
***DETENTION AND
CORRECTIONS
CASELAW CATALOG***

**26th Edition
2015-2016**

Volume Four: *Sec. 27-31*

**Rod C. Miller
Donald J. Walter**

Research and Review:

Joseph Heltzel
Chris Dickey
Richard Drennon
Kyle McCarty

CRS, Inc.

A Non-Profit Organization

925 Johnson Drive
Gettysburg, PA 17325
(717) 338-9100
Fax (717) 718-6178
www.correction.org
rod@correction.org

Copyright 2017

Table of Contents

DETENTION AND CORRECTIONS CASELAW CATALOG

VOLUME 1

How to Use the Catalog

Index and Topic Finder

Table of Cases

1. Access to Courts
2. Administration

3. Administrative Segregation
4. Assessment of Costs
5. Attorney Fees
6. Bail
7. Civil Rights

VOLUME 2

8. Classification and Separation
9. Conditions of Confinement
10. Cruel and Unusual Punishment
11. Discipline

12. Exercise and Recreation
13. Ex-Offenders
14. Failure to Protect

VOLUME 3

15. Facilities
16. False Imprisonment/Arrest
17. Female Prisoners
18. Food
19. Free Speech, Expression, Assoc.
20. Good Time

21. Grievance Procedures, Prisoner
22. Habeas Corpus
23. Hygiene-Prisoner Personal
24. Immunity
25. Intake and Admissions
26. Juveniles

VOLUME 4

27. Liability
28. Mail
29. Medical Care

30. Mental Problems (Prisoner)
31. Personnel

VOLUME 5

32. Pretrial Detention
33. Privacy
34. Programs-Prisoner
35. Property-Prisoner Personal

36. Release
37. Religion
38. Rules & Regulations-Prisoner

VOLUME 6

39. Safety and Security
40. Sanitation
41. Searches
42. Services-Prisoner
43. Sentence
44. Standards

45. Supervision
46. Training
47. Transfers
48. Use of Force
49. Visiting
50. Work- Prisoner

SECTION 27: LIABILITY

Detention and Corrections Caselaw Catalog *All Rights Reserved*
CRS Inc, 925 Johnson Dr., Gettysburg PA 17325 (717) 338-9100 www.correction.org/

The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

SEE ALSO: CHAPTER 24, IMMUNITY

1945

U.S. Supreme Court
42 U.S.C.A.
Section 1983
GOVERNMENTAL
LIABILITY

Screws v. United States, 325 U.S. 91 (1945). Screws, Sheriff of Buker County, Georgia, a policeman and a deputy sheriff arrested Robert Hall at his home late one night on a warrant charging Hall with theft of a tire. Hall, a negro, was handcuffed and taken by car to the court house. Upon alighting from the car at the court house, Hall was beaten by the three men with fists and a blackjack for fifteen to thirty minutes. Hall was later removed to a hospital where he died. Indictments were returned against the three men, one count charging a violation of Section 20 of the Criminal Code (predecessor of 42 U.S.C. Section 1983) and another charging a conspiracy to violate Section 20. A district court jury returned a verdict of guilty, and a fine and imprisonment on each count was imposed. The Circuit Court of Appeals affirmed and Screws petitioned for a writ of certiorari. (Reversed, remanded for new trial.) In discussing allegations that "under color of law" were designed to include only actions taken by officials pursuant to state law, the court stated:

DICTA: "It is clear that under 'color' of law means under 'pretense' of law. Thus acts of officers in the ambit of their personal pursuit are plainly excluded. Acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it." 325 U.S. at 111 (emphasis added). (Buker County, Georgia)

1961

U.S. Supreme Court
42 U.S.C.A.
Section 1983
GOVERNMENTAL
LIABILITY

Monroe v. Pape, 365 U.S. 167 (1961). Thirteen Chicago policemen broke into the Monroe family home in the early morning, routed them from bed, and made them stand naked in the living room while they ransacked the house. Mr. Monroe was then taken to the police station and detained on open charges for ten hours while being interrogated about a two day old murder. Though a magistrate was available, Monroe was not taken before him, and he was not permitted to call his family or attorney. He was finally released with no charges. The Monroe family sued the city of Chicago and the police under R.S.

Section 1979 (42 U.S.C. Section 1983) alleging that the warrantless search and arrest were made "under the color of statutes, ordinances, regulations, customs and usages" of the state and city. The district court dismissed the complaint, the court of appeals affirmed, and the Supreme Court granted certiorari and reversed the lower court ruling.

HELD: Allegation of facts constituting a deprivation under color of state authority of the fourth amendment guaranty against unreasonable searches and seizures, made applicable to the various states by the fourteenth amendment due process clause, satisfies to that extent the requirement of R.S. Section 1979 (42 U.S.C. Section 1983)

HELD: Congress in enacting R.S. Section 1979 (42 U.S.C. Section 1983) meant to give a remedy to parties deprived of constitutional rights, privileges, and immunities by an official's abuse of his position. 365 U.S. at 172.

HELD: The statutory words "under color of any statute, ordinance, regulation, custom, or usage, of any state or territory" do not exclude acts of an official or policeman who can show no authority under state law, custom or usage, to do what he did. 365 U.S. at 172.

HELD: "It is abundantly clear that one reason the legislation [R.S.

Section 1979, 42 U.S.C. Section 1983] was passed was to afford a federal right in federal courts because, by reasons of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the fourteenth amendment might be denied by the state agencies." 365 U.S. at 180.

HELD: The city of Chicago and the police argued that Monroe had the benefit of a state remedy which provided adequate relief, therefore making the federal remedy inappropriate. The court ruled:

"The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked."

HELD: "Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law is action taken 'under color of state law.'" 365 U.S. at 184 Citing United States v. Classic, 313 U.S. 299, (1940); (Screws v. United States, 325 U.S. 91 (1945).

HELD: It is not necessary that a specific intent to deprive a person of a federal right be found. "Section 1979 [42 U.S.C. Section 1983 should be seen against the background of tort liability that makes a man responsible for the natural consequences of his actions." 365 U.S. at 187.

HELD: "[W]e are of the opinion that Congress did not undertake to bring municipal corporations within the ambit of Section 1979 [42 U.S.C. Section 1983]."

EXPANSION: "The response of the Congress to the proposal to make municipalities liable for certain actions being brought within federal purview by the act of April 20, 1971 [Civil Rights Act, 42 U.S.C. Section 1983] was so antagonistic that we cannot believe that the word 'person' was used in the particular act to include them." 365 U.S. at 191. (Footnote Omitted.) (City of Chicago)

1970

U.S. District Court VICARIOUS LIABILITY

Davis v. Lindsay, 321 F.Supp. 1134 (S.D. N.Y. 1970). It is not proper for court to abstain from adjudicating detainee's claim for relief. The Commissioner of Department of Corrections is not liable in suit by city detainee seeking release from isolation on basis of general authority over jails. Constitutionality of administrative segregation must be measured by its reasonableness and effect, not the motivation of the actors. (City Jail, New York)

1971

U.S. District Court REMEDIES

Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Oh. 1971), aff'd, 456 F.2d 854 (6th Cir. 1972). Defendants must comply with federal court's orders regardless of division of responsibility under state law. (Lucas County Jail, Ohio)

U.S. Appeals Court NEGLIGENCE

Kish v. County of Milwaukee, 441 F.2d 901 (7th Cir. 1971). Under negligence concepts, in order for a prison official to be held liable, there must be found both a causal connection between the jailer's act and the resulting injury, and a duty for the official to act. The courts have held that there is a fundamental duty for prison officials to protect the lives and safety of inmates in their charge. (Milwaukee County Jail)

U.S. Appeals Court PERSONAL LIABILITY

Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971). Monetary liability "is entirely personal in nature, intended to be satisfied out of the individual's pocket." (Green Haven Correctional Facility)

1972

U.S. Appeals Court QUALIFIED IMMUNITY

Christman v. Skinner, 468 F.2d 723 (2d Cir. 1972). Where the plaintiff alleged that jail guards had refused to mail his letters to counsel, a suit against guards' superiors could not be dismissed since the plaintiff might be able to prove their participation or acquiescence. Where defendants censored mail pursuant to state regulations, and it was not claimed that they acted maliciously or in wanton disregard of plaintiff's rights, defendants are protected from suit by a qualified privilege. Monitoring of non-attorney conversation is not prohibited. (Monroe County Jail, New York)

1973

U.S. District Court 42 U.S.C.A. Section 1983 GOOD FAITH DEFENSE LIABILITY

Collins v. Schoonfield, 363 F.Supp. 1152 (D. Md. 1973). In action by prisoner against prison officials under 42 U.S.C. Section 1983 for damages against individual defendants, individual actions rather than general prison practices must be critically examined to determine if a constitutional violation has occurred. If an official has acted in good faith reliance on standard prison procedures, he shall not be required to respond personally in damages. (Baltimore City Jail, Maryland)

U.S. District Court DEFENSES

Hamilton v. Love, 358 F.Supp. 338 (E.D. Ark. 1973). Inadequate resources cannot justify deprivation of constitutional rights. (Palaski County Jail, Arkansas)

U.S. Appeals Court
42 U.S.C.A.
Section 1983

Johnson v. Glick, 481 F.2d 1028 (2nd Cir. 1973), cert. denied, 414 U.S. 1033. Guard's denial of prisoner's access to medical care may constitute a Section 1983 brutality claim. (Manhattan House of Detention, New York)

U.S. Supreme Court
FEDERAL TORT
CLAIMS ACT

Logue v. United States, 412 U.S. 521 (1973). Logue was a federal prisoner being held in a Texas county jail while awaiting trial. The county jail contracted with the federal government to house federal prisoners. While in custody, Logue committed suicide, and his parents brought suit under the Federal Tort Claims Act (FTCA) which allows individuals to sue the U.S. Government for negligent acts of an employee of the government. The district court found the sheriff's employees failed to provide adequate surveillance, and held the government liable. The Court of Appeals for the Fifth Circuit reversed the decision on the grounds that a "contractor exclusion" clause relieved the government of liability for the sheriff's employees' acts, and that these employees were not acting on behalf of a federal agency in an official capacity as the act intended. Logue's parents then sought certiorari from the U.S. Supreme Court. (Vacated and Remanded.)

HELD: The county jail was a contractor, not a federal agency within the meaning of the FTCA. a) The U.S. Marshal had no control or authority over the Sheriff's employees; b) The arrangement for keeping federal prisoners in the county jail clearly contemplated that the day-to-day operation of the jail be left with contractor (sheriff).

HELD: The contention that the sheriff's employees were "acting on behalf of a federal agency in an official capacity" and were thus employees of the government is not consistent with the legislative intent of the FTCA.

NOTE: The court remanded for further proceedings the question of negligence on the part of the U.S. Marshal in failing to order constant surveillance. (Nueces County, Corpus Christi, Texas)

1974

U.S. District Court
42 U.S.C.A.
Section 1983
GOOD FAITH
DEFENSE

Campise v. Hamilton, 382 F.Supp. 172 (S.D. Tex. 1974), cert denied, 429 U.S. 1102 (1976). Sheriff knew or should have known that the prisoner was kept under inhumane conditions and is liable under Section 1983, which incorporates state standards. The court rejected a sheriff's argument that he was immune from liability in a prisoners' rights suit under theories of quasi-judicial immunity and "good faith and probable cause." (Brazos County Jail, Texas)

1975

U.S. District Court
42 U.S.C.A.
Section 1983
TORT LAW

DiFebo v. Keve, 395 F.Supp. 1350 (D. Del. 1975). Inmate's glasses were broken in a scuffle, at which inmate was innocent bystander. Despite requests, he was not examined for three months, at which time the physician found the inmate's vision to have been permanently impaired. The court said the facts did not constitute a claim under Section 1983, but the facts would be sufficient to establish a claim under tort law. (Delaware Correctional Center)

U.S. District Court
DEFENSES
PERSONAL
LIABILITY

Miller v. Carson, 401 F.Supp. 835 (M.D. Fla. 1975), aff'd, 563 F.2d 741 (5th Cir. 1977). Where jail officials are joined as defendants in prisoners' rights litigation which commenced before said officials took office, they shall not be personally liable in damages for events transpiring or action taken or not taken prior to the date of their joinder, though they may be joined in both their individual and official capacities. Financial difficulties do not provide a defense where conditions of confinement violate minimum constitutional standards. (Duval County Jail, Florida)

1976

U.S. Appeals Court
GOOD FAITH
DEFENSE

Bryan v. Jones, 530 F.2d 1210 (5th Cir. 1976), cert. denied, 429 U.S. 865. The jury should be allowed to consider whether a sheriff is acting in good faith if he relies on the district attorney's office notice that the imprisonment was legal. (Dallas County Jail, Texas)

U.S. District Court

Doe v. Swinson, 20 Crim. L. Rptr. 2272 (E.D. Vir. 1976). Sloppy classification is liable. Sheriff is found liable for repeated beatings of prisoner. (Fairfax County Jail, Virginia)

U.S. Appeals Court
42 U.S.C.A.
Section 1983

Harris v. Chanclor, 537 F.2d 203 (5th Cir. 1976). A supervisory officer is liable under 42 U.S.C. Section 1983 if he refuses to intervene when his subordinates are beating an inmate in his presence. (Glynn County Jail, Georgia)

U.S. Appeals Court
42 U.S.C.A.

Kimbrough v. O'Neil, 545 F.2d 1059 (7th Cir. 1976). Culpability at the reckless disregard level is sufficient to maintain a section 1983 action. (St. Clair County Jail, Illinois)

U.S. District Court
DEFENSES

Mitchell v. Untreiner, 421 F.Supp. 567 (D. Neb. 1976). Lack of funds does not excuse unconstitutional conditions of confinement. (Escambia County Jail, Pensacola, Florida)

- U.S. District Court
DEFENSES Moore v. Janing, 427 F.Supp. 567 (D. Neb. 1976). Lack of resources does not justify denial of rights. (Douglas County Jail, Nebraska)
- U.S. District Court
DEFENSES Rodriguez v. Jiminez, 409 F.Supp. 582 (D. P.R. 1976). Inadequate resources can never be an adequate justification for the state's depriving persons of constitutional rights. (San Juan District Jail)
- U.S. District Court
RESPONDEAT
SUPERIOR Sandlin v. Pearsall, 427 F.Supp. 494 (E.D. Tenn. 1976). Doctrine of respondeat superior does not apply to sheriff for acts of deputies. (County Jail, Tennessee)
- U.S. District Court Tucker v. Thompson, 421 F.Supp. 297 (M.D. Ga. 1976). In suit for wrongful death of a detainee, liability of city may be predicated on maintenance of an actionable nuisance. (Macon City Jail, Georgia)

1977

- U.S. District Court Cook v. Brockway, 424 F.Supp. 1046 (N.D. Tex. 1977). Where jail employee allegedly stole prisoner's property after agreeing to sell it for the prisoner, the employee was acting outside the scope of his duties, and the sheriff would not be held liable absent evidence of personal involvement. (Kaufman County Jail, Texas)
- U.S. Appeals Court
DEFENSES Smith v. Sullivan, 553 F.2d 373 (5th Cir. 1977). Fiscal shortages are no defense to constitutional violations. (El Paso County Jail, Texas)
- U.S. District Court
FAILURE TO
SUPERVISE Stevens v. County of Dutchess, 445 F.Supp. 89 (S.D. N.Y. 1977). Sheriff is liable if prisoner-on-prisoner attack occurs under conditions of inadequate supervision. (Dutchess County Jail, New York)

1978

- U.S. District Court Fowler v. Vincent, 452 F.Supp. 449 (S.D. N.Y. 1978). Not every battery by a guard automatically states a claim for violation of civil rights, but where the battery is unprovoked or has no relationship to the necessary operation of the institution, a claim can be stated. (Green Haven Correctional Facility, New York)
- U.S. District Court Hamilton v. Covington, 445 F.Supp. 195 (W.D. Ark. 1978). A duty is owed by the sheriff to provide adequate security. Liability may exist for deaths and injuries occurring from a fire in an unattended jail. (Nevada County Jail, Arkansas)
- U.S. Supreme Court
42 U.S.C.A.
Section 1983
GOVERNMENTAL
LIABILITY
RESPONDEAT
SUPERIOR Monell v. Department of Social Services of the City of New York, 98 S.Ct. 2018 (1978). Female employees of the Department of Social Services and the Board of Education of New York City brought this class action against the department and its commissioner, the board and its chancellor, the City of New York and its mayor under 42 U.S.C. Section 1983. In each instance, the individual defendants were sued solely in their official capacity. The basis of the complaint was that the board and the department had as a matter of official policy compelled pregnant employees to take unpaid leaves of absence before such leaves were medically required.

The U.S. District Court for the Southern District of New York found that the women's constitutional rights had been violated, but held that their requests for injunctive relief were mooted by a supervisory change in official maternity leave policy. On the basis of Monroe v. Pape, 365 U.S. 167 (1961) the court denied recovery of back pay from the department, board, and city. Additionally and also on the basis of Monroe, the court held that persons sued in their official capacities as officers of a local government enjoy the immunity inferred on local governments by Monroe. The Second Circuit Court of Appeals affirmed and the Supreme Court granted certiorari. (Reversed.)

HELD: Our analysis of the legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress did intend municipalities and other local government units to be included among the person to whom Section 1983 applies. Local governing bodies, therefore, can be sued directly under Section 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. 98 S.Ct. at 2035-2036. (Footnotes omitted.)

HELD: [A]lthough the touchstone of the Section 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other Section 1983 'person' by the very terms of the statute, may be sued for constitutional deprivations visited

pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decision-making channels. 98 S.Ct. at 2036.

HELD: [T]he language of Section 1983, read against the background of the same legislative history, compels the conclusion that Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort. In particular, we conclude that a municipality cannot be held liable solely because it employs a tort-feasor, or in other words, a municipality cannot be held under Section 1983 on a respondeat superior theory. 98 S.Ct. at 2036.

HELD: Monroe v. Pape, 365 U.S. 167 is overruled "insofar as it holds Section 1983." 98 S.Ct. at 2022. (footnote omitted)

HELD: As the question whether local government bodies should be afforded some form of official immunity was not presented as a question to be decided in this case, the court expressed no view on the scope of municipal immunity, "beyond holding that municipal bodies sued under Section 1983 cannot be entitled to an absolute immunity, lest our decision that such bodies are subject to suit under Section 1983 'be drained of meaning.'" 98 S.Ct. at 2041. (Quoting Scgeyr v. Rhodes, 416 U.S. 232, 248. See, Owen v. City of Independence, Missouri, 100 S.Ct. 1398 (1980).

HELD: Considerations of stare decisis do not bar overruling of Monroe v. Pape, 361 U.S. 167, insofar as it is inconsistent with this opinion. 98 S.Ct. at 2041.

RATIONALE:

a. "Monroe v. Pape...insofar as it completely immunizes municipalities from suit under section 1983 was a departure from prior practice." 98 S.Ct. 2938.

b. Extending absolute immunity to school boards would be inconsistent with several instances in which Congress has refused to immunize school boards from federal jurisdiction under Section 1983. 98 S.Ct. at 2039.

c. Municipalities cannot arrange their affairs on an assumption that they can violate constitutional rights for an indefinite period. Accordingly, municipalities have no reliance interest that would support an absolute immunity. 98 S.Ct. at 2040.

d. "It is simply beyond doubt that, under the 1871 Congress view of the law, were Section 1983 liability unconstitutional as to local government, it would have been equally unconstitutional as to state officers. Yet everyone--proponents and opponents alike--knew Section 1983 would be applied to state officers and nonetheless stated that Section 1983 was constitutional." 98 S.Ct. at 2041.

NOTE: "Nothing we say today affects the conclusion reached in Moor [v. County of Alameda], 411 U.S. 693], that 42 U.S.C. Section 1988 cannot be used to create a federal cause of action where Section 1983 or the conclusion reached in City of Kenosha [v. Bruny], 412 U.S. 507] that 'nothing...suggests that the generic word 'person' in Section 1983 was intended to have a bifurcated application to municipal corporations depending on the nature of the relief sought against them.'" 98 S.Ct. 2041 at 66. (Department of Social Services and the Board of Education, New York City, New York)

U.S. Supreme Court
42 U.S.C.A.
Section 1983
QUALIFIED
IMMUNITY

Procunier v. Navarette, 434 U.S. 555 (1978). Navarette, an inmate of Soledad Prison, California, brought this 42 U.S.C. Section 1983 action against the director of the State Department of Corrections, the warden, and assistant warden, two correctional counselors, and a member of the prison staff in charge of handling inmate mail. The question on which the Supreme Court granted certiorari involved Navarette's third claim for relief. In that claim, Navarette alleged that his personal mail had not been mailed from the prison due to the subordinate staff's negligent application of prison mail regulations and the supervisory officer's failure to provide sufficient training and direction, all in violation of Navarette's constitutional rights. The U.S. District Court granted summary judgment for the prison officials, the Ninth Circuit Court of Appeals reversed, and the officials petitioned for a writ of certiorari and the Supreme Court reversed the lower court decision.

HELD: The court ruled that as prison officials, the defendants were not absolutely immune from liability in the Section 1983 damages suit and could only rely on qualified immunity as described in the cases of Scheur v. Rhodes, 416 U.S. 232 (1974); and Wood v. Strickland, 420 U.S. 308 (1975). 434 U.S. at 561 (Citing the Scheur holding).

HELD: Using the first standard put forth in Wood v. Strickland, the immunity defense would be unavailing to [the prison officials] if the constitutional right allegedly infringed by them was clearly established at the time of their challenged conduct, if they knew or should have known of that right, and if they knew or should have known that their conduct violated the constitutional norm. 434 U.S. at 562.

HELD: [T]here was no 'clearly established' first and fourteenth amendment right with respect to the correspondence of convicted prisoners in 1971-1972. As a matter of law, therefore, there was no basis for rejecting the immunity defense on the ground that petitioners knew or should have known that their alleged conduct violated a constitutional right. Because they could not reasonably have been expected to be aware of a constitutional right that had not been yet declared, petitioners did not act with such disregard for the established law that their conduct 'cannot reasonably be characterized as being in good faith.' [Citing Wood v. Strickland] 434 U.S. at 565.

HELD: In applying the second standard of Wood v. Strickland, authorizing liability where the official has acted with malicious intention to deprive a person of a

constitutional right or to cause him other injury the court ruled, "[t]he prison officers were charged with neglect and inadvertent interference with the mail and the supervisory personnel with negligent failure to provide proper training. To the extent that a malicious intent to harm is a ground for denying immunity, that consideration is clearly not implicated by the negligence claim now before us." 434 U.S. at 566.

DICTA: "Although the court has recognized that in enacting section 1983 Congress intended to expose state officials to damages liability in some circumstances, the section has been consistently construed as not intending wholesale revocation of the "common-law" immunity afforded government officials." 434 U.S. at 561.

NOTE: Navarette's complaint contained a total of nine claims for relief. The first three involved interference with outgoing mail, and though this issue reached the Supreme Court, it was disposed of by an immunity analysis. The six other claims for relief were dismissed by the U.S. District Court for failure to state a federal claim. These claims involved:

- Termination of a law student visitation program;
- Removal of inmate plaintiff from post of prison librarian;
- The remainder sought to hold supervisory officials liable on a theory of vicarious rather than personal liability. 434 U.S. at 558 N.4.

(Soledad Prison, California)

1979

- U.S. District Court Carwile v. Ray, 481 F.Supp. 33 (E.D. Wash. 1979). If opening of "judicial mail" actually occurred, it was in direct disobedience to the sheriff's orders and, therefore, the sheriff could not be liable. (County-City Jail, Spokane County, Washington)
- U.S. Appeals Court Clappier v. Flynn, 605 F.2d 519 (10th Cir. 1979). Jail administration and staff are held liable for an inmate-on-inmate attack where evidence reveals that living areas were patrolled only once per shift. (Laramie County Jail, Wyoming)
- U.S. Appeals Court Daily v. Byrnes, 605 F.2d 858 (5th Cir. 1979). Where a guard struck the plaintiff prisoner in retaliation for water being thrown at the guard, there is clear violation of civil rights. Where county jail prisoner is struck and injured by a guard and no effort is made to secure medical attention, guard and county could be held liable for deliberate indifference. (Escambia County Jail, Alabama)
- U.S. Appeals Court
FAILURE TO
SUPERVISE
VICARIOUS
LIABILITY Davis v. Zahradnick, 600 F.2d 458 (4th Cir. 1979). If a warden fails to properly supervise his officers and if improper supervision resulted in the guards' denial of access to medical treatment to a prisoner who had been beaten, the warden could be found vicariously liable for his failure to carry out the duty of supervision. (State Prison, Virginia)
- U.S. Appeals Court
DAMAGES Fielder v. Bosshard, 590 F.2d 105 (5th Cir. 1979). Jury awarded \$99,000 damages against jailer and sheriff for death of county jail prisoner. The deceased prisoner was arrested and jailed for nonsupport. Although informed of the prisoner's need for medication jail officials did not respond to his repeated requests. The jury found the officials were callously indifferent to the prisoner's known medical needs. (Williamson County Jail, Texas)
- U.S. Appeals Court
FAILURE TO
TRAIN
42 U.S.C.A.
SECTION 1983 Owens v. Haas, 601 F.2d 1242 (2nd Cir. 1979), cert. denied, 444 U.S. 980 (1979). The county may be held liable for failing to properly train jail staff if that failure amounts to "gross negligence" or "deliberate indifference" to the inevitable consequences of a lack of training. In addition, there need not be a "pattern" of abuse for the county to be liable, but liability under Section 1983 can arise from a single incident if that incident is serious enough to indicate some level of "official acquiescence" (in this case, the incident was the beating of a prisoner who refused to leave his cell, by the defendant Officer Haas and other officers). If the plaintiff can show an official "custom or policy" stemming from or resulting in a conspiracy, and if the conspiracy implicates the county itself, then the county may be liable as a "person" under Title 42, Section 1985 (the conspiracy section of the Civil Rights Act).

1980

- State Appeals Court
NEGLIGENCE Burns v. Town of Leesville, 383 So.2d 109 (Ct. App. La. 1980). Court of appeals affirms judgment against pretrial detainee. The plaintiff, Bill Burns, was arrested and charged with drunkenness and was admitted to the Leesville City Jail. He was assigned an upper bunk in a double cell. After several hours, he attempted to leave the bunk and fell across the bottom bunk, striking his back on its metal railing. He said that he was not able to move after his fall, requested medical attention several times, and it was refused. Burns was released from custody the following morning and sought treatment for his back. His injuries were diagnosed as a contusion, abrasion and acute sprain, and he spent several days in the hospital. Burns filed suit against

the town of Leesville, the chief of police, and the village of New Llano (where he was initially arrested), claiming they were responsible for his injuries. The plaintiff claimed that the defendants should not have placed him in an upper bunk because of his physical condition, and that they were negligent in failing to provide medical services. The defendants argued that the plaintiff was negligent in attempting to get down from his bunk and should be held responsible for his own actions. The trial judge concluded that the plaintiff was not unreasonably intoxicated, and was therefore responsible for his actions. The appeals court concurred, and ordered Burns to pay all court costs. (Leesville City Jail, Louisiana)

U.S. Appeals Court
DEFENSES

Campbell v. Cauthron, 623 F.2d 503 (8th Cir. 1980). Lack of funding is not a defense to performance of a constitutional duty. (Sebastian County Jail, Arkansas)

U.S. Supreme Court
FEDERAL TORT
CLAIMS ACT
DAMAGES

Carlson v. Green, 100 S.Ct. 1468 (1980). In this case, Green as administratrix of the estate of her deceased son, brought suit in an Indiana U.S. district court, alleging that while her son was an inmate in a Federal prison, officials failed to give him proper medical attention, causing personal injuries from which he died. Green claimed this violated her son's eighth amendment protection against cruel and unusual punishment. Asserting jurisdiction under 28 U.S.C. Section 1331 (a.), Green sought compensatory and punitive damages. The U.S. District Court held that the complaint gave rise to a cause of action under Bivens for damages, but dismissed the complaint because Illinois survivorship and wrongful death laws limited recoverable damages to less than the \$10,000 required to meet 1331 (a.) jurisdiction. The Seventh Circuit Court of Appeals agreed with the district court, but held that Section 1331 (a.) was satisfied because whenever a state survivorship statute would preclude a Bivens action, the federal common law allows survival of the action.

HELD: In ruling that a Bivens remedy against individual federal agents was permissible in this case, as well as an action against the federal government under the Federal Tort Claims Act, the court stated: "Plainly FTCA is not a sufficient protector of the citizens' constitutional rights, and without a clear congressional mandate we cannot hold that Congress relegated [Green] exclusively to the FTCA remedy." 100 S.Ct. at 1474. (Federal Correctional Center, Indiana)

U.S. District Court
FEDERAL TORT
CLAIMS ACT
DAMAGES

Garrett v. United States, 501 F.Supp. 337 (N.D. Ga. 1980). An ex-inmate of Atlanta Federal Penitentiary sues for injuries inflicted upon him while he was incarcerated. The district court found that the prisoner who assaulted the plaintiff prisoner arrived at the federal penitentiary in Atlanta accompanied by a file showing that he had committed assault upon a correctional officer on three separate occasions, had assaulted another inmate, had murdered an inmate and threatened correctional officers, as well as engaged in fighting and possession of dangerous weapons. The government was negligent in failing to anticipate that he might harm another prisoner and failed to provide closer supervision of him than was provided. He had been placed in a large area housing 500 to 600 prisoners in multi-tiered cells, manned by two to three guards. The court found that this negligence was proximate cause of prisoner's injuries so that he would be entitled to damages for loss of earnings, pain he suffered after the incident, and anxiety and mental distress. The legal standard for proximate cause requires the injuries to have been a foreseeable result to the alleged negligence. However, "foreseeability" does not require the anticipation of a particular injury to a particular person but only that anticipation of a general type or category of harm which in ordinary experience might be expected to flow from a particular type of negligence. Failure of the institutional staff to take the individual's prior record of attacks on inmates and guards into account when classifying him, which caused the individual to be placed in general population where he was able to attack plaintiff, was negligence giving rise to liability under the Federal Tort Claims Act. \$5040 was awarded. (Federal Penitentiary, Atlanta)

U.S. District Court
FEDERAL TORT
CLAIMS ACT

Guy v. United States, 492 F.Supp. 571 (N.D. Calif. 1980). The evidence does not indicate any negligence on the part of the institutional officials which resulted in the inmates who beat the plaintiff gaining access to alcohol. Therefore, no claim was stated under the Federal Tort Claims Act. (Federal Correctional Institute, California)

U.S. District Court
DEFENSES

Hutchings v. Corum, 501 F.Supp. 1276 (W.D. Mo. 1980). Class action is brought challenging the constitutionality of numerous conditions and practices at the county jail. The district court held that: (1) prison authorities' failure to immediately evacuate inmates from any sewage contaminated cell, pending thorough cleaning of cell, violated constitutional rights of inmates subject to that condition; (2) deficiencies in jail, including lack of fire escape, absence of windows, lack of necessary fire doors, and limited number of fire extinguishers amounted to constitutionally intolerable conditions. Prison conditions for an unconvicted person are to be judged against due process standards of the fifth and fourteenth amendments and conditions within the penal institution which are unconstitutional for the convicted person under eighth amendment review are likewise an abridgment of due process guarantees afforded unconvicted persons.

Deficiencies in the county jail, including lack of fire escapes, absence of windows, lack of necessary fire doors, and limited number of fire extinguishers amounted to constitutionally intolerable conditions. Failure of county jail authorities to provide each inmate one hour per day of exercise outside cells was a constitutionally intolerable condition. The claim that financial restrictions have prevented improvements in jail conditions is not a defense to constitutional violations. (Clay County Jail, Missouri)

U.S. District Court
RESPONDEAT
SUPERIOR

Madewell v. Garmon, 484 F.Supp. 823 (E.D. Tenn. 1980). Where the state statutes made the sheriff responsible for the operation of the jail and the plaintiff alleged the personal involvement of the sheriff in acts directed against him, the case required a trial to determine the sheriff's liability and could not be resolved on summary judgment on the basis that respondeat superior does not apply in civil rights cases. (County Jail, Tennessee)

U.S. District Court
NEGLIGENCE
VICARIOUS
LIABILITY

Moomey v. City of Holland, 490 F.Supp. 188 (W.D. Mich. 1980). A superior officer is not liable for the acts of his inferiors in a civil rights litigation without personal involvement. Failure of the booking officer to remove the inmate's belt, with a resulting suicide, is nothing more than negligence, and does not state a claim for violation of civil rights. (Holland City Jail, Michigan)

U.S. District Court
FEDERAL TORT
CLAIMS ACT
DAMAGES

Picariello v. Fenton, 491 F.Supp. 1026 (M.D. Penn. 1980). Force employed by a guard to restrain an inmate is privileged. Where the force employed is greater than necessary or longer in duration than necessary, a claim under the Federal Tort Claims Act is stated. An extended use of restraints (three days) was excessive under the facts. \$200 per inmate was awarded. (United States Penitentiary, Lewisburg, Pennsylvania)

U.S. Appeals Court
REMEDIES

Streeter v. Hopper, 618 F.2d 1178 (5th Cir. 1980). The state has an obligation to protect the safety of the inmates and where the courts have found a breach of this duty, they have wide discretion in formulating a remedy. (State Prison, Reidsville, Georgia)

U.S. Appeals Court
GOOD FAITH
DEFENSE

Williams v. Kelly, 624 F.2d 695 (5th Cir. 1980), cert. denied, 451 U.S. 1019 (1980). Mother of prisoner, whose death was apparently caused when jailers applied choke hold to him, brought wrongful death action against the jailers resting on statute authorizing a civil action for deprivation of rights. The United States District Court for the Northern District of Georgia entered judgment in favor of the jailers and the prisoner's mother appealed. The court of appeals held that the district court's findings that jailers applied fatal choke hold to prisoner in order to protect their own safety and in a good faith effort to maintain order or discipline were not clearly erroneous and therefore their conduct was not constitutionally tortious. (Atlanta Police Station, Holding Room)

U.S. Appeals Court
42 U.S.C.A.
Section 1983

Withers v. Levine, 615 F.2d 158 (4th Cir. 1980), cert. denied, 449 U.S. 849 (1979). The lack of a classification system which results in placements which promotes inmate on inmate assaults was more than simple negligence and therefore, assaults resulting from such a system stated a claim upon which relief could be granted under U.S.C. Section 1983. (House of Corrections, Maryland)

U.S. Appeals Court

Wood v. Woracheck, 618 F.2d 1225 (7th Cir. 1980). Jailers are not liable for incarceration of falsely arrested persons. (City Jail, Milwaukee, Wisconsin)

1981

U.S. District Court
42 U.S.C.A.
Section 1983
NEGLIGENT
RETENTION
VICARIOUS
LIABILITY

Brandon v. Allen, 516 F.Supp. 1355 (1981). A Civil Rights Act suit was brought against a police officer and the Director of the police department seeking damages because of assault and battery committed on the plaintiffs by the officer. Default judgment was taken against the officer. The district court held that since the city police director should have known of officer's dangerous propensities the director was liable in his official capacity. For one to be held liable under Civil Rights Act of 1871 he must act under color of law and in doing so he must play an affirmative part in deprivation of the constitutional rights of another. Although the police officer was technically off duty at the time of the alleged assault and battery, he acted under "color of law" within the meaning of Civil Rights Act of 1871 because off-duty officers were authorized to be armed and were required to act if they observed commission of a crime.

Since the city police director should have known of officer's dangerous propensities the director was liable in his official capacity for violation of plaintiffs' civil rights when they were attacked by the officer, in that the director failed to take proper action to become informed of the officer's dangerous propensities. The officer's reputation for maladaptive behavior was widespread among fellow officers and although at least one officer personally informed police precinct supervisors of the fellow officer's morbid tendencies, no investigation and action were undertaken.

Police officers are vested by the law with great responsibility and must be held to high standards of official conduct. Officials of the police department must become informed of the presence in the department of officers who pose a threat of danger to the safety of the community; when knowledge of a particular officer's dangerous propensities is widespread among the ranks of police officers, the department officials ought to be held liable for the officer's infringement of another's civil rights. 42 U.S.C.A. Section 1983. (Memphis Police Department)

U.S. Appeals Court
QUASI-JUDICIAL
IMMUNITY
GOOD FAITH
IMMUNITY

Jihaad v. O'Brien, 645 F.2d 556 (6th Cir. 1981). A prison disciplinary officer is not a quasi-judicial officer for the purpose of immunity. Therefore he has potential liability for civil rights violations committed while administering institutional discipline. To be liable for a violation of civil rights, the act must be malicious, i.e., the individual must be aware that he is violating the individual's civil rights. Here there was no established law, and the individual was acting in good faith so that he was not liable. (Federal Correctional Institution, Milan, Michigan)

U.S. Appeals Court
REMEDIES

Jones v. Diamond, 636 F.2d 1364 (5th Cir. 1981)(en banc). Where the conditions of the institution have improved but there is nothing in the record which would suggest any basis for an assurance that the conditions would not change, injunctive relief is warranted. An injunction prohibiting racial segregation, overcrowding and discipline, except in accordance with the newly prescribed rules, was entered. (Jackson County Jail, Pascagoula, Mississippi)

U.S. District Court
REMEDIES

Mercer v. Griffin, 30 CrL 2253 (1981). A consent decree entered nearly a year ago concerning the improvement of conditions at the Chatham County (Georgia) Jail "has been all but ignored," according to the U.S. District Court for the Southern District of Georgia. The court postponed a contempt adjudication but issued specific orders concerning overcrowding and other issues, stating:

"The patience of the plaintiffs and the court has apparently only permitted further deterioration in conditions which were already deplorable. The time for patience is at an end. In the event that Sheriff Griffin fails to meet the deadlines [imposed in this order], the court will be compelled to remove the jail from his control. Should it be shown that the county commissioners have failed to provide adequate resources to permit meeting these fundamental requirements, the court will similarly be compelled to act. I do not relish these responsibilities. The jail is in the first instance the responsibility of elected officials. I have no wish to remove this public facility from the control of representatives of the taxpayers who must in any event support it. Nor do I have any wish to expose the defendants to the political embarrassment of removal from their official duties. Nonetheless, the court has its own duty to the citizens of the community, including those who find themselves incarcerated. That duty will be fulfilled."

(Chatham County Jail, Georgia)

U.S. District Court
GOOD FAITH
DEFENSE

Nees v. Bishop, 524 F.Supp. 1310 (D.C. Colo. 1981). An FBI agent who denies a prisoner his sixth amendment right to counsel in a criminal proceeding is not immune from liability. Although the agent acted in good faith, his action in instructing the sheriff not to permit the public defender access to the prisoner was not reasonable. On appeal, the lower court decision was reversed when the appeals court determined that the arrestee's right to counsel had not yet attached at the time his request to see a public defender was denied. (Colorado State Penitentiary)

U.S. District Court
PERSONAL
LIABILITY
DAMAGES

O'Conner v. Keller, 510 F.Supp. 1359 (D. Md. 1981). Confinement in a strip cell (isolation) does not constitute a per se violation of the eighth amendment. Where the purpose of placing the individual in strip cell was to permit him to calm down after an incident in the institution, the placement was reasonable. However, the continuance of the placement for two days without providing a mattress, toilet paper, or operational plumbing was unreasonable and violated due process, particularly where the staff providing regular checks of the condition of the inmate had indicated that he was calm and normal. The Court finds that the stay was at least twenty-four hours too long. Guards who failed to act on the reports of proper behavior in isolation are liable. \$200 in damages was awarded. (Maryland Correctional Institution)

U.S. Supreme Court
42 U.S.C.A.
Section 1983

Parratt v. Taylor, 451 U.S. 527 (1981). The plaintiff, an inmate of a Nebraska prison, ordered by mail certain hobby materials. After being delivered to the prison, the packages containing the materials were lost when the normal procedures for receipt of mail packages were not followed. The inmate brought an action in federal district court under 42 U.S.C. Section 1983 against prison officials to recover the value of the hobby materials, claiming that they had negligently lost the materials and thereby deprived the inmate of property without due process of law in violation of the fourteenth amendment. The district court entered summary judgment for the inmate, holding that negligent actions by state officials can be a basis for an action under

Section 1983, that officials were not immune from liability, and that the deprivation of the hobby materials implicated due process rights. The court of appeals affirmed. The United States Supreme Court disagreed, **holding** that the inmate had not stated a claim for relief under 42 U.S.C. Section 1983. Pp. 531-544.

(a) In any Section 1983 action the initial inquiry must focus on whether the two essential elements to a Section 1983 action are present: (1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this conduct deprived a person of rights, privileges, or immunities secured by the constitution or laws of the United States. Pp. 531-535.

(b) Although the inmate had been deprived of property under color of state law, he had not sufficiently alleged a violation of the due process clause of the fourteenth amendment. The deprivation did not occur as the result of some established state procedure, but as the result of the unauthorized failure of state agents to follow established state procedure. Moreover, Nebraska has a tort claims procedure which provides a remedy to persons who have suffered a tortious loss at the hands of the state, but which the inmate did not use. This procedure could have fully compensated the inmate for his property loss and was sufficient to satisfy the requirements of due process. Pp. 535-544. 620 F.2d 30, reversed. (State Prison, Nebraska)

U.S. District Court
DAMAGES
PERSONAL
LIABILITY

Pitts v. Kee, 511 F.Supp. 497 (D. Del. 1981). A United States district judge has ordered a Delaware Correctional Center guard captain to pay \$680 in damages to an inmate for keeping him in solitary confinement and for preventing him from answering charges that he helped start a prison riot. The inmate was awarded thirty dollars a day as compensatory damages for each day he was kept in isolation after authorities had completed their investigation of the disturbance. He was also awarded \$500 in punitive damages. (Delaware Correctional Center)

U.S. Appeals Court

Tikalsky v. City of Chicago, 687 F.2d 175 (Chicago, Ill. 1981). A federal jury awarded \$30,000 in damages to Mary Ann Tikalsky, a former city of Chicago Clinical therapist, who was strip searched after being arrested for complaining about a parking ticket. The verdict was made against the city and Norman Schmiedeknecht, the police watch commander on duty when she was searched. Two other officers were found not guilty of the charge. Following the verdict, James O'Grady, former police superintendent for the city issued strict guidelines as to when strip searches could be made. The Illinois General Assembly has since passed legislation restricting such searches. (Illinois)

U.S. Appeals Court
GOOD FAITH
DEFENSE

Wolfel v. Sanborn, 666 F.2d 1005 (1981), cert. denied, 459 U.S. 1115. In an action for damages under the civil rights laws, state officials have the burden of proving that they are entitled to qualified immunity because they acted in good faith. (Ohio Adult Parole Authority)

1982

U.S. Appeals Court
42 U.S.C.A.
Section 1983

Berry v. McLemore, 670 F.2d 30 (5th Cir. 1982). A town can not be held liable under Section 1983 for injuries sustained by an arrestee during an allegedly unlawful arrest. No reasonable jury could have found from the evidence that the police officer's unlawful arrest was made pursuant to any policy or custom of the town. (Maben, Mississippi)

U.S. District Court
42 U.S.C.A.
Section 1983

DiGiovanni v. City of Philadelphia, 531 F.Supp. 141 (E.D. Penn. 1982). A municipality's immunity from any claim for punitive damages under 42 U.S.C.A. Section 1983 does not necessarily apply to officials and employees of municipalities. Punitive damages may be awarded against municipal officials and employees in order to punish gross violations of constitutional rights. (Philadelphia City Jail, Pennsylvania)

U.S. District Court

Dillon v. Director, Dept. of Corrections, 552 F.Supp. 30 (W.D. Vir. 1982). Director of state corrections agency not liable for negligent acts in local jails. Although he had a statutory duty to implement standards and goals for local correctional facilities, the court found that the Director of the Virginia Department of Corrections was not liable for isolated acts of negligence that occurred in local jails. The court held that since he had no direct control over city jail employees he could not be held vicariously liable for their negligent acts. The plaintiff had alleged that he was the victim of a sexual assault by an adult and two juveniles while incarcerated in the juvenile section of the Roanoke City Jail as a result of various officials' negligence. He was also suing the City of Roanoke, the sheriff, and several jail personnel. The director was dismissed from the suit. (Roanoke City Jail, Virginia)

U.S. Appeals Court
PERSONAL
LIABILITY
DAMAGES

Freeman v. Franzen, 695 F.2d 485 (7th Cir. 1982), cert. denied, 463 U.S. 1214 (1982). Guards are found to have used excessive force in moving inmate between cells. The Seventh Circuit Court of Appeals affirmed the decision of the lower court in finding for the plaintiffs in this case. The court noted that action for excessive force lies not only under the eighth amendment but under the due process clause of the fourteenth amendment as well.

The incident occurred at the Stateville Correctional Center in Joliet, Illinois. The jury awarded the plaintiff \$2,500 compensatory and \$1,000 punitive damages; \$12,000 in attorney fees were awarded. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
NEGLIGENT
RETENTION
FAILURE TO
SUPERVISE

Hirst v. Gertzen, 676 F.2d 1252 (9th Cir. 1982). The Ninth Circuit Court of Appeals sent back a Montana Civil rights case to the lower court based on allegations by the plaintiff concerning negligent hiring and failure to supervise a deputy sheriff. In 1975, Clayton Hirst, a Native American, was found dead in his jail cell in Cutbank, Montana, hanged by his belt. His family brought suit alleging that he had been electrocuted and then made to appear as though he had committed suicide or that he actually did commit suicide as a direct result of the negligence of the defendant city and county and their officials in negligently hiring and failing to supervise jail personnel.

The district court divided the trial into two parts. In the first portion, the jury determined that the victim's cause of death was suicide rather than electrocution. The second half dealt with the liability of the defendants, and the district court dismissed on all counts, finding no liability. The court of appeals remanded the case on two theories: (1) that the county and city and their officials had a duty under state law to exercise care in hiring and supervising correctional officers and (2) that the negligent hiring and failure to supervise resulted in a deprivation of constitutional rights under federal law. Under this theory, the court noted that the plaintiffs had alleged gross negligence, but even simple negligence (any failure to fulfill duties which should have reasonably been expected to be done) would be sufficient to find that the defendants were liable. (Glacier County Jail, Montana)

State Appeals Court
NEGLIGENCE

Iglesia v. Wells, 441 N.E.2d 1017 (Ind. App. 1982). Sheriff's department may be held liable under a negligence theory for release of an indigent man. The First Circuit Court of Appeals for Indiana held that the sheriff's department owed a man a duty to release him in a manner which would not subject him to unreasonable danger, ordering the trial court to hear the evidence and decide the case. The case involved an indigent man who was arrested for public intoxication. After pleading guilty to the charge, he was ordered to pay costs and a fine, but having no money, spent one week in the county jail. He was released at one minute past midnight on the final day of his sentence. The man's clothing was unsuitable for the cold winter weather on the night of his release. He could not speak or understand English, he lived far from the jail and had no transportation. Becoming disoriented, the man wandered, lost his shoes, and suffered frostbite resulting in partial amputation of his feet. (Marion County Jail, Indiana)

U.S. District Court
42 U.S.C.A.
Section 1983

Juncker v. Tinney, 549 F.Supp. 574 (D. Md., 1982). Section 1983 action is prevented for negligent deprivation of liberty interest. The Federal District Court for Maryland has held that the Supreme Court case of Parratt v. Taylor, 451 U.S. 527, prevents an inmate from recovering, under Section 1983, for burns allegedly received from a coverless radiator in his cell.

The court noted that Parratt has been used for two purposes: (1) for the notion that simple negligence may sometimes be enough to state a claim of action under Section 1983, and (2) that if a state remedy is available, a negligent deprivation of a property interest is not actionable under Section 1983.

The Maryland court reasoned that a negligent deprivation should be treated the same whether of a liberty interest or a property interest, and held that Parratt applies in this case and thus prevents the inmate from recovery under Section 1983.

The court outlined a four-step analysis in determining that the plaintiff was not entitled to recovery in this case:

- (1) if the complaint states a claim under some constitutional provision other than the fourteenth amendment, Parratt does not apply, because it deals only with the Due Process Clause of the fourteenth amendment;
- (2) if the complaint alleges that the violation resulted from an established state procedure, Parratt will not apply because the deprivation was not negligent;
- (3) if the complaint alleges conduct which shocks the conscience of the court, Parratt will not prevent the plaintiff from recovery because such conduct would be a violation of substantive due process and Parratt deals only with procedural due process; and
- (4) even if Parratt is applicable, if the court finds that there is no adequate state remedy, the Section 1983 action will be allowed to proceed.

The plaintiff in this case did not meet any of the above criteria and the suit was dismissed. (Maryland Correctional Institute)

U.S. District Court
REMEDIES

Miller v. Carson, 550 F.Supp. 543 (M.D. Fla. 1982). Defendants are found in contempt for exceeding population limit. The court found the defendants individually and in their official capacity for exceeding the capacity of the jail which was set in a permanent injunction. A fine of \$10,000 was imposed and fines in excess of \$5,000 per day were authorized in the event of further violations. (Duval County Jail, Florida)

U.S. Appeals Court
FAILURE TO
PROTECT

Mosby v. Mabry, 697 F.2d 213 (8th Cir. 1982). Administrative liability for an assault on an inmate exists only if the warden or jailer knew of risk of such injury or should have known of it and failed to prevent such an attack. (Arkansas Department of Correction)

U.S. District Court
REMEDIES

Parnell v. Waldrep, 538 F.Supp. 1203 (W.D. N.C. 1982). County fails to take remedial action to solve exercise deficiencies. The United States district court for the Western District of North Carolina found that Gaston County and its Board of Commissioners were liable for past and continuing injury to county prisoners for unconstitutional conditions with regard to the lack of exercise facilities. Since the county defendants knew that the unconstitutional conditions existed and failed to remedy the situation, they are subject to any lawful equitable remedies the court might order.

The case was filed as a class action against the sheriff and jail sergeant, complaining of several constitutional violations, including claims that prisoners in the jail were not allowed to receive newspapers, that they were denied access to legal materials, and that they were denied opportunities for adequate exercise. The court found all three policies unconstitutional, and the defendants were enjoined from prohibiting inmates' receipt of newspaper and books, and were ordered to submit plans to the court for providing inmates with adequate access to the courts and opportunities for exercise.

The defendants complied with the order as to the receipt of written materials but otherwise objected on the grounds that they were without the funds or authority to comply. As a result, the court added Gaston County and the County Board of Commissioners as defendants. The court found that the county and the Board of Commissioners knew of the unconstitutional conditions regarding the lack of exercise but failed to take remedial action. (Gaston County Jail, North Carolina)

U.S. District Court
PERSONAL
LIABILITY

Roscom v. City of Chicago, 550 F.Supp. 153 (N.D. Ill. 1982). Sheriff and jail director could be individually liable if they implemented a policy permitting unconstitutional strip searches. A woman arrested for writing dishonored checks has sued the sheriff, jail director, and various city defendants for conducting a visual strip search. Taken from a police station to a hospital when she complained of chest pains, she was subjected to a visual strip search upon her admission to the Cook County Jail. The Court held that even though the sheriff and jail director were not personally involved with the search, they could be individually liable if the policy which they implemented is found unconstitutional. (Cook County Jail)

U.S. Appeals Court
FAILURE TO
DIRECT

Salinas v. Breier, 695 F.2d 1073 (7th Cir. 1982), cert. denied, 104 S.Ct. 119. Police chief is not liable for failing to establish guidelines for strip searches. An appellate court has overturned the findings of a federal district court which held that a strip search was conducted by employees in a humiliating manner and that the chief was liable for failing to establish specific guidelines for the conduct of searches. The case was reversed by the appellate court which found that the police chief was not liable because the strip search was conducted based on probable cause that the arrestees possessed controlled substances. (Milwaukee Police Department)

U.S. Appeals Court
DAMAGES

Saunders v. Chatham County, 728 F.2d 1367 (11th Cir. 1982). \$20,000 is awarded to a prisoner who was assaulted by another prisoner. The suit alleged that jail officials in Chatham County, Georgia, were guilty of "gross negligence" in failing to protect the safety of an inmate who was beaten by another inmate. (Chatham County Jail, Georgia)

State Supreme Court
DAMAGES

Valadez v. City of Des Moines, 324 N.W.2d 475 (Iowa Sup. Ct. 1982). Award of \$3,800 overturned by appellate court. Arrested for hit and run and assault on an officer, Valadez was taken to a hospital shortly after admission to the jail. Upon his return to the jail, he was released on bail. In a jury trial, he was awarded \$300 in damages and \$3,500 in punitive damages for false imprisonment. On appeal, the Iowa Supreme Court reversed the decision and ordered the lower court to rule in favor of the defendants. The Supreme Court noted that although the plaintiff proved that detention and restraint were against his will, the evidence at the trial failed to prove the unlawfulness of the restraint. (Des Moines Police Department, Iowa)

U.S. Appeals Court
GOOD FAITH
DEFENSE

Williams v. Bennett, 689 F.2d 1370 (11th Cir. 1982), cert. denied, 104 S.Ct. 335 (1982). Supreme Court will not review a decision denying prison officials a "good faith" defense. The United States Supreme Court has declined to hear a case which established that a prisoner who was injured in an attack could sue prison officials in their personal capacity. State prison officials were told that they might personally be liable for damages, under the eighth amendment, by the 11th Circuit Court of Appeals. When an inmate of Holman Prison in Alabama was stabbed by another prisoner and was rendered a permanent quadriplegic, he brought suit alleging violation of his constitutional rights under the eighth amendment. (Holman Prison, Alabama)

U.S. District Court
GOOD FAITH
DEFENSE

Williams v. Heard, 533 F.Supp. 1153 (S.D. Tex. 1982). The sheriff is liable for the failure of his agents to release a prisoner after he was not billed by the grand jury. A grand jury "no bill" constitutes a direction to the jailer that demands that a prisoner be released when the grand jury fails to find a bill of indictment for the offense charged. The failure to release the prisoner amounted to a deprivation of the prisoner's liberty without due process. The sheriff was not immune from liability on the basis of good faith since his actions were not reasonable. (Harris County Jail, Texas)

U.S. Appeals Court
GOOD FAITH
DEFENSE

Williams v. Treen, 671 F.2d 892 (1982), cert. denied, 103 S.Ct. 762 (1982). Insofar as the conditions of confinement at a Louisiana prison contravened clearly established state law, the state prison officials' belief in the lawfulness of those conditions was per se unreasonable. Thus, they could not claim an immunity based on reasonable good faith. If the officials knowingly deprived a prisoner of needed medication, they violated the constitutional prohibition against cruel and inhuman punishment and would not be entitled to qualified immunity. (State Penitentiary, Angola, Louisiana)

1983

U.S. District Court
GOVERNMENTAL
LIABILITY

Brown v. City of Chicago, 573 F.Supp. 1375 (N.D. Ill. 1983). City officials could be held liable for injuries caused by prisoner transportation practices. The plaintiff, now a quadriplegic, accused the City of Chicago of purchasing unsafe "paddy wagons," and handcuffing prisoners in a manner which produces injuries during transport. A federal district court had found that the city may be liable for injuries which result from the alleged practices. (City of Chicago, Illinois)

State Court
DAMAGES

Craven v. Richmond City, (Superior Court of CA, #207934, 1983). Diabetic awarded \$1,118,434 because city jail failed to provide three meals a day. A female arrested in Richmond City, California, was housed in the Richmond City Jail. Upon admission her husband notified jail personnel that she was diabetic, and that she required daily insulin injections. She was taken to a hospital each day, and a hospital physician notified jail staff in writing that she was to receive three meals each day, instead of the two meals which were being served to all prisoners.

The written notice was lost, and the prisoner received only two meals. After three days she was admitted to a local hospital by jail staff, where she lapsed into a coma.

After a jury trial, the plaintiff was awarded a total of \$1,718,434, which was reduced by \$600,000, the amount of a previous settlement with the city. (City Jail, Richmond, California)

State Appeals Court
REMEDIES
GOOD FAITH
DEFENSE

Daniels v. McKinney, 193 Cal. Rptr. 842 (App. 1983). California appeals court awards fees to inmate counsel and finds that the sheriff is not in willful contempt. In a previous court order, the sheriff had been instructed to provide three hours of exercise per week to all inmates, without regard to sex. Female inmates sought to hold the sheriff in contempt of court for failing to implement the order. They prevailed and secured their exercise privileges. Their counsel was awarded attorney's fees.

The sheriff was not held in contempt because the court determined that he made a good faith effort to comply with the previous order, and showed a willingness to comply. However, the court ruled that personnel shortages did not justify the failure to provide female prisoners with exercise. (Fresno County Jail, California)

U.S. Appeals Court
STATUTES
(PREVENTING
LAWSUITS)

Holman v. Hilton, 712 F.2d 854 (3rd Cir. 1983) aff'd 542 F.Supp. 913 (D. N.J. 1982). Statute preventing lawsuits during confinement is held unconstitutional. The New Jersey state tort claims act prevents prisoners from filing suits against public entities or employees until they are released from confinement. A prisoner serving a life sentence, who was seeking the return of personal property, filed suit.

A federal district court found that the claims act was not constitutional, and on appeal, the Third Circuit Court of Appeals has affirmed the lower court's finding that the statute denied prisoners sentenced to life due process, and that the time delay contributed to governmental error in hearing the claims. The court also found that the state's administrative remedies available during confinement were not a valid alternative. (Trenton State Prison, New Jersey)

U.S. Appeals Court
DAMAGES
PERSONAL
LIABILITY

King v. Higgins, 702 F.2d 18 (1st Cir. 1983), cert. denied, 104 S.Ct. 404. Superintendent is to pay \$390 to an inmate for improperly conducting a disciplinary hearing. Following an incident, the plaintiff inmate was brought before a disciplinary board and charged with refusing to work, refusing a direct order and inciting to riot. He was not given prior notice of the hearing, nor was he advised of his right to seek counsel, to confront the complaining officer, nor his right to present witnesses on his own behalf. After the disciplinary hearing, a reclassification hearing was conducted in which it was recommended that because of his frequent disciplinary infractions, the inmate should be transferred to a more secure institution. The plaintiff inmate

brought suit alleging that the disciplinary hearing had been improperly conducted and adversely affected his reclassification hearing. The court ordered that the inmate be awarded \$375 for pain and suffering during the fifteen days he was placed in isolation as a result of the disciplinary decision, and \$15 for loss of wages. The superintendent of the facility was held liable for the \$390 since he was the official designated to hear prisoner's appeals. (Massachusetts Correctional Institute, Concord, Massachusetts)

U.S. District Court
DAMAGES
GOOD FAITH
DEFENSE

Lyons v. Cunningham, 583 F.Supp. 1147 (S.D. N.Y. 1983). Parents awarded \$24,000 for mental anguish following son's jail suicide. After an eight day trial, a federal jury found that two of nine defendants violated the deceased inmate's constitutional rights and awarded each parent \$12,000. A third defendant was also found to have violated the son's rights, but was afforded a good faith defense. Six other defendants were released from responsibility. The federal court granted attorney's fees to the parents. (New York City Detention Facility)

U.S. District Court
42 U.S.C.A.
Section 1983
GOOD FAITH
DEFENSE

Marchant v. City of Little Rock, Ark., 557 F.Supp. 475 (E.D. Ark. 1983), *aff'd*, 741 F.2d 201 (8th Cir. 1984). Officials are not liable under Section 1983 for failing to give a pretrial detainee prescribed medicine. A federal district court in Arkansas found no liability on the part of the city or jail officials concerning a claim of improper medical care. The court noted that although the jail matrons may have been negligent in not giving the prisoner her prescribed medicine on a regular basis, there could be no recovery for damages since the matrons defense of good faith entitled them to qualified immunity in this Section 1983 action. Recovery under state laws was not prohibited because the matron had not intentionally denied the detainee any constitutional rights. Because no policy had been promulgated that violated the prisoner's constitutional rights, the city, the chief of police, and the jail administrator could not be liable. (Little Rock City Jail, Arkansas)

U.S. District Court
42 U.S.C.A.
Section 1983

Nelson v. Herdzyk, 559 F.Supp. 27 (1983). Guard is not liable under Section 1983. The plaintiff, an inmate incarcerated at the Attica Correctional Facility in New York, filed suit under 42 U.S.C. Section 1983, alleging that a prison guard at the facility, A. Herdzyk, "intentionally and maliciously denied plaintiff his civil and constitutional rights by refusing plaintiff an hour of exercise, and continuing to do so at will." The district court dismissed the complaint, finding it frivolous. Noting that depriving inmates of an opportunity to exercise over prolonged periods of time has been held by numerous courts to constitute cruel and unusual punishment to be actionable under Section 1983, the trial court noted that plaintiff's allegation involved a denial of only one hour of exercise and, therefore, does not present a constitutional violation. (Attica Correctional Facility, New York)

U.S. District Court
FAILURE TO TRAIN
NEGLIGENT
SUPERVISION

Overbay v. Lilliman, 572 F.Supp. 174 (W.D. Mo. 1983). Sheriff and county could be liable for failure to train and supervise deputy. A prisoner was allowed to amend his complaint in federal district court, adding the county sheriff as a defendant. The original complaint alleged that a deputy sheriff had violated his civil rights and assaulted him. Later, the plaintiff asked to add the county sheriff as a defendant, alleging that the sheriff knew of the past violent behavior of the deputy and failed to train and supervise the deputy properly. The district court granted the plaintiff's motion, citing several circuit court decisions which allow sheriffs to be held liable because they are responsible for setting policy. (LaFayette County, Missouri)

U.S. District Court
42 U.S.C.A.
Section 1983
FAILURE TO
PROTECT

Reynolds v. Sheriff, City of Richmond, 574 F.Supp. 90 (E.D. Va. 1983). Sheriff may be liable for pretrial detainee's beating while housed with convicted felons. The United States District Court for the Eastern District of Virginia has refused the motion of the defendant sheriff to dismiss him from a suit brought by a pretrial detainee.

The detainee alleges that he was beaten by convicted felons while he was detained at the sheriff's facility. He accuses the sheriff of directing the act or acquiescing to it after it happened.

The court did not dismiss the sheriff from the suit because the plaintiff alleged that he established and maintained a policy of not segregating convicted felons from pretrial detainees. Because of a lack of separation, the plaintiff was attacked. Also, the court ruled that the case could be pursued under 42 U.S.C. Section 1983 because it alleged a violation of the plaintiff's right to be free from bodily injury, and that cruel and unusual punishment need not be alleged. (Richmond City Jail, Virginia)

U.S. Supreme Court
42 U.S.C.A.
Section 1983
DAMAGES
PERSONAL
LIABILITY

Smith v. Wade, 103 S.Ct. 1625 (U.S. Sup. Ct. 1983). Punitive damages may be assessed against a guard in Section 1983 action. A five-to-four decision by the U.S. Supreme Court holds that a plaintiff in a 42 U.S.C.A. Section 1983 civil rights action may be awarded punitive damages when a government official's conduct "involves reckless or callous indifference to the federally protected rights of others." The court rejected the argument of the defendant prison guard that the test for an award of punitive damages is one of "actual malicious intent." The decision came on appeal of a lower court's assessment of damages against Missouri corrections officer William Smith for placing inmate Daniel Wade in a cell where he was beaten and sexually assaulted.

(The appeal challenged only that portion of the award assessed for punitive damages. Punitive damages are imposed as punishment over and above actual damages that simply compensate a victim for losses incurred.)

Smith had argued that the standard which requires actual ill will or intent to injure is less vague than the standard which the court approved. "Reckless or callous indifference", he argued, "is too uncertain to achieve deterrence rationally and fairly."

However, the court stated:

Smith seems to assume that prison guards and other state officials look mainly to the standard for punitive damages in shaping their conduct. We question the premise. We assume, and hope that most officials are guided primarily by the underlying standards of federal substantive law--both out of devotion to duty, and in the interest of avoiding liability for compensatory damages...The need for exceptional clarity in the standard for punitive damages arises only if one assumes that there are substantial numbers of officers who will not be deterred by compensatory damages...The presence of such officers constitutes a powerful argument against raising the threshold for punitive damages.

The dissent by Justice Rehnquist, joined by the Chief Justice and Justice Powell, states that the decision will encourage 1983 suits which already strain the federal workload. Justice O'Connor, dissenting separately, said that the majority's ruling will tend to "chill public officials in the performance of their duties." (Missouri Reformatory For Youths)

State Appeals Court
FAILURE TO
PROTECT

Solberg v. County of Yellowstone, 659 P.2d 290 (Mont. 1983). County may be liable for alcoholic prisoner's death. An appeals court has remanded this case to trial for resolution. A prisoner found lying face down in his cell died from a high temperature resulting from alcohol withdrawal and delirium tremens (DT's). The plaintiff alleges that the jailer should have recognized the symptoms of the DT's. (Yellowstone County Jail, Montana)

U.S. Appeals Court
FAILURE TO
PROTECT

State Bank of St. Charles v. Camic, 712 F.2d 1140 (7th Cir. 1983), cert. denied, 104 S.Ct. 491 (1983). City not liable for prisoner's suicide. The Seventh Circuit Court of Appeals has decided that city officials were not liable for a prisoner's suicide because they had no reason to suspect he was a danger to himself and because they had exercised reasonable routine precautions before placing him in his cell. Upon admission, officers observed that the prisoner was intoxicated, uncooperative and assaultive, but did not have reason to believe that he would harm himself. The officers removed the prisoner's belt and shoelaces prior to placing him in the cell. The prisoner subsequently hung himself by tearing his shirt into strips which were tied together to form a rope. (Aurora Police Lockup, Illinois)

U.S. Appeals Court
DAMAGES
GOOD FAITH
DEFENSE

Stokes v. Delcambre, 710 F.2d 1120 (5th Cir. 1983). Award of \$380,000 to a college student is upheld by circuit court. In a civil rights suit, the U.S. Court of Appeals for the Fifth Circuit has upheld a lower court's decision to award \$380,000 in compensatory and punitive damages against a Louisiana sheriff and his deputy.

The twenty-one year old plaintiff was arrested with three other occupants of a truck after a beer bottle was thrown at a pedestrian. While housed in the dayroom of the local jail, the plaintiff was beaten and forced to engage in sexual acts by two inmates. His yells and screams for help were ignored by jail staff.

The circuit court affirmed the jury award of \$205,000 in punitive damages against the sheriff, \$105,000 in punitive damages against the deputy, and \$70,000 in compensatory damages against both defendants.

The court concurred that jailers owe a constitutional duty to prisoners to provide them protection from injury, that the evidence indicated an indifference to the safety of prisoners, that due to the indifference a "good faith" defense was not warranted, and that punitive damages were appropriate because the actions of the defendants were malicious, wanton and oppressive. (Vermillion Parish Jail, Louisiana)

State Appeals Court
FAILURE TO
PROTECT

Stout v. City of Porterville, 196 Calif. Rptr. 301 (Ca. Ct. App. 1983).

Intoxicated person is not allowed to sue a city for failing to arrest him before he was struck by car. Although not directly a detention case, the court decision indicates that a person must show a special relationship between himself and a governmental agency if he is to sue for failure to provide protection.

Stout was stopped by police officers while walking, and his drunkenness was observed. The officers did not arrest him. Subsequently he was struck by a car. Stout sued the City of Porterville, and the California Court of Appeals decided that the city did not take action which contributed to the accident, nor did it offer the plaintiff any assurances that it would take care of him. (City of Porterville, California)

U.S. Appeals Court
DAMAGES
GOOD FAITH
DEFENSE

Wolfel v. Bates, 707 F.2d 932 (6th Cir. 1983). One dollar is awarded to inmate for being improperly disciplined. No punitive damages awarded. The plaintiff inmate drafted a petition alleging that prison guards were harassing inmates of the Southern Ohio Correctional Facility. The petition was sent to the prison superintendent.

Subsequently, a guard charged the inmate with violating a rule prohibiting the making of unfounded complaints against staff members with malicious intent. The inmate received an informal hearing where he was found guilty of the rule violation. A verbal reprimand was entered on his record.

The court found that the inmate's first amendment right to petition for redress of grievances had been unduly restricted. The inmate was awarded one dollar in nominal damages. The court refused to award punitive damages since the guard and hearing officer had not acted willfully or in gross disregard of the inmate's rights. The guards claim of qualified immunity failed since they had not acted in good faith. (Southern Ohio Correctional Facility)

State Appeals Court
GOVERNMENTAL
IMMUNITY

Young v. City of Ann Arbor, 336 N.W.2d 24 (Mich. App. 1983). Governmental immunity is granted to police chief for arrestee's suicide in lockup. A Michigan Court of Appeals has ruled that a police chief be granted immunity for the death of an arrestee who hung himself with a belt in his lockup. The court decided that immunity should be granted when the act falls within the scope of employment and granted immunity based on this rationale. A dissenting judge argued that a more stringent test of "ministerial discretion" be applied for acts committed within the scope of employment. (Ann Arbor Police Department, Michigan)

1984

U.S. District Court
42 U.S.C.A.
Section 1983
QUALIFIED
IMMUNITY

Anela v. City of Wildwood, 595 F.Supp. 511 (D. N.J. 1984), 790 F.2d 1063 (3rd Cir. 1986), U.S. cert. denied in 107 S.Ct. 434. Police chief granted summary judgment; court finds qualified immunity against 42 U.S.C.A. 1983 action and immunity under state tort claims act; pre-hearing detention period constitutional rights discussed. The two plaintiffs, Connie Anela and Angela DiPietro, were arrested for violating a noise ordinance and were detained overnight by city police. They brought suit in the United States district court, claiming that the city police chief had violated their due process rights by an unconstitutionally long detention and false imprisonment.

The constitutional right examined by the court was the right that the period of detention following arrest and before the arrestee is brought before a magistrate (for bail setting) be "brief." In Fisher v. Washington Metro Transit Authority, 690 F.2d 1133 (4th Cir. 1982), "brief" was defined as no longer than is necessary for the taking of "administrative steps incident to arrest."

As stated by Fisher:

Whether there are any direct constitutional limits on the post-arrest, pre-hearing detention of arrested officers by state officers is a question that has not been much before the federal courts...In a line of Section 1983 cases the former Fifth Circuit has apparently accepted the view that there are no such constitutional limits... But the lower federal courts have simply assumed, though finding no violation on the facts at hand, that independently of any state law requirements there are ultimate durational limits derived from due process guarantees... The Supreme Court has not addressed the issue directly.

Based on this reasoning, the district court granted the defendant's motion for summary judgment in its entirety. (City of Wildwood, New Jersey)

State Appeals Court
FAILURE TO
PROTECT

Brewer v. Perrin, 349 N.W.2d 198 (Mich. App. 1984). Detention staff may be liable for juvenile's suicide because they failed to monitor actions and to make regular checks. An appeals court in Michigan has ordered a case to proceed to trial in which the plaintiffs charge the detention facility staff with responsibility for the suicide of their fifteen year old son. The boy was arrested after assaulting his twin brother. He was combative and belligerent during arrest and transport. Upon admission to a detention cell he continued to yell and scream. A staff member turned off an audio monitor because he decided the noise was interfering with department activities. After ninety minutes the boy hanged himself. He was only checked one time by facility staff during that period. The appeals court also instructed the jury to determine if liability might also result from violation of the state statutes regarding juvenile detention. (Southgate City Jail, Michigan)

U.S. District Court
DAMAGES

Bush v. Ware, 589 F.Supp. 1454 (E.D. Wisc. 1984). Two correctional officers ordered to pay prisoner \$2,000 for using excessive force. Although the prisoner had swung a towel with a metal object wrapped inside at the guards, testimony at the trial indicated that the guards entered the cell with a flashlight and ankle restraints with the intent to use them as weapons. The county was not found liable, even though no written policy existed, because it had advised all guards to use minimal force. (Waukesha County Jail, Wisconsin)

State Supreme Court
FAILURE TO
PROTECT

Cansler v. State, 34 CrL 2372 (Kan. Sup. Ct., 1984). Officials held liable for acts of escapees. The Kansas Supreme Court found that the state has a duty to securely confine inmates, and having failed to do so, resulting in the escape of seven convicted murderers, the state officials were held liable for the subsequent wounding of a law enforcement officer.

Finding that the corrections employees failed to exercise reasonable care commensurate with the risk presented by the escape of violent offenders, and having failed to prevent the escape, not notifying area residents and law enforcement agencies immediately, the court held the state liable for the subsequent incident. (Department of Corrections, Kansas)

U.S. District Court
DAMAGES

Cole v. Snow, 586 F. Supp. 655 (D. Mass. 1984) and 588 F. Supp. 1386 (D. Mass. 1984). Visitor Receives Over \$175,000 for Unconstitutional Strip Searches; Sheriff Held Liable for Policies. A woman who was subjected to visual cavity searches on three occasions was awarded \$150,000 as compensation and \$27,040 for future medical expenses by a federal court in Massachusetts.

The court found that the sheriff had instituted unconstitutional strip search policies, and that he was liable in his official and individual capacity. No punitive damages were awarded. (Plymouth County Jail, Mass.)

U.S. Appeals Court
DAMAGES
NEGLIGENCE

Estate of Davis v. Johnson, 745 F.2d 1066 (7th Cir. 1984). Court of appeals vacates district court decision to award \$875,000 for wrongful death; upholds jury award for negligence in the amount of \$50,000. The decedent was a patient in a nursing home who was picked up by police after he wandered away. He exhibited obvious bizarre behavior when he arrived at the city jail. A commander ordered the desk clerk to have the decedent taken from the city jail to a temporary placement in the county jail. The desk clerk did not transfer the inmate because the jail floors were being waxed and cleaning personnel did not want transfers on the day of cleaning.

As a result, he was placed in a cell with a man arrested for murdering his girlfriend. The alleged murderer asked city jail staff not to place the decedent in the cell and stated he was high on drugs and was hallucinating at the time. Following the placement in the cell, the decedent was beaten to death by his cell mate.

On appeal, the United States Court of Appeals for the Seventh Circuit found that police officials and staff were negligent in placing a mentally ill arrestee in a holding cell with another prisoner who subsequently beat him to death. The court did not agree with the federal district court jury finding that the defendants were callously indifferent to the decedent and that they had violated his civil rights.

The appeals court upheld only the negligence finding of the jury and an award of \$50,000 to the son. (Holding Facility, Police Department, Decatur, Illinois)

U.S. District Court
FAILURE TO
PROTECT

Gibson v. Babcock, 601 F.Supp. 1156 (N.D. Ill. 1984). Supervisors liable for detainee beating. A federal district court has held supervisors responsible for failing to protect a detainee from an assault by another prisoner. The court found that knowledge of a history of violence within a jail, rather than a specific risk of harm to a particular prisoner, was enough to hold the supervisors liable. The court found that the eighth amendment proscription against cruel and unusual punishment does not apply to pretrial detainees, and that a detainee need not demonstrate deliberate indifference to state a claim for denial of medical care under the due process clause of the eighth amendment. (Lake County Jail, Waukegan, Illinois)

State Appeals Court
DAMAGES
PERSONAL
LIABILITY

Harris County v. Jenkins, 678 S.W.2d 639 (Tex. App. 1984). Prisoner receives \$60,000 from sheriff, county and state because medication withheld. A prisoner who suffers from epilepsy reached a \$20,000 settlement with the State of Texas and was awarded \$40,000 by a state jury because he suffered seizures after his medication was taken from him upon admission to the Harris County Jail.

A jury found the sheriff seventy percent liable and the county thirty percent liable for the \$40,000 award. The jury found the sheriff liable not only for withholding the medication, but for failing to forward the prisoner's medical records when he was transferred to a state facility. The verdict was upheld upon appeal. (Harris County Jail, Texas)

State Court
NEGLIGENCE

Kanayurak v. North Slope Borough, 677 P.2d 893 (Alaska Sup. Ct. 1984). Liability for suicide of intoxicated prisoner could result if extra precautions not taken. A state court in Alaska has ordered a case to proceed to trial in which the family of a woman who committed suicide in a lockup has alleged negligence on the part of police officials.

Testimony revealed that the officials were aware that the woman was very intoxicated, and that she had reason to be depressed. Citing a case which held that a jailer must take extra precautions for the safety of a prisoner if he knows the prisoner is intoxicated or insane (Wilson v. City of Kotzebue), the court ordered the case to proceed to trial. (North Slope Borough Lockup, Alaska)

State Court
NEGLIGENT
SUPERVISION

Kemp v. Waldron, 479 N.Y.S.2d 440 (Sup. Ct. 1984). State court finds that sheriff and subordinate could be liable for negligent supervision- prisoner sues as a result of assault by another prisoner. A New York court determined that the sheriff had a statutory duty to protect prisoners from harm while in his custody, and that he has discretion with regard to prisoner segregation.

The court referred determination of whether discretion was abused to a jury, along with a determination of the adequacy of supervision.

The county defendants were dismissed from the suit when the court found that they were not responsible for the sheriff's actions. However, the sheriff could be held liable along with the subordinate officer who failed to provide supervision. (Schenectady County Jail, New York)

U.S. District Court
42 U.S.C.A.
Section 1983
NEGLIGENCE

Martini v. Russell, 582 F.Supp. 136 (C.D. Ca. 1984). Federal court finds city liable for locking children up with mother. After an officer arrested a woman for traffic offenses and locked her children up with her, a federal district court found the city liable under Section 1983, citing gross negligence on the part of the officer. State law requires minors to be taken to the custody of probation officers and prohibits detention under these circumstances. (Huntington Park Police Station, California)

U.S. District Court
DAMAGES
GOVERNMENTAL
LIABILITY

McElveen v. Prince William County, 725 F.2d 954 (N.D. Vir. 1984), cert. denied, 105 S.Ct. 88. \$210,000 is awarded to inmates held in jail. A federal jury awarded \$210,000 to approximately 7,000 inmates held in the Prince William County (Virginia) jail between August 1980 and January 1982. Two months before, the jury had found that the facility was unconstitutionally crowded, exceeding at times its inmate capacity by 400 percent. Witnesses had testified that the facility lacked medical care and security and was unsafe. Pretrial detainees are to receive \$170,000 of the award, with the remaining funds to be divided among the sentenced prisoners held at the jail.

Meanwhile, the county has filed its own case against Virginia state corrections officials, claiming that a chronic backlog of prisoners awaiting transfer to state facilities contributed to the jail crowding. The jury had rejected county claims during the class action suit that state officials should accept or share liability, after U.S. District Judge Richard L. Williams ruled that state employees are immune under the eleventh amendment from civil damages in their role as officials. The court continued them in the case as individuals, but instructed the jury that they were entitled to claim they had acted in good faith. (Prince William County Jail, Virginia)

U.S. Appeals Court
PERSONAL
LIABILITY
DAMAGES

McKinley v. Trattles, 732 F. 2d 1320 (7th Cir. 1984). Officer to pay \$6,000 to prisoner for unnecessary strip search. The United States Court of Appeals affirmed a lower court judgment against a correctional officer but reduced the amount of punitive damages from \$15,000 to \$6,000. The plaintiff, a prisoner, claimed that he had already been searched once before returning to his cell. He was then handcuffed and sprayed with mace in a forced attempt to subject him to a second search. The federal jury believed the plaintiff's version of the events.

U.S. District Court
DAMAGES

Pino v. Dalsheim, 605 F.Supp. 1305 (1984). Liability of several defendants, who were personally involved in a hearing that consisted of several basic constitutional flaws, would be joint and several, ruled a federal district court in New York. The inmate was awarded twenty-five dollars a day for the forty-five days he spent in a special housing unit, and the fifty-two dollars per month income from his library clerk's job that he lost during the forty-five-day period. Due process violations included a right to gather facts around the marijuana incident, the failure of his assigned assistant to gather facts or respond to his requests, and the denied right to call live witnesses. His being assigned an employee assistant rather than choosing one from a list was in itself a violation, ruled the court. (Downstate Correctional Facility, New York)

U.S. District Court
CONSENT DECREE

Poston v. Fox, 577 F.Supp. 915 (D. N.J. 1984). Plaintiffs entitled to attorney's fees as prevailing party after consent decree signed. County jail officials agreed in a consent decree to take steps to comply with New Jersey jail standards in a suit which alleged constitutional violations (physical conditions, admission and processing of prisoners, health care, discipline, grievance procedures, food and diet, recreation, educational programs, visitation, clothing and preferential treatment). The Federal District Court awarded \$39,794 in attorney's fees to the plaintiffs, which was forty percent less than requested because the action achieved only partial success. The court found that the consent decree was sufficiently favorable to render the prisoners the prevailing party. (Cape May County Jail, New Jersey)

U.S. Appeals Court
DAMAGES
42 U.S.C.A.
Section 1983

Raley v. Fraser, 747 F.2d 287 (5th Cir. 1984). Arrestee awarded only \$1,000 for claims of alleged excessive force during arrest and detention; court determines plaintiff is not considered "prevailing party" for purposes of attorney's fees. The United States Court of Appeals for the Fifth Circuit has affirmed the decision of a federal district court in a civil rights action against two police officers.

The plaintiff, Robert Dean Raley, was arrested for public intoxication by two Amarillo police officers (Thomas Fraser and Gary Trupe). The officers observed Raley knock over a sign after leaving his car at 1:00 a.m., and in the ensuing encounter Raley was not cooperative. Raley was booked at the police station, and officer Fraser applied choke holds on Raley four times during the process. Raley's arms were bruised, his face scraped, and the handcuffs raised welts on his wrists. There was no permanent injury.

Raley filed civil rights actions, under Section 1983, U.S.C.A. The district court found that Officer Fraser acted "overzealously" rather than maliciously, and therefore the plaintiff was not entitled to punitive damages under Section 1983. Raley was awarded \$1,000 as actual damages for pain and mental suffering, after the court found that Fraser's actions were not wanton or malicious. The damages were awarded on a state tort claim, the court finding against his Section 1983 claim. Raley appealed, arguing that the trial court erred in its findings. The Circuit Court of Appeals affirmed all aspects of the lower court decision. (Amarillo Police Department, Texas)

U.S. District Court
DAMAGES
NEGLIGENT
SUPERVISION

Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984), cert. denied, 105 S.Ct. 1413 (1984). Prisoner awarded \$32,500 for officer brutality; warden and other officials not immune and held liable for failing to supervise. An inmate injured when prison guards used high-pressure water hoses, tear gas and billy clubs to subdue him while he was confined in a one man cell brought a civil rights suit under Section 1983 against three guards and high ranking prison officials, alleging excessive force in violation of the eighth amendment, and that supervisory officials were deliberately indifferent to a known risk of harm. The federal district court found for the plaintiff inmate, awarding \$32,500 damages. On appeal, the Fourth Circuit Court of Appeals affirmed the lower court decision, holding that: (1) the guards' heavy-handed use of force crossed the line separating necessary force from brutality; (2) evidence established the supervisory liability of the warden, director of prisons and secretary of corrections; (3) supervisory officials were not entitled to qualified immunity since they had explicit legal guideposts to follow and were aware, or should have been aware, of a duty to ensure that instruments of control were not misused. (Central Prison, Raleigh, North Carolina)

U.S. Appeals Court
42 U.S.C.A.
Section 1983
FAILURE TO TRAIN
GOVERNMENTAL
LIABILITY

Tuttle v. City of Oklahoma City, 728 F.2d 456 (10th Cir. 1984), reh'g denied, 106 S.Ct. 16 (1983). Reversed by City of Oklahoma City v. Tuttle, 105 S.Ct. 2427 (1985).

Proof of single instance of unconstitutional activity not sufficient to impose liability under Monell rule unless....

The widow of a man shot by a police officer brought a civil rights suit against the officer and his employer city. The federal district court held against the city but absolved the officer. On appeal (728 F.2d 456) the Court of Appeals for the Tenth Circuit affirmed the lower court decision. On appeal to the United States Supreme Court, the majority reversed the lower courts' decisions, holding that it was a reversible error to allow the jury to infer a thoroughly nebulous "policy" of "inadequate training" on the city's part from the single shooting incident in question and at the same time sanction the inference that the policy was the cause of the incident, thereby giving rise to liability under the Civil Rights Act of 1861.

To impose a civil rights liability on the city under Monell v. New York City Department of Social Services, 436 U.S. 658, for a single incident, the plaintiff must prove that the incident was caused by an existing unconstitutional municipal policy which can be attributed to a municipal policymaker. The existence of the unconstitutional policy and its origin must be separately proved and where the policy relied on is not itself unconstitutional, considerably more proof than the single incident is necessary in every case to establish both the requisite fault on the part of the municipality and the causal connection between the "policy" and the constitutional deprivation.

The court also held that there must be an affirmative link between the training and adequacies alleged in the particular constitutional violation at issue. The court found that the fact that a municipal "policy" might lead to police misconduct is hardly sufficient to satisfy the Monell requirement for municipal liability under 42 U.S.C. Section 1983. (Oklahoma City)

1985

U.S. Supreme Court
FAILURE TO TRAIN
DAMAGES
GOVERNMENTAL
LIABILITY

City of Shepherdsville, Kentucky v. Rymer, 105 S.Ct. 3518 (6th Cir. 1985) (Memorandum Decision). Supreme court remands case for further consideration in light of Oklahoma city ruling. Ruling on Rymer v. Davis, 754 F.2d 198 (1984). City police were found by the federal district court to have used excessive force during the arrest of the plaintiff. The court of appeals upheld the finding of the lower court, including award of \$32,000 compensatory damages against the police officer, \$50,000 punitive damages against the city and \$25,000 compensatory damages against the city. The appeals court ruled that the city's failure to train police officers regarding arrest procedures was a proper basis for liability in a civil rights action arising from injuries sustained by the arrestee, and that official acquiescence in police misconduct may be inferred from lack of training even in the face of only one incident of brutal misconduct. The Supreme Court vacated the appeals court decision, remanding it for further consideration in light of its decision in City of Oklahoma City v. Tuttle, 105 S.Ct. 2427 (1985). In that decision, the court ruled that proof of a single instance of unconstitutional activity is not sufficient to impose civil rights liability on a city under the Monell rule unless proof of the incident includes proof that it was caused by an existing unconstitutional municipal policy, which can be attributed to a municipal policymaker. (City of Shepherdsville, Kentucky)

U.S. District Court
GOVERNMENTAL
LIABILITY

Cook v. Housewright, 611 F.Supp. 828 (D. Nev. 1985). Officials not liable for isolated incident of improper medical care. A prisoner sued officials of the Nevada Department of Prisoners alleging indifference to his medical needs (in delaying a knee operation). The director of the department and the warden argued that they were not liable because they were not directly involved with the incident. Although the court noted that direct involvement is not the only basis for determining liability, it found that the prisoner's rights had not been violated. Since other prisoners were regularly provided with medical care and there was no evidence of a policy discouraging the provision of care, the court viewed this as an isolated incident, relieving officials from responsibility. (Nevada State Prison)

State Appeals Court
CONTRACT
SERVICES

Craven County Hosp. Corp. v. Lenoir County, 331 S.E.2d 690 (N.C. App. 1985). A hospital tried to collect medical costs from a sheriff, the county, or the city for treating a man who died in the hospital, after city police had him transported there. Police found him intoxicated and were making arrangements to place him in the jail until he was sober, when he fell and injured his head, requiring immediate medical treatment. The court refused to hold the city liable, because it had not contracted with the hospital to pay the medical costs, nor did it have a statutory duty to pay medical services for people in its custody. The court said it was up to the legislature, not it, to create such a duty. Whether the man was considered to be in the "custody" of police was not relevant to finding an absence of liability. However, the court determined that the man had not been arrested but was merely being assisted by the officers, who were authorized to take to the county jail people found drunk in public. (Kingston Police Department, North Carolina)

U.S. District Court
FAILURE TO
PROTECT

Estate of Cartwright v. City of Concord, Cal., 618 F.Supp. 722 (U.S. D.C., N.D. Cal. 1985). Jail defendants were not liable for a prisoner suicide that occurred after the decedent had "joked" about it with a friend by shouting back and forth between their separate cells. The decedent and his female companion were brought to jail under the influence of alcohol and Valium. The two were laughing, shouting, and joking from their individual cells that they were going to kill themselves. His female friend faked a suicide, and when the jailers responded to it seriously, she bragged out loud that she had fooled them. Thereafter, the jailers increased the frequency of jail inspections. In fact, the decedent was checked about fifteen minutes to a half hour before he was found hanging by a torn bed blanket. The evidence was inconclusive as to whether the decedent was merely trying to fake a suicide, and lost consciousness due to his intoxicated and drugged state, or whether his suicide was actually motivated by serious intentions. Jailers had talked to him earlier and found no reason to believe he was suicidal or depressed. He hung himself by using the edge of his bed to tear a strip off a blanket and tied it around one of the high bars of his cell. The defendants were not liable for failing to prevent the death or for their actions after discovering the hanging. The aid given following the discovering was adequate and so was the investigation of events. (Concord City Jail, California)

U.S. District Court
DAMAGES

Ferola v. Moran, 622 F.Supp. 814 (D.C. R.I. 1985). An inmate brought a civil rights action charging that defendants subjected him to cruel and unusual punishment by denying him psychiatric care and by cruelly and abusively shackling him to his bed. The United States District Court held that: (1) a record of care afforded the prisoner did not reflect denial of psychiatric care or deliberate indifference to his psychiatric needs; (2) shackling of the defendant violated the eighth amendment; (3) the director of Department of Corrections was liable; (4) the inmate was entitled to damages of \$1,000 for physical and psychological injury suffered; and (5) shackling of the inmate warranted equitable relief. Because the warden had set no policies that would safeguard inmates against the unconstitutional conduct of his subordinates, he was responsible for damages in the amount of \$1,000 for the plaintiff's trauma, pain, and suffering. Judgment was also entered against a supervisor on duty who participated in the shackling. (Adult Correctional Institution, Rhode Island)

U.S. Appeals Court
42 U.S.C.A.
Section 1983

Ganey v. Edwards, 759 F.2d 337 (4th Cir. 1985). Attorney fees awarded although no damages obtained. A federal jury found that a state prisoner had been denied access to a prison law library but awarded no actual or nominal damages. On appeal, the Fourth Circuit Court of Appeals agreed with the finding and lack of damages award, but concluded that the prisoner was entitled to an award of costs and attorney fees as the prevailing party in this Section 1983 action. (North Carolina Central Prison, Raleigh, North Carolina)

U.S. Appeals Court
DAMAGES
FAILURE TO TRAIN
NEGLIGENT
SUPERVISION

Goodson v. City of Atlanta, 763 F.2d 1381 (11th Cir. 1985). Detainee awarded \$50,000 damages for conditions of detention. The plaintiff was held as a rape suspect in the Atlanta jail. A jury concluded that he was subjected to unconstitutional conditions of confinement (sanitation, toilet facilities, medical care, lack of bedding, lack of heating, roach infested food). The jury believed that the City of Atlanta and the jail

administrator knew of these conditions and had even made public statements to the media that the jail was "unfit for human habitation". Concluding that the administrator had failed to properly train and supervise staff, they held him liable for \$5,000 damages, and held the city liable for \$45,000 compensatory damages. (Atlanta City Jail, Georgia)

U.S. Appeals Court
FAILURE TO
PROTECT
DAMAGES

Hayes v. Vessey, 777 F.2d 1149 (6th Cir. 1985). Although a corrections officer was perhaps incompetent and held animosity toward a teacher because she was a woman, he was not liable for failing to protect her from being raped while he was on lunch break, ruled the Sixth Circuit Court of Appeals. The teacher claimed discrimination and denial of equal protection because the guard had not ticketed the rapist earlier in the day when discovered on the grounds without authorization. She claimed he set the tone for extremely lax security which caused her to be raped. He was not liable on such a theory because as a subordinate employee he had no authority to set a security policy, nor was he responsible for not ticketing the rapist earlier because such action was too remote from causation. Another teacher allowed the rapist to regain entry during lunch by unlocking the gate in violation of school rules. Finally, even if the guard had been at his station during the fifteen minute attack, he would not have been able to hear the woman's cries for help. His station was located at the end of the hall, and her room was soundproof. The court reversed a jury's judgment against the officer for \$200,000 in compensatory damages and \$100,000 in punitive damages. Also at issue was whether the teacher could collect from other prison officials for negligence in ignoring high levels of sexual tension, condoning an attitude of indifference toward danger to female employees, failing to require adequate security for female employees, assigning her to work in a remote area more dangerous than areas assigned to male teachers, and defeating automatic locking systems which led to the unauthorized entry of the rapist. The court found no liability for the random act and ruled that the plaintiff's remedy in worker's compensation precluded suit. She received compensation disability benefits which contained special provisions for prison employees injured by inmates, provisions not applicable to other employees. (State Prison at Jackson, Michigan)

U.S. Supreme Court
PERSONAL
LIABILITY

Kentucky v. Graham, 105 S.Ct. 3099 (1985). A Section 1983 suit was brought against the commissioner of the Kentucky State Police "individually and as the Commissioner" seeking damages for alleged deprivation of federal constitutional rights in a warrantless raid and arrest by the state police. The commonwealth, which was sued only for fees should the plaintiff eventually prevail, was dismissed on eleventh amendment grounds. Following a settlement, the plaintiff moved for costs and attorney's fees. The United States District Court for the Western District of Kentucky awarded costs and fees against the Commonwealth. The Court of Appeals for the Sixth Circuit, in an unpublished opinion, 742 F.2d 1455, affirmed. Certiorari was granted. The Supreme Court, held that: (1) liability on the merits and responsibilities for fees go hand in hand and, hence, where a defendant has not been prevailed against, Section 1988 does not authorize a fee award against that defendant; (2) a suit against a government official in his/her personal capacity cannot lead to imposition of fee liability on the governmental entity; and (3) the instant suit was necessarily litigated as a personal-capacity action, thereby precluding a fee award against the Commonwealth, notwithstanding that the Commissioner was sued in both his "individual" and "official" capacities. Personal-capacity civil rights suits seek to impose personal liability on a government official for actions he takes under color of state law; in contrast, official-capacity suits generally represent only another way of pleading an action against the entity of which the officer is an agent. (State Police, Kentucky)

U.S. Appeals Court
PERSONAL
LIABILITY
DAMAGES

Leggett v. Badger, 759 F.2d 1556 (11th Cir. 1985). State to pay attorney's fees for judgment against officer in his individual capacity. Using the Glover v. Alabama Department of Corrections, (734 F.2d 691) decision as precedent the court determined that the state could be assessed attorney's fees for the defendant officer, even though the state was not held liable. The lower court had found that the officer intentionally beat a prisoner, and awarded \$1,500 compensatory damages and \$25,000 punitive damages against the officer. (Florida State Prison)

U.S. District Court
42 U.S.C.A.
Section 1983
PERSONAL
LIABILITY

Madden v. City of Meriden, 602 F.Supp. 1160 (D. Conn. 1985). Police officers can be held liable under Section 1983 for beating mentally ill arrestee. The administrator of the estate of a mentally ill man who hanged himself while detained by police filed suit against two officers and the city, alleging that the officers beat the prisoner, denied him medical care for the resulting serious injuries and placed him alone in a cell where he hanged himself. The prisoner could not be observed in his cell because the television monitoring system was not operating, nor was there an audio monitoring system. The plaintiff further alleged that although the officers knew of previous suicide attempts they did not take away objects that the prisoner could use to injure himself. The defendants filed a motion for dismissal which was denied by a magistrate. On appeal, the federal district court affirmed the magistrate's order, finding that the police officers could be liable under Section 1983. (Meriden Police Lockup, Connecticut)

U.S. Appeals Court
DAMAGES

Madison County Jail Inmates v. Thompson, 773 F.2d 834 (7th Cir. 1985). Appeals court does not reinstate jury verdict for \$500,000 damages; nominal damages upheld. Having convinced a federal jury that conditions at the jail were substandard, they awarded damages of between ten to thirteen dollars per day to plaintiff prisoners in this class action suit.

The award would have exceeded \$500,000. The trial court entered a judgment reducing the award to nominal damages. On appeal, the Seventh Circuit concurred with the jury finding of unconstitutional conditions, but concluded that "the plaintiffs failed to present evidence which would support a finding of consequential injury to the class as a whole." The majority refused to permit damages, citing the courts reluctance in Doe v. District of Columbia, 697 F.2d 1115 (CADC 1983), "to grant money damages to a class of prisoners in mass that includes many prisoners who are causing the conditions complained of and who will not cooperate to correct them." (Madison County Jail, Indiana)

U.S. Appeals Court
FAILURE TO TRAIN
GOVERNMENTAL
LIABILITY

Marchese v. Lucas, 758 F.2d 181 (6th Cir. 1985), cert. denied, 107 S.Ct. 1369. Court upholds \$125,000 award for failure to train and discipline officers; sheriff and county held liable. The plaintiff alleged that he was beaten upon entering the detention area following his arrest, and that a deputy later opened his cell door, allowing another beating to be administered. A federal jury believed his story, awarding \$125,000 to the plaintiff. Under the Michigan constitution, the sheriff is the law enforcement arm of the county and makes policy in police matters for the county. The court held that the government entity is responsible when the execution of a government's policy (in this case, brutality), inflicts an injury.

The plaintiff alleged that the county and the sheriff failed to train and discipline the officers and failed to order an investigation of the incident after it came to the attention of county officials. The sheriff claimed that he knew nothing of the incident until years later, just before the trial. The court ruled that even though the sheriff did not know of the incident, he should have known and found him jointly liable with the county. The county shared liability with the sheriff because of its close relationship with the sheriff, who was an elected official and made policy for the county. The county board of supervisors appropriated funds and established the budget for the sheriff's department. (Wayne County Jail, Michigan)

U.S. Supreme Court
42 U.S.C.A.
Section 1983
FAILURE TO TRAIN
GOVERNMENTAL
LIABILITY

Oklahoma City v. Tuttle, 105 S.Ct. 2427 (1985), cert. denied, 106 S.Ct. 16 (1983). Supreme court limits municipal liability for police acts. In an important clarification of Monell v. New York City Department of Social Services (1978), a seven member majority ruled that absent "an affirmative link between the policy and the particular constitutional violation alleged," a municipality may not be held liable for a police officer's violations of a citizen's constitutional rights on the grounds that the officer's act resulted from government policy. In Monell the court ruled that municipalities are liable for civil damages for such acts if the violations occur pursuant to that government's "policy or custom."

In this case, the widow of a man who was shot by a rookie police officer sued under Section 1983, claiming that the shooting unconstitutionally deprived Tuttle of his life without due process, or that the officer had used excessive force in Tuttle's apprehension in violation of his civil rights. Although the plaintiff acknowledged that a municipality is not liable under civil rights laws for an employee's single act but argued that the act was so excessive that it indicated grossly inadequate training, resulting from a government training policy.

In this case, the court held that even if it could be established under Monell that the city had a policy of inadequate training, "some limitation must be placed on establishing municipal liability through policies that are not themselves unconstitutional." The court further stated that "where the policy relied upon is not itself unconstitutional, considerably more proof than the single incident will be necessary in every case to establish both the requisite fault on the part of the municipality and the causal connection between the policy and the constitutional deprivation." (Oklahoma City)

U.S. Appeals Court
FAILURE TO
PROTECT

O'Quinn v. Manuel, 767 F.2d 174 (5th Cir. 1985). Local government can be liable for jail conditions. A jail prisoner filed suit against Louisiana parish officials alleging that while he was detained he was beaten by prisoners and suffered severe injuries. The plaintiff argued that the assault and resulting injuries were the result of a failure to adequately supervise and protect prisoners. The appeals court found that parish officials could be held liable for the assault if they knew of jail deficiencies and failed to fund or otherwise support corrective actions. The case was remanded to the district court. (Caleasieu Parish Jail, Louisiana)

U.S. Appeals Court
FAILURE TO
PROTECT

Partridge v. Two Unknown Police Officers, 751 F.2d 1448 (5th Cir. 1985). City can be sued for failing to prevent prisoner suicide in lockup. An arrestee apparently became violent and agitated when he was arrested, attempting to kick the doors and windows out of the police car in which he was transported. By the time he arrived at the city jail he was composed, and the transporting officers did not call attention to his

behavior during booking. The booking officer did not check the prisoner's previous record, which showed a prior suicide attempt. The prisoner's father told officials that his son was unstable, and the son was wearing medical alert bracelets.

The prisoner was placed in solitary confinement, where he hanged himself within a few hours of his arrest. The parents sued the City of Houston, and the Circuit Court of Appeals ruled that their suit alleged a legitimate constitutional claim because the city had been deliberately indifferent to the prisoner's serious medical needs, determining that suicidal behavior constituted a serious need and that protecting prisoners from themselves is "an aspect of the broader constitutional duty to provide medical care..." (City Jail, Houston, Texas)

U.S. Appeals Court
GOVERNMENTAL
LIABILITY
42 U.S.C.A.
Section 1983

Roberts v. City of Troy, 773 F.2d 720 (6th Cir. 1985). Pretrial detainees not protected by eighth amendment, but rights are analogized to those of detainees under fourteenth amendment to avoid extending greater constitutional protection to sentenced offenders. Shortly after admission to the City of Troy jail, a prisoner committed suicide. His mother sued the city under 42 U.S.C.A. Section 1983 and under state law, claiming that officials should have identified him as suicidal during admission and should have supervised him more closely. A federal jury found for the defendants; on appeal, the Sixth Circuit Court of Appeals upheld the jury verdict concerning Section 1983 claims but reversed the prior summary judgment which released Chief of Police Fisher from liability for state claims. In reaching its conclusions, the appeals court noted that although pretrial detainees are not protected by the eighth amendment, those protections must be analogized under the fourteenth amendment. (Troy City Jail, Michigan)

U.S. Appeals Court
DAMAGES

Thomas v. Booker, 762 F.2d 654 (8th Cir. 1985), cert. denied in 106 S.Ct. 1975. City jail chief of security held liable for prisoner-on-prisoner attack; plaintiff awarded \$13,000. The defendant was initially assigned to a one man cell in the St. Louis City Jail's administrative segregation unit. He was subsequently assigned to the general population but was placed in disciplinary segregation when a homemade knife was found in his cell. He was returned to the general population, where he was attacked by another prisoner. After treatment, he was again returned to the same four man cell where he was again injured in a fight between cell mates. The prisoner filed suit against several city jail officials for violating his constitutional rights by not adequately protecting him from physical assaults from other prisoners. During the trial, testimony indicated that he had asked to be placed in administrative segregation because he feared injury and that he told the defendant several times that he feared for his safety. The court found that the defendant had acted with reckless disregard for the safety of the plaintiff, awarding \$13,000 in damages. Other defendants were not found liable. (St. Louis City Jail, Missouri)

U.S. District Court
FAILURE TO DIRECT
DAMAGES

Thomson v. Jones, 619 F.Supp. 745 (7th Cir. 1985). A state prison inmate brought action under the Federal Civil Rights statute against correctional officers and warden seeking damages arising out of beating and hearing loss. The district court held that: (1) the guards' use of excessive force violated the inmate's eighth and fourteenth amendment rights; (2) a warden was not liable on ratification theory for failure to discipline guards; (3) an award of \$25,000 was neither inadequate nor excessive compensation for permanent hearing loss; and (4) a punitive damages award of \$10,000 against the guard who actually caused the hearing loss, and \$5,000 against the guard who acquiesced in the first guard's use of force, was proper.

A prison guard's acquiescence and failure to intercede in another guard's beating of an inmate was proximate cause of the inmate's injuries, rendering the acquiescing guard jointly and severally liable with other guard for compensatory damages due inmate as result of consequent hearing loss. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
CIVIL LIABILITY

Thorne v. Jones, 765 F.2d 1270 (1st Cir. 1985), cert. denied, 475 U.S. 1016. Strip search of prisoners' mother upheld, search of father not proper but no civil liability results. Prison officials required the mother of two prisoners, one of whom was known to be receiving drugs, to submit to a strip search as a condition of visiting her sons.

The plaintiffs sued, alleging that the requirement infringed on their first amendment rights for association. The U.S. Court of Appeals for the First Circuit held that the search requirement for the mother, who was suspected of supplying drugs, was constitutional because it was reasonably related to security concerns. The court noted that the Constitution affords convicted prisoners and their families no absolute right of visitation, and that any qualified right which may exist is derived from a source other than the first amendment. The court held that the fourth amendment was infringed when the prisoners' father was required to submit to a strip search to visit his sons, because officials had no suspicion as to the father. Since the law on this point was not clear in late 1981 (when the search took place), the officials escaped civil liability according to the court. (Louisiana State Penitentiary)

U.S. District Court
FAILURE TO
PROTECT

Warner v. County of Washoe, 620 F.Supp. 59 (D.C.Nev. 1985). The court ordered further proceedings to determine whether county commissioners had a duty to prisoners by virtue of a Nevada statute requiring periodic inspection and supervision. The statute reads, in part, as follows:

... Duty of County commissioners: Supervision; inspection; precautions. The board of county commissioners:

1. Is responsible for building, inspecting and repairing any county or branch county jail located in its county.
2. Once every 3 months, shall inquire into the security of the jail and the treatment and condition of prisoners.
3. Shall take all necessary precautions against escape, sickness or infection.

The commissioners could possibly be found liable for a brutal rape and attack of a county jail inmate by fellow inmates. (Washoe County Jail, Nevada)

1986

U.S. District Court
FAILURE TO TRAIN
FAILURE TO
DIRECT

Albert v. DePinto, 638 F.Supp. 1307 (D.Conn. 1986). The plaintiffs brought a civil rights action against police officers and the city alleging use of excessive force by officers. The district court held that: (1) the city was not liable for damages under the civil rights statute for the acts of individual officers; (2) there was evidence from which a reasonable jury could have found that the officers either used unconstitutionally excessive force against one plaintiff or knew that other officers were using force but did nothing to stop them; and (3) a reasonable jury could have found sufficient evidence of pain and suffering experienced by plaintiffs, and reckless and callous disregard of constitutional rights to justify substantial compensatory and punitive damages.

A plaintiff who seeks to hold a municipality liable in damages under a civil rights statute must establish that an official policy or custom was cause of deprivation of constitutional rights.

The city was not liable for damages because evidence established that police officers were provided with police department rules and regulations, stating that the use of physical and deadly force would be in accordance with current departmental directives and state statutes; that police officers were unaware of any recent "directives" on the subject of physical force that might have been issued by the police department; and that, while they received training in the appropriate use of physical force at the time they joined the police department they received no refresher courses. (New Britain Police Department, Connecticut)

U.S. Appeals Court
GOVERNMENTAL
LIABILITY

Anela v. City of Wildwood, 790 F.2d 1063 (3rd Cir. 1986), cert. denied, 479 U.S. 949. Female detainees confined overnight were denied fourteenth amendment rights; city could be held liable for conditions. Nine females and one male, ages seventeen to twenty, were arrested at 11:15 p.m. by city police for loud radio playing. The male arrestee was able to post bail and was released. The females were held until 11:00 the following morning. The females filed suit, alleging that their confinement in cells without drinking water, food or mattresses violated their constitutional rights. The federal district court dismissed several counts prior to trial and directed a verdict against the plaintiffs following a trial.

The U.S. Court of Appeals for the Third Circuit held that: (1) the district court properly denied the plaintiffs' motion to reopen the case and did not err in its directed verdict for the individual defendants on the plaintiffs' denial of equal protection claim; (2) the District Court erred in dismissing the plaintiffs' fourth amendment claims on the ground of collateral estoppel; (3) the city is responsible for the use of a bail schedule in violation of a rule of the New Jersey Supreme Court; (4) the conditions of confinement to which the non-disruptive, non-violent, non-alcoholic women were subjected constituted privation and punishment in violation of the fourteenth amendment; and (5) the city may be held liable under Monell for the conditions of confinement, even if the practices with respect to jail conditions were followed without formal city action, because it appears that they were the norm and had become acceptable standard and practice for the city. (City of Wildwood, New Jersey)

State Appeals Court
FAILURE TO
PROTECT

Baker v. State Dept. of Rehabilitation, 502 N.E.2d 261 (Ohio App. 1986). An inmate filed a complaint against the state alleging that injuries following an assault by other inmates were the result of correctional officers' negligence. The Court of Claims entered judgment for the state, and the inmate appealed. The Court of Appeals for Franklin County held that: (1) the state was not liable for failure to provide protective custody, as guards did not have adequate notice of the impending assault because the inmate's vague statements regarding a need to be moved, unaccompanied by a specific request for protection or direct expression of fear of being assaulted, did not provide guards with adequate notice of an impending assault; and (2) the state was not liable for failure to have sufficient guards, in view of expert testimony that procedures followed were adequate. (Columbus Correctional Facility, Ohio)

U.S. District Court
DAMAGES

Burris v. Kirkpatrick, 649 F.Supp. 740 (N.D. Ind. 1986). An inmate brought action against a prison guard for injuries resulting when the guard threw hot water into the inmate's cell. The district court held that the guard who threw hot water into cell of two inmates following argument between guard and one inmate was liable to the non-offending inmate for resulting injuries, as his act amounted to deliberate indifference to the inmate's constitutional rights. Where substantive constitutional rights are violated, damages can be presumed even in absence of discernible consequential damages. (Indiana State Prison)

U.S. Appeals Court
PERSONAL
LIABILITY

Burton v. Livingston, 791 F.2d 97 (8th Cir. 1986). A prisoner stated a claim against a guard for cruel and unusual punishment. The complaint stated that the guard pointed a lethal weapon at the prisoner, cocked it and threatened him with instant death. The incident occurred immediately after the prisoner had given testimony against another guard in a Section 1983 action. The death threat was accompanied by racial epithets. In determining whether the conduct of a prison guard has impermissibly infringed the protected right of a prisoner, the court of appeals must consider need for guard's action, the relationship between that necessity and amount of force actually used, the degree of injury to the prisoner's retained rights, and whether the conduct was a good-faith effort to maintain discipline or engaged in maliciously and sadistically for the sole purpose of causing harm. (Department of Corrections, Arkansas)

U.S. Appeals Court
PERSONAL
LIABILITY

Chapman v. Pickett, 801 F.2d 912 (7th Cir. 1986). A prison warden was personally liable to a prisoner whose eighth amendment rights were violated when he was kept in segregation for nine months as a result of his refusal on religious grounds to clean pork off food trays. The warden admitted to knowing of the prisoner's confinement and doing nothing about it, even after he received a letter from his supervisor. He was in the best position to know that a constitutional deprivation had occurred and had the authority to remedy the situation but did nothing. The United States District Court for the Central District of Illinois awarded the inmate \$7,000 against prison officials, and the officials appealed. The Court of Appeals held that: (1) the award of \$7,000 was not an abuse of discretion; (2) the court could properly deny punitive damages on the grounds that defendants acted in good faith; and (3) the warden, associate warden, and members of adjustment committee were all properly held liable. (Federal Penitentiary, Illinois)

U.S. Appeals Court
FAILURE TO TRAIN

Chinchello v. Fenton, 805 F.2d 126 (3rd Cir. 1986). A prisoner failed to establish a Bivens claim against the director of the Bureau of Prisons for failing to train officers allegedly responsible for opening the prisoner's mail and keeping the prisoner in administrative detention. The prisoner did not allege that the director had contemporaneous knowledge of the offending incidents or knowledge of a prior pattern of similar incidents and did not allege circumstances under which the director's inaction could have been found to have communicated a message of approval to the offending officers. "Special mail" is mail from a federal prisoner directed to attorneys, designated state and federal officials, and representatives of news media, and it is not to be opened by prison officials. (Federal Correctional Institution in El Reno, Oklahoma)

U.S. Supreme Court
NEGLIGENCE

Daniels v. Williams, 106 S.Ct. 662 (1986). Supreme Court rules that prisoners may not use civil rights actions to sue prison officials for negligence. Finding that the fourteenth amendment due process clause was not intended to be "a font of tort law to be superimposed upon whatever systems may already be administered by the states," the Supreme Court affirmed its conclusion that civil rights suits are not appropriate avenues for pursuing claims which involve negligence (see parallel ruling in Davidson v. Cannon, 106 S.Ct. 668). In this case a county jail inmate slipped on a pillow which had been negligently left by a jail officer on a flight of stairs. The prisoner claimed that he was provided a constitutional right to be free from injury under the due process clause of the fourteenth amendment.

In this decision, the Court overturned one part of a recent decision which had suggested that negligence could state a claim under the due process clause when the plaintiff had no other effective state remedy; in Parratt v. Taylor, 451 U.S. 527 (1981) the Court had conditioned pursuit of claims on the lack of effective state remedies. (Richmond Jail, Virginia)

U.S. Supreme Court
NEGLIGENCE

Davidson v. Cannon, 106 S.Ct. 668 (1986). Supreme Court rules the prisoners may not use civil rights actions to sue prison officials for negligence. According to the U.S. Supreme Court, prisoners do not have a constitutional right to sue prison officials or the state in a civil rights action for negligence when they are injured, alleging due process violations. In this case, the plaintiff prisoner alleged that prison officials ignored his plea for assistance before he was stabbed by a fellow prisoner. The prisoner sued in federal court that this violated his due process rights under the Constitution.

The Supreme Court held that "...lack of care simply does not approach the sort of abusive government conduct that the due process clause was designed to prevent. The guaranty of due process has never been understood to mean that the state must guarantee due care on the part of its officials."

The Court noted that remedies for such injuries are usually available through other actions, such as tort claims, although in this case the New Jersey prison officials are protected from liability for injuries caused by one prisoner to another.

The ruling followed a companion case, Daniels v. Williams, which reached a similar conclusion. In reaching this conclusion, the Court overturned one part of a recent decision which had suggested that negligence could state a claim under the due process clause when the plaintiff had no other effective state remedy; in Parratt v. Taylor, 451 U.S. 527 (1981) the Court had conditioned pursuit of claims on the lack of effective state remedies. (New Jersey State Prison)

U.S. Appeals Court
PERSONAL
LIABILITY

H.C. by Hewett v. Jarrard, 786 F.2d 1080 (11th Cir. 1986). A juvenile, who had been confined at a juvenile detention center pending a trial on delinquency charges, brought action for imposition of isolation without notice or hearing, excessive length and conditions of isolation, unjustified and excessive force applied to him by superintendent of the center, and denial of medical care. The United States District Court awarded nominal damages on claims that isolation without notice and hearing and conditions of isolation violated due process and determined that the juvenile had not been deliberately deprived of medical attention, and that battery of the juvenile by the superintendent did not rise to a constitutional violation.

The juvenile appealed. The court of appeals held that: (1) the superintendent's battery of the juvenile violated the juvenile's liberty interests protected by the fourteenth amendment; (2) the superintendent was liable both personally and in his capacity as the center's superintendent for denying the juvenile medical care; (3) compensatory damages should have been awarded to the juvenile for imposition of isolation without procedural due process, for being a period beyond the maximum period set out in relevant regulations, and for his humiliation and dejection sustained as a result of such isolation; and (4) the superintendent's conduct warranted the award of punitive damages. (Volusia Regional Juvenile Detention Center, Florida)

U.S. Appeals Court
NEGLIGENCE

Johnston v. Lucas, 786 F.2d 1254 (5th Cir. 1986). Prison officials released from liability for prisoner stabbing by appeals court in light of recent Supreme Court rulings. A federal district court awarded a prisoner monetary damages from guards and prison officials for improperly placing him with another prisoner who had known animosity toward him. The appeals court noted that the eighth amendment affords prisoners protection against injury at the hands of another prisoner, but that the Supreme Court had recently stated that "the protections of the Due Process Clause, whether procedural or substantive, are not just triggered by lack of due care by prison officials." Davidson v. Cannon, 106 S.Ct. 668 (1986).

While each official bore responsibility for exposing the prisoner to danger, the court found it arguable that their default could be considered an abuse of power and an eighth amendment deprivation. As stated in Whitley v. Albers, 106 S.Ct. 1078 (1986), the deliberate indifference standard articulated in Estelle v. Gamble is appropriate in this case. The appeals court concluded that none of the defendants could be shown to be liable because none of them was guilty of conscious indifference to the danger of or infliction of unnecessary pain. (Parchman State Penitentiary, Mississippi)

U.S. Appeals Court
NEGLIGENCE

Justice v. Dennis, 793 F.2d 573 (4th Cir. 1986). The lower court's jury instruction, setting out a spectrum in which intentional conduct was contrasted with simple negligence and failing to suggest that conduct short of intentional wrongdoing, such as wantonness, recklessness, or gross negligence, was sufficient for imposition of liability, constituted reversible error in the pretrial detainee's action against a state highway patrol trooper for alleged unconstitutionally excessive force used while the detainee was held in the county courthouse jail.

The source of constitutional protection against the use of excessive force on a pretrial detainee is the detainee's liberty interest in bodily security, grounded in the fifth and fourteenth amendments rather than the fourth amendment. The fundamental inquiry in all excessive force cases, regardless of protected interest's fourth, fifth, or eighth amendment origins, is whether the degree of force used against the arrestee was necessary to protect legitimate state interest and, thus, was permissible under all the circumstances. (Onslow County, North Carolina)

U.S. District Court
NEGLIGENCE

Lewis v. O'Leary, 631 F.Supp. 60 (N.D. Ill. 1986). State prison officials not liable for prisoner-on-prisoner assault in light of recent Supreme Court decisions. Given the recent U.S. Supreme Court decisions in Davidson v. Cannon and Daniels v. Williams, a federal district court concluded that prison officials could not be held liable for failing to protect a prisoner because: "... the law in this area has been significantly altered. It is now definitively established that while a correctional official who recklessly disregards a substantial risk of danger to an inmate may be liable under the Eighth Amendment, one who negligently fails to take reasonable steps is not." In this case,

prison officials called the plaintiff prisoner to their office to tell him that they had received anonymous telephone calls threatening his life. When the prisoner did not express concern, they took no action. He was attacked and repeatedly stabbed several days later. The court ruled that prison officials failure to transfer the inmate did not rise to "reckless" conduct, since the inmate himself told officials there was only a "mere possibility" not a "strong likelihood" of attack. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
42 U.S.C.A.
Section 1983
NEGLIGENCE

Maddox v. City of Los Angeles, 792 F.2d 1408 (9th Cir. 1986). The jury was not erroneously instructed to consider the police officers' "state of mind" in determining whether the officers violated the arrestee's fourteenth amendment due process rights. The plaintiff brought an action alleging that the death of the arrestee was due to the police officers' use of a chokehold. Negligent conduct by a state official is not enough to state a claim under Section 1983 based on an alleged violation of the due process clause. (City of Los Angeles, California)

U.S. Supreme Court
DAMAGES
42 U.S.C.A.
Section 1983

Memphis Community School Dist. v. Stachura, 106 S.Ct 2537 (1986). Supreme Court rules that damages in U.S.C.A. Section 1983 action must be real; abstract "value" or "importance" of constitutional rights are not an element of compensatory damages. A tenured elementary school teacher sued his school district after he was suspended because parents complained about his teaching methods in a seventh grade science course, alleging violation of his first and fourteenth amendment rights. A federal district court jury awarded the plaintiff \$275,000 in compensatory damages and \$46,000 in punitive damages. This award was reduced by the district court judge to \$266,750 compensatory and \$36,000 punitive damages. The U.S. Court of Appeals for the Sixth Circuit affirmed the lower court actions. The Supreme Court reviewed the lower court decisions to determine the appropriateness of the district court instructions to the jury, authorizing not only compensatory and punitive damages, but also damages for the deprivation of "any constitutional right." The Court concluded that the district court had erred, and that the abstract "value" or "importance" of constitutional rights are not an element of compensatory damages. The case was remanded for a new trial on compensatory damages. (Memphis Community School District, Michigan)

U.S. Appeals Court

Owens v. City of Atlanta, 780 F.2d 1564 (11th Cir. 1986). City not liable for prisoner death in police detention facility. The decedent was arrested while intoxicated by Atlanta police. He became disruptive while in custody and was placed on a wooden bench in the back of his cell. His arms were crossed in front of him and were cuffed to the bench. His ankles were locked in leg irons, stretched and attached to the cell wall (called the "stretch" hold position). He died from asphyxiation after he fell off the bench, with his face forward. The district court found that the individual officers were not liable in this civil rights suit for merely negligent conduct, and that the city was not liable for its policy, as there was no evidence that police had previously misused the restraining device. The appeals court affirmed. (Atlanta, Georgia)

U.S. Supreme Court
42 U.S.C.A.
Section 1983
MUNICIPAL
LIABILITY

Pembaur v. City of Cincinnati, 106 S.Ct. 1292 (1986). Municipal liability under 42 U.S.C.A. Section 1983 may be imposed for a single decision by municipal policymakers under appropriate circumstances. A physician who was indicted and eventually acquitted of fraud charges was convicted for obstructing police. He filed suit alleging violation of his rights under the fourth and fourteenth amendments. Sheriffs' deputies had attempted to serve capias on two of the physician's employees at his clinic and were refused entry; after receiving instructions from the county prosecutor to "go in and get" the employees, the deputies tried to force the door and then chopped the door down with an axe. The physician's suit was dismissed by the federal district court on the grounds that the deputies were not acting pursuant to the kind of "official policy" that is a requisite for liability under Monell v. New York City Dept. of Social Services, 98 S.Ct 2018. The appeals court affirmed, holding that the plaintiff failed to prove the existence of a policy because he had shown nothing more than that on "this one occasion" the prosecutor and the sheriff decided to force entry. The Supreme Court reversed the lower court decisions. The majority held that the "official policy" requirement of Monell was intended to distinguish the acts of the municipality from the acts of its employees; in this case, the municipality should be held liable for the actions of its employees because it officially ordered and sanctioned them. "With this understanding, it is plain that municipal liability may be imposed for a single decision of municipal policymakers under appropriate circumstances. If the decision to adopt a particular course of action is directed by those who establish governmental policy, the municipality is equally responsible whether the action is to be taken only once or to be taken repeatedly." (City of Cincinnati, Hamilton County, Ohio)

U.S. District Court
PERSONAL
LIABILITY

Quinones v. Durkis, 638 F.Supp. 856 (S.D. Fla. 1986). A sheriff could be sued individually under Section 1983 for his actions which allegedly resulted in the deprivation of the plaintiffs' constitutional rights. However, the plaintiffs would be required to establish that the sheriff was either personally involved in the wrongful acts, or that he breached a duty imposed by state law in order to be held accountable for his actions. (Hendry County, Florida)

U.S. District Court
CONSENT DECREE

Ruiz v. McCotter, 661 F.Supp. 112 (S.D.Tex. 1986). The Texas Department of Corrections was in contempt of court for failure to afford sufficient single-occupancy cells, in failing to assign housing to prisoners according to their respective custody classifications, in failing to maintain a specified number of personnel, and to deploy staff in the housing areas, in failing to employ a substantial number of health care professionals, in failing to meet the needs of the physically handicapped, in failing to afford prisoners in administrative segregation appropriate housing facilities, and in failing to build and properly equip recreation yards and gymnasiums. On the whole, the court found, TDC had been habitually and inexcusably dilatory in complying with the orders in question. The court noted that contempt represents more than delay in performance or lack of perfection. It is, instead, failure to accomplish what was ordered in meaningful respects. Defendants may defeat finding of contempt by demonstrating that they employed, in good faith, utmost diligence in discharging their responsibilities. Prison inmates were not required to show that Texas Department of Corrections had violated the Eighth Amendment or to develop a method by which the Department could achieve compliance with consent decree in order to support a finding of contempt for violating the decree. Rather, inmates were required to establish by clear and convincing evidence that the Department had inappropriately mixed custody classifications or had housed prisoners not in minimum custody status in dormitories, and had done both, in violation of stipulations forming bases for district court orders. Motions to modify so as to alleviate or eliminate conditions or restrictions imposed by prior court order require a clear showing of grievous wrong evoked by new and unforeseen conditions. Texas Department of Corrections' alleged change in philosophy to a belief that dormitories provide adequate, secure housing for women prisoners in medium and close custody classifications was not sufficient to require modification of stipulations incorporated in court orders requiring inmates to be housed with inmates of like classification, in light of the fact that certain women inmates had been moved to cell housing, and conflicting testimony regarding appropriateness of dormitory housing for women requiring medium or close custody. (Texas Department of Corrections)

State Appeals Court
42 U.S.C.A.
SECTION 1983
FAILURE TO
PROTECT

Smith v. City of Westland, 404 N.W. 2d 214 (Mich. App. 1986). The placement of an intoxicated arrestee in a regular jail cell, instead of a detoxification cell, was not a violation of his rights and did not constitute a deliberate indifference to his medical needs. The arrestee was intoxicated at the time he was placed in the cell and had not exhibited any dangerous behavior. The detainee committed suicide by hanging himself with his shirt. The court noted that "intoxication in and of itself is not normally a serious medical need." Although there was an insufficient basis for attaching liability under federal law for a civil rights violation, the defendants had reached a settlement on the state law claims for negligence. (Westland City Jail, Michigan)

U.S. Appeals Court
DAMAGES

Thomas v. Booker, 784 F.2d 299 (8th Cir, 1986), cert. denied, 106 S.Ct. 1975. Damages awarded to prisoner against jail employees as a result of prisoner-on-prisoner beating. The plaintiff sued the chief of security, the supervisor of correctional officers, and a correctional officer. The appeals court affirmed a judgment awarding \$3,000 actual damages and \$10,000 punitive damages against the chief of security, and \$1,000 actual damages against the correctional officer. The court also reinstated a jury verdict of \$10,000 against the correctional officer which had been set aside by the trial court. The supervisor was not found liable, because he had instructed the plaintiff to discuss his fears with the chief of security when he was told of them. The correctional officer was on duty when the assault occurred and was supposed to have made rounds every fifteen or twenty minutes. Apparently, rounds were not made as appropriate, and the fight was not discovered. (St. Louis City Jail, Missouri)

U.S. Appeals Court
DAMAGES

Walker v. Rowe, 791 F.2d 507 (7th Cir. 1986), U.S. cert. denied in 107 S.Ct. 597. Appeals court rules that due process clause does not assure safe working conditions for public employees and reverses lower court awards. On July 22, 1978, inmates of the Pontiac Correctional Center, a maximum security prison, were being returned to their cells after exercise in the courtyard. The prisoners killed three guards, injured others, and set fire to part of the prison. Three of the injured guards and the estates of the three deceased guards filed suit against the director of the Illinois Department of Corrections, and the Assistant Warden of Operations at Pontiac, alleging that they deprived them of their constitutional right to a safe working environment. A federal district court jury returned verdicts against the defendants totalling \$706,845, and the district court added \$145,792 in attorney's fees and costs. These recoveries were in addition to workers' compensation awards (\$250,000 death benefits and burial expenses for each of the three deceased guards) and other benefits afforded by state law. (Pontiac Correctional Center, Illinois)

U.S. Appeals Court
GOVERNMENTAL

Weber v. Dell, 804 F.2d 796 (2nd Cir. 1986), cert. denied, 483 U.S. 1020. The arrestee brought a civil rights action challenging the county jail policy authorizing strip ~~SEARCH~~ ^{SEARCH} cavity searches of arrestees, regardless of whether they were reasonably suspected of concealing contraband. The district court, 630 F.Supp. 255, granted summary judgment

in favor of county and sheriff, and the arrestee appealed. The court of appeals held that: (1) the strip-body cavity search of an arrestee who had been arrested for misdemeanor offenses was unconstitutional, where jail authorities had no reasonable suspicion that the arrestee was concealing weapons or other contraband; (2) the county could be held liable for search because the highest ranking law enforcement official in the county, the sheriff, established the policy; and (3) the sheriff was not entitled to good faith immunity defense. The county was liable for damages caused by a policy providing for strip-body cavity searches of all arrestees, where the sheriff, who was highest ranking law enforcement official in county, established such policy. The sheriff who promulgated unconstitutional jail policy authorizing strip-body cavity searches of arrestees, regardless of whether they were reasonably suspected of concealing contraband, was not entitled to good-faith immunity from Section 1983 claim brought by arrestee who was subjected to strip-body cavity search, considering that three circuit court decisions holding similar policies unconstitutional antedated the search in question, and thus law was clearly established at time of search. (Rochester Police Department, New York)

1987

State Appeals Court
NEGLIGENCE

Baker v. North Carolina Dept. of Corrections, 354 S.E.2d 733 (N.C. App. 1987). The North Carolina Dept. of Corrections was found liable for inmate employee's negligently injuring a fellow inmate during job performance. Although the State Industrial Commission had ruled that an employee inmate was negligent when he shut a window and it slammed on a fellow inmate's fingers, the State Appeals Court reversed this ruling and found that the employee inmate was not negligent because, although he knew fellow inmates were cleaning windows, he had no reason to believe that the plaintiff was at the very window he was about to shut. (Iredell County Unit, North Carolina Department of Corrections)

U.S. District Court
NEGLIGENCE
TORT LIABILITY

Beck v. Kansas University Psychiatry Foundation, 671 F.Supp. 1552 (D. Kan. 1987). Two persons who worked in a hospital emergency room were shot by a paroled prisoner with mental problems. Their families filed a lawsuit against the members of the Kansas Adult Authority, charging that the prisoner's release was negligent under state law and that the two persons who were killed were denied constitutional rights by the release. The court held that the individual members of the Kansas Adult Authority were immune from liability on the basis of the Kansas Tort Claims Act, but allowed claims against the Secretary of Corrections and the director of the Penitentiary to proceed because they had not raised their immunity under Kansas Tort Claims Act as a defense. (Kansas Adult Authority)

U.S. Appeals Court
GOOD FAITH
DEFENSE

Brown v. Smith, 813 F.2d 1187 (11th Cir. 1987). Whether a prison guard's application of force to an inmate is actionable turns on whether that force was applied in a good faith effort to maintain or restore discipline. According to an appeals court, neither judge nor jury is free to substitute its own judgment for that of prison officials. A mere conclusory allegation by a prison inmate that a guard acted with malice when he placed his riot stick across the inmate's throat after the inmate refused to go back into his cell was not sufficient to establish the liability of the guard where the actual facts would not support a reliable inference of wantonness. (West Jefferson Correctional Facility, Alabama)

U.S. Appeals Court
42 U.S.C.A.
SECTION 1983
PERSONAL
LIABILITY
FAILURE TO
SUPERVISE

Carlson v. Conklin, 813 F.2d 769 (6th Cir. 1987). The Sixth Circuit Court of Appeals ruled that placing a man convicted of armed robbery in a community corrections center ("half-way house") was no basis to find the Director of the Department of Corrections liable for the man's subsequently abducting a woman and sexually assaulting her. The court found that the crime was "too remote" from the actions of the Director to attach liability. The court's decision to dismiss the Section 1983 suit reversed the district court's ruling. The district court had allowed the claim to continue based on the following allegations: (1) the defendant authorized departmental policies in placing known dangerous prisoners in half-way houses; (2) that it was foreseeable that assaults would occur in the surrounding communities; and (3) that the defendant owed the victim a duty of care to prevent injury. The appeals court ruled that there is no duty to protect the general public from criminals, unless promises of protection are made to individual members. According to the appeals ruling, no duty was owed to the woman as a member of the public absent a special relationship. (Department of Corrections, Michigan)

U.S. District Court
42 U.S.C.A.
SECTION 1983

Davis v. City of Camden, 657 F.Supp. 396 (D.N.J. 1987) A suit was filed against county officials by a woman who came to the police station to file a complaint against her neighbors was arrested and strip searched. Police officials found that the woman had several outstanding arrest warrants when they ran an identification check. She was arrested and sent to the Camden County Jail in New Jersey. At the jail a strip search was conducted by a female officer. The policy at the jail was to conduct a strip

search on any person arrested who could not post bail. The court found that policy unconstitutional. The suit was filed against the sheriff and the matron who performed the search claiming the strip search was illegal. While the court did not hold the sheriff and matron liable, it did find the county liable because "We believe that a municipality should be held liable under Section 1983 when it officially adopts a policy that subsequently is declared unconstitutional, notwithstanding the fact that the policy was mandated by state law." The court reasoned that, for purposes of determining whether a particular strip search is justified, reasonable suspicion that a particular arrestee is concealing weapons or contraband can arise not only from specific circumstances relating to the arrestee or arrests, but also from the nature of the charged offense. (Camden County Jail, New Jersey)

U.S. District Court
42 U.S.C.A.
SECTION 1983
FAILURE TO
SUPERVISE

Doe v. United Social and Mental Health Services, 670 F.Supp. 1121 (D. Conn. 1987). A prisoner who had a history of psychiatric problems and alcohol and drug abuse was sentenced to seven to seventeen years in custody for the shooting of a female bank teller during a robbery. After being paroled, he was sent to a halfway house drug treatment center where he had a prohibition on traveling. Having immediately violated his parole, he stabbed a woman to death in another state. Shortly after being returned to custody, and reparaoled, he kidnapped a woman, sexually assaulted her and attempted to strangle her. Section 1983 lawsuits against members of the Parole Board, parole officers, and a number of other defendants were brought by the estate of the murdered woman and the victim of the sexual assault. Members of the Parole Board were found absolutely immune from liability. The court found the parole officers who allegedly failed to supervise the second parole properly or order the parolee's arrest at the appropriate time, were not absolutely immune. However, the officers were still not found liable, since they did not assume any "special relationship" with the woman who was sexually assaulted, even though they allegedly knew that the parolee had violated a no-drinking condition of parole shortly before the assault. (Connecticut Parole Board)

State Appeals Court
RESPONDEAT
SUPERIOR

Duhon v. Calcasieu Parish Police Jury, 517 So.2d 1016 (La. App. 3 Cir. 1987). According to a state appeals court, the Louisiana Department of Corrections owes prison inmates the duty of providing equipment and machinery that is safe for tasks the inmates are required to perform. However, the Department is not the insurer of the safety of inmates in prison, and is not required to anticipate and warn against every possible danger to which inmates may be exposed. While participating as a farm crew member in the work program of a minimum security facility, an inmate suffered back injuries when the tractor/trailer he rode on hit a rut in the road and bounced him to the ground. Since the inmate driver was acting within the scope of his employment, the sheriff was found liable for \$6,515.60 under the doctrine of respondeat superior. (Calcasieu Parish Vocational Rehabilitation Center)

U.S. Appeals Court
PERSONAL
LIABILITY

Gill v. Mooney, 824 F.2d 192 (2nd Cir. 1987). According to a federal court of appeals, employees may be liable if they overrule a doctor's orders that an inmate participate in a prescribed exercise program. As treatment for injuries sustained from falling off a ladder during a work assignment, a doctor ordered Anthony Gill to be permitted additional time in the facility gym for rehabilitative therapy. On two separate occasions, Gill was refused access to the prescribed exercise program by both the gym supervisor and a correctional officer. Gill was again denied access to the gym after the doctor had heard about the incidents and allegedly signed a new order directing additional exercise. The deliberate defiance of expressed instructions of a prisoner's doctor by prison officials is deliberate indifference to the prisoner's medical needs, ruled the federal appeals court. Further, if Gill's allegations are true, the employees could be liable for causing him unnecessary pain, even though he suffered no permanent injuries. (Great Meadow Correctional Facility, New York)

U.S. District Court
CONSENT DECREES

Gill v. Neaves, 657 F.Supp. 1394 (W.D. Tex. 1987). Having previously accepted over 12 petitions by an inmate who had also filed at least 16 in another court, the court clerk was ordered not to accept any more of his filings unless directed to do so. The inmate was described as an "abuser of the judicial process" because he filed numerous frivolous, malicious, bad faith or meritless motions or petitions which include claims that his legal papers were destroyed, his property was illegally searched, and that he was subjected to bodily injury from other inmates because of correctional guards informing fellow prisoners that he passed information about them to officials. The inmate also brought a civil suit claiming that the Sheriff and Bexar County Jail officials violated his constitutional rights by violating a consent decree concerning jail conditions. It was ruled by the court that the inmates' claim was without merit because "the mere approval by the Court of a consent decree by parties to a civil action does not raise the status of that decree to the status of "rights, privileges, or immunities secured by the Constitution and laws" of the United States. Any violation of a court-ordered consent decree in a jail case is more properly brought through the enforcement provisions of the decree rather than an individual civil rights suit, the court rationalized. (Bexar County Jail)

U.S. Appeals Court
DAMAGES

Ivey v. Wilson, 832 F.2d 950 (6th Cir. 1987). A federal appeals court found that alleged verbal abuse and harassment did not constitute punishment, let alone "cruel and unusual punishment," and that strip searches and testing for intoxicants were reasonable. The case was filed by an inmate who was charged with interfering with a correctional officer because he threatened to file a grievance when he was strip searched and subjected to a body cavity search. The inmate was also tested for alcohol and drug use because officers thought they smelled "home brew" on his breath. Since no evil motive, recklessness or callous disregard to the inmate's rights were shown, the appeals court reversed a punitive damage award from the lower court, but it upheld an award of \$51 in damages against one defendant and \$76 against three others. (Kentucky State Penitentiary)

U.S. District Court
PERSONAL
LIABILITY

Jackson v. Elrod, 671 F.Supp. 1508 (N.D.Ill. 1987). A pretrial detainee challenged a policy of barring the receipt of all hardcover books and failing to notify detainees of the rejection of these books when mailed to them by filing a federal lawsuit. A federal district court ruled that a policy of prohibiting all hardcover books, regardless of content or source, could not meet a test of being reasonably related to a legitimate penological interest. While the court held that the jail's corrections head, security chief and division superintendents were properly liable for making and administering these policies, it ordered further proceedings on whether the sheriff was liable, since the policy differed from a written handbook sent out by his office. (Cook County Jail, Illinois)

U.S. Appeals Court
POLICIES/
PROCEDURES
42 U.S.C.A.
SECTION 1983

LaBoy v. Coughlin, 822 F.2d 3 (2nd Cir. 1987). A federal district court upheld the dismissal of a Section 1983 lawsuit by a prisoner. The plaintiff sued the commission of correctional services and various correctional officers alleging that they violated the prisoner's Fourteenth Amendment due process rights when they took disciplinary actions against the prisoner based on prison regulations which had not been filed with the New York Secretary of State. The court noted that the inmate did not claim that the hearings conducted were otherwise inadequate, or that he did not have adequate notice of the regulations. The mere allegation that a state procedural requirement was not followed is not adequate grounds for a federal civil rights claim. (Clinton Correctional Facility, New York)

U.S. District Court
GOOD FAITH
DEFENSE
QUALIFIED
IMMUNITY

LaMarca v. Turner, 662 F.Supp. 647 (S.D. Fla. 1987). As a result of a former prison superintendent's indifference to prisoners' rights, prisoners who were gang raped or assaulted were entitled to relief under Section 1983 according to a federal district court. With respect to all of the inmates except two, the superintendent was in a position to take steps that could have averted the attacks but, through his callous indifference, failed to do so. The prisoners were entitled to injunctive relief, including establishment of committees to advise the court in the formulation of specific injunctive relief. The court ruled that a prisoner has a right to be protected from the constant threat of violence and from sexual assault. Prison officials' failure to control or segregate prisoners who endanger the safety of other prisoners and who cause a high level of violence, constitutes "cruel and unusual punishment. A law was clearly established that required a prison superintendent with knowledge of the pervasive risk of harm to inmates to take reasonable steps to prevent that harm, and, thus, the former prison superintendent did not act in good faith and was not entitled to qualified immunity for liability for violating the prisoners' Eighth Amendment right to reasonable protection from rapes and assaults. (Glades Correctional Institution)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Lane v. Griffin, 834 F.2d 403 (4th Cir. 1987). A federal appeals court ruled that a restriction on inmates' constitutional rights that is reasonably related to legitimate penological interest is valid, whether imposed by a prison regulation or by a policy decision made by a prison official and that the lower court had improperly informed the jury that the prison regulation had to be no broader than necessary rather than reasonably related to a legitimate security interest. A state prisoner brought a civil rights action against the prison superintendent, alleging that a prison restriction imposed by the superintendent violated the prisoner's First Amendment right of freedom of religion. The trial court was directed to consider, on remand, whether the superintendent was entitled to qualified immunity for his action. This is based on whether the law governing the scope of the inmate's right to participate in religious services, at the time of his request, was sufficiently clear so that the superintendent could have known whether his conduct violated the inmate's constitutional rights. (McCain Correctional Center, McCain, North Carolina)

U.S. District Court
CONSENT DECREE

Morales Feliciano v. Hernandez Colon, 672 F.Supp. 627 (D. Puerto Rico 1987). Puerto Rican prison authorities moved to modify stipulation and an order that they provide each prisoner with at least 35 square feet of living space. The District Court held that: (1) prison authorities were not entitled to relief under subsection of federal rule allowing modification on the ground that changed circumstances would make further compliance with order unjust; (2) prison authorities failed to show that compliance would result in pernicious consequences, and failed to show changed circumstances

warranting relief; and (3) building project undertaken to increase dramatically available beds for housing did not entitle prison authorities to relief. The possible release of prisoners by Puerto Rican prison authorities as a result of compliance with a court order that they provide each prisoner with at least 35 square feet of living space was not a "pernicious consequence" of compliance and did not entitle them to relief from order under Rule 60(b)(6); there was little factual support for assertion that all persons presently incarcerated in Puerto Rico would present danger to the community if released, argument had an undertone of disingenuity, and compliance would not interfere with efforts of Commonwealth as to enforcement of criminal law or any other policy decision of that entity. The court ruled that prison authorities should have known that the population projection figure on which they relied was, in all probability, inaccurate, and, even if they did not properly assess information available at that time, they certainly knew by the end of 1986 that they had drastically underestimated the actual rate of growth, but did not make the motion for relief from the stipulation, informally apprise the court of predictable problems in compliance, solicit assistance of monitor or seek discussions with plaintiffs' counsel. (Puerto Rico System)

U.S. Appeals Court
FAILURE TO
SUPERVISE
42 U.S.C.A.
SECTION 1983

Nishiyama v. Dickson County, Tenn., 814 F.2d 277 (6th Cir. 1987). Reversing a lower court ruling, an appeals court held that the practice of allowing an inmate to drive an official patrol car was action taken under the color of state law, establishing a claim that the conduct of a sheriff and deputy deprived their daughter of constitutionally protected interest in life. The court found reckless indifference to risk posed by actions of the sheriff and deputy sheriff in permitting the inmate to have the use of an official patrol car--resulting in an inmate murdered their daughter while driving an official car with permission--and that this was sufficient to establish violation of substantive due process under section 1983. (Dickson County Sheriff Department)

U.S. District Court

Ortiz v. Turner, 651 F.Supp. 309 (S.D. Ill. 1987). A proceeding was instituted on the motion of Illinois correction officials to dismiss a complaint alleging a failure to enforce minimum physical standards for the county jail. The district court held that the obligation imposed upon correction officials by an Illinois statute to set minimum physical standards for the county jail and to petition an appropriate court in the event of noncompliance did not include enforcement and, hence, did not impose liability upon correction officials for acts of noncompliance by county officials who were given responsibility by other Illinois statutes for maintenance of the jail. The failure of correction officials in Illinois to ensure compliance with minimum physical standards for the county jail could not be causally linked to conditions existing at the jail so as to place liability on the correction officials, notwithstanding a statement of the sheriff that he would have acted to comply with minimum standards had the correction officials threatened him with legal action, where the statement could not be given credence in view of the sheriff's repeated history of false assurances that the county jail would be brought up to minimum standards. A decision by a federal court as to whether county officials were in compliance with minimum physical standards set for the county jail would have amounted to an intrusion by the federal court into a decision making process of state officials offensive to the eleventh amendment. (Alexander Co., Illinois)

State Appeals Court
NEGLIGENCE
FAILURE TO
PROTECT

Perro v. State, 517 So.2d 258 (La. App. 1 Cir. 1987). An inmate who cut off two of his fingers and damaged his thumb while using a skillsaw to cut some plastic to fix a toilet seat sued claiming negligence on the part of the state. He noted that there was no guard on the blade. The court found the state was negligent in not providing a safe place to work. However, since the inmate had worked in the shop for eight months and had enough experience to know the saw was for cutting wood, not plastic, he could not recover for injuries since a more appropriate tool was available and he chose to use the skillsaw. The court also barred the inmate from recovering under the theory that the saw, as a dangerous instrument, was in the care and custody of the institution and was defective. (Jackson Barracks, New Orleans, Louisiana)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Rios v. Lane, 812 F.2d 1032 (7th Cir. 1987). A federal appeals court denied prison officials a defense of qualified immunity for disciplining an inmate pursuant to a vague rule forbidding gang activity. The inmate was given no prior warning that his conduct in passing a 3" by 5" notecard to another inmate containing information about the schedule of Spanish speaking radio stations violated any regulation. The court explained that aside from the sparse text of the rule itself, there was no material available to fully explain what conduct was prohibited by the rule. (Graham Correctional Center, Illinois)

U.S. District Court
FAILURE TO
PROTECT
NEGLIGENCE

Rondon Pinto v. Jimenez Nettleship, 660 F.Supp. 255 (D. Puerto Rico 1987). A prison official's detailed sworn statement explaining the actions he took to improve prison safety, and his lack of knowledge that the plaintiffs' son was in any particular danger, clearly showed an absence of deliberate or gross indifference. Therefore, the official was not liable for the son's death. Moreover, the situation did not even rise to the level of mere negligence, unless prison custodians are held to absolute standard of liability, responsible for any injuries suffered by any inmate. (Bayamon Regional Jail)

State Supreme Court
NEGLIGENCE
TORT LIABILITY
FAILURE TO
PROTECT

Silva v. State, 745 P.2d 380 (N.M. 1987) After an inmate committed suicide, using his shirt to hang himself his personal representatives brought a wrongful death action against the State Corrections Department and others. The court rejected the argument that the inmate's shirt was "machinery" within the Tort Claims Act's waiver of immunity for negligence in the operation or maintenance of machinery or building. The plaintiff claimed that because the prison officials had not removed the clothing from the inmate there was failure to "properly maintain machinery" and that the "design of the building" allowed him to hang himself. The claims were dismissed. (Corrections and Criminal Rehabilitation Department of the State of New Mexico)

U.S. District Court
DEFENSES

Shropshire v. Duckworth, 654 F.Supp. 369 (N.D. Ind. 1987). An inmate filed a suit alleging that his civil rights had been violated. Prison officials filed a motion for summary judgment. The district court held that: (1) the state policy governing institutional transfers did not create a liberty interest protected by the fourteenth amendment; (2) any claims against prison officials in their official capacities were barred by the eleventh amendment; and (3) the procedures used, before the inmate was placed in administrative segregation, satisfied the minimum requirements of due process. Procedures accorded an inmate when he was placed in administrative segregation satisfied minimum requirements of due process. The inmate received a hearing within eight days of being placed in administrative segregation. He received notice of the hearing three days prior to it. He was permitted to speak on his own behalf and present evidence, call witnesses and have lay advocate. He was in fact assisted by lay advocate of his choice. (Indianapolis, Indiana)

U.S. District Court
QUALIFIED
IMMUNITY

Vaughn v. Ricketts, 663 F.Supp. 401 (D. Ariz. 1987). Prisoners brought action against prison officials to challenge legality of digital, rectal cavity searches. A federal district court held that: (1) prison officials needed reasonable grounds to conduct digital, body cavity searches of prisoners, and (2) the law governing cavity searches was clearly established when searches were conducted, and thus, officials did not enjoy qualified immunity from liability. According to the court, rectal cavity searches of prisoners must be reasonably conducted in order to withstand fourth amendment scrutiny. Prison officials had duty to conduct digital, rectal cavity searches of prisoners in a manner that was not brutal, offensive to human dignity, or shocking to conscience and had duty not to violate due process. (State Prison, Florence, Arizona)

1988

U.S. Appeals Court
FAILURE TO
PROTECT

Anderson v. Gutschenritter, 836 F.2d 346 (7th Cir. 1988). A pretrial detainee was stabbed by his cellmate. The detainee had informed the prison authorities that he had heard rumors that "someone was out to get him." The due process clause protects pretrial detainees from both deliberate exposure to violence, and from a failure to protect when prison authorities know of a strong likelihood that an inmate will be assaulted or injured. According to the appeals court, evidence presented by the pretrial detainee would have permitted a reasonable jury to conclude that a sheriff and a warden failed to protect the detainee. (Sangamon County Jail)

U.S. District Court
PERSONAL LIABILITY

Anderson v. Sullivan, 702 F.Supp. 424 (S.D.N.Y. 1988). An inmate sued correction officials alleging excessive use of force, in violation of his civil rights. The U.S. District Court held that officers did not use excessive force in handcuffing the inmate. According to the court, an inmate's constitutional protection against excessive force by correction officers is nowhere nearly so extensive as that afforded by common-law tort action for battery.

The court found that the officers did not use excessive force on the prisoner, in violation of his eighth amendment rights, when they pushed him into a bar and put his hands behind his back to apply handcuffs. The amount of force was not significantly disproportional to a legitimate goal of handcuffing the inmate while transporting him within the facility, and the incident resulted in little or no harm to the inmate.

The court also ruled that the prison superintendent could not be held liable for the correction officers' alleged excessive use of force against an inmate absent an allegation that the superintendent was directly involved in the incident, that he had an opportunity to remedy an alleged wrong, that he created the policy under which the violation occurred, or that he was grossly negligent in managing subordinates. (Sing Sing Correctional Facility, New York)

U.S. District Court
RESPONDEAT
SUPERIOR

Brassfield v. County of Cook, 701 F.Supp. 679 (N.D. Ill. 1988). A prisoner filed a civil rights action against the county, former county department of corrections' executive director, the executive director's immediate subordinate, unnamed supervisor of guards at the county jail, and a guard, alleging the failure to provide the prisoner with prompt and effective medical care after he suffered a severe beating at the hands of fellow inmates. In a sua sponte opinion, the district court found that the responsibility for the county jail was vested in the sheriff, not the county, and the potential respondeat

superior liability on the county for the jail officials' actions did not extend to civil rights actions. The court also found a complaint alleging that the sheriff, executive director, executive director's immediate subordinate, and the guard supervisor failed to train and supervise jail personnel was insufficient to sustain a civil rights action against them. (Cook County Jail, Illinois)

U.S. District Court
PERSONAL
LIABILITY

Brody v. McMahon, 684 F.Supp. 354 (N.D.N.Y. 1988). An inmate filed a complaint against the New York Commission of Corrections seeking to hold individual members liable for the conditions of the prison. The court ruled that members of the Commission could not be held personally liable for conditions at the prison because the Commission is simply a "watchdog" agency and has no direct power to control or direct customs and policies of prison facilities in New York. (New York State Commission of Correction)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROTECT

Cabrales v. County of Los Angeles, 864 F.2d 1454 (9th Cir. 1988). A civil rights suit was brought against the county, the commander of the county jail, and others for the death of a pretrial detainee. Following a verdict against the county and jail commander, motion for judgment was denied by the U.S. District Court and attorney fees were awarded. The appeals court affirmed the lower court ruling, noting that the sufficiency of evidence could not be reviewed except for plain error absent a motion for directed verdict at the close of all the evidence.

There were issues of the fact as to the liability of the county and the jail commander on the ground of the policy of deliberate indifference to the detainee's medical needs. In order to impose liability on the county under a civil rights statute in the suicide on a theory that the county had a policy of deliberate indifference to the detainee's medical needs, it was not necessary to establish that any policymaker may have, by affirmative acts, established or adopted such a policy; rather, the notion of deliberate indifference connoted a regime where neglect of medical and psychological needs would suffice to prove a constitutional violation; acts of omission, as well as commission, may constitute predicate for finding of liability.

Even though the detainee was not denied access to medical and psychiatric help, but was in fact evaluated on several occasions by medical personnel, this did not preclude the finding of deprivation of constitutional rights without due process based on a deliberate indifference to medical needs, in light of the demonstration of inadequate staff such that psychiatric staff could only spend minutes per month with disturbed inmates, so that any psychological illness would go undiagnosed and untreated.

It was also found by the court that the plaintiff's unsuccessful claims against individual county officers were related to successful claims against the county and the commander of the county jail that inadequate psychiatric care led to the pretrial detainee's suicide. There was no abuse of discretion in reducing the attorney fee award by 25% to reflect limited success, where the plaintiff's overall relief was materially diminished for a failure to make out claims against individual defendants who could have been found individually liable for their own deliberate indifference to a detainee's medical and psychiatric needs. (Los Angeles County Jail, California)

State Appeals Court
NEGLIGENCE
DAMAGES

Calloway v. City of New Orleans, 524 So.2d 182 (La. App. 4 Cir. 1988). The mother of a prematurely born infant brought a wrongful death action against the sheriff of the jail in which she was held prior to the birth. She also sued the hospital. A lower court found the sheriff and hospital liable and awarded the mother \$150,000 in damages. On appeal, the court reduced the damages award to \$30,000, cited the mother's neglect to seek out and carry out proper medical care and contracting syphilis, as well as her reluctance to see the child. According to the court, in all negligence cases, the responsible party must have breached a duty which encompasses a foreseeable risk of harm to the plaintiff. While the court ruled that a jail corpsman should not be held to the same standard of care as a medical doctor, his standard is above that of an ordinary layman. When determining an award of damages for the wrongful death of a baby, the determination is predicated on the bond between parent and child, and presumably the longer a child lives, the greater parental bond and greater loss upon a child's death. Finally, when a damage award is excessive, the reviewing court's function is to lower it to the highest reasonable amount. (Orleans Parish Prison)

U.S. Appeals Court
FAILURE TO
PROTECT
42 U.S.C.A.
SECTION 1983

Colburn v. Upper Darby Township, 838 F. 2d 663 (3rd Cir. 1988), cert. denied, 109 S.Ct. 1338. The estate of a detainee who committed suicide while incarcerated brought action against township and police officials. The district court dismissed the case and the plaintiffs appealed. The appeals court held that: (1) the allegation that custodial personnel knew or should have known that the detainee was a suicide risk was sufficient to state a Section 1983 claim against official; and (2) the allegation that the township had a custom of inadequately monitoring jail for potential suicides was sufficient to state a cause of action. Further, the court found that the fact that the deceased inmate was the third person to commit suicide while in custody of the same jail was reason to state a Section 1983 claim. The court noted that a detainee is

entitled under a due process clause of the Fourteenth Amendment to, at minimum, no less protection for personal security than that afforded to convicted prisoners under the Fourteenth Amendment and, no less a level of medical care than that required for convicted prisoners by the Eighth Amendment. Though custodial officials cannot be placed in a position of guaranteeing that inmates will not commit suicide, such officials know or should know of a particular vulnerability. Prior suicides could be viewed as providing a governing body with knowledge of its alleged custom. The appeals court ruled, however, that the police commissioner and mayor could not be held personally liable in a Section 1983 action arising out of suicide of a detainee absent allegations that either was personally involved in any activity related to detainee's death. (Upper Darby Police Department)

U.S. Appeals Court
FAILURE TO
PROTECT

Cortes-Quinones v. Jimenez-Nettleship, 842 F.2d 556 (1st Cir. 1988), cert. denied, 109 S.Ct. 68. The death of a psychiatrically disturbed prisoner whose body was dismembered a few months after his transfer to a district jail was caused by the deliberate indifference" of prison officials to his health or safety problems, according to a federal appeals court. The court ruled found that information about the prisoner's psychiatric history was, or should have been, in his prison files, and that prison officials who approved of the transfer should have known of the inmate's psychological problem and that there was evidence that the inmate should never have been in the general prison population. According to the court, it was unlikely that the inmate would have been killed if any of the officials had acted to segregate him from mentally sound prisoners at the jail. According to the appeals court, when prison officials intentionally place prisoners in dangerous circumstances, when they intentionally ignore prisoners' serious medical needs, or when they are deliberately indifferent either to a prisoner's health or safety, they violate the constitution. (Arecibo District Jail)

State Appeals Court
SOVEREIGN
IMMUNITY
FAILURE TO
PROTECT

Dept. of Health & Rehab. Serv. v. Whaley, 531 So.2d 723 (Fla.App. 4 Dist. 1988). A juvenile detainee was awarded \$100,000 in damages and his father was awarded \$5,575 in damages, for injuries sustained as a result of an alleged sexual assault by a fellow detainee in a juvenile detention intake facility. The white, 14-year-old, 98 pound youth, was arrested for burglary and placed in a holding cell with two older black youths, 15 and 16 years old, weighing 160 and 195 pounds respectively. The other two youths were charged with burglary and armed robbery. While one had a history of several violent crimes charged (most of which had been dismissed), there was no past history of sexual assault. The two allegedly forced him to perform fellatio on one of them. Following the youth's release, he received psychiatric treatment for "post-traumatic stress syndrome", but no medical treatment for any physical injury was required. The appeals court upheld the jury verdict, noting that there was a duty to protect an alleged juvenile delinquent in custody from potential harm by third persons where the risk of such harm is foreseeable. The court rejected an argument that sovereign immunity applied in this instance, noting that insurance for just such liability existed. (Juvenile Detention Intake Facility, West Palm Beach, Florida)

U.S. Appeals Court
QUALIFIED
IMMUNITY
42 U.S.C.A.
SECTION 1983

Eastwood v. Dept. of Corrections of State of Okl., 846 F.2d 627 (10th Cir. 1988). A federal appeals court ruled that a Department of Corrections investigator who asked irrelevant questions concerning the sexual history of a female employee who had charged a fellow employee with sexual assault was not entitled to qualified immunity. When the female employee reported the sexual assault incident, the departmental investigator allegedly told her that she would not be harassed or fired if she revealed everything about the assault. She filed a lawsuit claiming that she was threatened with termination if she did not sign a statement promising to forget the incident if the other employee resigned. The lawsuit also claimed that the investigator forced her to reveal facts about her sexual history. Furthermore, the investigator and several other Department of Corrections employees created an offensive work environment by harassing her with additional questions about her sexual history, "publishing offensive and insulting drawings" within the Department of Corrections facility, and repeatedly making insulting remarks, which led up to her resignation when she could no longer tolerate the abuse. The court found that under 42 U.S.C. Section 1983, these allegations were sufficient to state a claim. Since the unlawfulness of such questions were clearly established by prior case law establishing a right of privacy, citing Thorne v. City of El Segundo, 726 F.2d 459 (9th Cir. 1983), cert denied, 469 U.S. 979 (1984), ("unbounded, standardless inquiry" in personal life of applicant for police job violated right to privacy). An individual's interest in avoiding disclosure of personal matters and interest in being independent when making certain kinds of personal decisions are two kinds of privacy interests protected by the penumbra of the Bill of Rights. (Oklahoma Department of Corrections)

U.S. Court of Appeals
GOVERNMENTAL
IMMUNITY
FAILURE TO

Farrish v. Mississippi State Parole Board, 836 F.2d 969 (5th Cir. 1988). A former director of corrections was held liable for failure to establish adequate procedures governing the use of hearsay testimony at parole revocation hearings. The plaintiff, a parolee, was subjected to a preliminary parole revocation hearing following his arrest for the sale of marijuana. He continually objected to the introduction of statements

given at the hearing by a person whose statement to the police provided the sole basis for the charge against him. The statements were admitted and the plaintiff's parole was revoked even though he contended that the statements should not be considered unless he was present for confrontation and cross-examination. The federal appeals court noted that the U.S. Supreme Court held in 1972 that "on the request of a parolee, a person who has given adverse information on which parole revocation is based is to be made available for questioning" in the presence of the parolee, except when the hearing officer determines that an informant would be subject to harm if his identity was revealed. According to the court, this case presented a classic example of when the use of hearsay impermissibly violates the right to confront and cross-examine because the statements were the sole evidence against the plaintiff. The director of corrections was not entitled to absolute immunity and was liable for failing to establish adequate policies or procedures to govern the calling of witnesses in preliminary hearings. The court said the director should have known that this violated Farrish's clearly established rights. (Mississippi Department of Corrections)

U.S. District Court
FAILURE TO
PROTECT
FAILURE TO
TRAIN
42 U.S.C.A.
SECTION 1983

Francis v. Pike County, Ohio, 708 F.Supp. 170 (S.D. Ohio 1988). The administrator and personal representative of a deceased arrestee brought a Section 1983 action against the city, county, and their law enforcement officers for the failure to remove a belt of the deceased arrestee who then committed suicide while in a cell. The defendants moved for a summary judgment. The district court found that the police officers did not use excessive force in arresting the arrestee. It was also found that neither the city nor its police officers were liable for the arrestee's suicide while in the county jail following the arrest assisted by the city officer. Since the arrestee was not in their custody or control at the time of the suicide, the county deputies' failure to remove the drunk driving arrestee's belt before placing him in a holding cell, without knowledge or reason to know that the arrestee would commit suicide, did not impose a civil rights liability on them after the arrestee committed suicide. The lack of allegations or evidence that the county was grossly negligent in training its law enforcement officers precluded its liability. (Pike County Jail, Ohio)

U.S. Appeals Court
FAILURE TO
TRAIN
42 U.S.C.A.
SECTION 1983
NEGLIGENCE

Freedman v. City of Allentown, Pa., 853 F.2d 1111 (3rd Cir. 1988). The parent of an inmate who committed suicide while detained in jail brought an Section 1983 action against the city, chief of police, individual police officers, and a state probation officer. The U.S. District Court dismissed the complaint and appeal was taken. The appeals court, affirming the lower court decision, found that the failure of jail officials to recognize scars on the inmate's wrists, inside of his elbows and neck as suicide hesitation cuts amounted only to negligence and would not support a Section 1983 claim. The civil rights claimant failed to establish that the city deliberately elected not to fund or carry out the training of police officers in the handling of mentally disturbed persons. The state probation officer's action in failing to caution detaining officers about the jail inmate's prior suicide attempt and suicidal tendencies was at most negligent and did not rise to a level of reckless indifference of the inmate's rights as to support the Section 1983 action. The parent of the prisoner failed to establish that the city and supervisory officials did not have a procedure, system, or equipment whereby prison officials could maintain visual surveillance or otherwise monitor prisoners with known suicidal tendencies for the purpose of maintaining a Section 1983 action, especially in light of the fact that the complainant referred to the existence of a booking cell in the detective bureau where prisoners could be watched closely. (Allentown Police Station, Pennsylvania)

U.S. Appeals Court
FAILURE TO
PROTECT
NEGLIGENCE
42 U.S.C.A.
SECTION 1983

Gardner v. Cato, 841 F.2d 105 (5th Cir. 1988). An inmate filed a civil rights lawsuit against the county jail and its personnel, after he had without notice or warning, gotten a dark liquid thrown in his face by his mentally unstable cellmate. The court found that placement of the prisoner in a cell with a mentally unstable inmate who had access to cleaning chemicals at best raised an issue of negligence by the defendants, a claim not seen as a violation of the Fourteenth Amendment in a civil rights action. Because he was given extensive medical treatment, the court found that it was "frivolous" to claim that the defendants displayed a deliberate indifference or disregard for the inmate's medical needs. (Guadalupe County Jail)

State Supreme Court
PERSONAL
LIABILITY
SOVEREIGN
IMMUNITY

Grantham v. Dept. of Corrections, 522 So.2d 219 (Miss. 1988). The Supreme Court of Mississippi held that a woman attacked by a paroled prisoner can bring a lawsuit against individual members of the Parole Board for their alleged gross disregard for her safety in granting the parole. The paroled prisoner served twelve years and three months of a life sentence for murder. The court noted that the plaintiff alleged that the parolee and seventy-two other inmates were approved for parole and release on the same day and that the Parole Board members approved the parolee's petition without reviewing all the pertinent information required by state law, such as the circumstances of the prisoner's offense,

his previous social history and criminal record, his conduct, employment and attitude while in the custody of the Department, and the reports of such physical and mental examinations as have been made. Claims against the Parole Board, Department of Corrections and Commissioner of Corrections were dismissed on the basis of sovereign immunity. The individual Board members, however, the court stated, were charged in the plaintiff's complaint with "reckless disregard" for her safety. It was alleged that their failure to consider pertinent information was a substantial departure from their duties. The court found these allegations sufficient to "pierce the shield of these officials' qualified immunity to suit." The court carefully noted that it intended that "not the slightest hint be perceived how this case ought ultimately be decided." (Mississippi Department of Corrections)

U.S. District Court
NEGLIGENCE
FEDERAL TORT
CLAIMS ACT

Harris v. U.S., 677 F.Supp. 403 (W.D.N.C. 1988). A mother brought an action against the government in damages for the death of her son, a federal prison inmate. The district court found that the intentional tort proviso of the Tort Claims Act did not restrict the category of intentional torts for which sovereign immunity was waived on those committed in the course of the search, seizure, or arrest, and the mother's action against the government for the death of her son, who died when a government employee wrongfully or negligently applied an elastic bandage and duct tape over substantially all of his head and face, could be maintained under the intentional tort proviso of the Tort Claims Act. The court rejected the government's motion for summary judgment. The government argued that 28 U.S.C. Sec. 1346, the Federal Tort Claims Act, waiving sovereign immunity for intentional torts in Section 2680(h), only applied to actions of law enforcement officials committed during the course of a search, a seizure or an arrest, citing Pooler v. United States, 787 F.2d 868 (3d Cir. 1986), which so held. This court rejected that limitation, finding that the context in which the intentional wrongdoing was committed was not limited, as long as the officer fit the definition of "investigative or law enforcement officer." The court also cited Crow v. United States, 659 F.Supp. 556 (D.Kan. 1987), which also rejected the holding in Pooler. (United States Bureau of Prisons)

U.S. Appeals Court
FAILURE TO
PROTECT
42 U.S.C.A.
SECTION 1983

Harris by and Through Harris v. Maynard, 843 F.2d 414 (10th Cir. 1988). Prison officials were not immune from liability under 42 U.S.C.A. Section 1983 for a deceased inmate's unexplained and violent murder in the prison facility. Wanton or obdurate disregard of or deliberate indifference to a prisoner's right to life as a condition of confinement was a substantive constitutional deprivation. Material issues of fact existed as to whether state correctional officials evidenced deliberate indifference in connection with an inmate's unexplained death. Summary judgment was precluded. The inmate's mother had made phone calls to prison officials expressing her son's need for protection from other inmates. The order requiring separation of the inmate from fellow inmates was not enforced, and the inmate's mother had been denied access to the deceased inmate's personal effects, including threatening letters from the other inmate. (McAlester, Oklahoma Prison)

U.S. District Court
CONSENT DECREE

Heath v. DeCourcy, 704 F.Supp. 799 (S.D. Ohio 1988). An action was brought challenging conditions of confinement at a county facility. A motion was filed to modify an agreed modification of a consent decree. The district court, denying the motion in part and granting the motion in part, found that the agreed modification would be modified in part as requested with respect to the classification of inmates permitted to be double-celled at the facility. According to the court, a consent decree may be modified where a better appreciation of facts in light of experience indicates that the decree is not properly adopted to accomplishing its purposes. The defendant seeking to modify the consent decree has a burden of showing his entitlement to relief sought based on evidentiary record. The parties in this class action suit entered into a Consent Decree which became a final judgment in this case in 1985. An Agreed Modification of Agreed Final Judgment (Agreed Modification) was negotiated by the parties and became a final judgment in this case in 1988. This modified Consent Decree permitted double-celling of inmates in the Justice Complex in 168 cells, set an inmate population limit in the Jail Annex of 162 and in the Justice Complex of 1016, provided for an inmate safety and well-being, gave defendants the authority to comply with the maximum population limits by releasing inmates based upon set criteria and by refusing admission of inmates, and authority to set staffing limits. Over the inmates objections, the court approved as eligible for double-celling inmates being held pretrial on misdemeanor or felony charges and eligible inmates split-sentenced on felony charges, provided the double-celling should be implemented only when absolutely necessary and required by the penological program, and then only for the minimum time required, and that other requirements for "minimum security" classification be met. All parties agreed that the classification requirements paragraph in the agreed modification was in error. (Hamilton County Jail and Justice Complex, Ohio)

U.S. District Court
REMEDIES

Inmates of the Allegheny County Jail v. Wecht, 699 F.Supp. 1137 (W.D. Pa. 1988). Prison inmates sued county and state officials to relieve the overcrowding at the county jail. The district court found that conditions at the jail

including overcrowding, deplorable mental health facilities, fire hazards and the lack of reliable climate control rendered the jail constitutionally inadequate. The Commonwealth was partially responsible for the conditions and would be required to shoulder partial responsibility of remedial measures; and the jail would be closed and a new facility was required to be constructed. (Allegheny Co. Jail, Pennsylvania)

U.S. District Court
GOVERNMENTAL
LIABILITY

Kennedy v. Hardiman, 684 F.Supp. 540 (N.D. Ill. 1988). A county corrections official received a phone call from a man purporting to be an FBI agent informing him that a correctional officer would be transporting heroin into the facility on that date. When the officer arrived, a body cavity search was conducted by three investigators who found no heroin. The correctional officer sued corrections officials alleging violation of his fourth amendment rights. The federal district court held that there was nothing improper in the plaintiff naming several defendants in their official capacities, as this was an entirely appropriate way to allege municipal liability and there was no reason to limit the plaintiff to a single official capacity defendant. The court also denied summary judgment for the defendants, ruling that jury must decide if the search was based on reasonable suspicion. Since the law regarding strip searches was clearly established and an anonymous tip would not provide "reasonable suspicion," prison officials were not be entitled to qualified immunity for the strip search. (Cook County Dept. of Corrections, Illinois)

U.S. District Court
NEGLIGENCE
FEDERAL TORT
CLAIMS ACT

Lewis v. U.S., 702 F.Supp. 231 (E.D. Mo. 1988). A visitor at a federal prison brought an action under the Federal Tort Claims Act to recover damages for injuries sustained when she slipped and fell outside of prison. When the visitor came to the prison to see her imprisoned husband, there was no ice or water on the ground when she entered the building on the cold but sunny winter day. While she was inside, however, an inmate hosed down the driveway, which caused ice to form. When she left, she slipped and fell on a patch of ice, which she did not see because she was talking and looking straight ahead. Her injuries required chiropractic treatment and she sued for negligence under the Federal Tort Claims Act, 28 U.S.C. Sec. 1346. The United States moved to dismiss. The district court found that a prison visitor was a "public invitee," and the United States, as owner of the prison, was guilty of negligence and was 60% at fault. (United States Penitentiary, Terre Haute, Indiana)

U.S. Appeals Court
GOVERNMENTAL
LIABILITY

Lowe v. City of St. Louis, 843 F.2d 1158 (8th Cir. 1988). An inmate alleged that while correctional officer entered his cell, beat him with his fists, and severely injured him. According to the inmate's suit, the allegedly city knew that the officer had previously attacked other individuals, but had done nothing about it. A jury decided that the officer acted unconstitutionally in beating the inmate, but this single act is an insufficient predicate for municipal liability. Although the officer had been involved in an earlier assault on a prisoner, and an earlier knife fight with another correctional officer, he had been disciplined both times. (St. Louis City Jail)

U.S. District Court
QUALIFIED
IMMUNITY

O'Brien v. Borough of Woodbury Heights, 679 F.Supp 429 (D. N.J. 1988). According to a federal district court, a municipality was liable under section 1983 for causing arrestees to be subjected to unconstitutional strip/body cavity searches at the county jail, where it had a policy of bringing arrestees to the county jail and was aware of the county jail's policy of conducting strip/body cavity searches on all arrestees. Two arrestees filed claims against the Borough, County, and other law enforcement officials alleging that they were unlawfully detained and strip/body cavity searches were performed on them even though there was no suspicion that either arrestee was concealing contraband. The federal court held that the county jail's rule of performing routine strip/body cavity searches on anyone arrested, regardless of the offense, was unconstitutional. The court also denied a qualified immunity claim by officers, stating that the law against such searches was clearly established at the time of arrest. (Gloucester County Jail, New Jersey)

U.S. Appeals Court
CONSENT DECREE

Plyler v. Evatt, 846 F.2d 208 (4th Cir. 1988), cert. denied, 109 S.Ct. 241. The State requested modification of a consent decree so as to allow double-celling at new prisons and also appealed a court-ordered release of 700 inmates. This request was denied by the district court. The federal appeals court found that the State had made a good-faith effort to comply with the consent decree and had faced an unanticipated increase in the prison population and that it was an abuse of discretion not to allow double-celling--ordering the district court to modify the consent decree to allow double-celling at the five new facilities. The appeals court noted that the state had embarked on an aggressive program of new prison construction, involving the spending of over one-hundred million dollars, as well as instituting early release programs to alleviate overcrowding. The court also noted that there were potential dangers from the early release of high risk inmates- dangers which "far outweigh any imposition on the inmates from double-celling" in some of the "modern, air-conditioned facilities" which have been constructed. The court retained jurisdiction to order further remedies should the double-celling result in any unconstitutional conditions of confinement. (South Carolina Department of Corrections)

U.S. District Court
42 U.S.C.A.
SECTION 1983
GOOD FAITH
IMMUNITY
QUALIFIED
IMMUNITY

Reutcke v. Dahm, 707 F.Supp. 1121 (D.Neb. 1988). A prisoner sued prison officials alleging that the prison's policy regarding access to legal materials denied the prisoner his right to access to the courts. Following an evidentiary hearing and report and recommendation by a U.S. Magistrate, the district court adopted the report and recommendation, and found that the prison's policy regarding access to legal materials denied the prisoner his right to access to the courts. The warden was not entitled to qualified good faith immunity. The prisoner was entitled only to nominal damages; he was not entitled to punitive damages.

The prison warden was liable under Section 1983 for denial of the prisoner's right of access to the courts, because the warden was ultimately responsible for the policy of the prison concerning access to legal materials and assistance. The warden was not entitled to qualified immunity in the prisoner's action claiming a denial of his right of access to the courts, since the prison's policy concerning access to legal materials and assistance was in violation of clearly established constitutional law. A reasonable prison administrator would have determined that the prison's policy was unconstitutional. The associate warden was not liable to the prisoner under Section 1983 for the denial of the prisoner's right of access to the courts because the associate warden did not possess the final decision-making authority with respect to the policy concerning access to legal materials and assistance. (Diagnostic and Evaluation Center, Nebraska Department of Corrections)

U.S. Appeals Court
FAILURE TO
PROTECT

Richardson v. Penfold, 839 F.2d 392 (7th Cir. 1988). There were genuine issues of material fact, precluding summary judgment, on whether a prison official acted with "deliberate indifference" in failing to prevent an inmate's rape. The inmate filed an affidavit by another inmate which stated that the alleged attackers had an arrangement with the official to let the attackers have sex "with any new kid they wanted to have sex with," in return for information on contraband within the unit. If that was true, a jury could permissibly infer that the official knew about the rape, and deliberately chose to ignore it. (Indiana State Prison)

U.S. Appeals Court
LIABILITY
QUALIFIED
IMMUNITY
PERSONAL
LIABILITY

Shabazz v. Coughlin, 852 F.2d 697 (2nd Cir. 1988). An inmate brought a civil rights action against the superintendent of a correctional facility and the Commissioner of the New York State Department of Correctional Services alleging that the inmate was unconstitutionally disciplined for violating regulations prohibiting group prayer and prayer in the prison yard. The U.S. District Court denied the prison officials' motion for summary judgment, and appeal was taken. The appeals court, reversing the decision, found that officials could assert personal immunity defenses, such as qualified immunity, but not an eleventh amendment bar, and qualified immunity shielded the prison officials from civil rights liability for disciplining the inmate. At the time the discipline was imposed, a legitimate question existed as to whether a prisoner had a right to engage in group prayer in the prison yard. Muslims must offer "demonstrative prayer" (involving kneeling down, bending forward, etc.) five times a day at times determined by the sun's position. They also believe that group prayer is preferable to individual prayer. The court of appeals noted, however, that it had not, at the time of the discipline, or since then, directly addressed the constitutionality of restrictions on group prayer and prayer in prison yards, nor were there cases in other circuits clearly condemning or condoning such policies. (Attica Correctional Facility, New York)

U.S. District Court
DAMAGES
NOMINAL
DAMAGES
PUNITIVE
DAMAGES
QUALIFIED
IMMUNITY

Soto v. Lord, 693 F.Supp. 8 (S.D.N.Y. 1988). An inmate brought an action against a correctional facility program coordinator for violations of his constitutional rights in conducting a prison disciplinary hearing. The district court found that although the official was entitled to qualified immunity for failure to confirm positive test results, he was not entitled to qualified immunity for failure to establish a chain of custody for the narcotics test results. The defendant was therefore held liable for violating the inmate's right to procedural due process. The inmate was entitled to damages resulting from punitive segregation, lost wages and nominal damages for distress, but was not entitled to punitive damages or injunctive relief. Damages of \$3,243.50 were assessed (\$3,000 for punitive segregation, \$242.50 for lost wages and \$1 nominal damages for distress caused by the punitive segregation). The court found that, "assuming without deciding that as a constitutional rule reliance on an unconfirmed EMIT test violated due process," the defendant was entitled to qualified immunity from liability because such a rule was not "clearly established" law at the date of the test. (Downstate Correctional Facility, New York)

State Appeals Court
FAILURE TO
PROTECT
NEGLIGENCE

State Dept. of Corrections v. Romero, 524 So.2d 1032 (Fla. App. 1988). An inmate who was injured when he fell from the seat of a tractor he was driving as part of a prison work detail sued the Department of Corrections, alleging that it was negligent not to provide a seat belt on the tractor. A jury agreed, awarding the inmate \$100,000, and found the inmate to be free of any negligence himself. On appeal, the court noted that the inmate had stopped the tractor to fix his shoelaces. Under the facts as alleged by

the inmate, the appeals court found that the inmate could not have been guiltless of all negligence, concluding that the jury verdict could only be a result of misunderstanding the law or "a disregard of that law because of sympathy or prejudice." The appeals court ordered a new trial on the issue of comparative negligence, instructing the amount awarded to be reduced proportionate to the percentage of the inmate's fault for the accident. (Brevard Correctional Institution, Florida)

U.S. Appeals Court
CONSENT DECREE-
MODIFICATION

Twelve John Does v. District of Columbia, 861 F.2d 295 (D.C. Cir. 1988). The District of Columbia's motion to modify a consent decree establishing a population lid on a prison facility was denied by the U.S. District Court, and the District appealed. The appeals court, affirming in part and vacating and remanding in part, found that the increase in the number of inmates in the District of Columbia prison system was not unforeseeable, and thus was not a change of conditions entitling the District to modification of the consent decree establishing a population lid for the prison facility. Evidence failed to establish that the District made a good-faith attempt to comply with the consent decree. The district court order requiring that, before inmates subject to the consent decree be transferred to another District facility, the Director of the Department of Corrections was required to certify to the court that a transfer would not threaten to violate the obligation to provide adequate care to the inmates in other facility extended relief to inmates who were not party to the original proceedings and not encompassed by the provisions of the consent decree. Thus, the certification requirement was not a valid means of enforcing the consent decree. (Central Facility, Lorton, District of Columbia)

U.S. Appeals Court
FAILURE TO
PROTECT
DAMAGES

Vaughn v. Willis, 853 F.2d 1372 (7th Cir. 1988). A prisoner who had been raped by four other inmates brought a Section 1983 action against correctional officials and a guard. The U.S. District Court directed the verdict in favor of the supervisory personnel and entered a verdict against the guard, and appeal was taken. The appeals court, affirming the decision, found that the jury instruction which explained the grant of directed verdict in favor of the supervisory personnel did not erroneously indicate that by not granting a directed verdict in favor of the guard, the guard's liability was established. Even if the jury instruction was in error, the guard was not prejudiced. The court also found that the deposition of a witness to the assault who later refused to testify was properly admitted at the trial. The prisoner alleged that he was raped and otherwise sexually abused by four inmate-members of a street gang. His civil rights lawsuit also claimed that a prison guard had forced him into a cell where two of the inmates raped him and then returned him to his own cell and allowed two other inmates to rape him. A medical examination confirmed that the inmate had been sodomized. The trial court granted a directed verdict in favor of the supervisory prison personnel because there was insufficient evidence showing their alleged reckless indifference to the prisoner's rights. A jury returned a \$125,000 verdict against the prison guard who allegedly aided and abetted the prisoners in their assault. (Stateville Correctional Center, Joliet, Illinois)

U.S. Appeals Court
FAILURE TO
PROTECT
42 U.S.C.A.
SECTION 1983

Vosburg v. Solem, 845 F.2d 763 (8th Cir. 1988), cert. denied, 109 S.Ct. 313. A former inmate brought a section 1983 action against prison wardens to recover for violation of his right to be free from cruel and unusual punishment arising out of sexual assaults by fellow inmates. A federal appeals court ruled: (1) evidence created a jury question whether wardens violated the inmate's right to be free from cruel and unusual punishment; (2) an erroneous damage instruction that permitted a jury to award damages for an abstract violation of Eighth Amendment was harmless; and (3) the inmate was entitled to post-judgment interest from the date of the verdict. Prison officials may be liable for deliberate indifference to prisoner's constitutional right to be free from sexual attacks by other inmates, if they actually intend to deprive him of that right or if they act with reckless disregard of right. Reckless disregard of prisoner's right to be free from sexual attacks by other inmates may be shown by existence of pervasive risk of harm to inmates from other prisoner and failure of prison officials reasonably to respond to risk. Pervasive risk of harm to inmates by other prisoners may not ordinarily be shown by pointing to a single incident or to isolated incidents, but it may be established by much less than proof of reign of violence and terror in a particular institution. It is enough that violence and sexual assaults occur with sufficient frequency to put prisoners in reasonable fear for their safety and reasonably to apprise prison officials of existence of problem and need for protective measures. To establish pervasive risk of harm to inmates by other prisoners, it is not necessary to show that all prisoners suffer pervasive risk of harm, but it is enough that identifiable group of prisoners do, if the complainant is member of that group. (South Dakota State Penitentiary)

U.S. Appeals Court
NEGLIGENCE
FAILURE TO
PROTECT

Wells v. Walker, 852 F.2d 368 (8th Cir. 1988), cert. denied, 109 S.Ct. 1121. A federal trial court had found no federal civil rights liability for prison officials who authorized the early release of an inmate because of overcrowding. After his release, he allegedly murdered a female proprietor of a store where he was taken to board a bus. This

ruling was upheld by the federal appeals court that, although the circumstances gave rise to a right of the victim to be protected against an assault by the inmate, the allegation that the defendants failed to conduct an adequate background investigation and did not know of the inmate's potential for violence amounted to "a claim of ordinary negligence" at most. The court expressed no opinion on state law claims which may now be filed in state court. (Arkansas State Board of Corrections)

U.S. Supreme Court
42 U.S.C.A.
SECTION 1983
CONTRACT
SERVICES

West v. Atkins, 108 S.Ct. 2250 (1988). Private doctor who provides medical services to inmates under contract can be held liable under civil rights statute. The Supreme Court ruled that a private doctor who renders medical services to prison inmates pursuant to a contract with the state acts "under color of state law" pursuant to the Civil Rights Act, 42 U.S.C.A. Section 1983, and thus can be sued under that Act for services that fall below constitutional minimum standards under the cruel and unusual punishment or deliberate indifference aspects of the Eighth Amendment. The fact that such a doctor is an independent contractor rather than a state employee does not change this result: "It is the physician's function within the state system, not the precise terms of his employment, that determines whether his actions can fairly be attributed to the State." The United States District Court for the Eastern District of North Carolina entered summary judgment for the defendants, holding that, as a "contract physician," the doctor was not acting "under color of state law," a jurisdictional prerequisite for a Section 1983 action. The inmate appealed the summary judgment. The Court of Appeals for the Fourth Circuit remanded the case to the district court for rehearing. 799 F.2d 923. The district court then dismissed the claim and the inmate once again appealed. The Court of Appeals affirmed the lower court's dismissal of the complaint and the inmate filed an appeal with the Supreme Court. 815 F.2d 993. Justice Blackmun wrote the majority opinion for the Supreme Court, which held that a physician who was under contract with a state to provide medical services to inmates at a state prison hospital on a part-time basis acted under the color of state law, within meaning of 42 U.S.C. Section 1983, when he treated inmate. The Supreme Court reversed the lower court decision, and remanded the case for rehearing. The Supreme Court found that generally, a public employee acts under the color of state law within the meaning of Section 1983 while acting in his official capacity or while exercising his responsibilities pursuant to state law. Therefore, a physician who was under contract with the state to provide medical services to inmates at a state prison hospital on a part-time basis acted under the color of state law, within meaning of Section 1983, when he treated the inmate, and such conduct was fairly attributable to state. The Supreme Court noted that physicians are not removed from the purview of a Section 1983 action simply because they are professionals acting in accordance with professional discretion and judgment. However, there is no rule that professionals are subject to suit under Section 1983 unless they were exercising custodial or supervisory authority. According to the Court, it is a physician's function within a state system, providing treatment to prison inmates, not the precise terms of his employment, that determines whether his actions can fairly be attributed to the state under Section 1983. The fact that the physician's employment contract with the state did not require him to work exclusively for the prison in treating prisoners did not make him any less a state actor than if he performed duties as a full-time, permanent member of the state prison medical staff. Rather, it was the physician's function while working for the state, not the amount of time he spent in performance of those duties or the fact that he might be employed by others to perform similar duties, that determined whether he was acting under the color of state law. The Court also held that contracting out prison medical care does not relieve the state of its constitutional duty to provide adequate medical treatment to those in its custody, and does not deprive the state's prisoners of a means of vindication of their eighth amendment rights under Section 1983. Finally, the Supreme Court noted that the fact that a state employee's role parallels one in the private sector is not, by itself, reason to conclude that the employee is not acting under color of state law within the meaning of Section 1983 in performing his duties.

U.S. Appeals Court
42 U.S.C.A.
SECTION 1983
RESPONDEAT
SUPERIOR

Williams v. Cash, 836 F.2d 1318 (11th Cir. 1988). According to a federal appeals court a warden cannot be held automatically liable for the wrongful acts of his subordinates. An inmate sued a warden and other after his arm was broken by a correctional officer trying to force him back into his cell. While the question of whether the officer intentionally or accidentally broke Williams' arm had not yet been decided, it was clear, said the court, that the warden could not be held liable. Unless the inmate could show that the officer was implementing a policy or practice established by the warden or that a history of widespread abuse or improper behavior had put the warden on notice of the need to take corrective action, the warden could not be held liable. In a federal civil rights action under Section 1983, a supervisor is not automatically liable for the acts of his subordinates, the court said. (West Jefferson Correctional Facility, Alabama)

U.S. Appeals Court
VICARIOUS
LIABILITY

Wood v. Sunn, 865 F.2d 982 (9th Cir. 1988). A prisoner brought a suit against state prison officials alleging that they had been deliberately indifferent to his serious medical problems, thus violating his right to be free

QUALIFIED
IMMUNITY

of cruel and unusual punishment. The U.S. District Court entered judgment in favor of the prisoner, and the state defendants appealed. The appeals court, affirming in part, reversing in part, and remanding, found that the issue of whether defendants were entitled to qualified immunity was not preserved for appeal. The prison's physician consultant and its registered nurse engaged in deliberate indifference to serious medical problems of the prisoner in violation of his eighth amendment rights. The director of the State Social Services Department and the administrator of the prison could not be held vicariously liable. The failure to consider appropriate factors in determining the reasonableness of the award of attorney fees was an abuse of discretion. (Oahu Community Correctional Center, Hawaii)

1989

U.S. Appeals Court
42 U.S.C.A.
SECTION 1983
QUALIFIED
IMMUNITY

Al-Jundi v. Estate of Rockefeller, 885 F.2d 1060 (2nd Cir. 1989). An inmate brought a class action against the former New York Governor and state officials and correctional personnel to recover for injuries resulting from police action to quell a prison uprising and to rescue hostages. The U.S. District Court dismissed the action against the Governor's estate, and the inmate appealed. The appeals court affirmed the decision and found that the Governor's involvement was insufficient to establish a Section 1983 liability, and the Governor enjoyed qualified immunity. The Governor's involvement in the decisions and formulation and implementation of the plan to retake the prison from the inmates and to rescue the hostages was insufficient to establish a Section 1983 liability for injury to the inmate, even though the Governor was abreast of the events. The Governor ratified the decision by the New York State Commissioner of the Department of Correctional Services to abandon negotiations, to order the state police to formulate a plan to regain control of the prison, and to approve commencement of the actual retaking. (Attica Correctional Facility, New York)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Allen v. Lowder, 875 F.2d 82 (4th Cir. 1989). A defendant whose conviction for possession of stolen goods was reversed filed a civil rights action against the Secretary of the Department of Corrections, the prison warden, and the prosecutor whose acts allegedly caused him to be illegally kept in custody for 52 days following the reversal of his conviction. The U.S. District Court denied the defendants' motion for summary judgment, and they appealed. The court of appeals held that the secretary and prison warden played no role in causing the defendant's incarceration beyond the date of his lawful release and that they had qualified immunity from liability because they were completely ignorant of incidents involving the defendant and had lawfully complied with nondiscretionary state law requirements. The court also ruled that the prosecutor was not entitled to absolute immunity from liability. The prosecutor attempted to secure continued incarceration of the criminal defendant in "safekeeping" custody after reversal of the defendant's conviction and his release from the state prison to the county jail, under the theory that the defendant had previously "caused trouble" in the county jail. At best, according to the court, the prosecutor was acting in purely administrative capacity when he assisted the sheriff's office in obtaining a safekeeping order from the superior court. (Union County Jail, North Carolina)

U.S. Appeals Court
VICARIOUS
LIABILITY

Bolin v. Black, 875 F.2d 1343 (8th Cir. 1989), cert. denied, 110 S.Ct. 542. State prisoners sued prison officials and corrections officers claiming that beatings by prison guards following a prison riot violated their constitutional rights. The district court ruled in favor of the prisoners awarding both compensatory and punitive damages. The appeals court affirmed the lower court decision, finding that the evidence was sufficient to hold prison supervisors liable for excessive use of force by other corrections officers. During an interview with an inmate, the associate warden made reference to the possibility of retaliatory punishment. He took no steps to avoid the possibility of retaliatory punishment, even though he knew or should have known that flaring tempers among prison guards would lead them to retaliate against inmates. He chose not to ride on the bus transporting inmates from one prison to another despite his knowledge that a guard had been killed and that the entire staff, including the officers riding with the inmates, were upset. There was sufficient evidence to hold the captain of corrections officers liable for excess use of force against the prisoners by subordinate corrections officers following the prison riot. Inmates testified that the captain was present when guards removed certain inmates from their cells to administer beatings on the laundry table. The captain himself testified that he saw five or six inmates brought to rotunda of prison and laid on the laundry table and that he gave the order that he did not want anybody killed. The captain's later statement to highway patrol investigators that "I've seen a lot more ass kicking than was done in there" implied that he knew of beatings.

A jury found in favor of the plaintiffs and assessed damages against each defendant. One inmate was awarded \$9,500 compensatory damages and \$56,000 punitive damages, the second \$14,500 compensatory and \$74,000 punitive damages, and the third \$14,000 compensatory and \$73,000 punitive damages, for a total award of \$241,000. A federal appeals court upheld these awards. (Missouri Training Center for Men)

U.S. Appeals Court
DAMAGES
COVENANT- NOT-TO-
SUE

Berry v. Peterson, 887 F.2d 635 (5th Cir. 1989). An inmate who was injured in a fire at the county jail brought a suit against the county, county board of supervisors, and the sheriff. The district court entered judgment in favor of the inmate and awarded him \$200,000. The appeals court reversed the award after finding that the inmate who was injured in the fire "voluntarily" executed a covenant-not-to-sue, notwithstanding the attorney's alleged failure to adequately explain that the inmate thereby waived any claims against the county. The covenant-not-to-sue was not against public interest and could be enforced by the county. The court stated that the enforceability of the inmate's covenant-not-to-sue for injuries sustained during the fire was one of law for the court. The only issue which was even arguably suitable for the jury was the voluntariness of the agreement. (Hancock County Jail, Bay St. Louis, Mississippi)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Cleveland-Perdue v. Brutsche, 881 F.2d 427 (7th Cir. 1989). The mother of a deceased inmate brought an action against prison officials to recover for allegedly inadequate medical treatment of the inmate. The death of William Lowe prompted an investigation by the defendant Robert Brutsche, the medical director of the federal prison system. Based on interviews and his own observations, Brutsche recommended that the prison hospitals' only full-time physician be relieved of his duties and that the record-keeping procedures at the hospital be improved. He did not, however, check to see if his proposed changes were implemented. Between January 6, 1975, which was the date of Lowe's death, and August, 1975, two more inmates died at the prison's hospital. These deaths prompted another investigation by Brutsche. As a result of this investigation, a series of recommendations were made to the warden by Brutsche. These recommendations included keeping full in-patient records on anyone admitted to the prison hospital, utilizing outside facilities, encouraging better communications among the staff, and implementing a policy concerning the availability of physicians during off-duty hours. The court of appeals found that the failure to correct systematic deficiencies in the delivery of the health care services at the prison violated clearly established law in 1975, and, thus, the medical director was not entitled to qualified immunity for allegedly deliberate indifference to the inmate's medical needs in violation of the eighth amendment; the right was established by federal appellate courts in the second, fifth, and eighth circuits. (Federal Penitentiary, Terre Haute Prison, Indiana)

U.S. Appeals Court
FAILURE TO
DIRECT
FAILURE TO
SUPERVISE
CONTRACT
SERVICES

Crooks v. Nix, 872 F.2d 800 (8th Cir. 1989). An inmate suffering from granulocytic leukemia brought a Section 1983 action against prison officials for the officials' alleged improper denial of pain medication and necessary treatment. The U.S. District Court granted the defendants' motion for summary judgment, and the inmate appealed. The appeals court found that the material question of fact, whether prison policy contributed to the health professionals' alleged improper denial of pain medication to the inmate, precluded the entry of a summary judgment for the defendants on the inmate's "denial of medication" claims. According to the court, the state may not, by contracting with other parties to provide medical treatment to prisoners, immunize itself from a claim for damages arising from the failure to provide necessary medical treatment to prisoners. Although the officials had contracted with a private company, Correction Medical Services, to furnish medical services, this did not give them absolute immunity, the court said. If a prisoner claims that prison policies contributed to the denial of proper medical care, the state can still be liable. On the other hand, "if the alleged denial of medical care was based on a wrongful diagnostic judgment by a physician, the warden or prison director, lacking professional medical expertise, would not be liable for any constitutional wrong." The courts held that Iowa officials could be liable in this case if they failed to properly train, supervise, direct or control the actions of the private contractor. (Iowa State Penitentiary)

U.S. Appeals Court
QUALIFIED
IMMUNITY
VICARIOUS
LIABILITY
FAILURE TO
TRAIN

Danese v. Asman, 875 F.2d 1239 (6th Cir. 1989), cert. denied, 110 S.Ct. 1473. A pretrial detainee's family and estate brought a civil rights action against police officers, police supervisors, and the city after the detainee committed suicide. The U.S. District Court found that the defendants were not entitled to qualified immunity. Interlocutory appeal was taken. The appeals court reversed the lower court's decision and found that the police officers and supervisors enjoyed qualified immunity from liability. The law which existed at the time of the police officers' action did not clearly establish the right to have the officers diagnose the pretrial detainee's condition as prone to suicide and to take extraordinary measures to restrain the pretrial detainee; therefore, the police officers had qualified immunity from liability. The police officers were not subject to a clearly established constitutional duty to diagnose the pretrial detainee's condition as prone to suicide; and given that, the supervisors could not be held liable. (Roseville City Jail, Michigan)

U.S. Appeals Court
FAILURE TO
SUPERVISE
FAILURE TO TRAIN

Davis v. City of Ellensburg, 869 F.2d 1230 (9th Cir. 1989). A civil rights action was brought against the city and police officers for injuries suffered by an arrestee who died. The U.S. District Court granted a summary judgment for the city, and the plaintiffs appealed. The appeals court found that the city was not liable on the theory it had a policy of inadequate training of officers, inadequate medical treatment of

prisoners, or a deliberate indifference to the use of excessive force. The city's failure to have written policy regarding the proper use of force in a misdemeanor arrest did not amount to delegation of policymaking authority to rank and file police officers so as to render the city liable in a civil rights action for injuries suffered by an arrestee by transforming the individual police officers into municipal policymakers whose decisions in individual cases might give rise to a municipal liability. The court also found that the city was not liable on the theory it had a policy or custom of inadequately supervising its police officers. According to the court, the plaintiff cannot prove the existence of a municipal policy or custom for purposes of a civil rights action under Section 1983 based solely on the occurrence of a single incident of unconstitutional action by a nonpolicymaking employee.

The city was not liable for injuries suffered by the arrestee who died on the theory the city had a policy or custom of inadequately supervising its police officers; the chief sent an officer with an alleged alcohol problem and an officer with an alleged mental disorder to the police psychologist for an evaluation. The chief allowed the officers to remain on active duty only after receiving written reports that both were competent to perform their duties, and the chief received informal reports that the officer with an alleged alcohol problem was no longer drinking, so the evidence did not establish that the chief acted with deliberate indifference in failing to remove the officers from active duty. (Ellensburg Police Department, Washington)

U.S. District Court
CONSENT DECREE
REMEDIES

DeGidio v. Pung, 704 F.Supp. 922 and 723 F.Supp. 135 (D. Minn. 1989). State prison inmates sought relief from prison officials' allegedly inadequate response to a tuberculosis epidemic. The federal district court found that the prison officials' inadequate response to a tuberculosis epidemic, even if violative of the inmates' eighth amendment rights, did not warrant injunctive relief in that, since the initiation of the litigation, the officials had significantly remedied the deficiencies to a point where the medical care and tuberculosis control were not inconsistent with contemporary standards of decency, and there was no evidence that past problems were likely to recur unless enjoined. The court also ruled that a consent decree setting forth the level of medical care to be provided for prison inmates did not create any procedural due process interest in inmates actionable under Section 1983, in that the decree did not create any procedural standards to guide the prison officials' conduct with regard to any particular inmate. To the degree that the decree was violated, it was through omission or neglect, rather than intentional conduct; the inmates' remedies for breaches of the decree lay in either action for breach of contract or motion for contempt.

The district court found that the prisoners were prevailing parties entitled to an award of attorneys' fees, even though some of their claims were unsuccessful, and they were ultimately denied injunctive relief and that an hourly rate of \$150 was reasonable for the prisoners' attorneys. The court also found that the award of attorneys' fees would be 35% of the lodestar figure, to reflect the limited relief that was obtained and the incomplete and otherwise deficient time records. The prisoners would be awarded 25% of the amount of costs and expenses which they claimed, to reflect the partial relief obtained, and to avoid any award for expenses which were not properly assessed. (State Prison, Minnesota)

U.S. Appeals Court
FAILURE TO
PROTECT
FAILURE TO
TRAIN
42 U.S.C.A.
SECTION 1983

Dorman v. District of Columbia, 888 F.2d 159 (D.C. Cir. 1989). The representatives of a detainee's estate brought a Section 1983 action against a municipality to recover for the suicide of the detainee in a cell. The U.S. District Court denied the municipality's motion for judgment notwithstanding a verdict and the municipality appealed. The court of appeals, reversing and remanding the lower court's decision, found that the municipality was not liable. According to the court, the training of police officers on suicide prevention did not rise to the level of a conscious choice by the municipality or the policy of deliberate indifference to the eighth amendment rights of the detainee who committed suicide in his cell and, therefore, did not permit the imposition of a Section 1983 liability upon the municipality, even though the police officers did not receive a specific course on suicide prevention. The officers were trained to recognize abnormal behavior, could not accept arrestees who showed signs of mental illness or abnormal behavior, and utilized "WALES" computer system with information about previous arrests and suicide attempts. The detainee's suicide was the first in the cell block in the memories of the sergeant and the inspector who had been assigned there for eight years. The alleged deficiencies in the training of police officers on suicide prevention did not cause the suicide of the young male detainee in his cell. The mere fact that the detainee was somewhat docile at the time of the arrest and closed his eyes at the police station during lulls in the processing was insufficient to give the officers notice that he might be suicidal. The court found that the case presented was insufficient to be submitted to a jury and the verdict for the plaintiff was therefore reversed. (Fifth District, Metropolitan Police Department, District of Columbia)

U.S. Appeals Court
COMPENSATORY
DAMAGES

Erwin v. County of Manitowoc, 872 F.2d 1292 (7th Cir. 1989). The plaintiffs sued the defendants under 42 U.S.C.A. Section 1983 for civil rights violations and for damages resulting from a police search of a private residence. The

PUNITIVE
DAMAGES
FAILURE TO
TRAIN

individuals whose residence had been searched brought a civil rights action against deputies who conducted the search and against the county. The jury awarded the plaintiffs compensatory and punitive damages amounting to \$85,000, and the defendants moved for a new trial or judgment notwithstanding the verdict. The U.S. District Court granted judgment n.o.v. vacating most of the damage award, and appeal and cross appeal were taken. The appeals court, remanding the decision, found that although it was clear that the jury concluded liability properly attached to some defendants, confusing jury form and conflicting answers did not sufficiently disclose the jury's intent, and thus, a new trial was warranted. The U.S. Appeals Court has found that a county cannot be held liable for a failure to train unless this failure represents a deliberate or conscious choice by the county. The court noted that if it was obvious from the duties assigned to specific officers that enhanced training was so necessary that any inadequacy of training would likely result in the violation of constitutional rights, then a county's failure to provide such training would amount to deliberate indifference. But a particular officer's unsatisfactory training cannot alone suffice to attach liability to the county, said the court. "An officer's faults may result from factors other than the deficient training program," according to the court. Nor can an injured party prevail merely by proving that an accident or injury could have been avoided had an officer received enhanced training. Even adequately trained officers sometimes err, and such error says little about their training program or the legal basis for liability, the court noted. (Manitowoc County Sheriff's Department)

U.S. District Court
FAILURE TO
PROTECT
FAILURE TO
TRAIN

Feigley v. Fulcomer, 720 F.Supp. 475 (M.D. Pa. 1989). An inmate brought action against prison officials, alleging officials were violating his eighth amendment rights by not protecting him adequately from contracting Acquired Immune Deficiency Syndrome (AIDS). On the prison officials' motion for summary judgment, the district court found that the officials' practice of not testing inmates routinely for AIDS-causing virus at the time they were received or subsequently, and not testing other inmates for the virus upon request, did not violate the plaintiff inmate's eighth amendment rights. The court also found that the material issue of fact precluded a summary judgment as to whether the officials' refusal to test the inmate for the virus upon request involved unnecessary and wanton infliction of pain which is a violation of the eighth amendment. It allowed the inmate to continue with this claim that it constitutes such a punishment to fail to relieve the anxiety which might accompany an inmate's uncertainty as to whether he or she has a fatal disease. It was further found by the court that the absence of evidence that prison officials had knowledge and acquiesced in behavior by any of their subordinates who allegedly failed to prevent, or tacitly condoned and allowed, such conduct, precluded recovery by the inmate on the claim that officials failed adequately to prevent the spread of the virus in violation of his eighth amendment right to be free from cruel and unusual punishment. (State Correctional Institution, Huntingdon, Pennsylvania)

U.S. Appeals Court
FEDERAL TORT
CLAIMS ACT

Free v. U.S., 879 F.2d 1535 (7th Cir. 1989). A federal prisoner brought a federal tort claims action alleging that during a shakedown of his cell, prison guards either negligently or intentionally destroyed various items of personal hygiene, including toothpaste and baby powder, plus a tennis shoe. The parties consented to have the suit tried by a magistrate, who held a bench trial in the penitentiary and at its conclusion entered a judgment for the United States. The prisoner then sought permission to appeal in forma pauperis. The U.S. District Court denied the petition, and appeal was taken. The appeals court found that the federal prisoner who threatened to bring a tort-claim suit every time his cell was searched, apparently trying both to deter prison guards from searching his cell and to obtain replacement for lost, damaged, or worn out items of personal property at the government's expense, was abusing the judicial process in a classic sense of using courts to pursue ends other than vindication of claims believed to be meritorious. Thus, he was not entitled to in forma pauperis status in appeal of the magistrate's decision in favor of the government. The request for leave to appeal in forma pauperis was denied, and the appeal was dismissed. The court ruled that abusers of the judicial process are not entitled to sue and appeal without paying normal filing fees-- indeed, they are not entitled to sue and appeal, and they are not merely not to be subsidized; they are to be sanctioned. (Federal Penitentiary, Marion, Illinois)

U.S. Appeals Court
42 U.S.C.A.
SECTION 1983

Gillihan v. Shillinger, 872 F.2d 935 (10th Cir. 1989). An inmate who had been transferred from another prison brought a civil rights action against prison officials after the officials froze funds in his prison account until he paid for transportation expenses. The U.S. District Court entered a judgment in favor of the officials, and the inmate appealed. The appeals court, affirming in part, reversing in part, and remanding the case, found that the inmate's allegations were sufficient to state a civil rights claim based on the deprivation of property without due process, but freezing of the inmate's account was not cruel and unusual punishment in violation of the eighth amendment. According to the court, the inmate had a property interest in funds in his

prison account for due process purposes, to the extent the funds constituted monies received from friends and family outside prisons or represented wages earned while incarcerated. Section 1983 does not distinguish between personal liberties and property rights, and the deprivation of the latter without due process gives rise to a claim under Section 1983. Prison officials argued that the suit should have been dismissed because the inmate had adequate administrative and state remedies. But the court disagreed, noting that this was not a random and unauthorized act, but one taken pursuant to institution policy. "In such cases, the availability of an adequate state post-deprivation remedy is irrelevant..." said the court. The case was sent back to the district court to determine the exact nature and timing of the hearing due to the inmate. (Wyoming State Prison)

U.S. District Court
VICARIOUS
LIABILITY
FAILURE TO
PROTECT
FAILURE TO
SUPERVISE

Heine v. Receiving Area Personnel, 711 F.Supp. 178 (D. Del. 1989). A new inmate who was sexually assaulted by another inmate filed a federal civil rights action and pendent state law claims against two correctional officers and three supervisory officials of the State Department of Corrections. The district court found that the corrections officers who entrusted the plaintiff to the other inmate were not liable under Section 1983 absent evidence that either officer was aware that the other inmate presented a specific risk of violent homosexual attack to new prisoners. The supervisory officials were not liable under a civil rights provision absent any evidence that they approved of or acquiesced in the prison policy violation. For the purposes of a federal civil rights claim, the risk that homosexual rape will occur cannot be presumed as a matter of law every time an individual is left unattended with a prisoner. The Commissioner of the State Department of Corrections was not liable absent any evidence that the Commissioner played any role in planning or development of the facility at which the assault occurred. (Multi-Purpose Criminal Justice Facility, Delaware)

State Court
DAMAGES
NEGLIGENCE

Hill v. Com., Bureau of Corrections, 555 A.2d 1362 (Pa.Cmwlth 1989). A prisoner who was injured when he stepped in an uncovered goal post hole while trying out for a prison baseball team on a field also used for football sued the Bureau of Corrections. Following a verdict for the prisoner, the prisoner's motion for a new trial on the ground of inadequacy of damages was denied by the Common Pleas Court, and the prisoner appealed. The Commonwealth Court, reversing and remanding with instructions, found that an award of general damages of only \$1,800 in connection with the trimalleolar fracture of the ankle was inadequate. The award of, at most, \$1,800 for pain and suffering to the prisoner was inadequate, where the prisoner suffered severe pain at the time of the accident and following the first operation and continued to experience substantial pain for over a year, where the \$1,800 general damages covered some permanent impairment as well as pain and suffering, and was only 30% of the special damages. The possibility of prejudice against the plaintiff as a convicted prisoner or as a black person could not be ruled out, and there was no claim of contributory negligence or likelihood of compromise. (State Correctional Institution, Graterford, Pennsylvania)

U.S. Appeals Court
QUALIFIED
IMMUNITY
RESPONDEAT
SUPERIOR
DAMAGES

Howard v. Adkison, 887 F.2d 134 (8th Cir. 1989). An inmate brought an action against the supervisory officers at the facility at which he was confined, alleging the violation of his eighth amendment rights. The U.S. District Court entered a judgment in favor of the inmate, and the defendants appealed. The appeals court affirmed and found that the evidence concerning filthy conditions in the inmate's cell was sufficient to support a finding that the inmate's eighth amendment rights were violated. Supervisors at the prison are not liable for eighth amendment claims brought under Section 1983 under the respondeat superior theory. Proof of actual knowledge of constitutional violations is not an absolute prerequisite for imposing supervisory liability in an action based on alleged eighth amendment violations. The inmate's action against supervisory officers based on alleged violation of the eighth amendment, instructing the jury to assign liability only upon a finding that the supervisors either intentionally deprived the inmate of his right of be free from cruel and unusual punishment or acted in reckless disregard of the inmate's rights was proper. The difference between negligence, recklessness, and actual knowledge were not spelled out in detail. Qualified immunity is not available to all government officials acting within the scope of their employment. It is only for those officials who possess discretion to decide matters in the name of public interest. The trial court set aside a jury award of \$2,000 in punitive damages against the warden. The appeals court upheld an award of \$500 actual damages, \$1 nominal damages and \$750 punitive damages against the special unit manager, and \$1,000 punitive damages against the lieutenant. (Missouri DOC and Human Resources)

U.S. Appeals Court
VICARIOUS
LIABILITY
42 U.S.C.A.
SECTION 1983

Hunt v. Dental Dept., 865 F.2d 198 (9th Cir. 1989). An inmate at the Arizona State Prison at Florence sued prison officials for failing to promptly replace dentures which he lost during a prison riot. (He claimed that he was not involved in the riot, that his dentures were soaking in a cup in the area of the prison where he lived, that the riot extended into this area, and when

the riot ended his dentures were gone). He made his request for replacement of the lost dentures in October 1986, but it wasn't until July 1987 that they were finally delivered to him. He claimed that in the interim his remaining teeth were breaking off and his gums were bleeding and infected. He also complained that he suffered pain and weight loss due to his inability to eat properly.

The inmate appealed from an order of the district court which granted a summary judgment for defendants in the inmate's action under Section 1983 to recover for the defendants' deliberate indifference to his serious dental needs in violation of the eighth amendment. The appeals court found that the director of the state Department of Corrections could not be vicariously liable for the fault of the prison personnel. The dental department of the state prison was immune from Section 1983 actions; and fact question as to whether prison employees were deliberately indifferent to the inmate's serious dental needs precluded a summary judgment. The inmate's allegations that prison officials were aware of his bleeding gums, breaking teeth and his inability to eat properly due to the loss of his dentures, and failed to take any action to relieve his pain or to prescribe a soft food diet until new dentures could be fitted were sufficient to state a claim of deliberate medical indifference under Section 1983. (State Prison, Florence, Arizona)

U.S. Appeals Court
CONTEMPT
REMEDIES

Inmates of Allegheny County Jail v. Wecht, 874 F.2d 147 (3rd Cir. 1989). County officials appealed from an order of the U.S. District Court entered in a dispute over the conditions at the county jail. The court of appeals found that an order imposing contempt sanctions for the county's violation of inmate population caps at the jail, along with an order to close the jail was reasonable; however, an order requiring county officials to prepare a plan for the construction of a new jail facility was appealable. County officials could be held in contempt for failing to provide the warden at the county jail and his staff with the ability to comply with prior orders imposing inmate population caps and requiring trained psychiatric nurses at the jail's mental health unit. According to the court, when the totality of conditions in a jail violates the Constitution, the district court need not confine itself to the elimination of specific conditions; rather, the nature of overall violation determines the permissible scope of an effective remedy. The order prohibiting the county jail from being used to house inmates was an appropriate remedy in the action challenging conditions at the jail, in view of the jail's lack of adequate space for mental health facilities, its age, size and deteriorating condition, its persistent overcrowding problem and its small cell size. An order requiring county officials to submit a plan for accommodating at least 900 inmates was not final. The order was separable from a contempt order issued in connection with the county's violation of a population cap at the county jail, and was not sufficiently specific to be more than a step toward the selection of the remedy for constitutional violations addressed. (Allegheny County Jail, Pittsburgh, Pennsylvania)

U.S. District Court
42 U.S.C.A.
SECTION 1983
QUALIFIED
IMMUNITY

Langley v. Coughlin, 709 F.Supp. 482 (S.D.N.Y. 1989). Female inmates brought a class action against correctional authorities alleging violations of their eighth amendment rights arising from conditions of confinement in a "solitary" unit. Correctional authorities moved for summary judgment on the grounds of qualified immunity. The district court denied the motion for summary judgment, finding that the correctional authorities responsible for designing and implementing the inmate programs were not entitled to qualified immunity against the claims that female inmates were not provided with medical treatment and that mentally balanced inmates were housed with inmates who suffered from chronic mental illness. The Commissioner of the New York State Department of Correctional Services could be held liable in the Section 1983 suit to the extent he failed to develop and implement programs and policies regarding the treatment of mentally ill inmates or delegated that responsibility to others whom he then failed to supervise adequately. (Bedford Hills Correctional Facility, New York)

U.S. Appeals Court
CONTRACT
SERVICES

Leach v. Shelby County Sheriff, 891 F.2d 1241 (6th Cir. 1989), cert. denied, 110 S.Ct. 2173. A paraplegic inmate filed a suit against the mayor and county sheriff, claiming deliberate indifference to his serious medical needs. The U.S. District Court entered a judgment awarding \$10,000 to the inmate. The mayor and sheriff appealed. The appeals court found that the evidence demonstrated a policy or custom of deliberate indifference to serious medical needs of paraplegic inmates, for purposes of holding the mayor and sheriff liable in their official capacities. The sheriff had the responsibility of conforming to at least minimal constitutional standards in providing and maintaining adequate bedding, toiletries, and cleanliness. The court held that this rose to the level of a policy of deliberate indifference to serious medical needs. And it rejected the argument that because the state law of Tennessee allowed the sheriff to subcontract away the medical care of inmates, this excused the county from liability. (Shelby County Jail, Tennessee)

U.S. Appeals Court
42 U.S.C.A.
SECTION 1983
DAMAGES
DELIBERATE
INDIFFERENCE

Mandel v. Doe, 888 F.2d 783 (11th Cir. 1989). A prisoner brought a civil rights action under Section 1983 against the county, alleging he was injured by a physician assistant's deliberate indifference to his serious medical needs while he was a prisoner at a county road prison. The U.S. District Court rendered a judgment for the prisoner on a jury verdict and awarded \$500,000 damages, and the county appealed. The appeals court affirmed the decision, finding that the evidence established that the physician's assistant's treatment of the prisoner after he injured his leg constituted deliberate indifference to the prisoner's serious medical needs, and evidence established the physician's assistant was acting as a final policymaker for the county with respect to medical affairs at the road prison. The prisoner had serious medical needs once he injured his leg while jumping off the truck bed, the physician's assistant's knowledge of the need for medical care was conclusively established, the physician's assistant never apprised his superior, a medical doctor, of the prisoner's situation, obtained an x-ray of the prisoner's leg, or had the prisoner examined by a doctor or taken to a hospital, despite repeated requests by the prisoner and his parents directed toward the physician's assistant and the prison superintendent. The county maintained that the mere denial of Mandel's request for an x-ray did not amount to deliberate indifference. However, the court found that the record was "replete with evidence of serious medical need, grossly deficient treatment and callous indifference." (Escambia County Prison, Cantonment, Florida)

U.S. Appeals Court
VIOLATION OF
COURT ORDER

Morales-Feliciano v. Parole Bd. of Com. of P.R., 887 F.2d 1 (1st Cir. 1989), cert. denied, 110 S.Ct. 1511. The U.S. Supreme Court has refused to overturn a lower court decision which held the Commonwealth of Puerto Rico in contempt for keeping prisoners confined in less than 35 square feet of space in violation of a 1987 court order. The U.S. Court of Appeals had affirmed the decision and found that the civil contempt order was appealable. The Commonwealth's compliance was not so substantial as to invalidate a finding of contempt, and the Commonwealth's good-faith efforts to comply with the remedial order did not excuse the noncompliance. The sanction of \$50 per excess prisoner per day, with a rate increase of \$10 per month, was not unlawfully high, and the Commonwealth was not entitled to an oral hearing prior to the entry of the contempt order. (Commonwealth, Puerto Rico)

U.S. District Court
42 U.S.C.A.
SECTION 1983
PUNITIVE
DAMAGES
TORT
LIABILITY

Mosier v. Robinson, 722 F.Supp. 555 (W.D. Ark. 1989). An arrestee who was allegedly beaten by an intoxicated sheriff sued the sheriff, deputy sheriff, and the county which employed them. In his complaint, the plaintiff alleged that he was taken into custody and transported to the county jail. The plaintiff stated that upon his arrival at the jail, the sheriff beat and choked him without provocation, that the plaintiff offered no resistance, and that the arresting officer made no attempt to stop the attack. The plaintiff further contended that at the time of the attack, the sheriff was under the influence of alcohol, and that he had acted in his official capacity as sheriff while under the influence of alcohol on previous occasions. The county moved for summary judgment. The district court found that the county was not subject to tort liability or liability for punitive damages, and the county was potentially liable for the arrestee's Section 1983 claim. The county policy of condoning violations by the sheriff could be inferred from the failure to take action on the sheriff's alleged violations of department policies occurring over a period of time. (Ashley County Jail, Arkansas)

U.S. District Court
42 U.S.C.A.
SECTION 1983
MUNICIPAL
LIABILITY

Muhammad v. McMickens, 708 F.Supp. 607 (S.D.N.Y. 1989). A former prison inmate brought an action under Section 1983 against prison authorities alleging that they violated his rights under the first and fourteenth amendments to the free exercise of his Muslim faith. Upon the defendants' motions for summary judgment, the district court found that single instances of missing one meal prepared in a manner consistent with dictates of the inmate's Muslim religion and of being required to pray in unsanitary surroundings did not invoke municipal liability under Section 1983, absent proof of a municipal policy. The court also found that a genuine issue of material fact existed as to whether the inmate's religious dietary obligations were sufficiently accommodated during his incarceration. (House of Detention for Men, Rikers Island, New York)

U.S. District Court
CONTEMPT
VIOLATION OF
COURT ORDER

Palmigiano v. DiPrete, 710 F.Supp. 875 (D. R.I. 1989). Rhode Island officials failed to rid themselves of contempt by bringing a correctional facility into compliance with standing orders of the district court governing the conditions of confinement of pretrial detainees. The filing by the Governor and Director of the Rhode Island Department of Corrections of a long-range plan designed to address the growing need for additional space throughout the state correctional system was not the specific and detailed plan that the district court had ordered to take care of the overcrowding problem for the pretrial detainees. Thus, the Governor and Director were in contempt. The crux of an impossibility defense to a contempt charge is a lack of power to carry out orders of the court due to circumstances beyond one's control and means literal inability to take steps necessary to comply with a judicial order or

consent decree, not simply the unwillingness to take action because contemnor perceives steps that actually can be taken as politically costly or ideologically repugnant. In light of many steps available to the Rhode Island Governor and the Director of the State Department of Corrections to take care of overcrowding at the prison intake service center, compliance with previous district court orders regarding overcrowding was within the power of the Governor and the Director, and factual impossibility was not a defense to the contempt proceedings for failure to comply with those orders. (Adult Correctional Institutions, Rhode Island)

U.S. Appeals Court
COMPENSATORY
DAMAGES
42 U.S.C.A.
SECTION 1983
PUNITIVE
DAMAGES

Parker v. Williams, 862 F.2d 1471 (11th Cir. 1989). An arrestee who was kidnapped and raped by a county jail chief jailer brought action under state law and federal civil rights law against the chief jailer, the county sheriff, the county, and individual county commissioners. The U.S. District Court entered a judgment on jury verdict awarding compensatory damages of \$100,000, and punitive damages of \$100,000 against the sheriff and the county, and appeal was taken. The appeals court certified the question to the Supreme Court and received a response, 519 So.2d 442; thereafter, the court of appeals withdrew its initial opinion, 855 F.2d 763. As a result, the judgments against the sheriff and county were vacated and the case was reversed and remanded. The court found that the chief jailer's criminal conviction for kidnapping and rape did not collaterally estop the sheriff and county from challenging the fact of the rape. The sheriff and county could not be held liable on the arrestee's state law claims. The eleventh amendment barred the claim against the sheriff in his official capacity. The sheriff was not entitled to qualified immunity from the suit in his individual capacity; and the county could be sued under Section 1983 for the actions taken by the sheriff in hiring and training the chief jailer. The court stated that the county did not have to exercise a direct control over the county sheriff with respect to the sheriff's hiring and promoting the chief jailer who subsequently kidnapped and raped the arrestee in order to be held liable under Section 1983. (Macon County Jail, Alabama)

U.S. District Court
QUALIFIED
IMMUNITY

Raines v. Lack, 714 F.Supp. 889 (M.D. Tenn. 1989). An inmate brought an action against prison officials alleging a deprivation of due process in connection with his administrative segregation. On the inmate's motion for summary judgment, the district court found that the inmate was afforded all process he was due at the transferee prison, and although the warden at the first prison deprived the inmate of due process, the warden was entitled to qualified immunity from liability for damages. The inmate was confined to administrative segregation and transferred to another institution based upon allegations that he had instigated or participated in a prison riot and had the due process right only to receive the notice of the charges against him and an opportunity to present his views to prison officials. More formal procedures afforded to inmates faced with losing good-time credits and disciplinary segregation were not required. The inmate, who was placed in administrative segregation because of his suspected role in a prison riot was not denied due process upon his transfer to the state prison. The defendant received an informal review eight days after his transfer, at which time he was aware of charges against him and had an opportunity to present his views to the review board, though the hearing involved no additional review of evidence underlying the initial segregation. The warden who deprived the inmate of due process by failing to inform him and the disciplinary board of the factual basis for his disagreement with the board's recommendation that the inmate be released from administrative segregation, was entitled to qualified immunity. It was not clear that the warden needed to provide anything more than a general statement of charges, or that a more specific statement was required in the event the warden disagreed with the board's recommendation. (Turney Center Prison, Only, Tennessee)

State Court
DAMAGES
NEGLIGENCE
CONTRACT
SERVICES

Rivers v. State, 537 N.Y.S.2d 968 (Ct.Cl. 1989). An inmate sued the State to recover for damages resulting from the performance of a wrong operation by a private physician in an outside facility at the request of the State. The court of claims found that the State was not negligent for the failure to forward the inmate's medical records to the outside hospital, or to insist that the surgeon examine the inmate, prior to surgery. Evidence supported the finding that the doctor was negligent, despite the absence of expert testimony as to the standards of care in the community, the State was vicariously liable for the negligence of the doctor, by virtue of owing a nondelegable duty to the inmate to provide reasonable and adequate medical care, regardless of whether the doctor was characterized as an employee or an independent contractor, and the amount recovered by the doctor in an independent lawsuit would be deducted from recovery against the State. The State owed the inmate a nondelegable duty to provide reasonable and adequate medical care, and thus was liable when the outside surgeon it retained performed the wrong surgery on the inmate, following the inmate's transfer to an outside facility, regardless of whether the outside surgeon was characterized as an employee or independent contractor. (Greene Correctional Facility, New York)

U.S. District Court
FAILURE TO
PROTECT
42 U.S.C.A.
SECTION 1983

Robinson v. Estate of Williams, 721 F.Supp. 806 (S.D.Miss. 1989). The wife of a man who was killed by two escaped jail prisoners sued the county sheriff, alleging that it was negligence on his part or on the part of his agents, servants or employees that allowed them to escape, that security at the jail was dangerously inadequate and that it was negligent to fail to properly inform the public of the escape. The court noted that the sheriff in Mississippi is charged with the duty to safely keep his prisoners in the jail and to seek to prevent escape. However, as these duties are owed to the general public, rather than to any individual person, the court found that there could be no liability in the absence of a "special relationship" with the deceased man. The sheriff owed no duty of care to the deceased man or his spouse. (Clarke County Jail, Mississippi)

U.S. Appeals Court
COMPENSATORY
DAMAGES
NOMINAL
DAMAGES
PUNITIVE
DAMAGES

Taylor v. Green, 868 F.2d 162 (5th Cir. 1989), cert. denied, 110 S.Ct. 127. A state inmate brought an action for damages against various prison officials, alleging the defendants violated his rights by causing three "Support Service Inmates" to attack and seriously injure him. The U.S. District Court entered a judgment jury verdict awarding punitive but no compensatory damages to the inmate, and the inmate appealed. The appeals court found that the inmate was not entitled to a new trial; the court could not add to the amount of the verdict either compensatory or punitive damages; and the inmate was entitled to nominal damages. The jury awarded punitive damages of \$200 from each of the defendants, but no compensatory damages. On appeal, the court upheld the jury verdict but also awarded the inmate nominal damages of \$1. (Texas Department of Corrections)

U.S. District Court
42 U.S.C.A.
SECTION 1983
CONTRACT
SERVICES
VICARIOUS
LIABILITY

Temple v. Albert, 719 F.Supp. 265 (S.D.N.Y. 1989). A prison inmate brought a civil rights action against hospital and special officers and a private doctor employed by the hospital, alleging a violation of his civil rights. The plaintiff was arrested in connection with a crime that allegedly occurred at the Columbia Presbyterian Hospital. The plaintiff was apprehended by the officers, who were employed as security guards by the hospital. The plaintiff's complaint raised two distinct claims. First, the plaintiff asserted that he was assaulted by the security staff at the hospital upon his arrest, and continuously thereafter while he was handcuffed and unable to resist. Second, the plaintiff contended that he was denied medical attention by the medical staff at the hospital. The officers and the doctor claim that they are private citizens, and that therefore they did not act "under color of state law," depriving the court of subject matter jurisdiction. The hospital avers that it may not be held vicariously liable in a Section 1983 action.

The district court found that the officers were state actors; the allegations that the doctor conspired with the officers satisfied the requirement for maintaining a civil rights action against the doctor; and the private corporate employer was not vicariously liable. Special officers paid by the private hospital were state actors for the purposes of the prison inmate's civil rights action where they were also special patrolmen appointed by the city police commissioner and acted pursuant to the statutory grant of police power. (Fishkill Correctional Facility, New York)

U.S. Supreme Court
42 U.S.C.A.
SECTION 1983
GOVERNMENTAL
LIABILITY

Will v. Michigan Dept. of State Police, 109 S.Ct. 2304 (1989). A Michigan state employee brought an action against the Department of State Police and its director under the federal civil rights statute. The court of claims entered a judgment for the employee, and the Department and director appealed. The court of appeals vacated in part and remanded in part. On appeal, the Michigan Supreme Court affirmed in part and reversed in part, and certiorari was granted. The U.S. Supreme Court, affirming the decision, found that neither the state nor its officials acting in their official capacities were "persons" under the federal civil rights statute.

The petitioner filed Michigan state court suits under 42 U.S.C.A. Section 1983 alleging that the respondents, the Department of State Police and the Director of State Police in his official capacity, had denied him a promotion for an improper reason. The state court judge ruled for the petitioner, finding that both respondents were "persons" under Section 1983, which provides that any person who deprives an individual of his or her constitutional rights under color of state law shall be liable to that individual. However, the state court of appeals vacated the judgment against the Department, holding that a State is not a person under Section 1983, and remanded the case for a determination of the Director's possible immunity. The Michigan Supreme Court affirmed in part and reversed in part, agreeing that the State is not a person under Section 1983, but holding that a state official acting in his or her official capacity also is not such a person.

Held: Neither States nor State officials acting in their official capacities are "persons" within the meaning of Section 1983. Pp. 2307-2312.

(a) That a State is not a person under Section 1983 is supported by the statute's language, congressional purpose, and legislative history. In common usage, the term "person" does not include a State. This usage is particularly applicable where it is claimed that Congress had subjected the States to liability to which they had not been subject before. Reading Section 1983 to include States would be a decidedly awkward

way of expressing such a congressional intent. The statute's language also falls short of satisfying the ordinary rule of statutory construction that Congress must make its intention to alter the constitutional balance between the states and the federal government unmistakably clear in a statute's language. Moreover, the doctrine of sovereign immunity is one of the well-established common-law immunities and defenses that Congress did not intend to override in enacting section 1983. Cf. City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 101 S.Ct. 2748, 69 L.Ed.2d 616; Railroad Co. v. Tennessee, 101 U.S. 337, 25 L.Ed. 960. The "Dictionary Act" provision that a "person" includes "bodies politic and corporate" fails to evidence such an intent. This Court's ruling in Monell v. New York City Dept. of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611-- which held that a municipality is a person under Section 1983-- is not to the contrary, since States are protected by the eleventh amendment while municipalities are not. Pp. 2307-2311.

(b) A suit against state officials in their official capacities is not a suit against the officials but rather is a suit against the officials' offices and, thus, is no different from a suit against the State itself. (Michigan Department of State Police)

U.S. Appeals Court
42 U.S.C.A.
SECTION 1983

Wilson v. Brown, 889 F.2d 1195 (1st Cir. 1989). A prisoner sued the warden of a Rhode Island state prison in his official capacity for money damages under 42 U.S.C.A. Section 1983, alleging that his transfer to a Massachusetts prison was unconstitutional as a violation of due process and the New England Interstate Corrections Compact. The inmate sought compensation for alleged resulting mental and physical anguish, his divorce from his wife, psychological assistance his son required as a result of the transfer, his inability to see relatives, and other purported injuries. The court entered a summary judgment for the defendant. The appellate court affirmed, noting that each of these allegations sought monetary damages and that injunctive relief would not be an appropriate remedy for any of the alleged injustices. Because the U.S. Supreme Court, in Will v. Michigan Dept. of State Police, 108 S.Ct. 1466 (1989) held that state are not "persons" amendable to suit under 42 U.S.C.A. Section 1983, the court found that the inmate could not sue the warden in his official capacity for such damages. While a state official may be enjoined against future violations of an inmate's rights, "retrospective relief" is barred, the court noted, and in any event, the inmate in this case did not seek injunctive relief. (Rhode Island Adult Correctional Institution)

1990

U.S. Appeals Court
QUALIFIED
IMMUNITY

Alexander v. Perrill, 916 F.2d 1392 (9th Cir. 1990). An inmate brought an action against a warden and administrative systems manager for failure to investigate a claim that his sentence was miscalculated. The district court denied the defendant's motion for summary judgment on defense of qualified immunity, and the defendant appealed. The appeals court affirmed the district court decision and found that the obligation of the warden and administrative systems manager to investigate an inmate's claim of miscalculation of a sentence did not need to be set out in decisional law in order to be a clearly established duty under the qualified immunity doctrine. Prison officials who were under a duty to investigate claims of computational errors in the calculation of prison sentences may be liable for failure to do so when a reasonable request is made. (Federal Correctional Institution, Tucson, Arizona)

U.S. Appeals Court
VICARIOUS
LIABILITY

Bailey v. Wood, 909 F.2d 1197 (8th Cir. 1990). An inmate who had been assaulted by another inmate brought a civil rights action against the warden for allegedly subjecting him to cruel and unusual punishment contrary to the eighth amendment. The U.S. District Court entered judgment in favor of the prisoner and the warden appealed. The court of appeals held that the warden took reasonable steps to prevent the assault and was not "deliberately indifferent" to the prisoner's rights, reversing the lower court decision. According to the court, vicarious civil rights liability could not be imposed on the warden for a guard's negligence and possible deliberate indifference to the inmate's right to be free from violent attacks. The guard left his post, permitting a prisoner who had previously been involved in altercations with the inmate to enter the inmate's cell and stab him with a homemade weapon. To make out an eighth amendment claim against the warden, the prisoner had to show that the warden was "deliberately indifferent" to his rights, i.e., that the warden either intentionally deprived the prisoner of rights or acted in reckless disregard of rights. To establish that the warden acted in "reckless disregard" of eighth amendment rights, the prisoner had to show that he was faced with pervasive risk of harm and that the warden failed to reasonably respond to that risk. According to the court, the warden took reasonable steps to respond to threats which the prisoner faced from another inmate by transferring the inmate to a complex at the other end of the prison, and was not "deliberately indifferent" to the prisoner's rights, within the meaning of the eighth amendment, merely because he failed to anticipate that the guard would leave his post and permit the inmate to gain access to the prisoner's cell. The court noted that "... this case is one of an increasing number involving an assault by one prisoner on another in a state prison." (Minnesota Correctional Facility, Oak Park Heights, Minnesota)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Bee v. Greaves, 910 F.2d 686 (10th Cir. 1990). A former pretrial detainee brought an action against a physician, challenging his involuntary medication while confined. According to the court, law relative to forced medication clearly established the detainee's right to refuse the unwanted administration of antipsychotic drugs. The jail psychiatrist administered the medication to the pretrial detainee against his wishes. The appeals court found that a Utah law allowing involuntary medication of a mental patient did not give a jail psychiatrist qualified immunity from liability for involuntary medication of a pretrial detainee since Utah law applied only after a judicial involuntary commitment proceeding, which was not provided to the detainee. (Salt Lake County Jail, Utah)

U.S. Appeals Court
FAILURE TO
PROTECT

Berry v. City of Muskogee, 900 F.2d 1489 (10th Cir. 1990). The widow of an inmate who was killed by fellow inmates brought a civil rights action against the city. In vacating and remanding the district court's decision, the appeals court stated that eighth amendment standards, rather than due process standards that are applicable to pretrial detainees, apply to incarcerated persons whose guilt has been adjudicated formally but who await sentencing.

The safety and bodily integrity of a convicted prisoner implicates both the eighth amendment's prohibition against cruel and unusual punishment and the fourteenth amendment's substantive protection against state deprivation of life and liberty without due process of law. The city cannot absolutely guarantee the safety of its jailed prisoners, but it has a constitutional duty to take reasonable steps to protect the prisoners' safety and bodily integrity. A municipality is liable under Section 1983 if there is a direct causal connection between the municipality policies in question and the constitutional deprivation. (Muskogee City-Federal Jail, Oklahoma)

U.S. District Court
DAMAGES

Davis v. Village of Calumet Park, 737 F.Supp. 1039 (N.D. Ill. 1990), reversed, 936 F.2d 971. A defendant brought a Section 1983 action alleging that village officials unconstitutionally denied the defendant, while a pretrial detainee, access to adequate medical care. After a trial by jury, the defendant was awarded \$1 in compensatory damages and \$1,500 in punitive damages. The federal appeals court reversed the decision, finding that an objectively reasonable officer would not have thought the injuries were serious. (Village of Calumet Park, Illinois Jail)

U.S. Appeals Court
RESPONDEAT
SUPERIOR

Fruit v. Norris, 905 F.2d 1147 (8th Cir. 1990). Inmates brought a civil rights action against prison officials asserting constitutional violations in relation to their being disciplined for refusing to assist the prison maintenance supervisor in cleaning out the wet-well portion of the prison's raw sewage lift-pump station without protective clothing and equipment. The U.S. District Court dismissed after presentation of the inmates' case and the inmates appealed. The appeals court found that the inmates established a prima facie eighth amendment violation and the warden could be held liable for such a violation.

It was found by the court that the prison inmates are protected from punishment for refusing to perform an unconstitutional assignment, as they are protected from having to perform assignment. Certain acts or omissions are so dangerous in respect to health or safety that the knowledge of risk on the part of the prison officials can be inferred, for the purposes of the inmates' eighth amendment claim. Irrespective of whether the officials had actual or constructive knowledge of the presence of toxic or explosive gases in wet-well, in view of the evidence presented regarding the danger of heat stroke, risk of contracting a disease from contact with raw sewage, and general undesirability of being in close proximity to humane waste; forcing inmates to work in shower of human excrement without protective clothing and equipment would be inconsistent with any standard of decency.

While supervisors are not liable under Section 1983 on a respondeat superior theory, they can be liable for their personal involvement in a constitutional violation, or when their corrective action amounts to deliberate indifference to or tacit authorization of violative practices. While the deprivation of good-time credits claimed in a civil rights action would have been properly brought in a habeas action, rather than a civil rights action, the state waived the exhaustion requirement by failing to notify the district court that inmates had not exhausted their claims in state court. (Tucker Maximum Security Unit, Arkansas Dept. of Corr.)

U.S. District Court
CONSENT DECREE

Inmates of the Suffolk County Jail v. Kearney, 734 F.Supp. 561 (D. Mass. 1990). The county sheriff filed a motion to modify a consent decree. The district court found that the consent decree requiring the construction of a new jail with single occupancy cells would not be modified to permit double occupancy in most of the cells, despite a U.S. Supreme Court ruling upholding the practice of double-bunking, increases in the pretrial detainee population, and a possibility that the release of some pretrial detainees would result if double occupancy were not permitted. According to the court, for purposes of determining whether to modify a consent decree, the party uncertain as to whether the law would require results proposed to be included in a consent decree could have withheld the consent, and appealed the decision of the district court if it held against that party. (Suffolk County Jail, Massachusetts)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
PERSONAL
LIABILITY

Johnson v. Hardin County, Ky., 908 F.2d 1280 (6th Cir. 1990). A prisoner brought a suit against an elected county jailer, his first assistant, and the county, as well as other defendants, alleging a deliberate indifference to his serious medical needs. The U.S. District Court entered a judgment on jury verdicts of \$15,000 against the county and \$1,000 each against the jailer and his first assistant and awarded the prisoner \$20,173 in attorney fees and expenses, and the defendants appealed. The court of appeals, reversing and remanding, found that a reasonable jury could determine that jail officials were deliberately indifferent to the prisoner's serious medical needs. The county could not be held liable for the jailers' actions, where there was no evidence indicating that the jailer was invested with the authority to make all of the county's medical policy decisions and there was no evidence demonstrating that mistreatment had become custom in the jail tantamount to rule of law. Remand was required on the award of attorneys fees in light of the reversal on the part of the judgment in favor of the prisoner and the district court's failure to explain a reason for applying a multiplier.

The evidence was sufficient to support a jury determination that the jailer and the officer who was his chief assistant were deliberately indifferent to the prisoner's medical needs, given the credible testimony that the prisoner was denied a prescribed pain relief medication for leg problems and hairline fracture, denied access to the shower facilities, denied crutches and denied additional bedding to elevate his legs, in spite of his repeated requests and complaints made personally to jailers. The authorization given to an elected jailer for the county detention center to make policy decisions on prisoner care did not constitute policy decision of the state so as to render the county liable for the jailer's deliberate indifference to the prisoner's serious medical needs. Recovery was not permissible where evidence would not permit a conclusion that the elected jailer was vested with the final authority to set medical treatment policies for the county's prisoners. The county could not be held liable for the jail officials' deliberate indifference to the prisoner's serious medical needs based on the fact that the doctor visited the prison only one day per week, where the prisoner showed no causal connection between the failure to have a doctor on site and his injuries. The county jail prisoner did not produce enough evidence to demonstrate that his mistreatment was emblematic of mistreatment which had become a custom in the prison tantamount to rule of law, so as to hold the county liable for the jailer's deliberate indifference to his serious medical needs, even though evidence did show that the prisoner was denied proper medical care during his more than three-month recovery from a prison fall. The mistreatment of the prisoner alone was insufficient to establish a custom of mistreatment.

Where the success in the prisoner's civil rights claim was reduced on appeal, as a result of the finding that the county could not be held liable for the jailers' deliberate indifference to the prisoner's serious medical needs, a remand was required on the issue of the application of the 1.5 multiplier to lodestar figure for the attorney fees, particularly in light of the district court's failure to explain the reasons for its enhancement of the case. (Hardin County Detention Center, Kentucky)

U.S. Appeals Court
FAILURE TO
PROTECT
PUNITIVE
DAMAGES

Lewis v. Parish of Terrebonne, 894 F.2d 142 (5th Cir. 1990). The widow and children of an inmate who committed suicide while placed in solitary confinement brought a civil rights action against the warden of the jail, the parish and other defendants. The U.S. District Court entered a judgment in favor of the plaintiffs, but awarded only punitive damages, and both sides appealed. The appeals court found that the finding that the warden had been deliberately indifferent to the inmate's serious medical needs was sufficiently supported by evidence. The exclusion of evidence of the defendants' liability insurance was not an abuse of discretion, notwithstanding that the plaintiffs had made a punitive damages claim; but the action would be remanded to a district judge for determination as to damages suffered by the inmate immediately prior to death. A punitive damages award was sufficiently supported by evidence of the warden's callous indifference to the inmate's serious medical needs, in failing to deprive him of death dealing instrumentalities and placing him in solitary confinement even though he knew or should have known of the inmate's suicidal tendencies. (Terrebonne Parish Jail, Houma, Louisiana)

U.S. District Court
QUALIFIED
IMMUNITY

Lyons v. Powell, 729 F.Supp. 1404 (D. N.H. 1990). A pretrial detainee, who had been at a state prison and was transferred to a federal facility, filed a civil rights lawsuit complaining that he was confined to a cell for 22-23 hours per day during a 27 day period at the federal facility, during which time he was forced to sleep on a mattress on the floor. The federal prison officials filed a motion, stating that they were entitled to qualified immunity. The court denied the motion, noting that the defendants had a duty to check on the institutions where federal pre-trial detainees were lodged and were also responsible for any omissions they made in a supervisory capacity. (New Hampshire State Prison)

U.S. Appeals Court
CONSENT DECREE

McDonald v. Armontrout, 908 F.2d 388 (8th Cir. 1990). An appeal was taken from an order of the U.S. District Court modifying a consent decree entered in an action concerning the conditions in the prison's capital punishment unit. The appeals court affirmed the decision, finding that the plan to move the prison's capital punishment

unit to a new facility was a change in circumstance that warranted modification of the consent decree governing conditions at the old facility, and the modifications of the consent decree satisfied constitutional requirements, although access to recreational activities and telephones would be more restricted at the new facility for some inmates. The new facility could accommodate a larger classification system, entitling inmates with less restrictive classifications to more recreation time and other additional benefits. (Missouri State Penitentiary)

U.S. Appeals Court
FAILURE TO
PROTECT
PUNITIVE
DAMAGES

McHenry v. Chadwick, 896 F.2d 184 (6th Cir. 1990). An inmate brought a civil rights action against correctional officers alleging that they assaulted him. The U.S. District Court entered a judgment in favor of the inmate, and the correctional officers appealed. The appeals court affirmed the decision and found that it was not necessary that the inmate suffer severe injury for the correctional officers' infliction of unnecessary and wanton pain on him to amount to an eighth amendment violation. Evidence supported a claim that correctional officers breached a duty to protect the inmate from other correctional officers' assault. It was also found that evidence that correctional officers did not conduct an investigation as to allegations made by fellow inmates who "checked in" to protective custody allegedly to avoid the plaintiff inmate was admissible in the inmate's civil rights action against the correctional officers claiming he was assaulted by police officers. The evidence was relevant to the issue of whether the officers acted willfully and maliciously in their treatment of the inmate which would have subjected them to liability for punitive damages. (Brushy Mountain Penitentiary, Petros, Tennessee)

U.S. District Court
STATUTES
(PREVENTING
LAWSUITS)
42 U.S.C.A.
SECTION 1983

McKenzie v. Crotty, 738 F.Supp. 1287 (D.S.D. 1990). A former jail inmate sued the sheriff and the county board under Section 1983, seeking damages for treatment while he was in the county jail and requesting a class action certification. The sheriff and board moved for a partial summary judgment, a summary judgment and a judgment on the pleadings. The district court found that the state statutes conferring immunity on public employees with respect to jail conditions were preempted by Section 1983; an immunity claim was sufficiently frivolous to warrant a holding of a hearing to determine whether sanctions should be applied under Rule 11; and the former inmate was an adequate representative of the class, for class action purposes, even though he had been released from jail one day after the suit was instituted; sufficient guarantees that the suit would be properly prosecuted were provided by the representative seeking monetary damages and from the experience and competency of his trial counsel. (Lawrence County Jail, South Dakota)

U.S. District Court
42 U.S.C.A.
SECTION 1983
NEGLIGENCE

Rocheleau v. Cumberland County Sheriff's Department, 733 F.Supp. 140 (D. Me. 1990). An inmate brought a civil rights action against jail officials alleging he sustained injuries while incarcerated at a county jail when he tripped on an open floor drain, hit the jail wall, and broke his nose. The court found that the plaintiff's complaint alleged nothing more than mere negligence on the part of the defendants. The plaintiff did not allege either a deliberate or conscious indifference on the part of the jail officials. Rather, the uncontroverted facts demonstrate, and the plaintiff conceded in his complaint, that immediately following the mishap, jail officials rushed the plaintiff to the hospital for treatment and a few days later took him to a specialist. The district court found that the complaint alleged nothing more than negligence and failed to state a claim under Section 1983. (Cumberland County Jail, Maine)

U.S. District Court
QUALIFIED
IMMUNITY

Scott v. Coughlin, 727 F.Supp. 806 (W.D.N.Y. 1990). An inmate filed a pro se civil rights petition alleging that prison officials improperly confined him to "keeplock" for a total of 14 days. On the inmate's motion for summary judgment on the issue of improper confinement, the district court found that the officials' placement of an inmate in "keeplock" without issuing a misbehavior report or conducting a disciplinary hearing violated the inmate's due process rights, and the officials were not entitled to qualified immunity for failure to file a misbehavior report at any point during the inmate's stay in keeplock, which clearly defied well-delineated boundaries of official discretion. The inmate was inexcusably denied an opportunity to be heard for an "indefinite period of time," particularly absent an allegation of any circumstances justifying postponement. (Southport Correctional Facility and Elmira Correctional Facility, New York)

U.S. Appeals Court
FEDERAL TORT
CLAIMS ACT

Sellers v. U.S., 902 F.2d 598 (7th Cir. 1990). An inmate whose property had been lost following confiscation during a prison lockdown brought a *Bivens* action against the warden and three guards. The U.S. District Court entered judgment in favor of the inmate pursuant to the Federal Tort Claims Act, after the *Bivens* action had previously been dismissed against the individuals, and appeal was taken. The court of appeals, affirming in part, reversing and remanding in part, found that remand was required to permit the district court to address the issue of the lost books, and the marshals' failure to take appropriate steps in attempting to obtain service upon the former

guards and the warden constituted good cause why the service was not effectuated within a 120-day period. The magistrate's award to the inmate of \$100 for an oil painting lost by guards in the federal prison during the inmate's incarceration was not improper; nothing in record suggested that the painting had any market value, and although the inmate attached a value of \$200 to it, the magistrate was not required to accept it. A letter from a prisoner-artist supporting the inmate's valuation of the painting was inadmissible in the inmate's action brought pursuant to the Federal Tort Claims Act. The letter was hearsay and speculative. (Federal Prison, Marion Illinois)

U.S. District Court
CONTEMPT

Shaw v. Allen, 771 F.Supp. 760 (S.D. W.Va. 1990). A class of inmates brought a petition for contempt, alleging that prison officials were in contempt of previous orders requiring that conditions of the county jail be in compliance with constitutional standards. The district court found that the failure of officials to bring the conditions in the county jail up to constitutional standards warranted appointment of a receiver to operate the jail. According to the court, there was a dismal history of noncompliance and allowing additional time for compliance would only likely result in additional injunctions or contempt proceedings and would offer little hope of anything other than further confrontations and delays. (McDowell County Jail, West Virginia)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Simpson v. Hines, 903 F.2d 400 (5th Cir. 1990). A prisoner's survivors brought a Section 1983 action against police officers to recover for the death of a prisoner from alleged use of excessive force and lack of medical care. The officers moved for summary judgment on the basis of qualified immunity. The U.S. District Court denied the motion, and the officers appealed. The court of appeals, affirming in part, reversing in part, and dismissing in part, found that the officers who had entered the cell were not entitled to qualified immunity.

The police officers were not entitled to qualified immunity in the 1983 action to recover for the death of the prisoner from asphyxia after being searched and subdued, even though no evidence indicated that each officer's actions caused severe injuries. The captain admitted placing the prisoner in a neck hold and exerting sufficient pressure to subdue him, another officer sat on the prisoner, a tape recording allegedly indicated the prisoner's screams and repeated cries for mercy and contained statements from which the trier-of-fact could infer malice, and the officers discussed beforehand how to handle the situation and functioned as a unit once inside the cell. The officers knew that the prisoner heavily exerted himself and was "strung out" on drugs, and the tape recording indicated that the officers paid scant attention to the prisoner's physical condition during the approximately five minutes between the lapse into silence and the officers' exit from the cell. (Cleveland City Jail, Texas)

U.S. District Court
42 U.S.C.A.
SECTION 1983
PUNITIVE
DAMAGES
REMEDIES

Tasker v. Moore, 738 F.Supp. 1005 (S.D. W.Va. 1990). Former inmates brought a Section 1983 action against the former Commissioner of the Department of Corrections, the former prison warden and the former Governor of West Virginia, alleging that a violation of their civil rights occurred when the Commissioner and the warden, upon orders of the Governor, refused to release them, in violation of court orders that they be released to cure unconstitutional overcrowding. On a variety of motions by the defendants seeking relief from the adverse jury verdict, the district court found that the Commissioner and the warden were not entitled to qualified immunity. The Governor was bound to respect and refrain from interfering with the implementation of orders requiring the release of inmates and his willful interference and refusal to comply with orders rendered him liable under Section 1983. The orders to release inmates did not violate the doctrine of separation of powers and, under the eighth and fourteenth amendments, created a liberty interest in inmates; but the punitive damage awards in the amount of \$100,000 in favor of each inmate against the Governor was excessive. According to the court, officials knew that prisoners had been ordered released and that further incarceration was a violation of clearly established constitutional rights. The Governor, having knowledge of the orders requiring the release of inmates to cure the unconstitutional overcrowding, was bound to respect and refrain from interfering with the implementation of those orders, even though the Governor was not a party to the orders or underlying action, and the Governor's willful interference and refusal to comply with orders rendered him liable to inmates under Section 1983. In ordering the Commissioner of the Department of Corrections and the prison warden to refrain from releasing the inmates, the Governor was in violation of the State court order requiring such release to cure the unconstitutional overcrowding, acted with reckless indifference to federally protected rights of inmates who were to be released, warranting the imposition of punitive damages in the inmates' Section 1983 action. (Huttonsville Correctional Center, West Virginia)

U.S. Appeals Court
CONSENT DECREE-
MODIFICATION

Thompson v. Enomoto, 915 F.2d 1383 (9th Cir. 1990), cert. denied, 117 LE2 131. Death row prisoners in a state prison sued prison officials, seeking enforcement of a consent decree regarding their treatment. The U.S. District Court entered judgment on a monitor's report ordering prison officials to comply with terms of the consent decree and also recommending that dangerous prisoners be denied certain privileges, and appeals

were taken. The court of appeals found that a district court has the power to modify a consent decree if experience with the administration of the decree shows a need for modification in order to accomplish primary goals. The prison officials waived any right they may have had to the claim that the district court lost jurisdiction to modify the consent decree covering treatment of prisoners in the state prison's death row, as the parties had continued to operate under the decree for several years without objection by the officials. In addition, the prison officials waived a right to object that the consent decree covering treatment of prisoners in the state prison's death row applied only to prisoners in a certain location and did not apply to those moved to a second location due to overcrowding, as over a period of several years, the prison officials had acted as though the decree applied to prisoners at all locations. It was also found that the trial court did not abuse its discretion by granting modifications to the consent decree covering treatment of the death row prisoners in the state prison, to take away from the prisoners deemed dangerous yard equipment, cell equipment, personal property, canteen items, and access to telephones. (California State Prison, San Quentin, California)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
PRIVATE PROVIDER

Toombs v. Bell, 915 F.2d 345 (8th Cir. 1990). An inmate at an Arkansas correctional facility filed a pro se complaint, asserting a claim under a federal civil rights statute for lack of medical treatment he received during his incarceration. The U.S. District Court dismissed the complaint, and the inmate appealed. The court of appeals appointed counsel and reversed and remanded with instructions to permit the inmate to amend the pleadings and develop a claim. On remand, the district court directed a verdict for the defendants on the civil rights claim, declined to instruct the jury on breach of contract claim or on punitive damages, and granted summary judgment for a medical technician notwithstanding the jury's damages award against him, and the inmate appealed. The court of appeals found that although the prison warden and state correctional officials could not relieve themselves of the duty to provide adequate medical treatment to those in custody by contracting the provision of inmate health care to a private organization, there was no evidence of any Board of Corrections policy of deliberate indifference to the inmate's medical needs, and, thus, the effective directed verdict on the civil rights claims in favor of those defendants was proper. In addition, the district court did not abuse its discretion in excluding a report prepared by the Institute for Law and Policy Planning as part of an audit conducted at the request of the Board of Corrections to evaluate the private health care provider's compliance with its contractual obligations regarding care of inmates. Although those findings reflected a failure of performance, they did not tend to show a policy of deliberate indifference to the serious medical needs of the plaintiff or other inmates. However, a jury could award damages against the medical technician employed by the private health care provider at the prison for negligent care of the inmate, based on the inmate's testimony that the technician failed to examine him notwithstanding his complaints of pain, swelling and fever, and the jury could find the technician's contrary testimony incredible, in light of a supervisor's report characterizing the technician's performance as "apathetic, litesome, and lazy" and concluding that the technician should be dismissed immediately. (Cummins Unit, Arkansas Dept. of Corr.)

U.S. District Court
FEDERAL TORT
CLAIMS ACT
DAMAGES

Williams v. U.S., 747 F.Supp. 967 (S.D. N.Y. 1990). A former prisoner brought suit under the Federal Tort Claims Act seeking damages for a below-the-knee amputation of his right leg. The U.S. District Court found that the medical staff at the federal prison seriously departed from and breached basic standards of care owed to the diabetic prisoner in the diagnosis and treatment of a foot infection, which culminated in gangrene necessitating the amputation. The medical staff failed to provide appropriate testing, clinical examinations and diagnostic modalities consistent with a diabetic condition, failed to provide the prisoner with proper treatment for a possible foot infection, and failed to furnish a hospital with the prisoner's medical chart or a summary thereof when the prisoner had a spreading E. Coli infection and was transferred for intravenous antibiotic therapy. The court also found that the fifty-two-year-old former prisoner was entitled to an award of \$500,000 for his pain and suffering. (Fed. Corr. Inst., Otisville, New York)

U.S. Appeals Court
FAILURE TO
SUPERVISE
FAILURE TO
TRAIN
42 U.S.C.A.
SECTION 1983

Williams v. White, 897 F.2d 942 (8th Cir. 1990). An inmate proceeding in forma pauperis brought a pro se complaint against the prison superintendent under Section 1983. The U.S. District Court dismissed, and the prisoner appealed. The appeals court, vacating and remanding with instructions, found that the inmate's claim was not frivolous. The prisoner asserted he was placed in solitary, punitive confinement for no articulated reason and without a hearing and alleged that he was placed in a single cell with another prisoner with no hot water and no ventilation or air from outside and that he was required to use a mattress infested with bugs and insects. The prison superintendent can be liable under Section 1983 for operating the prison with unsanitary and inhumane conditions and can be directly liable if he fails to properly train, supervise or control subordinates. Dismissals under the in forma pauperis statute on the ground of frivolity are to be made early in the proceedings, before the service of the process on the defendant and before burdening the defendant with the necessity of making a responsive answer under Rules of Civil Procedure. (Missouri)

U.S. Appeals Court
DAMAGES
PUNITIVE
DAMAGES
FAILURE TO
PROTECT

Wright v. Jones, 907 F.2d 848 (8th Cir. 1990). Former inmates brought a Section 1983 action against prison guards based on an assault by fellow inmates. The U.S. District Court directed a verdict against one inmate but awarded the other inmate actual and punitive damages, and the guards' appealed. The appeals court, affirming the decision, found that the question of whether prison guards knew of conditions making it highly foreseeable that some inmates might be attacked by other inmates was for the jury, and punitive damages could be awarded if the jury found that guards acted in reckless or callous disregard of, or indifference to, the rights or safety of others. (Training Center for Men, Moberly, Missouri)

1991

U.S. Appeals Court
QUALIFIED
IMMUNITY

Al-Jundi v. Mancusi, 926 F.2d 235 (2nd Cir. 1991), cert. denied, 112 S.Ct. 182. Inmates brought a civil rights action against prison officials based on their conduct in planning and implementing the retaking of a prison and the treatment of inmates after the prison was retaken. The U.S. District Court denied the motion for summary judgment on qualified immunity grounds, and the prison officials appealed. The court of appeals found that the officials were entitled to qualified immunity in connection with most claims based on the planning and implementation of the plan to retake the prison, but the officials were not entitled to qualified immunity in connection with the alleged deficiencies in medical planning and their condoning of reprisals against the inmates after the prison was retaken. (Attica Correctional Facility, New York)

U.S. District Court
VICARIOUS
LIABILITY
FAILURE TO
PROTECT

Corrente v. State of R.I., Dept. of Corrections, 759 F.Supp. 73 (D.R.I. 1991). Correctional officers brought a civil rights action against the Governor of Rhode Island, the Director of the Department of Corrections, union officials and union members alleging that they were harassed and subjected to threats after reporting an assault on an inmate by fellow correctional officers and identifying the officers responsible for the assault. The defendants moved to dismiss. The U.S. District Court found that the correctional officers failed to state a Section 1983 cause of action against the Governor based on the alleged harassment as the correctional officers' assertion that the governor knew of and acquiesced in the harassment was purely conclusory and failed to state exactly what was reported to the governor and what he actually knew of the harassment. It was also found that the correctional officers failed to state a cause of action for civil rights conspiracy against union officials and members as the complaint did not contain any allegations that the defendants were motivated by the intent to deprive the victims of equal protection of the law or that the defendants conspired to injure the plaintiffs on account of their attendance or testimony in the court. The correctional officers did, however, state a Section 1983 cause of action against the Director of the Rhode Island Department of Corrections by alleging that the Director not only knew of the harassment of the correctional officers for their reporting the assault, but failed to act to cure the incidents of harassment when he had an obligation to do so. (Rhode Island Adult Correctional Institution)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Felix v. McCarthy, 939 F.2d 699 (9th Cir. 1991), cert. denied, 112 S.Ct. 1165. A prisoner brought a civil rights action against guards, asserting use of excessive force. The U.S. District Court denied the guards' motion for summary judgment, and the guards appealed. The court of appeals found that under the state of law in 1985, reasonable prison guards should have been on notice that they would violate the prisoner's constitutional rights by throwing the prisoner across the hallway and against a wall, and by pushing the prisoner without provocation. Therefore, although injuries inflicted were minor, the guards were not entitled to qualified immunity. (San Quentin Prison, California)

U.S. District Court
FAILURE TO
PROTECT

Flechsig v. U.S., 786 F.Supp. 646 (E.D. Ky. 1991). An inmate brought an action against the Federal Bureau of Prisons, alleging that she had been sexually assaulted by a corrections officer in the course of being transported to a medical appointment. The Bureau moved to dismiss. The district court granted the motion, finding that the federal prison warden did not have reason to anticipate that the corrections officer would sexually assault the inmate, thus, the warden did not breach a duty to keep the inmate from harm. The assault did not occur during the course of search, seizure, or arrest, and the officer was not acting within the scope of his employment when he committed the assault. (Federal Correction Institution, Lexington, Kentucky)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Henderson v. DeRobertis, 940 F.2d 1055 (7th Cir. 1991), cert. denied, 112 S.Ct. 1578. Inmates brought an action against prison officials alleging that their constitutional rights were violated when they were subjected to freezing temperatures. Following a jury trial, the U.S. District Court entered judgment in favor of officials notwithstanding the jury verdict in favor of the inmates, on the basis of qualified immunity. Thereafter, two other

inmates filed Section 1983 complaints based upon the same factual circumstances and sought to certify as a class the prisoners confined during a four-day period when adequate heat was not provided. The U.S. District Court dismissed the cases with prejudice, and on consolidated appeal, the court of appeals found that even though the inmates were subjected during a period of abnormally cold weather due to a malfunctioning heating system, the inmates had a clearly established constitutional right, established in 1982, to have adequate heat and shelter, and the prison officials were not entitled to qualified immunity. (Stateville Correctional Center, Illinois)

U.S. District Court
CONSENT DECREE-
MODIFICATION
CONTEMPT
REMEDIES

Kroll v. St. Charles County, Mo., 766 F.Supp. 744 (E.D. Mo. 1991). On a motion to hold a county in contempt of court for failing to comply with the provisions of a consent order, the district court found that the county courthouse, government building and administration building violated accessibility standards and federal handicapped laws. The buildings lacked electronic doors, sufficient space to accommodate wheelchairs, and ramps or elevators. If the county failed to fund improvements to bring the courthouse, government building and administration building into compliance with accessibility standards and federal handicapped laws, the court would consider an imposition of a property tax increase of 25 cents per one hundred dollars of assessed valuation on all property located in the county for a period of ten years. It might also enjoin a roll back of local taxes. (St. Charles County, Missouri)

U.S. District Court
ABSOLUTE
IMMUNITY
QUALIFIED
IMMUNITY

Lipinski v. Skinner, 781 F.Supp. 131 (N.D.N.Y. 1991). An arrestee brought an action against law enforcement and prison officials alleging that they violated his constitutional rights by disclosing his HIV-positive status to a newspaper. The arrestee sought to depose the newspaper's reporters and editors in order to learn the source of their information. The newspaper moved to quash the depositions and to obtain a protective order. The district court found that the editorial writer failed to demonstrate that the confidentiality of his sources or information were jeopardized by the mere taking of his deposition and, thus, was not entitled to absolute immunity under New York's Shield Law. Under New York law, journalists for the newspaper were entitled to qualified immunity from the arrestee's attempt to depose them. The journalists were responsible for articles which appeared some time after the original article disclosing the HIV-positive status and, thus, it was unlikely that the journalists possessed information regarding the initial disclosure. The newspaper editors were not entitled to qualified immunity under New York law. The reporter who had originally reported the story had told the arrestee that she was assigned the story by one of her editors. Discovering who gave the reporter the lead and where that individual acquired that information was critical to the arrestee's claim that law enforcement or prison officials released confidential medical information about him in violation of his rights, and the information the arrestee sought was not obtainable from other sources. The arrestee's discovery, however, was limited to questions relative to the initial disclosure of his HIV test results to the newspaper. (Broome County Jail, New York)

U.S. Appeals Court
42 U.S.C.A.
Section 1983
QUALIFIED
IMMUNITY

Moore v. Morgan, 922 F.2d 1553 (11th Cir. 1991). A county jail inmate brought a civil rights action against a county sheriff and county commissioners, challenging jail conditions. After determining that the inmate proved conditions at the county jail violated the Eighth Amendment due to overcrowding and lack of out-of-cell time, the magistrate judge concluded that the sheriff and county commissioners were entitled to qualified immunity. The U.S. District Court adopted the magistrate judge's recommendation and directed judgment against the inmate, who appealed. The court of appeals found that the defense of qualified immunity was not available with respect to official capacity claims. In addition, the county failed to satisfy its constitutional responsibility in maintaining the county jail by its delay in rectifying jail overcrowding, and it was liable for compensatory damages, despite voters' overwhelming rejection of a proposal to levy a tax to build a new jail. According to the court, the ways in which the commissioners actually obtained money to finance necessary jail improvements, when put under the threat of litigation, provided compelling evidence of fact that the commissioners could have taken steps to improve the jail at a much earlier date. It was also found that the sheriff and county commissioners waived qualified immunity as a defense to personal liability on the inmate's unconstitutional jail conditions claim, where the sheriff and commissioners never raised this affirmative defense. The qualified immunity defense was not tried by implied consent of parties where neither the issue, nor words, of qualified immunity was ever raised before or during trial. Although the inmate filed a brief at the qualified immunity hearing, it was unlikely that the inmate, acting without assistance of counsel, would object to the court's order to conduct a hearing, particularly when the magistrate judge was not prompted by any motion of the defendants. (Chambers County Jail, Alabama)

U.S. Appeals Court
CONSENT DECREE
CONTEMPT

Picon v. Morris, 933 F.2d 660 (8th Cir. 1991). A prisoner sought relief from dismissal of a consent decree so that he could file an action for civil contempt to enforce the decree regarding the use of emergency segregation cells. The United States District Court denied relief, and appeal was taken. The appeals court, reversing and remanding, found that the prisoner was entitled to proceed with the action. The fact that the district court had found compliance with the decree and entered a dismissal order did not justify the denial of the prisoner's motion for release. The compliance finding had been issued based on allegedly erroneous statements by prison officials that the cells in which the prisoner was housed had been abandoned. (Missouri Training Center for Men)

U.S. District Court
42 U.S.C.A.
Section 1983

Roman v. Koehler, 775 F.Supp. 695 (S.D.N.Y. 1991). A prisoner brought a Section 1983 claim alleging that the commissioner of the department of corrections, a former warden, unnamed corrections officers and the prison health service violated his Section 1983 right by failing to provide medical treatment for an injury to his finger. The district court found that the prisoner did not state a Section 1983 claim against the commissioner or warden absent a showing that they were responsible for the conduct of the unnamed corrections officers or the health service. In order to state a claim of inadequate medical care against prison officials, a plaintiff must allege "that his access to physicians for necessary medical care was unreasonably delayed or denied, or the prescribed medical treatment was not administered." However, under Section 1983, liability can only be imposed on prison officials who were directly and personally responsible for the alleged violation of civil rights. (Rikers Island, New York)

U.S. Appeals Court
CONSENT DECREE

Welch v. Spangler, 939 F.2d 570 (8th Cir. 1991). An inmate brought an action against prison officials alleging that the search of his legal papers by prison officials violated a policy governing such searches established in a consent decree in prior litigation. The U.S. District Court ordered the officials to pay a \$500 contempt fine to the court, \$10 in nominal damages to the inmate, and reasonable attorneys' fees, and the officials appealed. The court of appeals, affirming the decision, found that the prison officials' search of the inmate's legal materials outside of his presence in violation of policy governing such searches established in a consent decree promulgated in prior litigation was supported by evidence, and the prison officials' violation of the consent decree warranted a finding of contempt. The search warranted a payment of a \$500 contempt fine as the fine imposed reflected concerns over future compliance, and not imposing a fine would be an invitation to ignore dictates of the consent decree. It was also found that the district court could properly assess nominal damages of \$10 against prison officials for the search whether or not there was proof of actual injury or damages; the award of the nominal damages to the inmate personalized a remedy for the violation of the consent decree and substantially ensured that the inmate's legal papers would not be illegally interfered with in the future. (Iowa State Penitentiary)

U.S. District Court
CONSENT DECREE-
MODIFICATION
CONTRACT SERVICES

Wyatt By and Through Rawlins v. Horsely, 793 F.Supp. 1053 (M.D. Ala. 1991). A request was filed for approval and entry of consent decrees in a class action arising out of health care providers' alleged failure to comply with certain minimum constitutional standards for adequate care of the mentally ill. The district court found that it could not approve the proposed consent decrees given the counsel's apparent failure to solicit comments on, let alone to obtain any backing for, the proposed changes in the court's previous orders. (Alabama Department of Mental Health and Mental Retardation)

1992

U.S. District Court
MUNICIPAL
LIABILITY

Berry v. City of Phillipsburg, Kan., 796 F.Supp. 1400 (D.Kan. 1992). An arrestee brought an action against a police officer, the chief of police, and a city, alleging that excessive force was used in effecting her arrest. On the defendants' motions for partial summary judgment, the district court found that evidence raised a triable issue of fact as to whether the police officers used excessive force. Evidence indicated that the plaintiff was arrested for littering, attempted to evade arrest by fleeing to her home, and that the officers broke down the door to the arrestee's home, tackled and choked her, and dragged her from her home by handcuffs and her hair. In addition, the arrestee did not commit an offense of obstructing legal process under Kansas law when she initially refused tickets given to her by the first police officer, then threw them onto the ground, for the purposes of arrestee's claim that she was arrested without probable cause. There was evidence that the mayor was aware that the city chief of police had a history of being unnecessarily rough with persons he stopped, investigated or arrested. He communicated his knowledge to the city counsel and recommended that the chief be fired. This was sufficient to raise a question of fact regarding municipal liability for the police chief's alleged use of excessive force while effecting the arrest. (Phillipsburg Police Department, Kansas)

U.S. Appeals Court
PUNITIVE DAMAGES

Bogan v. Stroud, 958 F.2d 180 (7th Cir. 1992). A former inmate at a state prison filed an action under 42 U.S.C.A. Section 1983 against correctional officers, alleging the officers violated his rights under the Eighth and Fourteenth Amendments by using excessive force against him. The U.S. District Court entered judgments for the inmate on jury verdicts, awarding him punitive but not compensatory damages, and the officers appealed. The appeals court affirmed finding that evidence supported the jury's determination that prison officers used excessive force against the inmate in violation of the Eighth Amendment. Witnesses supported the inmate's claim that he was repeatedly stabbed, beaten and kicked after he had been disarmed and subdued. In addition, a physician confirmed that the inmate sustained numerous stab wounds. Punitive damages awards of \$5,000 against one officer and \$1,000 each against the other two officers were not excessive. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Diercks v. Durham, 959 F.2d 710 (8th Cir. 1992). An inmate brought a civil rights action against a prison supervisor, claiming that the supervisor had violated his right to due process by sitting in judgment on her own complaint in disciplinary proceedings against the inmate. The U.S. District Court directed a verdict in favor of the inmate, and subsequently denied the supervisor's motion for judgment notwithstanding the verdict, and the supervisor appealed. The court of appeals found that the supervisor was not entitled to qualified immunity against the inmate's civil rights claim because the law was clearly established that any prison official actively involved in conducting an investigation could not sit as a member of the disciplinary committee, and a reasonable prison official would have known about the law. The supervisor was subject to liability under Section 1983 where, although a prison guard wrote the actual conduct violation report, the guard did so at the express direction and insistence of the supervisor. (Algoa Corr. Center, Missouri)

U.S. Appeals Court
CONTEMPT

Elkin v. Fauver, 969 F.2d 48 (3rd Cir. 1992), cert. denied, 113 S.Ct. 473. A state prison inmate brought a civil rights action against various prison officials concerning a disciplinary proceeding. The U.S. District Court found the defendants in civil contempt because the chain-of-custody form used in connection with the collection and testing of a urine sample for drug use did not comply with previous district court orders. The defendants appealed. The appeals court, reversing the decision, found that sanctions selected by the district court upon finding the state prison officials in civil contempt--vacating of all punishment imposed on the prisoner for illegal drug use in the prison and expungement of his record--were not consistent with the sound exercise of discretion, where the use of a wrong form was harmless in that it contained a complete record of the chain of custody, so that use of the required form would not have changed the result. (New Jersey's Bayside State Prison)

U.S. District Court
COMPENSATORY
DAMAGES
DAMAGES
PUNITIVE DAMAGES

Giroux v. Sherman, 807 F.Supp. 1182 (E.D. Pa. 1992). An inmate brought a Section 1983 action against eight corrections officers, claiming that, on four separate occasions, various officers beat and tormented him without provocation. The district court found that the inmate was entitled to compensatory damages of \$10,000 from one officer who beat him without provocation after refusing to allow the inmate into the prison kitchen to do his job. The inmate subsequently underwent surgery to repair damage caused by repeated blows to his kidneys. In addition, the inmate was entitled to compensatory damages of \$10,000 and to an award of \$10,000 in punitive damages from a second corrections officer who forced the inmate, who had a medical history of heart trouble, to walk the long distance from the prison infirmary to his cell, all the while jabbing and hitting the inmate in the kidney area, despite the fact that the inmate had earlier been taken to the infirmary on a stretcher complaining of severe chest pains. The inmate was also entitled to an award of compensatory damages of \$1,000 for pain, humiliation, and mental anguish from a third corrections officer who, without provocation, stepped on the inmate's sneaker and punched him in the throat and head, although the attack did not result in any serious physical injury. Finally, the inmate was entitled to damages of \$5,000 from a fourth corrections officer who wantonly and without provocation beat the inmate in the kidneys, causing further injury. (Gatherford State Prison, Eastern Pennsylvania) Prison)

U.S. District Court
DELIBERATE
INDIFFERENCE

Gross v. Buescher, 791 F.Supp. 796 (E.D. Mo. 1992). An inmate brought a civil rights action against corrections officials and state officials who moved for summary judgment. The district court found that the inmate's allegations that corrections officials and the governor failed to submit or appropriate an adequate medical budget for the correctional facility did not state a deliberate indifference claim under the Eighth Amendment. (Missouri Eastern Correctional Center)

U.S. Appeals Court
PERSONAL
LIABILITY

Hardin v. Straub, 954 F.2d 1193 (6th Cir. 1992). An inmate sued a state prison official under Section 1983 alleging that his assignment to administrative segregation without a hearing in violation of a Michigan Administrative Code deprived him of due process. The U.S. District Court dismissed the complaint, and the court of appeals affirmed. Upon grant of certiorari, the United States Supreme Court reversed and remanded. On remand, the court of appeals reversed and remanded. On remand, the district court denied, in part, the official's motion for summary judgment, and the prison official appealed. The court of appeals found that the prison official was not personally involved in the initial classification of the inmate to "top lock" upon arrival at the prison so as to make the official liable for violation of the Fourteenth Amendment, but a genuine issue of material fact existed as to whether the prison official's personal involvement in the subsequent classification decision was sufficient to create liability for violating the inmate's due process right. In addition, it was found that the prison official was not personally involved in the treatment which the inmate received after his classification to administrative segregation so as to make the prison official liable under Section 1983 for violation of the inmate's Fourteenth Amendment rights due to the failure to provide periodic review of the inmate status, but the official was not absolutely immune in the action from personal liability under the Eleventh Amendment solely by virtue of the official nature of his acts; the inmate was not required to prove that the official acted outside the scope of his authority, but only that the official acted in his position as a state official. (Michigan Department of Corrections Reception and Guidance Center, State Prison of Southern Michigan in Jackson)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Henderson v. Lane, 979 F.2d 466 (7th Cir. 1992). An allegedly fractious inmate who had been placed in a state's "circuit rider" security program brought a Section 1983 action for prison officials' alleged violation of his civil rights. The U.S. District Court denied the inmate's request for preliminary injunctive relief and the defendants' motion for partial summary judgment on a qualified immunity claim, and both parties appealed. The appeals court found that the inmate had "adequate remedy at law" for the alleged restriction on his right of access to courts, and was not entitled to preliminary injunctive relief, as claims could be pursued in the pending Section 1983 action. The prison officials were entitled to qualified immunity for their alleged wrongful denial of the inmate's civil rights in placing him in the "circuit rider" security program that allegedly prevented him from having more than one shower or more than one hour of exercise per week, as the inmate's alleged right to additional showers and exercise was not "clearly established" at the time of the alleged violations. (Illinois Correctional System)

U.S. Appeals Court
DAMAGES
PUNITIVE DAMAGES

Hill v. Marshall, 962 F.2d 1209 (6th Cir. 1992), cert. denied, 113 S.Ct. 2992. An inmate brought a civil rights action against prison officials. A U.S. District Court judgment in favor of prison officials was reversed on appeal. On remand, the U.S. District Court entered judgment on a jury verdict awarding actual damages, but ordered remittitur of the entire punitive damages award, and appeals were taken. The court of appeals found that evidence sustained a finding that a prison official had violated the inmate's rights with respect to prescription medication and the prison official could be liable for failure to respond to the inmate's medical needs on the basis of evidence that he personally ignored the inmate's complaint and referred the inmate's complaints of not getting medication to the head nurse whom he knew was wrongly altering and destroying some of the inmate's prescriptions. The award of \$95,000 in compensatory damages to the inmate was not excessive in view of evidence that the denial of medication resulted in increasing the risk that he would develop active tuberculosis and evidence that he suffered a great deal of anguish on that account. But, with regards to the ordered remittitur of the entire punitive damages award, it was found that when a court sets aside the entire punitive damages award, rather than merely the excessive portion, it had not granted a "remittitur," but, rather, has granted a judgment notwithstanding the verdict, and the jury's determination to award the punitive damages in the inmate's civil rights action was supported by evidence of deliberate indifference to the inmate's need for prescription medication, with the result that there was a significant increase in the possibility that he would develop active tuberculosis. (So. Ohio Corr. Fac.)

U.S. Appeals Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Jolivet v. Deland, 966 F.2d 573 (10th Cir. 1992). An inmate brought a civil rights action against prison employees who were allegedly responsible for intercepting his personal mail. The U.S. District Court awarded the inmate \$250 against one employee, and the inmate appealed. The court of appeals, affirming the decision, found that awarding the inmate \$250 in compensatory damages for emotional distress he suffered when a prison employee copied love letters the inmate had written to another inmate's ex-wife and showed the copies to the other inmate was not an abuse of discretion in the inmate's civil rights action. Denying punitive damages was also not an abuse of discretion where the employee thought his actions were permissible and stopped his actions after he was informed they were unconstitutional. (Utah State Prison)

U.S. Appeals Court
GOVERNMENTAL
IMMUNITY
42 U.S.C.A.
Section 1983

McArdle v. Tronetti, 961 F.2d 1083 (3rd Cir. 1992). An inmate who had been sentenced for disorderly conduct filed a civil rights action against a prison physician and a prison counselor who diagnosed the inmate's alleged psychiatric condition and instituted involuntary commitment proceedings. The U.S. District Court found that the physician and counselor were entitled to official immunity and granted a motion to dismiss, and appeal was taken. The court of appeals found that the prison physician and prison counselor were immune from the Section 1983 liability with respect to claims of false diagnosis, false testimony and conspiracy, but were not immune from Section 1983 liability with respect to filing of the petition for involuntary commitment. The prison counselor and prison physician were not protected by either witness or judicial immunity with respect to allegations by the prisoner that they were responsible for filing a petition for involuntary commitment which they knew contained lies. (Erie Co. Jail, Pennsylvania)

U.S. District Court
QUALIFIED
IMMUNITY

Munir v. Scott, 792 F.Supp. 1472 (E.D. Mich. 1992), reversed, 12 F.3d 213. Muslim inmates brought a civil rights action against a prison official alleging violation of their religious rights due to a total ban on prayer oils and incense. The district court held that the total ban on prayer oils was unconstitutional. The prison official should have been aware that religious oils used by the Muslims during prayer could be accommodated in prison and that the total ban was contrary to the Department of Corrections policy, and he thus was not entitled to qualified immunity. The appeals court reversed the lower court decision. (Joseph Cotton Facility, Jackson, Michigan)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Murphy v. Dowd, 975 F.2d 435 (8th Cir. 1992), cert. denied, 113 S.Ct. 1310. A prison inmate brought a Section 1983 action against a state prison official. The U.S. District Court entered judgment for the official and the inmate appealed. The appeals court, affirming the decision, found that the official was entitled to qualified immunity. There was a split of authority among circuits about whether tobacco smoke exposure was cruel and unusual punishment, and under those circumstances the official could not be deemed to know he was violating the prisoner's rights by exposing him to smoke. (Farmington Correctional Center, Missouri)

U.S. Appeals Court
PERSONAL
LIABILITY
QUALIFIED
IMMUNITY

Pletka v. Nix, 957 F.2d 1480 (8th Cir. 1992). An Iowa state prisoner who had been placed in disciplinary confinement and then transferred to a Texas prison where he was released into general population sued Iowa prison officials upon his return, alleging that officials violated his due process rights by returning him to disciplinary confinement without a new hearing. The U.S. District Court denied a claim for damages. Upon rehearing en banc, the court of appeals found that the Texas prison authorities' release of the prisoner into general population did not result in a complete exoneration of his disciplinary sentence, and thus, the inmate's due process rights were not violated. Neither the Interstate Corrections Compact nor Iowa prison regulations confer liberty interest in prisoners who have been released into general population. (Iowa State Penitentiary)

U.S. Appeals Court
CONSENT ORDER
CONTEMPT
COURT ORDER

Stone v. City and County of San Francisco, 968 F.2d 850 (9th Cir. 1992), cert. denied, 113 S.Ct. 1050. In connection with a consent decree governing city jail population levels, the United States District Court entered a contempt order, and appeal was taken. The appeals court, affirming in part and vacating in part, found that the entry of the contempt order was appropriate. However, the sheriff should not have been allowed to override applicable state laws by conducting early release as state law override provisions were not the least intrusive option on state government operation. The district court should have waited to see whether the threat of sanctions would induce compliance or at least have made a finding that other alternatives were inadequate. (San Francisco Jail, Hall of Justice, California)

U.S. District Court
QUALIFIED
IMMUNITY

Taylor v. Foltz, 803 F.Supp. 1261 (E.D. Mich. 1992), affirmed, 14 F.3d 602. A state prison inmate brought a civil rights action against a state prison warden, state prison assistant resident unit manager, and members of a correctional facility security classification committee. He alleged denial of an Eighth Amendment right to be free from cruel and unusual punishment and Fifth and Fourteenth Amendment rights not to be subjected to arbitrary and capricious decisions. The warden and committee members moved for summary judgment. The district court found that a genuine issue of material fact existed as to whether the warden's operating procedure in reviewing and authorizing transfers of inmates was defective so as to create an unconstitutional condition under the Eighth Amendment, precluding summary judgment for the warden on a qualified immunity basis. The court also found that the classification committee members were entitled to qualified immunity from the state prison inmate's claim that because the inmate was mislabeled as a homosexual, he was improperly classified, transferred, and denied a prison job. The inmate had failed to show that the committee members' conduct violated a right so clearly established that any official in their position would have clearly understood that he should refrain from such conduct. (State Prison of Southern Michigan)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Zavaro v. Coughlin, 970 F.2d 1148 (2nd Cir. 1992). An inmate brought a Section 1983 action against a disciplinary hearing officer alleging violation of his due process rights. The U.S. District Court granted summary judgment for the inmate, and the hearing officer appealed. The appeals court, affirming the decision, found that the prison hearing officer's determination that the inmate participated in the riot and his consequent punishment violated the inmate's rights under the due process clause. Evidence only showed that the inmate was observed in the large mess hall where the riot occurred. There was nothing to point to the inmate as a participant or to call into question his assertion that he remained at his table without throwing anything or assaulting anybody or even rising from his chair until ordered to lie down on the floor. Additionally, the hearing officer was not entitled to qualified immunity from liability as there was not reliable evidence of the inmate's guilt. The inmate's right not to be adjudicated guilty without some evidence to support the finding was clearly established when the hearing occurred. (Great Meadows Prison, New York)

1993

U.S. Appeals Court
QUALIFIED
IMMUNITY

Abdul-Akbar v. Watson, 4 F.3d 195 (3rd Cir. 1993). A prisoner brought a Section 1983 action challenging the constitutional adequacy of legal services provided to inmates in a maximum security unit. The United States District Court found in favor of the prisoner and appeals were taken. The appeals court, vacating and remanding, found that the prison officials were entitled to qualified immunity from liability for the alleged denial of court access for the prisoner who was not allowed to use the main law library. The prisoner was provided with a satellite law library, a paging system to obtain photocopies of materials at the main law library, and varying degrees of assistance by paralegals and an attorney. The constitutional standard was inexplicitly defined, and reasonable officials could conclude that their conduct was not unlawful. (Maximum Security Unit, Delaware Correctional Center)

U.S. District Court
FAILURE TO TRAIN
QUALIFIED
IMMUNITY
RESPONDEAT
SUPERIOR

Camps v. City of Warner Robins, 822 F.Supp. 724 (M.D. Ga. 1993). The administrators of an arrestee's estate brought a civil rights action against city, county, and various law enforcement officers, alleging they were deliberately indifferent to the psychological needs of the arrestee, who lapsed into a coma after a suicide attempt and died approximately one year later. On motions for summary judgment, the district court found that the decision of a municipal holding facility supervisor to transport the arrestee to a county jail rather than the hospital or a psychiatric facility was, at most, negligent, rather than deliberately indifferent to the arrestee's serious psychological needs. Although the supervisor was aware that the arrestee had attempted suicide while at the detention facility, the supervisor directed officers who transferred the arrestee to inform jail officials that the arrestee was acting suicidal. Triable issues existed regarding whether deputies and a supervising officer at the county jail were aware that the arrestee was suicidal but were deliberately indifferent to his psychological needs. However, absent any allegation that the sheriff was personally involved in any way with the arrestee's suicide attempt while in custody at the county jail, or that any failure to train by the sheriff caused this injury, the sheriff was not subject to supervisory liability. The administrators of the arrestee's estate failed to create a genuine issue of material fact that the county jail's suicide prevention policy was inadequate, as would preclude summary judgment for the county of the civil rights municipal liability claim, where the administrators made only general allegations that policies regarding suicide prevention were grossly inadequate, and otherwise charged violations of county policy. (Houston County Jail, Georgia)

U.S. District Court
QUALIFIED
IMMUNITY

Canell v. Beyers, 840 F.Supp. 1378 (D.Or. 1993). A prison inmate brought a suit against prison officials and a county, challenging body cavity searches allegedly conducted in full view of clerical workers, other inmates, or other bystanders. On a defense motion to dismiss for summary judgment on grounds of qualified immunity, the district court found that the prison officials were not entitled to qualified immunity from civil rights liability even if such viewings by clerical workers, other inmates, and other bystanders were inadvertent. There was evidence that screening was not always in place. The county, which jointly operated the prison facility, which assisted in its design and construction, and which had considerable input in its procedures and duty to implement its policies, was a proper defendant. (Oregon Department of Corrections Intake Center)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Chapman v. Nichols, 989 F.2d 393 (10th Cir. 1993). Detainees brought a civil rights action against a sheriff to recover damages after they were subjected to strip searches at a jail following arrest. The U.S. District Court denied the sheriff's motion for summary judgment on grounds of qualified immunity, and the sheriff appealed. The appeals court, affirming and remanding, found that it was clearly established law in late 1991 and early 1992 when the arrests took place, that a blanket policy of strip searches for detainees was unconstitutional, so that the sheriff was not entitled to qualified immunity. (Creek County Jail, Sapulpa, Oklahoma)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Choate v. Lockhart, 7 F.3d 1370 (8th Cir. 1993). An inmate who fell off a roof while working on a construction crew on a state-owned residence sued the supervising prison officials and the director of the Department of Corrections. The U.S. District Court found the prison officials liable and awarded the inmate damages for pain and suffering. The inmate appealed the denial of punitive and other compensatory damages, and the prison officials cross-appealed on the finding of liability. The appeals court, reversing and dismissing, found that the immediate supervisors' conduct did not rise to a level of deliberate indifference in violation of the Eighth Amendment. The supervisors had no knowledge of the inmate's physical limitations. In addition, the supervisors did not choose which inmates would work on a project, and they had no duty to check the medical records of crew members assigned to them in determining whether they could do the work assigned. The appeals court also ruled that the Director of the Department of Corrections was not liable to the inmate. The director could not have known about the inmate's suffering on the job, had no duty to check the inmate's medical records, and had no relevant connection with the project at all. The overall supervisor of the construction projects on which inmates were working was not deliberately indifferent to the inmate who had a pre-existing knee injury. The inmate never complained to the overall supervisor about anything. In addition, the supervisor visited the worksite only periodically and there was nothing suggesting that the supervisor should have known about the severity of the inmate's knee injury or his attempts to be taken off of the crew. The supervisor did not assign the inmate to duty and did not have a duty to check the inmate's medical history. (Arkansas Department of Corrections)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Fortner v. Thomas, 983 F.2d 1024 (11th Cir. 1993). Inmates brought a Section 1983 action against prison officials alleging violations of their constitutional right to privacy. The United States District Court denied an amendment to the complaint to add disciplinary officers as additional defendants, dismissed the due process claims, and dismissed the complaint on the ground of qualified immunity. The inmates appealed. The appeals court, affirming in part, reversing in part and remanding, found that the inmates have a constitutional right to bodily privacy. However, the inmates' constitutional right to bodily privacy was not clearly established at the time female correctional officers viewed inmates while they were nude and, thus, the correctional officials were entitled to qualified immunity from civil damages liability. (Georgia State Prison)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Hemphill v. Kincheloe, 987 F.2d 589 (9th Cir. 1993). A state inmate brought an action against prison officials challenging a policy of subjecting all prisoners transferred to a secure area to an involuntary digital rectal probe for possible contraband without a showing of probable cause. The U.S. District Court denied the officials qualified immunity and denied their motion for judgment notwithstanding the verdict, and the officials appealed. The appeals court, reversing the decision, found that state prison officials were entitled to qualified immunity from liability in the Section 1983 action based on their implementation of the policy. Reasonable officials could have believed that their conduct was lawful at the time given that such a policy was permissible and sanctioned by federal regulations, and officials testified that they had researched the legality of the searches before implementing the policy. (Washington State Penitentiary)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROTECT

Herman v. Clearfield County, PA, 836 F.Supp. 1178 (W.D. Pa. 1993). The estate of a pretrial detainee who committed suicide while detained brought a Section 1983 civil rights claim alleging that jail officials failed to identify and treat the decedent's obvious suicidal intent and that the county consciously followed a policy or custom of failing to train jail employees. The county and its officials moved for summary judgment. The district court found that the jail officials were adequately trained in suicide prevention. Claims of inadequate training are not enough to establish liability. The plaintiff must identify specific training that the municipality did not give, explain how lack of that training actually caused the ultimate injury, and show that alleged failure to train was part of official municipal policy of deliberate indifference. The plaintiff must present evidence that the alleged indifference was a conscious choice that resulted either from a decision officially adopted and promulgated or from a permanent and well settled practice. The county's alleged failure to train jail personnel to recognize and respond to the suicidal tendencies of pretrial detainees did not support the Section 1983 civil rights claim by the detainee's estate. The jail did not have a history of numerous suicides and suicide attempts. In addition, the county employed a suicide prevention program for screening detainees. Also, the jail correction officials did receive training regarding detention of suicidal detainees and appropriate responses. (Clearfield County Prison, Pennsylvania)

U.S. Appeals Court
CONSENT DECREE-
MODIFICATION

Inmates of Suffolk County Jail v. Rufo, 12 F.3d 286 (1st Cir. 1993). The Commissioner of Corrections moved to vacate a consent decree between a county sheriff, the Commissioner, and inmates of the county jail after the county sheriff moved to modify the decree to allow double-bunking of pretrial detainees. The U.S. District Court denied the motion and the Commissioner appealed. The appeals court, affirming the decision, found that the Commissioner was not entitled to have the decree vacated in the absence of adequate

record and in light of the prospect of further proceedings. The approach proposed by the Commissioner for vacating the consent decree gave insufficient weight to the problem of recurrence of the constitutional violations. The court could not assume that double-celling of inmates, contemplated by the county sheriff in the foreseeable future, was clearly constitutional. (Suffolk County Jail, Massachusetts)

U.S. Appeals Court
CONSENT DECREE-
MODIFICATION

Johnson v. Robinson, 987 F.2d 1043 (4th Cir. 1993). Prisoners brought a class action challenging conditions of confinement at Maryland correctional facilities. Upon motion of prisoners, the United States District Court converted a timetable into a court order, and the prison officials appealed. The court of appeals, reversed and remanded with instructions. It found that the district court exceeded its authority when it adopted the order specifying a timetable in which Maryland prison officials had to make 83 improvements at prison facilities. The parties never formally agreed upon duties specified in the timetable, which added substantially to those accepted by prison officials in the original consent decree. (Maryland House of Corrections and Maryland Correctional Institution in Hagerstown)

U.S. District Court
DAMAGES
PERSONAL
LIABILITY

Jones v. Thompson, 818 F.Supp. 1263 (S.D. Ind. 1993). A pretrial detainee filed a Section 1983 civil rights action arising from the use of three-way restraints on the detainee following his suicide attempt. The district court found that the extended use of three-way restraints on the detainee, coupled with the absence of medical review or treatment and the denial of even basic amenities such as personal hygiene and toilet usage constituted deprivation of his due process rights. Various officers at the jail were found liable for \$5,000 compensatory damages in their individual capacities. In addition, an officer responsible for management of the jail was liable for \$2,000 punitive damages in her individual capacity and the county was liable for \$5,000 compensatory damages. (Madison County Jail, Indiana)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Leeks v. Cunningham, 997 F.2d 1330 (11th Cir. 1993), cert. denied, 114 S.Ct. 609. A pretrial detainee brought action under Section 1983 for a jail physician's alleged violation of his constitutional rights in subjecting him to antipsychotic medication against his will. The U.S. District Court denied the physician's motion for summary judgment, and he appealed. The appeals court, reversing and remanding, found that the pretrial detainee's right to refuse administration of an antipsychotic drug was not "clearly established" at the time of the alleged constitutional violation, so that the physician was entitled to qualified immunity for his acts. (Lake County Jail, Tavares, Florida)

U.S. District Court
QUALIFIED
IMMUNITY

Martin v. Ezeagu, 816 F.Supp. 20 (D.D.C. 1993). An inmate brought a Section 1983 action against a chief librarian and prison supervisors allegedly responsible for providing inmates with adequate access to library facilities. The librarian and supervisors moved to dismiss. The district court found that the inmate's complaint that alleged an ongoing pattern, and not an isolated episode of interference with his right of access to the prison law library and which specifically stated how litigation he was pursuing was hampered and delayed by actions of the chief librarian was sufficient to survive a Rule 12(b)(6) motion. The complaint stated that the inmate was prevented from filing a sentencing memorandum, a motion for a new trial and a motion to dismiss the indictment before his sentencing hearing due to alleged actions by the chief librarian. Furthermore, the prison supervisors who were allegedly responsible for providing the inmates with adequate access to the library facility were not entitled to qualified immunity in the Section 1983 action as the complaint posited "acquiescence" on the part of the supervisors that encouraged the chief librarian's conduct of harassing the inmate and of arbitrarily excluding him from the library. These allegations, coupled with specific allegations revealing the supervisors' knowledge and inaction, were adequate to support a claim of deliberate or reckless indifference to foreseeable disruptive effect. The inmate's complaint, including racial epithets and profanity allegedly directed at the inmate, and implicating a constitutional right of meaningful access to courts stated a claim for intentional infliction of emotional distress. (Occoquan Facility, Lorton, District of Columbia)

U.S. Appeals Court
FAILURE TO
PROTECT
QUALIFIED
IMMUNITY

Nelson v. Overberg, 999 F.2d 162 (6th Cir. 1993). A prison inmate who had been beaten by fellow prisoners brought a civil rights suit against a prison official. The official's motion for summary judgment was denied by the U.S. District Court and the official appealed. The appeals court, affirming the decision, found that two letters by the prison inmate indicating that he had enemies at the prison where he was being placed, and that he would like to be transferred, would have alerted a reasonable prison official that more action needed to be taken to protect the inmate; therefore, the official was not protected by qualified immunity. In addition, genuine issues of fact existed as to whether the prison official knew of the threat to the inmate by fellow prisoners yet disregarded it, despite the availability of relatively effortless ways of addressing the threat, and whether that conduct amounted to a conscious lack of concern or aloofness, precluding summary judgment. (Ohio Department of Rehabilitation and Corrections)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Quinn v. Nix, 983 F.2d 115 (8th Cir. 1993). Inmates with shag haircuts sued prison officials for civil rights violations arising out of an order directing the inmates to cut their hair. The U.S. District Court entered judgment for the inmates, and the prison officials appealed. The appeals court, affirming the decision, found that the prison officials violated the inmate's civil rights by ordering them to cut their hair. Although the officials had a legitimate penological interest in curbing gang activity, the district court's determination that the proffered explanation that the hairstyle at issue was gang-related was pretextual was not clearly erroneous, where officials never told the inmates why their hairstyle was considered extreme and officials did not receive a memo depicting gang-related hairstyles until after they ordered the inmates to get haircuts. In addition, the prison officials were not entitled to qualified immunity for violating the prisoners' civil rights, where the district court found that the officials did not act out of legitimate penological concerns. (Iowa State Penitentiary)

U.S. Appeals Court
CONTRACT
SERVICES

Sandoval v. U.S., 980 F.2d 1057 (5th Cir. 1993). An inmate who was injured in a beating administered by another inmate brought an action against the United States under the Federal Tort Claims Act (FTCA). The U.S. District Court dismissed the action and the inmate appealed. The court of appeals, vacating and remanding, found that the inmate's allegation that he was injured because of negligence of the United States Marshal in placing him in a facility for temporary housing of federal prisoners operated by a government contractor, where he was exposed to improper conduct of guards and other prisoners, was sufficient to state a nonfrivolous claim against the United States under FTCA. (Central Texas Violators Facility)

U.S. District Court
OFFICIAL
CAPACITY
PERSONAL
LIABILITY

Searer v. Wells, 837 F.Supp. 1198 (M.D. Fla. 1993). An arrestee brought an action against a county sheriff in his official capacity and deputies in their individual capacities alleging use of excessive force. The district court found that the arrestee's allegations that the county sheriff, in his official capacity, failed to investigate the alleged use of excessive force by deputies and failed to discipline the deputies were sufficient to state a Section 1983 action against the county. The arrestee also stated a cause of action against deputies under Florida statutes allowing an officer to be held personally liable in an action for injury or damage resulting from an act undertaken in the scope of employment if undertaken in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property. According to the court, the sheriff had immunity from liability in the action against him in his official capacity. (Manatee County Jail, Florida)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Severino v. Negron, 996 F.2d 1439 (2nd Cir. 1993). An imprisoned resident alien brought a civil rights action against state correctional officials, alleging that revocation of his participation in a work release program following the issuance of an immigration warrant violated due process. The U.S. District Court dismissed the complaint and the alien appealed. The appeals court, affirming the decision, found that officials were entitled to qualified immunity. While it was clear that a liberty interest existed in the work release program, the boundaries of that interest were not drawn with such clarity that officials could know precisely what was required to remove an alien from the program. (New York Department of Correctional Services)

U.S. District Court
NEGIGENCE
DAMAGES

Sheehan v. U.S., 822 F.Supp. 13 (D.D.C. 1993). An arrestee brought a tort claim suit against the United States to recover for injuries caused by a fall while in custody. The district court found that the doctrine of res ipsa loquitur supported a finding of liability of the United States for the handcuffed arrestee's fall at the top of a ramp. The arrestee would not have fallen was it not for police officers' negligence, and the arrestee could not have been responsible since she was handcuffed and had been drinking. The arrestee was entitled to \$5,000 for emotional distress and pain and suffering and to \$10,000 for apparently slight impairment of vision in one eye, scars on her face, and temporary aggravation of prior symptoms of memory loss, inability to concentrate, severe headaches, amnesia, fatigue, lack of stamina, and impaired mobility. (United States Capitol Police Headquarters, Washington D.C.)

U.S. Appeals Court
DAMAGES
QUALIFIED
IMMUNITY

Valencia v. Wiggins, 981 F.2d 1440 (5th Cir. 1993), cert. denied, 113 S.Ct. 2998. A pretrial detainee brought a civil rights action against a jail official, alleging that the official used excessive force against him during a jail disturbance. The U.S. District Court entered judgment in favor of the detainee, and the official appealed. The appeals court, affirming the decision, found that the substantive due process standard, rather than the Fourth Amendment excessive force standard, applied to the pretrial detainee's excessive force case, where the alleged use of excessive force occurred three weeks after the initial arrest. The court also found that the jail official's use of a choke hold and other force to subdue the nonresisting pretrial detainee during the jail disturbance was a malicious and sadistic use of force to cause harm, rather than a good-faith effort to maintain or restore security, violating due process. The use of force rendered the detainee temporarily unconscious.

The officer then struck the detainee while the detainee was handcuffed, kneeling, and nonresisting. The court found that the jail official's use of force was not objectively reasonable, so that the official was not entitled to qualified immunity in the detainee's civil rights action, where the detainee suffered severe injuries as a result. The detainee was awarded damages in the amount of \$2,500 from the jail official, and was also granted approximately \$27,600 in attorneys' fees and costs. (Brewster County Jail, Texas)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Walters v. Grossheim, 990 F.2d 381 (8th Cir. 1993). A prison inmate brought a civil rights suit against prison officials, alleging that the officials' failure to comply with a judgment requiring the inmate to be returned to a less restrictive environment constituted a violation of his rights. The U.S. District Court awarded the inmate compensatory damages of \$4 per day for the time the inmate spent in Level III custody after the entry of the state court judgment and before he was restored to Level IV, for a total of \$276 in damages; the parties cross appealed. The court of appeals, affirming the decision, found that the prison officials did not have qualified immunity for their failure to comply with the judgment ordering them to return the inmate to a less restrictive environment, regardless of whether the officials disagreed with the order and thought it lacked proper legal foundation. The judgment could serve as a basis for the inmate's constitutionally protected liberty interests, thus the prison officials violated the inmate's due process rights when they failed to carry out the state court judgment. The prison inmate, who was the prevailing party, was entitled to an allowance of costs although he had not requested them in the trial court. (Iowa)

U.S. Appeals Court
DAMAGES

Weeks v. Chaboudy, 984 F.2d 185 (6th Cir. 1993). A paralyzed prisoner brought a Section 1983 civil rights suit against a prison medical director alleging that refusal to prescribe a wheelchair was deliberately indifferent to the prisoner's serious medical needs. The U.S. District Court granted the prisoner's motion for summary judgment on liability, determined damages to be \$50,000, and ordered the prison medical director to pay \$5,000. The prisoner appealed. The appeals court, affirming in part, reversing in part and remanding, found that the prison doctor's deliberate indifference to the serious medical needs of the paralyzed prisoner was established where the doctor knew of the prisoner's paraplegia. The court found that the prison doctor's liability to the prisoner could not be apportioned, although security personnel and other unnamed parties may have also been liable for damages; the liability of other persons did not diminish the doctor's liability. (Southern Ohio Correctional Facility)

1994

U.S. District Court
FEDERAL TORT
CLAIMS ACT

Barrett v. U.S., 845 F.Supp. 774 (D.Kan. 1994). An inmate's mother brought a Federal Tort Claims Act (FTCA) action against prison officials after the inmate was fatally stabbed at the federal penitentiary. The district court found that the failure of the prison officials to investigate a death threat against the inmate made by a religious group or to segregate the inmate from other prisoners was not the proximate cause of the inmate's stabbing death. The inmate's death was a result of a personal conflict with another inmate who was not a member of the religious group. In addition, the prison officials had no knowledge of that conflict and could not have been aware of that conflict even with reasonable diligence. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
QUALIFIED
IMMUNITY

Brown v. Thompson, 868 F.Supp. 326 (S.D.Ga. 1994). An inmate brought a Section 1983 action against a warden and prison medical staff for deliberate indifference to his medical needs. On the defendants' motions for summary judgment, the district court found that the prison warden was not liable for the allegedly poor medical treatment the inmate received. There was no evidence that the warden condoned or directly participated in the allegedly unconstitutional treatment. In addition, the inmate's claim against medical staff for failing to provide a wheelchair was barred by their qualified immunity. (Coastal Correctional Institute, Georgia)

U.S. Appeals Court
CONTRACT
SERVICES
DELIBERATE
INDIFFERENCE

Conner v. Donnelly, 42 F.3d 220 (4th Cir. 1994). A prison inmate brought a Section 1983 action against a private physician who treated him on the referral of a prison physician, alleging that the private physician was deliberately indifferent to the inmate's serious medical needs in violation of the Eighth Amendment. The U.S. District Court granted summary judgment for the private physician, concluding that he did not act "under color of state law." The inmate appealed. The appeals court, reversing and remanding, found that a physician who treats a prisoner acts "under color of state law" for purpose of Section 1983, even in the absence of a contractual relationship between the prison and the physician, because the state has incarcerated the prisoner and denied him the possibility of obtaining adequate medical care on his own. The outside physician had no obligation to accept the prisoner as a patient, and provided treatment at a private facility using his own equipment. The physician acted "under color of state law" for purposes of Section 1983, because he assumed his state's constitutional obligation to provide medical care to the prisoner. (Bland Correctional Center, Virginia)

U.S. Appeals Court
CONSENT DECREE
CONTEMPT

Cooper v. Noble, 33 F.3d 540 (5th Cir. 1994), modified, 41 F.3d 212. County jail inmates brought a class action against county officials challenging jail conditions. Following the entry of a final consent judgment governing jail conditions, the officials moved for relief from the consent judgment. The inmates requested that officials be held in contempt for violations of the consent judgment. The U.S. District Court denied the motion for relief and held the officials in contempt. The officials appealed. The appeals court, affirming the decision, found that the officials failed to demonstrate that changes in factual conditions compelled the magistrate judge to grant their motion for relief from the final consent judgment governing jail conditions. Despite contentions that the new jail housed more prisoners than the old jail, and received prisoners from different governmental agencies with diverse criminal records, and was subject to inspections by governmental agencies, the officials did not adequately explain how increased inspections and changes in the number and diversity of inmates affected the workability of the final judgment, compliance with the judgment, or enforcement of the judgment. The court found that the officials failed to demonstrate that changes in the factual conditions compelled the magistrate judge to grant their motion for relief. Also, the magistrate judge's finding that county officials were in contempt for failure to comply with the final consent judgment governing jail conditions was neither clearly erroneous nor an abuse of his discretion, where the officials asserted only substantial compliance with the judgment, admitting to noncompliance in some areas. (Madison County Jail, Mississippi)

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Culver By and Through Bell v. Fowler, 862 F.Supp. 369 (M.D.Ga. 1994). A former detainee brought a Section 1983 action against police officers, a police chief, and a city, alleging they violated his Eighth Amendment rights. After granting summary judgment to the city and police chief, the district court found that a police officer who was attempting to control the heavily intoxicated, middle aged, mentally retarded male detainee violated the detainee's Eighth Amendment rights by kneeling him twice in the groin. The court ruled that the use of force was of the sort repugnant to the conscience of mankind, and the force was used not in a good faith effort to maintain discipline, but to maliciously and sadistically cause the detainee harm. Punitive damages in the amount of \$25,000 were awarded against the police officer as the officer acted with malicious intent to harm the detainee and kneeling him in the groin represented a barbaric and cruel means of control. The detainee was also entitled to \$25,000 in compensatory damages and special damages for reimbursement of medical costs in the amount of \$6,012. Another officer, who did not physically assault the detainee in any manner except to slap his hand away during an attempt to control the detainee, did not violate the detainee's Eighth Amendment rights. (Sparta Police Department, Georgia)

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Davis v. Moss, 841 F.Supp. 1193 (M.D.Ga. 1994). A former inmate brought a Section 1983 action against correctional officers alleging cruel and unusual punishment in violation of the Eighth Amendment in connection with defendants' treatment during a riot. The district court found that the former inmate was not entitled to recover for lost earning capacity in connection with violation of his Eighth Amendment rights by a correctional officer who shoved the inmate down a fire escape during the riot. Such an award would have been speculative in light of the inmate's meager past work history. The inmate had worked only sporadically at farm jobs and, after being paroled, had failed to go to either the unemployment office or the department of vocational rehabilitation. The inmate was entitled to a damage award of \$10,000 for pain and suffering as the fall down the stairs permanently damaged two discs in the inmate's lower back, causing him to undergo surgery. In addition, the inmate was entitled to \$25,000 in punitive damages. The imposition of punitive damages was necessary to deter the officer and other correctional officers from using unnecessary and malicious force against inmates. (Rivers Correctional Institution, Hardwick, Georgia)

U.S. Supreme Court
FAILURE TO
PROTECT
LIABILITY

Farmer v. Brennan, 114 S.Ct. 1970 (1994). A prisoner who was transsexual brought a *Bivens* suit against prison officials, claiming that officials showed "deliberate indifference" by placing the prisoner in the general prison population, thus failing to keep him from harm allegedly inflicted by other inmates. The U.S. District Court entered judgment for the officials and the inmate appealed. The appeals court affirmed and certiorari was granted. The Supreme Court, vacating and remanding, found that prison officials may be held liable under the Eighth Amendment for denying humane conditions of confinement only if they know that inmates face a substantial risk of serious harm and disregard that risk by failing to take reasonable measures to abate it. Remand would be required to determine whether prison officials would have liability, under the above standards, for not preventing harm allegedly occurring in this case. (Federal Correctional Institute, Oxford, Wisconsin and United States Penitentiary, Terre Haute, Indiana)

U.S. Appeals Court
COMPENSATORY
DAMAGES
NOMINAL DAMAGES

Gibeau v. Nellis, 18 F.3d 107 (2nd Cir. 1994). An incarcerated criminal contemnor brought a Section 1983 action against a jail officer, alleging excessive use of force. The U.S. District Court entered judgment on a jury verdict finding that the officer had used excessive force, but awarded no damages, and the inmate appealed. The appeals court

found that whether the contemnor suffered even a minor compensable injury proximately caused by the officer's use of excessive force, so as to mandate an award of compensatory damages, was a question for the jury. The district court should have instructed the jury that it was required to award nominal damages if it found that the plaintiff's Eighth Amendment rights were violated, and the court should have provided a corresponding verdict form. (Oswego County Jail, New York)

U.S. District Court
FAILURE TO
TRAIN
LIABILITY

Gilbert v. Selsky, 867 F.Supp. 159 (S.D.N.Y. 1994). An inmate brought a Section 1983 action, alleging that a prison disciplinary hearing had been conducted in violation of his due process rights. The district court found that the judgment that the inmate had committed theft was not supported by the requisite "some evidence." Given the evidence that others, but not the inmate, had access to the area during the relevant time, an informant's accusation was hearsay that could not constitute "some evidence" absent an objective foundation establishing reliability. In addition, the refusal to call relevant witnesses requested by the inmate deprived the inmate of due process. There was no showing that witnesses' testimony would have been unduly hazardous to institutional safety or correctional goals. Supervisory prison officials were personally involved with the violations of the inmate's constitutional rights at the disciplinary hearing and could be held liable under Section 1983. They failed to remedy violations on administrative appeal and failed to train the hearing officer. (Eastern Correctional Facility, New York)

U.S. District Court
CONSENT DECREE
CONTEMPT
PUNITIVE DAMAGES

Harrelson v. Elmore County, Ala., 859 F.Supp. 1465 (M.D. Ala. 1994). A paraplegic inmate brought an action against a city and county, alleging a violation of the Americans With Disabilities Act (ADA), Section 1983, constitutional rights, and a consent decree, and seeking compensatory and punitive damages, costs, and attorney fees. The defendants moved to dismiss the punitive damages claims. The district court found that cities and counties are immune from punitive damages under Section 1983. Also, punitive damages are not available to a plaintiff asserting a claim under the Americans With Disabilities Act (ADA) Title II, guaranteeing for qualified individuals with disabilities equal access to services and benefits provided by state and local governments. The court also ruled that an alleged violation of a consent decree cannot be the basis for the inmate's Section 1983 suit; the appropriate vehicle for enforcement of a consent decree is a contempt action brought before the court responsible for the decree. (Elmore County Jail, Alabama)

U.S. District Court
42 U.S.C.A.
Section 1983
OFFICIAL
CAPACITY

Haston v. Tatham, 842 F.Supp. 483 (D. Utah 1994). An inmate sued Utah Correctional Industries (UCI) and UCI officials, alleging that the defendants' failure to hire the inmate was based upon the inmate's alleged disabilities, in violation of Sections 1983 and 1985. The defendants moved for summary judgment. The district court found that the individual defendants could not be liable under Section 1983 in their official capacities and that the UCI director was not liable under Section 1983 to the inmate. The director stated that he did not personally participate in the consideration of any of the inmate's job applications, there was no allegation that UCI hiring policies were unconstitutional, and there was no constitutional or other requirement that UCI have an affirmative action policy. (Utah State Prison)

U.S. Appeals Court
FAILURE TO TRAIN

Hirsch v. Burke, 40 F.3d 900 (7th Cir. 1994). A wife, as the administratrix of the estate of her husband, brought a civil rights action under Section 1983 against a police officer and a county sheriff. The U.S. District Court dismissed the claims and entered judgment in favor of the defendants. On appeal, the court of appeals, affirming the decision found that the police officer had probable cause to arrest the individual for public intoxication, even though the individual was, in fact, a diabetic in a state of insulin shock. The individual had trouble balancing himself and appeared incoherent, smelled of alcohol and had bloodshot eyes, was unable to state his name or date of birth, and did not indicate that he was a diabetic. In addition, the municipality was not liable under Section 1983 based on a "failure to train" theory for alleged violation of the individual's civil rights which occurred when the police officer arrested and jailed the individual. There was no evidence that the municipality engaged in a pattern of mistakenly detaining people with symptoms of diabetic shock or a pattern of failing to medically treat those same individuals when their true affliction was discovered. (Marion County Jail, Indiana)

U.S. District Court
DELIBERATE
INDIFFERENCE

Holloway v. Wittry, 842 F.Supp. 1193 (S.D.Iowa 1994). An inmate brought an action against prison officials and a staff member arising from the assault of the inmate by four other prisoners. The district court found that the inmate had failed to establish deliberate indifference on the part of the prison officials, but that a staff member violated the inmate's Eighth Amendment rights. A staff member was required to remain on the floor of the prison industries at all times, a security officer roved through the industry building all day, security checks were made of tools, and staff members carried emergency beepers. But the court found that a staff member's failure to seek assistance by failing to use an emergency beeper and intervene during the assault violated the inmate's Eighth Amendment rights. As a result, the inmate was awarded \$500 in compensatory damages and \$1,000 in punitive damages. (Iowa State Penitentiary, Fort Madison, Iowa)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Housley v. Dodson, 41 F.3d 597 (10th Cir. 1994). An inmate in a county jail brought a civil rights suit against various public officials. The U.S. District Court dismissed the action and the inmate appealed. The appeals court found that the inmate's allegation that he was denied all access to any legal resources during his six-month confinement in the county jail was sufficient to state a claim against jail officials based on denial of right of access to courts. In addition, the court found that the inmate's allegation that he received only 30 minutes of out-of-cell exercise during a three-month period in which he was confined in the county jail was sufficient to state a civil rights claim against jail officials based on a violation of the prohibition against cruel and unusual punishment. The sheriff and jailer were not entitled to qualified immunity where such rights were clearly established at the time of the incarceration. (Custer County Jail, Oklahoma)

U.S. District Court
CLASS ACTION
OFFICIAL
CAPACITY

Hvorcik v. Sheahan, 847 F.Supp. 1414 (N.D.Ill. 1994). A class action suit was brought against a sheriff in his official capacity charging the sheriff with illegal custodial detention, false arrest under state law, and civil contempt of court for alleged failure of the sheriff to maintain accurate records of traffic warrants. The district court found that the sheriff's policy of not maintaining accurate records of traffic warrants was deliberately indifferent to the constitutional rights of persons being subjected to arrests and detention on recalled warrants. The sheriff's policy of not maintaining accurate records of traffic warrants was not the proximate cause of the unlawful arrests of the named plaintiffs, and thus the municipality was not liable for a Section 1983 violation as to the named plaintiffs. However, the sheriff's policy was the proximate cause of the unlawful arrests of the class of plaintiffs, and thus the municipality was liable for Section 1983 violations as to the class. The court also found that the sheriff's policy, although willful and wanton, was not the proximate cause of the unlawful arrests of named plaintiffs, and thus the municipality was not liable for false imprisonment as to named plaintiffs, but the municipality was liable for false imprisonment as to the class of plaintiffs. The sheriff was not entitled to absolute immunity from the suit under the Eleventh Amendment. (Cook County Sheriff's Office, Illinois)

U.S. District Court
CONTEMPT
REMEDIES

Inmates of the Allegheny County Jail v. Wecht, 848 F.Supp. 52 (W.D.Pa. 1994). In a civil rights litigation pertaining to conditions at a county detention facility, the district court found that upon the county's compliance with court orders concerning jail conditions, the court would relieve the county of the obligation to pay further fines. In addition, fines already paid would be returned for the exclusive purpose of contribution to jail construction or drug rehabilitation programs. (Allegheny County Jail, Pennsylvania)

U.S. District Court
CONSENT DECREE
MODIFICATION

Inmates of Suffolk County Jail v. Rufo, 844 F.Supp. 31 (D. Mass. 1994). A county sheriff moved to modify a consent decree requiring construction of a new jail. The U.S. District Court denied the motion and the sheriff appealed. The court of appeals affirmed and certiorari was granted. The Supreme Court vacated and remanded the case for reconsideration. On remand, the district court found that the matter would not be reassigned to another judge and that the sheriff was not entitled to modification of the decree to permit double-bunking. The Commissioner of Corrections appealed. The court of appeals affirmed. The sheriff subsequently revised the motion to modify the consent decree to permit double-bunking. The district court found that the proposed modification to the consent decree, proposing an increase in capacity by double-bunking in 161 cells, was not tailored to fit the changed circumstance of an increased number of pretrial detainees. The court found that the consent decree would be modified to allow alteration of up to 100 cells to permit double occupancy, even though this would impair some inmate's access to common areas. In addition, the final order closing the case was not immediately entered. The court provisionally found that it was appropriate to allow a five year period before closing the case, to allow parties to seek relief from the order. (Suffolk County Jail, Massachusetts)

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE
DAMAGES

Lowrance v. Coughlin, 862 F.Supp. 1090 (S.D.N.Y. 1994). A Muslim prisoner brought a Section 1983 action against various prison officials alleging violation of the First, Eighth, and Fourteenth Amendments. The district court found that the inmate who was repeatedly transferred from prison to prison in retaliation for his exercise of First Amendment free expression and religion rights, who spent 115 days in segregative confinement as a result of such retaliation, who was subjected to retaliatory cell searches, and whose knee surgery was delayed for nearly two years after the diagnosis, was entitled to recover from prison officials responsible for those acts \$132,000 in compensatory damages and \$25,000 in punitive damages. (Green Haven Correctional Facility, and other facilities, New York)

U.S. Appeals Court
CONSENT DECREE
CONTEMPT

Mahers v. Hedgepeth, 32 F.3d 1273 (8th Cir. 1994). Inmates brought a civil rights action for damages against a warden seeking to hold him in contempt of a consent decree arising from a search for contraband. The U.S. District Court dismissed the civil rights claim, but held the warden in contempt for allowing staff to violate the decree, and the warden appealed. The appeals court, reversing the decision, found that the district court

improperly held the warden in contempt for conduct not prescribed within the consent decree. Although the warden's staff disobeyed the Iowa State Penitentiary compliance policy in failing to have an authorizing official make an exigent circumstances determination before conducting a shakedown search of cells, the consent decree did not incorporate the compliance policy. The district court made no finding regarding exigent circumstances to justify the search of the inmates' legal papers outside their presence in violation of the consent decree. (Iowa State Penitentiary)

U.S. District Court
CONTRACT
SERVICES
QUALIFIED
IMMUNITY

Manis v. Corrections Corp. of America, 859 F.Supp. 302 (M.D. Tenn. 1994). An inmate brought a civil rights action against a private corporation and one of its employees who operated a prison under contract with the state, alleging deliberate indifference to serious medical needs in violation of the Eighth Amendment. The defendants moved to dismiss the action. The district court found that the private corporation and its employees were not protected from the suit by the qualified immunity of public officials. (South Central Correctional Center, Tennessee)

U.S. District Court
DAMAGES
INDIVIDUAL
CAPACITY
PERSONAL
LIABILITY

McCann v. Phillips, 864 F.Supp. 330 (S.D.N.Y. 1994). A former jail inmate brought a civil rights suit against a county sheriff and a correctional facility officer alleging a violation of procedural due process resulting from the inmate's confinement as part of a 24-hour keeplock of his jail tier. The district court found that the sheriff and the correctional officer were liable in their official capacities for any damages attributable to their not affording the jail inmate an opportunity to make a statement prior to being confined in 24 hour keeplock, where denying the inmate that opportunity was consistent with a standard policy followed in the jail, as set forth in a rules and infraction notice. In addition, the correctional officer could be held personally liable for failing to afford the inmate an opportunity to make a statement prior to being confined for administrative reasons, even though the defect was a result of a lack of a provision for such a right in the jail's rules, where the officer had not asserted official immunity. (Orange County Correctional Facility, New York)

U.S. Appeals Court
DAMAGES
DEFENSES
FAILURE TO
PROTECT
NEGLIGENCE

Myers v. County of Lake, Ind., 30 F.3d 847 (7th Cir. 1994), cert. denied, 115 S.Ct. 666. A county was found by a jury to have negligently failed to prevent a juvenile delinquent's suicide attempt and damages were awarded to the parent and juvenile by the U.S. District Court. The county appealed. The appeals court found that Indiana law requires state institutions to use reasonable care to prevent their wards from committing suicide. The court also found that whether the county negligently provided so few funds to the juvenile detention center that the staff could not exercise reasonable care to prevent the juvenile's suicide attempt was a jury question under Indiana law. Although Indiana recognizes intervening cause, reckless disregard of one's own safety, and incurred risk as defenses to a negligence claim, Indiana would probably not recognize the intentional efforts to commit suicide as a defense. Both the parent and child were entitled to separate per person awards under the statute limiting the government's liability. (Lake County Juvenile Center, Indiana)

U.S. District Court
NOMINAL DAMAGES

Sanford v. Brookshire, 879 F.Supp. 691 (W.D. Tex. 1994). An inmate filed a Section 1983 action asserting cruel and unusual punishment resulting from confinement to a filthy cell in a county jail for six days without functional plumbing or hygienic supplies. The district court found that the county jailer and her supervisor violated the inmate's Eighth Amendment rights, for purposes of the inmate's Section 1983 claim, by acting with deliberate indifference to complaints about filth in the cell and a nonfunctioning toilet and sink, lack of toilet paper, and a shower head which produced only a thin stream of cold water. The jailer left the inmate in the cell for six days while a written maintenance request was processed, and the jailer's supervisor told the inmate he could not receive cleaning supplies until cleaning day. However, the inmate failed to present any evidence of actual damages from violation of his civil rights and, thus, was only entitled to recover nominal damages of one dollar from the county jailer and her supervisor who were deliberately indifferent to the inmate's complaints. (Ector County Jail, Texas)

U.S. District Court
FAILURE TO
TRAIN
42 U.S.C.A.
Section 1983

Women Prisoners v. District of Columbia, 877 F.Supp. 634 (D.D.C. 1994). A class action was brought on behalf of female prisoners in the District of Columbia. The district court found that prison officials were liable for civil rights violations of female prisoners who were subject to sexual harassment, notwithstanding official policies regarding sexual misconduct, as the harassment was the result of governmental custom and officials failed to properly train employees in the area of sexual harassment. Longstanding health hazards which existed in prison as a result of the failure of the department of corrections to properly abate hazardous conditions resulted in prison officials being liable for civil rights violations. (District of Columbia Correctional System- the Lorton Minimum Security Annex, the Correctional Treatment Facility, the Central Detention Facility)

U.S. Appeals Court
DAMAGES
LIABILITY

Wright v. Smith, 21 F.3d 496 (2nd Cir. 1994). A prison inmate brought a Section 1983 action against the superintendent of the Attica Correctional Facility and the Commissioner of the New York Department of Correctional Services seeking damages on the grounds that he was confined in a special housing unit (SHU) for 67 days without a hearing. The U.S. District Court dismissed the complaint with prejudice and the inmate appealed. The appeals court, affirming in part, reversing in part and remanding, found that the Commissioner, who did not have actual or constructive notice of the violation, was not personally involved in the

constitutional deprivation and was not liable for damages. However, the superintendent was a supervisory official who, after learning of the violation through a report or appeal, failed to remedy the wrong and could not escape liability for damages by denying personal involvement. (Attica Correctional Facility, New York)

1995

U.S. Appeals Court
CONSENT DECREE
COURT MONITOR
FINES
REMEDIES
STATE LIABILITY

Alberti v. Klevenhagen, 46 F.3d 1347 (5th Cir. 1995). Appeal was taken from remedial orders in an action challenging conditions in a county jail system. The appeals court found that the state could be held liable for conditions in the county's jail if deliberately indifferent, and remanded. On remand, the U.S. District Court found the state and county liable. The county and state appealed and the appeals court affirmed. Subsequently, the district court denied the state's motion to modify a final order or stay the imposition of fines and modified conditions imposed in the consent decree. The state appealed and the plaintiff-prisoners cross-appealed. The appeals court found that the court order mandating a maximum inmate population and imposing a fine if that order were violated, based on the extent of the violation, was not improper. In addition, the district court did not abuse its discretion by concluding that it could ensure compliance with the population cap order by fining the state for overcrowding, even though it did not identically fine the county to ensure its compliance with the court order. The court found the majority of problems at the county jail resulted from the large number of transfer-ready felons which the state would not receive, and found that the primary responsibility for the overcrowding crises at the jail lay with the state defendants. The district court did not abuse its discretion by holding the state responsible for 90% of the costs of the monitors for the time period after the state entered the litigation. The state's actions in failing to accept transfer-ready felons were the primary cause of overcrowding in the county's jails and it was that overcrowding that predominately necessitated the presence of the monitors under the consent decree. The district court had authority to modify the jail conditions consent decree. (Harris County Jails, Texas)

U.S. Appeals Court
QUALIFIED IMMUNITY

Anderson v. Romero, 72 F.3d 518 (7th Cir. 1995). An inmate who was infected with the human immunodeficiency virus (HIV) sued prison officials alleging violation of his constitutional right of privacy and the Illinois AIDS Confidentiality Act. The district court denied the officials' motion to dismiss and they appealed. The appeals court found that the inmate's claim regarding disclosure of his HIV status to other inmates or prison staff and other measures taken against him on the basis of his HIV status was barred by the doctrine of official immunity. The court noted that HIV-positive inmates can be segregated from the rest of the population, in view of the prevalence of HIV in prisons, the amount of violence and homosexual intercourse. However, the court found that the inmate's claim to damages based on the denial of barber services was not barred. The court also found that to deny all opportunity for exercise outside his cell would violate the Eighth Amendment unless the prisoner posed an acute security risk. If the only reason that prison officials denied the inmate haircuts and yard privileges was that he was HIV-positive, and there was no conceivable justification for the denial as an HIV-fighting measure, then prison officials could not be immune even in the absence of a case involving this type of arbitrary treatment. (Stateville Penitentiary, Illinois)

U.S. District Court
CONSENT DECREE

Austin v. Pennsylvania Dept. of Corrections, 876 F.Supp. 1437 (E.D.Pa. 1995). Inmates brought a class action pursuant to 42 U.S.C.A. Section 1983 and the Rehabilitation Act contesting the practices and conditions of confinement in state correctional institutions. After extensive discovery and numerous court proceedings, the parties engaged in settlement negotiations and submitted a proposed settlement agreement for court approval. The district court found that any applicable notice requirements for settlement of the class action were satisfied where on three separate occasions the Department of Corrections posted notices of the prospective settlement in common areas of all institutions housing class members as well as the location of copies of the settlement agreement and the ways in which to file objections with the court. The court found that the proposed settlement agreement fairly, reasonably, and adequately advanced and protected the interests of the plaintiff class and thus was approved. (State Correctional Institution ["SCI"]- Camp Hill, SCI-Cresson, SCI-Dallas, SCI-Frackville, SCI-Graterford, SCI-Greensburg, SCI-Huntingdon, the State Regional Correctional Facility at Mercer, SCI-Retreat, SCI-Rockview, SCI-Smithfield, SCI-Waymart, and SCI-Waynesburg, Pennsylvania)

U.S. Appeals Court
LIABILITY

Boyd v. Knox, 47 F.3d 966 (8th Cir. 1995). A prisoner sued various prison officials for Eighth Amendment violations as a result of the delay of dental care for an infected and impacted tooth. The U.S. District Court denied summary judgment and the parties appealed. The appeals court found that supervisors could not be held liable for any Eighth Amendment violations absent a showing of personal involvement in a violation or inaction constituting deliberate indifference toward a violation. Waiting three weeks to complete a referral form for dental care of the impacted and infected wisdom tooth created a genuine issue of material fact, precluding summary judgment for one prison official, as to whether the official violated the Eighth Amendment prohibition against deliberate indifference to a serious medical need. The medical need was obvious from the extent of the swelling. (Missouri Department of Corrections)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Browning v. Vernon, 44 F.3d 818 (9th Cir. 1995). A class of inmates brought an action against prison officials, alleging due process violations in connection with a program under which individuals were placed in correctional institutions to be evaluated for potential release on probation. The U.S. District Court denied the officials' motion for summary judgment and the officials appealed. The appeals court, affirming the decision, found that the inmates had a protected liberty interest in objective and reliable rehabilitation reports and that the liberty interest was clearly established when the prison officials allegedly denied such interest. An Idaho Supreme Court decision explicitly stated that such interest existed, and such a decision was binding. In addition, prison officials did not act reasonably in light of a preexisting law mandating due process in connection with the program, and therefore, the officials were not qualifiedly immune from the suit alleging denial of due process. The officials should have known, even though no court had found, that they violated the inmates' rights when they informed the inmates only 24 hours in advance of an evaluation rebuttal hearing, failed to give the inmates copies of recommendations regarding probation, and immediately placed inmates in solitary confinement so that they could not contact witnesses or use the law library. The lower court found that due process requires that the prison provide such inmates with staff assistance to contact witnesses and access to a telephone to contact legal counsel. An inmate does not have the due process right to personally contact witnesses. The court also found that inmates are entitled to a written notice of the right to call witnesses at the rebuttal hearing. They are also entitled to copies of staff evaluations or chronological reports, as well as full psychiatric evaluations completed on sex offenders or others. (North Idaho Correctional Institution)

U.S. District Court
CONTRACT
SERVICES

Burton v. Cameron County, Tex., 884 F.Supp. 234 (S.D. Tex. 1995). A detainee who suffered from AIDS brought Section 1983 and Texas tort claims actions against a sheriff, a physician for the jail, and the county for insufficient medical care. On motions for summary judgment by the county and the physician, the district court found that the physician under contract to provide medical services to the county jail was not liable to the detainee for alleged insufficient medical treatment. The detainee was given reasonable medical care and suffered no adverse effects from the time spent in jail. In addition, the physician was not liable to the detainee for alleged medical negligence because the detainee was not harmed by any alleged shortcomings of treatment, and any failure by the infirmary staff to properly provide the detainee with AZT treatment was not conduct which could be imputed on the physician. The physician was not liable to the detainee for intentional infliction of emotional distress regarding allegedly insufficient medical treatment. The administration of a placebo did not constitute extreme or outrageous conduct and significant care was provided by the infirmary staff in coordination with the care provided by the detainee's private physician. The detainee's private physician testified that the confinement had not affected the detainee's medical conditions or his mental health. (Cameron County Jail, Texas)

U.S. District Court
OFFICIAL
CAPACITY
QUALIFIED
IMMUNITY

Caffey v. Johnson, 883 F.Supp. 128 (E.D. Tex. 1995). A prisoner, proceeding pro se, brought a Section 1983 action against a prison officer and against the director of the Texas Department of Criminal Justice, Institutional Division, alleging that the officer wrongfully seized and either destroyed or lost the prisoner's Holy Koran, handkerchief with an Islamic prayer on it, and Islamic papers. The officer moved for summary judgment and the director moved to dismiss. The district court found that the director was being sued in his official capacity and was shielded by the Eleventh Amendment. The inmate claimed no individual actions or participation in any wrongdoing by the director, and the inmate stated explicitly and unequivocally that there was no personal action or knowledge by the director in the prison officer's alleged wrongful seizure and destruction of the inmate's religious items. The inmate sued the director on the sole basis of his public status. Since the inmate did not designate himself a Muslim in accordance with a prison regulation stating that only those prisoners who designated themselves with a particular religious group may possess religious paraphernalia, the inmate's Holy Koran, handkerchief with an Islamic prayer on it, and Islamic papers were contraband and it was not unreasonable for the prison officer to seize and discard these items. The officer was entitled to qualified immunity for purposes of the inmate's Section 1983 action. (Texas Department of Criminal Justice, Institutional Division, Stiles Unit)

U.S. District Court
CONTRACT SERVICES
STATE LIABILITY

Citrano v. Allen Correctional Center, 891 F.Supp. 312 (W.D.La. 1995). A civil rights case was filed in forma pauperis by pro se prisoners alleging that they were assaulted by prison officials while at a correctional facility operated by a private contractor (Wackenhut Corporation). The district court granted the defendants' motion to dismiss, finding that officials at a corrections facility operated by a private contractor were entitled to the same qualified immunity afforded to state prison officials, and that the facility was an arm of the state and was therefore immune from suit under the Eleventh Amendment. The court noted that the mere fact that the contractual ties of the private prison officers were different than that of state employees did not provide a logical basis for denying those workers the benefit of qualified immunity. The state legislature had indicated that private contracts for corrections are for the safety and welfare of the people of the state, as opposed to local interests; Eleventh Amendment immunity extends to state agencies that act as arms of the state, but does not extend to counties, cities or other political subdivisions of the state. In determining whether a suit against a state agency or similar agency is in fact a suit against a state, the court identified six factors that must be determined: (1) whether state statutes and case law characterize the agency as an arm of the state; (2) the source of funds for the entity; (3) the degree of local autonomy the entity enjoys;

(4) whether the entity is concerned primarily with local, as opposed to statewide, problems; (5) whether the entity has the authority to sue and be sued in its own name; and (6) whether the entity has the right to hold and use property. (Allen Correctional Center, Louisiana)

U.S. District Court
DELIBERATE
INDIFFERENCE

Coleman v. Wilson, 912 F.Supp. 1282 (E.D.Cal. 1995). Inmates challenged the adequacy of mental health care provided at institutions operated by the California Department of Corrections, alleging that the inadequacies were cruel and unusual punishment in violation of the Eighth Amendment. The district court reviewed the findings and recommendations of the chief magistrate judge after objections were filed by the defendants. The court found that evidence supported the magistrate's findings and recommendations regarding many aspects of the Department's mental health services, and ordered that a special master be appointed to monitor the Department's compliance with court-ordered injunctive relief. The court denied immunity for the governor, finding that he failed to establish that he lacked knowledge of systemic deficiencies, and ruling that he demonstrated deliberate indifference for Eighth Amendment purposes. The court suggested that after five years of litigation on this issue, the claimed lack of awareness was not plausible. The court made similar findings for other state officials, including the Director of the Department of Corrections. Applying the "deliberate indifference" standard, rather than the "malicious and sadistic" standard, the court found that the use of tasers and 37mm guns against inmates with serious mental disorders had caused serious and substantial harm to mentally ill inmates, whether or not they were on psychotropic medication. (California Department of Corrections)

U.S. District Court
CONTRACT SERVICES
NEGLIGENCE
SOVEREIGN
IMMUNITY

Coppage v. Mann, 906 F.Supp. 1025 (E.D.Va. 1995). A former Virginia prison inmate brought a § 1983 action alleging Eighth Amendment violations against a prison superintendent, physician, nurse and private consulting physician. The plaintiff also asserted state-law claims for medical malpractice, intentional infliction of emotional distress and assault and battery. The plaintiff claimed that his cancerous condition was misdiagnosed and that he was subjected to inhumane living conditions during his course of treatment. The district court granted summary judgment, in part, for the defendants, dismissing all federal claims. The district court retained jurisdiction over state-law claims. The court ruled that the inmate did not have claims for intentional infliction of emotional distress or assault and battery, that the inmate failed to establish deliberate indifference to his serious medical needs, and that the defendants were entitled to qualified immunity. The court also found that the acknowledged fact that the inmate sometimes had to lie in his own waste, was not immediately provided with a wheelchair, and was handcuffed to his bed as a last resort to treat his bedsores, did not make out an Eighth Amendment claim. However, the court found that a fact issue existed as to whether the prison physician's conduct amounted to gross negligence so as to deprive him of sovereign immunity. Although the prison was short-staffed with nurses, this did not establish an Eighth Amendment violation absent any evidence that nurses were not hired with the knowledge that, as a result, the inmate would be placed at substantial risk of living in inhumane conditions. (Rappahannock Security Center, Virginia)

U.S. District Court
POSTAGE
INDIGENT INMATES

Dawes v. Carpenter, 899 F.Supp. 892 (N.D.N.Y. 1995). A prison inmate sued state officials alleging civil rights violations. The district court dismissed the case, finding that the prison's restriction on free postage did not violate the inmate's rights. The inmate had alleged that the prison's elimination of a postage subsidy for non-legal mail violated the First Amendment. The court found that the new policy did not overly restrict most prisoners' ability to conduct nonprivileged communication with people outside prisons, where the inmates could receive incoming mail and visitors, make collect phone calls, and purchase stamps with money earned while in prison. (Great Meadow Correctional Facility, New York).

U.S. Appeals Court
SPECIAL MASTER
REMEDIES

Dilley v. Gunn, 64 F.3d 1365 (9th Cir. 1995). An inmate brought a § 1983 action against prison officials alleging violation of his right of access to courts by their failure to provide reasonable access to the prison's law library. The district court granted summary judgment for the inmate and entered an injunction requiring improvements to the library. The appeals court held that the appeal was moot because the inmate was transferred, but that remand was warranted to determine if the officials' conduct caused the mootness such that the injunction should not be vacated. A special master had been appointed by the district court, who recommended: expanding both the size of the library and its holdings; permitting inmates to have open access to the stacks or to check out four rather than three books at a time; a training program for inmate law clerks; increasing both the length and frequency of inmates' visits to the library; implementing a system for scheduling inmates' use of the library; and providing more opportunities for inmates with jobs to use the library. (Calipatria State Prison, California)

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE
DAMAGES

Frazier v. Forgione, 881 F.Supp. 879 (W.D.N.Y. 1995). An inmate brought a civil rights action under Section 1983 against prison officials for intentionally withholding legal papers from him in violation of his constitutional rights. The district court found that nominal compensatory damages were appropriate against a prison official for intentionally withholding the inmate's legal papers for more than two years, though the inmate did not suffer any actual damages because he was able to pursue all of his intended actions without the papers at issue. In addition, the inmate was entitled to punitive damages of \$500 against the prison official for acting deliberately over a two-year period to deny the inmate's rightful access to courts by confiscating papers that the inmate was using to proceed in court actions, though the inmate had copies or could reconstruct his notes. (Collins Correctional Facility, New York)

U.S. District Court
CONSENT DECREE-
MODIFICATION

Glover v. Johnson, 879 F.Supp. 752 (E.D. Mich. 1995). Prison officials sought to modify a remedial plan and a plan for vocational programs designed to remedy equal protection violations identified in a civil rights action brought by female inmates. The district court found that the prison officials' failure to substantially comply with a remedial plan designed to provide female inmates with educational and vocational opportunities comparable to those provided to male inmates precluded termination of the court's jurisdiction over the civil rights case by deleting the role of the compliance monitor and modifying the termination language of the plans. The prison officials were required to substantially comply with goals of the negotiated settlement before the court would rule that finality had been reached and its involvement was no longer required. (Huron Valley Women's Facility, Michigan)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROTECT
LIABILITY

Hale v. Tallapoosa County, 50 F.3d 1579 (11th Cir. 1995). A pretrial detainee filed a Section 1983 action against a county, its sheriff and a jailer arising from an alleged beating of the detainee by other inmates in a group cell. The U.S. District Court entered summary judgment in favor of the defendants and the detainee appealed. The appeals court, affirming in part, reversing in part and remanding, found that evidence that the jailer failed to check on the group cell during the hour between the last check and the beating was not sufficient to show deliberate indifference and causation necessary to hold the jailer individually liable for the detainee's injuries. However, genuine issues of material fact existed, precluding summary judgment for the sheriff and the county, on whether conditions of the cell subjected the detainee to a substantial risk of serious harm, whether the sheriff was deliberately indifferent to the risk, and whether the beating of the detainee was caused by the excessive risk of violence in the group cell resulting from an atmosphere of deliberate indifference. The evidence showed that the jail was overcrowded during the time in question. In addition, the sheriff testified that he knew of inmate violence during periods of overcrowding and that incidents had required hospitalization of inmates. Although the sheriff worked toward the construction of a new jail, the existing jail had no policy for classifying and segregating inmates, the jailer had received no professional training, and the jailer was stationed out of eyesight and earshot of the cell. (Tallapoosa County Jail, Alabama)

U.S. Appeals Court
CONSENT DECREE-
MODIFICATION
CONTEMPT
REMEDIES

Harris v. City of Philadelphia, 47 F.3d 1311 and 1333 and 1342 (3rd Cir. 1995). In a jail conditions case, appeals were taken from orders of the United States District Court assessing stipulated penalties against a city, directing production of a facilities audit required under a consent decree, declaring the city in contempt and dismissing a motion to modify the decree. The appeals court found that the imposition of penalties stipulated in the decree to be imposed for a delay in submitting planning documents "without any further direction from the Court," did not require notice and a hearing that would be required for a civil contempt sanction. In addition, the court was not required to find that there was no good cause for the city's delays for imposition of the penalties. Any additional cost if a facilities audit was submitted before the physical standards were approved did not make submission of the audit "impossible." The court also found that changes in administrative policy resulting from the election of a new mayor did not permit the city to unilaterally default on its obligations to the court and other litigants under the consent decree and did not preclude an imposition of a contempt sanction. In the jail conditions litigation, the dismissal of the city's motion to modify the consent decree was an inappropriate sanction for civil contempt based on a delay in submitting plans, as the sanction was not compensatory nor was it denied to have a coercive effect because it had no provision explicitly permitting the city to refile a motion once the documents were submitted. In addition, the dismissal could not be upheld as within the district court's discretion as a sanction for failure to comply with discovery. The U.S. District Court held the city in contempt for failing to comply with an order requiring the city to maintain a 90% occupancy rate in a residential drug treatment facility. The appeals court found that the city was provided notice and a hearing sufficient to satisfy its due process rights before the district court imposed a contempt sanction of \$125,000. Furthermore, the alleged unclean hands of some class members did not justify denying relief to the entire class. The appeals court found that absent any provision in a consent decree or an order of the court requiring the city to seek court approval before modifying its prisoner relief practice, the city's mere failure to do so before changing its procedures was not alone enough to sustain a finding of contempt. The court also found that the city violated the unambiguous provision of the consent decree in the prison overcrowding case, which supported a finding of contempt, when it failed to list for release inmates who fell into categories the city deemed "dangerous," i.e., those whose bail was set at \$75,000 or higher or who required mental health treatment. A paragraph of the decree from which the city derived its authority to not list "dangerous" inmates was superseded by a subsequent decree. (Philadelphia Prison System, Pennsylvania)

U.S. Appeals Court
QUALIFIED IMMUNITY

Hayes v. Long, 72 F.3d 70 (8th Cir. 1995). A Muslim inmate brought a § 1983 action against prison officials after he was disciplined for refusing to handle pork while he was working in a prison kitchen. The district court granted summary judgment for the prison officials based on qualified immunity and the inmate appealed. The appeals court reversed the lower court decision, finding that Muslim inmates had clearly established rights not to handle pork at the time the plaintiff was disciplined and that it would be unreasonable for prison officials to be unaware of such rights. (Cummins Unit, Arkansas Department of Correction)

- U.S. District Court
CONSENT DECREE-
MODIFICATION
COURT MONITOR
SPECIAL MASTER
CONTEMPT
SANCTIONS
- Hook v. State of Ariz., 907 F.Supp. 1326 (D.Ariz. 1995). Three separate civil rights cases filed by prisoners were consolidated to resolve the issue of payment of special masters' fees. The court granted the plaintiffs' motion for contempt and denied the defendants' motion to modify previous orders. The court also held unconstitutional a state statute which purported to affect lawful orders of the U.S. District Court requiring payment of special masters fees; the statute prohibited payment of the fees absent legislative appropriations. The court ruled that it could properly order the state to pay special masters fees without violating the Eleventh Amendment. The court held that the Director of the Arizona Department of Corrections was subject to civil contempt for refusing to pay special masters fees noting that there was no "good faith" exception to the requirement of obedience to a court order. (Arizona Department of Corrections)
- U.S. District Court
FAILURE TO PROTECT
- Plumeau v. Yamhill Cty. Sch. Dist., 907 F.Supp. 1423 (D.Or. 1995). A student who was sexually abused by a janitor sued the school district and the janitor claiming that the school district had an affirmative duty to protect the student from the criminal actions of its employees. The district court found for the defendants, noting that the state's affirmative constitutional duty to protect only arises with respect to particular individuals, such as those persons the state has taken into its custody such as prison inmates or involuntarily committed mental patients. (Yamhill County School District #40, Oregon)
- U.S. District Court
GOVERNMENTAL
LIABILITY
INDIVIDUAL
CAPACITY
- Landfair v. Sheahan, 878 F.Supp. 1106 (N.D. Ill. 1995). A former pretrial detainee at a county jail brought a pro se civil rights complaint against a sheriff and various corrections officials complaining of conditions at the jail. On a motion to dismiss, the district court found that the plaintiff sufficiently stated a claim against the sheriff in his individual capacity with respect to jail conditions, as it was reasonable that the sheriff was aware of the overcrowding at the county jail and the problems which accompanied it. In addition, the detainee stated a claim against the executive director of the county department of corrections and the superintendent of the county jail, by arguing that they were aware of the jail conditions since the detainee submitted grievance reports to them and they visited his wing periodically. (Cook County Jail, Illinois)
- U.S. Appeals Court
DAMAGES
DELIBERATE
INDIFFERENCE
42 U.S.C.A.
Section 1983
- Marsh v. Jones, 53 F.3d 707 (5th Cir. 1995). A state prisoner filed a Section 1983 action against prison officials asserting claims seeking recovery for personal injury, inadequate medical care, and damage to her engagement ring arising from a slip and fall accident. The U.S. District Court dismissed the case for failure to exhaust administrative remedies and the prisoner appealed. The appeals court, affirming the decision, found that administrative procedures could have allowed the prisoner to recover monetary damages for personal injury and for allegedly deliberate indifference to her medical needs and, thus, the district court did not abuse its discretion under the Civil Rights of Institutionalized Persons Act by dismissing such claims for failure to justifiably explain her failure to exhaust administrative remedies. Furthermore, the prisoner's claim for monetary relief for damage to her engagement ring during the slip and fall accident presented a negligence claim that was not actionable under Section 1983. (Louisiana Correctional Institute for Women, St. Gabriel, Louisiana)
- U.S. Appeals Court
NEGLIGENCE
- Morissette v. Peters, 45 F.3d 1119 (7th Cir. 1995). An inmate sued a prison and prison officials for violations of Section 1983 based on confinement stemming from alleged drug possession in prison. The U.S. District Court granted summary judgment to the defendants and the inmate appealed. The appeals court found that the prison officials could not be liable under the Eighth Amendment for denying humane conditions of confinement absent a showing that the officials were even remotely aware of the alleged unsanitary conditions in the cell in which the inmate was confined. Even if the guards were aware of the exposed wires in the cell and failed to fix the problem during the inmate's brief stay in controlled segregation, the guards were only guilty of negligence which would not support an Eighth Amendment claim. (Pontiac Correctional Facility, Illinois)
- U.S. District Court
DAMAGES
PUNITIVE
DAMAGES
- Nettles v. Griffith, 883 F.Supp. 136 (E.D. Tex. 1995). A prisoner who was placed in administrative segregation without a hearing and was injured when he exited his cell after it was set on fire, brought a Section 1983 action against the county sheriff and other officials. The district court found that the appropriate damage award for the prisoner was \$50 per day of segregation. The prisoner was placed in a section of the jail designated primarily for the mentally imbalanced, where his cell was set on fire and he was doused with hot water, feces, and urine. The prisoner suffered mental and emotional toll, and the prisoner's privileges such as the ability to attend church services and the day room area were diminished. However, the prisoner was not entitled to punitive damages. The only willfulness with regard to his claim was the willful decision to place him in administrative segregation, and the lack of procedure accorded to the prisoner was more the result of a misstatement and miscommunication than malice. (Jefferson County Detention Center, Beaumont, Texas)
- U.S. District Court
QUALIFIED
IMMUNITY
QUASI-JUDICIAL
IMMUNITY
- Parisie v. Morris, 873 F.Supp. 1560 (N.D.Ga. 1995). A state inmate brought a Section 1983 action against members of a state parole board claiming that members departed from parole decision guidelines in setting his tentative release date, which violated his due process and equal protection rights. On motions to dismiss the district court found that the alleged failure by the members of the parole board to set the inmate's release date in accordance with parole decision guidelines did not violate due process. Inmates have no legitimate expectation of, and no liberty interest in, receiving parole. However, the inmate did

state an equal protection claim against the director of the parole board despite the contention that state law did not empower the director to make parole decisions. The inmate alleged that he wrote to the director after discovering that the board had incorrectly calculated his parole success likelihood factor to let him know of the error. The inmate received a letter in response in which the director contended to write on behalf of the board and explained the board's reasoning as his own. It was also found that the inmate did not have to exhaust administrative remedies where the inmate's claim was cognizable under Section 1983. The inmate was challenging the process employed by the board rather than the result reached, claiming that the board members violated his equal protection rights by impermissibly considering his ethnicity in making its decision. Although the chairman of the state parole board was entitled to quasi-judicial immunity from the suit for damages under Section 1983 and the board members performed a quasi-judicial function in considering the inmate for parole, the board members were not entitled to qualified immunity in connection with the claim that they considered the inmate's ethnicity in setting his release date. (Ware Correctional Institution, Waycross, Georgia)

U.S. Appeals Court
CONSENT DECREE
CONTEMPT

Saahir v. Estelle, 47 F.3d 758 (5th Cir. 1995). An inmate filed a motion for civil contempt against state prison officials alleging that they violated a consent decree in a Section 1983 action by confiscating and not returning nonreligious tapes. The U.S. District Court granted the motion and required the prison officials to return the tapes or reimburse the inmate. The prison officials appealed. The appeals court found that the state prison officials did not waive their Eleventh Amendment immunity from the enforcement of a provision of the Section 1983 consent decree by entering into a settlement agreement. The prison officials did not expressly waive their immunity and in fact argued that the settlement agreement did not cover non-religious tapes. (Texas Department of Criminal Justice)

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Sisneros v. Nix, 884 F.Supp. 1313 (S.D.Iowa 1995). A prisoner incarcerated in an Arizona facility brought suit against Iowa prison officials alleging deprivation of his First Amendment rights while he was confined in Iowa before his transfer. The district court held that the prison regulation which required that mail sent and received by the prisoner be in the English language did not violate the inmate's First Amendment rights. However, the court found that Iowa officials had erred by transferring the prisoner to Arizona in retaliation for his assertion of his First Amendment rights, and that the prisoner was entitled to compensatory and punitive damages. The court issued an injunction which required Iowa officials to exercise all available efforts to secure the prisoner's return to Iowa, although it was asserted that it would be ineffectual because it could not be applied to Arizona officials who have the ultimate transfer decision authority. This case compelled the district court judge to begin his decision with the following: "Given the crescendo of public uproar over frivolous prisoner litigation clogging the federal courts, this case is an important reminder that however fortissimo the public clamor, the court must always listen for a solo voice with a legitimate complaint of a constitutional violation. This is such a case." The prisoner was transferred from Arizona to Iowa under an interstate compact. Prison officials ordered him transferred back to Arizona in retaliation for having brought grievances and lawsuits. The court found that the prisoner was entitled to compensatory damages of \$5,000, which was approximately \$10.50 per day, covering out-of-cell time lost when Arizona authorities placed him in involuntary protective custody, loss of access to yard and exercise facilities and loss of access to communal activities including meals and sports. The court also awarded punitive damages of \$1,000 against each Iowa official who had been involved in the wrongful transfer. On appeal (95 F.3d 749) the court found that the transfer was warranted and granted qualified immunity for the officials. (Iowa State Penitentiary)

U.S. District Court
CONTEMPT
QUALIFIED
IMMUNITY
DAMAGES

Smith v. Norris, 877 F.Supp. 1296 (E.D. Ark. 1995). An inmate sought declaratory and injunctive relief based on alleged unconstitutional conditions of confinement. The district court found that the inmate was entitled to injunctive relief based on the failure of prison officials to comply with a previous court order regarding security checks of an open barracks unit in the prison. The record clearly demonstrated that prison officials and the state agreed in a prior case that a serious problem existed and they agreed on how to solve the problem and funds were actually appropriated to alleviate the problem. The prison officials did not carry through on their agreement with the Department of Justice, instead making a unilateral decision to ignore the problem and use the funding elsewhere. The prison officials were not entitled to qualified immunity from liability. The inmate's constitutional right to reasonable protection from inmate-on-inmate violence was clearly established at the time of his assault, and a previous court opinion had set forth conditions of confinement for the open barracks unit. It required a correctional officer in the hallway to constantly monitor two opposing open barracks containing up to 100 inmates each and hourly security patrols. Prison officials failed to carry out the required security patrols and knew that they were violating clearly established constitutional rights. The inmate had been stabbed by a fellow inmate. The district court found that risks occasioned by prison officials' policy which permitted inmates who had received special permission to possess dangerous hobby craft tools in an open barracks unit created not only an obvious risk of serious harm to other inmates but a pervasive risk of such harm and constituted deliberate indifference to an inmate's constitutional rights under the Eighth Amendment. The inmate was entitled to monetary damages under Section 1983. (Cummins Unit, Arkansas Department of Correction)

U.S. District Court
DELIBERATE
INDIFFERENCE

Stone-El v. Sheahan, 914 F.Supp. 202 (N.D.Ill. 1995). A pretrial detainee brought a § 1983 civil rights action against a sheriff, executive director of the county department of corrections, and the superintendent of the county jail. The detainee alleged that various conditions of his confinement violated his right to due process. The district court granted the defendants' motion to dismiss. The court found that the defendants had not personally caused the conditions at the jail, nor could they limit the number of pretrial detainees assigned there or appropriate funds to improve conditions. The court also found that the detainee failed to allege conditions of confinement serious enough to violate the objective component of a due process claim. The detainee had asserted that he had slept on the floor without a mattress, that the jail was noisy, that the jail lacked showers, that he was not able to maintain his personal hygiene, that ventilation was poor, and that inadequate security permitted gangs to intimidate him. The detainee also alleged a lack of exercise opportunities, but the court found that even dramatic restrictions on outdoor exercise do not violate due process as long as detainees have ample opportunities to participate in indoor activity. The court noted that the detainee failed to allege any harm caused by the poor ventilation or any adverse health effects from the alleged lack of exercise. (Cook County Jail, Illinois)

U.S. District Court
OFFICIAL
CAPACITY

Summers v. Sheahan, 883 F.Supp. 1163 (N.D. Ill. 1995). An inmate brought a pro se action against prison officials seeking compensatory and punitive damages for alleged violations of his constitutional rights. On the defendant officials' motion to dismiss, the district court found that the inmate's allegation, that supervisors' failure to deal with the overcrowding problem constituted a decision or custom, failed to state an official capacity claim under Section 1983. The inmate failed to point to any conduct by the supervisors approving or condoning any policy or regulation that promoted inmates living in overcrowded or unsanitary conditions. In addition, the inmate did not allege that the supervisors were personally involved in the overcrowded or unsanitary conditions, and the inmate did not allege a pattern of conduct by the supervisors regarding the denial of adequate medical attention or unsanitary conditions. (Cook County Department of Corrections, Illinois)

U.S. District Court
QUALIFIED IMMUNITY
QUASI-JUDICIAL
IMMUNITY
FAILURE TO
PROTECT
OFFICIAL CAPACITY

Viero v. Bufano, 901 F.Supp. 1387 (N.D.Ill. 1995). A parent of a juvenile who committed suicide while in custody filed a § 1983 action against a probation officer and corrections employees. The district court denied the defendants' motion for dismissal, finding that the complaint sufficiently alleged that the son had presented a substantial suicide risk of serious medical needs, where it was alleged that the 14-year-old had a history of severe psychological and psychosocial problems, that just a few months before his death he was confined for mental treatment and given a prescription, and that he had expressed suicidal tendencies on at least two occasions. The court found that the complaint sufficiently alleged that the defendants were deliberately indifferent to the son's risk or need, where the complaint alleged that the parent personally advised both individuals of the son's mental history and medication needs, and also advised a department employee that the son had suicidal thoughts. The complaint asserted that the probation officer did not communicate information on the son's mental health to the department and that a department employee did not ensure that the son received adequate counseling and observation. The court found that the defendants were not entitled to qualified immunity on the basis of the objective reasonableness of their actions nor were they entitled to a dismissal on the basis that the complaint appeared to seek damages against them in their official capacities. The court also found that the probation officer was not entitled to quasi-judicial immunity. (St. Charles Youth Correctional Facility, Illinois)

U.S. District Court
42 U.S.C.A.
Section 1983

Westmoreland v. Brown, 883 F.Supp. 67 (E.D. Va. 1995). A pretrial detainee sued a city and city officials for a violation of Section 1983 based on injuries he suffered when a jail guard arranged for an attack by other inmates. The district court found that the city and the city officials were not liable for injuries suffered by the pretrial detainee as they could be held liable only for the guard's actions taken under color of law. (Richmond City Jail, Virginia)

U.S. Appeals Court
FAILURE TO
SUPERVISE

Zarnes v. Rhodes, 64 F.3d 285 (7th Cir. 1995). A pretrial detainee filed a pro se § 1983 action against guards, alleging violation of her due process rights. The district court dismissed in part and entered summary judgment for the guards in part. The appeals court affirmed in part and reversed in part, finding that allegations that a guard showed deliberate indifference for the detainee's rights by placing her in a cell with a mentally ill inmate who presented an imminent potential for assault were sufficient to state a § 1983 claim. But the appeals court found that allegations that a guard failed to supervise subordinate guards and allowed them to provide inadequate medical care failed to state a claim. The court also found that the detainee was not entitled to a pre-segregation hearing; she had been segregated for her own protection and that of other inmates after a verbal confrontation. (Sangamon County Jail, Illinois)

1996

U.S. Supreme Court
DAMAGES

BMW of North America, Inc. v. Gore, 116 S.Ct. 1589 (1996). After a jury awarded a purchaser of an automobile compensatory damages of \$4,000 and punitive damages of \$4,000,000, the defendant appealed. The appeals court reduce the punitive damages award to \$2,000,000. The U. S. Supreme Court ruled that the punitive damages award was grossly excessive. (Alabama)

U.S. Appeals Court
DAMAGES
GOVERNMENTAL
IMMUNITY

Brooks v. George County Miss., 84 F.3d 157 (5th Cir. 1996). A pretrial detainee whose charges were dropped brought a § 1983 action against a county and various officials. The district court entered a judgment upon jury verdict for the detainee for claims of involuntary servitude and violation of due process based on lost wages. The appeals court affirmed in part, vacated in part, rendered in part and remanded. The court held that the work performed by the detainee during his incarceration was not involuntary servitude and that he was not deprived of property under the due process clause when he did not receive additional wages for work on private property. The court found that the sheriff, but not a deputy, deprived the detainee of a property right in wages for work performed on public property and that the sheriff was not entitled to qualified immunity. The court held that the sheriff had a policy of not paying wages to detainees, thus rendering the county liable for the constitutional deprivation. The sheriff had a statutory duty under Mississippi law to keep records of work performed by pretrial detainees and to transmit such records to ensure that detainees were paid for their work. This duty was mandatory, not discretionary and therefore the sheriff was not entitled to qualified immunity. The statute created a legitimate expectation of entitlement to compensation for work on public property by pretrial detainees. While the detainee was confined in the jail he requested and was granted trusty status which allowed him the freedom to roam in and out of his cell, the Sheriff's office, the jail, and the surrounding grounds. While incarcerated the detainee performed, at his own request, various services for the sheriff, the county and others on public and private property. He performed these services to secure his release from the jail during the day and to earn extra money by working on the outside. But the detainee was not compensated for the services he performed on public property, although he was sometimes paid money or received goods in exchange for services rendered on private property. After a five-day trial the jury returned a verdict for the detainee against the sheriff and two deputies, and against the county, awarding \$50,000 damages for the claim of involuntary servitude and \$20,000 for lost wages under his due process claim. The jury also awarded punitive damages against the sheriff (\$5,000) and a deputy (\$500) in their individual capacities. (George County Jail, Mississippi)

U.S. District Court
42 U.S.C.A Sec. 1983

Byrd v. Moseley, 942 F.Supp. 642 (D.D.C. 1996). An inmate brought a pro se § 1983 action alleging that he was denied permission to participate in a program in retaliation for filing a previous lawsuit. The district court dismissed the case in part, and granted summary judgment to the defendants. The court found that the inmate had no constitutional right to participate in a particular educational or vocational program, and that he failed to show that he had been the victim of retaliation. The court also found that a nonprofit corporation, which operated the "Take it From Me" program at the prison, did not act under the color of state law. (District of Columbia Maximum Security Facility, Lorton, Virginia)

U.S. District Court
QUALIFIED
IMMUNITY

Carter v. Kane, 938 F.Supp. 282 (E.D.Pa. 1996). A state inmate brought an action against a prison hearing examiner who presided over two of his disciplinary proceedings, alleging violation of his due process rights and retaliation for bringing a suit against the examiner. The district court found that the examiner's alleged conduct--imposing a harsher penalty due to the fact that the inmate would not plead guilty to a disciplinary charge--did not "shock the conscience" and therefore did not violate the inmate's substantive due process rights. The court noted that the harsher penalty involved only an additional 15 days of disciplinary custody. However, the court denied qualified immunity for the examiner in connection with the inmate's procedural due process claim, finding that treating inmates who invoke the hearing process as a burden undermines the purpose of the hearing process itself. The court denied summary judgment for the examiner on the procedural due process claim. (Pennsylvania)

U.S. Appeals Court
FAILURE TO PROTECT

Davis v. Fulton County, Ark., 90 F.3d 1346 (8th Cir. 1996). A victim of rape and assault by a prisoner who had escaped from a county detention center brought an action alleging claims under § 1983 against county staff and officials. The district court dismissed the claims and the appeals court affirmed. The court found that the victim failed to establish that the danger to her resulting from the prisoner leaving the detention center was any greater than that faced by the general public in the area, as required to maintain a § 1983 claim. The court also found that the victim failed to allege that the duty jailer acted intentionally, or was not performing official county functions in failing to prevent the prisoner from escaping. (Fulton County Detention Center, Arkansas)

U.S. District Court
QUALIFIED IMMUNITY
DAMAGES

Dean v. Thomas, 933 F.Supp. 600 (S.D.Miss. 1996). Pretrial detainees filed a § 1983 action against jail officials and members of an inmate disciplinary board alleging violation of their due process rights when they were placed in lockdown without any hearing. Lockdown consisted of confinement in a one-man cell for approximately 23 hours each day; access to a dayroom which offered access to a shower and telephone was allowed one hour daily. The detainees were locked down for 34-35 days. The district court found that the inmates' due process rights were violated and that board members were not entitled to qualified immunity. Two officers who reported the disciplinary infractions were immune from liability because they were not involved with the subsequent disciplinary process. Each detainee was awarded \$300 damages which the court found was reasonable under the circumstances. The court noted that the U.S. Supreme Court decision in Sandin did not stand for the proposition that pretrial detainees may be punished without due process if the punishment does not impose atypical and significant hardships on the detainees. (Hinds County Detention Center, Mississippi)

U.S. District Court
QUALIFIED IMMUNITY

Dugas v. Jefferson County, 931 F.Supp. 1315 (E.D.Tex. 1996). A female arrestee brought a § 1983 action against a county and a sheriff's deputy claiming that a strip search ordered by the deputy following her arrest for a misdemeanor violated her Fourth Amendment rights. The district court denied the deputy's motion for summary judgment, finding that he was not entitled to a qualified immunity defense because it was clear at the time of the deputy's order that a strip search of a minor offense arrestee violated the Fourth Amendment. The court also found that the deputy was not shielded from civil liability for illegal acts simply because he was following orders. (Jefferson County Jail, Texas)

U.S. District Court
DELIBERATE
INDIFFERENCE

Estep v. Dent, 914 F.Supp. 1462 (W.D.Ky. 1996). An inmate moved for a preliminary injunction in this suit against prison officials. The district court denied the motion with regard to the inmate's allegation that he was deprived of opportunities for outdoor exercise while he was housed in a particular housing unit. The court noted that prison officials had already begun to build an outdoor recreation site for that unit and therefore recognized the need and were resolving the problem. The court also denied the motion with regard to the inmate's assertion that his safety was endangered because prison officials allowed inmates of different classifications to exercise together. The court granted the inmate's motion with regard to his claim that the prison policy which required him to cut his earlocks violated the Religious Freedom Restoration Act. The court found that the inmate established the likelihood of success on his claim that earlocks were a component of the Orthodox Hasidic Judaism faith, and that the inmate adhered to the tenets of his faith religiously. Requiring the inmate to cut his earlocks would substantially burden the inmate's faith, according to the court, and prison officials had failed to establish that the policy was the least restrictive means of furthering its interest in maintaining security, particularly in light of the fact that there was a three-month delay before the inmate's earlocks were cut. (Kentucky State Penitentiary)

U.S. District Court
DAMAGES

Evans v. Hennessy, 934 F.Supp. 127 (D.Del. 1996). An inmate sued a guard alleging violation of his civil rights when the guard struck him twice on the head with a closed fist. The court found that evidence established that the guard struck the inmate without justification or reasonable apprehension of physical harm, in violation of the Eighth Amendment. The court awarded damages in the amount of \$7,500. However, the court found that moving the inmate away from other prisoners to a cell closer to the guard post to prevent him from disrupting and inciting other inmates was not a violation of the inmate's First Amendment right of free speech, and the change of cells did not violate any constitutionally protected liberty interest because the inmate was not moved to a more restrictive unit. (Sussex Correctional Institution, Delaware)

U.S. District Court
DELIBERATE
INDIFFERENCE

Freeman v. Fairman, 916 F.Supp. 786 (N.D.Ill. 1996). A deceased inmate's children and the special administrator of his estate filed a § 1983 civil rights action against a county and county officials, alleging an Eighth Amendment violation in connection with the death of the inmate. The district court dismissed the federal court claims but retained jurisdiction for related state court claims. The court found that a single instance of improper medical care, such as the one at issue, was insufficient to show a governmental policy or custom to support § 1983 liability. The court also found that the plaintiffs failed to sufficiently allege the requisite deliberate indifference to state an Eighth Amendment claim. The plaintiffs had alleged that the county failed to identify any abnormality in the size of the inmate's liver and administered tuberculosis medication to him at several times the normal dosage, leading to his death while in custody. (Cook County Department of Corrections, Illinois)

U.S. District Court
QUALIFIED
IMMUNITY

Garrett v. Angelone, 940 F.Supp. 933 (W.D.Va. 1996). A state prisoner brought a pro se action against prison officials asserting § 1983 claims and violation of the Americans with Disabilities Act (ADA). The district court found that prison officials were entitled to qualified immunity from monetary damages on the inmate's ADA claims because of uncertainty about the applicability of ADA to state prisons. The court also found that the prisoner's allegations were insufficient to support a claim under ADA. The court also found that changes in the prisoner's custody status, security status, and earning rates for good conduct time did not violate due process. The court noted that an inmate's security level, custody status and opportunity to earn good conduct time are subject to change at any time during incarceration based on the behavior of the inmate and discretion of prison officials. The court also noted that an inmate's parole eligibility date and mandatory parole release date are estimates only, subject to change based on changes in an inmate's other classifications. (Virginia Dept. of Corrections)

U.S. District Court
CONTEMPT
FINES
SANCTIONS

Glover v. Johnson, 931 F.Supp. 1360 (E.D.Mich. 1996). Female prisoners moved to hold prison officials in an ongoing class action which challenged educational and vocational opportunities available to female prisoners in Michigan. The district court held prison officials in contempt of various orders relating to court access, vocational programs, and apprenticeship programs at women's facilities. The court assessed fines of \$500/day until compliance with all court orders regarding access to courts was achieved and ordered prison officials to submit policies and plans to achieve compliance in this and other areas. The court also levied a \$500/day fine until compliance was achieved in the areas of vocational programming and another \$500/day fine until compliance was achieved in the area of apprenticeship programming. The court found that the officials' clear, positive and repeated violation of orders warranted significant monetary contempt sanctions. (Michigan Department of Corrections)

U.S. Appeals Court
DAMAGES

Goff v. Burton, 91 F.3d 1188 (8th Cir. 1996). A prisoner brought a § 1983 action against prison officials alleging damages arising out of retaliatory transfer and punishment. The district court entered judgment for the prisoner and the appeals court affirmed. The appeals court found that the sequence of events supported the determination that the prisoner was transferred from a correctional center to a penitentiary in retaliation for a civil rights action the prisoner had brought against the prison. The appeals court also found that the district court could conclude that a disciplinary action imposed on the prisoner was in retaliation for filing a suit, as the penitentiary did not put forward "some evidence" in support of its disciplinary action. The appeals court held that the trial court could impose damages of \$2,250 for 225 days spent in segregation. The court noted that although prison officials had information tending to implicate the prisoner in an assault, they took no action until after the civil complaint had been received. (Iowa State Penitentiary)

U.S. District Court
CLASS ACTION

Hancock v. Thalacker, 933 F.Supp. 1449 (N.D.Iowa 1996). Prisoners sued a warden and other prison officials alleging that being disciplined for filing grievances containing false or defamatory statements violated their constitutional right to petition for the redress of grievances. The district court refused to certify the suit as a class action but denied summary judgment for the defendants, allowing the inmates to pursue their claims for declaratory and injunctive relief. The court found that disciplining inmates for false or defamatory statements in grievances based on less than a preponderance, or greater weight, of evidence that the inmate knowingly made such statements, would violate an inmate's right of petition. The court also found that an inmate's rights would also be violated if the inmate were not provided with notice of the burden of proof to sustain the charge. The court noted that interference with an inmate's "kite," which was the routine means of direct communication with the warden, would constitute a chilling of the inmate's right to petition for redress of grievances. (Iowa Men's Reformatory)

U.S. Appeals Court
PUNITIVE DAMAGES

Harris v. Chapman, 97 F.3d 499 (11th Cir. 1996). A Rastafarian inmate brought a § 1983 action against officers of a "closed custody" facility alleging that they forcibly removed him from his cell and had his hair cut while beating him and using racial slurs. The district court jury exonerated five defendants but awarded \$500 in punitive damages against the sixth. The appeals court held that evidence supported the punitive damages award against the sixth officer. The officer allegedly kicked and beat the inmate, snapped his head back with a towel, "mugged" or slapped him twice in the face, and harassed him with several racial epithets and other taunts. The court also held that Florida's hair length rule does not violate the First Amendment or RFRA. (Martin Correctional Institution, Florida)

U.S. Appeals Court
REMEDIES
QUALIFIED
IMMUNITY

Jensen v. Clarke, 94 F.3d 1191 (8th Cir. 1996). State prison inmates brought a § 1983 action against prison officials alleging that randomly assigning new inmates to double cells substantially increased the risk of violence by cellmates. On remand from an appeal of a remedial plan, the district court ruled that prison officials had actual knowledge of and disregarded a substantial risk of safety to inmates posed by random cell assignments. The appeals court affirmed, finding that the practice was cruel and unusual punishment and noting that this suit was a failure-to-protect case focusing on the manner of assigning new inmates to cells, rather than a prison crowding case. The court found that cruel and unusual punishment was established by evidence that demonstrated the increased number of inmates found guilty of violent offenses, the number of inmates requesting protective custody, and anecdotal evidence of violence from prisoners. The appeals court held that prison officials were entitled to qualified immunity in their individual capacities in light of the diversity of precedent on the need for classifying cellmates. The appeals court found that a district court injunction which required prison officials to use available classification information to determine cellmate compatibility was a proper remedy, after officials chose to take a premature appeal rather than remedy the constitutional violation. The appeals court held that the Eleventh Amendment did not bar the award of attorney fees as an ancillary to prospective relief and that limits on fee awards under the Prison Litigation Reform Act (PLRA) did not apply retroactively. The court found that reductions used to make a lodestar award of attorney fees were not abuses of discretion. The court had used a 10% reduction of the number of hours sought by the attorneys, while the state had requested a 50% reduction. The court had also made a 15% reduction of attorney fees for partial success despite the state's request for a 75% reduction, noting that the inmates had prevailed on the primary claim that the prison was unsafe. (Nebraska State Penitentiary)

U.S. District Court
FAILURE TO PROTECT

Lacy v. Berge, 921 F.Supp. 600 (E.D.Wis. 1996). An inmate filed a suit seeking injunctive relief and monetary damages for alleged violation of his civil rights. The district court held that a prison guard did not act with deliberate indifference toward a serious risk of harm faced by the inmate, even assuming that the guard watched a fight briefly and did not intervene. The inmate claimed his attacker was armed with a shampoo brush with which he was beating him unconscious, the inmate did not establish that the fight was readily preventable or that it would have been reasonable for the guard to have tried to stop the fight, or that the guard acting alone could have ended the fight any sooner. The court also held that the alleged failure of prison officials to investigate the fight thoroughly and to refer the attacking inmate to the district attorney for criminal prosecution did not violate the inmate's constitutional rights, as the inmate suffered no harm from the nonprosecution of his attacker. The court found that the attacking inmate was not subject to suit under § 1983. (Fox Lake Corr. Institution, Wisconsin)

- U.S. District Court
**QUALIFIED
 IMMUNITY
 COMPENSATORY
 DAMAGES
 PUNITIVE DAMAGES**
- Mathie v. Fries, 935 F.Supp. 1284 (E.D.N.Y. 1996). A former inmate of a county correctional facility brought an action against the facility's Director of Security alleging that the director sexually abused him while he was confined as a pretrial detainee. The district court entered judgment for the inmate, finding that evidence was sufficient to support findings that the director repeatedly sexually abused the inmate and that the director sodomized the inmate while he was handcuffed to pipes in the security office. The court found that these acts violated the inmate's due process rights and that the director was not qualifiedly immune from § 1983 claims, awarding compensatory damages of \$250,000 and punitive damages of \$500,000. The court noted that evidence showed that the inmate sustained physical injury to his anal area and suffered from post-traumatic stress disorder as a result of sexual abuse by the director. The court called the director's action an outrageous abuse of power and authority. (Suffolk County Correctional Facility, New York)
- U.S. Appeals Court
**QUALIFIED
 IMMUNITY**
- Sisneros v. Nix, 95 F.3d 749 (8th Cir. 1996). A prisoner incarcerated in an Arizona facility sued Iowa prison officials alleging First Amendment violations as a result of his retaliatory transfer. The district court granted summary judgment to the inmate on a damage claim but the appeals court reversed in part and remanded. The appeals court found that the officials were entitled to qualified immunity. (Iowa State Penitentiary)
- U.S. District Court
**QUALIFIED
 IMMUNITY**
- Warren v. Keane, 937 F.Supp. 301 (S.D.N.Y. 1996). Prisoners brought a § 1983 action against prison officials alleging that their exposure to environmental tobacco smoke (ETS) violated their Eighth Amendment rights. The district court denied the defendants' motion for summary judgment, finding a fact question as to whether the level of smoke permeating the prison was so severe as to be a danger to the health of prisoners. The court also found that a fact question as to whether a prison corrections officer and fire and safety officer were entitled to qualified immunity precluded summary judgment. The court ruled that supervisors did not have qualified immunity because they were chargeable with the knowledge of the conditions of the prison and with the knowledge that second-hand smoke could cause serious health problems. The prisoners alleged that smoke permeated the facility due to underenforcement, inadequate smoking rules, overcrowding, and poor ventilation. (Ossining State Correctional Facility, New York)
- U.S. District Court
PERSONAL LIABILITY
- Webb v. Lawrence County, 950 F.Supp. 960 (D.S.D. 1996). A prisoner sued county correctional officials alleging civil rights violations under § 1983 and common-law negligence, seeking compensatory and punitive damages in connection with a sexual assault by another prisoner. The district court granted summary judgment for the defendants and dismissed the negligence and punitive damages claims. The court ruled that the incarceration of the plaintiff in the same cell as a prisoner who sexually assaulted him did not give rise to a cause of action against corrections officials under § 1983. The court found that the officials had no reason to be aware and were not in fact aware of an excessive risk to the plaintiff's health or safety, noting that the prisoner who committed the assault had assaulted no other prisoners while incarcerated nor had the plaintiff notified officials of his fear of his cellmate or of any assaults until he had been assaulted for four straight days. The court also found that under South Dakota law, the purchase of liability insurance by the county on behalf of prison officials did not waive the officials' statutory immunity from personal liability for negligence. (Lawrence County Jail, South Dakota)
- 1997**
- U.S. District Court
 42 USCA Sec. 1983
**RICO-Racketeer Infl.
 & Corrupt Organ. Act**
- Alley v. Angelone, 962 F.Supp. 827 (E.D.Va. 1997). Prisoners brought a civil rights action against corrections officials and the district court dismissed the case. The court found that the prisoners could not recover under the civil remedies section of the Racketeer Influenced and Corrupt Organizations Act (RICO) where they did not allege that they were injured in their business. The court held that the prisoners did not have a constitutional right to prison work assignments or a constitutionally protected interest in continued prison employment. The prisoners also failed to state a § 1985 claim with their allegations that corrections officials engaged in a conspiracy to under-staff facilities and to incite riots. The court found that due process was not required before a prison lockdown, as lockdowns were within the normal range of incarceration. (Virginia Department of Corrections)
- U.S. Appeals Court
**PLRA-Prison Litigation
 Reform Act
 CONSENT DECREE-
 MODIFICATION**
- Benjamin v. Jacobson, 124 F.3d 162 (2nd Cir. 1997). Prison officials who had entered into a consent decree governing conditions at New York City jails moved for the immediate termination of those decrees under the Prison Litigation Reform Act (PLRA). Pretrial detainees opposed the motion. The district court vacated the decrees and the detainees appealed. The appeals court affirmed in part and reversed in part, finding that the PLRA's consent decree termination provision did not violate the separation of powers principle, equal protection or due process. The court found, however, that the provision refers to constitutional termination of federal remedies arising out of consent decrees, but does not mandate the termination of the decrees themselves. The court also found that the PLRA provision made only the nonfederal aspects of a consent decree unenforceable by federal courts; nonfederal provisions remained binding but could only be enforced by state courts. (New York City Department of Correction)

U.S. Supreme Court
MUNICIPAL LIABILITY
42 USCA SEC. 1983

Board of County Com'rs. of Bryan County, Okls. v. Brown, 117 S.Ct. 1382 (1997). Respondent Jill Brown brought a claim for damages against petitioner Bryan County under 42 U.S.C. Sec. 1983. She alleged that a county police officer used excessive force in arresting her, and that the county itself was liable for her injuries based on its sheriff's hiring and training decisions. She prevailed on her claims against the county following a jury trial, and the Court of Appeals for the Fifth Circuit affirmed the judgment against the county on the basis of the hiring claim alone. The United States Supreme Court held that the Court of Appeals' decision "cannot be squared with our recognition that, in enacting Sec. 1983, Congress did not intend to impose liability on a municipality unless deliberate action attributable to the municipality itself is the 'moving force' behind the plaintiff's deprivation of federal rights." (Bryan County, Oklahoma)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROTECT

Carrigan v. State of Del., 957 F.Supp. 1376 (D.Del. 1997). A female inmate brought a civil rights action against prison officials and a guard as the result of an alleged rape by the guard. The district court found that the inmate did not establish deliberate indifference by prison officials where the officials had a policy forbidding sexual contact between correctional officers and inmates, the alleged rapist had received a total of 64 hours of training, and the inmate offered no expert opinion to rebut an expert report that the training was adequate. The court found that prison officials were entitled to qualified immunity. The court noted that the inmate's transfer to protective custody following her alleged rape by a guard did not show deliberate indifference but, rather, showed the prison officials' attentiveness to her condition as they were aware that her claims put her at risk of attack by other inmates. The court found that the inmate failed to establish an Eighth Amendment violation through evidence of other incidents because nearly all of those incidents occurred after the alleged rape, and those which occurred prior took place at a different institution or were unsubstantiated by the inmate involved. However, the court found that the inmate had stated a claim based on gross or wanton negligence, or bad faith, against the guard. (Delaware Department of Correction)

U.S. District Court
CONSENT DECREE-
MODIFICATION
CONTEMPT

Carty v. Farrelly, 957 F.Supp. 727 (D.Virgin Islands 1997). Detainees and inmates housed in a criminal justice complex asked the court to find officials in civil contempt of a consent decree. The district court found that the consent decree comported with the principles of the Prison Litigation Reform Act (PLRA) because it was narrowly drawn, extended no further than necessary to correct the violation of federal rights, and was the least intrusive means necessary to correct the violations. The court found the officials in contempt for failing to comply with the terms of the consent decree, and continued noncompliance with a court order requiring officials to pay detainees' and inmates' attorney fees. The officials admitted they never fully complied with the order and failed to make meaningful progress toward reducing the inmate population. The officials had paid only \$50,000 of the \$155,000 attorney fees that the court had ordered paid to the National Prison Project of the American Civil Liberties Union. (Criminal Justice Complex, St. Thomas, Virgin Islands)

U.S. Appeals Court
DAMAGES
QUALIFIED IMMUNITY

Doby v. Hickerson, 120 F.3d 111 (8th Cir. 1997). A former prisoner brought a § 1983 action alleging that a psychiatrist and other corrections personnel violated his due process rights by administering antipsychotic medications to him without his consent. The district court awarded the prisoner \$9,500 in compensatory damages and the defendants appealed. The appeals court affirmed, finding that the psychiatrist was only qualifiedly immune for a portion of the treatments in question, and that the record supported the amount of damages awarded. According to the court, the psychiatrist should have known of the Supreme Court's Harper decision when she met with the prisoner three weeks after it was handed down, and she was therefore not entitled to qualified immunity for administrations that occurred thereafter. The court noted that the prisoner was afforded virtually no procedural protections, and experienced severe side effects that continued for weeks after the medications were discontinued. (ADC Special Programs Unit, Arkansas)

U.S. Appeals Court
DAMAGES

Downey v. Denton County, Tex., 119 F.3d 381 (5th Cir. 1997). An inmate who was sexually assaulted by an employee of a county sheriff's department sued the county and jail officials and employees under § 1983 and the Texas Tort Claims Act, alleging they were negligent in failing to prevent the assault. The district court entered judgment for all defendants on the § 1983 claim, and entered judgment for the inmate on the remaining claims. The district court held the county liable for \$100,000 and the assailant liable for \$1 million. The county and inmate appealed. The appeals court affirmed as amended, finding that the inmate's tort claim did not "arise out of" the assailant's intentional tort but rather from a co-employee's negligence. The assailant left his post and went to the women's unit and asked another officer to have the plaintiff brought from her cell to repair a short tear in his uniform pants. The employee explained that the plaintiff was not a trustee and it was customary for trustees to repair guards' uniforms. Although the employee thought the assailant's request was strange, she did not call her supervisor and instead brought the plaintiff down to repair the uniform as requested by the assailant. Although the employee initially remained with the plaintiff and assailant after admitting them to a multipurpose room, she eventually left them unsupervised for nearly two hours. (Denton County Jail, Texas)

U.S. Appeals Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES
NEGLIGENT
RETENTION
FAILURE TO PROTECT

Estate of Davis by Ostenfeld, v. Delo, 115 F.3d 1388 (8th Cir. 1997). A state inmate brought a § 1983 action against correctional officers and prison administrators alleging the use of excessive force when he was removed from his cell. The district court entered judgment against the defendants and they appealed. The appeals court affirmed, finding that evidence supported the determination that a correctional officer used excessive force against the inmate in violation of the Eighth Amendment. The court also found that evidence supported the determination that other officers and a supervisor were liable for failing to protect the inmate from the use of excessive force, and that the prison superintendent's failure to investigate or take remedial action subjected him to liability. The court held that qualified immunity was not available to the defendants, and that punitive damages were warranted against the correctional officer and prison superintendent. The inmate alleged that the correctional officer struck him in the head and face 20 to 25 times while four other officers were restraining his limbs, after the inmate had complied with an order to lie face down on the floor without resistance. The district court had found that the inmate sustained serious injuries and that the correctional officer used force maliciously and sadistically for the purpose of causing the inmate harm. The prison superintendent had authorized an investigation into the correctional officer's failure to report the use of force, was advised that the officer should be discharged because of persistent complaints, but took no responsive action. The district court had awarded \$10,000 in compensatory damages against seven defendants jointly and severally, and awarded punitive damages in the amount of \$5,000 each against the correctional officer and the supervisor. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
PLRA-Prison Litigation
Reform Act
CONSENT DECREE

Gavin v. Branstad, 122 F.3d 1081 (8th Cir. 1997). After a consent decree was entered in an action challenging conditions in a state prison, and after the subsequent enactment of the Prison Litigation Reform Act (PLRA), a state moved to terminate prospective relief. The district court denied the motion, declaring unconstitutional the "immediate termination" provisions of PLRA. The appeals court reversed and remanded, holding that the provisions did not violate the separation of powers doctrine, equal protection, or due process. The court noted that the nature of a remedy to be applied in the future is not established in perpetuity upon approval of a consent decree. (Iowa State Prison)

U.S. District Court
QUALIFIED
IMMUNITY

Holt Bonding Co., Inc. v. Nichols, 988 F.Supp. 1232 (W.D.Ark. 1997). A bail bond company brought a § 1983 action against a sheriff, alleging that the sheriff violated its due process rights by effectively suspending its license. The district court concluded that the company had proven the essential elements of its § 1983 claim and ordered the parties to advise the court about possible damages. The court found that the sheriff's action, suspending the company's authority to issue bonds in the county, was equivalent to suspending the company's license and that the sheriff was not entitled to qualified immunity because a reasonable official would have known that refusing to accept all bonds written by the company without notice or a hearing violated the company's clearly established rights. The court noted that the sheriff had not given the company adequate notice by simply telling one of its bail bondsmen that the county would no longer accept bonds from the company. (Sheriff of Nichols County, Arkansas)

U.S. Appeals Court
CONSENT DECREE-
MODIFICATION
PLRA-Prison Litigation
Reform Act

Inmates of Suffolk County Jail v. Rouse, 129 F.3d 649 (1st Cir. 1997). A sheriff moved to terminate a 1979 consent decree pursuant to the Prison Litigation Reform Act (PLRA). The decree arose from a class action challenging conditions of confinement. The district court granted the sheriff's motion in part, but denied the Massachusetts Commission of Correction's motion to vacate the decree. The appeals court held that PLRA did not violate the separation of powers principle, the detainees' due process rights, or the detainees' equal protection rights. The appeals court found that PLRA mandates the termination of extant consent decrees unless the district court makes specific findings that are necessary to keep a particular decree alive. The court also found that the district court was not required to conduct an inquiry into whether violation of a federal right currently existed, or would come into existence, before it terminated a consent decree governing confinement conditions for pretrial detainees. The district court determined that double-bunking of the county jail's pretrial detainees did not violate the federal rights of detainees, given that such conduct, in and of itself, was not a constitutional violation. (Suffolk County Jail, Massachusetts)

U.S. District Court
CONSENT DECREE-
MODIFICATION
ADA-Americans with
Disabilities Act

Jensen v. County of Lake, 958 F.Supp. 397 (N.D.Ind. 1997). A county filed a motion to terminate a consent decree and judgment order through the provisions of the Prison Litigation Reform Act (PLRA). The district court held that Congress could, through the Prison Litigation Reform Act, modify the authority of a court to award relief greater than that required by federal law, and thus the PLRA section providing for immediate termination of prospective consent decrees in pending cases did not violate the separation of powers doctrine, nor did retroactive application of the section. The court also found that PLRA did not violate equal protection. However, the court found that inmates had adequately alleged that overcrowding made it difficult for jail personnel to ensure the safety of inmates and therefore further proceedings were necessary before the district court could terminate the consent judgment. The court held that PLRA does not violate the separation of powers doctrine, even though by altering prospective relief PLRA makes futile the careful negotiations that have gone into crafting a consent decree, the parties' strategy to save time and effort in litigating, and compromises made in exchange for giving up risk. According to the court, even if a consent

decree in prison reform litigation was a "contract" for the purposes of the contract clause, Congress did not act irrationally or arbitrarily when it enacted PLRA and therefore did not impermissibly impair contract rights. The initial lawsuit was filed in 1974 on behalf of inmates of the Lake County Jail and a consent decree was entered in 1980. Two years later the defendants admitted that they had not complied and a broader and more detailed agreement was entered, encompassed in a judgment order in 1982. Since then, the district court has maintained continuing supervision over the operation of the jail in order to enforce the 1980 decree and the 1982 judgment. (Lake County Jail, Indiana)

U.S. District Court
REMEDIES
DELIBERATE
INDIFFERENCE

Jones v. City and County of San Francisco, 976 F.Supp. 896 (N.D.Cal. 1997). Pretrial detainees brought a class action against the City and County of San Francisco and various city officials challenging the constitutionality of their conditions of confinement at a jail. The district court granted various summary judgment motions filed by the plaintiffs and the defendants, enjoining future overcrowding based on past unconstitutional overcrowding. The court found due process violations based on the defendants' inadequate response to fire safety risks at the jail, excessive risks of harm from earthquakes, physical defects in the jail's water, plumbing and sewage systems, excessive noise levels, and poor lighting. The court held that the plaintiffs failed to show deliberate indifference or another basis for liability on the claims of current overcrowding, inadequate food preparation and storage, provision of medical services, personal visitation, hours and accessibility of legal visitation, legal materials and assistance, and outdoor recreation. The court noted that pretrial detainees enjoy the greater protections afforded by the Fourteenth Amendment's due process clause, rather than the Eighth Amendment's protection against cruel and unusual punishment. The district court stated it would assume that any unreasonable failure of the defendants to remedy obvious deficiencies in the jail constituted deliberate indifference based on a Special Master's findings that the defendant officials had actual and constructive knowledge of every significant deficiency in the jail for several years. This was evidenced by newspaper accounts, grand jury reports, defendants' own written correspondence, and repeated proposal of bond measures to finance improvements.

The court concluded that development and implementation of a narrowly tailored remedial plan was an appropriate remedy, and that the plan was to address each condition that was found unconstitutional including fire safety, seismic safety, water, plumbing, sewage, noise, lighting and overcrowding. (San Francisco Jail No. 3, California)

U.S. District Court
PRIVATE PROVIDER

McDuffie v. Hopper, 982 F.Supp. 817 (M.D.Ala. 1997). The son of a prisoner who committed suicide while in the custody of a state department of corrections sued corrections officials, private party doctors, and health care providers under § 1983. The son alleged wrongful death caused by negligence, indifference, or recklessness and malpractice. The district court denied summary judgment for the private party doctors and mental health care providers. The court determined that although these parties were government contractors, they were performing at their own behest motivated by a desire to make a profit, rather than at the behest of the sovereign government. The court found that genuine issues of material fact regarding whether treatment received by the prisoner was deliberately indifferent precluded summary judgment. The prisoner had tried to commit suicide at least four times and was receiving large doses of a psychotropic drug. The prisoner requested that all personal items be removed from his cell because his hallucinations were intensifying and made statements to prison personnel about suicide or self harm. But despite these reports of suicidal thoughts a decision was made to discontinue his psychotropic medication. He was placed in an isolation cell, which the court suggested might not have been the proper situation for his treatment. Although the prisoner complained about the discontinuation of his medication, he was not appropriately visited by the medical defendants and was not transferred from the isolation cell. He committed suicide by hanging himself with a bedsheet tied to the bars of his isolation cell. (Kilby Correctional Facility, Alabama, and Correctional Medical Services, Inc.)

U.S. District Court
FEDERAL TORT
CLAIMS ACT

Melvin v. U.S., 963 F.Supp. 1052 (D.Kan. 1997). A pro se inmate brought an action against the United States under the Federal Tort Claims Act for loss of personal property from his cell. The district court denied summary judgment for the defendants, finding that once a federal prison officer agreed to lock the inmate's cell, the officer had a duty to act with reasonable care, and that fact issues as to whether the officer met that duty precluded summary judgment. The inmate alleged that the officer negligently unlocked his prison cell, allowing other prisoners to enter and take his belongings. The inmate valued the missing property at \$226.30. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
SUPERVISORY LIA-
BILITY

Mitchell v. Keane, 974 F.Supp. 332 (S.D.N.Y. 1997). A prisoner brought a civil rights action against prison officials alleging that they inflicted pain on him by twisting a baton in his chains while he was shackled. The district court found that the prisoner's allegations stated a civil rights claim for excessive use of force, and that the prisoner's allegation that a sergeant was present at the time of the incident stated a claim of supervisory liability. (Sing Sing Correctional Facility, New York)

U.S. District Court
QUALIFIED IMMUNITY
PRIVATE PROVIDER

Nelson v. Prison Health Services, Inc., 991 F.Supp. 1452 (M.D.Fla. 1997). The personal representative of an inmate who died of an acute myocardial infarction while awaiting trial in a county jail brought a § 1983 action against a county, county sheriff, the private company that provided medical services to the jail, and individual nurses employed by the company. The district court held that the sheriff was protected from individual liability under the qualified immunity doctrine, but that the nurses were not entitled to raise a defense of qualified immunity even though they were considered state actors under § 1983. The court held that the evidence was sufficient to establish that the nurses were deliberately indifferent to the inmate's medical needs and failed to provide treatment. According to the court, the nurses delayed giving the inmate her prescription medication for her cardiac condition for 36 hours, failed to verify her medications after she disclosed them to the screening nurse, failed to examine the inmate when she complained of chest pains, and failed to call for an emergency response team until the inmate had stopped breathing. The court held that reports of a court appointed monitor regarding the pervasive failure of the private medical service company to provide medical care to the inmates of the county jail, and the company's own internal memoranda characterizing the attitude of the nurses at the jail as one of deliberate indifference, were sufficient to establish a custom of violating inmates' constitutional rights to medical treatment. (Pinellas County Jail, Florida)

U.S. Appeals Court
DAMAGES

Newman v. Holmes, 122 F.3d 650 (8th Cir. 1997). Two state inmates brought a § 1983 action against a corrections officer alleging Eighth Amendment violations as the result of the officer's failure to protect them from an attack by another prisoner. A district court jury returned a verdict for the inmates, awarding each \$500 damages. The appeals court affirmed, finding that evidence supported the finding that the officer's act of opening the door to the cell of an inmate in isolated confinement created an excessive risk of harm to the other inmates, and that evidence supported the finding that the officer was deliberately indifferent to such risk. (Tucker Maximum Security Unit, Arkansas)

U.S. Supreme Court
42 USCA SEC. 1983
QUALIFIED IMMUNITY
PRIVATE OPERATOR

Richardson v. McKnight, 117 S.Ct. 2100 (1997). McKnight, a prisoner at a Tennessee correctional center whose management had been privatized, filed an action under 42 U.S.C. Sec. 1983 for physical injuries inflicted by petitioner prison guards. The District Court denied McKnight's motion to dismiss, finding that, since the guards were employed by a private prison management firm, they were not entitled to qualified immunity from Sec. 1983 lawsuits. The Court of Appeals affirmed. The Supreme Court held that prison guards employed by a private firm are not entitled to qualified immunity from suit by prisoners charging a Sec. 1983 violation.

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROTECT
FAILURE TO SUPERVISE

Scott v. Moore, 114 F.3d 51 (5th Cir. 1997). A pretrial detainee who alleged she was sexually assaulted by a correctional officer brought a § 1983 action against a city and its police chief. The district court entered summary judgment for the defendants, but the appeals court remanded the case on the claim of inadequate staffing. On remand, the district court again entered summary judgment for the defendants and the detainee appealed. The appeals court vacated and remanded. On rehearing en banc, the court of appeals affirmed, holding that the detainee met the burden of establishing a constitutional violation but that the city's failure to adopt a policy of adding jail staff did not constitute deliberate indifference. According to the majority of the appeals court, there was no showing that the city had actual knowledge that its staffing policy created a substantial risk of harm to female detainees. As a condition of employment, jailers underwent background investigations, medical examinations and polygraph tests, none of which revealed any concerns about the jailer who allegedly sexually assaulted the detainee. The majority noted that the jailer had been a commissioned police officer for four years prior to his employment with the jail, without incident, and that he had been trained in the official policies of jail management by experienced jailers. The detainee had been arrested for public intoxication, assault and resisting arrest, and was taken to a city jail, processed by a female jailer who was on duty at the time, and placed in a holding cell pending arraignment. A male jailer subsequently replaced the female officer, entered the detainee's cell, and sexually assaulted her repeatedly during the course of his eight-hour shift. The jailer resigned and pleaded guilty to criminal charges. The majority of the appeals court rejected the detainee's argument that constitutionally adequate staffing would have included, at a minimum, a female jail officer, or at least two male officers, whenever a female pretrial detainee is in custody. The majority noted that the jail is located on the first floor of the police department, in the patrol division area, and a patrol duty sergeant periodically checks on jail personnel. However, four appeals judges dissented, suggesting that the city's policy of inadequate staffing enabled the harm to be committed and actually facilitated the sexual assault. While the majority asserted that the assault was episodic--by definition incidental or occasional, rather than regular and systematic. The minority argued that the long established custom of inadequate staffing was far from episodic, and that the city only offered financial justifications for its staffing policy. In the dissenting opinion, the judges stated they were unwilling to "classify the issues in this case as 'minutia.'" (City of Killeen Police Department, Texas)

U.S. Appeals Court
GOVERNMENTAL
LIABILITY

Triplett v. District of Columbia, 108 F.3d 1450 (D.C.Cir. 1997). A prisoner sued the District of Columbia alleging he was injured by correctional officers. The district court awarded the prisoner \$135,000 in compensatory damages after finding that the District was liable for negligence, assault and battery and for the use of excessive force in violation of the Eight Amendment. The prisoner's neck was broken as a result of the assault by staff. The District appealed and the appeals court affirmed in part and reversed in part. The appeals court held that evidence sustained the determination that the correctional officers had committed assault and battery for which the District could be held liable, but that the alleged practice of excessive force by correctional officers was not part of a policy of the District for the purposes of establishing municipal liability. The court held that even if low-level supervisors covered up other alleged incidents of excessive force through falsified disciplinary reports, that practice would actually reduce the likelihood that policymakers would learn of the practice. (District of Columbia Occoquan Facility, Lorton, Virginia)

U.S. Appeals Court
NEGLIGENCE

Walker v. Reed, 104 F.3d 156 (8th Cir. 1997). A state prisoner brought a civil rights suit to recover for injuries sustained from a fall in a bathroom. The district court dismissed the case as frivolous and the prisoner appealed. The appeals court affirmed, finding that the complaint, which alleged only negligence, lacked an arguable basis in law and was properly dismissed as frivolous. The prisoner had alleged that he slipped and fell because of water on the floor in the prison barracks bathroom, injuring his arm and shoulder. The prisoner asserted that the water had accumulated on the floor because of leaks from the shower wall and from the sinks. (Cummins Unit, Arkansas Department of Correction)

U.S. Appeals Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Williams v. Brimeyer, 116 F.3d 351 (8th Cir. 1997). A prison inmate brought a § 1983 action against a deputy warden and mail room clerk, alleging they violated his First Amendment free exercise rights by twice denying him materials sent by the Church of Jesus Christ Christian (CJCC). The district court awarded the inmate \$1 in compensatory damages and \$500 punitive damages from each of the two defendants. The appeals court affirmed, finding that a blanket ban on CJCC materials--without review of their individual contents--was unconstitutional and that punitive damages were warranted. According to the court, the inmate had a right to receive materials mailed to him by the Church of Jesus Christ Christian (CJCC), even though those materials expressed racist and separatist views, because the materials did not counsel violence and there was no evidence that they ever caused a disruption. The court found that the deputy warden and mail room clerk were "callously indifferent" to the inmate's First Amendment free exercise rights, warranting punitive damages. The deputy warden knew that the blanket ban on CJCC materials was unconstitutional when the materials were first withheld, and the clerk did not consult a list naming CJCC materials as approved because she believed the blanket ban remained in effect, despite her knowledge that the ban was unconstitutional. (Iowa Men's Reformatory)

U.S. District Court
DAMAGERS
PUNITIVE DAMAGES

Wilson v. Philadelphia Detention Center, 986 F.Supp. 282 (E.D.Pa. 1997). An inmate brought a § 1983 action against corrections officials alleging they had used excessive force and violated his due process rights by placing him in administrative segregation. A jury ruled against the three defendants and they moved for judgment as a matter of law. The district court held that evidence supported the jury verdict against members of the prison disciplinary board and supported the award of punitive damages. The court upheld the jury's award of punitive damages in the amount of \$5,000. The inmate was held in administrative segregation for ten days without a determination of guilt on charges that he violated prison disciplinary rules, although prison regulations required a hearing within three days. (Philadelphia Detention Center, Pennsylvania)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROTECT

Woods v. Lecureux, 110 F.3d 1215 (6th Cir. 1997). A murdered inmate's mother brought a § 1983 action against prison officials alleging violation of the inmate's Eighth Amendment rights. The district court granted summary judgment in favor of the defendants and the mother appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court did not abuse its discretion by excluding from evidence all materials from ongoing litigation challenging prison conditions in Michigan, or by prohibiting an expert witness from using the term "deliberately indifferent" to describe the defendants' conduct. According to the court, the use of the term "deliberately indifferent" by the expert attempted to tell the jury what result to reach and ran the risk of interfering with jury instructions. The court held that the issue of whether an official acted with deliberate indifference depended on that official's state of mind, of which the expert witness had no knowledge. However, the appeals court held that genuine issues of material fact precluded summary judgment for a deputy warden but that there was insufficient evidence to support the imposition of liability against the deputy warden. (State Prison of Southern Michigan)

U.S. District Court
CONSENT DECREE-
MODIFICATION

Wyatt By And Through Rawlins v. Rogers, 985 F.Supp. 1356 (M.D.Ala. 1997). The state commissioner of mental health and mental retardation moved to have a federal court find that the state had complied with the provisions of a consent decree and to terminate the prior lawsuit. The class action plaintiffs moved to enforce the decree. The district court granted partial release from the provisions of the decree but did not release the state from mental retardation standards. According to the court, accreditation of state mental health facilities by the Joint

Commission on the Accreditation of Health Care Organizations (JCAHO), and certification of the facilities through Title XIX of the Social Security Act, did not establish compliance with minimum constitutional standards which govern the treatment of patients at such facilities. (Alabama Mental Health and Mental Retardation System).

1998

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE
DAMAGES

Arroyo Lopez v. Nuttall, 25 F.Supp.2d 407 (S.D.N.Y. 1998). A Muslim inmate brought a § 1983 action against a corrections officer alleging violation of his First Amendment right to freedom of religion. The district court found that the officer violated the inmate's right to freedom of religion and held that the officer was not entitled to qualified immunity. The court awarded compensatory damages of \$2,000 and punitive damages of \$5,000. The court found that the officer violated the inmate's right by shoving him and disrupting his prayer, acted without justification or provocation, and his actions were not reasonably related to any legitimate penological objectives. The court concluded that a reasonable officer would have known that he could not shove the inmate and disrupt his prayer when he was praying quietly during quiet time without disturbing others. The court awarded compensatory damages, even though the inmate was not physically injured and his emotional anguish was minimal. The court found punitive damages were appropriate because the officer, at the least, acted recklessly and with callous indifference to the inmate's rights, the officer had been embroiled in a "running battle" with Muslim inmates, and the officer was simply wrong about the ability of inmates to pray quietly during quiet time. (Downstate Correctional Facility, New York)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Avers v. Ryan, 152 F.3d 77 (2nd Cir. 1998). A prison inmate who had been the subject of a prison disciplinary proceeding brought a § 1983 action against a hearing officer and a facility superintendent, alleging violation of his due process rights. The district court dismissed the case, but the appeals court vacated the decision and remanded the case. The appeals court held that the failure of the hearing officer to provide any assistance or to obtain the testimony of witnesses requested by the inmate violated the inmate's due process rights. The appeals court denied qualified immunity to the hearing officer because the right in question was clearly established at the time of the hearing. According of the court, the decision of the inmate to have the hearing officer assist him, rather than a properly appointed assistant, did not result in a waiver of the inmate's due process right to pre-hearing assistance. (Southport Correctional Facility, New York)

U.S. Appeals Court
FAILURE TO TRAIN

Barney v. Pulsipher, 143 F.3d 1299 (10th Cir. 1998). Two female former inmates who were sexually assaulted by a jailer each brought a § 1983 action against jailer, county, sheriff and county commissioners based on their assault and other conditions of confinement. The actions were consolidated and all defendants except the jailer were granted summary judgment by the district court. The appeals court affirmed, finding that the county was not liable on the grounds of failure to train or inadequate hiring. The court held that the inmates did not show that the training received by the jailer was deficient and that even if it was, the sexual assault of the inmates was not plainly the obvious consequence of a deficient training program. The court noted that the sheriff should not have been expected to conclude that the jailer was highly likely to inflict sexual assault on female inmates if he was hired as a correctional officer.

The court found that the sheriff and commissioners did not violate the inmates' rights by permitting the jailer to be the sole guard on duty in the county jail. The court noted that permitting a single officer to be on duty when a second jailer was sick or on vacation did not impose liability on the county, where there were no previous incidents of sexual harassment or assault of female inmates that would have given notice to the county that its one-jailer policy would result in injuries. The court also noted that the sheriff acknowledged problems with crowding and inadequate monitoring, and its inability to house female inmates for extended periods of time. The county contracted out female inmates to neighboring jails that had better facilities and limited confinement of female inmates to 24-36 hours whenever possible.

According to the appeals court the inmates failed to establish an equal protection claim. The court also found that the sheriff and commissioners did not act with deliberate indifference to the female inmates' health and safety with regard to conditions of confinement. The inmates' allegations regarding a filthy cell, inadequate lighting and ventilation, lack of enclosure around a shower, unappetizing food, and lack of access to recreational facilities, did not rise to the level of a constitutional violation given that the inmates were confined for only 48 hours. (Box Elder County Jail, Utah)

U.S. District Court
FAILURE TO
SUPERVISE
FAILURE TO
TRAIN
NEGLIGENT SUPER-
VISION

Bednar v. County of Schuylkill, 29 F.Supp.2d 250 (E.D.Pa. 1998). A county prison inmate brought a § 1983 suit against a prison physician and others alleging deliberate indifference to his serious medical needs, negligent hiring, negligent supervision and medical negligence. The district court granted summary judgment in favor of the defendants. The court held that the physician's failure to diagnose the inmate's hip fracture and failure to order an x-ray was not deliberate indifference to the inmate's serious medical needs, where there was no evidence that the doctor recognized the inmate's need for an x-ray and refused to order it, or that the doctor possessed the requisite mental intent to sustain a deliberate indifference claim. The court held that the county was not liable to the inmate for failing to adequately screen him before hiring him,

even though the physician had five previous medical malpractice actions filed against him, and had his staff privileges suspended at one hospital based upon "chart delinquency." The court noted that the previous actions had been settled or dismissed, the physician was licensed to practice medicine in the state, and he had experience as an emergency room physician as well as a prison physician in two state correctional facilities. The court also held that the county prison warden was not liable to the inmate for failing to supervise the doctor, even though the warden failed to provide the doctor with a copy of the prison's written policies regarding medical treatment, and the warden had knowledge of four accident reports concerning the inmate. (Schuylkill County Prison, Pennsylvania)

U.S. Appeals Court
DAMAGES

Berry v. Oswalt, 143 F.3d 1127 (8th Cir. 1998). A female inmate at a state corrections center who was allegedly raped by one correctional officer and sexually harassed by a second officer, brought a § 1983 action against corrections officials. The district court granted summary judgment for a warden and director of corrections, but entered judgment against other officials, awarding reduced damages. The inmate and an officer appealed. The appeals court found that the inmate was entitled to damages against the first officer for both outrage and constitutional violation, and that the finding that a second officer's conduct violated the Eighth Amendment was supported by evidence. The second officer was found to have harassed the inmate by attempting to perform non-routine patdown searches, propositioning the inmate, and making sexual comments. The appeals court reversed the district court's decision to eliminate a jury award for outrage, ordering the district court to fully effectuate the jury's verdict on remand. The jury had originally awarded the inmate compensatory damages of \$40,000 on her § 1983 claim and \$25,000 in compensatory damages on her state tort claim, along with \$15,000 in punitive damages. (Tucker Women's Unit, Arkansas Department of Corrections)

U.S. District Court
PUNITIVE DAMAGES

Boyce v. Fairman, 24 F.Supp.2d 880 (N.D.Ill. 1998). An inmate who was attacked by other inmates sued county corrections officials alleging that they failed to protect him and failed to provide adequate medical care. The district court held that the inmate could pursue his claim against a corrections director in his official capacity and against lieutenants in their individual capacity and could seek punitive damages from them. The court held that the inmate adequately stated a § 1983 action against the director, alleging that it was the practice and policy of the department to refuse protective custody requested by prisoners who had been beaten by other inmates, and that it was the practice and policy of officials to deny specialized medical care to prisoners. The court found that the inmate stated a claim against corrections lieutenants, alleging that they were aware he was the target of, and vulnerable to assaults by other prisoners, but failed to take reasonable steps to abate the risk of attack and place him in protective custody. The inmate also alleged that the lieutenants breached their duty to provide adequate medical care, which resulted in the total loss of vision in one eye. The inmate had asked to be excused from "yard" because he was afraid of being attacked, but his request was denied and he was told that yard was mandatory for all inmates. He was subsequently attacked by several inmates upon returning from yard on a stairwell leading to the tiers, and was beaten for about twenty minutes. (Cook County Department of Corrections, Illinois)

U.S. District Court
SOVEREIGN IMMUNITY
PRIVATE PROVIDER

Callaway v. Smith County, 991 F.Supp. 801 (E.D.Tex. 1998). An inmate at a county jail sued a county and a sheriff alleging mistreatment. The district court held that the inmate's Eighth and Fourteenth Amendment rights were not violated when he was not given the correct dosage of medication where there was no evidence that the conduct of jail personnel evinced deliberate indifference to his condition as opposed to a mistake or simple negligence. The court held that the inmate's rights were violated because he was not seen by doctors in a timely manner. According to the court, a state university hospital center, which provided medical care to inmates in the county jail, had sovereign immunity from a suit by the inmate claiming improper medical care because the center is an agency of the State of Texas. (Smith County Jail, Texas)

U.S. District Court
PUNITIVE DAMAGES
COMPENSATORY
DAMAGES

Castle v. Clymer, 15 F.Supp.2d 640 (E.D.Pa. 1998). A state prisoner brought a § 1983 action against prison officials alleging that he was transferred to another facility in retaliation for exercise of his First Amendment free speech rights. The district court entered judgment for the prisoner, finding that transferring him based on his correspondence with a newspaper reporter violated his right to free speech. The court held that transferring the prisoner because he participated in a preauthorized interview with a reporter violated his right to procedural due process, as did transferring him based on his activities as president of an advocacy group for life prisoners. The court found that the prisoner had a free speech right to send outgoing correspondence to a newspaper reporter, subject to reasonable prison regulations. The court held that compensatory damages were not warranted for the prisoner's loss of his position as a para-law library clerk, and that punitive damages were not warranted because there was no finding that the officials acted with callous indifference or an evil motive; the court awarded the prisoner nominal damages of \$1. The court declined to order the receiving facility to give the prisoner the same job and the single-cell status the prisoner enjoyed at the original facility, because the receiving facility was not involved in the constitutional violations that gave rise to the case. In its decision, the court outlined three tests to determine whether the prisoner was transferred in retaliation for exercising his constitutional rights: the "but for" test, the "significant factor" test, and the "narrowly tailored" test. (State Correctional Institution-Dallas, Pennsylvania)

U.S. District Court
CONSENT DECREE
CONTEMPT

Chairs v. Burgess, 25 F.Supp.2d 1333 (N.D.Ala. 1998). A county sheriff and county moved to enforce a consent decree which had been entered in a class action suit brought by county jail inmates to remedy overcrowding. The district court entered an order holding the state of Alabama in contempt for violating the consent decree and imposed sanctions. The appeals court reversed and remanded. On remand, the district court held that the state had not made reasonable, good faith efforts to comply with the transfer provision of the consent decree, and therefore a judgment of contempt was appropriate. According to the court, state corrections officials had not reviewed the consent decree which had been entered 11 years earlier, even prior to the show cause hearing for this case. The decree called for the state to transfer county jail inmates to state facilities, which the court found did not happen despite available space in state prisons and increases in programs to decrease state overcrowding. The court found that attorneys for the class of inmates and the county were entitled to reasonable attorney fees as the prevailing parties. (Morgan County Jail and Alabama Department of Corrections)

U.S. Appeals Court
PLRA-Prison Litigation
Reform Act
NOMINAL DAMAGES

Davis v. District of Columbia, 158 F.3d 1342 (D.C.Cir. 1998). An inmate brought a § 1983 action against the District of Columbia and correctional officials, alleging violation of his right to privacy. The district court dismissed the action, citing the provision of the Prison Litigation Reform Act (PLRA) that prohibits inmates from bring federal action for a mental or emotional injury suffered while in custody without making a prior showing of a physical injury. The appeals court affirmed, finding that the fact that the inmate may have been entitled to nominal damages did not save his action from dismissal under PLRA. The court noted that PLRA does not prevent actions for injunctions or declaratory judgments in which no allegation of prior physical injury are made. The inmate had sought compensatory damages, alleging that officials violated his right of privacy by disclosing his HIV status. The inmate alleged that he suffered weight loss, appetite loss and insomnia as the result of officials' disclosure of his status to others. (District of Columbia Central Prison at Lorton, Virginia)

U.S. District Court
CONSENT DECREE
CONTEMPT
FINES

Essex County Jail Annex Inmates v. Treffinger, 18 F.Supp.2d 445 (D.N.J. 1998). Inmates filed a motion to hold county corrections defendants in civil contempt for noncompliance with a consent decree addressing unconstitutional conditions of confinement. The district court held that monetary sanctions for civil contempt were not appropriate in light of the county's efforts to attain full compliance by investing over \$200 million in new facilities and improving existing ones. The court concluded that contempt sanctions would be counterproductive and would impede the county's efforts to build a new jail. The court held that it could not consider whether a classification plan satisfied the consent decree until an independent analysis was conducted. The court noted that the Special Master reported that staffing was inadequate, and as a result inmates and staff are exposed to danger and other problems. The court adopted the Master's recommendation that an independent, professional staffing analysis be conducted to address staff training, coverage and operations. The Master also reported that there was an insufficient supply of personal hygiene items, and the court ordered the defendants to comply with the consent order's terms by issuing adequate amounts of personal hygiene items, including toilet paper, soap, shampoo, toothpaste, toothbrush, comb, mirror, individual razors and shaving cream or powder. (Essex County Jail and Essex County Jail Annex, New Jersey)

U.S. District Court
PRIVATE OPERATOR
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES
FEDERAL TORT
CLAIMS ACT

Giron v. Corrections Corp. of America, 14 F.Supp.2d 1245 (D.N.M. 1998). A female prisoner brought a § 1983 action against a correctional officer, alleging he had raped her. The district court denied the officer's motion for summary judgment, finding that the officer was acting under color of state law when he raped the prisoner, and the officer was not a state employee immune from suit for compensatory and punitive damages under the Tort Claims Act. According to the court, even though a private firm ran the correctional facility, the officer exercised coercive authority over the prisoner through his employment, used his employment status to gain access to her prison cell, and the state was directly involved in aspects of prison life. The court noted that the delegation of a governmental function must carry with it the delegation of constitutional responsibilities. (New Mexico Women's Correctional Facility, operated by the Corrections Corporation of America)

U.S. District Court
PRIVATE PROVIDER

Gwynn v. Transcor America, Inc., 26 F.Supp.2d 1256 (D.Colo. 1998). A former prisoner who had been transported from Oregon to Colorado by employees of a Tennessee corporation which contracted with the Colorado Department of Corrections to transport prisoners to other states, sued the corporation under § 1983 alleging that she had been sexually assaulted and otherwise endangered during the trip. The district court held that the corporation and its employees, who were nonresidents of Colorado, were subject to personal jurisdiction in Colorado. The court found that the prisoner stated a § 1983 claim by alleging that she had been sexually assaulted by one employee and that another employee failed to stop the assaults. The court found that the employees were acting as agents and prison guards of the State of Colorado, and used state power as a coercive force to further their wrongful acts. (Colorado Dept. of Corrections)

U.S. Appeals Court
PRIVATE OPERATOR

Halvorsen v. Baird, 146 F.3d 680 (9th Cir. 1998). A detainee who was questioned by police and then involuntarily committed to a detoxification facility overnight

filed a § 1983 action alleging constitutional violations. The district court entered judgment in favor of the defendants on a jury verdict and the appeals court affirmed in part, reversed in part and remanded. The appeals court held that a private non-profit firm that provided involuntary detoxification services did not enjoy qualified immunity from § 1983 liability. The court found that the private firm was not a private individual that was briefly deputized to assist government actors, in light of its nature as a company that was organized to assume a major lengthy administrative task. The appeals court also held that confinement for six hours overnight was not too short, as a matter of law, to trigger a due process right to communicate with someone outside the facility. But the court found that a facility can control the manner and timing of a telephone call from a detainee, so that it comports with reasonable institutional requirements. The court found that the detainee was given sufficient notice or opportunity to demonstrate sobriety to satisfy due process, where testimony indicated that he was told why he was at the facility and that he was observed for indications of drunkenness or sobriety. (Central City Concern, and City of Portland, Oregon)

U.S. District Court
PRIVATE OPERATOR
FAILURE TO
SUPERVISE
FAILURE TO
TRAIN
FAILURE TO DIRECT
OFFICIAL CAPACITY
QUALIFIED IMMUN-
ITY

Kesler v. King, 29 F.Supp.2d 356 (S.D.Tex. 1998). Former inmates from Missouri who had served time in a privately-operated unit leased from a county in Texas brought a § 1983 action. The district court found that the county sheriff, his chief deputy, and a county official in charge of the detention center's emergency response team were not entitled to qualified immunity from claims alleging the use of excessive force, failure to train or supervise staff, or failure to screen job applicants. The suit addressed staff actions that had become nationally-publicized through a videotape that depicted staff use of force, including the use of stun guns and dogs.

The court held that triable issues existed regarding whether the sheriff's conduct was extreme and outrageous. A private firm, Capital Correctional Resources, Inc. (CCRI) leased 512 of the detention center's 1,163 beds at a cost of \$10/bed per day plus expenses. In 1996 CCRI entered into a contract to house low- to medium-security inmates from Missouri. The terms of CCRI's contract with the county included the following provisions: all CCRI hiring and training decisions and policies are subject to the sheriff's review and approval; the county and the sheriff are obligated to provide CCRI with all information necessary for the screening of applicants; the county and sheriff are obligated to certify all jailers prior to their assuming duties; and the sheriff is required to monitor CCRI's operations.

CCRI hired, with the support of the sheriff, a warden for the privately-operated portion of the facility. The sheriff subsequently asked CCRI to hire two individuals, one as a lieutenant and one as a sergeant, each of whom had been previously convicted and had served sentences for a 1983 beating of a department of corrections inmate, and they were hired by CCRI.

The court held that a defendant's conduct of allowing a canine unit dog to bite five inmates without provocation during a shakedown was not objectively reasonable and the defendant was not entitled to qualified immunity from liability. The court also denied qualified immunity for another defendant who failed to intercede to protect the inmates from excessive force used by officers, failing to stop an officer from allowing a dog to bite inmates, and failing to remove an officer who was using his stun gun on inmates. (Brazoria County Detention Center, Texas, and Capital Correctional Resources, Inc.)

U.S. District Court
QUALIFIED
IMMUNITY

Lee v. Coughlin, 26 F.Supp.2d 615 (S.D.N.Y. 1998). An inmate brought a pro se civil rights action against a hearing officer and corrections commissioner alleging deprivation of due process by denying his request for employee assistance during a disciplinary hearing. The district court held that the inmate's confinement in disciplinary segregation for 376 days was an atypical and significant hardship for the purposes of establishing a liberty interest. The court held that the defendants were not entitled to qualified immunity because it was clearly established at the time of the hearing that the inmate had a right to an assistant. (Sing Sing Correctional Facility, New York)

U.S. District Court
OFFICIAL CAPACITY
INDIVIDUAL
CAPACITY

Lewis v. Cook County Dept. of Corrections, 28 F.Supp.2d 1073 (N.D.Ill. 1998). An inmate brought a pro se § 1983 case against county correctional officers in their individual and official capacities. The district court that the inmate stated a claim for retaliation against the officers in their individual capacities by alleging that he was terminated from his position as law library cleaner one month after he filed a grievance against a corrections officer. The court held that the inmate's complaint did not adequately allege that the officers were policymakers of the county department of corrections, so as to support a § 1983 claim against the officers in their official capacities. The court also held that an officer's conduct in forbidding the inmate from continuing with his law library job due to a "hickey" on his neck did not violate the inmate's equal protection rights. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
NEGLIGENCE

Martinez v. City of Los Angeles, 141 F.3d 1373 (9th Cir. 1998). A defendant who was arrested in Mexico at the request of a U.S. police department sued a city and police officials. The district court granted summary judgment for the defendants, but the appeals court affirmed in part, reversed in part, and remanded. The appeals court held that material fact issues precluded summary judgment on the plaintiff's false imprisonment and negligence claims based on his prolonged detention. The court held that under California law, a jailer and the public entity that employs a jailer may be liable for false imprisonment if the jailer knows that imprisonment is

unlawful or if there is some notice sufficient to put him, as a reasonable man, under a duty to investigate the validity of incarceration. Los Angeles police had asked Mexican authorities to arrest a murder suspect. The plaintiff was arrested, but was innocent and was nevertheless held in a Mexican prison for 59 days. Ten days after his arrest and detention, the plaintiff's lawyer sent a letter to a Los Angeles detective telling him that the Mexican authorities had arrested the wrong man, providing information that challenged the validity of the arrest, but the two witnesses to the Los Angeles murder were never given the opportunity to identify the plaintiff at the prison or to view a picture of him. The plaintiff was eventually released when the true suspect was identified. (Los Angeles Police Department)

U.S. District Court
DEFENSES

Morales Feliciano v. Rossello Gonzalez, 13 F.Supp.2d 151 (D.Puerto Rico 1998). In an ongoing action against a corrections system seeking improvement of medical and mental health care provided to inmates, an expert witness prepared a report documenting the state of compliance with prior orders that had been entered. The district court held that the correctional system continued to violate inmates' Fifth, Eighth, and Fourteenth Amendment rights by failing to provide adequate medical care. The court found that the officials' actions or lack thereof contributed to the deaths of inmates and to the infliction of pain and suffering. The court ruled that there were systematic deficiencies in staffing, facilities, procedures and administration, and that officials acted in a manner that was deliberately indifferent to the basic human and health needs of inmates. The court noted that budgetary limitations or inadequate resources can never be a valid justification for constitutional violations. The court concluded that the system had failed to provide adequate facilities and equipment necessary for the provision of adequate health care of inmates pursuant to acceptable professional standards. But the court noted that despite the findings of the expert, the National Commission on Correctional Health Care had accredited the medical care programs in four prisons and awarded provisional accreditation to four more in 1992. But an expert found noncompliance with at least one essential standard at every accredited facility, and the Department of Health provided the court monitor's staff with credible evidence that employees had falsified documents in support of accreditation. (Administration of Correction, Puerto Rico)

U.S. District Court
NEGLIGENCE
FEDERAL TORT
CLAIMS ACT

Muhammed v. U.S., 6 F.Supp.2d 582 (N.D.Tex. 1998). A prison inmate sued the United States under the Federal Tort Claims Act (FTCA) for failing to transfer him to a medical facility. The district court awarded a total of \$45,000 to the inmate, finding that the statute that defines the government's duty to provide suitable quarters for inmates creates a private cause of action under the Tort Claims Act. According to the court, Bureau of Prisons employees were negligent in not assigning the inmate to a medical facility during the two and one-half years following the inmate's complaint that he was unable to walk and his request for a cane or a wheelchair, causing him physical pain and mental anguish. The court awarded the inmate \$30,000 for physical pain and \$15,000 for mental anguish. (Federal Correctional Institution at Texarkana, Texas)

U.S. Appeals Court
NEGLIGENCE
DAMAGES
QUALIFIED
IMMUNITY

Newton v. Black, 133 F.3d 301 (5th Cir. 1998). A state prisoner who was beaten by another prisoner sued prison officials under § 1983 asserting claims for failure to protect, inadequate medical care, and negligence. The district court dismissed all claims except the negligence claim against one official, on which it awarded a \$10,000 judgment. The appeals court affirmed in part and reversed and rendered in part, finding that the official was entitled to qualified immunity under Mississippi law. The court found that although the prison official was mistaken in his assessment of the seriousness of one prisoner's threat against another, this did not deprive him of qualified immunity. (Mississippi State Penitentiary)

U.S. District Court
FEDERAL TORT
CLAIMS ACT

Petrazzoulo v. U.S. Marshals Service, 999 F.Supp. 401 (W.D.N.Y. 1998). A pretrial detainee alleged that the U.S. Marshals Service (USMS) and a county which housed the detainee under contract to the USMS failed to provide him with dentures, in violation of his Eighth Amendment rights. The district court held that the USMS was not deliberately indifferent to the detainee's dental needs and that the detainee failed to state a § 1983 claim against county officials. The inmate's teeth had been extracted to treat a broken jaw, and a dentist had "recommended" that the detainee obtain dentures. The USMS concluded that the dentist's recommendation was not a prescription and that the dentures were an elective treatment. The detainee received prompt treatment for his broken jaw, pain medication and a soft food diet. The court also held that the detainee could not bring an action under the Federal Tort Claim Act. (Chautauqua County Jail, New York)

U.S. District Court
PUNITIVE DAMAGES

Ramirez v. U.S., 998 F.Supp. 425 (D.N.J. 1998). A person who was arrested and imprisoned pursuant to an arrest warrant issued for a different individual with a similar name brought an action against the United States, the Immigration and Naturalization Service (INS), and various federal and county officials. The court held that the INS and its agents were immune from claims under the Federal Tort Claims Act (FTCA) but the United States was not immune. The court found that the alleged conduct stated claims against the county and county officials. The court noted that under New Jersey law, punitive damages may be awarded in a false imprisonment case even where there are no compensatory damages. (Hudson County, New Jersey)

- U.S. Appeals Court
RESPONDEAT
SUPERIOR
ABSOLUTE
IMMUNITY
QUALIFIED
IMMUNITY
- Scotto v. Almenas, 143 F.3d 105 (2nd Cir. 1998). A parolee brought a § 1983 action against state parole officers. The district court dismissed the action. The appeals court affirmed in part and reversed in part. The appeals court held that the parole officer who recommended that a warrant be issued for the parolee was not entitled to absolute immunity, where he allegedly fabricated a parole violation and arrested the parolee knowing he lacked probable cause to do so. But the appeals court held that the parole division supervisor who signed the arrest warrant upon the parole officer's recommendation was entitled to absolute immunity because his actions were prosecutorial in nature. (New York State Division of Parole)
- U.S. Appeals Court
QUALIFIED
IMMUNITY
COMPENSATORY
DAMAGES
- Simmons v. Cook, 154 F.3d 805 (8th Cir. 1998). Paraplegic inmates brought a § 1983 suit challenging their placement in solitary confinement. The district court ruled in favor of the inmates and the appeals court affirmed. The appeals court held that the inmates' Eighth Amendment rights were violated and that damage awards of \$2,000 for each inmate for their 32-hour period of solitary confinement were not excessive. The court found that corrections officials violated the inmates' rights because the inmates did not receive adequate food or medical care while in solitary confinement. The inmates' wheelchairs did not fit through the solitary confinement cell doors, so they were lifted onto their beds and their wheelchairs were folded and then reopened inside their cells. Because their wheelchairs could not pass their cell bunks to reach the barred door where food trays were set, the inmates missed four consecutive meals. The inmates were unable to use a toilet during their 32-hours in solitary confinement because the facilities were not accessible and no assistance was provided. (Arkansas Department of Corrections, Diagnostic Unit)
- U.S. Appeals Court
DAMAGES
PUNITIVE DAMAGES
- Stanley v. Hejirika, 134 F.3d 629 (4th Cir. 1998). An inmate brought a § 1983 action against correctional officers who subdued him during a prison disturbance, alleging that they used unconstitutionally excessive force. The district court awarded the inmate \$1,000 in compensatory damages and \$2,000 in punitive damages. The officers appealed and the appeals court reversed, finding that evidence did not support the finding that the officers acted sadistically and maliciously for the sole purpose of causing harm when they subdued the inmate. The appeals court cited a videotape of the incident which showed that the officers treated the inmate roughly but did not demonstrate wanton sadism. The court also held that as a matter of law, the injuries suffered by the inmate were insufficient to establish the use of unconstitutionally excessive force. The inmate suffered bruises, swelling and a loosened tooth. (A-Wing Tier, Maryland Correction Annex, Jessup, Maryland)
- U.S. Appeals Court
GOVERNMENTAL
LIABILITY
- Turquitt v. Jefferson County, Ala., 137 F.3d 1285 (11th Cir. 1998). The estate of a pretrial detainee who was killed during an altercation with another inmate at a county jail filed a civil rights action against the county. The district court denied the county's motion to dismiss and the county appealed. The appeals court vacated and remanded, finding that an Alabama county cannot be liable in a civil rights case for harms that befall jail inmates due to improper operation of the jail or negligent supervision of its inmates because the county has no responsibility in that area. According to the court, the sheriff, not the county, is responsible for jail conditions under Alabama law; counties have no duties with respect to daily operation of county jails and have no authority to dictate how jails are run. The deceased inmate was fatally injured in a fight with another inmate, who was a convicted felon, in the dayroom of the jail. (Jefferson County Jail, Alabama)
- U.S. District Court
LIEN
- U.S. v. Barker, 19 F.Supp.2d 1380 (S.D.Ga. 1998). The United States brought an action against prison inmates seeking to enjoin the inmates from filing "commercial liens" against federal employees who had allegedly failed to perform their duties by taking positions adverse to the inmates. The district court held that the inmates' claims had no basis in federal and state law and declared the "liens" null and void. (Federal Correctional Institution, Jesup, Georgia)
- U.S. Appeals Court
CONTRACT SERVICES
- Zinn v. McKune, 143 F.3d 1353 (10th Cir. 1998). A nurse who was employed by a private corporation that had contracted with a state corrections department to provide medical services sued corrections officials alleging discrimination, retaliation, violation of Title VII and violations of § 1983 and the Kansas law protection whistleblowers. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court held that the nurse was not an employee of the corrections department for the purpose of Title VII, where she received compensation from the medical corporation rather than the department, and was supervised and evaluated by the corporation. The appeals court found that the nurse failed to show the existence of a causal connection between her whistle-blowing and any retaliation against her. (Prison Health Services, Osawatomie Correctional Facility, Kansas)
- 1999
- U.S. District Court
QUALIFIED IMMUN.
- Baker v. Willett, 42 F.Supp.2d 192 (N.D.N.Y. 1999). A jail inmate brought an action against a county and county officials alleging excessive use of force in violation of § 1983. The district court denied, in part, the defendants' motion to dismiss, finding that a named sheriff's deputy was not entitled to qualified immunity because it was clearly established at the time of the incident

that unnecessary and wanton infliction of pain constituted cruel and unusual punishment in violation of the Eighth Amendment. The deputy allegedly pushed the inmate in the back, causing him to fall off of a table and strike his head on metal bars approximately four or five feet from where he had been sitting. The inmate sustained a laceration on his forehead which required sutures. The county Undersheriff reviewed the incident and spoke to the inmate and the deputy, but did not conduct a formal investigation nor discipline the deputy. The district court dismissed the sheriff's department and county from the suit, finding that they could not be held liable on the ground that the sheriff's department had a practice of not investigating use of force complaints or disciplining officers. The court noted that three of five meritorious complaints in the past ten years had been directed toward one officer who had been terminated after disciplinary proceedings. (Warren County Jail, New York)

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES
PERSONAL LIABILITY
SUPERVISORY
LIABILITY

Beckford v. Irvin, 49 F.Supp.2d 170 (W.D.N.Y. 1999). Defendants moved to set aside a jury verdict and dismiss an inmate's case against them. The district court denied the motions, finding that the award of compensatory and punitive damages was not excessive. The inmate had been confined to a wheelchair since 1984. In 1994 he was transferred from a psychiatric center to another correctional facility where he was assigned to a Mental Health Observation Unit (MHU). The court noted that the inmate was "...not placed in MHU for mental health treatment. He was placed in MHU because the cell was bigger and because his wheelchair fit in the cell." But shortly after his transfer officials took away his wheelchair and denied him access to it for the majority of his time at the facility. The inmate repeatedly requested permission to use his wheelchair and his requests were denied. The jury concluded that the inmate's rights had been violated because he was unable to participate in outdoor exercise or to take a shower because he was not allowed to use his wheelchair. The jury awarded \$125,000 in compensatory damages for violations of the Americans with Disabilities Act (ADA) and punitive damages totaling \$25,000 against two supervisory officials for being deliberately indifferent to the inmate's serious medical needs. The court noted that the fact that the jury did not assess liability on the part of lower ranking prison officials did not preclude the jury from assessing liability on the supervisory officials. (Wende Correctional Facility, New York)

U.S. Appeals Court
CONSENT DECREE-
TERMINATION
PLRA-Pris. Litigation
Reform Act
TERMINATION OF
ORDER

Benjamin v. Jacobsen, 172 F.3d 144 (2nd Cir. 1999). Officials who had entered into a consent decree governing New York City jail conditions moved for immediate termination of the decree under provisions of the Prison Litigation Reform Act (PLRA). Pretrial detainees opposed the action. The district court vacated the decree and the appeals court affirmed in part and reversed in part. A rehearing en banc was granted and the appeals court affirmed in part, reversed in part and remanded. The appeals court held that the detainees were entitled to present evidence of current and ongoing violations of federal rights and of the need for continuation of the prospective relief provided in the decrees. According to the court PLRA provides for decrees to be terminated, but it does not require that decrees be vacated. The appeals court found that the PLRA termination provision does not violate the Constitutional separation of powers principle nor does it strip the courts of their Article III power and duty to remedy constitutional wrongs. (New York City Department Correction)

U.S. Appeals Court
CONSENT-DECREE
TERMINATION
PLRA-Prison Litigation
Reform Act

Berwanger v. Cottey, 178 F.3d 834 (7th Cir. 1999). A county jail moved under the Prison Litigation Reform Act (PLRA) to terminate the maximum population features of a court injunction. The district court entered an order terminating all prisoner release orders but the appeals court remanded the case. The appeals court held that the district court had erred by letting more than a year pass without action on the motion to terminate prospective relief, and then terminating the decree without making any findings. (Marion County Jail, Indiana)

U.S. Appeals Court
PLRA-Pris. Litigation
Reform Act
CONSENT DECREE

Cagle v. Hutto, 177 F.3d 253 (4th Cir. 1999). A state moved to terminate a prison conditions consent decree under the provisions of the Prison Litigation Reform Act (PLRA). The district court granted the motion and the inmates appealed. The appeals court affirmed, finding that the PLRA is constitutional and does not mandate an evidentiary hearing in all cases. (Powhatan Correctional Center, Virginia)

U.S. District Court
INDIVIDUAL
CAPACITY

Caldwell v. Hammonds, 53 F.Supp.2d 1 (D.D.C. 1999). A prisoner brought a § 1983 action for damages for injuries allegedly suffered. The district court held that the prisoner failed to state a claim with his allegations of limited access to legal materials because he did not allege a specific injury as a result. But the court held that the prisoner stated a claim for deliberate indifference because his prescribed treatment for skin cancer was delayed. The court also found a claim for deliberate indifference in the prisoner's allegations that he was exposed to secondary tobacco smoke and to smoke from fires set in his cell block. The court noted that although prison policy prohibited smoking in the prison, tobacco products were sold in the prison canteen and correctional officers permitted smoking in cell blocks. The court found that pervasive unsanitary and unhealthy conditions in his cell block existed for a long time and were obvious to any observer. Because the Director of the Department of Corrections had notice of these conditions, the prisoner stated a § 1983 claim for violation of the Eighth Amendment. (Cell Block 3, Maximum Security Facility, District of Columbia Department of Corrections, Lorton, Virginia)

U.S. District Court
NOMINAL DAMAGES
PLRA-Prison Litigation
Reform Act

Cassidy v. Indiana Dept. of Correction, 59 F.Supp.2d 787 (S.D.Ind. 1999). A blind inmate brought an action against a state corrections department alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court held that the Prison Litigation Reform Act (PLRA) barred the inmate's claims to the extent that he asserted mental or emotional injuries, and that nominal damages were available to the plaintiff. According to the court, to the extent that the inmate's claims under ADA and the Rehabilitation Act addressed the extra offender pay that the inmate lost as the result of being denied the opportunity to work at the prison, the claims would not be barred by the section of PLRA that prohibits a prisoner from bring an action for mental or emotional injury suffered while in custody without the showing of a physical injury. The court also held that nominal damages are available for intentional violations of ADA or the Rehabilitation Act, even if no other damages are available. The inmate had sought relief for the emotional and mental harm he suffered from his inability to pursue the same activities at his newly-assigned prison which did not accommodate his disabilities, compared to his opportunities at a previous facility. (Wabash Valley Correctional Facility, Indiana)

U.S. District Court
PUNITIVE DAMAGES
DAMAGES

Gaston v. Coughlin, 81 F.Supp.2d 381 (N.D.N.Y. 1999). In a § 1983 suit a state prisoner alleged retaliation in violation of his constitutional rights for his complaints about work conditions. The district court found that prison officers were liable for First Amendment retaliation and that they were not entitled to qualified immunity. The court ruled that the prisoner was entitled to pre-judgment compounded interest for lost wages and for monetary awards for educational costs incurred because of the loss of financial aid. The court held that the officers filed false accusations against the prisoner after he met with prison officials to discuss the prison's violation of a state law that limited the number of hours that inmates were required to work. The prisoner was allegedly disciplined for instigating a work stoppage but the court found no evidence that a work stoppage occurred. The prisoner was restricted from his job in the prison kitchen and was transferred to another prison, depriving him of wages and forcing him to delay and alter his educational plans and to incur additional educational costs. The court ruled that the prisoner was not entitled to punitive damages because there was no evidence that the officers were motivated by evil motive or intent or that they acted with reckless or callous indifference to the prisoner's federally-protected rights. (Eastern Correctional Facility, New York)

U.S. District Court
CONSENT DECREE-
MODIFICATION
PLRA-Pris. Litigation
Reform Act

Glover v. Johnson, 35 F.Supp.2d 1010 (E.D.Mich. 1999). Prison officials moved to terminate the district court's continuing jurisdiction over a plan to remedy equal protection violations identified in a civil rights action by female inmates. The district court denied the motion and the appeals court affirmed in part and vacated and remanded in part. On remand, the district court found that post-secondary and college educational opportunities provided to male and female inmates of state prison were sufficiently comparable, noting that male and female inmates had equal access to degree programs and the state's expenditures on college programming were similar for both genders. The court also held that vocational and apprenticeship opportunities provided to each gender were sufficiently comparable. The court noted that although ten more vocational programs were offered to male inmates, the six most frequently offered male vocational programs were offered to female inmates and enrollment rates of male and female inmates were similar. The court also noted that despite the fact that male inmates were offered twelve different types of apprenticeships and female inmates were offered seven, all eligible female inmates could participate in apprenticeship while only a small portion of eligible male inmates could participate. (Michigan Department of Corrections)

U.S. Appeals Court
CONSENT DECREE-
TERMINATION

Glover v. Johnson, 198 F.3d 557 (6th Cir. 1999). Prison officials moved to terminate the district court's continuing jurisdiction over a plan to remedy equal protection violations identified in a 20-year-old action by female inmates. The district court denied the motion and prison officials appealed. The appeals court vacated and remanded in part and on remand the district court granted the motion. The plaintiffs appealed and the appeals court affirmed. The appeals court reviewed the district court's finding that the state had achieved parity between male and female inmates in educational, vocational, apprenticeship and work-pass opportunities, as well as access to courts. The appeals court found that the district court's decision to terminate jurisdiction was not clearly erroneous. (Michigan Department of Corrections)

U.S. District Court
FAILURE TO PROTECT

Gonzalez v. Angelilli, 40 F.Supp.2d 615 (E.D.Pa. 1999). A civil rights action was brought against state parole and prison authorities by the relatives of a police officer killed by a former prison inmate and the owner of a trailer to which the former inmate moved upon release. The district court dismissed the case finding that as a general rule, the state has no affirmative obligation to protect its citizens from the violent acts of private individuals. The court held that the plaintiffs failed to state a § 1983 claim under a state-created danger theory where they failed to allege that it was foreseeable that the paroled offender would direct his violence at police officers in general, or that police would destroy trailer park property while looking for evidence. The court also found that the plaintiffs failed to state a § 1983 claim based on a failure to train theory where they did not identify what policies or procedures were defective, how they were defective or whether a training program was involved. (Pennsylvania Board of Probation and Parole, Pennsylvania Dept. of Corrections)

U.S. Appeals Court
PRIVATE PROVIDER
QUALIFIED IMMUNITY

Hinson v. Edmond, 192 F.3d 1342 (11th Cir. 1999). An inmate brought a § 1983 action against a jail's medical director who was an employee of a private, for-profit company that had contracted with the county to provide medical services to the jail. The district court denied the medical director's motion for summary judgment and he appealed. The appeals court affirmed and remanded the case. The appeals court held that a privately employed jail physician was ineligible to advance the defense of qualified immunity. The inmate had alleged he was subjected to an unreasonable delay in his medical treatment. (DeKalb County Jail, Georgia, and Wexford Health Services)

U.S. Appeals Court
CONSENT DECREE-
MODIFICATION
PLRA-Prison Litigation
Reform Act

Imprisoned Citizens Union v. Ridge, 169 F.3d 178 (3rd Cir. 1999). Pennsylvania prison officials moved to terminate a 1978 prison conditions consent decree under the provision of the Prison Litigation Reform Act (PLRA). Inmates opposed the motion and the United States intervened to defend the PLRA. The district court granted the termination motion and the inmates appealed. The appeals court affirmed, finding that the PLRA's termination provision did not violate the separation-of-powers doctrine nor equal protection principles. The appeals court also held that the district court did not abuse its power by refusing to hold officials in civil contempt for failing to comply with portions of the consent decree in the past. Inmates had sued in 1970 challenging conditions of confinement in seven state prisons. The resulting consent decree, according to the court, "governs nearly every aspect of prison management." (Pennsylvania Department of Corrections)

U.S. District Court
CONSENT DECREE-
MODIFICATION
PLRA-Prison Litigation
Reform Act

King v. Greenblatt, 53 F.Supp.2d 117 (D.Mass. 1999). A state moved to terminate consent decrees which were in place approximately 25 years to govern operations at a treatment facility for civilly committed sexually dangerous persons. The district court terminated the consent decrees, finding that the underlying conditions that existed when the decrees were entered had been remedied. The court noted that the provisions of the Prison Litigation Reform Act (PLRA) did not apply to civilly committed persons, who were not "prisoners" under the Act. (Massachusetts Treatment Center for Sexually Dangerous Persons, Bridgewater, Massachusetts)

U.S. Appeals Court
PLRA-Prison Litigation
Reform Act
FAILURE TO PROTECT

Liner v. Goord, 196 F.3d 132 (2nd Cir. 1999). A prisoner brought a § 1983 action against prison officials alleging he was sexually assaulted on three separate occasions by correctional officers. The district court dismissed the complaint and the prisoner appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that the alleged policy or practice of the Commissioner of the Department of Correctional Services that permitted corrections officers to conduct intrusive body searches without "therapeutic supervision" supported a § 1983 claim, even if the emotional distress claim required a showing of prior injury because the alleged sexual assaults qualified as more than de minimis physical injuries. The appeals court held that although the Prison Litigation Reform Act (PLRA) restricts an inmate's right to sue for emotional distress, "the law concerning the PLRA's exhaustion requirement is in great flux." (Attica Corr'l Facility, New York)

U.S. Appeals Court
OFFICIAL CAPACITY
INDIVIDUAL
CAPACITY

Luck v. Rovenstine, 168 F.3d 323 (7th Cir. 1999). An arrestee who was jailed for a week without a probable cause hearing following his warrantless arrest brought a § 1983 action against a sheriff in his personal and official capacities. The district court granted summary judgment in favor of the sheriff. The appeals court affirmed in part and reversed and remanded in part. The appeals court held that the sheriff could not be held liable in his individual capacity. Fact issues as to whether the arrestee's detention without a probable cause hearing resulted from the sheriff's deliberate decision not to monitor detainees who were brought to the jail by outside agencies precluded summary judgment on the official capacity claim. According to the court, the sheriff, as the custodian of persons incarcerated in the county jail, had a duty to ensure that detainees arrested without warrants received probable cause hearings or gained release. The court noted that according to the Supreme Court, "prompt" in this context means, under most circumstances, within 48 hours. (Kosciusko Co. Jail, Indiana)

U.S. Appeals Court
COMPENSATORY
DAMAGES

Makin v. Colorado Dept. of Corrections, 183 F.3d 1205 (10th Cir. 1999). A former inmate brought a § 1983 action against prison officials alleging that they violated his right of free exercise of his religion. The district court entered judgment for the inmate and the appeals court affirmed in part, vacated in part, and remanded. According to the appeals court, the officials' failure to accommodate the inmate's meal requirements during the Muslim holy month of Ramadan violated his First Amendment right to freely exercise his religion. The court also found that evidence that the inmate suffered mental or emotional distress as the result of the officials' actions supported more than a mere nominal damage award, but the trial court had incorrectly based its compensatory damages award on the abstract value of a constitutional right rather than on actual injuries the inmate suffered from the denial of that right. The trial court had awarded \$9000 in compensatory damages, which the appeals court ordered it to review on remand. (Colorado State Penitentiary)

U.S. District Court
INDIVIDUAL
CAPACITY
QUALIFIED IMMUN-
ITY
ADA-Americans with
Disabilities Act

Montez v. Romer, 32 F.Supp.2d 1235 (D.Colo. 1999). State prisoners with various disabilities brought a class action suit claiming violation of their rights under the Rehabilitation Act, the Americans with Disabilities Act (ADA), and the Eighth and Fourteenth Amendments. The district court held that the prisoners stated legally cognizable claims under both Acts, but that the individual defendants were not liable under either Act, nor under § 1983, and were entitled to qualified immunity because it was not clearly established at the time of the alleged discriminatory

conduct that either Act applied to prisons. The court allowed claims against the state to proceed. (Colorado Department of Corrections)

U.S. Appeals Court
PLRA-Pris. Litigation
Reform Act
CONSENT DECREE-
TERMINATION

Nichols v. Hopper, 173 F.3d 820 (11th Cir. 1999). A state moved to terminate a consent order that had been entered in civil litigation regarding prison conditions for women, under the provisions of the Prison Litigation Reform Act (PLRA). The district court granted the motion and the appeals court affirmed. The appeals court noted that the PLRA provision allowing termination did not violate the separation of powers doctrine. (Alabama)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
QUALIFIED IMMUN-
ITY

Ralston v. McGovern, 167 F.3d 1160 (7th Cir. 1999). An inmate brought a civil rights action against a state prison officer, alleging that the officer denied him medical care in violation of the Eighth Amendment. The district court entered summary judgment for the officer. The appeals court reversed and remanded, finding that the inmate could maintain a claim based on allegations that the officer refused to give him medicine prescribed to alleviate pain caused by radiation treatment for Hodgkin's Disease. The appeals court ruled that the officer was not entitled to qualified immunity from suit. The appeals court stated that the officer's "refusal to treat, at trivial cost, the pain caused by cancer and cancer treatments bordered on barbarous, and the guard's deliberate refusal of request for pain medication was gratuitous cruelty, even if the context of cancer were ignored." (Green Bay Correctional Institution, Wisconsin)

U.S. District Court
QUALIFIED IMMUNITY

Schmidt v. Odell, 64 F.Supp.2d 1014 (D.Kan. 1999). A former county jail inmate, a double amputee without legs from a point below his knees, brought a civil rights action against jail officials asserting claims under the Eighth Amendment. The district court denied summary judgment for the defendants, finding that it was precluded on all claims. The court held that refusal to provide the inmate with a wheelchair while confined in the county jail did not violate the Eighth Amendment since jail exits, entrances and hallways were too narrow to accommodate wheelchairs and there were legitimate safety concerns about placing a wheelchair among the jail's general population. The court also found that deficiencies such as plumbing problems, overcrowding, inadequate exercise areas, and other defects during the inmate's confinement in the county jail did not rise to the level of cruel and unusual punishment; there were opportunities to exercise in dayrooms, plumbing problems and other allegedly unsanitary conditions did not pose a serious threat to the health, safety or well-being of the inmate, and overcrowding did not result in denial of the minimal measures of life's necessities. But the court denied summary judgment for jail officials on the issue of whether they were deliberately indifferent to the basic needs of the inmate while he was confined at the jail. The court noted that the fact that the inmate was able to use most of the jail services did not preclude his Americans with Disabilities Act (ADA) or Rehabilitation Act claims against jail officials. (Cowley County Jail, Kansas)

U.S. Appeals Court
PUNITIVE DAMAGES
NOMINAL DAMAGES

Trobaugh v. Hall, 176 F.3d 1087 (8th Cir. 1999). An inmate brought a § 1983 action against county officials alleging violation of his First Amendment right to petition for the redress of grievances was violated when he was placed in administrative segregation for filing repeated grievances. The district court entered summary judgment for the jail administrator and awarded \$1 nominal damages against the deputy. The inmate appealed and the appeals court affirmed in part, reversed in part and remanded. The appeals court held that the district court abused its discretion by awarding only \$1 in compensatory damages, which was "patently insufficient" to compensate for the injury suffered by the inmate by being placed in segregation. The appeals court also held that the deputy who placed the inmate in segregation was potentially subject to punitive damages for his conduct. The inmate had filed a grievance to contest his transportation to court early and when it was denied he filed a second grievance which was also denied. The inmate filed a third grievance challenging the apparent lack of an appeal process, which was also denied. The day after his third grievance was denied he was awakened at 12:30 a.m. and was escorted to an isolation cell. (Linn County Correctional Center, Iowa)

U.S. District Court
FAILURE TO DIRECT
FAILURE TO
SUPERVISE

Wilson v. City of Chanute, 43 F.Supp.2d 1202 (D.Kan. 1999). The parents of a detainee who died of a drug overdose shortly after being released from police custody brought a § 1983 action alleging conspiracy and violations of the Fourth and Fourteenth Amendments. The defendants moved for summary judgment, which was granted in part and denied in part by the district court. The court held that the police officers were not entitled to qualified immunity because there was sufficient evidence of deliberate indifference to the detainee's serious medical needs. The court also held that there was sufficient evidence that the police chief failed to properly direct or supervise officers. Summary judgment was also denied for the city because the court found fact questions as to whether municipal policy or custom was the moving force behind the officers' alleged violation of the detainee's due process rights. The court found sufficient evidence to create an inference that two police officers and a detective had agreed to deprive the detainee of his due process rights by releasing him rather than providing medical treatment, for the purposes of a § 1983 conspiracy claim. (City of Chanute, Kansas)

2000

U.S. District Court
CONTRACT SERVICES

Andrews v. Camden County, 95 F.Supp.2d 217 (D.N.J. 2000). A former inmate brought an action alleging that jail officials were deliberately indifferent to his need for medical treatment for a life-threatening infection that caused him to suffer severe injuries and nearly caused his death. The district court declined the defendant's motion for summary judgment, finding that it was precluded

by fact issues of whether the inmate's right to adequate medical treatment was violated during his eight days of confinement. The court noted that when contracting for correctional health care services, the county or municipality still remains liable for constitutional deprivations. The court found that jail officials may have knowingly failed to follow their own policy of having a jail medical director, which was essential to the safe functioning of the jail's health services, and may have abandoned a sick call system. (Camden County Correctional Center, New Jersey)

U.S. District Court
CONTRACT SERVICES

Bowman v. Corrections Corp. of America, 188 F.Supp.2d 870 (M.D.Tenn. 2000). The mother of a deceased inmate brought a § 1983 action against a corporation that managed a correctional facility, the warden, a hospital and physicians, alleging violations of his Eighth Amendment right to adequate medical care for sickle cell anemia. After a jury trial judgment was entered in favor of the defendants the plaintiff moved for judgment as a matter of law. The district court held that the corporation's medical policy violated contemporary standards of decency. According to the court, it was proper to consider the constitutionality of the medical policy of the corporation that managed the correctional facility, even though the mother's claims for damages against the physicians were unsuccessful, because the corporation's liability for its medical policy was measured by a different legal standard. The court concluded that the corporation would be treated as a municipal corporation for § 1983 liability purposes and noted that the corporation could not "contract away" its obligation to provide adequate medical care to inmates in its custody. The court held that the corporation that managed the facility violated contemporary standards of decency by contracting with a physician who provided exclusive medical services with substantial financial incentives to reduce necessary medical services. The court noted that the contract exceeded proper levels of risk to the physician under the American Medical Association and federal regulatory standards, and that the state had set higher cost requirements for services than were expended under the contract. The contract with the physician had a capitation agreement that governed referral of inmates to medical specialists, decisions to do laboratory tests, and the issue of prescriptions. According to the court, the contract and "its extreme financial incentives" to the physician "poses a significant risk for the denial of necessary medical treatment for the inmates." The court found that these covered services involved the existence of perceived or actual serious medical conditions that required treatment or analysis. The court entered an injunction, prohibiting the corporation from enforcing its contract with the physician. The court also awarded attorney fees to the plaintiff for the time expended on the motion. (Corrections Corporation of America's South Central Correctional Facility, Tennessee.)

U.S. District Court
FAILURE TO PROTECT
FAILURE TO SUPER-
VISE
NEGLIGENT RETEN-
TION
NEGLIGENT SUPER-
VISION

Brown v. Youth Services Intern. of South Dakota, 89 F.Supp.2d 1095 (D.S.D. 2000). Residents of a juvenile treatment facility who were allegedly sexually assaulted by a counselor brought an action alleging negligent hiring, supervision and retention, and negligent and intentional infliction of emotional distress. The district court found that fact issues precluded summary judgment with respect to the negligent hiring, retention and supervision claims. The court found that the plaintiffs may collect damages for emotional injuries resulting from their alleged physical assaults. According to the court, the retention of the employee after allegedly receiving reports of sexual abuse constituted extreme and outrageous behavior as needed to support a claim of intentional infliction of emotional distress. The court found that there were genuine material issues of fact as to whether the facility administrators knew, or should have known, of the counselor's alleged propensity for abusing children when they hired the counselor. (Youth Services International of South Dakota, Inc., operating under the name Chamberlain Academy)

U.S. Appeals Court
PLRA-Prison Litigation
Reform Act

Cassidy v. Indiana Dept. of Corrections, 199 F.3d 374 (7th Cir. 2000). A blind inmate brought an action against the Indiana Department of Corrections alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court granted partial judgment in favor of the defendants and the inmate appealed. The appeals court affirmed, finding that the provision of the Prison Litigation Reform Act (PLRA) that banned prisoner civil actions for mental or emotional damages without a prior showing of physical injury applies to constitutional torts and that the provision barred the inmate's claims. The inmate had alleged that the department had denied him access to programs, services, activities and benefits that it provides to non-disabled inmates in its custody. (Wabash Valley Correctional Facility, Indiana)

U.S. District Court
VAWA- Violence
Against Women Act
FAILURE TO TRAIN

Daniels v. Delaware, 120 F.Supp.2d 411 (D.Del. 2000). A state inmate who had been raped by a correctional officer and became pregnant as a result, sued prison officials under § 1983 and the Violence Against Women Act (VAWA). The district court granted summary judgment in favor of the defendants. The court held that the inmate failed to establish that the officials had been deliberately indifferent to her health and safety, even though they had previously investigated the correctional officer for taking female inmates outside their cells after lockdown. The court noted that there was no evidence that the previous incident involved sexual misconduct and the officials had disciplined the officer and changed lock down procedures following the investigation.

The court found that the inmate failed to establish a failure to train violation because the prison's training programs were found to be sufficient under national standards promulgated by the American Correctional Association. The offending officer had received an adequate number of training hours and the prison had received an award of excellence for its training programs. The officer's training had included training in cultural awareness, which included training in sexual harassment and inmate treatment, and he was trained regarding the prison's code of conduct, which prohibited sexual contact between inmates and guards. The court noted that personnel training standards for correctional institutions that were promulgated by national groups do not

necessarily equate with the training standards required by the Eighth Amendment. According to the court, while the recommendations of such groups may be instructive in certain cases they simply do not establish constitutional minima, but rather establish goals recommended by the organization. (Delaware Women's Correctional Institute)

U.S. Appeals Court
PUNITIVE DAMAGES
COMPENSATORY
DAMAGES
DELIBERATE
INDIFFERENCE

Daskalea v. District of Columbia, 227 F.3d 433 (D.C.Cir. 2000). A former District of Columbia jail inmate who had been forced to perform a striptease in front of other prisons and male and female guards, sued the District and corrections officials for § 1983 violations. The district court entered a jury verdict awarding \$350,000 in compensatory and \$5 million in punitive damages, and denied the defendants' motion for judgment as a matter of law. The appeals court affirmed in part and reversed in part. The appeals court held that the \$350,000 award for mental and emotional distress resulting from the § 1983 violation was reasonable, but that the former inmate was not entitled to punitive damages from the District for negligent supervision, because District law bars the imposition of such awards against the District. The mental and emotional distress award was supported, according to the court, by the fact that the inmate was denied library assistance because she refused to have sex with the librarian, she was attacked with the assistance of correctional officers, she was confined in isolation without underwear or a mattress, she felt constant stress, anxiety and dread of imminent sexual attack, she had to sleep during the day for fear of what guards might do to her at night, she suffered from insomnia and eating disorders, and spent months emotionally and psychologically debilitated, withdrawn and depressed. The appeals court agreed with the jury finding that the District's failure to train or supervise jail employees amounted to deliberate indifference toward the female inmate's constitutional rights, so that the District was liable under § 1983. The court noted that seven months prior to this incident the district court had found the District liable under § 1983 for being deliberately indifferent to repeated sexual abuse and harassment of female prisoners by correctional officers and for failing to train staff to prevent such misconduct. According to the court, the fact that the District jail officers sought to conceal the incident did not insulate the District from § 1983 liability based on its deliberate indifference. (District of Columbia Jail)

U.S. District Court
RESPONDEAT
SUPERIOR

Delaney v. Detella, 123 F.Supp.2d 429 (N.D.Ill. 2000). A prison inmate filed a § 1983 action against a warden and other correctional officials alleging that denial of exercise opportunities during a six-month lockdown violated his Eighth Amendment rights. The district court denied summary judgment for the defendants, finding that denial of out-of-cell exercise for six months presented a cognizable § 1983 claim. The only out-of-cell opportunities offered to the inmate were for weekly showers and a handful of family and medical visits. The court found that the six month lockdown was a large scale policy such that the warden and upper level officials could be said to have personally participated in the alleged violation. (Stateville Correctional Center, Illinois)

U.S. District Court
FAIR HOUSING ACT

Garcia v. Condarco, 114 F.Supp.2d 1158 (D.N.M. 2000). A female detainee filed a Fair Housing Act claim alleging that the city jail in which she had been confined was a "dwelling" within the meaning of FHA. The district court granted the defendants' motion to dismiss, finding that the jail was not a dwelling for FHA purposes. The detainee alleged she had been sexually abused by a jail officer. The officer had pled guilty to a criminal sexual penetration charge. The detainee asserted that the city defendants had discriminated against her on the basis of her sex in the provision of services and facilities. (Hobbs City Jail, New Mexico)

U.S. Appeals Court
CONSENT DECREE-
TERMINATION
PLRA-Prison Litigation
Reform Act

Gilmore v. People of the State of California, 220 F.3d 987 (9th Cir. 2000). A corrections department moved under the Prison Litigation Reform Act to terminate the prospective relief provisions of a consent decree governing certain conditions of confinement for condemned prisoners. The federal district court granted the motion for termination and prisoners under the sentence of death appealed. The appeals court reversed and remanded. The appeals court held that the PLRA termination provision is not a unilateral mandate to courts to unconditionally terminate prospective relief in prison conditions cases and does not unconstitutionally prescribe the rule of decision. The appeals court found that the PLRA termination provision does not violate prisoners' due process or equal protection rights. The appeals court held that the district court should have examined the court record and the relief granted by the decree in order to determine whether it was narrowly tailored and minimally intrusive, and should have simply considered whether there were any explicit findings to this effect. (San Quentin State Prison, California)

U.S. Appeals Court
CONSENT DECREE-
TERMINATION
PLRA-Prison Litigation
Reform Act

Hazen Ex Rel. LeGear v. Reagen, 208 F.3d 697 (8th Cir. 2000). Iowa prison officials moved to terminate consent decrees that had regulated prison conditions. The district court terminated the decrees and the inmates appealed. The appeals court affirmed, finding that it was within the power of Congress to remove state-court jurisdiction to enforce federal consent decrees that are subject to termination under the Prison Litigation Reform Act (PLRA). (Iowa State Penitentiary)

U.S. District Court
COMPENSATORY
DAMAGES

Kelleher v. New York State Trooper Fearon, 90 F.Supp.2d 354 (S.D.N.Y. 2000). An arrestee brought a § 1983 action against a police officer, alleging that he was subjected to an unlawful strip search. The district court held that the issue of whether the officer had an objectively reasonable suspicion to strip search the arrestee was for the jury, but that the jury award of damages in the amount of \$125,000 as compensation for emotional distress were excessive to the extent that they exceeded \$25,000. According to the court, although the unlawful strip search in which the arrestee was touched by the officer was an "egregious intrusion" on the arrestee's person, there was no corroborating medical evidence concerning the arrestee's emotional distress. (State Police Barracks in Brewster, New York)

U.S. District Court
PRIVATE OPERATOR
BIVENS CLAIM

Lawson v. Liburdi, 114 F.Supp.2d 31 (D.R.I. 2000). A federal pretrial detainee filed a complaint against employees of a private company that operated a detention facility, alleging violation of his First Amendment free exercise rights. The district court held that the detainee could not assert a Bivens action against the employees because they were not affiliated in any way with the federal government. (Cornell Corrections, Donald Wyatt Detention Facility, Rhode Island)

U.S. District Court
FEDERAL TORT
CLAIMS ACT

Maurello v. U.S., 111 F.Supp.2d 475 (D.N.J. 2000). A prisoner brought a Federal Tort Claims Act action alleging that the federal Bureau of Prisons negligently delayed enrolling him in a statutory drug treatment program and caused his release to be delayed by 51 days. The district court granted summary judgment for the Bureau, finding that the delay was within the Act's false imprisonment exception. (Federal Bureau of Prisons)

U.S. District Court
DAMAGES

McClary v. Coughlin, 87 F.Supp.2d 205 (W.D.N.Y. 2000). A prisoner brought an action against prison officials alleging violation of his due process rights by failing to provide him with meaningful "periodic review" of his administrative segregation status during his four uninterrupted years. A jury found in favor of the prisoner and awarded \$600,000 in damages to the prisoner. The district court denied judgment for the defendants as a matter of law but found that the damage award was excessive and reduced it to \$237,500. The court noted that the initial award amounted to nearly \$500 per day of confinement while the prisoner had only sought \$125 per day and \$50,000 for mental and emotional distress. (Attica Correctional Facility, New York)

U.S. District Court
DAMAGES
FAILURE TO PROTECT

Miller v. Shelby County, 93 F.Supp.2d 892 (W.D.Tenn. 2000). A county jail inmate brought a § 1983 action against a county alleging injuries suffered in an attack by fellow inmates were the result of the jail's practice of permitting inmates of different security levels to take recreation together. The district court entered judgment for the plaintiff, finding that the jail's recreation policy posed a substantial risk of harm and that jail officials showed deliberate indifference to the risk posed by the policy. The court noted that whether the policy was official or not, it was pervasive enough to be considered a de facto policy. The jail policy allowed inmates of different security levels to take recreation together, including gang members who were allowed to mix with protective-custody inmates. The inmate had been attacked by gang members and the court found that jail officials had both general and specific knowledge of threats against the inmate by gang members yet took no affirmative steps to protect the inmate, including the "readily available step of ending [the] mixed-recreation practice." The inmate suffered permanent impairment to his shoulder. The district court awarded \$40,000 to the inmate. (Shelby County Correctional Center, Tennessee)

U.S. District Court
DAMAGES
PLRA-Prison Litigation
Reform Act

Morrison v. Davis, 88 F.Supp.2d 799 (S.D.Ohio 2000). A prisoner who prevailed on a § 1983 excessive force action against corrections officers moved for an attorney fee award and brought an equal protection challenge against the Prison Litigation Reform Act (PLRA). The district court held that the PLRA limit on attorney fees comported with equal protection. The court found that a fee award of \$53,000 was not inherently disproportionate to the \$15,000 awarded to the inmate and that only \$1 of the damages would apply to the attorney fees. The court noted that the prisoner had vindicated a significant Eighth Amendment right and obtained a judgment that would arguably have a deterrent impact on others who might violate the same right. Although PLRA prescribed application of up to 25% of the damage award toward attorney fees the court decided that only \$1 should be applied because of the significant violation involved and because the jury had sent a clear signal, through its inclusion of \$3,000 in punitive damages, that the defendant correctional officers should be punished. (Ross Correctional Institute, Ohio)

U.S. District Court
QUALIFIED
IMMUNITY

Pahk v. Hawaii, 109 F.Supp.2d 1262 (D.Hawai'i 2000). A parolee brought state court and § 1983 actions against a state and individual parole board officials alleging he had been discharged from parole without notice and that when the discharge was rescinded he also did not receive notice. The parolee alleged that the paroling authority discharged him from parole and then continued to treat him as if he were still on parole. The district court held that the officials' alleged actions violated well-established due process rights and that the officials did not enjoy quasi-judicial immunity against § 1983 claims. (Hawaii Paroling Authority)

U.S. District Court
COMPENSATORY
DAMAGES
QUALIFIED
IMMUNITY

Quartararo v. Hoy, 113 F.Supp.2d 405 (E.D.N.Y. 2000). A prisoner brought a civil rights action against prison officials alleging violation of his due process rights when he was removed from a temporary work release program. The district court restored the prisoner to the program and held that the prisoner was entitled to compensatory damages for the loss of income and benefits attributable to his unlawful removal from the work release program, as well as emotional distress that he may have suffered. The court held that the officials' actions were not objectively reasonable and that they were not entitled to qualified immunity, noting that the officials failed to comply with their own regulations and failed to provide the prisoner any due process at all. According to the court, the prisoner established that he would not have been removed from the program if he had been afforded the due process to which he was entitled. The court found that prior to removal of a New York prisoner from temporary work release a prisoner must be given the following: written notice of the alleged violation; statement of the actual reason for which removal is being considered; a report or summary of the evidence against him/her; an opportunity to be heard and to present evidence; advance notice of a temporary release committee hearing; the right to confront and cross examine adverse witnesses; a committee composed of neutral decision-makers; and a post-hearing written account of the actual reason for removal. (Queensboro Correctional Facility, New York)

U.S. Appeals Court
DAMAGES
NEGLIGENCE

Rangolan v. County of Nassau, 217 F.3d 77 (2nd Cir. 2000). An inmate who was beaten by fellow prisoners brought an action against the county and county sheriff's department alleging negligence and violation of his Eighth Amendment rights. The district court entered judgment for the inmate on the negligence claim and ordered remittitur of damages. The appeals court affirmed in part and certified the question to the state court, finding that the county's conduct, in placing the inmate with a prisoner against whom the inmate had acted as a confidential informant, did not rise to the level of an Eighth Amendment violation. The court noted that although the inmate's records indicated that he should not be assigned to the same dormitory as a prisoner against whom he had informed, the correctional officer who assigned the prisoner to the inmate's dormitory failed to notice the warning in the inmate's records. The district court jury had found that the inmate's pain and suffering damages totaled \$1.55 million but the inmate agreed to a reduced award totaling \$800,000. The appeals court sent the case to the state court to resolve liability questions. (Nassau Co. Jail, N.Y.)

U.S. Appeals Court
CONSENT DECREE-
TERMINATION

Sharp v. Weston, 233 F.3d 1166 (9th Cir. 2000). Officials moved to dissolve an injunction against a state commitment center for persons civilly committed as sexually violent predators. The district court denied relief and issued an order detailing additional steps to be taken to provide center residents with constitutionally adequate treatment. The appeals court affirmed, finding that the officials failed to show that dissolution of the injunction was warranted, and that the scope of the order detailing additional steps to be taken by the center was not an abuse of discretion. (Special Commitment Center, Washington)

U.S. District Court
SUPERVISORY
LIABILITY

Souffront v. Alvarado, 115 F.Supp.2d 237 (D.Puerto Rico 2000). A prisoner brought a § 1983 action against prison officials alleging deliberate indifference to his serious medical needs. The district court found that the prisoner stated a valid claim for deliberate indifference and a claim for supervisory liability against the administrator of correctional services. The court also ruled that a Puerto Rico statute that shielded government physicians from civil liability for medical malpractice suits was preempted. The prisoner had suffered from abdominal pain and allegedly writhed in excruciating pain for three days before officials, who knew of his condition, followed up on his sonogram and sought care for his condition. (Guerrero Correctional Complex, Puerto Rico)

U.S. Appeals Court
BIVENS CLAIMS

Tellier v. Fields, 280 F.3d 69 (2nd Cir. 2000). A prisoner brought a *Bivens* action against federal prison officials alleging he was wrongfully confined in administrative detention for 514 days in violation of his due process rights. The district court denied summary judgment for the defendants and they appealed. The appeals court affirmed, finding that there was a fact issue, precluding summary judgment, as to whether the 514 days in administrative detention was atypical and significant. According to the court, a prison regulation concerning administrative detention orders created a liberty interest for the prisoner, which was protected by procedural due process. The court denied qualified immunity to prison officials, finding that no objectively reasonable person in their position could have believed that he or she was not violating the prisoner's constitutional rights by confining the prisoner in administrative segregation for 514 days without the hearing required by the prison regulation. (Federal Metropolitan Correctional Center, New York)

U.S. District Court
QUALIFIED
IMMUNITY
DELIBERATE INDIF-
ERENCE

Verser v. Elyea, 113 F.Supp.2d 1211 (N.D.Ill. 2000). A prisoner brought a § 1983 action against a prison's current and former medical directors and other officials, alleging that he was denied proper medical attention for an injury. The district denied the defendants' motion to dismiss, finding that the medical director's alleged conduct in declining to follow the recommendations of an orthopedic specialist, without even examining the prisoner and despite the prisoner's repeatedly complaints of pain and injury, rose to the level of deliberate indifference. The inmate injured his knee while playing basketball and an orthopedic specialist ordered physical therapy three times a week and instructed the prisoner to wear a knee brace. The former medical director of the prison denied the knee brace, stating that it was "not indicated for this problem." The prisoner was unable to participate in most of his physical therapy sessions due to the refusal of correctional officers and others to give him passes. When he was again examined by the orthopedic specialist and ordered to have more physical therapy and to wear an ace bandage, the medical director again contravened the recommendations, even though he had never examined the prisoner himself. Several weeks later the prisoner fell down a flight of stairs and injured his back, attributing the fall to his weak knee. The court found that the prison's chief administrative officer and the director of the state corrections department were not entitled to qualified immunity because they concurred in the denial of the prisoner's medical grievance appeal. In its decision the court stated that "...a plaintiff need not use magic words like 'reckless' or 'intentional' to make out a case for deliberate indifference. He must merely plead that the defendant behaved in a way that can be construed to show reckless or intentional conduct." (Stateville Correctional Center, Illinois)

2001

U.S. District Court
PRELIMINARY
INJUNCTION

A.A. v. New Jersey, 176 F.Supp.2d 274 (D.N.J. 2001). Convicted sex offenders challenged the constitutionality of a New Jersey constitutional provision and the Internet Registry Act amendment to the state's "Megan's Law" statute, that authorized a system for making sex offender registration information publicly available on the Internet. The offenders moved for preliminary injunctive relief and the court granted the motion in part. The court found that the Internet disclosure statute was not punitive in its effects or intent and that the compilation and dissemination of publicly-available information on offenders did not violate their privacy rights.

The court noted that the legislature expressly disavowed any intent to inflict additional punishment on offenders and stated that the statute was intended solely for the protection of the public. The legislature prescribed penalties to deter the misuse of information. But the court found that offenders' home addresses were not adequately safeguarded by the Internet disclosure system and the court issued a preliminary injunction limiting disclosure to offenders' county of residence. (New Jersey)

U.S. Appeals Court
FTCA- Federal Tort
Claims Act
BIVENS CLAIMS

Alfrey v. U.S., 276 F.3d 557 (9th Cir. 2002). The personal representative of a federal prisoner who was killed by his cellmate brought Federal Tort Claims Act (FTCA) and *Bivens* actions against the government and corrections officials. The district court dismissed the *Bivens* claim and granted summary judgment for the defendants based on the discretionary-function exception to FTCA. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the plaintiff failed to state a *Bivens* claim and that the discretionary-function exception barred an FTCA claim based on the officers' response to the report of the cellmate's threat. But the appeals court found that federal correctional officers had a non-discretionary duty to perform a "Central Inmate Monitoring" evaluation of the prisoner, who was to be held at a federal facility pending trial on a federal charge, before assigning the inmate to share a cell with a federal prisoner, precluding summary judgment on the FTCA claim. (Sheridan Federal Correctional Facility, Oregon)

U.S. Appeals Court
BIVENS CLAIM
QUALIFIED
IMMUNITY

Benefield v. McDowall, 241 F.3d 1267 (10th Cir. 2001). A prison inmate brought a *Bivens* action against prison officials alleging that he had been exposed to a risk of harm at the hands of other inmates after an officer labeled him as a "snitch." The officer moved for dismissal on the basis of qualified immunity and the district court denied the motion. The appeals court affirmed, finding that it was clearly established at the time of the incident (1998) that labeling a prison inmate as a "snitch" to other inmates violated the inmate's Eighth Amendment rights. The appeals court held that the inmate stated an Eighth Amendment claim with his allegation that he had suffered psychological injury due to the fear of harm to which the officer exposed him, even though the inmate had not in fact been assaulted. (United States Penitentiary, Florence, Colorado)

U.S. Appeals Court
CONSENT DECREE-
TERMINATION
PLRA-Prison Litigation
Reform Act

Benjamin v. Fraser, 264 F.3d 175 (2nd Cir. 2001). A city corrections department moved for immediate termination of consent decrees requiring judicial supervision over restrictive housing, inmate correspondence, and law libraries at city jails, pursuant to the Prison Litigation Reform Act (PLRA). The district court vacated the decrees and pretrial detainees appealed. The appeals court affirmed in part, reversed in part, and remanded. On remand the district court granted the motion in part and denied it in part and the city appealed. The appeals affirmed. The appeals court held that the detainees were not required to show actual injury when they challenged regulations that allegedly adversely affected their Sixth Amendment right to counsel by impeding attorney visitation. The appeals court concluded that there was a continuing need for prospective relief with respect to the detainees' right to counsel, and the relief granted by the district court satisfied the requirements of PLRA. The appeals court held that the restraints used when moving certain detainees within, or outside, the jail, had a "severe and deleterious effect" on the detainees given that such restraints were often painful and could result in injury. (N.Y. City Dept. of Correction)

U.S. Supreme Court
DAMAGES
PLRA-Prison Litigation
Reform Act

Booth v. Churner, 121 S.Ct. 1819 (2001). A state prison inmate who claimed that correctional officers assaulted him and then denied him adequate medical care for resulting injuries filed a civil rights action, seeking both injunctive relief and money damages. He had pursued an administrative grievance, but he did not seek an administrative review after prison officials denied relief. Money damages were not available through the administrative process. The federal appeals court upheld the dismissal of the inmate's civil rights lawsuit, for failure to pursue the administrative appeal under the Prison Litigation Reform Act (PLRA). The U.S. Supreme Court unanimously held that prisoners must seek administrative appeal, even if they are seeking only money damages as remedies, and despite the fact that money damages may not be available in an administrative grievance procedure. The Court held that Congress intended to require procedural exhaustion of available administrative remedies "regardless of the relief offered through administrative remedies." (Pennsylvania Department of Corrections)

U.S. District Court
PLRA-Prison Litigation
Reform Act
DAMAGES

Caldwell v. District of Columbia, 201 F.Supp.2d 27 (D.D.C. 2001). An inmate filed a § 1983 action against the District of Columbia and several employees of its corrections department, alleging unconstitutional conditions of confinement and denial of medical care. A jury entered a verdict in favor of the inmate, on all claims, and awarded \$174,178. The appeals court granted judgment for the defendants as a matter of law, in part, denied judgment for the defendants in part, and did not reduce the damage award. The court found that statements by the inmate's attorney during his closing argument, suggesting specific dollar amounts to be considered by the jury, did not warrant a new trial. The appeals court held that the Prison Litigation Reform Act (PLRA) does not require a prisoner to allege or prove serious, permanent physical injury in order to bring an action for violation of his constitutional rights. The appeals court held that the prisoner sufficiently alleged a "physical injury" for the purposes of PLRA, with allegations that excessive heat in his cell made him dizzy, dehydrated, and disoriented, gave him a severe rash, and that smoke from rolled toilet paper "wicks" and frequent use of mace gave him bronchial irritation and a runny nose. (Maximum Security Facility, Lorton Correctional Complex, District of Columbia)

U.S. District Court
CONTEMPT

Carty v. Turnbull, 144 F.Supp.2d 395 (D.Virgin Islands 2001). On its own motion, the district court held that Virgin Islands officials did not make all reasonable efforts to comply with the court's

orders in a class action alleging unconstitutional conditions of confinement. The court held the officials in civil contempt of the settlement agreement and subsequent remedial orders. The court noted that lack of financing is not a defense to the failure to provide minimum constitutional standards in the operation of a jail. (Criminal Justice Complex, Virgin Islands)

U.S. Appeals Court
PLRA-Prison Litigation
Reform Act
CONSENT DECREE--
TERMINATION

Castillo v. Cameron County, Tex., 238 F.3d 339 (5th Cir. 2001). Pretrial detainees and convicted inmates held at a jail brought a class action under § 1983 against a county, state and various individuals, alleging that overcrowding at the jail resulted in cruel and unusual punishment. The state moved to terminate previously-entered injunctions and the district court dismissed the state from the action and ordered continuation of injunctive relief designed to reduce the jail population. The appeals court vacated the decision and remanded the case. The appeals court found that the order continuing injunctive relief was a "prisoner release order" within the meaning of the Prison Litigation Reform Act (PLRA) and that the state had standing to appeal the continuation of injunctive relief. The appeals court held that on remand, the district court must determine if a continuing and ongoing constitutional violation exists, and if so, whether the remaining requirements of PLRA are met. (Cameron County Jail, Texas)

U.S. Supreme Court
BIVENS CLAIM
PRIVATE OPERATOR

Correctional Services Corp. v. Malesko, 534 U.S. 61 (2001). A federal prisoner diagnosed with a heart condition was transferred to a halfway house where he was to serve the remainder of his sentence, and was assigned to living quarters on the fifth floor. The company who operated the facility had a policy that required inmates residing below the sixth floor to use the staircase rather than the elevator to travel from the first-floor lobby to their rooms. Although the prisoner was exempted from this policy, he claimed that one of the company's employees forbade him to use the elevator to reach his fifth-floor bedroom, and that he then suffered a heart attack and fell after climbing the stairs. In addition to suing individual employees of the facility, he sought to impose liability on the company for alleged violation of his constitutional rights. The U.S. Supreme Court, in a 5-4 decision, ruled that federal prisoners may not file civil rights claims against private corporations operating a halfway house under a contract with the Federal Bureau of Prisons (BOP). The Court declined to extend the implied damage remedy for violation of constitutional rights first recognized in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) to claims against private companies allegedly acting under color of federal law. The Court noted that federal prisoners' only remedy for an alleged constitutional deprivation lies against the individual officer, and not against the federal government itself. The Court concluded that it should not "impose asymmetrical liability costs on private prison facilities alone." If such a decision is to be made, the Court said, that is a "question for Congress, not us, to decide." (Le Marquis Community Correctional Center, New York)

U.S. District Court
BIVENS CLAIM

Dekoven v. Bell, 140 F.Supp.2d 748 (E.D.Mich. 2001). A prisoner sued individuals, a state, the United States and foreign counties, alleging they failed to recognize him as the "God-Messiah" of the Holy Bible. The district court dismissed the case, finding it was "patently frivolous, implausible, and devoid of merit." According to the court, the prisoner had no constitutional right to be recognized and treated as the "Messiah-God" or any other holy, extra-worldly, or supernatural being or power. The court found the prisoner's request of payment from the federal government of certain precious and semi-precious metals to be the equivalent of a *Bivens* type of claim for money damages, which is barred by sovereign immunity absent a waiver. (Standish Maximum Correctional Facility, Michigan)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Despain v. Uphoff, 264 F.3d 965 (10th Cir. 2001). A prison inmate brought a § 1983 action against prison officials alleging Eighth Amendment violations. The district court granted summary judgment in favor of the officials and the inmate appealed. The appeals court reversed and remanded. The appeals court held that flooding of the prison's administrative segregation unit was a significant deprivation, as required to support an Eighth Amendment claim, and that there was an issue of material fact as to whether there was an ongoing threat to safety during the flooding that would justify the inmate's exposure to human waste. Because the inmate's extended exposure to human waste as a result of flooding was a violation of clearly established law, the court found that an associate prison warden was not entitled to qualified immunity. The court also found that the inmate stated a claim of excessive use of force in his allegation that a corrections officer indiscriminately discharged pepper spray. (Wyoming State Penitentiary)

U.S. Appeals Court
NOMINAL DAMAGES
PLRA-Prison Litigation
Reform Act

Fouk v. Charrier, 262 F.3d 687 (8th Cir. 2001). A prisoner brought a § 1983 action against a corrections officer alleging the use of excessive force in violation of his Eighth Amendment rights. The district court entered judgment on a jury verdict, awarded nominal damages of \$1 plus interest and costs, and awarded attorney fees. The appeals court affirmed in part, vacated in part, and reversed in part. The appeals court held that the award of nominal damages for an Eighth Amendment violation was permissible, and that the finding of use of excessive force was supported by evidence. The appeals court found that the award of attorney fees was subject to the cap established by the Prison Litigation Reform Act (PLRA), and that the PLRA cap on attorney fees did not violate the equal protection clause. The court noted that under the provisions of PLRA, if non-monetary relief of some kind had been ordered, whether or not there was also a monetary award, the attorney fees cap would not apply. (Moberly Correctional Center, Missouri)

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Glaspay v. Malicoat, 134 F.Supp.2d 890 (W.D.Mich. 2001). A prison visitor sued a corrections officer, alleging that the officer violated his constitutional rights when the officer refused the visitor's request to use the bathroom during a visit to an inmate. The district court held that the officer violated the visitor's substantive due process rights by refusing to permit him to use the restroom, and awarded \$5,000 in compensatory damages and \$5,000 in punitive damages. The 69-year-old visitor and the inmate he was visiting had informed the officer several times that the visitor was in pain and that he needed urgently to use the restroom. The officer, who laughed at the visitor's situation, was found to have been deliberately indifferent to the visitor's due process rights. The court noted that the visitor suffered pain and discomfort for a period of time, as well as extreme humiliation when he urinated in his pants in front of others, and inconvenience in having to deal with his wet pants at the facility and on the way home. (Newberry Correctional Facility, Michigan)

U.S. Appeals Court
CONSENT DECREE-
TERMINATION
PLRA-Prison Litigation
Reform Act

Harvey v. Schoen, 245 F.3d 718 (8th Cir. 2001). State officials moved to terminate a 1973 prison conditions consent decree, pursuant to the Prison Litigation Reform Act (PLRA). The district court granted the motion and inmates appealed. The appeals court affirmed, finding that the mandatory termination provision of PLRA did not violate separation of powers principles. The district court had found that there were no current and ongoing federal rights violations, and the appeals court held that the district court did not abuse its discretion in denying the request for additional discovery in order to permit prisoners to supplement the record to show ongoing violations. (Minnesota Correctional Facilities at Stillwater and St. Cloud)

U.S. Appeals Court
CLASS ACTION

Hawkins v. Comparet-Cassani, 251 F.3d 1230 (9th Cir. 2001). A convicted prisoner who had a "stun belt" placed on him, and activated, when he appeared in court for sentencing, brought a § 1983 action. The district court certified a class action and granted a preliminary injunction. The appeals court reversed in part and remanded. The appeals court held that the class of all persons in the custody of the county sheriff was improperly certified since the convicted prisoner could not serve as a representative for those prisoners who had not yet been convicted. The appeals court also found the district court injunction against the use of the belt was overbroad because it did not allow for use of the belt to protect courtroom security, such as restricting violence or preventing escape. But the court noted that even at sentencing, where a defendant's guilt is no longer in dispute, shackling is inherently prejudicial and detracts from the dignity and decorum of the proceeding, and impedes the defendant's ability to communicate with his counsel. (Los Angeles County, California)

U.S. District Court
QUALIFIED
IMMUNITY
DELIBERATE
INDIFFERENCE

Johnson v. Herman, 132 F.Supp.2d 1130 (N.D.Ind. 2001). A detainee who was incarcerated beyond his release date brought a § 1983 action against jail authorities, alleging violation of his substantive due process rights. The district court denied summary judgment for the defendants, finding that a jailer's record notations that a judge had ordered the detainee to remain in jail and later had ordered the detainee released, were admissible as non-hearsay evidence that the jailer did not act with deliberate indifference in retaining custody. The court held that summary judgment was precluded by an issue of material fact as to whether the jail's "Inmate Request Form" policy, which was used to correct defects in its "will call" policy for holding detainees following their appearances in court, was being implemented in a manner suggesting deliberate indifference to the right of detainees to be timely released. The court noted that the jailers were not entitled to qualified immunity because the right of a detainee not to be held without a court order was clearly established at the time of the incident. (Allen County Jail, Indiana)

U.S. District Court
PRIVATE OPERATOR
42 U.S.C.A. Sec. 1983

Keeling v. Schaefer, 181 F.Supp.2d 1206 (D.Kan. 2001). A prison inmate brought a § 1983 action against corrections officials and a private corporation that employs inmates within a corrections facility. The district court granted summary judgment to the defendants on some of the claims. The court held that an employee of the private corporation was not a "state actor" for the purpose of an action alleging Eighth Amendment violations. The court noted that the corporation was not performing a function--correction and rehabilitation of criminals--traditionally performed only by the state. Rather, the corporation was engaged in making a profit through its embroidery business, and the use of inmate labor and its location inside the facility were merely incidental to its business plan. The court held that corrections officials were not "persons" for the purposes of a § 1983 action to the extent that the prisoner was seeking monetary damages from the defendants in their official capacities. But the court found that fact issues existed, precluding summary judgment, as to whether the employee of the private corporation became a state actor by using prison disciplinary proceedings to obtain a "judgment" against the inmate. The court noted that as private persons, employees of a private corporation operating in a correctional facility were not entitled to a qualified immunity defense in a § 1983 action. The court also found that fact issues as to whether the inmate received procedural due process during a disciplinary hearing precluded summary judgment. The inmate alleged that he was attacked by another inmate while he was working. The following day he was charged by prison officials with violating two prison regulations--fighting, and poor work performance. The inmate was subsequently found guilty of the fighting charge and was sentenced to 21 days in disciplinary segregation. The inmate was charged by prison officials with deliberately miscalculating a thread inventory that resulted in a loss of customer orders. The inmate argued that he was unable to complete the inventory because he was attacked by another inmate. An employee of Impact requested restitution for its losses and the prison disciplinary board ordered the inmate to pay \$2,965 in restitution. The inmate's prison account was frozen as a result of the judgment. (Lansing Corr'l Facility, Kansas)

- U.S. District Court
PUNITIVE DAMAGES
FAILURE TO TRAIN
DELIBERATE INDIFFERENCE
- Lewis v. Board of Sedgwick County Com'rs., 140 F.Supp.2d 1125 (D.Kan. 2001). A detainee brought a federal civil rights suit against a county alleging that jail officers used excessive force against him. A jury returned a verdict of \$500,000 in favor of the inmate and the county asked for a new trial or for judgment as a matter of law. The district court granted judgment as a matter of law, finding that evidence was insufficient to show that the county had been deliberately indifferent to the use of excessive force against detainees at the county detention facility. According to the court, the size of the damage award suggested that the jury was excessively or improperly motivated by its desire to punish the county. The court held that the county was not deliberately indifferent to the rights of the detainee because it provided training designed to prevent the use of excessive force at both a training academy and on-the-job, and had established a use-of-force policy of which its detention officers were aware. The court found that it was not a "glaring omission" to fail to instruct detention officers during training that they were prohibited from standing on a detainee's back in an effort to restrain a person. The court held that it was not deliberate indifference by the county to state in county training manuals that it was permissible to use pressure point tactics when inmates were being placed in a restraint chair, where the manuals cautioned that the tactics were to be used with the minimal amount of force necessary to gain compliance. The court noted that the county had encountered only 22 complaints of excessive force in its jail from approximately 90,000 detainees who went through the facility. (Sedgwick County Adult Detention Facility, Kansas)
- U.S. District Court
LIABILITY
- Naumoff v. Old, 167 F.Supp.2d 1250 (D.Kan. 2001). A mother whose son had committed suicide while confined in a jail brought a § 1983 action against a county sheriff. The sheriff moved for summary judgment and the court granted the motion, finding that the mother failed to allege an injury to her own constitutional rights. The court held that the mother lacked standing to bring the § 1983 action because she brought the action in her individual capacity rather than as representative of her son's estate. The mother did not make a claim for deprivation of familial association or otherwise allege injury to her own constitutional rights. (Wabaunsee Co. Jail, Kansas)
- U.S. District Court
ELEVENTH AMENDMENT
OFFICIAL CAPACITY
- Ramsey v. Schauble, 141 F.Supp.2d 584 (W.D.N.C. 2001). A former detainee whose finger tip was severed after a sheriff's deputy allegedly shut a cell window on it, brought a pro se complaint against the deputy and the sheriff. The district court held that the detainee stated a cognizable civil rights complaint against the sheriff, and the detainee pled a cause of action under a state law that provided that a keeper of a jail must pay treble damages if he/she does any wrong or injury to a detainee, and is guilty of a Class 1 misdemeanor. The court found that jail officials ignored the detainee's cries for help after he was injured by the deputy and displayed deliberate indifference to his need for quick medical attention to preserve the possibility of reattaching the finger. The detainee was released from custody several hours after he was returned from the hospital, but officials refused to give the detainee pain medication prescribed by the hospital, requiring him to return to the jail periodically over the next several days to receive each pill individually. (Watauga Co. Law Enf. Ctr, N.C.)
- U.S. District Court
COMPENSATORY DAMAGES
PUNITIVE DAMAGES
- Reilly v. Grayson, 157 F.Supp.2d 762 (E.D.Mich. 2001). A prisoner brought a § 1983 action against a warden, deputy warden, and Michigan Department of Corrections physicians, alleging violation of his Eighth Amendment rights. After a bench trial, the district court ruled that the warden and deputy wardens were deliberately indifferent to the prisoner's serious medical need to be placed in a smoke-free environment, supporting the prisoner's cruel and unusual punishment claims. The court found that the wardens were reckless in their disregard of the prisoner's rights, and awarded the prisoner \$18,250 in punitive damages and \$36,500 in compensatory damages for the five years of inaction by the wardens. The prisoner had two Individual Management Plans (IMP) which required that he be placed in a smoke-free environment, but the non-smoking regulations in the prisoner's cell block were consistently violated and the wardens were aware of the violations. After receiving notice that the IMPs were not being followed, the wardens continued to do nothing to remedy the situation. The court concluded that the three wardens "...each clearly ignored his supervisory obligations and, as a consequence, should suffer the opprobrium of punitive damages, not so much to deter each of them in the future, but to deter other officials in like positions of ignoring their responsibility." (Trustee Division, State Prison of Southern Michigan)
- U.S. District Court
PLRA-Prison Litigation Reform Act
PUNITIVE DAMAGES
QUALIFIED IMMUNITY
- Romaine v. Rawson, 140 F.Supp.2d 204 (N.D.N.Y. 2001). A state prison inmate brought a § 1983 action against a prison guard, alleging Eighth and Fourteenth Amendment violations resulting from an assault on the inmate. The district court ruled that the guard's actions were wanton and malicious, and were objectively unreasonable even though the inmate's injuries were de minimis. The court denied the guard qualified immunity and awarded the inmate \$1,000 in compensatory damages and \$500 in punitive damages. The court found that the guard struck the inmate three times across the face even though the guard admitted that there was no need to use force against the inmate, and he did not temper his response by utilizing non-forcible means available to him. (Mt. McGregor Correctional Facility, New York)
- U.S. Appeals Court
PLRA-Prison Litigation Reform Act
CONSENT DECREE--TERMINATION
- Ruiz v. U.S., 243 F.3d 941 (5th Cir. 2001). Texas prison officials moved to terminate a judgment that found aspects of the prison system to be in violation of prisoners' constitutional rights. The district court found that provisions of the Prison Litigation Reform Act (PLRA) that authorized a court to terminate prospective relief were unconstitutional. The district court also held that the Texas prison system suffered from constitutional violations. The appeals court reversed and

remanded, finding that the PLRA provisions did not violate separation of powers principles or the due process clause, and that the failure of the district court to make statutory findings under PLRA required remand. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
PLRA-Prison Litigation
Reform Act
DAMAGES

Searles v. Van Bebbler, 251 F.3d 869 (10th Cir. 2001). A state inmate sued corrections officials and a prison chaplain asserting violation of his First Amendment right to free exercise of religion by denying him approval for a kosher diet. The district court entered judgment on a jury verdict awarding the inmate \$3,650 in compensatory damages and \$42,500 in punitive damages against the chaplain, finding no liability on the part of the corrections officials. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the punitive damages award had to be vacated in light of the district court's instruction to consider actual damages, that the Prison Litigation Reform Act (PLRA) does not bar punitive damages, and whether punitive damages were warranted was a question for the jury on remand. (Hutchinson Corr'l Facil., Kansas)

U.S. District Court
DAMAGES
REMEDIES

Spruytte v. Hoffner, 181 F.Supp.2d 736 (W.D.Mich. 2001). Prisoners brought an action alleging they were transferred to other facilities in retaliation for exercise of their First Amendment rights. The district court found in favor of the inmates, holding that the prisoners were subjected to adverse actions in retaliation for writing a letter to a newspaper editor. (Lakeland Corr'l Facil., Michigan)

U.S. Appeals Court
CLASS ACTION

Streit v. County of Los Angeles, 236 F.3d 552 (9th Cir. 2001). Detainees brought a § 1983 action against a county and sheriff's department seeking damages for overdetention. The district court denied the defendants' motion to dismiss and the appeals court affirmed. The appeals court held that the county would be subject to liability under § 1983 and that the sheriff's department was not entitled to Eleventh Amendment immunity because the department was not acting as an arm of the state when it administered county jails. Before an inmate is released from custody the sheriff's department conducts a check of a computerized database to confirm that the inmate is not wanted by any other law enforcement agency. But the department's policy requires this check to be run only after all wants and holds that arrive on a given day are entered into the database. Entering wants and holds can take up to two days, resulting in extended incarceration for inmates beyond their release date. (Los Angeles County Sheriff's Department, California)

U.S. Appeals Court
FAILURE TO PROTECT
FAILURE TO DIRECT
QUALIFIED
IMMUNITY

Thompson v. Upshur County, TX, 245 F.3d 447 (5th Cir. 2001). Parents whose son had died of medical conditions associated with his delirium tremens while he was a pretrial detainee in a county jail, sued under § 1983. The district court denied the defendants' motion for summary judgment on qualified immunity grounds and the defendants appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the sheriff of the jail to which the detainee was first admitted was entitled to qualified immunity in connection with the death of the detainee, which occurred following his transfer to another county jail that had the detoxification facilities that his jail lacked. The sheriff of the jail in the receiving county did not violate any clearly established right in failing to instruct his staff on the potentially life-threatening nature of medical conditions associated with delirium tremens and was entitled to qualified immunity, according to the appeals court. But the appeals court found that a sergeant at the jail in which the detainee died was not entitled to qualified immunity because of fact questions as to whether she had instructed her subordinates not to disturb her at home unless a detainee was on the verge of death, or whether she had otherwise interfered with the detainee's receipt of medical care. (Upshur Co. Jail and Marion Co. Jail, Texas)

2002

U.S. District Court
FCA- False Claims Act

Alexander v. Gilmore, 202 F.Supp.2d 478 (E.D.Va. 2002). Two prisoners, one a current prisoner and one a former prisoner, sued a prison and officials. The district court found that a prisoner's placement in segregated housing following an institutional conviction for being under the influence of drugs, even though a confirmatory urine test was not conducted, was not sufficiently severe to support an Eighth Amendment claim. The court also held that the prisoners did not state a claim under the False Claims Act (FCA) by alleging that the prison had obtained federal funding for drug testing by falsely certifying that the requirements for testing and disposal of samples were being followed. According to the court, the prison, and employees who were acting in their official capacities, were exempt from the FCA and there was no showing that the employees were acting in their individual capacities. (Virginia Department of Corrections)

U.S. District Court
CONSENT DECREE-
TERMINATION

Armstrong v. Metropolitan Government of Nashville, 196 F.Supp.2d 673 (M.D.Tenn. 2002). Inmates and pretrial detainees brought a class action against a metropolitan government in 1987, alleging that overcrowding in jails was unsanitary and unsafe. The district court issued an injunction and set population caps. The district court granted the government's motion to lift the injunction in 2002, finding that conditions in new jails met the requirements of the Eighth Amendment. The court found that the new jails' environment, sanitation and fire safety complied with the Eighth Amendment, providing adequate levels of personal security for inmates and staff. The court held that food service was adequate and acceptable and that there was adequate physical space available for recreation. The court noted that two of the four jails had achieved accreditation by the American Correctional Association and the other two had applied, and would also probably receive accreditation. The court called the jail administration at the time of the 1987 suit "a brutal and corrupt regime" The court praised the government's correctional experts who assisted the

county, and the plaintiffs' counsel "for the enormous service she has performed for the class of plaintiffs and the community. (Metro. Gov't of Nashville, Tennessee)

U.S. Appeals Court
QUALIFIED
IMMUNITY
FAILURE TO PROTECT
COMPENSATORY
DAMAGES

Cantu v. Jones, 293 F.3d 839 (5th Cir. 2002). A prison inmate who had been slashed with a razor by another inmate, brought a civil rights action to recover on a deliberate indifference theory from prison officials, who allegedly orchestrated the assault. A jury ruled in favor of the inmate and awarded \$22,500 in compensatory damages; the prison officials appealed. The appeals court affirmed the district court verdict. The appeals court held that the question of whether officials manifested deliberate indifference to the inmate's safety when they allegedly left a door to another inmate's cell open and allowed him to escape and assault the first inmate, was a matter for the jury. The plaintiff inmate had previously complained about prison guards. The appeals court affirmed that the officials were not entitled to qualified immunity. (Connally Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
CONSENT DECREE
PLRA-Prison Litigation
Reform Act

Carruthers v. Jenne, 209 F.Supp.2d 1294 (S.D.Fla. 2002). A consent agreement was entered, calling for improvements in conditions of county jails. The county ceased payment of attorney fees and compliance monitoring costs, relying on a provision of the Prison Litigation Reform Act (PLRA) that automatically stayed enforcement of prospective relief under consent decrees. The district court ordered the county to pay the fees, finding that the PLRA stay provision only applied to prospective relief engendered within a consent decree, not to the entire decree. The court noted that the stay provision did not bar the payment of attorney fees nor did it bar payment of monitoring fees. (Broward County Jail, Florida)

U.S. District Court
COMPENSATORY
DAMAGES
NOMINAL DAMAGES
ATTORNEY FEES

Ciaprazi v. County of Nassau, 195 F.Supp.2d 398 (E.D.N.Y. 2002). An inmate filed a § 1983 action alleging that county correction officers used excessive force against him. After a jury awarded nominal damages on one count, the inmate applied for attorney fees and costs. The district court held that the inmate was the "prevailing party" but that the award of attorney fees was not warranted, where the inmate recovered only \$1 in nominal damages against one officer, the jury found in favor of the other officer, the case did not involve a significant legal issue, and there was no award of injunctive relief. (Nassau County Correctional Center, New York)

U.S. Appeals Court
CONSENT DECREE--
CONTEMPT

Floyd v. Ortiz, 300 F.3d 1223 (10th Cir. 2002). An inmate filed a petition to enforce the terms of a prior settlement agreement and to obtain contempt citations against a state director of corrections. The district court denied the petition and the inmate appealed. The appeals court reversed, finding that the district court abused its discretion by denying the inmate's request for a rehearing. The appeals court noted that the inmate, who benefited from the settlement agreement, could invoke the district court's continuing jurisdiction over the matter even though he was not a party to the original settlement agreement. The settlement addressed procedures for handling income from the inmate canteen program and interest on individual inmate accounts. The inmates alleged that income from the operation of the inmate canteen program was being deposited in the state treasury and not properly accounted for. (Colorado Department of Corrections)

U.S. District Court
PRIVATE OPERATOR

Gabriel v. Corrections Corp. of America, 211 F.Supp.2d 132 (D.D.C. 2002). An HIV-positive inmate housed in a facility operated under a contract with the District of Columbia brought a § 1983 action alleging inadequate medical treatment against a private prison operator, the District, and the federal Bureau of Prisons. The district court granted the defendants' motions for summary judgment and dismissal. The district court held that the contractor could not be liable, absent a showing that the allegedly inadequate treatment resulted from the contractor's or the District's custom or policy. The prisoner had been held at a federal prison in Kansas and was transferred to the privately-operated facility near the District of Columbia. Prior to his transfer he was diagnosed as being HIV positive. When the inmate was transferred, the Bureau did not transfer his actual medical jacket and the medical history that was sent did not explicitly state that the inmate was HIV positive, although instructions to provide the inmate with AZT were included. The inmate alleged that he was not provided with any further treatment for eight years, when his condition was rediscovered. He alleged that as a result of his failure to receive treatment, he suffered a decline in his T-cell count and experienced the onset of premature dementia and depression. (Lorton Correctional Complex, Virginia, operated by Corrections Corporation of America under contract to the District of Columbia)

U.S. District Court
QUALIFIED
IMMUNITY

Gonzalez v. Cecil County, Maryland, 221 F.Supp.2d 611 (D.Md. 2002). The widow of a pretrial detainee who died while in custody filed a § 1983 action against a county, sheriff, and detention center medical personnel. The district court denied the defendants' motion to dismiss, in part, finding that fact issues remained as to whether the care provided to the detainee amounted to deliberate indifference. The detainee was admitted to a county detention center at approximately 5:00 p.m. Shortly after his admission he identified himself as a heroin user during a standard intake medical screening. He told three nurses employed by the detention center, upon his arrival, that he was likely to undergo acute heroin withdrawal symptoms. The only treatment provided to him at this time was to be placed on twice-daily doses of Clonidine, a blood pressure medication. The detainee allegedly became violently ill and progressed to acute pulmonary distress, disease and pneumonia during the night and during the next day. He complained to the nurses but was only given an over-the-counter stomach remedy, Kaopectate. Two days later he was found in his cell, unresponsive, and was pronounced dead twenty minutes later. His body was taken to a nearby hospital where an autopsy revealed he died from "pneumonia, complicating narcotics abuse." The

district court held that the fact that the nurses were acting in conformity with the county's established protocol in treating the inmate did not entitle them to qualified immunity from liability under § 1983. (Cecil County Detention Center, Maryland)

U.S. District Court
FTCA- Federal Tort
Claims Act

Gonzalez-Jimenez De Ruiz v. U.S., 231 F.Supp.2d 1187 (M.D.Fla. 2002). Survivors of a federal prison inmate who died while in custody brought claims under the Federal Tort Claims Act (FTCA). The district court granted summary judgment in favor of the defendants. The court held that the family failed to state a claim under Florida law. The family alleged that prison officials deceived the inmate's family regarding the inmate's terminal condition, failed to provide the family with reasonable access to the inmate during his illness, failed to inform the family of the inmate's death, offered the inmate substandard care, and delayed transporting the inmate's remains for nine days after his death. The inmate had been transferred from a correctional facility in Florida to a nearby hospital, and then to a correctional medical facility in Texas where he died after nine days. The family claimed that the officials' conduct exacerbated one of the family member's pre-existing medical conditions, caused one child to experience difficulty in school, and triggered another child's asthma. (Coleman Federal Correctional Institution, Florida, and Fed'l Bur. of Prisons Medical Facil., Fort Worth, Texas)

U.S. Appeals Court
CONSENT DECREE-
TERMINATION

Hallett v. Morgan, 287 F.3d 1193 (9th Cir. 2002). In a class action, female prisoners at a state prison secured a consent decree that addressed health care concerns. The prisoners challenged the prison's attempt to end the decree, sought additional time for court involvement and moved to have prison officials held in contempt for past violations of the decree. The district court denied the prisoners' motions and granted the prison officials' motion to terminate the consent decree. The prisoners appealed and the appeals court affirmed in part, reversed in part and remanded. The appeals court held that dental care and mental health care did not violate the Eighth Amendment, but ordered the district court to consider retrospective relief on remand. The court noted that the district court should have considered whether officials were in contempt for failing to comply with other medical care provisions of the consent decree. (Washington Corrections Center for Women)

U.S. Appeals Court
CONSENT DECREE-
TERMINATION

Hallett v. Morgan, 296 F.3d 732 (9th Cir. 2002). A class of prisoners at a women's state prison who brought a § 1983 action against prison officials moved to extend jurisdiction over a consent decree for an additional period of time, to have prison officials held in contempt, and to compel discovery. The district court denied the motions and granted the prison officials' motion to terminate the consent decree. The appeals court affirmed in part, reversed in part, and remanded. The appeals court found that dental care and mental health conditions at the prison did not violate the Eighth Amendment. The appeals court found that officials' substantial compliance with the consent decree judgment was an acceptable defense to the prisoners motion to hold the officials in civil contempt for past violations of the decree. The court remanded the case for reconsideration of allegations that the officials failed to comply with consent decree requirements regarding medical care. (Washington Corrections Center for Women)

U.S. District Court
FTCA- Federal Tort
Claims Act

Helton v. U.S., 191 F.Supp.2d 179 (D.D.C. 2002). Female arrestees brought an action under the Federal Tort Claims Act (FTCA) alleging that United States Marshals conducted unlawful searches and invasions of their privacy. The district court held that the alleged strip search of arrestees satisfied the elements of a tort intrusion upon seclusion. The court noted that the Fourth Amendment precludes police or prison officials from conducting a strip search of an individual arrested for misdemeanors or other minor offenses, unless there is reasonable suspicion that the individual is concealing contraband or weapons. The five women plaintiffs had been arrested for unlawful entry in connection with an "anti-fur" demonstration at a department store. According to their complaint, they were compelled "to remove clothing and submit to a strip and squat search" while six men arrested with them were not subjected to such searches. (U.S. Marshals Service)

U.S. District Court
PRIVATE OPERATOR

Herrera v. County of Santa Fe, 213 F.Supp.2d 1288 (D.N.M. 2002). A prisoner filed a §1983 suit against a county, the county's detention center, and the privately-owned corporation that operated the detention center. The prisoner alleged that he had been assaulted and injured by corporation employees. The court denied the county's motion to dismiss, finding that the county could be held liable under §1983 for the corporation's customs and policies. The court reasoned that operation of a detention center was a significant public function over which the county retained oversight responsibilities, and the county could be held responsible for the actions of the private company it had hired to manage and operate its detention center. (Santa Fe County Detention Center, New Mexico, operated by Cornell Corrections, Inc.)

U.S. Supreme Court
QUALIFIED
IMMUNITY

Hope v. Pelzer, 122 S.Ct. 2508 (2002). An Alabama prison inmate who was allegedly handcuffed to a "hitching post" twice in 1995 for disruptive conduct, brought a civil rights action against three correctional officers involved in the incidents. The federal appeals court held that the hitching post's use for punitive purposes violated the Eighth Amendment but found that the officers were entitled to qualified immunity. The U.S. Supreme Court reversed, finding that the defense of qualified immunity was not available to the officers at the summary judgment phase of the case. The Court found that the prisoner's allegations, if true, established an Eighth Amendment claim for cruel and unusual punishment because the alleged conduct would be "unnecessary and wanton" infliction of pain for reasons "totally without penological justification." The Court held that a reasonable officer would have known that using a hitching post as the prisoner alleged was unlawful. During a 2-hour period in May of 1995, when the inmate was handcuffed to the hitching

post, the inmate was offered drinking water and a bathroom break every 15 minutes. He was handcuffed above shoulder height, and when he tried moving his arms to improve circulation, the handcuffs cut into his wrists, causing pain and discomfort. In a second incident after a fight with an officer at his chain gang's worksite in June, he was subdued, handcuffed, placed in leg irons, and transported back to the prison. Once there, he was ordered to take off his shirt, thus exposing himself to the sun, and spent seven hours on the hitching post. He was given one or two water breaks, but no bathroom breaks, and he claimed that an officer taunted him about his thirst. (Alabama Department of Corrections)

U.S. Appeals Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES
PLRA-Prison Litigation
Reform Act

Johnson v. Breeden, 280 F.3d 1308 (11th Cir. 2002). A state prisoner brought a § 1983 action against corrections officers alleging that they used excessive force on him in violation of the Eighth Amendment. The district court entered judgment for the prisoner and awarded \$25,000 in compensatory damages, \$45,000 in punitive damages and attorney fees and expenses in the amount of \$85,268. The officers appealed and the appeals court affirmed the award of compensatory damages but vacated the punitive damages and attorney fee awards and remanded the case for determination. The appeals court held that the action was a "civil action with respect to prison conditions" and was therefore subject to limitation on prospective relief under the Prison Litigation Reform Act (PLRA). The appeals court also held that the application of the lodestar method in calculating the attorney's fee award was an abuse of discretion. (Phillips Correctional Institution, Georgia)

U.S. District Court
SUPERVISORY
LIABILITY

Kosilek v. Maloney, 221 F.Supp.2d 156 (D.Mass. 2002). An inmate brought an action against a director of corrections, seeking an injunction that would require medical treatment for gender identity disorder. The district court held that the corrections department's medical treatment plans for the inmate were not adequate, but that the director was not deliberately indifferent to the serious medical needs of the inmate. The inmate suffered from a severe form of a rare, medically recognized, major mental illness-- gender identity disorder-- and was a transsexual. The court found that the treatment plans were not developed pursuant to any clinical decision by a doctor or social worker concerning the inmate's condition or particular needs, but were derived from an administrative decision that created a blanket policy that prohibited initiation of hormones for inmates who were not prescribed hormones prior to their incarceration. Although the inmate's treatment was found inadequate, the court declined to provide injunctive relief, reasoning that the director was no longer likely to be indifferent to the inmate's needs in the future as a result of the litigation. The court noted that "ordinarily, the Commissioner of the DOC would not be the appropriate defendant in a case involving the inmate's claim alleging denial of medical care. As Commissioner, Maloney does not usually make decisions concerning medical care...Because of Kosilek's lawsuit, Maloney, as a practical matter, has made the major decisions relating to Kosilek's medical care." After the lawsuit was filed, the Commissioner consulted with attorneys and doctors employed by the department and adopted a blanket policy that was aimed at "freezing" a transsexual in the condition he was in when incarcerated. The policy prohibited the provision of hormones to inmates such as the plaintiff who had only taken "black market" hormones previously, and categorically excluded the possibility that an inmate would receive sex reassignment surgery. The court concluded that "Because Maloney removed from the professionals employed by the DOC their usual discretion concerning Kosilek's medical needs and care, Maloney's conduct is properly the focus of this case." (Massachusetts Department of Corrections)

U.S. District Court
COMPENSATORY
DAMAGES
STATE LIABILITY

Livingston v. Goord, 225 F.Supp.2d 321 (W.D.N.Y. 2002). A pro se state prisoner brought a § 1983 action against corrections officials and employees. The prisoner had previously brought a claim in state court and was awarded compensatory damages. The district court held that the state court compensatory damages award barred his § 1983 claim for punitive damages. The court found that the prisoner chose to litigate his claim in state court, where he was fully compensated for his injuries. A state claims court judge found that more force than was necessary had been used against the prisoner and awarded the prisoner \$3,151 in damages. The award included \$3,000 "for all past and future pain, suffering, lack of proper medical attention, and any and all other damages he sustained as a result of the incidents." (Attica Correctional Facility, New York)

U.S. District Court
CONSENT DECREE-
TERMINATION
PLRA-Prison Litigation
Reform Act

Merriweather v. Sherwood, 235 F.Supp.2d 339 (S.D.N.Y. 2002). Prison officials moved, under the Prison Litigation Reform Act (PLRA), to dissolve a prison conditions consent decree entered 24 years earlier. Prisoners moved to postpone the automatic stay of the consent decree's provisions. The district court held that it lacked the discretion to postpone the automatic stay once the stay came into effect 30 days after the motion to dissolve was filed. The court noted that even assuming it had the discretion to postpone the automatic stay, the prisoners failed to show that they were entitled to a postponement, where the record did not demonstrate widespread or ongoing constitutional violations of rights to religious freedom, medical care, or access to counsel. (Orange County Correctional Facility, New York)

U.S. Appeals Court
PRIVATE PROVIDER
PLRA-Prison Litigation
Reform Act

Milledge v. McCall, 43 Fed.Appx. 196 (10th Cir. 2002) [unpublished]. A male state prisoner brought a § 1983 action alleging Fourth Amendment violations resulting from a strip search that was allegedly conducted in the presence of female correctional officers. The district court dismissed the action and the appeals court affirmed. The appeals court held that a private correctional facility that provided services on behalf of a state was a "facility" for the purposes of the Prison Litigation Reform Act (PLRA), but a provision of the Act barred a prisoner civil action alleging emotional injury while in custody without a prior showing of a physical injury. (Crowley County Correctional

Facility, Colorado)

U.S. Appeals Court
DAMAGES
PLRA-Prison Litigation
Reform Act

Mitchell v. Brown & Williamson Tobacco Corp., 294 F.3d 1309 (11th Cir. 2002). A federal prisoner brought an action against cigarette manufacturers, alleging deceptive advertising, misrepresentation and strict liability under a state tort law. The district court dismissed the case as frivolous and the prisoner appealed. The appeals court affirmed in part and vacated in part. The appeals court held that allegations satisfied the amount-in-controversy requirement for diversity jurisdiction, and that the section of the Prison Litigation Reform Act (PLRA) that prohibited action for mental or emotional suffering while in custody did not apply to the prisoner's action against the manufacturers. (Wisconsin)

U.S. Appeals Court
NEGLIGENT
RETENTION

Morris v. Crawford County, 299 F.3d 919 (8th Cir. 2002). A county detention center detainee brought § 1983 and state law battery claims against a sheriff, county, and deputies. The district court granted summary judgment for the defendants, in part, and the remaining claims were voluntarily dismissed. The appeals court affirmed, finding that there was not a strong causal connection between a deputy sheriff's background and the specific constitutional violation alleged by the detainee. The detainee had been arrested and charged with driving while intoxicated and disorderly conduct. After arriving at a county detention center, he refused to take a breathalyzer test and began to yell and bang on his cell door. Four deputies responded, and according to the detainee, they repeatedly assaulted him as they dragged him to another cell. One deputy allegedly used excessive force on the detainee by utilizing a "knee drop" on him, which severed the detainee's intestine. The court noted that the only violent act in the deputy's record was an incident in which he slapped an inmate, although ex parte protective orders were obtained against the deputy by both his ex-wife and girlfriend. The appeals court held that the sheriff and the county were not liable under § 1983 on the theory of deliberate indifference in hiring the deputy. (Crawford County Detention Center, Arkansas)

U.S. Appeals Court
PLRA-Prison Litigation
Reform Act

Napier v. Preslicka, 314 F.3d 528 (11th Cir. 2002). A prisoner brought a pro se action against police officers for emotional injury allegedly resulting from mistaken arrest on a charge unrelated to his current incarceration. The district court dismissed the case as frivolous and the appeals court affirmed. The appeals court held that the alleged emotional harm occurred while the prisoner was in custody, for the purpose of the Prison Litigation Reform Act (PLRA) section that prohibited a prisoner from bringing an action for mental or emotional injury absent a prior showing of physical injury. (Jacksonville, Florida)

U.S. Appeals Court
ALIEN
BIVENS ACTION
ALIEN TORT CLAIMS
ACT

Papa v. U.S., 281 F.3d 1004 (9th Cir. 2002). The widow and children of an alien who had been killed by another detainee while being held by the Immigration and Naturalization Service (INS) brought *Bivens* and Federal Tort Claim Act (FTCA) claims against the INS. The district court granted the defendants' motion to dismiss and the plaintiffs appealed. The appeals court affirmed in part, and reversed and remanded in part. The appeals court held that allegations that guards knowingly placed the alien in danger in disregard of, or with deliberate indifference to, his due process rights, stated a *Bivens* claim. The appeals court noted that limited rights under the due process clause extend to detained aliens. (Immigration and Naturalization Service, California)

U.S. Appeals Court
NEGLIGENCE
STATE LIABILITY

Perkins v. Lawson, 312 F.3d 872 (7th Cir. 2002). An inmate brought a state court action against a sheriff in his official capacity under § 1983, and under state negligence laws, seeking damages for injuries sustained in an attack by another inmate. The case was removed to federal court, where the district court entered summary judgment for the sheriff. The inmate appealed and the appeals court affirmed in part, vacated and remanded in part. The appeals court remanded the inmate's negligence claim to the state courts because the appeals court was not convinced that there could be no finding of negligence under state law. The inmate had been beaten by another inmate and was provided with some treatment by jail medical staff. He did not eat or drink anything for several days after the attack, claiming he was unable to swallow. The inmate was released on his own recognizance, "probably because of his condition--though the record does not make this clear." His wife immediately took him to a hospital where he was placed on life support in an intensive care unit, in critical condition with a neurological problem. (Grant County Jail, Indiana)

U.S. Appeals Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Reilly v. Grayson, 310 F.3d 519 (6th Cir. 2002). A prisoner brought a § 1983 action against prison officials alleging violation of his Eighth Amendment right to be free from cruel and unusual punishment. The district court entered judgment for the prisoner and awarded damages. The defendants appealed and the appeals court affirmed. The appeals court held that the prisoner had a right not to be exposed to environmental tobacco smoke that presented a serious risk to his health, and to be removed from places where smoke hovered. The court affirmed the lower court findings that the prisoner's asthma was a serious medical condition and that it was exacerbated by exposure to second-hand smoke, and that the defendants repeatedly failed to respond to repeated recommendations by medical personnel that the prisoner be moved to a smoke-free setting. The appeals court affirmed the award of actual damages rather than nominal damages in the amount of \$36,500, and the award of punitive damages in the amount of \$18,250. The court found no abuse of discretion in the district court's award of \$51,786 in attorney's fees. (Michigan Department of Corrections)

U.S. Appeals Court
FAILURE TO PROTECT
FAILURE TO
SUPERVISE
PUNITIVE DAMAGES
COMPENSATORY
DAMAGES

Riley v. Olk-Long, 282 F.3d 592 (8th Cir. 2002). A female inmate brought a § 1983 action against prison officials arising from a sexual assault by a prison guard. A jury found in the inmate's favor and the officials moved for judgment as a matter of law or for a new trial. The district court denied the motions and the appeals court affirmed. The appeals court held that the issue of whether a warden and a director of security were deliberately indifferent to the substantial risk of harm that the guard presented to female inmates was a matter for the jury. The guard had asked the inmate whether she was having a sexual relationship with her roommate at the facility and if so, if he could watch. The guard later attempted to reach under the inmate's nightshirt but she backed away. The guard continued to harass the inmate and at one point grabbed her from behind and rubbed up against her while grabbing her breasts. The inmate did not report these incidents to prison officials because she doubted she would be believed and feared the resulting discipline. Later, the guard entered the inmate's cell and forcibly had intercourse with her. Fearing she would become pregnant she began performing oral sex on him. Another inmate witnessed the sexual encounter and reported it to prison officials. The officials investigated and subsequently allowed the guard to resign. He was later charged with, and pleaded guilty to, sexual misconduct with an inmate. The district court jury found in favor of the inmate, awarding her compensatory damages of \$15,000 and a total of \$30,000 in punitive damages. (Iowa Correctional Institution for Women)

U.S. District Court
CONSENT DECREE-
TERMINATION

Sheppard v. Phoenix, 210 F.Supp.2d 450 (S.D.N.Y. 2002). Current and former inmates filed a class action alleging that city corrections officials engaged in a pattern of brutality and used gratuitous and excessive physical violence at a segregation unit. A detailed consent decree was implemented. The city moved to terminate the decree and the district court granted the motion. The district court noted positive trends for four years of reduced incidents involving serious injuries and head strikes, reduced acts of self-mutilation, unprecedented levels of command discipline, and the institution of procedures to safely and effectively manage the inmate population. (Central Punitive Segregation Unit, Rikers Island, New York City Department of Correction)

U.S. District Court
FAILURE TO
SUPERVISE
FAILURE TO TRAIN

Smith v. Board of County Com'rs. of County of Lyon, 216 F.Supp.2d 1209 (D.Kan. 2002). A prisoner brought state tort and federal Eighth Amendment claims against county officials arising out of a serious spinal chord injury he allegedly suffered in a fall, and for which he did not receive requested medical attention. The defendants moved for summary judgment and the district court granted the motions in part, and denied in part. The district court found no Eighth Amendment violation from the failure of jail staff to provide clean bedding and clothing to the inmate who suffered from incontinence, on four or five occasions. The court concluded that the inmate's complaint that officials failed to supervise jail staff to ensure compliance with procedures was "far too generic" to support an Eighth Amendment claim, and that he failed to show systemic and gross deficiencies in training jail personnel. The inmate was a trustee in the jail and alleged that he fell while working in the kitchen and sustained injuries. An officer noticed the inmate limping about a week after the alleged fall and immediately took the inmate to the jail medical room for evaluation. The inmate also alleged that the jail failed to follow certain national standards, but according to the court, failed to show that the jail had any duty to follow those national standards. The officials asserted that the minimum legal standards for the operation of county jails are established in state law, rather than by national standards. (Lyon County Jail, Kansas)

U.S. District Court
DAMAGES
PLRA-Prison Litigation
Reform Act

Todd v. Graves, 217 F.Supp.2d 958 (S.D.Iowa 2002). An African-American state prisoner brought a § 1983 action against past and current prison wardens, alleging that their denial of his requests for furloughs to visit his hospitalized mother and then to attend her funeral constituted racial discrimination. The prisoner sought compensatory and punitive damages for stress and mental anguish. The district court dismissed the action, finding that the prisoner failed to allege a physical injury, as required under the provisions of the Prison Litigation Reform Act (PLRA). (Iowa State Prison)

U.S. Appeals Court
42. U.S.C.A. Sec. 1983

Townsend v. Moya, 291 F.3d 859 (5th Cir. 2002). An inmate brought a § 1983 action against a prison officer seeking damages for the officer's action in cutting the inmate with a knife. The district court granted summary judgment for the officer and the appeals court affirmed. The appeals court held that the officer's action with a knife was not taken "under color of state law" for the purposes of § 1983. The court noted that if a state officer pursues personal objectives without using or misusing the power granted to him by the state, then he is not acting under the color of state law. The inmate had been working as a trusty caring for the officer's tracking dogs. The officer approached the inmate from behind with a pocketknife, saying "I told you I was going to get you, whore" and stabbed the inmate on his buttocks. The officer was eventually terminated for his actions, but criminal charges were dropped for insufficient evidence. (Hughes Unit, Texas Department of Criminal Justice- Institutional Division)

U.S. Appeals Court
PLRA-Prison Litigation
Reform Act

Troville v. Venz, 303 F.3d 1256 (11th Cir. 2002). A civilly committed detainee filed a § 1983 action challenging his conditions of confinement. The district court dismissed the case for failure to state a claim and the detainee appealed. The appeals court reversed and remanded, finding that the civil detainee is not a "prisoner" for purposes of the Prison Litigation Reform Act (PLRA) and therefore the PLRA provision requiring full payment of the filing fee on appeal did not apply. The appeals court held that the district court should have permitted the detainee to amend his complaint. According to the court, the definition of "prisoner" in the in forma pauperis statute applies only to persons incarcerated as punishment for a criminal conviction, and a civil detainee is not a "prisoner." (South Bay Detainee Unit, South Bay Correctional Facility, Florida)

U.S. Appeals Court
FTCA- Federal Tort
Claims Act

Ueland v. U.S., 291 F.3d 993 (7th Cir. 2002). An inmate sued the United States under the Federal Tort Claims Act (FTCA) alleging that he was injured in a collision between a prison van in which he had been riding and a "chase car." The district court entered judgment in favor of the defendants and the inmate appealed. The appeals court reversed and remanded, finding that the deposition of a fellow federal inmate was admissible, and the federal government was entitled to discuss the inmate's medical history and condition with a prison physician. The appeals court ordered the district court to hold a hearing to determine the qualifications of the inmate's chiropractor to testify. (Metropolitan Correctional Center, U.S. Bureau of Prisons, Chicago, Illinois)

U.S. Appeals Court
FEDERAL TORT
CLAIMS ACT

U.S. v. Lemons, 302 F.3d 769 (7th Cir. 2002). A pretrial detainee held in a federal jail sued the United States under the Federal Tort Claims Act, seeking compensation for injuries he sustained when he slipped and fell on a wet floor while working in the jail kitchen. The district court dismissed the action and the appeals court affirmed. The appeals court held that the Inmate Compensation Program applied to the detainee, even though previous definitions had excluded pretrial detainees. The court noted "We cannot think of any reason why Congress would have wanted two classes of prison workers distinguished." (Metropolitan Corr'l Center, Federal Bureau of Prisons, Chicago)

U.S. District Court
QUALIFIED
IMMUNITY

Wares v. VanBebber, 231 F.Supp.2d 1120 (D.Kan. 2002). A state prisoner brought a pro se § 1983 action against a prison chaplain, alleging that the chaplain violated his First Amendment right to freely exercise his religion by intentionally interfering with the prisoner's ability to observe a religious holiday. The district court held that the prisoner's allegations stated a claim for violation of the Free Exercise Clause of the First Amendment and § 1983. The court held that the chaplain was not entitled to qualified immunity from liability in his personal capacity because the right of prisoners to reasonable opportunities to practice their religion was clearly established at the time. The prisoner alleged that the chaplain's intentional interference was motivated by his personal animus toward followers of the prisoner's religion. The prisoner had converted Orthodox Chassidic Judaism and had asked the chaplain for permission to eat his meals under a Sukka in observance of the Sukkot holiday. The chaplain allegedly refused to accommodate the prisoner's request and intentionally misled the prisoner and other Jewish inmates by suggesting that Torah law permitted inmates to observe Sukkot by wearing a napkin on their head. The chaplain apparently ignored state corrections department manuals and other information that described Sukkot requirements. (Hutchinson Correctional Facility, Kansas)

2003

U.S. District Court
REHABILITATION ACT
SOVEREIGN
IMMUNITY

Bane v. Virginia Dept. of Corrections, 267 F.Supp.2d 514 (W.D.Va. 2003). An inmate brought action against a state corrections department and prison officials, stemming from injuries allegedly suffered while being handcuffed. The district court denied motions to dismiss and for summary judgment. The court found that the inmate properly stated a prima facie claim under the Rehabilitation Act by alleging that he suffered from a chronically unstable right shoulder and that he had been issued a "cuff-front" pass by the corrections department medical personnel. The pass required prison personnel to cuff the inmate with his hands in front to accommodate his injury, but prison officers failed to heed the cuff pass and handcuffed the inmate's arms behind his back. The court noted that acceptance of federal funds by the state corrections department was a waiver of its sovereign immunity from liability under the federal Rehabilitation Act. The court ordered further proceedings to determine if officers destroyed a posted medical order pertaining to the inmate, whether another officer stood by as an officer handcuffed the inmate in a manner contrary to the posted medical order, and whether the officers maliciously intended to cause harm to the inmate. (Wallens Ridge State Prison, Virginia)

U.S. District Court
FTCA- Federal Tort
Claims Act

Beckwith v. Hart, 263 F.Supp.2d 1018 (D.Md. 2003). An inmate filed an action against the Federal Bureau of Prisons (BOP) under the Federal Tort Claims Act (FTCA), alleging claims of defamation of character, negligence, battery and constitutional claims. The district court dismissed the action. The court held that the inmate failed to establish that he was subjected to excessive force in violation of his Eighth Amendment rights, when a BOP employee closed the door of a conference room on the inmate's foot after he had interrupted a meeting to request forms, and stuck his foot in the door when the employee attempted to shut it to regain the privacy of the meeting. The court noted that even if the employee's actions contained the requisite application of force to rise to a constitutional violation, the inmate failed to establish that the employee closed the door maliciously for the purpose of causing him harm. (Federal Correctional Institution, Cumberland, Maryland)

U.S. Appeals Court
PRIVATE OPERATOR

Bowman v. Corrections Corp. of America, 350 F.3d 537 (6th Cir. 2003). The mother of a deceased prisoner sued a private company that managed a prison, a warden and a physician, under § 1983 alleging failure to provide adequate medical care to the prisoner. The district court entered judgment on a jury verdict finding that the defendants were not indifferent to the prisoner's serious medical condition. The district court granted judgment as a matter of law that the company's medical policy, as reflected in its contract with the physician, was unconstitutional. The parties appealed. The appeals court affirmed in part and reversed in part. The appeals court reversed the district court's holding with respect to the constitutionality of the medical policy, along with the injunction awarded on that basis, finding that the issue is moot for the plaintiff and she had no standing to bring such a claim for prospective relief. The appeals court also reversed the district

court's award of attorney fees to the mother, as she was no longer the prevailing party. (South Central Correctional Center, Tennessee)

U.S. Appeals Court
QUALIFIED
IMMUNITY

Ford v. McGinnis, 352 F.3d 582 (2nd Cir. 2003). A Muslim inmate brought a § 1983 action alleging infringement of his religious rights because corrections officials refused to serve a religious feast in a high-security area. The district court granted the defendants' motion for summary judgment and the inmate appealed. The appeals court vacated and remanded. The appeals court held that whether the inmate had a Free Exercise Clause claim depended on whether the inmate sincerely believed in the postponed feast's religious significance. The court found that the fact that the officials' religious authorities had determined that participation in the feast was not mandated by the religion of Islam did not, by itself, render the burden on the inmate's free exercise non-substantial. (Downstate Correctional Facility, New York)

U.S. District Court
INDIVIDUAL
CAPACITY

Gaines v. Choctaw County Com'n., 242 F.Supp.2d 1153 (S.D.Ala. 2003). Administrators of a deceased inmate's estate asserted state and federal law claims against a sheriff and county, alleging that the inmate's death resulted from the denial of medical treatment while the inmate was a pretrial detainee in a county jail. The district court held that the county could not be held liable for any alleged lack of training or supervision of the sheriff, or sheriff's employees. The court found that allegations failed to support a claim against the county based on its statutory duty to maintain a jail, but that the allegations supported a claim against the county for an alleged breach of duty to fund medical care, where the alleged failure to provide adequate funding to meet the medical needs of inmates supported a claim for deliberate indifference under § 1983. The court noted that although the county did not have a duty to appoint a physician, but merely had the authority to do so, the county had the authority to act and its failure to do so could be construed as a county policy. The court held that the allegations stated a § 1983 claim under the Fourteenth Amendment against the sheriff in his individual capacity, based on his direct participation. The sheriff allegedly removed the inmate from the hospital against medical advice, failed to provide adequate treatment during his subsequent incarceration, and refused to readmit the inmate to the hospital. At the time of his arrest, the inmate was a patient at an infirmary where he was being treated for acute renal failure and pneumonia. The sheriff personally removed the inmate from the hospital, over the strenuous objections of the inmate's physician. He was placed in jail, where his condition deteriorated to the point that he was unable to walk or to feed himself. His family found him in worsening condition during their visits and eventually paid other inmates to help bathe and feed the inmate. Jail staff allegedly refused to administer prescription medication because, according to the family, the Sheriff's policies did not require them to do so. The sheriff finally took the inmate to a nearby medical clinic where the treating physician recommended that the inmate be hospitalized, but the sheriff refused. The family contacted the state human resources agency, which intervened and caused the inmate to be admitted to the hospital. Upon admission, he was found to be dehydrated and malnourished and his illness had become irreversible; he died a few days later. (Choctaw County Jail, Alabama)

U.S. District Court
COMPENSATORY
DAMAGES

Hayes v. Faulkner County, Ark., 285 F.Supp.2d 1132 (E.D.Ark. 2003). An arrestee brought a § 1983 action against a county, sheriff and jail administrator, complaining of his long detention prior to an initial court appearance. The district court entered judgment in favor of the arrestee, finding that the county's detention policy was deliberately indifferent to the arrestee's constitutional rights. The court held that the sheriff did not possess the requisite level of personal knowledge to be individually liable, but that the jail administrator was not entitled to qualified immunity. The sheriff and jail administrator were responsible for the policy under which the sheriff's office submitted the names of those confined in jail to the court, and then waited for the court to schedule a hearing. The policy resulted in a 38-day delay for the arrestee, in violation of his Fourth Amendment right to a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest. The court held that it would enter an order awarding compensatory damages and attorney fees and costs, if the parties were unable to settle the amounts between them. The court found that the arrestee was entitled to compensatory damages because his reputation in the community was compromised as the result of his confinement, he suffered mental anguish, emotional distress and physical pain while incarcerated, and he was financially injured when his home and property were left unattended for the 38 days he was confined. The arrestee had been brought to the jail when two outstanding warrants were discovered during a traffic stop. (Faulkner County Detention Center, Arkansas)

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Jackson v. Austin, 241 F.Supp.2d 1313 (D.Kan. 2003). A state prisoner brought a § 1983 action against state corrections officers, alleging they subjected him to excessive force. The district court entered judgment in favor of the prisoner, finding that the officers used excessive force to restrain him. The court held that the officers were not entitled to qualified immunity, and that the prisoner was not required to prove that he sustained significant or permanent injuries. The court also found that an officer who did not participate in the altercation was liable for failing to intervene. The court ordered the officers to pay \$15,000 in compensatory damages, and \$30,000 in punitive damages. One officer had grabbed the prisoner, pushed him to the floor and handcuffed him while the prisoner attempted to explain that he was permitted to sit in a medical clinic's waiting room since his knee injury prevented him from standing for long periods. The officer had ordered the prisoner to stand in line and refused to look at the prisoner's written medical restriction. The court noted that the prisoner was 60 years old and the officers were aware that the prisoner had a knee injury. (El Dorado Corr'l Facility, Kansas)

- U.S. District Court
PLRA-Prison Litigation
Reform Act
- Laube v. Haley, 242 F.Supp.2d 1150 (M.D.Ala. 2003). Female prisoners brought an action against prison officials, challenging conditions of their confinement at certain state prisons. The district court granted injunctive relief, including an order that the officials submit a plan for alleviating the conditions. Following submission of the plan, the court rejected the plan, finding it unacceptable to the extent that it asked the federal court to enjoin further transfer from county jails of prisoners eligible for state incarceration. The court noted that under the Prison Litigation Reform Act (PLRA), it could not prohibit the transfer, and in any event, such an order would conflict with a state court order that prisons accept those prisoners. The court held that lack of funding was no excuse for the deficiencies in the plan. (Alabama State Prison System, Tutwiler Prison for Women)
- U.S. Appeals Court
VICARIOUS LIABILITY
- Lumley v. City of Dade City, Fla., 327 F.3d 1186 (11th Cir. 2003). An arrestee who was wounded in a shoot-out brought a suit against police officials. The district court granted summary judgment in favor of the defendants on the arrestee's Sixth Amendment claim, but rejected their qualified immunity defense, and both sides appealed. The appeals court affirmed in part and reversed in part. The court held that a law enforcement officer's decision while he was present in the hospital watching the arrestee as he awaited surgery for a bullet wound, that the arrestee should be strapped to the hospital bed in order to minimize the risk of flight, did not rise to the level of a substantive due process violation. The court found that the officers who took no part in a doctor's decision to remove a bullet from the arrestee's jaw but not to treat a fracture of his right cheek bone, could not be held vicariously liable for the doctor's conduct. (Dade City Police Dept., Florida)
- U.S. District Court
DAMAGES
- Lynn v. Maryland, 295 F.Supp.2d 594 (D.Md. 2003). An arrestee sued state prison officials alleging excessive force. The district court entered judgment in the arrestee's favor on a single claim against a single defendant and awarded damages of approximately \$2,500. The arrestee's counsel sought attorney fees of approximately \$130,000 and costs of \$12,000. The district court reduced the requested attorney fee award to \$25,000, and costs to \$2,158, finding the reduction was warranted by the counsel's unnecessary prolonging of the action and other factors. The court held that the arrestee could not recover the cost of hiring an expert whose testimony was excluded. The court noted that the counsel prolonged the trial with inartful questioning and extensive examination of witnesses on immaterial points. The arrestee had been visiting his son at a state correctional facility when he was subjected to an unconstitutional search and arrest as the result of a false alert by a drug dog. (Maryland)
- U.S. Appeals Court
TERMINATION OF
ORDER
PLRA-Prison Litigation
Reform Act
- Para-Profess. Law Clinic, SCI-Graterford v. Beard, 334 F.3d 301 (3th Cir. 2003). Prison officials moved, under the provisions of the Prison Litigation Reform Act (PLRA), to terminate a nearly 14-year-old permanent injunction that required a prison law clinic to remain open. The district court granted the motion and prison inmates appealed. The appeals court affirmed, finding that PLRA did not encompass future violations, and an injunction was not needed to correct a current and ongoing violation. (State Correctional Institute at Graterford, Pennsylvania)
- U.S. Appeals Court
PRIVATE OPERATOR
- Rosborough v. Management & Training Corp., 350 F.3d 459 (5th Cir. 2003). A state prisoner brought a § 1983 action against the private operator of a prison and against a corrections officer employed by the operator, alleging violation of his rights as the result of injuries he sustained--two severed fingers--when the officer slammed a door on his hand. The district court dismissed the action, but the appeals court reversed and remanded. The appeals court held that private prison management corporations and their employees perform a public function and can be sued under § 1983. (Bradshaw State Jail, Texas)
- U.S. District Court
PRIVATE OPERATOR
BIVENS CLAIM
42 U.S.C.A. Sec. 1983
- Sarro v. Cornell Corrections, Inc., 248 F.Supp.2d 52 (D.R.I. 2003). A federal pretrial detainee brought a Bivens and/or § 1983 suit against the private operator of a prison facility, officers employed by the operator, and others. A federal magistrate recommended that summary judgment be entered for the defendants and the inmate filed objections. The district court held that the inmate could maintain Bivens claims against the officers who were employed by the private operator, but that the private corporation that operated the facility could not be sued under Bivens. The court held that officers and operators were not subject to § 1983 liability because they did not act under the color of state law, because only federal prisoners were housed in the facility. (Donald Wyatt Detention Center, Rhode Island)
- U.S. District Court
POLICIES AND
PROCEDURES
- Sulton v. Wright, 265 F.Supp.2d 292 (S.D.N.Y. 2003). A prison inmate sued physicians and a state corrections department's medical director, alleging that his Eighth Amendment rights were violated when surgery to repair his torn knee ligaments was delayed for four years. The district court denied qualified immunity for the defendants. The court held that the inmate stated a claim of deliberate indifference against the physicians, and against the medical director based on a policy that contributed to the delay. The policy required transferee inmates to be evaluated as new cases, causing a delay in the inmate's surgery. (Wende Correctional Facility, Green Haven Correctional Facility, New York)
- U.S. District Court
PRIVATE PROVIDER
- Wall v. Dion, 257 F.Supp.2d 316 (D.Me. 2003). A county jail inmate suffering from hepatitis C brought a pro se state court § 1983 action against private contractors that provided medical services to inmates, alleging inadequate dental care. The district court denied the contractors' motion to dismiss, finding that the inmate's failure to allege a blanket custom or policy of not treating inmates with hepatitis C, did not preclude his § 1983 claim. The court noted that even absent a blanket policy, if the inmate could demonstrate that the contractor's employee was a final

policymaker with respect to treatment, and decided not to treat the inmate pursuant to an unconstitutional policy, the contractors could be liable. (Cumberland County Jail, Maine)

U.S. Appeals Court
PUNITIVE DAMAGES

Williams v. Kaufman County, 352 F.3d 994 (5th Cir. 2003). Detainees brought a § 1983 action against a sheriff and county, alleging violation of their civil rights during the execution of a search warrant at a night club. The district court entered judgment against the defendants and they appealed. The appeals court held that the strip searches of the detainees were unlawful, absent individualized suspicion or probable cause, and that the law on this matter was clearly established at the time of the searches. The court found that the prolonged detention of the detainees was unlawful, but that the law was not clearly established at the time of the detention and the district court had properly granted qualified immunity to the defendants on the unlawful detention claims. The court held that the detainees established the county's municipal liability for their strip search and detention, and that the district court did not err in imposing nominal damages of \$100 per plaintiff. The searches and detention were conducted according to a sheriff department's unwritten policy for executing "hazardous" warrants, according to the court. The appeals court found that the record supported the district court's conclusion that the sheriff acted with reckless indifference toward the plaintiffs' constitutional rights, justifying an award of punitive damages, and held that punitive damage awards of \$15,000 per plaintiff were not excessive. The plaintiffs had been held for three hours and were subjected to highly intrusive strip searches, and the sheriff kept the plaintiffs handcuffed after they had been searched and no weapons or contraband had been found. (Kaufman County, Texas)

2004

U.S. Appeals Court
INJUNCTIVE RELIEF
CLASS ACTION
PLRA-Prison Litigation
Reform Act

Austin v. Wilkinson, 372 F.3d 346 (6th Cir. 2004). State inmates housed at a supermaximum security prison facility brought a class action against corrections officials under § 1983, alleging violations of their procedural due process rights. The district court ruled that officials had violated the inmates' due process right and granted injunctive relief. The court ordered the adoption of a revised version of placement regulations and the officials appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that state inmates enjoyed a due process protected liberty interest in not being placed at a supermaximum facility, but that the district court did not have the power to order state officials to modify their predicates. The appeals court upheld the procedural modifications made by the district court to the state's placement and retention policies, which included increased notice requirements and changes to the administrative appellate procedure. The court noted past erroneous and haphazard placements at the facility, and the availability of administrative segregation to ensure the state's interest in safety. The appeals court found that the proper comparison was within the state's prison system, not between other supermaximum facilities in other states. The court held that confinement at the supermaximum facility imposed an atypical and significant hardship, given the extreme isolation visited upon inmates, lack of outdoor recreation, limitations on personal property rights and access to telephone and counsel, and ineligibility for parole. (Ohio State Penitentiary. Youngstown)

U.S. District Court
CONSENT DECREE-
TERMINATION
PLRA-Prison Litigation
Reform Act

Baker v. Haun, 333 F.Supp.2d 1162 (D.Utah 2004). Injunctive relief was granted prohibiting the practice of double-celling in certain areas of a prison, in a state prison inmates' class action challenging their conditions of confinement. The prison moved to terminate the injunction under the provisions of the Prison Litigation Reform Act (PLRA). The district court held that the continuation of the injunction was not warranted where there was no evidence of any present unwillingness on the part of prison officials to comply with the injunction. The court found that prison officials who resumed double-celling in one area without court permission did not engage in contemptuous conduct because the officials had renovated the area in accordance with court requirements. (Wasatch Unit, Utah State Prison)

U.S. District Court
CONSENT DECREE
ADA-Americans with
Disabilities Act

Bolden v. Stroger, 306 F.Supp.2d 792 (N.D.Ill. 2004). Pretrial detainees brought an action challenging a county's policy of barring individuals with mental illness from various pre-release programs, and its policy of discharging mentally ill individuals without providing them with medication and referrals necessary to manage their illnesses. The district court dismissed the action, finding that a court monitoring consent decree that had created pre-release programs at the jail was the proper forum for claims regarding eligibility for the programs, and for challenging the treatment of mentally ill detainees, even though the Americans with Disabilities Act (ADA) was not in existence at the time the decree was originally entered. (Cook County Jail, Illinois)

U.S. District Court
NEGLIGENT
RETENTION
FAILURE TO
SUPERVISE

Bolton v. U.S., 347 F.Supp.2d 1218 (N.D.Fla. 2004). A female inmate brought an action against the federal Bureau of Prisons and a correctional officer, alleging that the officer coerced her into sex by threats of adverse official action. The district court granted summary judgment for the defendants in part, and denied it in part. The district court held that the government did not negligently hire and train the officer, but that fact issues remained as to whether the government negligently supervised and retained the officer. The court found that genuine issues of material fact, regarding whether the officer's supervisor knew that the female inmate was at risk of sexual assault by the officer, precluding summary judgment. The officer purportedly threatened to send the inmate to a special housing unit and affect her release date unless she submitted to his sexual demands. (Federal Bureau of Prisons, Florida)

- U.S. Appeals Court
PRIVATE OPERATOR
PLRA-Prison Litigation
Reform Act
- Boyd v. Corrections Corp. of America, 380 F.3d 989 (6th Cir. 2004). A group of prisoners at a private correctional facility brought an action against the operator of the facility and individuals, alleging they were severely beaten and subjected to racial epithets by workers at the facility. The district court dismissed the action for failure to exhaust administrative remedies under the provisions of the Prison Litigation Reform Act (PLRA). The prisoners appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the PLRA exhaustion requirement applied to private correctional facilities. (Whiteville Correctional Facility, Tennessee)
- U.S. District Court
DAMAGES
PLRA-Prison Litigation
Reform Act
- Brewster v. Nassau County, 349 F.Supp.2d 540 (E.D.N.Y. 2004). A detainee brought a § 1983 action. The district court dismissed the complaint, finding that the detainee failed to state a § 1983 conspiracy claim against a legal aid society, which had sent three successive attorneys work with the detainee. The court considered these to be state law malpractice claims and declined to exercise jurisdiction. The court found that even if the detainee suffered all of the psychological and emotional injuries that he alleged, the Prison Litigation Reform Act (PLRA) precluded recovery against corrections officials under § 1983 because the detainee did not allege any physical injury. (Nassau County Correctional Facility, and Nassau County Legal Aid Society, New York)
- U.S. District Court
42 U.S.C.A. Sec. 1983
MUNICIPAL
LIABILITY
- Brown v. Mitchell, 327 F.Supp.2d 615 (E.D.Va. 2004). The administratrix of the estate of a jail inmate who contracted and died from bacterial meningitis while in jail brought a civil rights action. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that summary judgment was precluded by fact issues as to whether the city had a policy or custom of jail mismanagement, and whether any policy or custom caused the inmate's death. The court also found that there were fact issues as to whether the sheriff violated the Eighth Amendment regarding jail overcrowding. The court ordered further proceedings to determine if the city council was aware of the long history of overcrowding, poor ventilation and structural defects in the jail. The court found that the sheriff did not violate the Eighth Amendment by failing to maintain sanitation in the jail, because sanitation deficiencies were caused by overcrowding, not by her failure to perform. The sheriff was also not found liable for failure to train her staff, where she had an illness-recognition and response program in place which consisted of initial and follow-up training, combined with surprise inspections. The court noted that the guards' failure to respond to the obvious illness of the inmate could be attributed to their failure to apply their training, for which the sheriff was not responsible. The court held that summary judgment was precluded by material issues of fact as to whether the jail physician showed deliberate indifference when he ordered the inmate returned to overcrowded and ill-ventilated quarters, essentially without treatment. (Richmond City Jail, Virginia)
- U.S. Appeals Court
INJUNCTIVE RELIEF
PLRA-Prison Litigation
Reform Act
- Clement v. California Dept. of Corrections, 364 F.3d 1148 (9th Cir. 2004). A state inmate brought a § 1983 action, alleging that a regulation prohibiting inmates from receiving mail that contained material downloaded from the Internet violated his First Amendment rights. The district court granted summary judgment for the inmate and issued a permanent, statewide injunction against enforcement of the Internet mail policy. The state corrections department appealed, and the appeals court affirmed. The appeals court held that the regulation violated the First Amendment and that a statewide injunction was appropriate. The court found that the regulation was an arbitrary way to achieve a reduction in the volume of mail, and that the corrections department did not support its assertion that coded messages were more likely to be inserted into Internet-generated materials than into word-processed documents. The court noted that the origin of printed electronic mail was usually easier to trace than that of handwritten or typed mail. The court held that entering a statewide injunction barring enforcement of the policy was consistent with the provisions of the Prison Litigation Reform Act, where evidence showed that at least eight state prisons had adopted virtually identical policies and other prisons were considering it. The court held that the injunction was no broader than necessary to remedy the First Amendment violations. (Pelican Bay State Prison, California)
- U.S. District Court
INJUNCTIVE RELIEF
- Colton v. Ashcroft, 299 F.Supp.2d 681 (E.D.Ky. 2004). A federal prisoner filed a petition for habeas corpus relief alleging that the federal Bureau of Prison's new regulation, which would delay his release to a halfway house until only ten percent of his sentence remained, violated the notice and comment provisions of the Administrative Procedures Act (APA). The district court granted the prisoner's motion for a preliminary injunction. The court held that the Prison Litigation Reform Act's (PLRA) exhaustion requirements did not apply to a habeas petition. The court noted that the public interest would be served by the grant of an injunction and that the prisoner would be irreparably harmed in the absence of an injunction. The court ordered the prisoner to be immediately transferred to a halfway house without regard to the new regulation. (FMC-Lexington, Kentucky, Federal Bureau of Prisons)
- U.S. District Court
RESPONDEAT
SUPERIOR
- Cooper v. Office of Sheriff of Will County, 333 F.Supp.2d 728 (N.D.Ill. 2004). A pretrial detainee's surviving father brought an action against a county, sheriff, and deputies after his son died as the result of an asthma attack while he was incarcerated. The district court held that state law did not preclude the possibility of respondeat superior liability on the sheriff for a deputy's intentional or willful conduct. According to the court, the father's allegations were sufficient to state a § 1983 claim against the deputies based on deliberate indifference to the detainee's serious medical condition. The court noted that the central allegation in the complaint was that the deputies failed to provide timely medical care and treatment to the detainee. The detainee had been placed in the general population of the jail, and had previously had an asthma attack that required inhaler

medication. When the detainee had a subsequent attack, he and other inmates informed deputies on duty that immediate medical care was necessary, but the deputies failed to act in a timely manner and the detainee died. (Will County Jail, Illinois)

U.S. District Court
INJUNCTIVE RELIEF

Donhauser v. Goord, 314 F.Supp.2d 139 (N.D.N.Y. 2004). A state prisoner inmate brought a pro se civil rights action seeking declaratory, injunctive and monetary relief. The district court held that the inmate's allegations supported a claim for violation of the inmate's Fifth Amendment privilege against self-incrimination and that preliminary injunctive relief was warranted. The court enjoined prison officials from requiring, as part of the Sexual Offender Counseling Program, participants to divulge their history of sexual conduct, including illegal acts for which no criminal charges had been filed. (Oneida Correctional Facility, New York)

U.S. District Court
CONSENT DECREE

Ginest v. Board of County Com'rs. of Carbon County, 306 F.Supp.2d 1158 (D.Wyo. 2004). A motion was filed seeking to hold a board of county commissioners in contempt for violating the requirements of a 1987 consent decree concerning inmate medical care. The county board refused to comply with the plaintiffs' request for inmate records, unless a signed release was provided for each inmate whose file was requested. The court held that the plaintiffs' counsel was entitled to examine client medical records to determine whether a systematic failure occurred in the jail's health care system, without signed releases. The court ordered the information to be kept confidential, except to the extent necessary to advise the court of any violations of federal law. (Carbon County, Wyoming)

U.S. District Court
CONSENT DECREE
CONTEMPT
FAILURE TO TRAIN

Ginest v. Board of County Com'rs. of Carbon County, 333 F.Supp.2d 1190 (D.Wyo. 2004). County jail inmates brought a class action against a county and sheriff, alleging deliberate indifference to the inmates' medical needs, and seeking declaratory and injunctive relief. Following the entry of a consent decree governing medical care, the inmates sought a contempt order, alleging specific violations of the decree's terms. The defendants moved to terminate the consent decree. The district court held that the county was potentially liable, and the sheriff was potentially liable for failure to train. The court found that the constitutional rights of the inmates were violated by inadequate medical care and inadequate medical records at the jail, including lack of training in suicide prevention. According to the court, jail medical records that are inadequate, inaccurate and unprofessionally maintained are actionable under the Eighth Amendment. The court found that many physician progress notes and other medical records were missing, there was no written definition of a medical emergency requiring immediate care, there were numerous delays in responding to inmate requests for medical care, there was no suicide prevention training nor written policies, and potentially suicidal inmates were often isolated physically and provided with little or no counseling. (Carbon County Jail, Wyoming)

U.S. Appeals Court
CONSENT DECREE-
TERMINATION
PLRA-Prison Litigation
Reform Act

Guajardo v. Texas Dept. of Criminal Justice, 363 F.3d 392 (5th Cir. 2004). A state sought to terminate prospective relief provided by a consent decree that modified correspondence rules and practices in the state's prisons. The district court granted the state's motion and inmates appealed. The appeals court affirmed, finding that once the state established that the statutory two-year period after enactment of the Prison Litigation Reform Act (PLRA) had elapsed, the inmates had the burden of proof to demonstrate that there were ongoing violations and that the relief was narrowly drawn. (Texas Department of Criminal Justice)

U.S. Appeals Court
DAMAGES

Guerra v. Drake, 371 F.3d 404 (8th Cir. 2004). A pretrial detainee brought civil rights claims seeking damages from correctional officers, alleging they used excessive force and left him in a "restraint" chair for prolonged periods. The district court entered judgment against a Captain for \$1,500 on the restraint chair claim and against another officer for \$500 on the excessive force claim. The district court refused to award punitive damages and the detainee appealed. The appeals court affirmed, finding that the district court's refusal to award punitive damages was not an abuse of discretion. The inmate had alleged that during his first six days of detention he was subjected to unprovoked beatings and was placed in a "torture chair" for long periods. (Benton County Detention Center, Arkansas)

U.S. Appeals Court
CONSENT DECREE-
TERMINATION

Hadix v. Johnson, 367 F.3d 513 (6th Cir. 2004). State inmates filed a class action under § 1983 alleging that their conditions of confinement violated their constitutional rights. Their claims were settled by a consent decree. The district court denied prison officials' motion to terminate the consent decree and issued an injunction ordering the departmentalization of facilities as a fire safety remedy. The officials appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the consent decree encompassed the cell blocks in question but that the district court judge abused his discretion when he found that current conditions violated the Eighth Amendment, because the court incorporated its principal findings from two years earlier, despite the fact that a number of issues had since been resolved. The appeals court also noted that the district court did not state the standard it was applying to find that conditions relating to fire safety and fire prevention were inadequate, and failed to identify the point at which certain fire safety deficiencies ceased being mere deficiencies and instead became constitutional violations. (State Prison of Southern Michigan, Central Complex)

U.S. District Court
QUALIFIED
IMMUNITY

Hernandez v. Goord, 312 F.Supp.2d 537 (S.D.N.Y. 2004). An inmate brought a pro se civil rights action against state prison employees and the employees moved to dismiss the complaint for failure to provide a short and plain statement of the claim, and for failure to state a claim. The district

<p>SUPERVISORY LIABILITY</p>	<p>court granted the motions in part and denied in part. The court held that the inmate's allegations were sufficient to state a claim for conspiracy under § 1983 and that the inmate adequately alleged the personal involvement of a supervisory prison official in an alleged campaign of harassment and retaliation. The court denied qualified immunity for the defendants because their alleged acts violated clearly established law. The inmate alleged that prison employees retaliated against him after he filed a state court action. (Sing Sing Correctional Facility, and Green Haven Correctional Facility, New York)</p>
<p>U.S. District Court VICARIOUS LIABILITY CONTRACT SERVICES PRIVATE PROVIDER</p>	<p><u>Jackson v. Fauver</u>, 334 F.Supp.2d 697 (D.N.J. 2004). Fifteen former and current prisoners brought separate actions against corrections officials and employees and a contractor hired to operate a prison, alleging deliberate indifference to their serious medical needs and medical malpractice. The district court held that there were genuine issues of material fact as to whether the prison defendants were deliberately indifferent to one inmate's prostate cancer and to another inmate's another inmate's HIV/AIDS condition and Hodgkins disease. The court found genuine issues of material fact as to whether the contractor hired to operate the prison was aware of grave deficiencies in the medical care provided to inmates, as well as the acute risks created by those deficiencies. The court denied summary judgment for the prison defendants on some of the medical malpractice claims, and held that the corrections department and contractor could be held vicariously liable for independent contractors' medical negligence. (East Jersey State Prison, New Jersey)</p>
<p>U.S. District Court PRIVATE OPERATOR ACTA- Alien Tort Claims Act</p>	<p><u>Jama v. U.S.I.N.S.</u>, 343 F.Supp.2d 338 (D.N.J. 2004). Undocumented aliens who were detained pending determination of their asylum status brought an action alleging inadequate living conditions, torture, beatings, and other mistreatment at a facility operated by a private contractor. The court held that officials of the contractor were not government employees, and therefore the aliens' claims were not barred by a previous settlement agreement between the aliens and the United States, which included non-tort claims. The district court denied summary judgment in part, finding that issues of fact as to whether the burdens placed on the aliens' exercise of religion were in furtherance of a compelling governmental interest and were the least restrictive means of furthering that interest. The court found that the aliens could seek money damages against guards, in their individual capacities, for alleged violation of their rights under the Religious Freedom Restoration Act (RFRA). (Facility operated by Esmor, Elizabeth, New Jersey)</p>
<p>U.S. Appeals Court CONSENT DECREE PLRA-Prison Litigation Reform Act</p>	<p><u>Jones-El v. Berge</u>, 374 F.3d 541 (7th Cir. 2004). Prisoners of a "supermax" prison brought a suit challenging their conditions of confinement. After the plaintiff class was certified and a preliminary injunction was entered, a consent decree was approved by the court. The prisoners subsequently moved to enforce the decree. The district court entered an order directing the installation of air conditioning and the defendants appealed. The appeals court affirmed, finding that the district court's order was not a grant of "prospective relief" that was subject to the requirements of the Prison Litigation Reform Act (PLRA). (Wisconsin Secure Program Facility)</p>
<p>U.S. District Court CONSENT DECREE PLRA-Prison Litigation Reform Act</p>	<p><u>Laube v. Campbell</u>, 333 F.Supp.2d 1234 (M.D.Ala. 2004). A class action lawsuit was brought on behalf of women incarcerated by the Alabama Department of Corrections. The district court approved two four-year settlement agreements, finding them in full compliance with the Prison Litigation Reform Act (PLRA) and to be fair, adequate and reasonable. The court found that the healthcare monitor position that was created under the medical settlement agreement was not a special master for the purposes of PLRA, where the position served a monitoring function and did not exercise quasi-judicial power. (Alabama Department of Corrections)</p>
<p>U.S. Appeals Court INJUNCTIVE RELIEF PLRA-Prison Litigation Reform Act</p>	<p><u>Lindell v. Frank</u>, 377 F.3d 655 (7th Cir. 2004). A prisoner brought an in forma pauperis civil rights suit against state prison officials, alleging numerous constitutional violations and seeking injunctive, declaratory and monetary relief. The district court dismissed some claims, entered summary judgment in favor of the defendants on other claims, and granted injunctive relief to the prisoner on the one remaining claim. The prisoner and the defendants appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that a general ban on the receipt of clippings from noncommercial sources violated the prisoner's First Amendment right to receive information, but that the district court injunction was overly broad and violated the Prison Litigation Reform Act (PLRA.) The state prison had applied a general policy, that banned the receipt of publications from noncommercial sources, to the prisoner's receipt of magazine clippings and photocopies of clippings. According to the appeals court, the injunction should have been limited to the receipt of clippings by the litigating prisoner, but the injunction improperly prevented the prison from banning any photocopies rather than just photocopies from published sources. (Wisconsin Secure Program Facility)</p>
<p>U.S. District Court NOMINAL DAMAGES COMPENSATORY DAMAGES PUNITIVE DAMAGES PLRA- Prison Litigation Reform Act</p>	<p><u>Meade v. Plummer</u>, 344 F.Supp.2d 569 (E.D.Mich. 2004). A prisoner brought a § 1983 action against a prison's resident unit manager, alleging retaliation in violation of his First Amendment rights. The district court held that the prisoner's failure to allege physical injury caused his claim to be barred by the Prison Litigation Reform Act (PLRA) to the extent that he sought damages for mental and emotional injury, but not to the extent that he sought nominal, compensatory and punitive damages. (Kinross Correctional Facility, Michigan)</p>

- U.S. Appeals Court
NEGLIGENCE
FTCA- Federal Tort
Claims Act
- Montez Estate of Hearlson v. U.S., 359 F.3d 392 (6th Cir. 2004). The administratrix of the estate of a murdered federal inmate brought a negligence claim against the United States under the Federal Tort Claims Act (FTCA). The district court dismissed the case and the administratrix appealed. The appeals court affirmed. The appeals court that the allegations in the complaint were insufficient to rebut the presumption that prison officials' decisions regarding the inmate's safety at the time of his death were of the type that could be said to be grounded in Bureau of Prisons (BOP) policy, and thus the FTCA's discretionary function exception shielded the United States from liability for the inmate's death. (Federal Medical Center, Lexington, Kentucky)
- U.S. Appeals Court
CONSENT DECREE-
TERMINATION
PLRA-Prison Litigation
Reform Act
- Morales Feliciano v. Rullan, 378 F.3d 42 (1st Cir. 2004). The government moved to terminate an injunction issued pursuant to a consent decree that addressed unconstitutional conditions of an inmate health care system. The district court denied the motion and the government appealed. The appeals court affirmed. The court held that there was an adequate record of continuing constitutional violations and that the district court's order to privatize the system met the Prison Litigation Reform Act's (PLRA) requirements for narrowness, need, and lack of intrusiveness. The district court had found substandard conditions that included the following findings: one-fourth of all inmates who requested sick call did not get it; only 55% of all ambulatory care appointments actually took place; only 49% of specialist consultations deemed necessary for serious conditions were arranged; medically prescribed diets were routinely ignored; mortality rates were rising; and only 31.3% of inmates who had been diagnosed HIV-positive were receiving treatment. The appeals court voiced frustration with this case: "Like the legendary Phoenix, this class action litigation involving prison conditions in Puerto Rico is seemingly incapable of eternal rest...given the long and tortuous history of this litigation--two years ago, we acknowledged that 'the lore of this case is Byzantine.'" (Puerto Rico)
- U.S. District Court
PRIVATE PROVIDER
- Page v. Kirby, 314 F.Supp.2d 619 (N.D.W.Va. 2004). A state inmate filed a § 1983 action challenging his conditions of confinement. The district court dismissed the complaint, finding that private corporations that provided food and medical services at a state prison were not subject to liability under § 1983, absent an allegation that the inmate's constitutional rights were denied because of a corporation's policy or custom. (Huttonsville Correctional Center, West Virginia)
- U.S. Appeals Court
ELEVENTH AMEND-
MENT
- Phiffer v. Columbia River Correctional Inst., 384 F.3d 791 (9th Cir. 2004). A state inmate filed an action alleging that the state's failure to accommodate his osteoarthritis and osteoporosis violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act. After the United States Supreme Court vacated the appeals court decision, the case was remanded. On remand, the Appeals Court affirmed and remanded, finding that the state waived its Eleventh Amendment immunity under the Rehabilitation Act by accepting federal funds. (Columbia River Correctional Institution, Oregon)
- U.S. District Court
PRIVATE OPERATOR
- Purkey v. CCA Detention Center, 339 F.Supp.2d 1145 (D.Kan. 2004). A federal prisoner brought a *Bivens* action against private prison employees. The district court denied the defendants' motion to dismiss. The district court held that employees at a private company under contract to house federal pretrial detainees were "federal actors" for the purposes of potential *Bivens* liability, since the detainees were in the custody of the United States Marshal and held under the authority of the United States pending disposition of federal charges against them. According to the court, the prisoner sufficiently stated that he was prejudiced by the employee's destruction of his legal papers, for the purpose of his claim under *Bivens* that he was denied access to court. The court also found that the prisoner stated a claim for violation of his free speech and association rights. The court noted that prisoners incarcerated at prisons under contract to the federal government enjoyed the same constitutional protections as those inmates incarcerated at prisons that are actually run by the federal government. The court held that the prisoner was prejudiced by the employee's destruction of his legal papers because the papers contained written recollections of police interrogations shortly after they were conducted and also recounted representations that were made to him to elicit his cooperation in return for a lighter sentence. The court found that the prisoner stated a *Bivens* claim by alleging that employees disciplined him because he assisted other inmates in the preparation of grievances against the prisoner. According to the prisoner, the prison did not provide a law library and an attorney employed by the prison to answer legal research requests refused requests for assistance in preparing legal actions against the prison and its personnel. The prisoner alleged that employees harassed and threatened him, placed him in segregation, entered his cell and scattered his papers and belongings, denied him visits with his wife, and confiscated his legal materials because he filed grievances. (Corrections Corporation of America, Leavenworth, Kansas)
- U.S. Appeals Court
DAMAGES
- Riley v. Kurtz, 361 F.3d 906 (6th Cir. 2004). A prisoner brought an action against a corrections officer, alleging that his legal mail was opened by the officer outside of the prisoner's presence, in violation of both prison policy and his First Amendment rights. The prisoner also alleged that the officer wrote a false misconduct report against him, in violation of the Eighth Amendment. A jury entered a verdict in favor of the prisoner, the district court awarded attorney fees and the officer appealed. The appeals court reversed in part and ordered remittitur to reduce a punitive damages award. On remand, the district court entered an amended judgment and awarded attorney fees. The officer appealed, challenging the attorney fees awards. The appeals court affirmed in part and reversed in part. The appeals court held that the prisoner was the prevailing party within the meaning of § 1988 and the prisoner, who prevailed on appeal, was entitled to attorney fees for the

appellate work under the Prison Litigation Reform Act (PLRA).(Michigan)

U.S. Appeals Court
PUNITIVE DAMAGES
NOMINAL DAMAGES
PLRA-Prison Litigation
Reform Act

Royal v. Kautzky, 375 F.3d 720 (8th Cir. 2004). A prisoner filed a civil rights action against a prison employee, alleging retaliation against his First Amendment rights and access to the courts. Finding that the prisoner did not sustain a physical injury, the district court denied mental or emotional damages, awarding only nominal damages, and further denied an award of punitive damages. The prisoner appealed. The appeals court affirmed. The appeals court held that Prison Litigation Reform Act's (PLRA) limitation on damages to those who sustain a physical injury applied to First Amendment violations. The court found that the district court did not abuse its discretion by not awarding punitive damages. (Iowa Medical Classification Center)

U.S. Appeals Court
DAMAGES
NOMINAL DAMAGES

Shain v. Ellison, 356 F.3d 211 (2nd Cir. 2004). A misdemeanor detainee in a county correctional facility challenged a blanket policy that required strip searches of all detainees, regardless of the nature of the crime for which they were detained. The detainee sought a declaration that the policy was unconstitutional, monetary damages, and injunctive relief. The district court entered judgment in favor of the detainee and awarded \$1 in nominal damages. The parties appealed and the appeals court affirmed in part, and remanded on the issue of injunctive relief. On remand, the district court granted injunctive relief to the detainee and the defendants again appealed. The appeals court vacated and remanded, finding that the detainee lacked standing to seek prospective injunctive relief because he failed to show that he was likely to be rearrested or that he would be remanded to the county correctional facility overnight if he was rearrested. The court noted that the county had implemented a new policy that required reasonable suspicion that a detainee is concealing contraband to justify a search. (Nassau County Correctional Center, New York)

U.S. District Court
VICARIOUS LIABILITY

Shaw v. Coosa County Com'n., 330 F.Supp.2d 1285 (M.D.Ala. 2004). The daughter and the administratrix of an estate brought a civil rights action against a county, sheriff and other persons after her father died while in jail. The district court denied the defendants' motion to dismiss, in part. The court held that the plaintiff stated a claim against the county for an alleged breach of duty to provide adequate funding for medical treatment of, and medicines for, the inmate. The father had died while he was serving a 90 day sentenced for domestic violence, and allegedly was not screened for a determination of proper medical care. (Coosa County Jail, Alabama)

U.S. Appeals Court
PRIVATE PROVIDER

Warren v. District of Columbia, 353 F.3d 36 (D.C.Cir. 2004). A prisoner brought a pro se § 1983 action against the District of Columbia, alleging that he suffered constitutional violations while incarcerated in a private prison operated under contract with the District. The district court dismissed the claim and the prisoner appealed. The appeals court reversed and remanded, finding that the prisoner's allegations that the District had, or should have had, knowledge of alleged constitutional violations were sufficient to state a claim against the District under § 1983. The prisoner alleged that private prison officials used common needles to draw blood from prisoners. (Corrections Corporation of America, Youngstown, Ohio)

U.S. Appeals Court
FAILURE TO
SUPERVISE
FAILURE TO PROTECT

Wever v. Lincoln County, Nebraska, 388 F.3d 601 (8th Cir. 2004). A personal representative brought a civil rights action against a county and county sheriff alleging that an arrestee's Fourteenth Amendment rights were violated. The district court denied the sheriff's motion for summary judgment and the sheriff appealed. The appeals court affirmed. The court held that the arrestee had a clearly established Fourteenth Amendment right to be protected from the known risks of suicide, and two prior suicides in the county jail should have put the sheriff on notice that his suicide prevention training needed revision. The court held that the representative stated a supervisory liability claim under the due process clause, noting that a supervisor may be held liable under § 1983 if a failure to properly supervise and train an employee causes a deprivation of constitutional rights. (Lincoln County Jail, Nebraska)

U.S. Appeals Court
PUNITIVE DAMAGES

Woodward v. Correctional Medical Services, 368 F.3d 917 (7th Cir. 2004). The administratrix of the estate of a pretrial detainee who had committed suicide in a county jail brought a § 1983 action against a private contractor hired by the county to provide medical and mental health services at the jail, and against the contractor's agents. The district court entered judgment on a jury verdict against the contractor and the contractor's social worker, awarding \$250,000 in compensatory damages and \$1.5 million in punitive damages, and denied motions for summary judgment as a matter of law. The contractor appealed. The appeals court affirmed, finding that the contractor's employee's lack of training and carelessness were relevant toward establishing deliberate indifference, even though the employee herself was not found liable. The court held that the fact that no previous suicides had occurred in the jail did not preclude the contractor's liability. According to the appeals court, the district court did not abuse its discretion by letting the punitive damages award stand. The estate proffered evidence that the contractor failed to adequately train its employees and condoned employees' failure to complete mental health intake forms and the social worker's practice of challenging suicide watch referrals. According to the court, employees knew that the detainee was suicidal but failed several times to place him on suicide watch, in violation of its own written procedures. The court found that evidence of an alcohol-impaired nurse, intake backlogs, and claims of delayed or denied medical care to other inmates was relevant to the contractor's state of mind and was therefore admissible. (Lake County Jail, Illinois)

U.S. Appeals Court
DAMAGES
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Bell v. Johnson, 404 F.3d 997 (6th Cir. 2005). A former state prisoner sued corrections officers, alleging that they had retaliated against him for filing a civil rights suit. The case was remanded by the appeals court. A jury verdict awarded the former prisoner \$1,500 in compensatory damages but no punitive damages. The district court granted a new trial on damages and subsequently entered judgment on verdict against an officer for \$6,000 in compensatory damages and \$28,000 in punitive damages. The officer appealed. The appeals court affirmed. The appeals court held that the district court did not abuse its discretion by granting a new trial on damages. The officer had searched the prisoner's cell while the prisoner was in the prison yard for his daily hour of "yard time." When the prisoner returned to his cell he found it in disarray and he noticed that some of his legal papers and medical snacks had been taken. (State Prison of Southern Michigan)

U.S. District Court
SUPERVISORY
LIABILITY

Billops v. Sandoval, 401 F.Supp.2d 766 (S.D.Tex. 2005). A representative of a prisoner's estate brought a § 1983 action against prison doctors, alleging that by failing to adequately supervise their medical staff, they were deliberately indifferent to the prisoner's serious medical condition, resulting in the prisoner's death. The doctors moved to dismiss the action and the district court denied the motion. The court held that the representative stated a cause of action by alleging that the doctors were the persons who were ultimately responsible for the prisoner's treatment and that they had the legal authority and duty to supervise their nursing and physician's assistant staff. The representative alleged that the doctors, despite their duty, entirely failed to supervise staff's treatment of the prisoner, and were therefore deliberately indifferent to his care. According to the representative, the doctors' indifference for a period of two months caused the prisoner's death. (Clemons Unit, Texas Department of Criminal Justice)

U.S. District Court
SUPERVISORY
LIABILITY

Collins v. Graham, 377 F.Supp.2d 241 (D.Me. 2005). An inmate brought a civil rights action against corrections officers and their supervisors alleging that the officers subjected him to sexual harassment. The district court held that the inmate failed to state a claim for sexual harassment with allegations that the officers made statements to him referring to sexual acts and tried to grab him in a sexual manner. According to the court, an attempted touching, with no accompanying allegation of pain or injury, cannot support an inmate's claim of constitutional injury. The court found that the inmate failed to state a claim for supervisory liability. The court also found that the inmate's allegation that an officer exposed his testicles to him did not meet the "unnecessary and wanton infliction of pain" standard necessary to support a § 1983 claim. The court noted that sexual abuse or harassment of an inmate by a correctional officer can never serve a legitimate penological purpose and may well result in severe physical and psychological harm, and that in some circumstances such abuse can constitute the unnecessary and wanton infliction of pain that is forbidden by the Eighth Amendment. (Maine Correctional Center)

U.S. Appeals Court
VICARIOUS LIABILITY

Cook Ex Rel. Tessier v. Sheriff of Monroe County, 402 F.3d 1092 (11th Cir. 2005). The personal representative of the estate of a pretrial detainee who committed suicide while incarcerated brought an action against a sheriff, in his official capacity, asserting claims for deliberate indifference to the detainee's medical needs in violation of § 1983, negligent training and supervision of jail employees, and vicarious liability for the employees' negligence. The district court excluded the representative's expert witness testimony, precluded reference to other suicides at the facility, and granted judgment as a matter of law for the sheriff. The representative appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court acted within its discretion in excluding evidence of other suicides at the jail. The court found that the plaintiff failed to establish that the detainee's suicide was foreseeable to the sheriff and therefore any deficiencies in the sheriff's training or supervision did not rise to the level of deliberate indifference. But the court held that evidence was sufficient to support a jury verdict on the plaintiff's claim that the sheriff was vicariously liable under state law for employees' alleged negligence. The court noted that the detainee made two written requests to see a psychiatrist, one on each of the two days immediately preceding his suicide, and that the detainee stated in one request that he was "mentally sick" and asked to see the psychiatrist "as soon as possible." Three deputies observed the detainee as nervous and anxious, and one specifically observed the detainee apparently having an anxiety attack and complaining of chest pains. (Monroe County Detention Center, Florida)

U.S. Appeals Court
DAMAGES
TORT LIABILITY

Copeland v. County of Macon, Ill., 403 F.3d 929 (7th Cir. 2005). A former pretrial detainee who had been beaten by another inmate sued a county seeking indemnification under the "scope of employment" provision of the state's local government tort immunity statute. The detainee alleged that a county correctional officer recruited and encouraged other inmates to commit the beating. The district court jury awarded the detainee \$400,000 and the county appealed. The appeals court reversed, finding that the corrections officer was not acting within the scope of his employment within the meaning of the tort immunity statute, and that the county jail, not the citizens of the county, was the officer's employer. (Macon County Jail, Illinois)

U.S. District Court
SUPERVISORY
LIABILITY

Davis v. Carroll, 390 F.Supp.2d (D.Del. 2005). An inmate brought a § 1983 action against prison personnel alleging violations of his Eighth Amendment rights. The district court denied the defendants' motion to dismiss. The court held that the inmate stated a claim of excessive force with his allegations that correctional officers harmed him on two different occasions while he was handcuffed. The court found that the inmate stated a claim for supervisory liability with his allegations that correctional officers planned his beating and encouraged him to act out, and that a deputy warden witnessed the attack and took no action to stop it or punish the officers who were involved. The inmate also alleged that a sergeant stood by as correctional officers harmed him while he was handcuffed. (Delaware Correctional Center)

U.S. District Court
NEGLIGENCE

Drake ex rel. Cotton v. Koss, 393 F.Supp.2d 756 (D.Minn. 2005). The legal guardian for an incapacitated person, who attempted to commit suicide while he was a pretrial detainee in a county jail, and the state human services department sued a county and various officials under § 1983 alleging Eighth and Fourteenth Amendment violations and a state law claim for negligence. The district court granted summary judgment in favor of the defendants. The court held that the officials did not act with deliberate indifference in failing to recognize and respond to the risk that the detainee was suicidal, even assuming there was a 72-minute gap between the last time the detainee was checked and when he was found. According to the court, the officials did not know that the detainee presented a substantial risk of suicide, based on a physician's reports describing the detainee's depression as only "mild" or "situational." There was nothing in the reports to suggest that anti-anxiety medication would have helped prevent the detainee's depression and attempted suicide. The court held that the county was not shown to have any official policy or custom of overcrowding or understaffing that played a role in the detainee's attempted suicide. The court held that the officials acted with discretion with respect to their placement and treatment of the detainee, and in accordance with a physician's orders, and they promptly took the detainee to the hospital when they discovered he had harmed himself, and were therefore entitled to official immunity as to the negligence claims. (McLeod County Jail, Minnesota)

U.S. District Court
QUALIFIED
IMMUNITY
SUPERVISORY
LIABILITY

Dunbar v. County of Saratoga, 358 F.Supp.2d 115 (N.D.N.Y. 2005). A female correctional officer at a county jail brought an action alleging sexual harassment in violation of Title VII and § 1983. The district court granted summary judgment for the defendants, in part, and denied in part. The court held that summary judgment was precluded on the officer's hostile environment sexual harassment claim. The officer alleged that co-workers made unwelcome sexual advances, directed graphic sexual comments and jokes at her, left sexual notes on her car, called her at home several times, and made obscene and offensive gestures toward her. The court held that the officer failed to establish that she was constructively discharged because of her gender in violation of Title VII, absent evidence that the defendants intentionally created an intolerable work atmosphere that forced the officer to quit voluntarily. The court found that the sheriff was entitled to qualified immunity under § 1983 from the officer's claims of sexual harassment, where the sheriff never sexually harassed the officer, never observed her alleged sexual harassment, never took any adverse employment action against her, and was never personally aware of allegations of sexual harassment. (Saratoga County Sheriff's Department, New York)

U.S. Appeals Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES
FAILURE TO PROTECT

Estate of Moreland v. Dieter, 395 F.3d 747 (7th Cir. 2005). Family members of a county jail detainee who died in custody, brought a § 1983 action alleging the use of unnecessary and excessive force. The district court entered judgment, upon jury verdict, in favor of the family members and against county deputies, and awarded \$29 million in compensatory damages, and \$27.5 million in punitive damages. The parties appealed. The appeals court affirmed, finding that the punitive damages award was not excessive, where evidence showed that the deputies threw the detainee's head against a concrete wall, discharged a can of pepper spray into his face when he was fully restrained, and repeatedly assaulted him, without attending to the detainee's medical needs. The detainee died of a fatal hematoma caused by one of the head traumas inflicted by the deputies. The deputies lied to a jail nurse about the detainee's injuries and filed false reports to conceal their wrongdoing. The court held that neither multiple prior incidents involving the use of pepper spray, nor alleged jail overcrowding, established that a sheriff was deliberately indifferent to a substantial risk of harm to the detainee. The detainee had been admitted to jail after he was arrested for driving under the influence. Shortly after his admission to the jail, the detainee provoked a confrontation with another detainee by directing racial slurs at him. Jail staff responded to the altercation with excessive force. (St. Joseph County Jail, Indiana)

U.S. District Court
CONTEMPT

Little v. Shelby County, Tenn., 384 F.Supp.2d 1169 (W.D.Tenn. 2005). An inmate brought a § 1983 action against a county and sheriff, alleging that he had been raped in jail in violation of his Eighth Amendment rights. The county stipulated to liability and an order of injunctive relief was issued. Later, the district court found the county in contempt, and the county sought to purge itself of the contempt finding. The court entered a purgation order. The court held that the county and sheriff complied with the Eighth Amendment and purged themselves of contempt through the adoption of a structured reform to correct conditions that included violence, rape and gang control among inmates. In reaching its conclusion, the court considered whether officials took all reasonable steps within their power to comply with the order, which included whether they

marshaled their own resources, asserted their highest authority, and demanded the results needed from subordinate persons and agencies in order to effectuate the course of action required by the order. The court praised the county, noting that it had adopted a focused, systemic and information-driven structural reform based on critical expert assessment of essential institutional functions. The county adopted a 14-point remedial scheme that included implementing direct supervision management of inmate cellblocks, improving population management, collecting and utilizing data, and installing an objective inmate classification system. (Shelby County Jail, Tennessee)

U.S. Appeals Court
FTCA- Federal Tort
Claims Act

Myles v. U.S., 416 F.3d 551 (7th Cir. 2005). A federal inmate brought a suit against the government seeking compensation under the Federal Tort Claims Act (FTCA), alleging that officers failed to protect him from being beaten by other inmates. The district court dismissed the suit as untimely and the inmate appealed. The appeals court affirmed, finding that the complaint could not be deemed to assert *Bivens* claims. (Federal Bureau of Prisons, Terre Haute, Indiana)

U.S. District Court
CLASS ACTION
SETTLEMENT

Nilsen v. York County, 382 F.Supp.2d 206 (D.Me. 2005). County jail inmates brought a class action suit against a county, claiming that the practice of forced disrobing of all incoming inmates, in the presence of an officer, was an unauthorized strip search. The parties submitted a proposed settlement for court approval. The district court approved the settlement, in part. The court found that the practice of having inmates remove their clothing in the presence of an officer was the equivalent of a strip search conducted without cause. The county agreed to create a \$3.3 million settlement fund, from which members of the class would be compensated. The court approved higher "incentive" payments of \$6,500 to the first class representative, and \$5,500 and \$5,000 to the other two class representatives, noting that they put considerable time into the case and were required to give embarrassing deposition testimony. They also received unfavorable publicity regarding their arrest and humiliation, due to the small size of the county and the ease of their recognition. The court noted that a privacy factor was strong in this case, and that requiring individual class members to prove damages would stifle individuals who are too embarrassed to discuss their searches. The court rejected the proposal that would have awarded twice as much to females. The proposal had been based on the assertion that females had two areas of the body subject to privacy protection. The county contended, even when the settlement was offered, that its policy was constitutional because the officers were looking for contraband in the clothing and were not intentionally viewing arrestees' naked bodies. (York County Jail, Maine)

U.S. District Court
FAILURE TO
SUPERVISE

Perez v. Oakland County, 380 F.Supp.2d 830 (E.D.Mich. 2005). The father and personal representative of the estate of an inmate brought a suit under § 1983, alleging that the defendants violated the inmate's Eighth Amendment rights by failing to provide appropriate mental health treatment or monitoring when the inmate was being held in the county jail, leading to the inmate's suicide. The court found that allegations that the sheriff failed to ensure that the county's deputies enforced and followed the law could not sustain a § 1983 claim absent evidence that the sheriff himself engaged in active unconstitutional behavior by directly participating, encouraging, authorizing, or acquiescing in the allegedly offending conduct of the sheriff's deputy. (Oakland County Jail, Michigan)

U.S. District Court
INJUNCTIVE RELIEF

Roe v. Crawford, 396 F.Supp.2d 1041 (W.D.Mo. 2005). A female inmate sued prison officials, requesting a preliminary injunction requiring them to transport her to a local health care provider for the purpose of providing medical services to terminate her pregnancy. The district court held that the inmate was entitled to injunctive relief and ordered accordingly. The court found that denying the inmate the right to choose to terminate her pregnancy constituted irreparable injury and that substantial delay in the decision to abort increased the risks associated with the procedure. According to the court, the prison policy not to transport female prisoners out of the institution for abortions that were not medically necessary was claimed to be reasonably related to the penological interests of security and cost, but the court found those interests were not legitimate penological interests. (Women's Diagnostic and Correctional Center, Missouri)

U.S. District Court
PERSONAL LIABILITY

Tardiff v. Knox County, 397 F.Supp.2d 115 (D.Me. 2005). A class action suit was brought against a county, its sheriff, and jail officers claiming that the Fourth Amendment rights of some detainees were violated when they were subjected to strip searches without reasonable suspicion that they were harboring contraband on or within their bodies. The district court held that the county violated the Fourth Amendment by adopting a policy that allowed for strip searches of all detainees alleged to have committed felony offenses, although the sheriff was granted qualified immunity because the law on this matter was not clearly established at the time the policy was implemented. The policy provided for the strip-searching of all detainees alleged to have committed non-violent, non-weapon, non-drug felonies. The court found that the county and the sheriff were liable for a policy that called for the strip searches of detainees alleged to have committed misdemeanors, without reasonable suspicion. According to the court, the sheriff was responsible, in his individual capacity, for Fourth Amendment violations arising from strip searches of all detainees alleged to have committed misdemeanors without a showing of reasonable suspicion that they were harboring contraband on or within their bodies. The court found that the

sheriff was aware of the custom of these universal strip searches and did not take effective action to halt the practice. The court noted that specific standards that described which strip searches may be undertaken in jails and prisons had been issued by the state attorney general. The state corrections department had conducted a review of the jail's policy and procedure manual and informed the sheriff that the policy pertaining to body searches needed to be revised to comply with the attorney general's rules for searches. (Knox County Jail, Maine)

U.S. District Court
DAMAGES
HECK RULE

Thomas v. Barker, 371 F.Supp.2d 636 (M.D.Pa. 2005). A jail inmate brought a pro se civil rights suit seeking to challenge the propriety of charges of escape and other crimes. The district court dismissed the case, finding that the inmate could not seek release from custody in a § 1983 action. The court noted that to the extent that the jail inmate was challenging the fact or duration of his confinement by attacking a sheriff's filing of charges against him, the claims had to be brought in a habeas corpus petition, rather than a civil rights action. The court also held that any claim for monetary damages based on a civil rights claim for allegedly unconstitutional imprisonment based on vindictive prosecution would not accrue in the inmate's favor under the *Heck* rule until such time as the charges were dismissed or convictions were reversed on direct appeal, expunged by a state tribunal, or called into question by the issuance of a federal writ of habeas corpus. The court found that the claims were legally frivolous and subject to dismissal under the Prison Litigation Reform Act (PLRA). (State Correctional Institution-Retreat, Pennsylvania)

U.S. District Court
TORT LIABILITY

Thomas ex rel. Smith v. Cook County Sheriff, 401 F.Supp.2d 867 (N.D.Ill. 2005). The administrator of a detainee's estate brought an action arising from the death of the detainee at the jail, allegedly due to inadequate medical attention. The district court granted the defendants' motions to dismiss in part, and denied in part. The court held that the administrator had standing to sue on behalf of the surviving spouse and next of kin, and that the allegations were sufficient to state most of the § 1983 claims. The court found that allegations of conspiracy were insufficient to state a claim. The court held that the allegations were sufficient to remove the shield of immunity under a state tort immunity act by pleading "willing and wanton conduct." According to the court, allegations that an institutional policy, whether an express policy or a widespread practice, led to the death of the detainee due to deliberate indifference to the detainee's medical needs, were sufficient to state a § 1983 claim. The detainee was suffering flu-like conditions at the time of arrest and he complained of these symptoms to medical personnel during his initial screening at the jail. Three days later his condition worsened and he requested medical attention from several officers, who refused and told him he was just "dopesick." The next three days the detainee, and fellow detainees on his behalf, requested medical attention and their requests were denied by officers and medical technicians, and even made written requests. The detainee was found unconscious on the floor of his cell on the seventh day after his admission and he died of meningitis later that day. (Cook County Department of Corrections, Illinois)

U.S. District Court
PRIVATE OPERATOR
NEGLIGENCE
PLRA- Prison Litigation
Reform Act

Torres v. Corrections Corp. of America, 372 F.Supp.2d 1258 (N.D.Okla. 2005). A state prison inmate who was assaulted and battered by a prison officer brought a § 1983 action in state court against the corporate administrator of the prison, and also asserted a negligence claim. The district court dismissed the case in part and denied dismissal in part. The court held that the inmate's § 1983 claims were subject to the exhaustion requirements of the Prison Litigation Reform Act (PLRA). The court held that the inmate's state law claim of negligence against the corporate administrator of the prison did not fall within the ambit of PLRA's exhaustion of administrative remedies provision. (David L. Moss Criminal Justice Center, Oklahoma, operated by Corrections Corporation of America)

U.S. District Court
SUPERVISORY
LIABILITY

Valdes v. Crosby, 390 F.Supp.2d 1084 (M.D.Fla. 2005). The estate of an inmate who died in prison after an alleged beating by correctional officers brought a § 1983 action against prison officials and prison nurses. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court found that summary judgment was precluded by a genuine issue of material fact on a supervisory liability claim against a warden. The court also held that there were genuine issues of material fact as to whether inmate abuse at the hands of prison officers occurred with sufficient regularity to demonstrate a history of widespread abuse at the prison, and as to whether the prison warden established customs and practices that resulted in deliberate indifference to violations of inmates' constitutional rights. According to the court, it was clearly established at the time of the inmate's death that the warden could face liability under § 1983 predicated on his failure to take reasonable steps in the face of a history of widespread abuse that created a known substantial risk of serious harm to inmates. The court found that a prison inspector was not liable on a § 1983 supervisory liability claim, since the inspector was neither responsible for, nor had authority to prevent or correct problems relating to abusive officers. The court concluded that nurses were not liable under § 1983 where a nurse's physical examination of the inmate following alleged abuse by officers during the extraction of the inmate from his cell revealed that the inmate suffered only minor injuries consistent with those seen by medical personnel in prisons following cell extractions. The court held that any delay in the nurse's response to a call for immediate medical help for the inmate did not create or exacerbate injuries the inmate received from an alleged beating by prison officers, since the nurse arrived within

minutes of receiving the call and officers were attending to the inmate's medical needs by administering cardiopulmonary resuscitation. (Florida State Prison)

U.S. Appeals Court
INJUNCTIVE RELIEF

Warsoldier v. Woodford, 418 F.3d 989 (9th Cir. 2005). A Native American inmate sued state corrections officials challenging a prison hair grooming policy that required male inmates to maintain hair no longer than three inches, alleging it violated his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the inmate's request for a preliminary injunction and the inmate appealed. The appeals court reversed and remanded, finding that the policy imposed a substantial burden on the inmate's religious practice and that the policy was not the least restrictive alternative to achieve the state's interest in prison security. The court noted that the inmate was not physically forced to cut his hair, but that he was subjected to punishments including confinement to his cell, imposition of additional duty hours, and reclassification into a less desirable work group. The court also noted that the state failed to explain why its women's prisons did not adhere to an equally strict grooming policy. The court concluded that the inmate faced the possibility of irreparable injury absent the issuance of an injunction and the balance of hardships favored the inmate. (Adelanto Community Correctional Facility, California)

U.S. District Court
NOMINAL DAMAGES
PUNITIVE DAMAGES

White v. Kautsky, 386 F.Supp.2d 1042 (N.D.Iowa, 2005). A state prison inmate sued a state corrections director and a warden, claiming that a policy that did not allow attorneys to do legal research for inmates in appropriate cases violated his right to have access to the courts. The district court held that the inmate was injured by the policy for the purposes of a constitutional claim, where he did not pursue his non-frivolous claim that noncompliance with extradition procedures invalidated his conviction. The court concluded that the corrections department did not provide the inmate with a reasonably adequate opportunity to present claimed violations, where there was no legal library and the attorney who was provided to consult with the inmate was only allowed to confer and consult about the lack of merit of any proposed litigation, without being allowed to conduct any legal research. The court noted that the inmate's question that required research carried a great deal of significance for the inmate. The court awarded only nominal damages in the amount of \$1 and held that the inmate was not entitled to the compensatory damages he had requested, equal to the estimated amount of legal fees that would have been incurred with his lawsuit. The court declined to award punitive damages where there was no showing that the department acted maliciously when it provided attorneys to inmates for the limited purpose of advising and conferring, but did not allow the attorneys to conduct any legal research. (Anamosa State Penitentiary, Iowa)

U.S. Appeals Court
FAILURE TO TRAIN
SUPERVISORY
LIABILITY

Ziemba v. Armstrong, 430 F.3d 623 (2nd Cir. 2005). A state prison inmate brought a civil rights action alleging that prison officials failed to provide constitutionally-adequate health care, failed to protect him from the use of excessive force, and used excessive force. The district court granted summary judgment for the officials, in part, and they appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that evidence was sufficient to establish that a state corrections commissioner exhibited deliberate indifference to the inmate's constitutional rights or was grossly negligent in training subordinates, and that evidence was sufficient to impose supervisory liability on a prison warden. The inmate was allegedly placed in four-point restraints for 22 hours, beaten, and denied medical care. The court found that summary judgment was precluded by a genuine issue of material fact as to whether a prison nurse and medic were deliberately indifferent to the inmate's serious medical needs. (Connecticut State Prison)

2006

U.S. District Court
QUALIFIED
IMMUNITY

Abdullah v. Washington, 437 F.Supp.2d 137 (D.D.C. 2006). An inmate brought a pro se civil rights action under § 1983 against the District of Columbia and certain jail officials, in their individual and official capacities, seeking damages related to his alleged exposure to second-hand tobacco smoke while confined at a jail. The district court granted the officials' motion to dismiss in part, and denied in part. The court held that the inmate's allegations that he was subjected to an intolerable level of second-hand tobacco smoke while confined at the jail, and that jail officials were deliberately indifferent to his condition because they did not resolve the numerous grievances he filed on the issue, were sufficient to support an Eighth Amendment claim based on exposure to environmental tobacco smoke (ETS). The court found that the inmate's Eighth Amendment right to be free from levels of second-hand smoke that posed an unreasonable risk of serious damage to the inmate's future health was clearly established, and thus, the officials were not entitled to qualified immunity. (District of Columbia Department of Corrections, Central Detention Facility)

U.S. Appeals Court
NEGLIGENCE
FTCA- Federal Tort
Claims Act

Acosta v. U.S. Marshals Service, 445 F.3d 509 (1st Cir. 2006). A detainee brought an action against the United States Marshals Service, various county jails where he was detained, doctors in a federal prison, a private medical center, a private doctor, and others, alleging claims under § 1983 and the Federal Tort Claims Act (FTCA), and alleging negligence under state law. The district court dismissed the action and the detainee appealed. The appeals court affirmed. The court held that filing of an administrative claim with the United States Marshals Service was insufficient to

satisfy the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA), for the purpose of § 1983 claims against county jails and a federal prison doctor. The court noted that administrative claims against the county jails had to be directed to those facilities, and claims alleging wrongdoing by a doctor at a federal prison had to be filed with the federal Bureau of Prisons. The court ruled that FTCA claims against county facilities were barred by the independent contractor exemption of the FTCA. According to the court, allegations did not state deliberate indifference claims against a private medical center or a private doctor with allegations that someone at a private medical center overmedicated him, and that a private doctor failed to properly diagnose the severity of his foot injury. The detainee had been arrested on federal drug and firearm charges and he was held without bail. During his pretrial detention, the United States Marshals Service lodged him in several county jail facilities with which it contracts, and he also spent time in two federal facilities. (Hillsborough County Department of Corrections, NH; Cumberland County Jail, Maine; Merrimack County House of Corrections, NH; FMC Rochester, MN; Strafford County House of Corrections, NH; FCI Raybrook, NY)

U.S. District Court
SANCTIONS
INJUNCTIVE RELIEF

Americans United For Separation of Church and State v. Prison Fellowship Ministries, 432 F.Supp.2d 862 (S.D.Iowa 2006). A separation of church and state advocacy group, and affected state prison inmates, sued the State of Iowa, claiming that funding of a contract under which an organization providing pre-release rehabilitation services to inmates through a program based on Evangelical Christianity violated the Establishment Clause. The plaintiffs moved for declarative and injunctive relief. The district court held that: (1) the service provider was operating under color of state law, for purposes of a suit under § 1983; (2) the program was pervasively sectarian; (3) the program did not involve payments made at the direction of inmates, which would not violate Establishment Clause; (4) the program fostered excessive entanglement of government with religion; (5) the contract violated the Establishment Clause. The service provider was enjoined from further contract performance, would not be paid amounts due under its contract, and would be forced to return all payments received. The court noted that the plaintiffs had standing to sue the State of Iowa and corrections officials and the prison ministries organization, even though they were not Iowa taxpayers, because the inmate plaintiffs had made contributions to the telephone fund, designed to finance telephone use by inmates, from which withdrawals had been allegedly made to pay for the prison ministry in question. The court noted that if secular activities of a pervasively sectarian organization may be separated from sectarian activities, the secular activities may be funded by the government without violating the Establishment Clause. The court found that all instruction, regardless of subject, with exception of computer science, was presented as an aspect of Evangelical Christianity, and participants were required to participate in single and group devotional activities. According to the court, state prison inmates were not given true freedom of choice, there was no secular alternative to participation in the program, which offered superior living quarters and some relaxation of prison rules. The program provider was required to return the \$1,529,182 paid by the state. (Iowa Department of Corrections and InnerChange Freedom Initiative, Newton Correctional Facility)

U.S. Appeals Court
CONTEMPT

Armstrong v. Guccione, 470 F.3d 89 (2nd Cir. 2006). A prisoner incarcerated for civil contempt for refusing to comply with an order, sought habeas corpus relief. The district court denied the prisoner's motion for bail and the prisoner appealed. The appeals court affirmed, remanded, and ordered the case to be reassigned. The court held that the Non-Detention Act did not eliminate the lower courts' inherent power to order coercive civil confinement, and implicitly authorized coercive confinement in the face of civil contempt. The court found that civil confinement only becomes punitive, for the purposes of a due process analysis, when it loses the ability to secure compliance. The court held that a seven-year length of imprisonment for refusing to produce corporate records and property, so as to comply with an order issued in a civil securities fraud action, did not violate the prisoner's due process rights, where the property in question had a "life-altering" value of \$15 million, such that his refusal to comply indicated that he was willing to suffer jail time in hopes of ending up in possession of the property. The court opened its opinion with the following statement: "It has been said that a civil contemnor who is incarcerated to compel compliance with a court order holds the key to his prison cell: Where defiance leads to the contemnor's incarceration, compliance is his salvation." (Metropolitan Correctional Center, Federal Bureau of Prisons, New York)

U.S. Appeals Court
PUNITIVE DAMAGES
COMPENSATORY
DAMAGES
FAILURE TO PROTECT

Britt v. Garcia, 457 F.3d 264 (2d Cir. 2006). A prisoner brought a suit against correctional officials and others, alleging failure to protect him in violation of Eighth Amendment, civil rights conspiracy, and state law violations. Following a jury verdict in favor of the prisoner on the civil rights conspiracy claim, the district court denied a post-trial motion for judgment as matter of law on qualified immunity grounds, and ordered a new trial on the issue of punitive damages. The officials appealed. The appeals court held that the officials were not entitled to qualified immunity as a matter of law based on special verdict on which the jury answered "no" to the question asking if the officials had failed to protect the inmate in violation of his Eighth Amendment rights, but "yes" to question asking if they had conspired to violate his constitutional rights. The prisoner was serving a state sentence for a felony conviction when he was assaulted by another inmate who slashed his head, neck, and back. He was rushed to a hospital where he received multiple stitches

to close his wounds. Upon his return to prison, he was placed in protective custody but was allegedly attacked at least once more by another inmate, and his cell was allegedly set on fire. He brought suit seeking compensation for his injuries. The jury assessed compensatory damages against two officials in the amounts of \$100,000 and \$50,000, and punitive damages in the amounts of \$5 million and \$2.5 million, respectively. The court concluded that punitive damages “should not exceed \$200,000” in the case of one defendant and \$100,000 in the case of the other defendant, and ordered a new trial on the issue of punitive damages when the prisoner refused to agree to forego all punitive damages in excess of those amounts. (Sing Sing Correctional Facility, New York)

U.S. District Court
OFFICIAL CAPACITY

Burkett v. Wicker, 435 F.Supp.2d 875 (N.D.Ind. 2006). A prisoner, proceeding pro se, brought a civil rights action under § 1983 against a jail nurse and others, alleging that he was denied medical treatment while he was a pretrial detainee. The inmate alleged that a jail nurse made a false entry into the prisoner's medical record, denied him doses of his prescribed medication, prevented him from seeing a doctor, and delayed filling his prescription, that the nurse knew that his hand was injured and that it would get worse without treatment, and that because of her deliberate indifference to his serious medical need, he developed an infection, his hand did not heal properly, he had permanent disfigurement, and he was in prolonged, unnecessary pain. The district court held that the allegations supported a claim for violation of Eighth Amendment's prescription against cruel and unusual punishment. But the court found that no liability existed against the nurse in her official capacity, for allegedly denying the prisoner medical treatment while he was a pretrial detainee, in violation of the Eighth Amendment, absent any allegation that the nurse was acting pursuant to a policy or custom. (Cass County Jail, Indiana)

U.S. District Court
CLASS ACTION
SETTLEMENT

Bynum v. District of Columbia, 412 F.Supp.2d 73 (D.D.C. 2006). Persons who had been, were, or would be incarcerated by the District of Columbia Department of Corrections brought a § 1983 class action challenging the Department's policy of conducting suspicionless strip searches of inmates who were declared releasable after their court appearances, and challenging alleged over-detentions. The district court preliminarily approved a proposed settlement. Following a final approval hearing, the district court held that final approval was warranted and that the allocation of a sum for distribution to all class members who submitted claims was a fair method of distribution. The court held that the distribution fund of \$12 million was very favorable, especially in view of the low number of opt-outs and objectors. The court found that there was no collusion between the parties or their counsel and that the settlement comported with the rule governing class actions and with due process requirements. The court found that the attorney fee award of 33% of the settlement fund, or \$4 million, was reasonable, noting that counsel had engaged in protracted efforts over four years to obtain the outstanding settlement in both monetary and injunctive terms, the case was complex and involved novel issues, the case carried a serious risk of lack of success, and the settlement met with a high level of class satisfaction. The court defined the “Over-Detention Injunctive Relief Class” as: (a) Each person who has been, is or will be incarcerated in any District of Columbia Department of Corrections facility beginning in the three years preceding the filing of the action on or about May 16, 2002 up to and until the date this case is terminated; and (b) who was not released, or, in the future will not be released by midnight on the date on which the person is entitled to be released by court order or the date on which the basis for his or her detention has otherwise expired. (District of Columbia Department of Corrections)

U.S. District Court
PLRA- Prison Litigation
Reform Act

Clifton v. Eubank, 418 F.Supp.2d 1243 (D.Colo. 2006). An inmate brought a § 1983 action alleging violations of the Eighth and Fourteenth Amendment against a prison nurse and corrections officers, arising out of the stillbirth of her fetus. The court denied the defendants' motion for summary judgment. The court held that the inmate's delayed labor, resulting in the stillbirth of an otherwise viable fetus, constituted a physical injury to the mother sufficient to satisfy the Prison Litigation Reform Act's (PLRA) physical injury requirement, and that PLRA did not bar her constitutional claims under the Eighth and Fourteenth Amendments. The inmate had told an officer that she was in labor and needed medical assistance but the officer sent her back to her housing unit. Later she told another officer that she was in labor and needed help but the officer declined to provide her with medical assistance and told her to return to her unit. Upon her third request for medical assistance, another officer sent her to the facility's medical unit where the nurse examined the inmate and found no evidence that her water had broken. During the examination the nurse did not use a fetal heart monitor to evaluate the status of the fetus, apparently because she did not know how to use the monitor. The inmate was sent back to her housing unit without treatment, even though she told the nurse that she had difficulties with prior deliveries. The next day, another officer noticed Clifton's distress and sent her to the medical unit. She was sent from the prison to a hospital, where it was determined that her fetus was dead. (Women's Correctional Facility, Canon City, Colorado)

U.S. District Court
CLASS ACTION
PLRA- Prison Litigation
Reform Act

Ginest v. Board of County Com'rs of Carbon County, 423 F.Supp.2d 1237 (W.D.Wyo. 2006). County jail inmates filed a motion for an award of attorney fees and expenses after obtaining a consent decree in a § 1983 class action against a county and sheriff in his official capacity, for deliberate indifference to their medical needs, and a contempt order against the defendants. The

district court held that: (1) the class counsel for the inmates was entitled to attorney fees for time and effort spent in monitoring compliance by the county and its sheriff with the remedial plan; (2) the Prison Litigation Reform Act (PLRA) did not preclude an award of attorney fees to the class counsel; (3) the counsel would be awarded a 25% fee multiplier or enhancement; and (4) the counsel was entitled to the award of expenses for his travel to Wyoming to review medical records and perform other activities on behalf of the inmates. (Carbon County, Wyoming)

U.S. Appeals Court
PLRA-Prison Litigation
Reform Act
INJUNCTIVE RELIEF
SPECIAL MASTER

Handberry v. Thompson, 436 F.3d 52 (2nd Cir. 2006). City prison inmates, between the ages of 16 and 21, brought a class action against city officials under § 1983, alleging failure to provide adequate educational services. The district court entered declaratory judgment in favor of the inmates and entered an injunction ordering the city to comply with the terms of an educational plan and to provide additional required services to eligible inmates. The city appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the Prison Litigation Reform Act (PLRA) prohibited prospective relief for violations of state law only. The court found that the requirement that the city develop temporary education plans (TEP) for students who did not have current individualized education plans (IEP) within thirty days of enrollment was appropriately narrowly drawn. According to the court, a special monitor appointed to oversee the implementation of the order was not a “special master” for the purposes of PLRA and therefore the district court’s requirement that the city and state pay for the special monitor did not violate PLRA, which required expenses of special masters to be borne by the judiciary. The court noted that the special monitor was not given a mandate to exercise quasi-judicial powers, such as finding facts that would be binding on the court. (New York City Department of Corrections, New York City Department of Education)

U.S. Appeals Court
SPECIAL MASTER
PLRA- Prison Litigation
Reform Act

Handberry v. Thompson, 446 F.3d 335 (2nd Cir. 2006). City prison inmates, between the ages of 16 and 21, brought a class action against city officials under § 1983 and the New York education code, alleging failure to provide adequate educational services. After the entry of a declaratory judgment in favor of the inmates, the district court entered an injunction ordering the city to comply with the terms of an educational plan and to provide additional required services to eligible inmates. The city appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that the Prison Litigation Reform Act (PLRA) prohibited prospective relief for violations of state law only. The court held that the injunction was a necessary and narrowly drawn means of effectuating prospective relief, as required by Prison Litigation Reform Act (PLRA), even though the court described the plaintiff class as consisting of inmates housed in one specific facility, where that was the only facility that provided educational services, and inmates at city's other jails had to transfer there to receive such services. According to the court, the special monitor appointed by the district court to oversee implementation of the order was not a “special master,” and thus the requirement that the city and state pay for the special monitor did not violate the provision of Prison Litigation Reform Act (PLRA) requiring expenses for special masters to be borne by the judiciary. (New York City Department of Education, New York City Department of Corrections, Rikers Island)

U.S. Appeals Court
CLASS ACTION

In re Nassau County Strip Search Cases, 461 F.3d 219 (2d Cir. 2006). Arrestees brought an action against a county and others, challenging the county correctional center's blanket strip search policy for newly-admitted, misdemeanor detainees. The district court denied the plaintiffs' class certification motions, and the plaintiffs appealed. The appeals court reversed in part and remanded in part. The court held that common issues predominated over individual issues as to liability in this case, and the class action device was a superior litigation mechanism as to the issue of liability. (Nassau County Correctional Center, New York)

U.S. District Court
SUPERVISORY
LIABILITY
VICARIOUS LIABILITY

Locicero v. O'Connell, 419 F.Supp.2d 521 (S.D.N.Y. 2006). An inmate brought a pro se § 1983 action against a correction facility's superintendent and a correction officer, alleging deprivations of his Eighth Amendment right to be free of cruel and unusual punishment. The district court held that the inmate's allegations were sufficient to plead that the superintendent was personally involved in an alleged deprivation of the inmate's constitutional rights. The court found that the inmate stated a claim against a prison superintendent for deliberate indifference under § 1983 by alleging that the risk a corrections officer posed to inmates was obvious prior to the deprivation the inmate allegedly suffered, and by alleging that a corrections officer reportedly was officially reprimanded for misconduct towards inmates and that the severity of his misconduct rose to a level requiring his temporary removal from duty or from a particular program. The inmate alleged that the officer threatened him and hit him on more than one occasion. (Downstate Correctional Facility, New York)

U.S. District Court
INSURANCE

North River Ins. Co. v. Broward County Sheriff's Office, 428 F.Supp.2d 1284 (S.D.Fla. 2006). An insurer sued a county sheriff's office and a number of its officers, seeking a determination of its coverage obligations regarding lawsuits involving former inmates who had been incarcerated over 20 years earlier, but who were recently exonerated. The insurer moved for summary judgment. The district court held that “bodily injury” and “personal injury” covered by the policy did not cover allegations of malicious prosecution and false imprisonment that occurred 20 years earlier. One of

the complaints was filed by the estate of an inmate who died in prison in 2000 and was posthumously exonerated later that year. The second complaint was filed by a person who was arrested in 1979 and convicted in 1980 and spent 22 years in prison before he was exonerated and released from prison in June 2001. (Broward County Sheriff's Office, Florida)

U.S. District Court
PRIVATE OPERATOR
MEDICAL CARE
PLRA- Prison Litigation
Reform Act

Olivas v. Corrections Corp. of America, 408 F.Supp.2d 251 (N.D.Tex. 2006). An inmate brought a § 1983 action against a private company that managed a prison, alleging violations of his constitutional rights and a claim of negligence under state law. The corporation moved for summary judgment and the district court granted the motion. The court held that: the company was not liable for alleged deliberate indifference to the inmate's serious medical needs; even if the corporation failed to properly prioritize the inmate's dental injury, the failure did not amount to deliberate indifference to the inmate's serious medical needs; and the inmate did not suffer a "physical injury" under the Prison Litigation Reform Act (PLRA). The court noted that a private corporation that manages a prison can be sued by an inmate under § 1983 for an alleged constitutional injury, since the operation of a prison is a fundamental government function and the standards applicable to determining liability under § 1983 against a municipal corporation are applicable to determining the liability of a private corporation performing a government function. The court held that the inmate's injury, in which he broke two front teeth, was not a dental injury that required emergency care, and therefore the private prison-management company was not liable to the inmate under § 1983 for alleged deliberate indifference to inmate's serious medical needs. The inmate did not initially seek emergency care, and in the days immediately following the injury he did not suffer pain requiring more than over-the-counter medicine. According to the court, even if the private prison-management corporation failed to properly prioritize the inmate's dental injury, such failure did not amount to deliberate indifference to the inmate's serious medical needs under the Eighth Amendment, for the purposes of the inmate's § 1983 claim against the company. The inmate's allegation in the § 1983 action that he suffered some pain, and later suffered depression and emotional injury resulting from the loss of his teeth, was insufficient to establish a "physical injury" under the Prison Litigation Reform Act (PLRA). (Corrections Corporation of America, Mineral Wells Pre-Parole Transfer Facility, Texas)

U.S. Appeals Court
PUNITIVE DAMAGES
COMPENSATORY
DAMAGES

Patterson v. Balsamico, 440 F.3d 104 (2nd Cir. 2006). An African-American former employee of a county sheriff's department brought an action against another corrections officer, alleging the existence of a racially discriminatory hostile work environment and the intentional infliction of emotional distress. After a jury trial, the district court awarded the former employee nominal damages on the hostile work environment claim, \$100,000 on the emotional distress claim, and \$20,000 in punitive damages. The court denied the corrections officer's motion for a new trial and awarded the former employee attorney fees. The parties appealed. The court of appeals affirmed in part, and vacated and remanded in part. The appeals court held that the district court did not abuse its discretion when, pursuant to New York law, it declined to reduce compensatory damages of \$100,000 awarded to the plaintiff on his claim for intentional infliction of emotional distress, arising from an assault in which the officer and others sprayed the plaintiff with mace, covered him with shaving cream, and taunted him with racial slurs. The court noted that the plaintiff had testified as to his humiliation, embarrassment, and loss of self-confidence, as well as to his sleeplessness, headaches, stomach pains, and burning in his eyes from the use of mace. The appeals court found that the punitive damages award of \$20,000 did not exceed the maximum permissible amount considering that this was a thoroughly reprehensible incident, particularly in light of its racial motivation, and that the punitive damages award represented a relatively small fraction of \$100,000 compensatory damages awarded on the emotional distress claim. The court noted that the officer against whom the award was made should have appreciated the gravity of the racially motivated assault on a fellow officer and should have understood that such conduct could have adverse economic consequences. But the appeals court concluded that the \$20,000 damage award was excessive in light of the personal finances of the defendant corrections officer, who earned an annual salary of approximately \$37,632, was married and had two children. The court found that an award of no more than \$10,000 would provide sufficient punishment and deter future conduct. The court remanded the case for a new trial on punitive damages, unless the plaintiff agreed to remit the portion of the punitive damages award that exceeded \$10,000. The plaintiff alleged that he had been subjected to a racially discriminatory hostile work environment and that his employment had been terminated because of his race. He alleged that he heard fellow employees use racial slurs and make disparaging remarks about African-Americans on approximately 12 occasions during his first three months of employment. (Oneida County Correctional Facility, New York)

U.S. Appeals Court
NOMINAL DAMAGES

Pearson v. Welborn, 471 F.3d 732 (7th Cir. 2006). An inmate brought an action against prison personnel, alleging retaliation in violation of the First Amendment. The district court entered judgment upon jury verdict in favor of the inmate. Inmate appealed the court's refusal to award attorney fees and declaratory relief, and a prison warden and social worker cross-appealed. The appeals court affirmed. The appeals court held that the inmate's oral complaints to prison personnel about prison conditions, including the use of shackles in group therapy and denial of yard time to prisoners in a pre-transfer unit, related to matters of public concern and were

designed to effect a change in prison policy, and thus, they were protected by the First Amendment. The court held that the inmate, who was awarded only nominal damages under the Prison Litigation Reform Act (PLRA) in his action against prison personnel, was not entitled to an attorney fee award greater than 150% of the nominal damages based on his claim for declaratory judgment, that his punishment by personnel was illegal. The court noted that the only relief the inmate secured was nominal damages, and since the inmate had already been transferred to another facility, a declaratory judgment would have been largely duplicative of the jury's verdict concluding that personnel had retaliated against inmate. (Tamms Correctional Center, Illinois)

U.S. District Court
OFFICIAL CAPACITY
RLUIPA - Religious
Land Use and
Institutionalized
Persons Act

Price v. Caruso, 451 F.Supp.2d 889 (E.D.Mich. 2006). A state prison inmate brought a pro se suit against the director of the state corrections department, claiming that failure to provide transportation to another facility in order to permit his minimum attendance requirement for Jewish services to be satisfied, was a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court found material issues of fact, as to whether there were sufficient Jewish inmates in the prison to conduct services, precluded summary judgment. The court found that the inmate's claim for damages, arising from the refusal of authorities to transport him to another facility, was not rendered moot when he was transferred to another facility where need for transportation no longer existed. According to the court, the inmate could pursue his damages claim against the director in her official capacity, claiming that his rights under the RLUIPA were violated because it was not clear whether, in accepting federal funding, the state had waived sovereign immunity, and with it the director's official capacity immunity. (Southern Michigan Correctional Facility)

U.S. District Court
INJUNCTIVE RELIEF
DELIBERATE
INDIFFERENCE

R.G. v. Koller, 415 F.Supp.2d 1129 (D.Hawai'i 2006). Three juveniles who either identified themselves as, or were perceived to be, lesbian, gay, bisexual, or transgender and who had been confined at a state juvenile correctional facility brought claims against the facility alleging due process, equal protection, Establishment Clause, and access to counsel violations. The district court granted the juveniles' motion for a preliminary injunction in part, and denied in part. The court held that the juveniles had standing to seek a preliminary injunction preventing the facility officials from engaging in unconstitutional conduct and requiring them to implement policies and procedures to ensure their safety at the facility. Although none of the juveniles were incarcerated at the time the complaint was filed, the court found that enjoining certain unconstitutional conduct and requiring officials to implement policies and procedures to remedy those conditions would remedy the juveniles' injury, and, the juveniles showed a likelihood of repetition of the injury given that each of the juveniles had been incarcerated at the facility two to three times over a relatively short period of time, each had been released only to return to the facility a short time later, and the juveniles' experiences indicated that, at the time the complaint was filed, each juvenile was likely to return to the facility. The court found that the facility's adoption of a youth rights policy providing that youth should not be discriminated against on the basis of sexual orientation did not render moot the juveniles' claims for injunctive relief from sexual orientation harassment, absent evidence, aside from the policies themselves, that the facility had altered its treatment of its lesbian, gay, bisexual, or transgender wards. According to the court, the facility's use of isolation to "protect" its lesbian, gay, bisexual, or transgender wards was not within the range of acceptable professional practices and constituted punishment in violation of their due process rights. The court found that such practices were, at best, an excessive and therefore unconstitutional, response to the legitimate safety needs of the institution. The court held that officials at the facility acted with deliberate indifference in violation of due process in allowing pervasive verbal, physical, and sexual abuse to persist against lesbian, gay, bisexual, or transgender juveniles. The juveniles complained of a relentless campaign of harassment based on their sexual orientation that included threats of violence, physical and sexual assault, imposed social isolation, and near constant use of homophobic slurs. (Hawai'i Youth Correctional Facility)

U.S. Appeals Court
PUNITIVE DAMAGES

Rodriguez-Marin v Rivera-Gonzalez, 438 F.3d 72 (1st Cir. 2006). Employees of Puerto Rico's corrections administration filed suit under § 1983 against the administration alleging political discrimination, claiming that they were demoted in violation of their First Amendment and due process rights. The district court entered a verdict for the employees, awarding compensatory and punitive damages, and the defendants appealed. The court of appeals affirmed, finding that evidence was sufficient to support the jury finding that the employees were demoted based on their political affiliation. The court noted that the employees were long-standing, competent employees and that both were demoted without being given any notice or opportunity to defend their demotions, and that important documents were missing from their personnel files. According to the court, punitive damages of \$120,000 to \$195,000 assessed against the chief legal advisor of the new political administration were not excessive because the demotions jeopardized the employees' livelihood. As a result of their demotions, one employee's salary was reduced by 60 percent and the other's was reduced by 43 percent. Both employees suffered harm to their professional careers, were unable to meet their financial obligations because of their reduced salaries, and suffered emotional distress for which they sought medical attention. The court noted that "discrimination based on political-party affiliation is rampant in government employment in Puerto Rico." (Administration of Corrections, Puerto Rico)

U.S. Appeals Court
PRIVATE OPERATOR

Roles v. Maddox, 439 F.3d 1016 (9th Cir. 2006). A prisoner brought a pro se § 1983 claim asserting violations of his First and Fourteenth Amendment rights in connection with the confiscation of magazines by prison officials. The district court dismissed the action and the prisoner appealed. The appeals court affirmed, finding that the exhaustion requirement of the Prison Litigation Reform Act (PLRA) applied to prisoners who were held in private prisons, and the prisoner's claim that his constitutional rights were violated by the confiscation of his magazines was subject to the PLRA exhaustion requirement. (Idaho Correctional Center, operated by Corrections Corporation of America, Inc.)

U.S. Appeals Court
SUPERVISORY
LIABILITY

Serna v. Colorado Dept. of Corrections, 455 F.3d 1146 (10th Cir. 2006). A prisoner brought excessive force and inadequate medical care claims against various officers and officials. A state prison director moved for summary judgment on the ground of qualified immunity. The district court denied summary judgment and director appealed. The court of appeals reversed and remanded. The court held that: (1) the director's authorizing the use of a special team was not personal involvement that could form the basis for supervisory liability; (2) the director's receipt of periodic reports about the team's progress was not direct participation that could give rise to liability; (3) the director's conduct did not constitute failure to supervise; and (4) the director was not deliberately indifferent to the rights of inmates. The director had, at a warden's request, authorized a special team to conduct cell invasions to find a loaded gun. (Colorado Territorial Corrections Facility)

U.S. District Court
DEFENSES
DELIBERATE
INDIFFERENCE
MUNICIPAL
LIABILITY

Shaw v. Coosa County Com'n., 434 F.Supp.2d 1199 (M.D.Ala. 2006). The estate of deceased inmate brought an action against county commission and sheriff, stemming from the inmate's death while incarcerated at the county jail. The district court granted the county's motion for summary judgment. The court found that, in matters related to supervision of inmates and otherwise operating county jails, Alabama's sheriffs are state, not county officers, and the sheriff's authority is totally independent of the county commission. According to the court, the county commission did not owe a duty of care under Alabama law to the inmate, where policies of the commission with respect to funding jails or providing medical treatment to persons held in jails were not the moving force behind the alleged injury. The court noted that, under Alabama law, sheriffs have full responsibility for daily management of jails, including inmate supervision, and they are not subject to county oversight in their performance of this responsibility. (Coosa County Jail, Alabama)

U.S. District Court
PUNITIVE DAMAGES
CRIPA- Civil Rights of
Institutionalized
Persons Act

Siggers-El v. Barlow, 433 F.Supp.2d 811(E.D.Mich. 2006). A state inmate filed a § 1983 action alleging that a prison official transferred him in retaliation for his exercising his First Amendment rights. After a jury verdict in the inmate's favor, the official filed a motion for a new trial, and the inmate moved for costs and attorney fees. The district court held that the Civil Rights of Institutionalized Persons Act (CRIPA) that prohibited inmates from recovering mental or emotional damages in the absence of a the physical injury, did not bar the inmate's claim for emotional damages and that evidence supported the award of punitive damages. The court applied only \$1 of the inmate's damages award to his attorney fee award. The court noted that a jury may be permitted to assess punitive damages in a § 1983 action when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless disregard or callous indifference to the federally protected rights of others. According to the court, the jury's award of punitive damages against the prison official was supported by evidence that the official transferred the inmate in retaliation for the inmate's exercise of his First Amendment free speech rights in complaining to the official's superiors about the official's misconduct, even though the official was aware that the transfer would prevent the inmate from seeing his attorney, from paying his attorney, and from seeing his emotionally-disabled daughter.

The court found that the jury did not improperly use punitive damages to compensate the inmate for the prison official's misconduct because the amount of economic damages, \$4,000, was too low. The court held that the prison official's conduct in transferring the inmate was sufficiently reprehensible to warrant a punitive damages award of \$200,000, even though prisoner transfers were routine, and the inmate suffered only \$4,000 in economic damages. According to the court, a lesser award would have encouraged bad behavior by prison officials. The court ruled that the inmate was entitled to reimbursement for the work of law students in calculating his attorney fee award, even though the law students were supervised by an attorney and obtained course credit for their work. The inmate had been represented by the law school's clinical law program, and the law students participated as competent and professional attorneys throughout discovery, dispositive motions, interlocutory appeal, and trial. According to the court, in calculating the attorney fee award, the rate of \$85/hour, rather than the \$25/hour proposed by the defendant, was the appropriate billing rate for time spent by law students on the case, where affidavits from local attorneys stated that prevailing billing rates for the work of summer associates and interns was between \$100 and \$130 per hour. The court applied only \$1 of the inmate's \$219,000 damages award to the \$90,875 in attorney's fees awarded to the plaintiff, even though the Prison Litigation Reform Act (PLRA) prescribed application of up to 25% of such damages awards. (Michigan Department of Corrections)

U.S. District Court
CONSENT DECREE-
TERMINATION
INJUNCTIVE RELIEF
PLRA- Prison Litigation
Reform Act

Skinner v. Lampert, 457 F.Supp.2d 1269 (D.Wyo. 2006). An inmate, on behalf of himself and current and future inmates at a state prison, brought a § 1983 action against state prison officials, alleging that policies, practices, and customs of officials placed inmates at risk of unprovoked assault, bodily injury, and death at hands of other inmates. The court found that conditions at the prison violated inmates' Eighth Amendment right to be reasonably protected from physical violence in the form of assaults by other inmates, and established a remedial plan to eliminate those violations. The prison brought a motion to terminate the final decree and all related prospective relief, under the two-year provision of the Prison Litigation Reform Act (PLRA), and the inmates brought a motion for contempt. The court held that its supervision over the prison's inmate conflict documentation system could not be terminated and that the prison's interpretation of "institutional deficiency" in the remedial plan constituted deliberate indifference. The court held that the initial investigation requirement, reporting requirement, general incident tracking log requirement, and educational requirement were narrowly tailored, as required by PLRA, and the requirement for incorporation of various prison policies and state procedures were all narrowly tailored and the least intrusive means as required by PLRA. (Wyoming State Penitentiary)

U.S. District Court
CONSENT DECREE-
TERMINATION
INJUNCTIVE RELIEF

Skinner v. Uphoff, 410 F.Supp.2d 1104 (D.Wyo. 2006). A state prison inmate brought a § 1983 class action against prison officials, alleging failure to safeguard inmates against assaults by other inmates, and seeking individual compensatory as well as class injunctive relief. The district court granted injunctive relief and declaratory relief, finding that the defendants failed to adequately train and supervise employees, failed to properly review policy violations, and failed to properly discipline employees, all of which led to risks to inmate safety. In an effort to alleviate the problems at the prison, a remedial plan was adopted and approved by the court. The parties filed various motions to modify the remedial plan and the state moved for termination of the final decree. The district court granted the motions in part, and denied in part. The court held that state inmates and prison officials were entitled, under the remedial plan, to the opportunity to ask an outside investigator about reports of his investigation of suspected premeditated inmate-on-inmate assaults. The investigator was an independent contractor, and his reports bore directly upon whether officials were complying with plan. The court held that the inmates had the right under the Prison Litigation Reform Act (PLRA) to pursue discovery as to existence of the alleged ongoing and continuing constitutional violations before the court could terminate the remedial plan entered in the inmates' action challenging officials' responses to inmate-on-inmate violence. The court concluded that the inmates demonstrated good cause for a 60-day postponement of an automatic stay of the remedial plan after the officials filed a motion for termination, where the inmates made allegations of ongoing inmate-on-inmate violence and delays in the officials' remedial actions, and a joint expert raised various concerns. (Wyoming State Penitentiary)

U.S. District Court
DELIBERATE
INDIFFERENCE
OFFICIAL CAPACITY

Smith v. Brevard County, 461 F.Supp.2d 1243 (M.D.Fla. 2006). The personal representative of the estate of pretrial detainee who hung himself in his cell, brought a § 1983 action on behalf of the survivors of the estate, against a county sheriff, officers, and a non-profit corporation which was under contract to provide mental health services to the prisoners at detention center. The sheriff, officers and corporation moved to dismiss and the district court granted the motion in part, and denied in part. The court held that allegations by the estate that, prior to the detainee's hanging himself in his cell, his family members and friends called and went to the detention center in person to inform the non-profit corporation that the detainee was suicidal, were sufficient to satisfy the deliberate indifference test in the suit. After receiving knowledge of the detainee's suicidal tendency, the corporation failed to provide adequate mental health care to the detainee. According to the court, knowledge that the detainee was actually threatening to commit suicide was certainly enough to show knowledge of a substantial risk of suicide, rather than just a mere possibility. The court held that the estate stated a cause of action under § 1983 against the county sheriff, in his official capacity, for violating the detainee's Fourteenth Amendment rights. According to the court, violation of the detainee's constitutional rights was the result of the sheriff's failure to provide adequate staffing and safe housing for suicidal inmates, and in light of the sheriff's knowledge that inmate suicide was a problem, his failure to address any policies that were causing suicides constituted deliberate indifference to the constitutional rights of inmates. (Brevard County Detention Center, Florida)

U.S. District Court
PRIVATE OPERATOR
SOVEREIGN
IMMUNITY

Stephens v. Correctional Services Corp., 428 F.Supp.2d 580 (E.D.Tex. 2006). A pretrial detainee brought an action against a private jail corporation, alleging civil rights violations and common law negligence stemming from an attack while he was incarcerated. The corporation moved for dismissal. The district court held that the corporation was not entitled to state sovereign immunity and that the corporation was potentially liable under § 1983. The court found that the detainee properly stated a negligence claim, and also a viable claim for failure to train and/or supervise. The court noted that although the establishment and maintenance of jails were "governmental functions" under state law, jail services provided by a private entity were not. The detainee alleged that the corporation had a duty to protect his well-being and to ensure his reasonable safety while incarcerated, and that the corporation breached such duty by not properly segregating him from violent inmates who threatened his life. He alleged that he informed officials of the death threats and they took no action, and that he was severely beaten by three prisoners and suffered

life-threatening injuries. (Jefferson County Corrections Facility, Texas)

U.S. District Court
PRIVATE PROVIDER

Sykes v. McPhillips, 412 F.Supp.2d 197 (N.D.N.Y. 2006). The personal representatives for a mother and son's estates brought a civil rights action under § 1983 against various employees of a substance abuse correctional facility where the son had been confined, a private hospital which provided emergency medical services to the son, and a physician. The representatives alleged constitutional violations arising from the delivery of emergency medical services during the son's incarceration, as well as a state law malpractice/negligence claim. The hospital and physician moved for summary judgment on the issue of their "state actor" status. The district court granted the motion, holding that neither the hospital nor the physician were a "state actor" for the purposes of § 1983. According to the court, hospitals and physicians that provide care outside of the prison facility may be held to be state actors for purposes of § 1983 when they work pursuant to a contract, but the private hospital did not voluntarily assume the function of the state by accepting the correctional facility's delegation of its duty to provide emergency medical care to the prisoner. The court noted that the hospital did not have an implied contract with the correctional facility to provide emergency medical services when it treated the prisoner, given that it was federally mandated to do so by the Emergency Medical Treatment and Active Labor Act (EMTALA). The prisoner suffered from diabetes while confined at the facility and the plaintiffs alleged that the defendants were deliberately indifferent to his medical needs. The defendants maintained that the prisoner received the same medical care as any other patient, regardless of his prisoner status. The plaintiff disputed this by pointing out that corrections officers exercised continual custody over the prisoner in a manner that interfered with the confidentiality normally accorded the health information of free patients, the hospital accommodated the officers' constant attendance upon the prisoner, and the state paid for his medical care. (Hale Creek Alcohol and Substance Abuse Correctional Treatment Center, New York)

U.S. Appeals Court
FTCA- Federal Tort Claims
Act

Triestman v. Federal Bureau of Prisons, 470 F.3d 471 (2nd Cir. 2006). A pro se federal prisoner, who was injured when he was attacked by his roommate in a locked cell, brought an action against the federal Bureau of Prisons (BOP) and the United States under the Federal Tort Claims Act (FTCA). The district court partially dismissed the complaint and the prisoner appealed. The appeals court vacated and remanded. The court held that the suit was not barred by the discretionary function exception to the FTCA, as the complaint's allegations could be read to refer to negligence of the officer on duty by failing to patrol or respond diligently. The court noted that the BOP had in place a program statement which provided that "[s]ignaling devices will be available for inmate use in all locked housing units that do not have continuous staff coverage," and that "[i]nmates will not be left unattended in locked areas unless a signaling device is available to them for emergencies." According to the court, the language of this program statement makes it clear that prison officials must provide "continuous staff coverage" to, and may not leave "unattended," any inmate in a locked housing unit who does not have access to an emergency "signaling device." The prisoner, a first-time, non-violent inmate, had originally been "designated a low security inmate and initially housed [in a] low security facility." But due to overcrowding, he was transferred to a "medium/high security prison" and was assigned to share a cell with an inmate who, the prisoner argued, "was known to the [BOP] to be a violent criminal and sexual predator." He was assaulted by his cellmate, dislocating his shoulder and having his hand burned with lit cigarettes. Despite his shouts for help, no officer responded, and during that time the prisoner was at the mercy of his cellmate, and in excruciating pain and fear. (Federal Correct'l Institution, Ray Brook, New York)

U.S. District Court
QUALIFIED
IMMUNITY
PUNITIVE DAMAGES
COMPENSATORY
DAMAGES

Ziemba v. Armstrong, 433 F.Supp.2d 248 (D.Conn. 2006). A prison inmate sued a correctional officer under § 1983, seeking actual damages of \$100,000 and punitive damages of \$150,000, for injuries incurred when excessive force was used to place the inmate in a four-point restraint. A jury returned a verdict against one officer, who moved for judgment as matter of law and a new trial. The district court denied the motions, finding that the officer was not entitled to qualified immunity and that the jury could find that the officer had the requisite state of mind when he attacked the inmate. The court found that compensatory damages did not shock the conscience and that punitive damages of \$150,000 were warranted. The jury found that the officer hit the inmate in the face, knelt on him and otherwise inflicted pain in the course of securing the inmate in a four-point restraint, where he remained for 22 hours. The court noted that the officer engaged in reprehensible conduct by hitting the inmate after the inmate was secured, and that punitive damages were only 50% higher than compensatory damages. (Connecticut Department of Corrections)

2007

U.S. Appeals Court
NEGLIGENCE
FTCA- Federal Tort Claims
Act

Ashford v. U.S., 511 F.3d 501 (5th Cir. 2007). An inmate sued the United States under the Federal Tort Claims Act (FTCA) alleging that the Federal Bureau of Prisons (BOP) was negligent in placing him in a prison population with a gang member who had attacked him in the past. The district court entered summary judgment for the BOP and the inmate appealed. The appeals court reversed and remanded. The court held that the discretionary-function exception to FTCA did not apply if the inmate raised a concern at a prison intake interview that he would be endangered if he were placed in the prison population with the gang member. According to the court, genuine issues of material fact existed as to whether the inmate raised a concern at the prison intake interview, precluding summary judgment. (Federal Bureau of Prisons)

U.S. District Court
CONTRACT SERVICES
INDIVIDUAL CAPACITY
RESPONDEAT
SUPERIOR

Banks v. York, 515 F.Supp.2d 89 (D.D.C. 2007). A detainee in a jail operated by the District of Columbia Department of Corrections (DOC), and in a correctional treatment facility operated by the District's private contractor, brought a § 1983 action against District employees and contractor's employees alleging negligent supervision under District of Columbia law, over-detention, deliberate indifference to serious medical needs, harsh living conditions in jail, and extradition to Virginia without a hearing. The district court granted the defendants' motion to dismiss in part and denied in part. According to the court, the private corporation which operated a prison as contractor for the District of Columbia, was performing functions normally performed by a

municipality, and thus, the corporation could be liable to the prisoner under § 1983 if the prisoner alleged and ultimately proved that his injuries were the result of an unconstitutional custom or policy of corporation. The court held that the detainee sufficiently alleged that the Director of District of Columbia Department of Corrections (DOC) was directly involved in violations of the detainee's constitutional rights, as required to state a claim under § 1983 against a government official in his individual capacity. The detainee alleged that the Director refused to transfer the detainee from the jail to a correctional treatment facility and failed to train DOC employees under his supervision in such a way as to prevent the detainee's over-detention (detention beyond proper release date). The court found that the Director of District of Columbia Department of Corrections (DOC) could not be liable in his individual capacity, under the theory of respondeat superior, to the jail detainee for allegedly unconstitutional actions or omissions of his subordinates. The court found that the detainee's allegations that a DOC captain placed him in solitary confinement in retaliation for his oral complaint to the captain that his newly-assigned cellmate was HIV positive, stated a claim under § 1983 for retaliation for exercising First Amendment free speech rights. The court found that whether the detainee had a protected right under the First Amendment, to complain to the captain was not clearly established at the time, and thus, the captain had qualified immunity from the detainee's § 1983 claim. The court found that the detainee's allegations that the Director of the Department of Corrections (DOC), despite his actual and constructive knowledge that DOC employees were engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury through over-detention, failed to train, monitor, and discipline DOC employees with regard to timely release of inmates from DOC custody, and that the Director's deliberate failure to do so caused detainee's over-detention, were sufficient when construed liberally to state a claim under § 1983 for violation of due process and violation of protection against cruel and unusual punishment. The court noted that the detainee had a clearly established constitutional protection against over-detention and thus, the Director was not entitled to qualified immunity. (Central Detention Facility, D.C. and Correctional Treatment Facility operated by the Corrections Corporation of America)

U.S. District Court
BIVENS CLAIM
FTCA- Federal Tort Claims
Act

Barbaro v. U.S. ex rel. Federal Bureau of Prisons FCI Otisville, 521 F.Supp.2d 276, (S.D.N.Y. 2007). A federal prison inmate brought a pro se Federal Tort Claims Act (FTCA) suit against the Bureau of Prisons (BOP), alleging failure to treat his preexisting injuries, and asserted Eighth Amendment *Bivens* claims against individual prison officials, alleging deliberate indifference to his medical needs. The district court granted the defendants' motion to dismiss in part, on statutes of limitations grounds. Following the appointment of counsel for the inmate, the inmate renewed his opposition to the motion to dismiss. The district court rejected the inmate's opposition. The prisoner alleged that officials failed to treat his preexisting back and neck injuries, allegedly leading to the deterioration of his condition. (Federal Correctional Institution in Otisville, New York)

U.S. District Court
CONTRACT SERVICES
STATE LIABILITY

Bush v. Butler, 521 F.Supp.2d 63 (D.D.C. 2007). An inmate sued two attorneys, an investigative reporter, a civil liberties organization, and unknown defendants, alleging that the defendants engaged in a conspiracy to deprive him of his civil rights and failed to prevent a conspiracy in violation of his civil rights. The inmate also asserted state-law claims for legal malpractice, negligent misrepresentation, constructive fraud, breach of contract, breach of implied warranty, civil conspiracy, intentional infliction of emotional distress, and breach of fiduciary duty. The defendants filed motions to dismiss. The district court dismissed the case. The court held that the inmate failed to sufficiently allege the existence of a conspiracy to deprive him of his civil rights when he asserted that the defendants agreed to punish him by interfering with his access to the courts, breaching their contract with him, and making fraudulent misrepresentations. The court noted that the inmate failed to describe the persons involved in the alleged agreement, the nature of the agreement, the particular acts taken to form a conspiracy, and overt acts taken in furtherance of the conspiracy. The court held that it did not have diversity jurisdiction over state-law claims. (Eastern Correctional Institution, Maryland)

U.S. District Court
INDIVIDUAL CAPACITY

Cobb v. Marshall, 481 F.Supp.2d 1248 (M.D.Ala. 2007). An older black female correctional officer sued a sheriff under Title VII, Fourteenth Amendment equal protection as enforced by § 1983, and state law for hostile work environment sexual harassment, retaliation, and race discrimination. The sheriff moved to dismiss for failure to state a claim. The district court granted the motion in part and denied the motion in part. The court held that the Title VII claims would not be dismissed on the basis of failure to name the sheriff in the Equal Employment Opportunity Commission (EEOC) charge, but that the officer could not bring Title VII claims against the sheriff in his individual capacity. The court found that the officer stated Title VII claims for retaliation and race discrimination, where she alleged that she filed an EEOC charge and provided favorable testimony in support of a coworker's claim "against the department," that as a result of those activities she was subjected to various forms of retaliation, including denial of her request for leave, all in violation of Title VII, and pleaded that she was disciplined more harshly than other similarly-situated Caucasian employees and was denied certain benefits which other similarly-situated Caucasian employees received. (Montgomery County Sheriff's Department, Alabama)

U.S. District Court
SUPERVISORY
LIABILITY

Danley v. Allyn, 485 F.Supp.2d 1260 (N.D.Ala. 2007). A pretrial detainee brought a § 1983 action against jail officers, alleging that he was subjected to excessive force and then denied medical treatment when they sprayed him with pepper spray. The district court denied the defendants' motions to dismiss and they appealed. The court of appeals vacated and remanded. On the remand, the district court again denied the defendants' motion to dismiss. The court held that the officers were not entitled to qualified immunity from the detainee's claim that the officers subjected him to excessive force, in violation of Fourteenth Amendment, by pepper spraying him in response to a dispute over toilet paper. The court noted that the officers had fair warning that to employ pepper spray as punishment, or for the sadistic pleasure of the sprayers, as distinguished from what was reasonably necessary to maintain prisoner control, was constitutionally prohibited. The court found that the detainee's allegations that a jail administrator and sheriff created an atmosphere or practice under which the defendant officers operated in allegedly subjecting the detainee to excessive force and then denying him medical treatment when they sprayed him with pepper spray, were sufficient, if proven, to create supervisory liability under § 1983. The court held that the detainee's claim of deliberate indifference on behalf of defendant officers, wherein they failed to provide medical attention to the detainee after using pepper spray against him, was no more than a

continuation of the detainee's excessive force claim, and thus was not a separate cause of action under § 1983. (Lauderdale Detention Center, Alabama)

U.S. District Court
FAILURE TO PROTECT
FTCA- Federal Tort Claims
Act

Davis v. U.S., 474 F.Supp.2d 829 (N.D.Tex. 2007). An inmate who was raped by a prison officer in a federal medical center brought a Federal Tort Claims Act action against the United States, alleging negligence on the part of other prison officers. The district court denied the defendants' motion for summary judgment. The court found that summary judgment was precluded by genuine issues of material fact as to whether the prison officers were working within the scope of their employment when they led the inmate to another officer who raped her, whether the officers violated a duty to protect the inmate from harm, and whether their violations proximately caused the inmate's injury. (Federal Medical Center-Carswell, Texas)

U.S. District Court
INJUNCTIVE RELIEF

Hadix v. Caruso, 492 F.Supp.2d 743 (W.D.Mich. 2007). Prisoners brought a suit to correct unconstitutional prison conditions necessary for prisoner health and safety, and requested injunctive relief as to a heat-related injury. The district court entered an injunction. The court held that prison officials may not, consistent with Eighth Amendment values, cause the expected deaths of prisoners subject to heat-illness by exposing them to high heat and humidity conditions. According to the court, the requirements for safe Eighth Amendment custody are violated by housing high-risk inmates in facilities which are routinely at heat index levels above 90 during summer months, when it is known that such heat conditions will reliably cause heat injury and death. The court ruled that the prisoners were entitled to an injunction requiring that all prisoners classified at high-risk for heat-related injury be housed in areas in which the heat index was reliably maintained below a heat index of 90. The court noted that the injunction was necessary to prevent irreparable harm, including bodily injury and death, and that the scope of the injunction was narrowly tailored and was the least intrusive means of correction of the Eighth Amendment violation. (Southern Michigan Correctional Facility, Charles E. Egeler Correctional Facility)

U.S. District Court
NEGLIGENT HIRING
NEGLIGENT RETENTION

Heckenlaible v. Virginia Peninsula Regional Jail Authority, 491 F.Supp.2d 544 (E.D.Va. 2007). An inmate brought an action against a correctional officer and regional jail authority, seeking to recover monetary relief for injuries suffered as a result of an allegedly nonconsensual sexual encounter between her and the officer. The jail authority moved for summary judgment. The district court granted the motion in part, and denied in part. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officer, whose duties required him to observe inmates in the shower, was acting within the scope of his employment when he allegedly sexually assaulted the inmate after he observed her showering and during a "cell search" thereafter. The court held that the inmate's deposition testimony that she was the victim of a sexual assault by the correctional officer was sufficient to preclude summary judgment in favor of the jail authority on her intentional infliction of emotional distress claim. The court found that absent evidence indicating that the correctional officer was known by anyone to have a propensity to commit sexual assault at the time he was hired, or evidence indicating that some testing would have revealed that the officer would pose a danger to inmates, the jail authority was not liable under Virginia law on the inmate's negligent hiring claim. The court also found that since the jail authority never received any complaints from inmates about the officer, and swiftly investigated the matter and took appropriate action upon learning that a sexual encounter had occurred, it was not liable for negligent retention. (Virginia Peninsula Regional Jail)

U.S. District Court
NEGLIGENCE

Heredia v. Doe, 473 F.Supp.2d 462 (S.D.N.Y. 2007). An inmate filed a § 1983 action against county jail officials alleging that he slipped and fell at a jail, and was denied proper medical treatment. The officials moved to dismiss the complaint and the district court granted the motion. The court held that the inmate's claim that he injured his back when he slipped and fell at the county jail was nothing more than a claim for negligence, for which there was no cause of action under § 1983. The inmate alleged he slipped and fell while walking to his cell and in the process injured his back "to the point it swelled up and was in a lot of pain." The court also found that officials were not deliberately indifferent to the inmate's medical needs, despite a one-day delay in providing treatment, where the jail medical department took X-rays and provided pain medication. (Sullivan Corr'l. Facil., New York)

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act

Hutchins v. McDaniels, 512 F.3d 193 (5th Cir. 2007). A prison inmate who was subjected to strip and cavity searches by a prison officer brought suit under § 1983 to recover for alleged violation of his Fourth Amendment rights. The district court entered an order dismissing the complaint and the prisoner appealed. The appeals court reversed and remanded. The court held that the inmate's allegations regarding strip and cavity searches to which he was subjected by a prison officer who never accused him of possessing contraband during the search, and who was allegedly wearing a "lewd smile" during the procedure, were sufficient to state a claim for violation of the inmate's Fourth Amendment rights. The court noted that the Prison Litigation Reform Act (PLRA) prohibits a prisoner from recovering compensatory damages in any federal civil action absent a showing of physical injury. According to the court, the inmate's failure to allege that he had sustained any physical injury as a result of a strip and cavity search, prevented him from asserting a claim for recovery of compensatory damages for emotional or mental injuries that he allegedly suffered. The court noted that the inmate did not have to allege any physical injury in order to state a claim for recovery of nominal or punitive damages for the officer's alleged violation of his Fourth Amendment rights. (California Men's Colony East)

U.S. District Court
FAILURE TO PROTECT
FAILURE TO TRAIN
POLICIES/PROCEDURES
SUPERVISORY
LIABILITY

Jenkins v. DeKalb County, Ga., 528 F.Supp.2d 1329 (N.D.Ga. 2007). Survivors of a county jail detainee who had died as the result of an apparent beating by a fellow inmate brought a § 1983, Eighth and Fourteenth Amendment action against a county sheriff in his individual capacity, and against corrections officers. The defendants moved for summary judgment on qualified immunity grounds. The district court granted the motion. The 71 year old pretrial detainee suffered from multiple mental illnesses including schizophrenia and dementia, which reportedly manifested themselves in the form of delusions, paranoia, bizarre thoughts and behavior, physical violence, and verbal outbursts that included racial epithets. The court held that county corrections officers' putting the inmate into a cell different from the one to which he had been assigned, allegedly leading to the beating death of a pretrial detainee who shared the same cell, did not violate the detainee's right against cruel and unusual punishment. The

court noted that even though the action violated a jail policy, the policy was created primarily to keep track of inmates' placement, not to maintain inmate safety, and there was no evidence of widespread inmate-on-inmate violence due to the misplacement of inmates. The court found that the plaintiffs failed to show that the sheriff's alleged poor training and supervision of corrections officers led to the officers' allegedly inadequate reaction to the incident between the jail inmates, which ended with the beating death of one inmate. The court also found that the sheriff's failure to comply with a court order to transfer the pretrial detainee to a mental health facility did not show supervisory liability because the purpose of the transfer order was likely to get the detainee treatment for mental illness, not to protect him. The court held that the county corrections officers were acting within the scope of their duties when they mistakenly placed a fellow inmate in the same cell with a pretrial detainee, and thus the officers were eligible for qualified immunity in the detainee's survivors' § 1983 Eighth and Fourteenth Amendment action. The court noted that the fact that the mistake violated jail policies or procedures did not mean that the officers were not exercising discretionary authority. (DeKalb County Jail, Georgia)

U.S. District Court
NEGLIGENT SUPER-
VISION
DAMAGES

Limone v. U.S., 497 F.Supp.2d 143 (D.Mass. 2007). Two former prisoners whose convictions arising out of a murder were overturned, and representatives of two co-defendants who died in prison, sued the United States and individual federal and state law enforcement officers under the Federal Tort Claims Act (FTCA), *Bivens*, § 1983, and state law, alleging their complicity in framing the prisoners. Following a bench trial, the district court entered judgment for the plaintiffs. The court held that: (1) FBI agents engaged in malicious prosecution; (2) agents engaged in a coercive conspiracy; (3) agents intentionally inflicted emotional distress on the prisoners; (4) agents were negligent in their treatment of prisoners; (5) FBI was liable for negligent supervision of the agents activities; (6) damages for wrongful imprisonment would be set at the rate of \$1 million per year, adjusted for unrelated concurrent sentences; (7) loss of consortium damages would be awarded to wives and children of prisoners; and (8) damages would be awarded for intentional infliction of emotional distress. (Massachusetts)

U.S. District Court
SUPERVISORY
LIABILITY

Murphy v. Franklin, 510 F.Supp.2d 558 (M.D.Ala. 2007). A pretrial detainee brought a § 1983 action against a sheriff and jail administrator, alleging that he was subjected to punitive, degrading and inhumane treatment when, without explanation, he was shackled hands-to-feet to the toilet in an isolation cell, and, on another occasion, shackled to his cot. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that although the detainee's complaint against the sheriff and jail administrator did not allege that he was subjected to mistreatment pursuant to any specific official policy, the detainee's allegations that the sheriff promulgated all policies and procedures in the county jail, that the detainee was placed in an isolation cell and shackled hands-to-feet to the toilet, which was nothing more than a hole in the ground covered by a grate, and that the sheriff ordered the detainee removed from this cell for an interview and then reshackled to the toilet grate, were sufficiently specific to state a § 1983 claim against the sheriff under the theory of supervisory liability. The detainee alleged that without explanation, he was moved into a 'lockdown' cell for one day, in which his right hand was cuffed to the frame of his cot and his right leg was shackled to the other end of the cot's frame. Again without explanation, he was allegedly then moved to an isolation cell, where he was shackled hands-to-feet to the toilet, which is actually nothing more than a hole in the ground. He alleged that he was held in this configuration for almost 12 days and was not released to allow urination or defecation, which caused him to soil himself, and that he was also not given any personal necessities such as clean, dry clothing, personal hygiene items, or bedding. (Elmore County Jail, Alabama)

U.S. District Court
CONTRACT SERVICES
NEGLIGENCE

Norris v. Corrections Corp. of America, 521 F.Supp.2d 586 (W.D.Ky. 2007). The victim of an assault, rape, and robbery filed suit against a private corrections company operating a prison under contract for a state, claiming the company's negligence in allowing a prisoner to escape led to her injuries. The prisoner had crawled out of a window of the facility and walked away. The corrections company moved for summary judgment. The district court sustained the motion. The court ruled that the prisoner's harm to the victim was unforeseeable, and the prisoner's acts were the intervening and superseding cause. The court noted that the company did not have a special relationship by being in charge of a person with dangerous propensities that created a duty of care to control the prisoner's conduct and to protect a third-party victim. (Marion Adjustment Center, Kentucky, Operated by Corrections Corporation of America)

U.S. District Court
NEGLIGENT RETENTION

Orange v. Fielding, 517 F.Supp.2d 776 (D.S.C. 2007). A pretrial detainee brought a § 1983 action against two detention center administrators to recover for a beating by officers. The court granted summary judgment in favor of one administrator, and denied the other administrator's motion. The court held that the detainee's conclusory statements in an affidavit, that the administrator was aware of an officer's aggressiveness toward inmates and failed to protect the detainee, were insufficient to preclude summary judgment. The court found that the detainee's affidavit stating that he spoke with the administrator several times about danger from officers, but that the administrator failed to take action, raised genuine issues of material fact, precluding summary judgment in favor of the other administrator. (Georgetown County Detention Center, South Carolina)

U.S. District Court
CLASS ACTION
CONSENT DECREE

Palmigiano v. Sundlun, 482 F.Supp.2d 207 (D.R.I. 2007). Inmates moved to join or intervene in a class action lawsuit challenging prison conditions, settled by agreement 13 years previously. The district court denied the motions. The court held that the agreement that settled a class action suit by inmates and called for complete dissolution and dismissal of court orders, terminated the class action insofar as it concerned complaints regarding prison conditions, precluding joinder of current inmates who alleged deficient medical, mental health and dental care, environmental health and safety, management, security and inmate inactivity. (Adult Correctional Institutions, Rhode Island)

U.S. Appeals Court
DAMAGES
QUALIFIED IMMUNITY

Phillips v. Hust, 477 F.3d 1070 (9th Cir. 2007). A state prisoner brought a pro se § 1983 action against a prison librarian in her personal and official capacities, alleging violation of his right to free speech and right of access to court under the First Amendment. The district court granted summary judgment in favor of the prisoner, and subsequently awarded compensatory damages of \$1,500. The librarian appealed. The appeals court affirmed in

part, and remanded. The court held that the librarian's refusal to allow the prisoner to comb-bind his petition for a writ of certiorari to the United States Supreme Court violated the state prisoner's First Amendment right of access to the courts, where the prisoner raised a nonfrivolous claim in his certiorari petition, a state court applied an incorrect legal standard in determining the prisoner's ineffective assistance to counsel claim in his postconviction petition, and the denial of the use of comb-binding machine frustrated his attempt to press his claim in the Supreme Court. The court noted that even if Supreme Court rules did not require comb-binding, it was the binding method the prison routinely made available to the prisoner and others, it was foreseeable that the librarian's refusal would obstruct the prisoner's ability to file a petition in a timely manner, and the prisoner had no independent tort cause of action against the librarian for violation of his rights. The court found that the librarian was not entitled to qualified immunity for her conduct in refusing to allow the prisoner to use a comb-binding machine, where her conduct violated the prisoner's clearly established right to prepare, serve, and file court documents in a timely manner, and not to be subjected to arbitrary enforcement of prison rules. The prisoner's petition missed the Supreme Court filing deadline and was denied as untimely. The appeals court held that the librarian's refusal was blatantly contrary to past practice and state prison regulations, and under existing precedent, the librarian should have known that refusal of the prisoner's request could result in missing the filing deadline. According to the court, the damages award could be based on costs that the prisoner expended in prosecuting his postconviction relief petition over the course of many years and any mental or emotional injury the prisoner suffered, but the district court was required to make specific findings concerning the amount of the costs expended as well as specific findings concerning mental or emotional injury. The court concluded that where the district court's findings are insufficient to indicate the factual basis for its ultimate conclusion concerning damages in a § 1983 claim, its finding as to the amount of damages is clearly erroneous. On appeal to the United States Supreme Court (555 U.S. 1150) the decision was vacated. (Snake River Correctional Institution, Oregon)

U.S. Appeals Court
COMPENSATORY
DAMAGES

Phillips v. Hust, 507 F.3d 1171 (9th Cir. 2007). A state prisoner brought a pro se § 1983 action against a prison librarian in her personal and official capacities, alleging violations of his right to free speech and right to access courts under the First Amendment. The district court granted summary judgment in favor of prisoner, and subsequently awarded compensatory damages of \$1,500. The librarian appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the librarian's refusal to allow the prisoner to comb-bind his petition for a writ of certiorari to the United States Supreme Court violated the prisoner's First Amendment right of access to the courts, the librarian was not entitled to qualified immunity, and the district court was required to make specific findings to support the damages award. The appeals court denied the librarian's petition for rehearing. In a dissent, Circuit Judge Kozinski expressed his "utter astonishment that we're leaving an opinion on the books that not only denies the prison librarian qualified immunity but actually holds her liable. Her transgression? Failing to help a prisoner bind a brief in a way that's not even permitted, and certainly not required, by the Supreme Court's rules....How the prison librarian violated any of his rights, let alone his clearly established rights, is a mystery that repeated readings of the majority opinion do not dispel." (Snake River Correctional Institution, Oregon)

U.S. District Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE

Primus v. Lee, 517 F.Supp.2d 755 (D.S.C. 2007.) A prisoner brought a pro se medical malpractice action against a prison surgeon, prison physician, and the director of the state Department of Corrections. The defendants moved to dismiss, and the prisoner moved for leave to amend. The district court dismissed the action without prejudice and granted the plaintiff's motion to amend. The court held that the allegations did not state an Eighth Amendment claim for deliberate indifference, and that the prisoner's proposed amendment would not be futile. According to the court, the allegations that a prison surgeon negligently performed surgery, which resulted in the unwanted removal of the prisoner's testicle, did not state a § 1983 claim for deliberate indifference to the prisoner's serious medical needs under the Eighth Amendment. The prisoner's proposed amendment, alleging that the surgeon contracted with the state corrections department to provide surgical treatment, and that the surgeon unnecessarily and maliciously removed the prisoner's testicle in retaliation for the prisoner's lack of cooperation, could state a § 1983 claim for deliberate indifference under the Eighth Amendment. The court noted that when a physician cooperates with the state and assumes the state's constitutional obligation to provide medical care to its prisoners, he or she acts "under color of state law," for purpose of a § 1983 action. (Lee Correctional Institution, South Carolina)

U.S. District Court
CONTRACT SERVICES
42 U.S.C.A. Sec. 1983

Probst v. Central Ohio Youth Center, 511 F.Supp.2d 862 (S.D. Ohio 2007). A plaintiff, on behalf of the estate of her son who committed suicide while incarcerated at juvenile detention facility, brought a wrongful-death action against the facility, its superintendent, a non-profit provider that performed suicide evaluations at the facility and a social worker employed by the provider. The plaintiff asserted claims under § 1983 and state law. The facility and non-profit moved for summary judgment. The district court denied the motion. The court held that under the state compulsion test, the private provider that performed suicide evaluations at the juvenile detention facility was not a "state actor" for § 1983 purposes. The court noted that the facility did not exert any control over suicide evaluations and the provider performed evaluations on an as-needed basis using its own standards and procedures. According to the court, the facility had discretion to implement the provider's recommendations resulting from the evaluations. But the court held that the private provider was a state actor for § 1983 purposes because it was performing a "public function." (Central Ohio Youth Center)

U.S. District Court
SPECIAL MASTER

Roberts v. County of Mahoning, Ohio, 495 F.Supp.2d 784 (N.D. Ohio 2007). Pretrial detainees and convicted prisoners being held in the custody of an Ohio sheriff at two correctional facilities that were allegedly understaffed and overcrowded brought a § 1983 class action against the county, sheriff, and county commissioners, alleging that conditions of confinement at those facilities were unconstitutional. The district court appointed a special master for the remedial phase of the litigation. A three-judge panel of the district court

approved the proposed stipulated order. The district court held that the appointment of a special master had accomplished the court's original objective and the appointment would be terminated. The court noted that the special master's reports and other actions had fulfilled the requirement that he "assist the parties, specifically the Defendants, in attempting to find a solution to the problems which created the unconstitutional conditions in the Jail," and his fourth report had established a mechanism for the litigation's actual resolution. The first two reports addressed a narrowly avoided crisis that would have resulted from massive layoffs of security staff as a result of a budget shortfall in the county. The third report, filed after passage of a successful ballot issue increasing revenues available for the funding of the MCJC, described the parties' continued cooperation in attempting to resolve the problems facing the jail, in particular, the need for accelerated collection of the proceeds from the successful bond issue. The court concluded "These reports, to which no party filed any objection, were instrumental in establishing an informational foundation for discussions of possible remedies to the phenomenon of chronic and serious crowding in the jail." (Mahoning County Justice Center, Ohio)

U.S. District Court
SPECIAL MASTER

Roberts v. Mahoning County, 495 F.Supp.2d 719 (N.D.Ohio 2007). Pretrial detainees and convicted prisoners being held in the custody of an Ohio sheriff at one of two correctional facilities that were allegedly understaffed and overcrowded brought a § 1983 class action against the county, sheriff, and county commissioners alleging that conditions of confinement at those facilities were unconstitutional. The district court held that there was clear and convincing evidence that crowding was the primary cause of the violation of a federal right, and that no other relief besides a prisoner release order would remedy that violation. The release order provided for incarceration of all violent felons and for reopening of all jail facilities under the control of the county to maximum occupancy, while at the same time protecting the constitutional rights of inmates in the county jail facilities. (Mahoning County Justice Center, Ohio)

U.S. Appeals Court
CONSENT DECREE-
MODIFICATION
PLRA- Prison Litigation
Reform Act

Rowe v. Jones, 483 F.3d 791 (11th Cir. 2007). Following settlement of county prisoners' § 1983 class action lawsuit against county officials, an inmate welfare fund was created. The district court dismissed the officials' motion to terminate a permanent plan for a charitable trust providing for donations from the fund. The officials appealed and the appeals court reversed and remanded with instructions. The court held that an order establishing a charitable trust funded by an inmate welfare fund, and a later order continuing the charitable trust were "consent decrees," rather than "private settlement agreements," under the Prison Litigation Reform Act (PLRA). The court noted that PLRA's termination provisions, limiting prospective relief, are applicable to consent decrees but not to private settlement agreements. The court noted that county officials did not sign either the order or otherwise indicate their consent to the charitable trust, the orders bore the district judge's signature and the district court's official stamp, and the district court retained jurisdiction over the enforcement of the charitable trust in both orders. (Glynn County Detention Center, Georgia)

U.S. District Court
RESPONDEAT SUPERIOR
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

Schnitzler v. Reisch, 518 F.Supp.2d 1098 (D.S.D. 2007). An inmate who was a practicing Jehovah's Witness brought a § 1983 action against a secretary of corrections, warden, and prison officials, alleging that a prison's sex offender treatment program violated his religious beliefs by requiring his participation in explicit group discussions of a sexual nature as well as viewing certain images. The defendants moved for summary judgment and the district court granted the motion in part and denied in part. The court held that the prisoner's First Amendment rights were not violated by participation in the program, but the prisoner stated a claim for violation of his statutory free exercise of religion under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court held that the § 1983 claims against the secretary and warden were not based upon the theory of respondeat superior. The court found that summary judgment was precluded by a genuine issue of material fact as to the level of personal involvement of the warden and the Secretary of the South Dakota Department of Corrections in the determination that no alternative form of sex offender treatment program should be provided to the prisoner. (Mike Durfee State Penitentiary, Springfield, South Dakota)

U.S. District Court
FTCA- Federal Tort Claims
Act

Smith v. U.S., 518 F.Supp.2d 139 (D.D.C. 2007). The mother of a child who was murdered by a parolee brought an action under the Federal Tort Claims Act (FTCA) against the United States. The district court granted the defendants' motion for dismissal. The court held that an FTCA claim did not accrue until the mother knew or should have known that the parolee was the person who killed her daughter, and that his presence in the community was connected to the government in some way. The court found that the mother failed to make a necessary showing to delay the accrual of her claim, the mother was not entitled to deviation from the objective standard for determining whether she established that she could not have discovered her injury and its cause with the exercise of due diligence. According to the court, even if extreme circumstances could justify a deviation from the objective standard for whether an FTCA plaintiff established that she could not have discovered her injury and its cause with the exercise of due diligence, the mother's affidavit and declaration of her psychiatrist demonstrated that she had suffered tremendously since the death of her daughter, but it did not establish sufficiently extreme mental disability. (District of Columbia)

U.S. District Court
SUPERVISORY
LIABILITY

Streeter v. Goord, 519 F.Supp.2d 289 (N.D.N.Y. 2007). A prisoner brought a § 1983 action, alleging prison officials and medical personnel acted with deliberate indifference in treating his sickle cell anemia in violation of the Eighth Amendment. The court granted the defendants' motion for summary judgment. The court held that the inmate's condition during the sickle cell crisis was a "serious medical condition," for the purposes of an Eighth Amendment § 1983 claim. The court found that there was no evidence that a prison doctor knowingly disregarded an excessive risk to the prisoner's health or safety, and that a delay in flushing the prisoner's catheter was not a serious medical need. According to the court, the prisoner's conclusory allegations about prison nurses were insufficient to establish that they knowingly disregarded a serious risk to his health. The court concluded that there was no evidence that the prison commissioner was aware of the alleged constitutional violations that occurred, nor was there any evidence that he implemented or sanctioned policies or customs amounting to a constitutional violation, as was required to impose supervisory liability in § 1983 action. The court also found that

the prison superintendent had no personal involvement in alleged violations as was required to impose supervisory liability under § 1983. The court noted that the superintendent was not serving at the prison at the time of the events relevant to the prisoner's claims. (Coxsackie Correctional Facility, New York)

U.S. District Court
SOVEREIGN IMMUNITY

Strope v. Collins, 492 F.Supp.2d 1289 (D.Kan. 2007). Inmates brought a civil rights action against prison officials, stemming from censorship of magazines containing alleged nudity. The parties moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that summary judgment on the inmates' claims alleging First Amendment violations was precluded by genuine issues of material fact, regarding whether prison officials' withholding of publications containing alleged nudity was reasonably related to legitimate penological interests. The court found that an inmate who sued prison officials was afforded adequate procedural due process in the denial of access to magazines containing alleged nudity, where the inmate was given written notice of withholding of the magazine by way of an "Appeal of Censored Material," was told verbally about the refusal to process a Special Purpose Order (SPO) for a supplemental issue, and had the opportunity to grieve the censorship and appeal decisions to prison officials who were not involved in original process. According to the court, the prison officials were not entitled to sovereign immunity to the extent that the inmates were seeking prospective injunctive relief from the officials in their official capacities, where the inmates adequately indicated that they were challenging the nudity regulation itself and the manner in which it could be applied prospectively. The court held that officials were not entitled to qualified immunity to the extent that they were being sued in their individual capacities, where the claim that the censorship was not related to legitimate penological interests implicated clearly-established First Amendment rights. The court held that genuine issues of material fact, regarding the extent to which the prison warden personally participated in the alleged deprivation of the inmates' First Amendment right to receive information by censoring magazines containing alleged nudity, precluded summary judgment on claims alleging the warden's vicarious liability under a federal civil rights statute. (Lansing Correctional Facility, Kansas)

U.S. District Court
INDIVIDUAL CAPACITY

Wakat v. Montgomery County, 471 F.Supp.2d 759 (S.D.Tex 2007). The estate of inmate who died in a county jail brought a § 1983 action against the county, jail physician, and other county personnel. The defendants moved for summary judgment. The district court held that the county was not liable based on a county policy, the county was not liable for failure to train or supervise county jail personnel, and a physician did not act with deliberate indifference to the inmate's serious medical needs. The court held that the county sheriff was not liable in his individual capacity under § 1983 to the estate of the inmate absent a showing that he participated in any of the alleged activities in any individual capacity. According to the court, the county was not liable to the estate under § 1983 for deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment, since the county policy did not directly cause county personnel to fail to seek physician approval to reinstate the inmate's prescription medication. The court noted that although the jail had a written policy of abruptly discontinuing any narcotic medications when inmates were initially processed for booking, regardless of whether the inmate had a valid prescription for the narcotic, the jail also had a policy allowing the narcotic medications to be reinstated with the permission of a doctor. (Montgomery County Jail, Texas)

U.S. Appeals Court
FTCA- Federal Tort Claims
Act

Watson v. U.S., 485 F.3d 1100 (10th Cir. 2007). A guardian brought an action on behalf of an incapacitated former federal prisoner under the Federal Tort Claims Act (FTCA), alleging that the government responded negligently to the prisoner's medical condition, resulting in a brain hemorrhage that left him severely and permanently disabled. The district court entered a jury verdict in favor of the defendants and the guardian appealed. The appeals court affirmed. The court held that there was sufficient evidence that the government lacked notice of the need to closely observe the prisoner for post-surgical complications upon his return to the correctional facility after brain surgery. Evidence indicated that the prisoner did not require observation upon his return to the facility, that he was neurologically normal except for mild speech problems, and that he was discharged with the instruction only that he continue speech and occupational therapy, with no need for further observation. The court upheld the district court's finding that the government did not breach any applicable standard of care by failing to summon an air ambulance after the prisoner was found unconscious in his cell, where expert physicians testified that the use of an air ambulance was dependent upon distance, necessity, and the patient's best interest, but did not suggest that such factors applied to the prisoner's case. (Federal Correctional Institute in El Reno, Oklahoma)

2008

U.S. Appeals Court
STATE REMEDIES

Alba v. Montford, 517 F.3d 1249 (11th Cir. 2008). A federal prisoner incarcerated in a privately operated correctional facility brought a pro se § 1983 action against prison employees for allegedly acting with deliberate indifference to his medical needs in violation of the Eighth Amendment. The district court interpreted the complaint as asserting a claim under *Bivens* and dismissed it for failure to state a claim because the prisoner had adequate state remedies available. The prisoner appealed. The appeals court affirmed. The court held that even assuming that the private prison was a government actor for the purposes of *Bivens* liability, alternative remedies existed by which the prisoner could recover from its employees. (McRae Correctional Facility, Corrections Corporation of America, Georgia)

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Antoine v. County of Sacramento, 566 F.Supp.2d 1045 (E.D.Cal. 2008). A pretrial detainee brought a civil rights action against corrections officers based upon the officers' use of a "grating" restraint practice. After a jury verdict in favor of the detainees, the officers moved for a new trial. The district court granted the motion in part and denied in part. The court held that it was proper to permit an expert witness to express his opinions regarding the propriety of the "grating" practice in the context of whether the officers' decision to employ that practice rather than the "prostraint" restraining chair was appropriate. The court found that the compensatory damages instruction given in the detainee's civil rights action was in error since it permitted the jury to believe that it could award an

unlimited amount of non-compensatory damages to compensate the plaintiff for the abstract “value” of his constitutional rights. According to the court, the use of the term “constitutional injuries”--combined with the instruction allowing the jury to award nominal damages, and the omission of the \$1.00 limit--invited the jury to award an unlimited amount of damages based on the importance of the plaintiff's constitutional rights in lieu of awarding compensatory damages. The jury awarded the detainee \$20,000 in compensatory damages as well as \$25,000 in punitive damages against each of four defendants, and \$50,000 against one defendant. (Sacramento County, California)

U.S. Appeals Court
SUPERVISORY
LIABILITY
CONTRACT SERVICES

Brown v. District of Columbia, 514 F.3d 1279 (D.C. Cir. 2008). A District of Columbia prisoner brought Eighth Amendment civil rights claims against the District, mayor, operator of a private prison and various correctional officials and employees, among others. The district court dismissed certain claims for failure to effect service and others for failure to state a claim. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner stated a claim for violation of his Eighth Amendment rights through deliberate indifference to his serious medical needs. The court also found that the allegations were sufficient to state a claim for *Monell* liability against the District for Eighth Amendment violations by alleging that prison officers failed to transfer him for treatment for 60 days following a physician's notification that the prisoner was in need of immediate hospitalization for gallstones. The court found that the allegations were insufficient to state a supervisory liability claim against a correctional official who supervised the care of prisoners “housed in contract facilities” for alleged wrongdoing at a correctional facility that did not qualify as a “contract facility”. (District of Columbia, Corrections Corporation of America, Occoquan Correctional Facility in Lorton, Virginia)

U.S. District Court
DELIBERATE
INDIFFERENCE
NEGLIGENCE
QUALIFIED IMMUNITY
SUPERVISORY
LIABILITY

Buckley v. Barbour County, Ala., 624 F.Supp.2d 1335 (M.D.Ala. 2008). An inmate brought § 1983, Eighth Amendment and due process claims, as well as state law claims, against a county and a work-crew supervisor, alleging that his back was injured as the result of a failure to train him in equipment safety before he cleared trees as part of a prison work crew. The county and supervisor filed separate motions to dismiss. The district court granted the motions in part and denied in part. The court held that the inmate's allegations that the county failed to train him and another inmate in equipment operations safety, that they were ordered while part of a community work squad to use chainsaws to cut a large oak tree to clear it from a roadway, and that the tree rolled onto the inmate, breaking his back, were sufficient to plead a causal connection between the county's practice or custom of failing to train and the inmate's injury. The court noted that the inmate was not required to allege a specific practice or custom of failing to train inmates to avoid falling trees. The court held that the inmate's allegations were also sufficient to show the county's awareness of facts from which an inference of a substantial risk of harm could be drawn, as required to plead a deliberate indifference § 1983 Eighth Amendment claim. According to the court, the inmate's allegations that a prison work-crew supervisor was aware that the inmate was not trained in equipment safety and felt unqualified to use a chainsaw, yet still ordered the inmate to use a chainsaw to cut a fallen tree hanging over a ditch, were sufficient to plead a § 1983 Eighth Amendment claim against the supervisor. The court also denied qualified immunity from the inmate's allegations. According to the court, under Alabama law, the inmate's allegations that the work-crew supervisor ordered him and another inmate to cut a tree hanging over a ditch with chainsaws, with the knowledge they were not trained in equipment safety, and that the tree rolled onto the inmate breaking his back, were sufficient to plead willful negligence by the supervisor. (Barbour County Community Work Squad, Alabama)

U.S. District Court
DELIBERATE
INDIFFERENCE
COMPENSATORY
DAMAGES

Cameron v. Myers, 569 F.Supp.2d 762 (N.D.Ind. 2008). A prisoner moved for a default judgment on a § 1983 claim against a prison doctor for deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The district court granted the motion. The court held that the prison doctor was deliberately indifferent to the prisoner's serious medical needs, and an award of \$250,350 in compensatory damages, and denial of punitive damages was warranted. According to the court, the doctor was deliberately indifferent to the prisoner's serious medical needs in failing to provide the prisoner with the necessary and urgent medical care and treatment required for his Crohn's disease, which also led to the prisoner's development of a flesh eating disease. The court found that the doctor was plainly subjectively aware of the prisoner's objectively serious medical condition because of the diagnosis established in his previous doctor's medical records as well as by what the prisoner told him, and the doctor's inaction forced the prisoner to endure tremendous pain and suffering stemming from his untreated Crohn's disease as well as the newly formed flesh eating disease, which ceased only when the prisoner moved to a new facility and began treatment under another physician. (Indiana State Prison)

U.S. District Court
CLASS ACTION
CONSENT DECREE
DAMAGES
SETTLEMENT

Craft v. County of San Bernardino, 624 F.Supp.2d 1113 (C.D.Cal. 2008). County jail inmates brought a class action alleging that a county's practice of routinely strip-searching inmates without probable cause or reasonable suspicion that the inmates were in possession of weapons or drugs violated the Fourth Amendment. After the court granted the inmates' motion for partial summary judgment, the parties entered into private mediation and reached a settlement agreement providing for, among other things, a class fund award of \$25,648,204. The inmates moved for the award of attorney's fees and costs. The district court held that class counsel were entitled to an attorney's fees award in the amount of 25% of the settlement fund plus costs. The court noted that counsel obtained excellent pecuniary and nonpecuniary results in a complex and risky case involving 150,000 class members, 20,000 claims, and five certified classes, each of which presented unsettled legal issues. According to the court, tens or hundreds of thousands of future inmates benefited from policy changes brought about by the suit, and the attorneys were highly experienced and highly regarded civil rights lawyers with extensive class action experience. (San Bernardino County Jail, California)

U.S. Appeals Court
BIVENS CLAIM
FAILURE TO PROTECT

Dale v. Poston, 548 F.3d 563 (7th Cir. 2008). A federal prison inmate brought a Bivens action against several corrections officers, alleging deliberate indifference in violation of the Eighth Amendment based on the officers' failure to prevent an assault by a fellow inmate. Following a jury verdict for the inmate on the issue of administrative exhaustion, the district court granted summary judgment for the officers. The inmate appealed. The

appeals court affirmed. The court found that the subjective prong of the inmate's claim was unsatisfied, since the inmate had given the officers inadequate details of the danger involved. The prisoner told officers that other inmates were "pressuring" him and "asking questions," but never gave more details despite the officers' requests, preventing them from determining whether a true threat was at play. The inmate declined offers to remain in protective custody. (Federal Penitentiary, Terre Haute, Indiana)

U.S. District Court
CLASS ACTION
CONSENT DECREE-
TERMINATION
PLRA- Prison Litigation
Reform Act

Emerson-West v. Redman, 574 F.Supp.2d 433 (D.Del. 2008). A state inmate filed a motion for relief from the district court's order terminating a consent order entered in a class action that challenged prison conditions and disciplinary procedures. The inmate moved for a preliminary injunction and for summary judgment. The district court denied the motions. The court held that the inmate received adequate notice of prison officials' motion for relief from the consent order, and that termination of the consent order was warranted. The court noted that the inmate was not a named class member, the inmate's name never appeared in the case, officials mailed copies of their motion for relief to pro se plaintiffs who had appeared in the case and to the former attorney who represented the class, and the court reopened the case when an inmate filed a motion to vacate the judgment. According to the court, termination of the consent order was warranted under the provisions of the Prison Litigation Reform Act (PLRA), where the consent order encompassed the state's entire penal system of discipline and sanctions and there was no mention that it was entered to correct constitutional violations, particularly with respect to due process issues. The court noted that a subsequent United States Supreme Court decision provided clear guidance regarding prisoners' due process rights, and the consent order was not the least intrusive means to correct any alleged constitutional violation. (James T. Vaughn Correctional Center, Delaware)

U.S. District Court
DAMAGES
FTCA-Federal Tort Claims
Act

Estate of Trentadue v. U.S., 560 F.Supp.2d 1124 (W.D.Okla. 2008). In a suit arising from the death of a special housing unit (SHU) inmate at a Federal Transfer Center in Oklahoma, the district court ruled in favor of the plaintiff's family members on their claim for intentional infliction of emotional distress under the Federal Tort Claims Act (FTCA), and awarded a total amount of \$1.1 million in damages to the individual family members. On appeal, the court remanded for additional findings. On remand, the district court held that evidence supported a \$250,000 award to the inmate's wife for the extreme and outrageous actions of the federal government in the aftermath of the inmate's death and prior to her viewing the body, including the failure to inform her in advance of the numerous extensive injuries on his body and the fact that an autopsy had been performed. The court found that the siblings who were present when the numerous, extensive, and unexpected injuries to inmate's body were first discovered were entitled to awards ranging from \$150,000-\$200,000, and brothers who never personally viewed the injuries were entitled to between \$50,000 and \$100,000. The district court held that the plaintiffs' understandable emotional reaction to the inmate's death was needlessly and recklessly intensified by the United States' failure to inform the family in advance as to the existence of the extensive injuries and that an autopsy had been performed, and throughout the trial, the court heard no explanation for the defendant's silence in this regard. The inmate had been returned to prison as a parole violator and was placed in a segregation single cell at his request. The inmate was found hanging in his cell approximately 20 minutes after the previous routine cell check by correctional officers. Other cuts and abrasions found on his body indicated persistent attempts to cause himself serious injury or death. Permissible items found in the cell supported presumptions that cuts on the body were self-inflicted. (Federal Transfer Center in Oklahoma City, Oklahoma)

U.S. Appeals Court
NOMINAL DAMAGES
PLRA- Prison Litigation
Reform Act
PUNITIVE DAMAGES

Fegans v. Norris, 537 F.3d 897 (8th Cir. 2008). A state inmate sued prison officials, alleging that they violated the Religious Land Use and Institutionalized Persons Act (RLUIPA), as well as his free exercise and equal protection rights, by enforcing a grooming policy and denying him Kosher meals. The district court entered judgment for the inmate with respect to the Kosher meals, but entered judgment for the prison officials with respect to the grooming policy. The inmate appealed. The appeals court affirmed. The court held that the prison policy prohibiting male inmates from wearing hair below their collar, which prevented the inmate, who followed the Assemblies of Yahweh, from leaving his hair untrimmed, did not violate RLUIPA. Prison officials gave examples of inmates using hair to conceal contraband and to change their appearance after escaping, and, although the officials allowed shoulder-length hair in the women's barracks, the women were housed in a single unit and thus had less opportunity to obtain and transport contraband. The court also found that the policy did not violate the inmate's free exercise rights. According to the court, the policy did not violate the inmate's equal protection rights, inasmuch as differences in security risks between male and female inmates was a valid reason for differing hair-length rules for men and women, and the policy was reasonably related to the state's legitimate, penological interests of safety and security. The appeals court held that the district court did not abuse its discretion in awarding nominal damages, as limited by PLRA, of \$1,500 for the prison officials' constitutional violation of failing to provide Kosher meals, which amounted to \$1.44 for each constitutional violation. The court also held that the district court did not abuse its discretion in declining to award punitive damages for the prison officials' constitutional violation of failing to provide Kosher meals. The district court accurately stated the legal standard for the award of punitive damages, but found that prison officials did not act with malice, and that punitive damages were not warranted to deter future unlawful conduct, because the officials already had instituted a policy for providing Kosher meals. (East Arkansas Regional Unit of the Arkansas Department of Corrections)

U.S. Appeals Court
DAMAGES
DELIBERATE
INDIFFERENCE

Ford v. County of Grand Traverse, 535 F.3d 483 (6th Cir. 2008). A state inmate brought a § 1983 action against jail officials and the county claiming, among other things, that the county's policy or custom regarding the provision of medical care at the jail on weekends reflected deliberate indifference to her medical needs and caused injuries resulting from a fall from the top bunk in her cell when she had a seizure. After a jury found against the county, the district court denied the county's motions for judgment as a matter of law. The county appealed. The appeals court affirmed, finding that sufficient evidence existed for reasonable minds to find a direct causal link between county's policy of permitting jail officials to "contact" medical staff simply by leaving a medical form in the nurse's inbox, even though a nurse might not see the notice for 48 hours, and the alleged denial of the inmate's right to adequate medical care, allegedly leading to the inmate suffering a seizure and falling from a top bunk.

According to the court, the deposition testimony of a doctor provided a basis for finding that the inmate would not have suffered a seizure had she been given medication within a few hours of her arrival at the jail. The inmate, a self-described recovering alcoholic who also suffers from epilepsy, was arrested on a probation violation and taken to the jail. That afternoon, she had a seizure, fell from the top bunk of a bed in her cell, and sustained significant injuries to her right hip and right clavicle. Her case proceeded to trial and the jury found that none of the jail officials were deliberately indifferent to her serious medical needs, but determined that the county's policy regarding weekend medical care exhibited deliberate indifference to, and was the proximate cause of, her injuries. The jury awarded her \$214,000 in damages. (Grand Traverse County Jail, Michigan)

U.S. Appeals Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Gibson v. Moskowitz, 523 F.3d 657 (6th Cir. 2008). The representative of the estate of a mentally disabled inmate who died of dehydration in a state prison brought a § 1983 action against a prison psychiatrist and others, alleging deliberate indifference to serious medical needs, and asserting medical malpractice claims. The district court denied the defendants' motion for summary judgment, and subsequently entered judgment, upon a jury verdict, in favor of the representative. The court awarded \$1.5 million in compensatory damages and \$3 million in punitive damages. The psychiatrist appealed. The appeals court affirmed in part and reversed in part. The court held that evidence was sufficient to support a determination that the inmate had an objectively serious medical condition and that the psychiatrist subjectively ignored the inmate's serious medical needs. The court found that the compensatory damages award was not excessive and that the representative was entitled to recover punitive damages. The court found that the punitive damages award was not excessive. The case was remanded to the district court to provide justification for its allocation of \$1.5 million in compensatory damages awarded by the jury between the § 1983 Eighth Amendment deliberate indifference claim and the medical malpractice claim. The court had allocated \$683,500, representing Michigan's high-tier non-economic damages cap to the medical malpractice claim, and the rest to the deliberate indifference claim, but it failed to provide any explanation for the allocation. The appeals court held that the allocation did not follow intuitively from the evidence, since a higher standard of culpability was required for the deliberate indifference claim. (Riverside Corr'l Facility, Michigan)

U.S. Appeals Court
MUNICIPAL LIABILITY
OFFICIAL CAPACITY
POLICIES/PROCEDURES

Hampton Co. Nat. Sur., LLC v. Tunica County, Miss., 543 F.3d 221 (5th Cir. 2008). A surety company and its agents, who were white, brought a § 1983 action against an African-American county sheriff in his individual capacity and against the county, alleging that the sheriff's removal of the agents from the roster of approved bail bond agents in the county constituted First Amendment retaliation and violated the Fourteenth Amendment's due process and equal protection clauses. The district court granted summary judgment for the defendants and the plaintiffs appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that the sheriff was entitled to qualified immunity on the due process claim since there was no clearly established law in the state as to whether the agents had a property right to issue bonds in a particular county, and thus no clearly established law that would render the sheriff's actions objectively unreasonable. The court found that the county was potentially liable since, under the governing state's law, sheriffs were final policymakers with respect to all law enforcement decisions made within their counties, and the sheriff's decision was the type of single decision by a relevant policymaker that could form the basis of § 1983 "municipal" liability. According to the court, summary judgment was precluded by a fact issue as to whether the African-American sheriff failed to place the agents back on the approved roster after they satisfied the arrearages that had given rise to their removal, while simultaneously reinstating black bail bond agents who had been removed for the same reason. The court also found that there were fact issue as to the credibility of the sheriff's stated reason for not reinstating the bail bond agents, namely that the agents had failed to satisfy arrearages that had given rise to removal. (Tunica County, Mississippi)

U.S. District Court
SUPERVISORY
LIABILITY

Harnett v. Barr, 538 F.Supp.2d 511 (N.D.N.Y. 2008). A prisoner brought a civil rights action against corrections defendants, alleging they interfered with the practice of his religion in violation of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the defendants' motion to dismiss. The court held that, without more, it could not be stated that the prisoner could prove no set of facts that would entitle him to relief under the First Amendment or RLUIPA. The prisoner alleged that the corrections defendants confiscated his religious meal, denied a sweet breakfast at the end of Ramadan, denied the ability to retain food in his cell on Mondays and Thursdays, and denied permission to hem his pants. The court found that failure of a supervisory official to investigate a letter of protest written by the inmate is not sufficient to show personal involvement for the purposes of establishing § 1983 liability. According to the court, the same is true if the only involvement of the supervisory official is to refer the inmate's complaint to the appropriate staff for investigation. (Upstate Correctional Facility, New York)

U.S. Appeals Court
CONSENT DECREE-
TERMINATION
PLRA- Prison Litigation
Reform Act

Hines v. Anderson, 547 F.3d 915 (8th Cir. 2008). Inmates appealed an order of the district court that had terminated a consent decree that regulated prison medical care. Inmates had filed a class action against the state in 1973, resulting in a 1977 consent decree that set medical standards for the prison. The appeals court affirmed the district court's ruling. The court held that the Prison Litigation Reform Act (PLRA) did not require an investigation and/or evidentiary hearing before termination of a consent decree. The court noted that the consent decree that regulated prison medical care did not constitute a final judgment, and therefore inmates had no property right that would entitle them under the due process clause to further discovery and a pre-termination evidentiary hearing. The court found that although the record presented a picture of what, at times, may have constituted less than optimum care of inmates, it failed to show current and ongoing deliberate disregard of the inmates' serious medical needs, which was required to maintain the consent decree. According to the court, the type of day-to-day oversight on all aspects of medical care encompassed in the consent decree was broader than necessary to assure protection of the right to reasonable medical care in the face of a known substantial risk of harm to the inmate. Because the consent decree was not narrowly tailored nor was it the least intrusive means to protect the inmates' Eighth Amendment rights, it violated the provisions of PLRA. (Minnesota Correctional Facility at Oak Park Heights)

U.S. District Court COMPENSATORY DAMAGES NEGLIGENCE RESPONDEAT SUPERIOR	<p><i>Jackson v. Correctional Corporation of America</i>, 564 F.Supp.2d 22 (D.D.C 2008). An inmate brought an action against a prison's medical provider, alleging medical negligence and violations of the Eighth Amendment. The court held that the inmate stated a medical negligence claim and the provider was liable under the theory of respondeat superior. The inmate alleged that he was deprived of medication prescribed for his stomach ailments for 19 days. The court held that an award of \$9,500 in compensatory damages for medical negligence was warranted, where the inmate experienced a burning pain in his stomach and esophagus that increased over time without his medication and at times prevented him from sleeping or eating. (Center for Correctional Health Policy and Studies, Inc., Correctional Corporation of America, District of Columbia Correctional Treatment Facility)</p>
U.S. Appeals Court BIVENS CLAIM FTCA-Federal Tort Claims Act	<p><i>Jackson v. Kotter</i>, 541 F.3d 688 (7th Cir. 2008). A prisoner brought an action against federal prison employees and the federal government, alleging negligence under the Federal Tort Claims Act (FTCA) and constitutional claims pursuant to Bivens. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that a Physician's Assistant (PA) in the prison did not act with deliberate indifference toward the prisoner in response to an alleged back injury suffered by the prisoner after being escorted out of his cell for a strip search. According to the court, the PA saw the prisoner shortly after his alleged injuries and ordered an x-ray, personally observed the prisoner's condition and took into consideration prior x-rays of his spine, and afforded some of the pain treatment that the prisoner demanded. (United States Penitentiary, Terre Haute, Indiana)</p>
U.S. District Court NEGLIGENCE SUPERVISION	<p><i>Jean-Laurent v. Wilkinson</i>, 540 F.Supp.2d 501 (S.D.N.Y. 2008). A prisoner in a state correctional facility brought a civil rights action against officers and supervisors claiming violation of his rights under the First, Fourth, Eighth, and Fourteenth Amendments. The district court granted summary judgment for the defendants in part and denied in part. The court held that striking the prisoner in the face several times while he was standing naked in a stairwell surrounded by several officers, absent any indication that the prisoner posed a threat, was not within the corrections officer's asserted good-faith effort to maintain order, discipline, and security due to a stabbing that recently had occurred within the prison. The court found that the objective condition for a Fourteenth Amendment excessive force civil rights claim was satisfied where the corrections officer, without reason or provocation, struck the prisoner several times across his face, causing swelling on the left side of his face, a cut to the inside of his mouth, his ear to bleed, and a hearing impairment. The court held that summary judgment was precluded by a fact issue as to whether the prisoner was under constant supervision by corrections officers and to what proximity he was to other inmates so as to determine whether he could have acquired contraband. The court also found summary judgment was precluded by a fact issue as to whether senior corrections officers were grossly negligent in supervising a junior officer who allegedly violated the prisoner's Fourth Amendment rights through a strip search, and as to whether the Fourth Amendment rights of the prisoner were violated during a second strip search and alleged use of excessive force. (George Motchan Detention Center, New York City Dept. of Correction)</p>
U.S. District Court FAILURE TO TRAIN SUPERVISORY LIABILITY	<p><i>Jones v. Taylor</i>, 534 F.Supp.2d 475 (D.Del. 2008). A state prisoner brought a civil rights action alleging that a corrections officer used excessive force against him, another officer did not protect him, and a former commissioner and a former warden did not properly train and supervise officers in dealing with prisoners. The district court granted the defendants' motion for summary judgment. The court held that the supervisors were not the driving force behind the alleged use of excessive force by the corrections officer and were not deliberately indifferent to the plight of the state prisoner. The court denied the prisoner's claim for improper training, noting that the officer received training prior to his employment and that he attended annual refresher courses. The court noted that the officer had never been disciplined. The court held that the officer did not use excessive force against the prisoner, where the officer, alone in a small space with the prisoner who was not handcuffed, perceived a threat from the prisoner, and used minimal force, which included an A-frame chokehold. The court noted that the prisoner was handcuffed once he was under control, received only minimal injury and never sought follow-up medical treatment after his initial visit with a nurse. The use of force was investigated and approved by the officer's supervisor, and the prisoner was found guilty of disorderly and threatening behavior with regard to the incident. (Sussex Correctional Institute, Delaware)</p>
U.S. District Court DAMAGES	<p><i>May v. Rich</i>, 531 F.Supp.2d 998 (C.D.Ill. 2008). A state prisoner brought suit against a prison employee, alleging civil rights claims for denial of access to the courts and retaliation for filing grievances and litigation. Following a jury trial, the jury returned a general verdict in favor of the prisoner, awarding \$2,388. The prison employee moved for judgment as matter of law or, in the alternative, for a new trial. The district court granted the motion, entering a judgment for the defendant as a matter of law. The court held that the prisoner did not suffer an actual injury, as required for a denial of access claim. The court found that the employee did not retaliate against the prisoner by filing a disciplinary report based on his possession of prison contraband. The court noted that the employee had an absolute duty to file a disciplinary report against the prisoner for possession of carbon paper, which was contraband in the prison system, such that reporting the prisoner could not be deemed retaliation for the prisoner's exercise of First Amendment rights in filing civil rights suits. (Pontiac Correctional Center, Illinois)</p>
U.S. District Court DAMAGES	<p><i>McCabe v. Mais</i>, 602 F.Supp.2d 1025 (N.D.Iowa 2008). County jail detainees brought a § 1983 action against a county jail officer, alleging that the officer conducted illegal strip searches and visual body cavity searches. Following a jury trial, the district court granted the officer's motion reduce the jury's damages award, and after the detainees refused to accept the reduced damages award, ordered a new trial on the issue of damages. After a jury returned a verdict in favor of the detainees in the amount of \$55,804, the detainees moved for new trial. The court held that a new trial on damages was not warranted and that the damages award was not so inadequate as to shock the conscience. The court noted that there was no evidence that the detainees were subjected to repeated violations of their Fourth Amendment rights, or that the illegal searches were conducted in a violent or mocking way, and detainees' own descriptions of their emotional distress was not compelling. (Linn County Jail, Iowa)</p>

<p>U.S. District Court CONTRACT SERVICES OFFICIAL CAPACITY</p>	<p><i>Moonblatt v. District of Columbia</i>, 572 F.Supp.2d 15 (D.D.C. 2008). A former inmate filed a § 1983 action against the District of Columbia, alleging that correctional officers employed by a contractor hired to operate a detention center violated his civil rights on account of his race, religion, and sexual orientation. The district court denied summary judgment for the defendants. The court held that summary judgment was precluded by fact issues as to whether the District had constructive or actual notice of the inmate's mistreatment, and whether the contractor acted pursuant to a state custom or policy. The court found that an employee of a contractor hired by the District of Columbia to operate a detention center, sued in his official capacity, was subject to liability under § 1983 for alleged deprivations of the inmate's constitutional rights by correctional officers. (Correctional Treatment Facility, District of Columbia, operated by Corrections Corp. of America)</p>
<p>U.S. District Court SUPERVISORY LIABILITY</p>	<p><i>Munyiri v. Haduch</i>, 585 F.Supp.2d 670 (D.Md. 2008). A motorist who was arrested for driving around a police roadblock and subsequently failing to stop when signaled by a pursuing squad car brought a civil rights action against an arresting officer, police commissioner and warden at central booking facility to which she was transported. She alleged she was subjected to unlawful strip and visual body cavity searches. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that allegations in the motorist's complaint were sufficient to state a supervisory liability claim against the Secretary of the Maryland Department of Public Safety and Correctional Services (DPSCS) and the warden at a central booking facility, for intrusive searches to which she was subjected. The court found that the allegations in the offender's complaint-- that she was improperly subjected to a strip search and to a visual body cavity search as the result of a policy implemented by the Secretary of the Maryland Department of Public Safety and Correctional Services (DPSCS) and by a warden at the central booking facility-- adequately pleaded the minimum facts necessary to state a supervisory liability claim against the Secretary and the warden under § 1983. The policy allegedly authorized strip searches and visual body cavity searches of all persons admitted to the facility, regardless of the charges filed against them or circumstances surrounding their arrest. (Baltimore Central Booking and Intake Facility, Maryland)</p>
<p>U.S. District Court DAMAGES DELIBERATE INDIFFERENCE PUNITIVE DAMAGES</p>	<p><i>Murphy v. Gilman</i>, 551 F.Supp.2d 677 (W.D.Mich. 2008). A civil rights action was brought against state prison officials, raising claims arising from the death of a prisoner, who died from dehydration after a four-day period during which he received no medical care and little water and food. A jury found that certain defendants were deliberately indifferent to the prisoner's serious medical needs, the defendants were grossly negligent, and one defendant was liable for intentional infliction of emotional distress. The jury awarded \$250,000 in actual damages, and \$2,500,000 in punitive damages. The defendants moved for judgment as a matter of law, and to stay enforcement of the judgment. The plaintiff filed a motion for a new trial. The district court denied the motions, finding that evidence supported the finding that an official knew of the obvious risks to the prisoner. The court held that punitive damages of \$1,250,000 per prison official defendant was not constitutionally excessive for the dehydration death of a physically vulnerable prisoner, who was trapped without physical necessities or medical care for five days during a heat wave and who was awarded \$250,000 in actual damages. The court noted that evidence established that prison officials kept the prisoner's water turned off, knew that the prisoner was not drinking, and knew the prison was on a heat alert. (Bellamy Creek Correctional Facility, Michigan)</p>
<p>U.S. District Court CONSENT DECREE- TERMINATION PLRA- Prison Litigation Reform Act</p>	<p><i>Osterback v. McDonough</i>, 549 F.Supp.2d 1337 (M.D.Fla. 2008). Inmates sued corrections officials, alleging that conditions of close management (CM) status amounted to cruel and unusual punishment. Following the grant of the inmates' motion to certify the class, and issuance of an order entering the officials' revised offer of judgment (ROJ), the officials moved to terminate the ROJ pursuant to the Prison Litigation Reform Act (PLRA). The district court granted the motion. The court held that corrections officers were deliberately indifferent in violation of the 8th Amendment when inmates on close management (CM) status who truly were suicidal or otherwise suffered from severe psychological distress declared psychological emergencies. According to the court, the officers failed to summon mental health staff, and inmates thereafter attempted to commit suicide or otherwise harmed themselves, or, in one case, actually committed suicide. The court held that accreditation reports for correctional institutions were inadmissible hearsay in the inmates' action. The court held that termination of the revised offer of judgment (ROJ), which was previously adopted by the district court as a final order and judgment, was appropriate under the Prison Litigation Reform Act (PLRA) in that isolated instances of prison staff's failure to appropriately respond to a bona fide psychological emergency of inmates in close management status did not create a current and ongoing violation of the class members' Eighth Amendment rights. (Everglades Correctional Institution, Florida)</p>
<p>U.S. Appeals Court FAILURE TO PROTECT FTCA-Federal Tort Claims Act NEGLIGENCE</p>	<p><i>Parrott v. U.S.</i>, 536 F.3d 629 (7th Cir. 2008). A federal inmate brought an action against the Bureau of Prisons (BOP) and several of its employees under the Federal Tort Claims Act (FTCA), alleging the employees negligently handled his personal property and failed to protect him from being attacked by another inmate. The inmate had been stabbed 22 times in the head and arm by another inmate and he was hospitalized for two weeks. The district court granted summary judgment for the government and the inmate appealed. The appeals court affirmed in part, vacated and remanded in part. The court held that the confiscation of the inmate's property, followed by sending such property to the inmate's sister, was a "detention" for the purposes of the exception to liability under the Federal Tort Claims Act (FTCA) for claims arising from detention of goods by a law enforcement officer. The court found that summary judgment was precluded by a genuine issue of material fact as to whether a former separation order was in effect between the inmate and another inmate who attacked him. The court noted that if a valid separation order is in effect between inmates, prison staff have no discretion in enforcing such an order, and violation of the order will not be sheltered from liability under the Federal Tort Claims Act (FTCA). (U.S. Penitentiary, Terre Haute, Indiana)</p>
<p>U.S. Appeals Court INJUNCTIVE RELIEF</p>	<p><i>Pierce v. County of Orange</i>, 519 F.3d 985 (9th Cir. 2008). Pretrial detainees in a county's jail facilities brought a § 1983 class action suit against the county and its sheriff seeking relief for violations of their constitutional and statutory rights. After consolidating the case with a prior case challenging jail conditions, the district court</p>

rejected the detainees' claims and the detainees appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the injunctive orders relating to the jail's reading materials, mattresses and beds, law books, population caps, sleep, blankets, dayroom access (not less than two hours each day), telephone access and communication with jailhouse lawyers were not necessary to correct current ongoing violations of the pretrial detainees' constitutional rights. Inmates had alleged that they were denied the opportunity for eight hours of uninterrupted sleep on the night before and the night after each court appearance. The court found that an injunction relating to restrictions of the detainees' religious rights based on security concerns was narrowly drawn and extended no further than necessary to correct the violation of the federal right of pretrial detainees in administrative segregation. According to the court, providing pretrial detainees housed in administrative segregation only ninety minutes of exercise per week, less than thirteen minutes per day, constituted punishment in violation of due process standards. The court also found that the county failed to reasonably accommodate mobility-impaired and dexterity-impaired pretrial detainees in violation of the Americans with Disabilities Act (ADA). The court affirmed termination of 12 of the injunctive orders, but found that the district court erred in its finding that two orders were unnecessary. (Orange County, California)

U.S. Appeals Court
INJUNCTIVE RELIEF

Pierce v. County of Orange, 526 F.3d 1190 (9th Cir. 2008). Pretrial detainees in a county's jail facilities brought a § 1983 class action suit against the county and its sheriff, seeking relief for violations of their constitutional and statutory rights. After consolidating the case with a prior case challenging jail conditions, the district court rejected the detainees' claims, and the detainees appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that injunctive orders relating to the county jail's reading materials, mattresses and beds, law books, population caps, sleep, blankets, telephone access, and communication with jailhouse lawyers were not necessary to current the current and ongoing violations of pretrial detainees' constitutional rights. The court found that an injunction relating to restrictions of detainees' religious rights based on security concerns was narrowly drawn and extended no further than necessary to correct the violation of the federal right of pretrial detainees in administrative segregation. The injunctive order, with its provision for the curtailment or elimination of pretrial detainees' religious rights based on security concerns, provided for no more than a minimum level of ongoing participation in religious activities. The court held that providing pretrial detainees housed in administrative segregation only 90 minutes of exercise per week, less than 13 minutes per day, constituted punishment in violation of due process standards. The court found that an order requiring that inmates in administrative segregation be permitted exercise at least twice each week for a total of not less than 2 hours per week was necessary to correct the current and ongoing violation.

The court found that the county failed to reasonably accommodate mobility-impaired and dexterity-impaired pretrial detainees in violation of the Americans with Disabilities Act (ADA). The county did not offer any legitimate rationale for maintaining inaccessible bathrooms, sinks, showers, and other fixtures in the housing areas and common spaces assigned to mobility and dexterity impaired detainees, and the county offered no explanation or justification for the significant differences between the vocational and recreational activities available to non-disabled and disabled detainees. Termination of injunctive orders requiring that inmates be provided with seating while detained in holding cells, or elsewhere, awaiting transport to or from court and requiring that inmates be given at least fifteen minutes within which to complete each meal did not constitute an abuse of discretion since the treatment of detainees in the county's holding cells and the time allowed for meals did not violate the detainees' constitutional rights. The court held that restrictions placed on use of the day room, limiting administrative segregation detainees' use of the room to one or two inmates at a time, were reasonably related to institutional security concerns. (Orange County Jail System, California)

U.S. District Court
SETTLEMENT

Platcher v. Health Professionals, Ltd., 549 F.Supp.2d 1040 (C.D.Ill. 2008). The estate of an inmate brought a civil rights suit against a state department of corrections and private health professionals who worked at an institution's health care center, alleging the inmate died from hypothermia as the result of being stripped, beaten, and placed in a cold cell. The estate moved to enforce a settlement agreement reached with the state defendants. The district court granted the motion to enforce the settlement. The court held that the estate was not required to accept a confidentiality clause that was not discussed in an oral agreement simply because his counsel may have had constructive notice of an alleged state policy to include confidentiality clauses. According to the court, there was no evidence that counsel contemplated inclusion of a confidentiality clause during negotiations. (Menard Correctional Center, Illinois)

U.S. District Court
DELIBERATE
INDIFFERENCE
FTCA-Federal Tort Claims
Act

Potter v. Ledesma, 541 F.Supp.2d 463 (D.Puerto Rico 2008). A federal inmate filed an action to recover damages he suffered when prison officials failed to provide medical treatment after a cell door closed on his finger. The district court granted the officials' motion to dismiss in part and denied in part. The court held that the Federal Tort Claims Act's (FTCA) exclusivity provision did not bar the inmate's Eighth Amendment claim. According to the court, the inmate's allegation that he was entitled to money damages due to prison officials' deliberate indifference to his serious medical needs after a cell door closed on his finger raised a cognizable claim for violation of his Eighth Amendment rights. (Puerto Rico)

U.S. District Court
MEDICAL CARE
NEGLIGENCE

Presley v. City of Blackshear, 650 F.Supp.2d 1307 (S.D.Ga. 2008). A mother brought an action against a city police officer and a county paramedic, arising out of her son's death while detained in a county jail after his arrest. The district court granted the defendants' motion for summary judgment. The court held that the arresting officer was not deliberately indifferent to the serious medical needs of the detainee who died of an apparent drug overdose after being arrested on drug charges and placed into custody at a county jail, absent evidence that the arresting officer actually saw the detainee swallow any drugs that allegedly led to his death. The court held that the county paramedic who responded to the jail was not deliberately indifferent despite any alleged negligence in the paramedic's original diagnosis. The court noted that the paramedic promptly responded to both calls from county jail concerning the detainee, and, each time, examined the detainee to determine whether further medical treatment was needed. According to the court, the paramedic's alleged bad judgment and negligence in caring for

the pretrial detainee who died of an apparent drug overdose, was insufficient to show a lack of good faith for the purposes of statutory immunity from negligence or malpractice liability under Georgia law. (*City of Blackshear and Pierce County Jail, Georgia*)

U.S. Appeals Court
BIVENS CLAIM
ALIEN

Rasul v. Myers, 512 F.3d 644 (D.C. Cir. 2008). Former detainees at a military facility in Guantanamo Bay, Cuba sued the Secretary of Defense and commanding officers alleging they were tortured. The detainees asserted claims under the Alien Torture Statute, under the Geneva Conventions, under the Religious Freedom Restoration Act (RFRA) and also asserted Fifth and Eighth Amendment claims on a *Bivens* cause of action. The defendants moved to dismiss and the district court granted the motion in part and denied the motion as to the RFRA claim. Both sides appealed. The district court affirmed in part and reversed as to the RFRA claim. The court held that the acts of torture allegedly committed against aliens detained at the military base in Cuba were “within the scope of employment” of military personnel who were allegedly committing such acts, for the purpose of deciding whether the United States should be substituted as defendant. The court found that the aliens were without property or presence in the United States and therefore lacked any constitutional rights and could not assert a *Bivens* claim against military personnel for alleged due process violations and cruel and unusual punishment inflicted upon them. The court held that the term “persons” as used in the RFRA to generally prohibit the government from substantially burdening a “person’s exercise of religion” did not extend to non-resident aliens. (*United States Naval Base at Guantanamo Bay, Cuba*)

U.S. Appeals Court
FAILURE TO PROTECT

Sandage v. Board of Com’rs of Vanderburgh County, 548 F.3d 595 (7th Cir. 2008). The family of murder victims brought a civil rights action under § 1983 against county officials, alleging that a county sheriff’s department’s failure to act on the victims’ complaint deprived the victims of their lives without due process of law, in violation of the Fourteenth Amendment. The victims had complained that they were being harassed by a murderer who was a county jail inmate and they asked county officials to revoke the inmate’s work-release privilege and re-imprison him. The inmate ultimately murdered the victims while he was on work release. The inmate had been serving a four-year sentence for robbery. The district court dismissed the complaint, and the plaintiffs appealed. The appeals court affirmed, finding that the sheriff’s department’s failure to act on the victims’ complaint did not deprive the victims of due process. The court noted that the county officials had no duty to protect the victims against private violence, and the officials’ failure to revoke the inmate’s work release did not create the danger that the inmate posed to the victims. (*Vanderburgh County Jail, Indiana*)

U.S. Appeals Court
CLASS ACTION
INJUNCTIVE RELIEF
REMEDIES

Shook v. Board of County Commissioners of County of El Paso, 543 F.3d 597 (10th Cir. 2008). County jail inmates brought a class action suit alleging that jail conditions for prisoners with mental health needs violated the Eighth Amendment’s ban against cruel and unusual treatment. The district court denied the prisoners’ motion for class certification and dismissed the suit. The appeals court reversed and remanded. On remand, the district court again denied certification, and the inmates appealed. The appeals court affirmed, finding that class certification could be denied due to unmanageability, namely the difficulty of crafting specific injunctive relief applicable to the class as a whole. The court noted that the plaintiff inmates variously complained that they were denied medications, inadequately supervised, or subjected to excessive force or excessive restraint, and the propriety of the jail’s actions depended on circumstances that varied from class member to class member. (*El Paso County Jail, Colorado*)

U.S. District Court
DAMAGES

Smith v. City of Oakland, 538 F.Supp.2d 1217 (N.D.Cal. 2008). After a jury rendered a verdict in favor of a parolee and his girlfriend based on a finding that officers planted a semi-automatic rifle in his residence in order to frame him, the officers filed post-trial motions seeking to overturn the jury’s verdict on both liability and damages. The district court held that substantial evidence supported the jury’s verdict in favor of the parolee but that the \$5 million dollar emotional distress award to the parolee was grossly excessive. According to the court, the emotional distress award to the parolee for malicious prosecution that resulted in 4 1/2 months imprisonment, the indignity of having to defend himself against trumped-up criminal charges and parole revocation proceedings, the uncertainty and apprehension about his fate and future caused by the false arrest, and loss of his house and relationship with his girlfriend was grossly excessive. The court granted a new trial on damages unless the parolee accepted a reduction from \$5 million to \$3 million. The court found that the parolee was not precluded from recovering damages that accrued after the indictment on his malicious prosecution claim against the police officers. The court noted that the parolee’s testimony was corroborated by another witness, the lack of any fingerprints on the gun, expert’s testimony about standard police procedures, the testimony of a parole agent that an inspection of the parolee’s home was scheduled for that same day, the lack of any other guns or ammunition found in the search of the house, and inconsistencies in the officers’ testimony. The court also found that the award of \$750,000 to the parolee’s girlfriend for emotional distress suffered when officers’ conducted a suspicionless search of the parolee’s residence while she was present was grossly excessive, and was subject to reduction to \$300,000. (*City of Oakland, California*)

U.S. District Court
FAILURE TO SUPERVISE

Stutes v. Tipto, 540 F.Supp.2d 516 (D.Vt. 2008). A Vermont inmate incarcerated in Oklahoma in a privately-owned facility brought an action against Vermont prison officials and facility employees claiming cruel and unusual punishment. The inmate alleged that his time spent outdoors in cold weather exposed him to “the potential of hypothermia, frostbite, and cold-related infections such as influenza, ear infections, upper respiratory infections, bronchitis and more.” Shortly after his exposure to the cold, he began suffering from flu-like symptoms. The district court dismissed the action. The court held that a state corrections commissioner was not subject to liability under § 1983 for alleged mistreatment of the inmate, even though the inmate sent a letter to the commissioner asking for protection from retaliation, and submitted a formal grievance form to the commissioner after the alleged mistreatment, where there was no indication that the commissioner was responsible for a policy or custom that led to the wrongdoing, or that he failed to properly supervise employees who committed the allegedly wrongful acts. (*North Fork Correctional Facility, Oklahoma, Corrections Corporation of America*)

- U.S. District Court
CLASS ACTION
SETTLEMENT
- Tardiff v. Knox County*, 567 F.Supp.2d 201 (D.Me. 2008). An arrestee who was subjected to a strip and visual body cavity search brought a § 1983 action against a county for alleged violations of her Fourth Amendment rights. She brought the action after opting out of a class action against the county in which her claim had initially moved forward and in which she was named as class representative. The county asserted counterclaims for breach of contract and equitable estoppel and the parties cross-moved for summary judgment. The district court held that the settlement agreement in a prior class action did not contain an implied term that the arrestee, as named class representative, would not opt out of the agreement. (Knox County Jail, Maine)
- U.S. District Court
CONTRACT SERVICES
FAILURE TO PROTECT
- Tatsch-Corbin v. Feathers*, 561 F.Supp.2d 538 (W.D.Pa. 2008). Survivors of an inmate who committed suicide sued a jail's forensic specialist under § 1983, claiming violations of the Fourteenth Amendment's prohibition against deprivations of life without due process. The district court denied the forensic specialist's motion to dismiss. The court found that the fact that the jail's forensic specialist lacked a contractual relationship with either the jail or a health care contractor retained by the county did not preclude her from being considered a "state actor," as required for imposition of liability under § 1983 in connection with the inmate's suicide. According to the court, her role was to provide mental health care to inmates, regardless of her other job responsibilities or the contractual nuances through which she came to work at the jail, and she could not have done so without the authorization of the state. The court found that the inmate's survivors alleged sufficient facts to establish that the forensic specialist should have known, or did know, that the inmate presented a suicide risk and failed to take necessary or available precautions to protect him. According to the court, alleged facts suggested that the inmate had made various threats to kill himself, which had been taken seriously enough by jail officials to warrant the request of an evaluation by a mental health professional, and he had a documented history of attempted suicide and psychiatric hospitalization, of which the specialist was allegedly aware. (Blair County Prison, Pennsylvania)
- U.S. District Court
DAMANGE
SOVEREIGN IMMUNITY
- Williams v. Beltran*, 569 F.Supp.2d 1057 (C.D.Cal. 2008). A state inmate brought an action against a prison, alleging violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) by forcing him to shave his beard, which he had worn for religious reasons. The district court dismissed the case. The court held that RLUIPA unambiguously conditions receipt of federal prison funds on the waiver of Eleventh Amendment sovereign immunity, and the remedial clause in RLUIPA providing for "appropriate relief" was not sufficiently broad to waive state sovereign immunity from money damages. The court noted that there are three main exceptions to the broad grant of sovereign immunity under the Eleventh Amendment: first, Congress may authorize such a suit in the exercise of its power to enforce the Fourteenth Amendment; second, a state may waive its sovereign immunity by consenting to suit; and third, suit may be brought to enjoin a state official rather than against the state itself. The court concluded that California had not waived its Eleventh Amendment immunity from money damages under RLUIPA and absent the availability of monetary relief, the plaintiff lacked any remedy for his alleged RLUIPA claim. (California State Prison Lancaster)
- U.S. District Court
FTCA-Federal Tort Claims
Act
- Zabala-Calderson v. U.S.*, 616 F.Supp.2d 195 (D.Puerto Rico 2008). A female detainee filed suit, under the Federal Tort Claims Act (FTCA), seeking injunctive relief and damages from the United States for injuries she allegedly suffered from falling to the ground when exiting the bus managed by the United States Marshal Service (USMS) during her transport from a detention center to a federal courthouse while she was fully restrained with handcuffs, a belly chain, and shackles. The district court denied the government's motion for summary judgment, finding that fact issues precluded summary judgment as to whether the detainee's injuries were caused by the government's negligence. The court found genuine issues of material fact remained as to whether the government failed to follow a standard of care and skill in transporting the female detainee by placing shackles on her that were allegedly too short for her to step down from a bus managed by the United States Marshal Service (USMS) and by allegedly failing to assist her as she stepped down from bus, resulting in the detainee's falling to the ground and sustaining injuries. (Metropolitan Detention Center, Puerto Rico)
- 2009**
- U.S. District Court
FTCA-Federal Tort Claims
Act
NEGLIGENCE
- Abuhouran v. U.S.*, 595 F.Supp.2d 588 (E.D.Pa. 2009). A prisoner brought a negligence action against the United States under the Federal Tort Claims Act alleging prison officials exposed him to excessive amounts of environmental tobacco smoke (ETS). The defendants moved for summary judgment and the district court granted the motion. The court held that the prisoner was precluded, under the discretionary function exception of the Federal Tort Claims Act (FTCA), from challenging the warden's designation of smoking areas, as federal regulations explicitly assigned the exercise of choice or judgment to the warden to designate areas subject to ETS. The court noted that the stated policy considerations for implementing the "no smoking areas" in prisons was to provide a clean air environment and to protect the health and safety of staff and inmates, suggesting the designation of smoking areas was the kind of discretionary function the FTCA exception was meant to shield. The court held that under Pennsylvania law, the prisoner failed to present any medical evidence or expert witnesses to establish a causal connection between his exposure to environmental tobacco smoke (ETS) and his alleged injury, as required to prevail on his negligence claim. The court also held that the prisoner failed to present any evidence of an actual injury. (Federal Detention Center, Philadelphia, Pennsylvania)
- U.S. Appeals Court
DAMAGES
DELIBERATE
INDIFFERENCE
MUNICIPAL LIABILITY
- Askev v. Sheriff of Cook County, Ill.*, 568 F.3d 632 (7th Cir. 2009). A pretrial detainee brought a § 1983 action against a prison guard and a sheriff, asserting excessive force and deliberate indifference claims against the guard and a municipal liability claim against the sheriff. The district court granted the defendants' motion to dismiss. The detainee appealed. The appeals court vacated and remanded. The appeals court held that upon determining that a county was a required party in the pretrial detainee's § 1983 suit against a prison guard and the sheriff, the district court was required to order that the county be made a party, rather than dismissing the suit. The court noted that a county in Illinois is a necessary party in any suit seeking damages from an independently elected county officer, and, because state law requires the county to pay, federal law deems it an indispensable party to the litigation. But the court found that the Illinois county was not a party that was required to be joined if feasible

in § 1983 suit brought against a prison guard in his individual capacity. (Cook County Jail, Illinois)

U.S. District Court
CONTRACT SERVICES
POLICIES/PROCEDURES
RESPONDEAT SUPERIOR
VICARIOUS LIABILITY

Austin v. Taylor, 604 F.Supp.2d 685 (D.Del. 2009). A state prisoner brought an action alleging a § 1983 claim for inadequate medical care in violation of the Eighth Amendment and a state law medical negligence claim against a medical service corporation under contract with the state to provide healthcare services at a prison. The district court dismissed the case in part. The court held that the corporation that provided prison healthcare was not a state actor entitled to Eleventh Amendment immunity on the state prisoner's § 1983 claim. The court noted that despite having been named in hundreds of § 1983 actions, the corporation had never been held to be an arm of the state for Eleventh Amendment purposes. The court noted that the corporation was an autonomous actor and was not immune from state taxation, and any judgment against the corporation would not be paid from the state treasury. According to the court, although the corporation could not be held liable for allegedly medically negligent acts of an employee under the theories of respondeat superior or vicarious liability, the corporation could be directly liable for acts of the employee if the employee's acts were deemed the result of the corporation's policy or custom that was so likely to result in the violation of constitutional rights that the corporation could reasonably be said to have been deliberately indifferent to the prisoner's serious medical need in violation of the Eighth Amendment. The court noted that a "policy" of the corporation is made when a decision-maker possessing final authority to establish a policy with respect to an allegedly violative action issues an official proclamation, policy or edict. According to the court, the "custom" of the corporation can be proven by showing that a given course of conduct, although not specifically endorsed or authorized by law, is so well-settled and permanent as to virtually constitute law. (Howard R. Young Correctional Institution, Wilmington, Delaware)

U.S. District Court
NOMINAL DAMAGES
PUNITIVE DAMAGES

Baker v. Wilkinson, 635 F.Supp.2d 514 (W.D.La. 2009). A Louisiana state prisoner brought a § 1983 action, in forma pauperis, against a warden, assistant warden, prison operator, and two nurses, alleging that he was denied adequate medical care related to hemorrhoids. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prisoner suffered an injury as a result of the delay in appropriate medical care, whether he was entitled to damages for emotional distress, and whether he was entitled to nominal or punitive damages. (Winn Correctional Center, Louisiana, Corrections Corporation of America)

U.S. Appeals Court
BIVENS CLAIM
FAILURE TO PROTECT

Boyd v. Driver, 579 F.3d 513 ((5th Cir. 2009). Following his acquittal on charges of assaulting prison employees, a federal inmate filed a pro se *Bivens* action against numerous prison employees, alleging a "malicious prosecution conspiracy." The inmate alleged that prison employees committed perjury and tampered with evidence in his prosecution for assaulting employees. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part and reversed and remanded in part. The appeals court held that the inmate was not required to exhaust his administrative remedies with regard to his claim in his *Bivens* action, where the claim was not "about prison life" within the meaning of the exhaustion provision of the Prison Litigation Reform Act (PLRA). According to the court, the allegation by the inmate, that prison employees committed perjury and tampered with evidence in conspiring to maliciously prosecute him for assault, did not, without more, state any constitutional claim, as required to support a *Bivens* action. But the court held that allegations that prison employees gave perjured testimony at the inmate's criminal trial and destroyed and tampered with video evidence of the alleged assaults stated a claim for a due process violation, sufficient to support his *Bivens* action. (Federal Correctional Institution Three Rivers, Texas)

U.S. District Court
SOVEREIGN IMMUNITY
SUPERVISORY
LIABILITY

Boyd v. Nichols, 616 F.Supp.2d 1331 (M.D.Ga. 2009). A female, who had been housed in a jail for violation of her probation, brought an action against a former jailer, county, and former sheriff, under § 1983 and state law, relating to the sexual assault of the inmate by the jailer. The county and sheriff moved for summary judgment and the district court granted the motions. The court held that the sheriff was not "deliberately indifferent" to a substantial risk of serious harm to the inmate under the Eighth Amendment or the Georgia constitution in failing to protect the inmate from sexual assaults by a jailer, absent evidence that the sheriff had knowledge or indication that the jailer was a threat or danger to inmates, or that male guards, if left alone with female inmates, posed a risk to the inmates' health and safety. The court noted that the sheriff's actions in calling for an investigation and terminating the jailer's employment upon learning of the jailer's actions was not an "indifferent and objectively unreasonable response" to the inmate's claims, and thus, there was no violation of the inmate's rights. The court held that the jail's staffing did not pose a "substantial risk of serious harm" to the inmate who was sexually assaulted by a jailer, as required to show violation of the Eighth Amendment and Georgia constitution, absent evidence that the jail was inadequately staffed. According to the court, the county did not have a policy or custom of underfunding and understaffing the jail, as would constitute deliberate indifference to a substantial risk of serious harm to the inmate, and thus the county could not be liable under § 1983 to the inmate who was sexually assaulted by a jailer. The court found that the sheriff's failure to train deputies and jailers in proper procedures for escorting and handling female inmates did not support supervisory liability on the § 1983 claim of the inmate, where the sheriff had no knowledge of any prior sexual assaults at the jail or any problems with jailers improperly escorting and handling female inmates, and the jailer who committed the assault had been trained previously on how to interact with inmates and knew it was improper to have intimate contact with inmates. During the time period in question, the county did not have a policy prohibiting a male jailer from escorting a female inmate within the Jail. The court held that the county and sheriff had sovereign immunity from the state law claims of the inmate, absent evidence that such immunity had been waived by an act of the General Assembly. (Berrien County Jail, Georgia)

U.S. District Court
FAILURE TO TRAIN
SUPERVISORY
LIABILITY

Brickell v. Clinton County Prison Bd., 658 F.Supp.2d 621 (M.D.Pa. 2009). A former inmate filed a § 1983 action against a county, county prison board, and various county officials to recover for injuries she sustained while working in a jail kitchen. The district court dismissed the case in part, and denied dismissal in part. The court held that the sheriff was not subject to supervisory liability under § 1983 for alleged failure to obtain adequate medical treatment for the inmate after she suffered burns while working in a jail kitchen, where the sheriff did not

participate in or have knowledge of any violations of the inmate's rights, did not direct jail employees to commit the violations, and did not acquiesce in the employees' violations. The court found that the inmate's allegation that a county prison board failed to adopt, and the jail's warden and deputy wardens failed to implement, policies regarding treatment of severe burns and general medical treatment was sufficient to state a claim against the board and officials under § 1983 for violation of her Eighth Amendment right to adequate medical care, where the inmate claimed that there was a total absence of policy concerning medical treatment for severe burns or general medical care when prison facilities were inadequate. According to the court, the county's alleged negligence in the training of kitchen staff at the county jail was not sufficiently shocking to support the inmate's § 1983 due process claim pursuant to a state-created danger theory based on the inmate's allegation that she suffered severe burns while transferring a hot container from a stove to a top shelf of upright warmers, even if the county officials knew or should have known that the inmate was physically unable to place the container on the top shelf in a safe fashion. (Clinton County Prison Board, Clinton County Correctional Facility, Pennsylvania)

U.S. Appeals Court
DAMAGES

Cabral v. U.S. Dept. of Justice, 587 F.3d 13 (1st Cir. 2009). A nurse practitioner working as a contractor in a county house of correction brought an action against a county sheriff claiming that she was barred from entering the house of correction, in violation of her free speech rights, for informing the Federal Bureau of Investigation (FBI) of alleged prisoner abuse. The county sheriff brought an Administrative Procedure Act (APA) proceeding against the United States Department of Justice, seeking discovery of relevant documents. The district court denied the requested discovery and the sheriff appealed. A jury found in favor of the contractor in the underlying free speech case and the district court denied the defendants' motions for a new trial. The appeals from the two judgments were consolidated. The appeals court affirmed. The court held that the sheriff's request for information concerning a meeting between the nurse and the Federal Bureau of Investigation (FBI) would directly and adversely impact the FBI investigations into prisoner abuse in the house of correction and violate the Privacy Act, so as to warrant denial of such requests. The court held that evidence was sufficient to support the jury's determination that the county sheriff barred the nurse practitioner from a county house of correction with a conscious indifference to her free speech rights, as was necessary to support an award of punitive damages in the nurse's § 1983 action. The court found that the award of \$250,000 in punitive damages to the nurse was not excessive, where the sheriff's conduct was reprehensible and the award could have been greater. (Suffolk County House of Correction, Massachusetts)

U.S. District Court
QUALIFIED IMMUNITY

Chao v. Ballista, 630 F.Supp.2d 170 (D.Mass. 2009). A former state prisoner brought a § 1983 action against officials at the Massachusetts Department of Correction (DOC), alleging that the officials failed to properly investigate and protect her from sexual abuse by a prison guard. The officials moved to dismiss the complaint on a number of grounds. The district court held that the former prisoner was not subject to the Prison Litigation Reform Act's (PLRA) exhaustion requirement. The court found that the former prisoner's allegations in her amended complaint that, over the course of a year, she and the prison guard engaged in 50 to 100 sexual encounters in a prison facility without detection, that the guard had a sexual relationship with at least one other female inmate, that sexual encounters continued even after the guard was reassigned to different duties, and that a prison nurse placed the prisoner on oral contraceptive pills during the relevant time period, sufficiently stated a § 1983 claim against prison officials. The district court held that DOC officials were not entitled to qualified immunity, given the extent of the abuse, the numerous warning signs alleged, and the available sources of information. (South Middlesex Correctional Center, Massachusetts)

U.S. District Court
FTCA-Federal Tort Claims
Act
QUALIFIED IMMUNITY

Chehade Refai v. Lazaro, 614 F.Supp.2d 1103 (D.Nev. 2009). A German citizen, who was detained by Department of Homeland Security (DHS) officials at a Nevada airport, and later transferred to a local jail, after his name had been erroneously placed on a watch list, brought an action against the United States, DHS officials, a police department, a city, and a police chief, alleging various constitutional violations. The district court granted the DHS and United States motions to dismiss in part, and denied in part. The court held that DHS officials could not bypass constitutional requirements for strip searches and body-cavity searches of non-admitted aliens at a border by sending the German citizen to a detention facility where they allegedly knew strip searches occurred in the absence of reasonable suspicion under circumstances in which the DHS officials could not perform the strip search themselves. According to the court, regardless of any reasonable suspicion that detention center officials had for a strip search, federal officials at the border needed reasonable suspicion for a strip search.

The court found that the Fourth Amendment right of a non-admitted alien to be free from a non-invasive, non-abusive strip search absent suspicion to conduct such a search was clearly established in 2006, when the German citizen was detained at an airport, and thus, a DHS officer was not entitled to qualified immunity. The court held that the German citizen who was detained after arriving at a United States airport and was asked to spy for the United States government in order to obtain an entry visa was not subjected to "involuntary servitude" in violation of the Thirteenth Amendment, where the German citizen never actually spied for the United States.

The court found that the German citizen adequately alleged that the defendant's actions constituted extreme and outrageous conduct, as required to state claim for intentional infliction of emotional distress under Nevada law, where he alleged that DHS officials told him that if he did not spy for the United States government, he would never be able to return to the United States where his daughter and grandchild lived.

According to the court, the detained German citizen's negligence claim, alleging that the United States owed him a duty of care not to cause him to be detained in a local jail when he had not been and was never charged with any criminal offense, was not barred by the discretionary function exception to the Federal Tort Claims Act (FTCA). The court noted that although the government claimed that immigration officials had discretion in choosing where to house aliens, under an Immigration and Naturalization Service (INS) memorandum, the alien should never have been booked into local jail. (North Las Vegas Detention Center, Nevada)

U.S. District Court
INJUNCTIVE RELIEF

Chester v. Beard, 657 F.Supp.2d 534 (M.D.Pa. 2009). Pennsylvania death-row inmates brought a class action under § 1983 against Pennsylvania Department of Corrections officials, seeking a permanent injunctive relief against alleged violations of their right to be free from cruel and unusual punishment and their right to due

process, arising from Pennsylvania's use of lethal injection as an execution method. The district court denied the defendants' motion to dismiss. The court held that the inmates had Article III standing to bring a § 1983 challenge to the state's use of lethal injection as an execution method, seeking permanent injunctive relief, even if the inmates were not under active death warrants. The court noted that the fact that the inmates were subject to the death sentence conferred a sufficient personal stake in the action to satisfy the standing requirements. The court held that the death-row inmates stated a § 1983 claim against the DOC by alleging that the state's use of lethal injection as an execution method, in the absence of adequate training for those conducting the executions, exposed the inmates to the risk of extreme pain and suffering. (Pennsylvania Department of Corrections)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO ACT
FAILURE TO PROTECT

Clem v. Lomeli, 566 F.3d 1177 (9th Cir. 2009). A state inmate brought a § 1983 action against a prison officer, alleging his Eighth Amendment rights were violated when the officer failed to alleviate a substantial risk posed by his drunk, threatening cellmate. The district court entered judgment following a jury verdict in favor of the officer and the inmate appealed. The appeals court reversed and remanded. The appeals court held that the inmate was entitled to a "failure to act" jury instruction, where evidence showed that the officer heard the inmate's call for help immediately prior to his beating by his cellmate and that the officer took no steps to abate any risk to the inmate. The court also found that the district court's jury instruction error in the inmate's § 1983 action was not harmless, where the instruction added an extra element to the inmate's burden of proof by requiring the jury to find that some act of the officer was the moving force that directly caused the ultimate injury. The court noted that the entire verdict consisted of a response of "no" to the question of whether the officer was deliberately indifferent to a serious risk of harm by failing to remove the inmate from his cell, and the court never explained to the jury what "deliberately indifferent" meant. (Mule Creek State Prison, California)

U.S. Appeals Court
INJUNCTIVE RELIEF
PLRA- Prison Litigation
Prison Litigation
RLUIPA- Religious Land
Use and Institutionalized
Persons Act

Crawford v. Clarke, 578 F.3d 39 (1st Cir. 2009). Muslim inmates confined in a special management unit (SMU) sued the Commissioner of the Massachusetts Department of Correction (DOC) under the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that he violated their right to freely exercise their religion by preventing them from participating in Jum'ah Friday group prayer. The district court entered an injunction requiring closed-circuit broadcasting of Jum'ah in any SMU in which the plaintiff inmates were housed or might be housed in the future, and subsequently denied the commissioner's motion for reconsideration. The commissioner appealed. The appeals court affirmed. The appeals court held that the district court did not abuse its discretion in issuing the injunction requiring corrections officials to provide closed circuit television broadcasts of services in any SMU in which the plaintiff inmates were housed or might be housed in the future, as opposed to the SMU in which they were currently housed, without making findings as to whether other SMUs were suitable for closed circuit broadcasts. The court found that the injunction did not violate the Prison Litigation Reform Act (PLRA), where the prospective relief was narrowly drawn and providing closed-circuit broadcasting was the least intrusive means to alleviate the burden on the inmates' rights. The court noted that the commissioner put nothing in the record to differentiate other SMUs on the issues of a compelling governmental interest or least restrictive means. (Massachusetts Department of Correction, MCI-Cedar Junction)

U.S. District Court
DAMAGES
QUASI-JUDICIAL
IMMUNITY

Delaney v. District of Columbia, 659 F.Supp.2d 185 (D.D.C. 2009). A former inmate and his wife brought a § 1983 action, on behalf of themselves and their child, against the District of Columbia and several D.C. officials and employees, alleging various constitutional violations related to the inmate's incarceration for criminal contempt due to his admitted failure to pay child support. They also alleged the wife encountered difficulties when she and her child attempted to visit the husband at the D.C. jail. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that District of Columbia judges and court clerks were entitled to quasi-judicial immunity against the § 1983 claims for monetary damages for alleged infringement of Fifth Amendment due process rights. According to the court, the defendants' acts of issuing court orders regarding the plaintiff's child support obligations, calculating the plaintiff's probation period, issuing hearing notices, filing court documents, and posting the plaintiff's child support payments, were performed pursuant to judicial functions. The court held that the inmate's wife did not allege that any District of Columbia custom or policy caused the alleged violation of her Fourth Amendment right against unreasonable seizure, precluding her § 1983 claim against a D.C. corrections official, even if the corrections officer's request that the inmate's wife wait to speak to a corrections official prior to exiting the visiting area constituted a seizure.

The court held that an attorney, who was an African-American woman, stated a § 1983 claim against the District of Columbia and D.C. jail official for violations of her Fifth Amendment due process rights by alleging that an official refused to allow her to visit her clients at the jail based on her gender and race. (Lorton and Rivers Correctional Centers, and District of Columbia Jail)

U.S. District Court
FTCA-Federal Tort Claims
Act
NEGLIGENCE

Edwards v. District of Columbia, 616 F.Supp.2d 112 (D.D.C. 2009). The representative of the estate of a woman who committed suicide while being held in a District of Columbia jail brought an action against the District and the jail's medical services contractor in the Superior Court for the District of Columbia, alleging negligence in the provision of mental health care in ensuring that the woman was not a danger to herself. The representative also alleged that the District and contractor failed to adequately provide a medical response upon discovering the woman in the immediate moments after her suicide. The contractor removed the case to federal district court and moved to dismiss. The district court held that the representative was required to exhaust administrative remedies under the Federal Tort Claims Act (FTCA) on claims against the contractor before bringing an action under FTCA and that the court lacked subject matter jurisdiction over the FTCA claims and claims against the District. (District of Columbia Jail)

U.S. Appeals Court
NOMINAL DAMAGES
SETTLEMENT

Estate of Enoch ex rel. Enoch v. Tienor, 570 F.3d 821 (7th Cir. 2009). The estate and minor sisters of an 18-year-old female prisoner who committed suicide while on suicide watch at a correctional institution brought an action against correctional officers and staff, alleging violations of the prisoner's civil rights and seeking \$5 million for the estate plus \$5 million for the sisters. After accepting the defendants' offer of a judgment for \$635,000, the

plaintiffs filed a motion requesting \$328,740 in attorney fees. The district court awarded \$100,000 to the plaintiffs, with \$1,500 to be taxed as fees for the guardian ad litem. The plaintiffs appealed. The appeals court reversed and remanded, holding that the fact that the case was settled for \$635,000 did not warrant a reduction in the requested attorney fees. The court noted that \$635,000 was not a nominal award, and the Farrar analysis for determining attorney fees, which considered the extent of relief compared to the relief sought, was not relevant in cases in which the recovery was not merely nominal. The court found that the district court did not abuse its discretion in awarding \$1,500 in fees to the guardian ad litem. (Taycheedah Correctional Institution, Wisconsin)

U.S. District Court
FAILURE TO
SUPERVISE
QUALIFIED IMMUNITY

Estate of Henson v. Wichita County, Tex., 652 F.Supp.2d 730 (N.D.Tex. 2009). Daughters of a pre-trial detainee, who died from chronic obstructive pulmonary disease while being held in a county jail, brought a § 1983 action against the county and jail physician for violation of the detainee's Fourth and Fourteenth Amendment rights. The court held that summary judgment was precluded by genuine issues of material fact as to whether the jail physician was a supervisor, whether a policy of intimidation of jail nurses was a moving force behind the alleged violation of the rights of the detainee, whether the physician failed to supervise nurses, and, if so, whether his failure to supervise amounted to deliberate indifference. The court held that the jail physician was entitled to assert a defense of qualified immunity, even though he was a contract physician. (Wichita County Jail, Texas)

U.S. District Court
FLSA-Fair Labor Standards
Act

Fraternal Order of Police Barkley Lod. v. Fletcher, 618 F.Supp.2d 712, (W.D.Ky. 2008). A police union, union local, and current and past corrections officers at the Kentucky State Penitentiary filed a complaint alleging violations of the Fair Labor Standards Act (FLSA), the Portal to Portal Act (PPA) and mandatory career retention programs provisions under state statutes. The action was brought against a former Kentucky Governor, the Department of Corrections Commissioner, and three wardens, all in their individual and official capacities. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that state officials and public employees can be liable as "employers" under FLSA. The plaintiffs alleged that the defendants exempted and continued to deny overtime compensation to them in violation of FLSA. (Kentucky State Penitentiary)

U.S. District Court
FHA-Fair Housing Act

Fross v. County of Allegheny, 612 F.Supp.2d 651 (W.D.Pa. 2009). A group of convicted sex offenders brought a civil rights action against a county, alleging that a county ordinance that restricted the residency of sex offenders violated their constitutional rights, the Fair Housing Act (FHA), and state law. The district court granted summary judgment for the plaintiffs, finding that the ordinance was preempted by state law. The ordinance barred offenders from residing within 2,500 feet of any child care facility, community center, public park or recreation facility, or school. According to the court, the ordinance was contradictory to and inconsistent with various provisions of state law, and interfered with the state's express objectives of rehabilitating and reintegrating offenders, diverting appropriate offenders from prison, and establishing a uniform, statewide system for the supervision of offenders. (Allegheny County, Pennsylvania)

U.S. Appeals Court
SETTLEMENT

Gevas v. Ghosh, 566 F.3d 717 (7th Cir. 2009). A prisoner brought a § 1983 action alleging prison staff members and administrators were deliberately indifferent to his serious medical needs. After a telephonic conference among all of the parties was held, an agreement was supposedly reached, but there was no court reporter or recording of the conference. The district court granted the defendants' motion to enforce the settlement agreement and ordered the prisoner to sign the release and settlement agreement within 30 days or have his case dismissed. The prisoner appealed. The appeals court affirmed. According to the court, the magistrate judge's failure to record the settlement agreement did not invalidate the settlement, and the magistrate judge did not coerce the prisoner into settling. The court noted that both parties assumed the risk that the judge would recall the discussion differently than they did, when neither asked that any part of the discussion be placed on the record. According to the court, having made no such request to have the discussion placed on the record, the prisoner had to live with the consequences. (Stateville Correctional Center, Illinois)

U.S. District Court
COMPENSATORY
DAMAGES
INDIVIDUAL CAPACITY

Gilmore v. Bostic, 636 F.Supp.2d 496 (S.D.W.Va. 2009). A state prison inmate brought an action against a probation officer, the state parole board, and state correctional facility employees, asserting that his constitutional rights were violated by allegedly false information in his presentence report for a burglary conviction and in the prison file which resulted in the inmate's classification in the state penal system at a higher level than was appropriate and in a sex offender designation. The district court held that: (1) the board was entitled to absolute immunity; (2) employees were not liable in their official capacities on claims for compensatory relief but the employees sued in their individual capacities were liable; (3) the inmate stated a violation of a protected liberty interest in parole release under the state constitution; (4) the inmate stated a claim under the state constitution for violation of a protected liberty interest in not being required to undergo sex offender treatment; and (5) the inmate adequately alleged a physical injury required to recover for mental or emotional injury. (Kanawha County Adult Probation Department, West Virginia Board of Prob. and Parole, Huttonsville Correctional Center, West Virginia)

U.S. District Court
CLASS ACTION
CONSENT DECREE-
TERMINATION

Graves v. Arpaio, 633 F.Supp.2d 834 (D.Ariz. 2009). Pretrial detainees in a county jail system brought a class action against a county sheriff and a county board of supervisors, alleging violation of the detainees' civil rights. The parties entered into a consent decree which was superseded by an amended judgment entered by stipulation of the parties. The defendants moved to terminate the amended judgment. The district court entered a second amended judgment which ordered prospective relief for the pretrial detainees. The amended judgment provided relief regarding the following: population/housing limitations, dayroom access, natural light and windows, artificial lighting, temperature, noise, access to reading materials, access to religious services, mail, telephone privileges, clothes and towels, sanitation, safety, hygiene, toilet facilities, access to law library, medical care, dental care, psychiatric care, intake areas, mechanical restraints, segregation, outdoor recreation, inmate classification, visitation, food, visual observation by detention officers, training and screening of staff members, facilities for the handicapped, disciplinary policy and procedures, inmate grievance policy and procedures, reports

and record keeping, security override, and dispute resolution. The detainees moved for attorney's fees and nontaxable costs. The district court held that: (1) the class of detainees was the prevailing party entitled to attorney's fees; (2) the initial lodestar figure of \$1,239,491.63 for attorney's fees was reasonable; (3) Kerr factors provided no basis for downward adjustment of the initial lodestar; (4) the attorney's fees award would not be reduced for limited success; (5) the amount requested as reimbursement for attorney's fees was fully compensable under the Prison Litigation Reform Act (PLRA); (6) PLRA did not require appointment of class counsel for the award of attorney's fees and non-taxable costs; and (7) the class was entitled to interest on the award of attorney's fees from the date of the court's order ruling in favor of the detainees on the motion to terminate. The court noted that defending and enforcing the judgment for more than five years and obtaining prospective relief required substantial time and labor, the issues presented were not novel but many were difficult and complex, conducting discovery, marshaling evidence, and presenting that evidence during a 13-day evidentiary hearing required considerable skill, commitment of attorneys' time and advancement of costs limited attorneys' ability to take on new cases, and the attorneys would not receive any compensation for their work representing the detainees except as awarded by the court. (Maricopa County Sheriff and Maricopa County Board of Supervisors, Arizona)

U.S. Appeals Court
CLASS ACTION
PLRA-Prison Litigation
Reform Act

Hagan v. Rogers, 570 F.3d 146 (3rd Cir. 2009). Fourteen state prisoners jointly filed a single § 1983 complaint, on behalf of themselves and a purported class, claiming violation of their Eighth and Fourteenth Amendment rights by prison officials' purported deliberate indifference to the exposure of prisoners to an outbreak of a serious and contagious skin condition, allegedly scabies. The prisoners sought class certification, requested to proceed in forma pauperis (IFP) under the Prison Litigation Reform Act (PLRA), and sought appointment of counsel. The district court denied joinder (combining actions), dismissed with leave to amend for all except one prisoner, and denied class certification. The prisoners appealed. The appeals court reversed in part, vacated in part, and remanded. The appeals court held that: (1) IFP prisoners were not barred from joinder by PLRA; (2) each joined prisoner was required to pay the full individual filing fee; and (3) the typicality and commonality requirements were satisfied for class certification. The court noted that prisoners proceeding in forma pauperis (IFP) remained within the definition of "persons" under the permissive joinder rule, and thus, the prisoners were not categorically barred from joinder in their civil rights action, despite concerns that joinder would undermine PLRA by permitting split fees or avoiding the three-strike rule that limited IFP status. (Adult Diagnostic and Treatment Center, New Jersey)

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Hall v. Terrell, 648 F.Supp.2d 1229 (D.Colo. 2009). A female detainee brought a § 1983 action against a correctional officer, alleging that he raped her while she was in custody. Following entry of default judgment against the officer, a bench trial to determine damages, and the entry of a judgment awarding compensatory and punitive damages, the detainee moved for prejudgment interest and attorney fees. The district court granted the motion for attorney fees in part. The court held that the Prison Litigation Reform Act (PLRA) applied to the detainee's request for attorney fees where the detainee was, at every stage of the lawsuit, a prisoner confined to a correctional facility, she was the prevailing party in her suit, and the suit was an action in which attorney fees were authorized under § 1988. The court held that the reasonable hourly rate for the lodestar amount, in determining the award of attorney fees under PLRA, was the hourly rate for Criminal Justice Act (CJA) appointments in Tenth Circuit and District of Colorado. According to the court, under PLRA, the appropriate hourly rate for the award of paralegal fees was 64% of the average rate that she had requested for non-senior attorneys, and for an assistant was 50% of such rate. The court held that under PLRA, 10 percent was the appropriate percentage of the judgment obtained by the detainee against the corrections officer, where the factor of the opposing party's culpability or bad faith favored the detainee, the factor of ability to satisfy the award of attorney fees suggested that the detainee should bear some portion of attorney fees, and the factor of the possibility that the award might deter other persons favored the detainee. The district court had awarded \$1,354,070 in damages, comprised of \$354,070.41 in compensatory damages and \$1 million in punitive damages. (Denver Women's Correctional Facility, Colorado)

U.S. District Court
DAMAGES
FAILURE TO DIRECT
FAILURE TO
SUPERVISE
SUPERVISORY
LIABILITY

Hamilton v. Lajoie, 660 F.Supp.2d 261 (D.Conn. 2009). An inmate filed a pro se § 1983 action against the State of Connecticut, a warden, and correctional officers, seeking compensatory and punitive damages for head trauma, abrasions to his ear and shoulder, and post-traumatic stress due to an officers' alleged use of unconstitutionally excessive force during a prison altercation. The inmate also alleged inadequate supervision, negligence, and willful misconduct. The court held that the inmate's factual allegations against correctional officers, in their individual capacities, were sufficient for a claim of excessive force in violation of the inmate's Eighth Amendment rights. The officers allegedly pinned the inmate to the ground near his cell, following an inspection for contraband, and purportedly sprayed the inmate in the face with a chemical agent despite his complaints that he had asthma. The court found that the inmate's allegations against the warden in his individual capacity were sufficient for a claim of supervisory liability, under § 1983, based on the warden's specific conduct before and after the altercation between the inmate and correctional officers. The inmate alleged that the warden was responsible for policies that led to his injuries and for procedures followed by medical staff following the incident, and the warden failed to properly train officers, to adequately supervise medical staff, to review video evidence of the incident, and to order outside medical treatment of the inmate's injuries even though a correctional officer received prompt medical care at an outside hospital for his head injury sustained in the altercation. (Corrigan-Radowski Correctional Center, Connecticut)

U.S. Appeals Court
CLASS ACTION

Harper v. Sheriff of Cook County, 581 F.3d 511 (7th Cir. 2009). A former detainee filed a class action against a sheriff, claiming that new detainees remanded to the sheriff's custody after a probable cause hearing were unconstitutionally required to undergo intake procedures at the county jail before release on bond. The district court certified the class and the sheriff appealed. The appeals court vacated and remanded. The court held that the former detainee's class action lacked a predominance of common issues, precluding certification of the class, where the detainee had not challenged any particular intake procedure. The court noted that the reasonableness of

the delay between posting bond and release and the reasonableness of the time and manner of assigning identification numbers prior to release required individual determinations based on the length of delay for each detainee and the conditions and exigencies of the jail existing on that particular day. According to the court, resolution of an equal protection claim could be satisfied in an individual suit. The court noted that the detainee was not interested in a large damage award, and his constitutional claims required individualized liability and damages determinations that could be better litigated in an individual suit. (Cook County Jail, Illinois)

U.S. Appeals Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Haynes v. Stephenson, 588 F.3d 1152 (8th Cir. 2009). A state inmate brought a § 1983 action for retaliatory discipline against a corrections officer who had filed a disciplinary report against the inmate after the inmate had filed a grievance report against an officer for directing “profane or abusive language” toward him. After a bench trial, the district court awarded the inmate \$1.00 in compensatory damages and \$2,500.00 in punitive damages. The officer appealed. The appeals court affirmed. The appeals court held that the district court did not err in concluding that the inmate established a prima facie case of retaliatory discipline and in determining that the officer's retaliation against the inmate was reprehensible. According to the appeals court, evidence supported the district court's findings that the officer was knowingly untruthful in claiming that the inmate lied in the grievance, the officer's retaliatory conduct was willful, reckless, and malicious, and the officer knew that Arkansas Department of Corrections (ADC) regulations prohibited him from filing the disciplinary report. The court held that the district court did not err in concluding that the high, 2,500:1 ratio of punitive to economic damages awarded to the inmate in his § 1983 action did not offend due process, where the officer's action was sufficiently egregious to sustain the punitive damages. (Arkansas Dept. of Corr., Tucker Max. Security Unit)

U.S. Supreme Court
CIVIL LIABILITY

Haywood v. Drown, 129 S.Ct. 2108 (2009). A state prisoner brought civil rights actions in the New York Supreme Court against several correction employees for allegedly violating his civil rights in connection with prisoner disciplinary proceedings. The action was dismissed as barred by a state “jurisdictional” statute requiring that such causes of action for damages arising out of the conduct of state corrections officers within the scope of their employment be filed against the state in the New York Court of Claims. The prisoner appealed. The New York Supreme Court Appellate Division affirmed, and the prisoner appealed. The New York Court of Appeals affirmed. The United States Supreme Court granted certiorari. The Supreme Court reversed and remanded. The court held that, having made the decision to create courts of general jurisdiction which regularly sat to entertain analogous civil rights actions against state officials other than corrections officers, New York was not at liberty to shut the doors of these courts to civil rights actions to recover damages from its corrections officers for acts within the scope of their employment, and to instead require that such damages claims be pursued against the state in another court of only limited jurisdiction. (New York)

U.S. Appeals Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Hendrickson v. Cooper, 589 F.3d 887 (7th Cir. 2009). A prisoner brought a § 1983 action against a prison officer alleging excessive force. The district court entered judgment following a jury verdict in favor of the prisoner and denied the officer's motion for judgment as matter of law or a new trial. The officer appealed. The appeals court affirmed. The court held that the issue of whether the officer attacked the prisoner for the malicious purpose of causing harm was for the jury, as was the issue of whether the attack caused the prisoner to feel pain. According to the court, the jury's award of compensatory damages of \$75,000 for the prisoner's pain and suffering was not excessive, noting that objective medical evidence was not required to support a compensatory damages award. The court also found that the jury's punitive damages award of \$125,000 against the officer was not excessive, in light of the prisoner's description of how much pain the officer inflicted by throwing him to the ground and kneeling him in the back. The court noted that the officer acted with a malicious desire to cause the prisoner harm, the officer's use of force was completely unjustified, the officer goaded the prisoner into leveling an assault which the officer then used as an excuse to attack, the officer laid in wait for the prisoner to enter a housing unit, the prisoner was disabled, and when the prisoner appeared the officer grabbed, shoved, floored, and kneed him. The appeals court opinion began with the following statement: “Prison is rough. Violent prisoners can pose a serious threat, requiring prison officers to use force to maintain order. Sometimes, though, the only real threat comes from a rogue officer who attacks a prisoner for no good reason.” (Wabash Valley Correctional Facility, Indiana)

U.S. District Court
CONTRACT SERVICES
PRIVATE OPERATOR

Hinton v. Corrections Corp. of America, 624 F.Supp.2d 45 (D.D.C. 2009). An inmate, acting pro se and in forma pauperis, brought a § 1983 action against a private corporation that operated the treatment facility where the inmate was held in custody, alleging the facility failed to provide prescription eyeglasses in violation of the Eighth Amendment. The district court dismissed the case. The court held that the inmate's allegations were insufficient to state a § 1983 claim for an Eighth Amendment violation. According to the court, the corporation had no duty to provide eye glasses, eye care, or eye treatment, as the corporation's contract with the government did not stipulate that the corporation was to provide eye care, and a separate entity, other than the corporation, was under contract to provide eye care to inmates at the facility. (Central Treatment Facility, District of Columbia, operated by Corrections Corporation of America)

U.S. Appeals Court
DAMAGES

Kahle v. Leonard, 563 F.3d 736 (8th Cir. 2009). An individual who was raped by a trainee corrections officer while she was a pretrial detainee, brought a § 1983 action against the trainee corrections officer and other public officials and entities. After a jury found the trainee corrections officer liable and awarded damages, the district court granted the plaintiff's motion for attorneys' fees. The trainee corrections officer appealed. The appeals court affirmed in part and remanded in part. The court held that the district court did not abuse its discretion by admitting the plaintiff's psychologist's report as a supplemental report, and the district court's jury instructions did not constitute an abuse of discretion. The district court applied one percent of the detainee's \$1.1 million judgment (\$11,000) to attorneys' fees. With the detainee's legal expenses totaling \$186,208.88, the defendant was responsible for \$175,208.88 in attorneys' fees, in addition to the \$1.1 million judgment. The appeals court did not affirm the award of only one percent and remanded the case for further proceedings. (Pennington County Jail, South Dakota)

U.S. Appeals Court
SETTLEMENT

King v. Rivas, 555 F.3d 14 (1st Cir. 2009). A pretrial detainee brought an action against corrections officers and others, alleging constitutional violations relating to a false accusation of threatening a guard. Prior to trial, the defendants made a package settlement offer, which was rejected by the detainee. Following the trial of one officer, a jury awarded the detainee damages in an amount less than the settlement offer. The parties moved for attorney's fees and costs. The district court granted the detainee's motion and denied the defendant's motion. The officer appealed. The appeals court vacated and remanded. The court held that the package settlement offer is to be taken on its own terms and compared with the total recovery package in determining whether a defendant is entitled to costs following the detainee's success at trial. The court held that the officer was entitled to costs, excluding attorney's fees, and that the detainee was entitled only to attorney's fees and costs accrued prior to the rejected offer. (Hillsborough House of Corrections, New Hampshire).

U.S. Appeals Court
DAMAGES
FTCA- Federal Tort
Claims Act

Limone v. U.S., 579 F.3d 79 (1st Cir. 2009). Former prisoners whose murder convictions were overturned, and representatives of codefendants who died in prison, brought an action against the United States Government, asserting claims under the Federal Tort Claims Act (FTCA) arising from the Government's involvement in framing the prisoners. Following a bench trial, the district court entered judgment for the plaintiffs, and the Government appealed. The appeals court held that evidence supported the district court's conclusion that the FBI's conduct in cultivating witness's testimony inculcating wrongly accused defendants in a state murder prosecution, while possessing information undercutting the testimony's veracity, was extreme and outrageous, as required to state a claim for intentional infliction of emotional distress under Massachusetts law and the Federal Tort Claims Act (FTCA). According to the court, the FBI agents knowingly participated in events leading to wrongful indictment, prosecution, conviction and continued incarceration of the defendants, they aided a witness in framing the plaintiffs and they bolstered the credibility of the witness's testimony. The appeals court held that the FBI's conduct did not fall within the Federal Tort Claims Act's (FTCA) discretionary function exception, and thus the Government was not immune from the defendants' claim for intentional infliction of emotional distress under Massachusetts law and FTCA. According to the court, the FBI's conduct violated due process. The appeals court ruled that non-economic damages awards of \$1 million per year of wrongful incarceration in the plaintiffs' action were not excessive and the damages awards were not grossly disproportionate to the injuries sustained and did not shock the conscience. (Federal Bureau of Investigation, Suffolk County, Massachusetts)

U.S. Appeals Court
CONTRACT SERVICES
DAMAGES

Medical Development Intern. v. California Dept. of Corrections and Rehabilitation, 585 F.3d 1211 (9th Cir. 2009). A medical services provider for two California Department of Corrections and Rehabilitation (CDCR) prisons brought an action in state court against CDCR and the receiver appointed by the United States District Court for the Northern District of California to oversee the delivery of medical care to prisoners incarcerated by the CDCR. The provider sought damages for the receiver's refusal to pay for services it provided under contract with CDCR. After the case was removed to the district court, the court granted the receiver's motion to dismiss. The provider appealed, but the appeal was stayed to allow the provider to seek leave from the Northern District to sue the receiver. Subsequently, the Northern District denied the provider's request, and then denied the provider's motion for clarification. The provider appealed. The appeals court affirmed in part, vacated in part, and remanded to the United States District Court for the Eastern District of California. The appeals court held that the receiver was not immune in his official capacity from the claim of a medical services provider seeking damages for the receiver's refusal to pay for services it provided under contract with CDCR. The court noted that the receiver held "all powers vested by law in the Secretary of the CDCR as they relate[d] to the administration, control, management, operation, and financing of the California prison medical health care system," which necessarily included the power to control CDCR with regard to paying the provider. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
QUALIFIED IMMUNITY

Merriweather v. Zamora, 569 F.3d 307 (6th Cir. 2009). A former federal prisoner filed a Bivens complaint claiming deprivation of his First, Fifth, and Sixth Amendment rights by prison mailroom employees' routinely opening and reading prisoner's mail outside of his presence, although the mail was marked as "legal mail" or "special mail" pursuant to Bureau of Prison's (BOP) regulations. The district court denied the employees summary judgment on the grounds of qualified immunity. The employees appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that: (1) a fact issue precluded summary judgment as to whether two envelopes from the prisoner's attorney were opened outside the presence of the prisoner; (2) an envelope from federal community defenders was properly labeled legal mail; (3) nine envelopes containing the word "attorney/client" were properly labeled legal mail; (4) prison employees' opening of the prisoner's legal mail outside his presence violated his clearly established First and Sixth Amendment rights; (5) prison mailroom supervisors were not protected by qualified immunity; but (6) prison mailroom employees were protected by qualified immunity. According to the court, the former prisoner's allegations that prison mailroom employees opened his legal mail outside his presence despite his repeated complaints to mailroom supervisors were sufficient to find that mailroom supervisors acted unreasonably in response to the prisoner's complaints, precluding the supervisors' protection by qualified immunity from the prisoner's claims. The prisoner alleged that the supervisors' conduct encouraged an atmosphere of disregard for proper mail-handling procedures, where one supervisor stated that the prison did not have to follow case law but only the Bureau of Prisons' (BOP) policy, and that other supervisors knew of the prisoner's complaints but did nothing to correct the admitted errors. (Michigan Federal Detention Center. Federal Bureau of Prisons)

U.S. District Court
CLASS ACTION

Miller v. Washington County, 650 F.Supp.2d 1113 (D.Or. 2009). Inmates brought a class action against county and sheriff, alleging that the county's policy of strip searching inmates was unconstitutional. The parties cross-moved for summary judgment, and the inmates additionally moved for class certification. The district court held that summary judgment was precluded by genuine issues of material fact existed as to whether the county's blanket policy of strip searching all individuals transported from another correctional or detention facility was justified by the need for institutional security. The court denied class certification, finding that the county's strip

search policy regarding arrestees did not present common questions of law or fact. The court stayed the action, noting that the appellate court was reviewing a strip search policy at the time. (Washington Co. Jail, Oregon)

U.S. District Court
DAMAGES

Nails v. Laplante, 596 F.Supp.2d 475 (D.Conn. 2009). A state prisoner filed a civil rights action alleging that physicians had been deliberately indifferent to his medical needs and violated his rights under the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that the prisoner's disagreement over the treatment provided by the defendant physicians was insufficient to show that the physicians actually were aware of a substantial risk that the prisoner would suffer serious harm as the result of their actions or inactions, as required for a claim of deliberate indifference under Eighth Amendment, or a claim under Title II of ADA. The court noted that a private suit for money damages under Title II of ADA could have been maintained against the physicians in their official capacities only if the prisoner, as plaintiff, could have established that the Title II violation had been motivated by either discriminatory animus or ill will due to the prisoner's disability. (Osborn Correctional Institution, Connecticut)

U.S. Appeals Court
INDIVIDUAL CAPACITY
RLUIPA-Religious Land
Use & Inst. Persons Act

Nelson v. Miller, 570 F.3d 868 (7th Cir. 2009). A Roman Catholic prisoner sued a prison chaplain in his official and individual capacities for alleged violations of his rights under the free exercise and establishment clauses of the First Amendment, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the Illinois Religious Freedom Restoration Act (IRFRA). The district court entered partial summary judgment in favor of the chaplain, and, after a bench trial on the remaining issues, found against the prisoner on all counts. The prisoner appealed. The appeals court held that the Roman Catholic prisoner's practice of his religion, which compelled him to abstain from all meat on all Fridays and during Lent and to avoid the meat of four-legged animals, was substantially burdened under the First Amendment, RLUIPA, and IRFRA by the requirement that he document that his preferred diet was compelled by his religion. The court found that denial of the prisoner's request that he not be given the meat of four-legged animals did not constitute a substantial burden on his religious exercise for the purposes of the First Amendment, RLUIPA, and IRFRA since a regular diet would still be nutritionally adequate if all meat of four-legged animals were skipped, and thus the prisoner was not put to a choice between his religious beliefs and adequate nutrition. But the denial of a non-meat diet on Fridays and during Lent substantially burdened the prisoner's practice of his religion. According to the court, since the prisoner currently received a non-meat diet and there was no evidence that the prison intended to revoke the prisoner's religious diet, the prisoner's claim for injunctive relief was moot. The court noted that RLUIPA, which was enacted pursuant to the Spending Clause, could not subject state officials to suit in their individual capacities. (Tamms Correctional Center, Illinois)

U.S. District Court
CONSENT DECREE-
TERMINATION
PLRA-Prison Litigation
Reform Act

North Emerson-West v. Redman, 630 F.Supp.2d 373 (D.Del. 2009). A state inmate filed a motion for relief from the district court's order terminating a consent order entered in a class action challenging prison conditions and disciplinary procedures. The court denied the motion. The district court held that the inmate did not have standing to challenge the order, which was brought 30 years earlier, under Prison Litigation Reform Act (PLRA). The court held that termination of the consent order was warranted, where the consent order encompassed the state's entire penal system of discipline and sanctions, that there was no mention that it was entered to correct constitutional violations, particularly with respect to due process issues and subsequently a United States Supreme Court decision provided clear guidance regarding prisoners' due process rights, and finally that the consent order was not the least intrusive means to correct any alleged constitutional violation. (James T. Vaughn Correctional Center, Smyrna, Delaware)

U.S. District Court
ALIEN
INJUNCTIVE RELIEF
MUNICIPAL LIABILITY

Ortega Melendres v. Arpaio, 598 F.Supp.2d 1025 (D.Ariz. 2009). Detainees of Hispanic descent brought an action against a county sheriff for declaratory and injunctive relief, alleging that deputies from the sheriff's office profiled, targeted, and ultimately stopped and detained persons based on their race in violation of the Fourth and Fourteenth Amendments. The district court ruled against the defendants' motion to dismiss. The court held that: (1) allegations were sufficient to state Fourth Amendment claims; (2) allegations were sufficient to state equal protection claims; (3) the county was subject to municipal liability; and (4) the court would not dismiss the county sheriff's office as a non-jural entity. The plaintiff was detained for four hours in a police holding cell without being apprised of any charges against him, and was then handed over to Immigration and Customs Enforcement officials.

The court held that an allegation that deputies placed the Hispanic passenger of a speeding vehicle in full custodial arrest for violating United States immigration laws, even after the passenger provided them with sufficient immigration documents, including a United States Visa containing a fingerprint and picture, a Department of Homeland Security (DHS) permit, and a Mexican Federal Voter Registration Card with a picture and fingerprint, was sufficient to state a claim for a Fourth Amendment violation for being placed into full custodial arrest without probable cause. The court noted that an allegation that the deputies' request for an Hispanic driver's Social Security card was not "standard procedure" for all routine traffic stops conducted by the county. According to the court, allegations that the county sheriff made a public statement that physical appearance alone was sufficient to question an individual about their immigration status, that the county's crime suppression sweeps had been allegedly targeted at areas having a high concentration of Hispanics, and that the county had used volunteers with known animosity towards Hispanics and immigrants to assist in crime sweeps, were sufficient to allege a discriminatory purpose, as required to state a § 1983 equal protection claim. (Maricopa County Sheriff's Office, Cave Creek Holding Cell, Arizona)

U.S. District Court
BIVENS CLAIM
QUALIFIED IMMUNITY

Padilla v. Yoo, 633 F.Supp.2d 1005 (N.D.Cal. 2009). A detainee, a United States citizen who was designated an "enemy combatant" and detained in a military brig in South Carolina, brought an action against a senior government official, alleging denial of access to counsel, denial of access to court, unconstitutional conditions of confinement, unconstitutional interrogations, denial of freedom of religion, denial of right of information, denial of right to association, unconstitutional military detention, denial of right to be free from unreasonable seizures,

and denial of due process. The defendant moved to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee, who was a United States citizen, had no other means of redress for alleged injuries he sustained as a result of his detention, as required for Bivens claim against the senior government official, alleging the official's actions violated constitutional rights. The court noted that the Military Commissions Act was only applicable to alien, or non-citizen, unlawful enemy combatants, and the Detainee Treatment Act did not "affect the rights under the United States Constitution of any person in the custody of the United States." The court found that national security was not a special factor counseling hesitation and precluding judicial review in the Bivens action brought by the detainee. Documents drafted by the official were public record, and litigation may be necessary to ensure compliance with the law.

The court held that the detainee sufficiently alleged that the official's acts caused a constitutional deprivation, as required for the detainee's constitutional claims against the official. The detainee alleged that the senior government official intended or was deliberately indifferent to the fact that the detainee would be subjected to illegal policies that the official set in motion, and to a substantial risk that the detainee would suffer harm as a result, that the official personally recommended the detainee's unlawful military detention and then wrote opinions to justify the use of unlawful interrogation methods against persons suspected of being enemy combatants. According to the court, it was foreseeable that illegal interrogation policies would be applied to the detainee, who was under the effective control of a military authority and was one of only two suspected enemy combatants held in South Carolina.

The court found that the detainee's allegations that he was detained incommunicado for nearly two years with no access to counsel and thereafter with very restricted and closely-monitored access, and that he was hindered from bringing his claims as a result of the conditions of his detention, were sufficient to state a claim for violation of his right to access to courts against a senior government official.

According to the court, the detainee's allegations that a senior government official bore responsibility for his conditions of confinement due to his drafting opinions that purported to create legal legitimacy for such treatment, were sufficient to state a claim under the Eighth Amendment, and thus stated a due process claim under the Fourteenth Amendment. The detainee alleged that while detained, he suffered prolonged shackling in painful positions and relentless periods of illumination and intentional interference with sleep by means of loud noises at all hours, that he was subjected to extreme psychological stress and impermissibly denied medical care, that these restrictions and conditions were not justified by a legitimate penological interest, but rather were intended to intensify the coerciveness of interrogations.

The court held that federal officials were cognizant of basic fundamental civil rights afforded to detainees under the United States Constitution, and thus a senior government official was not entitled to qualified immunity from claims brought by the detainee. The court also held that the official was not qualifiedly immune from claims brought by the detainee under the Religious Freedom Restoration Act (RFRA). (Military Brig, South Carolina)

U.S. Appeals Court
COMPENSATORY
DAMAGES

Phillips v. Hust, 588 F.3d 652 (9th Cir. 2009). An inmate brought a § 1983 action against a prison librarian, claiming that her failure to allow him access to a comb-binding machine violated his First Amendment right of access to the courts. The district court granted summary judgment to the inmate, and after a bench trial, awarded the inmate \$1,500 in compensatory damages. A panel of the court of appeals affirmed, and the librarian's petition for a rehearing en banc was denied. The United States Supreme Court granted the librarian's petition for a writ of certiorari, vacated the panel opinion, and remanded. On remand, the appeals court reversed and remanded, finding that the librarian was entitled to qualified immunity. According to the court, it was objectively legally reasonable for the prison librarian to conclude that her denial of access to the comb-binding machine would not hinder the inmate's capability to file his petition for a writ of certiorari to the Supreme Court of the United States, and thus the librarian was entitled to qualified immunity from the inmate's § 1983 suit in light of the Supreme Court's flexible rules for pro se filings, which did not require and perhaps did not even permit comb-binding. (Snake River Correctional Institution, Oregon)

U.S. Appeals Court
CONTEMPT

Plata v. Schwarzenegger, 560 F.3d 976 (9th Cir. 2009). In a class action brought on behalf of state prisoners, alleging that state officials were providing inadequate health care in violation of the Eighth Amendment and the Americans with Disabilities Act (ADA), the receiver appointed to oversee the provision of health care at state prisons moved for an order of contempt based on the state's failure to fund the receiver's capital projects. The district court ordered the state to fund the projects and to show cause why it should not be held in contempt. The state appealed, and alternatively filed a petition for a writ of mandamus. The appeals court dismissed the appeal and denied the writ of mandamus. According to the court, the state failed to prove that it would be damaged or prejudiced in a way not correctable on appeal, weighing against granting the state's petition for a writ of mandamus to prevent the district court from holding it in contempt based on its failure to fund the receiver's capital projects. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
INDIVIDUAL CAPACITY
RLUIPA-Religious Land
Use & Inst. Persons Act

Rendelman v. Rouse, 569 F.3d 182 (4th Cir. 2009). A state prisoner brought an action against state prison officials in their official and individual capacities, seeking injunctive relief and damages under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and § 1983 based on the officials' refusal to make any accommodation for his kosher dietary restrictions. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court dismissed in part and affirmed in part. The appeals court held that RLUIPA did not authorize a claim for money damages against an official sued in her individual capacity when invoked as a spending clause statute. The court held that the prisoner's claim for injunctive relief under RLUIPA based on the state prison officials' refusal to make accommodations for his kosher dietary restrictions was rendered moot by his transfer to a federal prison. The court noted that even if the prisoner's claim was capable of repetition because there was a possibility that he could return to state prison if his appeal of a federal conviction was successful, the claim would not likely persist in evading judicial review, as the prisoner would have sufficient opportunity to re-initiate an action seeking injunctive relief if he returned to state prison. (Maryland Correctional Institution-Hagerstown)

U.S. District Court
INJUNCTIVE RELIEF
QUALIFIED IMMUNITY
RLUIPA-Religious Land
Use & Inst. Persons Act

Rouser v. White, 630 F.Supp.2d 1165 (E.D.Cal. 2009). A California state prisoner brought a § 1983 action against current and former directors of the California Department of Corrections and Rehabilitation (CDCR) and wardens at two prisons at which the prisoner was housed, alleging violations of federal and state constitutions, and the Religious Land Use and Institutionalized Persons Act (RLUIPA), related to his practice of the Wiccan religion. The defendants moved for summary judgment and the district court granted the motion in part and denied in part. The court held that the officials significantly burdened the prisoner's exercise of the Wiccan religion under RLUIPA by inhibiting the prisoner's timely receipt of religious articles, restricting Wiccans' use of chapel space, failing to announce Wiccan group worship to the general population, prohibiting use of certain items that are part of group worship, blocking access to religious items, and failing to retain a paid chaplain to provide services to the prisoner and other Wiccans. According to the court, the officials made no deliberate change in policies to prevent the recurrence of the events that caused understaffing that resulted in the prisoner being barred from attending group services. The court held that the failure of the officials to hire a paid chaplain to attend to the religious needs of the prisoner and other Wiccans constituted a substantial burden on the prisoner's religious exercise under RLUIPA, where paid chaplains had certain rights and authority within institutions, which volunteer chaplains and inmates themselves were denied, thus hindering the prisoner's religious exercise. The court found that neither limited resources, nor lack of necessary accommodations to facilitate the religious needs in prisons, constituted a compelling interest under RLUIPA, and thus the California Department of Corrections and Rehabilitation could not avoid liability under RLUIPA in the prisoner's action.

The court held that a prison warden, but not the director of the California Department of Corrections and Rehabilitation, was liable for violation of the prisoner's free exercise of the Wiccan religion arising from denial of the prisoner's request for a "Witches Bible" while the prisoner was in administrative segregation. According to the court, even if the warden did not personally sign the form denying the request, it was reasonable to assume that the person who signed the form did so with the warden's authority. But the court found that the proffered reasons were rationally related to the denial of the prisoner's request for incense and candles, and thus did not violate the prisoner's right of free exercise of religion. The director and warden denied the request based on fire safety concerns. The court held that California prison officials instituted a policy of denominational preference by harassing the prisoner on the basis of his Wiccan faith, and denying him access to religious articles, group worship, and a spiritual leader, thus weighing against the officials under the test to determine whether they violated the prisoner's rights under the Establishment Clause. The court noted that the officials' policy to announce to the general population times for certain religious services, but not to announce Wiccan services, had the primary effect of advancing or inhibiting religion.

The court denied qualified immunity to the director and the warden because the law was well-settled at the time. The court concluded that the prisoner was entitled to injunctive relief on his claims, even though officials had changed some policies to facilitate the prisoner's access to religious items and group worship. The court found that these changes had not improved the process for approving orders for religious items nor altered the way in which religious groups gained access to items in lockers, and a pattern of constitutional violations existed sufficient to call into question the permanence of any changes the defendants had made. (Pleasant Valley State Prison, California)

U.S. District Court
INJUNCTIVE RELIEF

Scott v. DiGuglielmo, 615 F.Supp.2d 368 (E.D.Pa. 2009). A state inmate filed an action seeking a declaration that he had serious and continuing mental health condition and had not been receiving adequate treatment, and an injunction ordering prison officials to make corrections to his prison charts. The district court granted the officials' motion to dismiss in part and denied in part. The court held that the inmate had standing to seek declaratory and injunctive relief against prison officials based on his claim that he had a serious and continuing mental health condition and had not been receiving adequate treatment, where the alleged denial of proper medical and psychiatric care was continuing, and there was a substantial likelihood that his injury would be addressed by the requested relief. (State Correctional Institution at Graterford, Pennsylvania)

U.S. Appeals Court
BIVENS CLAIM
FTCA-Federal Tort Claims
Act

Smith v. U.S., 561 F.3d 1090 (10th Cir. 2009). An inmate brought an action against prison employees, the U.S. Attorney General, and the director of the Federal Bureau of Prisons, alleging that he was exposed to asbestos while assigned to work at a prison. The district court granted the defendants' motion to dismiss, and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the Inmate Accident Compensation Act was the exclusive remedy against the government for a prisoner with alleged work-related injuries, and thus dismissal of the prisoner's claims under Federal Tort Claims Act (FTCA) was warranted. The court held that the federal workers' compensation scheme for participants in a prison work program lacked the requisite procedural safeguards of the inmate's constitutional rights to foreclose a Bivens action by the inmate. According to the court, the inmate's allegations that prison employees had known that asbestos was present in a closet in which the inmate was working when he was exposed to asbestos were sufficient to state an Eighth Amendment Bivens claim against those employees. (United States Penitentiary at Leavenworth, Kansas)

U.S. District Court
DAMAGES

Tardiff v. Knox County, 598 F.Supp.2d 115 (D.Me. 2009). After granting a detainee's motion for summary judgment on liability under § 1983 for a strip search she underwent at a county jail, the county moved to exclude the detainee's evidence of lost income or profits allegedly caused by her mental distress growing out of the strip search. The district court granted the motion in part and denied in part. The court held that the detainee's tardy pretrial disclosure of economic loss information did not prejudice the county's ability to investigate so as to warrant the exclusion of evidence of the detainee's evidence of lost income or profits. The court found that damages for economic loss based upon a lost future contract were not recoverable in the civil rights suit seeking damages allegedly caused by the detainee's mental distress, since the jury would have to speculate in order to determine whether the detainee suffered an economic loss on a future contract and, if so, how much. (Knox County Jail, Maine)

U.S. Appeals Court
CLASS ACTION

Vallario v. Vandehey, 554 F.3d 1259 (10th Cir. 2009). County jail inmates sued a county sheriff and a county's administrator of jail operations in their official capacities, alleging disregard of risks to inmates from restraint chairs and other devices, and the denial of access to psychiatric care for indigent inmates. The district court grants the inmates' motion for class certification and the defendants petitioned for interlocutory appeal. The appeals court granted the petition and remanded the case. The court held that the district court abused its discretion by misconstruing the complaint as alleging that denial of adequate mental health treatment affected all inmates, and abused its discretion by refraining from any consideration whatsoever of the action's merits. (Garfield Co. Jail, Colo.)

U.S. District Court
POLICIES/PROCEDURES
SANCTIONS
SETTLEMENT

Walker v. Gomez, 609 F.Supp.2d 1149 (S.D.Cal. 2009). A prisoner brought an action against the California Department of Corrections and Rehabilitation, alleging violations of their settlement agreement with the prisoner that resulted from a prior complaint, discrimination based on race as a policy, and retaliation. The prisoner moved to enforce the settlement agreement and for monetary sanctions. The court held that the prison officials' conduct of placing the prisoner under lockdown for a period of 10 days following incidents of riots and attempted murder was not a severe restriction on the prisoner's activities amounting to a breach of the terms of the prior settlement agreement. The court found that prison officials did not violate the settlement agreement's requirement that they implemented policies and procedures within the prison system which held inmates accountable for their own individual conduct rather than institute prison-wide lockdowns based on race. The court held that a prison counselor's conduct of asking the prisoner if he wished to transfer to another prison that would cater to his "sensitive needs" was not in retaliation in violation of the settlement agreement. The court noted that the act of asking the prisoner if he would like to volunteer for a transfer was simply because a new facility was in place and inmates were needed to successfully operate it, and, moreover, the counselor testified that she asked the same question of other inmates and she posted a sign on her office window conveying the same inquiry she posed to prisoner, and, further, the prisoner was never transferred. According to the court, a prison counselor's conduct of staying in the same room as the prisoner while he completed confidential calls did not amount to retaliation in violation of the settlement agreement. (Calipatria State Prison, California)

U.S. District Court
FAILURE TO PROTECT
FAILURE TO TRAIN
NEGLIGENCE

Wilson v. Taylor, 597 F.Supp.2d 451 (D.Del. 2009). The mother of a deceased prisoner, who died in his solitary cell as a result of asphyxia due to hanging after an apparent attempt to feign suicide, brought a § 1983 action against Delaware Corrections officials. The district court denied the defendants' motion for summary judgment. The court held that fact issues precluded summary judgment on the mother's § 1983 claim, custom or policies claim, deliberate indifference claim, qualified immunity grounds, wrongful death claim, and claim for punitive damages. The court found genuine issues of material fact as to: (1) whether the prisoner's detention was valid at the time of his death; (2) whether Delaware Corrections officials failed to train and or maintain customs, policies, practices, or procedures, relating to the prisoner's repeated release inquiry; (3) whether Delaware Corrections officials' ignored the prisoner's risk of hurting himself to get the attention of guards as to his repeated release inquiries; (4) whether a correctional officer acted in good faith and without gross or wanton negligence in throwing the prisoner against a bench in his cell while holding his throat and threatening him verbally; and (5) whether Delaware Corrections officials' conduct in ignoring the prisoner's repeated release inquiries was a proximate cause of the prisoner's ultimate death. The court also found that fact issues existed as to whether Delaware Corrections officials acted outrageously and with reckless indifference to the rights of others, precluding summary judgment on the mother's § 1983 claim for punitive damages. (Delaware Correctional Center)

U.S. District Court
CONTRACT SERVICES
PRIVATE OPERATOR

Wormley v. U.S., 601 F.Supp.2d 27 (D.D.C. 2009). A detainee brought an action against private correctional entities, the District of Columbia, the federal government and officials, stemming from an alleged five-month jail over-detention. The court held that the conduct of federal officials in allegedly causing the five-month jail over-detention did not violate a clearly established federal right of which a reasonable officer would have known, for the purposes of the officials' qualified immunity defense to the detainee's Fifth Amendment claim, since the officials did not participate in the actual over-detention. The court found that the private correctional vendor sued by the detainee, stemming from an alleged five-month jail over-detention, was acting "under color of state law," for purposes of the detainee's § 1983 claims, since the vendor was performing a traditional government function by administering the District of Columbia Correctional Treatment Facility. (Washington Halfway Homes, Fairview Halfway House, Correctional Treatment Facility, Corrections Corporation of America, District of Columbia)

2010

U.S. District Court
INJUNCTIVE RELIEF
SOVEREIGN IMMUNITY

Advocacy Center for Elderly and Disabled v. Louisiana Dept. of Health and Hospitals, 731 F.Supp.2d 583 (E.D.La., 2010). A disability advocacy organization and incompetent detainee's next friend brought an action against the Louisiana Department of Health and Hospitals and Department officials, challenging the Department's practice of subjecting incompetent criminal defendants to extended delays in parish jails before their transfer to a mental health facility. The defendants moved to dismiss. The district court denied the motion. The court held that the action fell within the Ex Parte Young exception to sovereign immunity, where the organization alleged an ongoing violation of the Fourteenth Amendment and sought prospective relief in the form of a permanent injunction requiring officials to accept custody of incompetent defendants and provide them with proper restorative treatment. The court noted that the Ex Parte Young exception to sovereign immunity holds that a suit is not barred when it is brought against state officials to enjoin the enforcement of an allegedly unconstitutional law. The court found that the disability advocacy organization had associational standing to bring the due process challenge where the organization was allied with and representative of its constituents, who had standing to sue in their own right. The federal laws under which the Advocacy Center was established include the Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("PAIMI"). (Louisiana Department of Health and Hospitals, Feliciana Forensic Facility)

U.S. District Court
INJUNCTIVE RELIEF

Advocacy Center for Elderly and Disabled v. Louisiana Dept. of Health and Hospitals, 731 F.Supp.2d 603 (E.D.La. 2010). A disability advocacy organization brought an action challenging the Louisiana Department of Health and Hospitals' practice of subjecting incompetent criminal defendants to extended delays in parish jails before their transfer to a mental health facility. The organization moved for a preliminary injunction. The district court granted the motion in part and denied in part. The court held that the organization demonstrated a substantial likelihood of success on the merits of its due process claim, and demonstrated a substantial threat of irreparable injury if the injunction did not issue. The court found that the organization demonstrated that the threatened injury outweighed the damage the injunction might cause, and the organization demonstrated that the public interest would not be disserved if an injunction was issued. The organization claimed that the Louisiana Department of Health and Hospitals' practice of subjecting criminal defendants found to be incompetent to stand trial to extended delays in parish jails before their transfer to a mental health facility was not rationally related to the restoration of the defendants' competency, in violation of their due process rights, where incompetent defendants remained in parish jails because mental health facility was full, not because remaining in jail might restore their competency. The court noted that the organization presented evidence that continued incarceration in parish jails could exacerbate the incompetent defendants' mental conditions. The court held that inadequate funding could not excuse the Department's perpetuation of unconstitutional conditions of confinement. (Louisiana Department of Health and Hospitals, Feliciana Forensic Facility)

U.S. Appeals Court
CONTRACT SERVICES
INJUNCTIVE RELIEF
PLRA- Prison Litigation
Reform Act

Armstrong v. Schwarzenegger, 622 F.3d 1058 (9th Cir. 2010). A class of disabled state prison inmates and parolees moved for an order requiring state prison officials to track and accommodate the needs of disabled parolees housed in county jails, and to provide access to a workable grievance procedure pursuant to the officials' obligations under the Americans with Disabilities Act (ADA), Rehabilitation Act, and prior court orders. The district court granted the motion and the state appealed. The appeals court affirmed in part and vacated in part. The appeals court held that: (1) contractual arrangements between the state and a county for incarceration of state prison inmates and parolees in county jails were subject to ADA; (2) the district court's order was not invalid for violating federalism principles; (3) the state failed to show that the order was not the narrowest, least intrusive relief possible, as required by the Prison Litigation Reform Act (PLRA); but (4) there was insufficient evidence to justify the system-wide injunctive relief in the district court's order. The court noted the state's recent proposal to alter its sentencing practices to place in county jails approximately 14,000 persons who would otherwise be incarcerated in state prisons. The court also noted that the state's contracts with counties were not simply for incarceration, but to provide inmates and parolees in county jails with various positive opportunities, from educational and treatment programs, to opportunities to contest their incarceration, to the fundamentals of life, such as sustenance, and elementary mobility and communication, and the restrictions imposed by incarceration meant that the state was required to provide these opportunities to individuals incarcerated in county jails pursuant to state contracts to the same extent that they were provided to all state inmates. The district court's order did not require the state to shift parolees to state facilities if county jails exhibited patterns of ADA non-compliance; rather, the order required that, if the state became aware of a class member housed in a county jail who was not being accommodated, the state either ensure that the jail accommodated the class member, or move the class member to a state or county facility which could accommodate his needs. In finding that statewide injunctive relief was not needed, the court held that evidence of ADA violations was composed largely of single incidents that could be isolated, and the district court's order identified no past determinations that showed class members in county jails were not being accommodated. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
OFFICIAL CAPACITY
POLICIES/PROCEDURES

Avalos v. Baca, 596 F.3d 583 (9th Cir. 2010). A detainee brought an action against officers of a county sheriff's department in their official and individual capacities for alleged violations of his Fourth and Fourteenth Amendment rights based on his over-detention and the officers' alleged efforts to procure an involuntary waiver of his civil rights claim. The district court granted summary judgment in favor of the officers. The detainee appealed. The appeals court affirmed. The court held that the officers were not liable under § 1983 in their official capacities on the over-detention claim, absent evidence that they had a policy, practice, or custom of over-detaining inmates. According to the court, the detainee had no freestanding constitutional right to be free of a coercive waiver, and even if the detainee had a right to be free from a coercive waiver, the officers were entitled to qualified immunity on the involuntary waiver claim. The detainee had been arrested on a warrant from another county for domestic abuse and was transported to the arresting county jail. The arresting county had the responsibility to notify the other county, under state law, but failed to do so. Over two months later the arresting county realized that the detainee had been over-detained and released him. On the day of his release, a deputy in street clothing asked the detainee, who did not speak English, to sign papers that were an offer to settle his claim for over-detention for \$500. The detainee asserted that he did not know what was in the papers. (Los Angeles Sheriff's Department, California)

U.S. District Court
FAILURE TO SUPERVISE
FAILURE TO TRAIN
MUNICIPAL LIABILITY

Beatty v. Davidson, 713 F.Supp.2d 167 (W.D.N.Y. 2010). A former pretrial detainee brought a § 1983 action against a county, jail officials, and a nurse, alleging that the defendants denied him adequate medical care while he was a pretrial detainee, in violation of his Fourteenth Amendment rights. The defendants moved for summary judgment. The district court denied the motion. The court held that the detainee's diabetic condition was a serious medical condition and that a genuine issue of material fact existed as to whether the nurse was deliberately indifferent to the detainee's diabetic condition, precluding summary judgment for the nurse. The court held that summary judgment was precluded by a genuine issue of material fact as to whether jail officials were grossly negligent in supervising subordinates who allegedly violated the former pretrial detainee's constitutional rights. According to the court, a genuine issue of material fact existed as to whether the county lacked a system at its jail for managing chronically ill inmates and failed to train and properly supervise its staff, precluding summary judgment for the county on the former pretrial detainee's municipal liability claim under § 1983. (Erie County Holding Center, Pennsylvania)

U.S. Appeals Court
FAILURE TO PROTECT
DELIBERATE
INDIFFERENCE

Brown v. North Carolina Dept. of Corrections, 612 F.3d 720 (4th Cir. 2010). An inmate brought a § 1983 suit against correctional officers and the North Carolina Department of Corrections, claiming that they violated his Eighth Amendment rights by being deliberately indifferent to the serious harm he suffered at the hands of a fellow inmate. The district court dismissed the action and the inmate appealed. The appeals court vacated and remanded. The court held that the prisoner, who suffered significant physical injuries as the result of another inmate's attack, sufficiently alleged a § 1983 claim of deliberate indifference to his Eighth Amendment rights against an officer who allegedly observed the altercation and failed to respond, and another officer who allegedly was aware of the other inmate's grudge but still sent the prisoner into a housing block to pick up supplies. The court found that the inmate stated a § 1983 claim against a corrections officer of deliberate indifference by alleging that an officer was in "the Block" when the assault occurred, and a reasonable person could infer from that statement that the officer was aware of the attack, and that his failure to intervene represented deliberate indifference to a serious risk of harm. (Alexander Correctional Institute, North Carolina)

U.S. District Court
PLRA- Prison Litigation
Reform Act
SETTLEMENT
CONSENT AGREEMENT-
TERMINATION

Clark v. California, 739 F.Supp.2d 1168 (N.D.Cal. 2010). The state of California, Governor and various state prison officials filed a motion pursuant to the Prison Litigation Reform Act (PLRA) to terminate the prospective relief in a 2001 settlement agreement and an order that required them to comply with a remedial plan designed to ensure that California prisoners with developmental disabilities were protected from serious injury and discrimination on the basis of their disability. Developmentally disabled prisoners moved for enforcement of, and further relief under, the settlement agreement and order. The court held that for the purposes of a motion pursuant to the Prison Litigation Reform Act (PLRA), testimony from a few prison staff members at individual prisons did not prove systemic compliance with the remedial plan. The court held that termination of the settlement agreement and order entered pursuant to Prison Litigation Reform Act (PLRA) was unwarranted since the state defendants failed to carry their burden to show the absence of current and ongoing rights violations under ADA and Rehabilitation Act, and the prospective relief contained in the settlement agreement and order remained necessary, was sufficiently narrow, and was minimally intrusive. According to the court, the defendants failed to fulfill their obligation to provide developmentally disabled California prisoners with the accommodations and program modifications that would enable them to gain access to prison programs, services, and activities afforded non-disabled prisoners. The court found that the state defendants were not deliberately indifferent, so as to violate the Eighth Amendment, even though the state defendants had not adequately implemented the remedial plan, where the correction department's policies provided for constitutionally acceptable treatment. The court ruled that further relief was necessary under the Prison Litigation Reform Act (PLRA) to secure the rights of class of developmentally disabled prisoners, where the defendants demonstrated an ignorance of conditions for developmentally disabled prisoners and an inability to recognize the gravity of and to remedy the problems that had been identified by the court expert and others. According to the court, the defendants demonstrated an inability to take remedial steps absent court intervention, evidence reflected that the defendants had failed to comply with the remedial plan even nine years later, and the remedial plan in its current form did not go far enough to ensure compliance with the Americans with Disabilities Act (ADA) and Rehabilitation Act. (California Department of Corrections and Rehabilitation)

U.S. District Court
INJUNCTIVE RELIEF

Couch v. Jabe, 737 F.Supp.2d 561 (W.D.Va. 2010). An inmate, proceeding pro se, brought a § 1983 action claiming that prison officials violated his First and Fourteenth Amendment rights when they applied a Virginia Department of Corrections (VDOC) regulation to exclude the books *Ulysses* and *Lady Chatterley's Lover* from the prison library and prevented him from ordering those books from a private, approved vendor. The parties cross-moved for summary judgment. The district granted the inmate's motion, finding that the regulation violated the First Amendment, and that injunctive relief was warranted. The court held that the regulation was not reasonably related to legitimate penological interests, and thus, was overbroad, in violation of the First Amendment. The court noted that legitimate government interests in security, discipline, good order and offender rehabilitation were not rationally related to the regulation, which forbid all "explicit ... descriptions of sexual acts" including "sexual acts in violation of state or federal law," and encompassed much of the world's finest literature, but did not extend to "soft core" pornography. According to the court, while the inmate had no right to a general purpose reading library under the First Amendment, where the Virginia Department of Corrections (VDOC) decided to provide a general literary library to offenders, VDOC officials were constrained by the First Amendment in how they regulated the library. The court concluded that the appropriate remedy following a determination that the First Amendment was violated by a prison regulation, which excluded the books *Ulysses* and *Lady Chatterley's Lover* from a prison library, was injunctive relief against the enforcement and application of the regulation. (Augusta Correctional Center, Virginia)

U.S. Appeals Court
FAILURE TO PROTECT
FAILURE TO TRAIN
DELIBERATE
INDIFFERENCE

Davis v. Oregon County, Missouri, 607 F.3d 543 (8th Cir. 2010). A pretrial detainee brought an action under § 1983 and various state law authority against a county, county sheriff's department, and a sheriff, alleging the defendants violated his rights in failing to ensure his safety after a fire broke out at the county jail. The district court granted summary judgment in favor of the defendants. The detainee appealed. The appeals court affirmed. The court held that the county jail's smoking policy did not demonstrate that the sheriff acted with deliberate indifference in violation of the due process rights of the detainee caught in his cell during a jail fire, even if a jailer supplied cigarettes to inmates, since the jail had an anti-smoking policy in effect at all relevant times. The court noted that the jailer who allegedly supplied the cigarettes to the inmates had retired nine months before the fire occurred, and jail officials made sweeps for contraband as recently as five days before the fire. According to the court, the county jail's inoperable sprinklers and lack of extra fire safety equipment such as oxygen tanks did not amount to deliberate indifference in violation of the due process rights of the detainee caught in his cell during a fire, where jail officials took action to deal with fire hazards by prohibiting smoking and searching for contraband, and fire extinguishers and smoke detectors were present at the time of the fire. The court held that any failure of the sheriff to engage his officers in more exhaustive emergency training did not amount to deliberate indifference in violation of the due process rights of the detainee caught in his cell during a fire, even if the officers' lack of training

presented a substantial safety risk. The court noted that the officers' actions in removing inmates from their cells after they discovered the fire demonstrated that they did not disregard the risk. (Oregon County Jail, Missouri)

U.S. District Court
TORT LIABILITY

Dean v. Walker, 743 F.Supp.2d 605 (S.D.Miss. 2010). Motorists injured when a squad car commandeered by an escapee collided with their vehicle brought a § 1983 action in state court against a county sheriff and deputy sheriffs, in their individual and official capacities, the county, and others, asserting various claims under federal and state law. The case was removed to federal court where the court granted in part and denied in part the defendants' motion for summary judgment. The defendants moved to alter or amend. The court denied the motion. The court held that the "public duty" doctrine did not relieve the county of tort liability to the motorists under the Mississippi Tort Claims Act (MTCA). The court found that the county sheriff and deputy sheriffs who were in vehicular pursuit of the escaped jail inmate when the escapee's vehicle crashed into the motorists' vehicle owed a duty to the motorists as fellow drivers, separate and apart from their general duties to the public as police officers, and thus the "public duty" doctrine did not relieve the county of tort liability in the motorists' claims under the Mississippi Tort Claims Act (MTCA). (Jefferson-Franklin Correctional Facility, Mississippi)

U.S. District Court
COMPENSATORY
DAMAGES
INJUNCTIVE RELIEF

Durrenberger v. Texas Dept. of Criminal Justice, 757 F.Supp.2d 640 (S.D.Tex. 2010). A hearing impaired prison visitor brought an action against the Texas Department of Criminal Justice (TDCJ), alleging failure to accommodate his disability during visits in violation of the Americans with Disabilities Act (ADA) and Rehabilitation Act. The district court denied summary judgment for the defendants and granted summary judgment, in part, for the visitor. The court held that acceptance by the Texas Department of Criminal Justice (TDCJ) of federal financial assistance waived its Eleventh Amendment immunity from the prison visitor's action alleging disability discrimination in violation of the Rehabilitation Act, where the Act expressly stated that acceptance of federal funds waived immunity. The court held that summary judgment as to compensatory damages was precluded by a genuine issue of material fact as to the amount of damages suffered by the visitor by the prison's failure to accommodate his disability. The court found that a permanent injunction enjoining future violations of the Rehabilitation Act by the Texas Department of Criminal Justice (TDCJ) was warranted in the hearing impaired prison visitor's action alleging failure to accommodate, where TDCJ had not accommodated the visitor in the past, continued to not provide accommodations and gave no indication that it intended to provide any in the future. (Hughes Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
NEGLIGENCE
STATE LIABILITY
DELIBERATE
INDIFFERENCE

Estate of Crouch v. Madison County, 682 F.Supp.2d 862 (S.D.Ind. 2010). An inmate's estate brought a § 1983 suit against a county and corrections officers, claiming that the officers were deliberately indifferent to the inmate's serious medical needs in violation of the Eighth Amendment, and that the county was liable for failure to train its officers or establish policies regarding the medical care of inmates. The defendants moved for summary judgment. The district court granted the motion. The court held that the inmate did not show signs of an objectively serious need for medical attention prior to 3:00 a.m. on the day of his death from a drug overdose, at which time he was found unresponsive. According to the court, the Indiana Tort Claims Act entitled the corrections officers and county to immunity on state law negligence claims arising from the inmate's death, which occurred while he was assigned to a community corrections program maintained under the supervision of a governmental entity. (Madison County Community Justice Center, Indiana)

U.S. Appeals Court
CLASS ACTION
POLICIES/PROCEDURES
QUALIFIED IMMUNITY

Florence v. Board of Chosen Freeholders of County of Burlington, 621 F.3d 296 (3rd Cir. 2010). *Affirmed* 132 S.Ct. 1510 (2012). A non-indictable arrestee brought a class action pursuant to § 1983 against two jails, alleging a strip search violated the Fourth Amendment. After granting the motion for class certification, the district court granted the arrestee's motion for summary judgment, denied his motion for a preliminary injunction and denied the jails' motions for qualified and Eleventh Amendment immunity. The jails appealed. The appeals court reversed and remanded. The appeals court held that as a matter of first impression in the circuit, the jails' policy of conducting strip searches of all arrestees upon their admission into the general prison population was reasonable. The court found that jails were not required to provide evidence of attempted smuggling or discovered contraband as justification for the strip search policy. According to the court, the decision to conduct strip searches, rather than use a body scanning chair, was reasonable. The court noted that the chair would not detect non-metallic contraband like drugs, and there was no evidence regarding the efficacy of the chair in detecting metallic objects. The appeals court decision was affirmed by the United States Supreme Court in 2012 (132 S.Ct. 1510). (Burlington County Jail, Essex County Correctional Facility, New Jersey)

U.S. District Court
CONTRACT SERVICES
POLICIES/PROCEDURES

George v. Sonoma County Sheriff's Dept., 732 F.Supp.2d 922 (N.D.Cal. 2010). A county inmate's estate and survivors filed a § 1983 action alleging that the inmate received inadequate medical care from medical staff at a county detention facility and at a medical center. The court held that the medical center, that was contractually obliged to undertake medical treatment of inmates from the county detention center, and its physicians, were state actors, and thus were subject to liability under § 1983 in action alleging that county inmate's death was result of inadequate treatment he received at the center, even though the center was a privately owned facility that cared for patients other than inmates, and inmates could be sent to other facilities. The court held that summary judgment for the defendants was precluded by genuine issues of material fact as to whether physicians at the medical center with which the county had contracted to provide care for its inmates had an ulterior financial motive to discharge the inmate before his condition had stabilized, had a predetermined length of inmate's hospital stay, and had no intention of fully treating the inmate. (Sonoma Co. Main Adult Det.Facility, and Sutter Medical Center, Calif.)

U.S. Appeals Court
CONSENT DECREE-
MODIFICATION

Graves v. Arpaio, 623 F.3d 1043 (9th Cir, 2010). Pretrial detainees in a county jail system brought a class action against a county sheriff and the county supervisors board, alleging violation of the detainees' civil rights. The parties entered into a consent decree which was superseded by an amended judgment entered by stipulation of the parties. The defendants moved to terminate the amended judgment. The district court entered a second amended judgment which ordered prospective relief for the pretrial detainees. The district court awarded attorney fees to

the detainees. The sheriff appealed the second amended judgment. The appeals court affirmed. The court held that the district court did not abuse its discretion by ordering prospective relief requiring the sheriff to house all detainees taking psychotropic medications in temperatures not exceeding 85 degrees and requiring the sheriff to provide food to pretrial detainees that met or exceeded the United States Department of Agriculture's Dietary Guidelines for Americans. The district court had held that air temperatures above 85 degrees greatly increased the risk of heat-related illnesses for individuals taking psychotropic medications, and thus that the Eighth Amendment prohibited housing such detainees in areas where the temperature exceeded 85 degrees. (Maricopa County Sheriff, Jail, Maricopa County Supervisors, Arizona)

U.S. District Court
FTCA- Federal Tort Claims
Act

Hanson v. U.S., 712 F.Supp.2d 321 (D.N.J. 2010). An inmate brought a Federal Tort Claims Act (FTCA) action, alleging that a Bureau of Prisons (BOP) officer slammed his head on the floor and choked him in an attempt to force the inmate to spit out contraband that the inmate was attempting to swallow. The government filed a motion for summary judgment and the district court denied the motion. The court held, for the purposes of the inmate's FTCA claim, under New Jersey law the BOP officers employed unreasonable force while attempting to search the inmate for contraband. According to the court, summary judgment was precluded by material issues of fact regarding whether the BOP officers used reasonable force in holding and searching the inmate. (Federal Correctional Facility in Fort Dix, New Jersey)

U.S. Appeals Court
SUPERVISORY LIABILITY
DELIBERATE
INDIFFERENCE

Harper v. Lawrence County, Ala., 592 F.3d 1227 (11th Cir. 2010). Following a pretrial detainee's death from alcohol withdrawal while in a county jail, the detainee's estate brought an action against the county, sheriff, police officers, and others under § 1983 and state law, alleging deliberate indifference to the detainee's serious medical needs. The district court denied the defendants' motion to dismiss and the defendants appealed. The appeals court affirmed and reversed in part. The court held that allegations supported a claim that jailers were deliberately indifferent to the detainee's serious medical needs, but that the sheriff and others did not have actual knowledge of the detainee's erratic and strange behavior while in jail. The court found that allegations supported a claim that the sheriff and jail administrators were deliberately indifferent. The court held that allegations that jailers were told by other inmates and other jail staff that the pretrial detainee was displaying erratic and strange behavior, and that jailers took no steps to secure immediate medical attention for the detainee, supported a § 1983 claim that jailers were deliberately indifferent to the detainee's serious medical needs under the due process clause. The court held that the detainee's estate failed to allege how the sheriff and jail administrators could possibly have had actual knowledge of the detainee's erratic and strange behavior while in jail, as required to support a § 1983 claim alleging deliberate indifference to the detainee's serious medical needs. According to the court, for the purposes of a jailer's claim of qualified immunity from the § 1983 claim that he was deliberately indifferent to the pretrial detainee's serious medical needs under the due process clause, it was clearly established at the time of the detainee's confinement that a jail official who was aware of, but ignored, dangers of acute alcohol withdrawal and waited for an emergency before obtaining medical care was deliberately indifferent to the inmate's constitutional rights. The court found that the complaint's specific allegations that the sheriff and jail administrators who were responsible for management and administration of the jail had customs or policies of improperly screening inmates for alcohol withdrawal and improperly handling inmates addicted to alcohol or drugs, together with its factual detail concerning prior a similar incident, satisfied the pleading standards for stating a § 1983 claim of deliberate indifference to the pretrial detainee's serious medical needs under the due process clause based on supervisor liability. (Lawrence County Jail, Alabama)

U.S. District Court
SUPERVISORY LIABILITY

Hawkins v. Brooks, 694 F.Supp.2d 434 (W.D.Pa. 2010.) A state prisoner brought a pro se § 1983 action against various prison officials and corrections officers, alleging retaliation, harassment, due process violations, defamation of character, and mental anguish. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner's conduct of pressing charges against a corrections officer who the prisoner claimed raped and impregnated her and complaining about other officers' alleged harassment amounted to a "constitutionally protected activity," as required for the prisoner to state a § 1983 retaliation claim.

The court found that corrections officers' alleged conduct of withholding the prisoner's incoming and outgoing mail in retaliation for the prisoner's pressing rape charges against an officer at another prison amounted to an "adverse action," as required to establish a prima facie pro se § 1983 retaliation claim against the officers. But the court found that a prison official's alleged conduct of reassigning the prisoner to a different unit in the same prison did not rise to the level of an "adverse action," as required to establish a prima facie pro se § 1983 retaliation claim. The court found that the prisoner had no liberty interest in her place of confinement, transfer, or classification, and thus, prison officials' alleged refusal to have the prisoner transferred to an out-of-state institution did not violate her due process rights. The court found that the prisoner's assertions that she made supervisory prison officials aware of the harassment and retaliation she allegedly suffered at the hands of correctional officers as a result of her pressing rape charges against a correctional officer at another facility, and that none of the supervisory officials offered assistance or took any corrective action, were sufficient to state a claim for supervisory liability, in her § 1983 retaliation action. (State Correctional Institution at Cambridge Springs, Pennsylvania)

U.S. District Court
DAMAGES

In re Nassau County Strip Search Cases, 742 F.Supp.2d 304 (E.D.N.Y. 2010). Arrestees brought a class action against a county, among others, challenging the county correctional center's blanket strip search policy for newly admitted, misdemeanor detainees. The defendants conceded liability, and following a non-jury trial on the issue of general damages, the district court held that each arrestee was entitled to the same dollar amount per new admit strip search by way of the general damages award, that it would exclude any information concerning the effect that the searches had upon arrestees in awarding general damages, and an award of \$500 in general damages to each arrestee was appropriate. (Nassau County, New York)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROTECT

Jackson v. Stevens, 694 F.Supp.2d 1334 (M.D.Ga. 2010.) An inmate brought a § 1983 suit against a prison official asserting an Eighth Amendment deliberate indifference claim. The official moved for summary judgment and the district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prison official had subjective knowledge of a serious risk of harm to the inmate from a second inmate, whom the official heard say that he would try to kill or harm the first inmate if they were put in a cell together, and whether the official disregarded the risk when she admonished the second inmate before placing him in a cell with the first inmate. Immediately after the official closed the cell door, the second inmate immediately hit the inmate. (Washington State Prison)

U.S. Appeals Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

King v. McMillan, 594 F.3d 301 (4th Cir. 2010). A female former deputy sued her employer sheriff in his official capacity, under Title VII, for sexual harassment and in his individual capacity, under state law, for battery. The sheriff left office and the incoming sheriff was substituted in the action. A jury returned verdicts for the deputy on both claims, and the district court entered judgment for the deputy, awarded compensatory and punitive damages, and granted the sheriff's post-trial motion to reduce the compensatory damages award. Both sheriffs appealed. The appeals court affirmed. The court held that substitution was appropriate for the claim under Title VII. The court held that, under Virginia law, the punitive damages award of \$100,000 imposed for the sheriff's battery of the female deputy by unwanted touching was not excessive. The court also found that the compensatory damages award of \$50,000, which the district court had reduced from \$175,000, was not excessive. (City of Roanoke, Virginia)

U.S. District Court
ALIEN
FTCA- Federal Tort Claims
Act

Lin Li Qu v. Central Falls Detention Facility Corp., 717 F.Supp.2d 233 (D.R.I. 2010). A federal immigration detainee's widow sued the Government under the Federal Tort Claims Act (FTCA), asserting claims arising out of the detainee's care while he was detained by Immigration and Customs Enforcement (ICE). The government moved to dismiss. The district court denied the motion. The court held that the widow met the FTCA's notice requirement and that her FTCA claims were not barred by the independent contractor defense. The court held that the widow stated negligence claims actionable under the Federal Tort Claims Act (FTCA), when she alleged that after the Government was aware, or should have been aware, of the detainee's deteriorating medical condition, it acted negligently when it ordered the transfers of the detainee to different facilities and when it improperly reviewed the basis for his custody and detention. (Immigration and Customs Enforcement, Wyatt Detention Center, Rhode Island, Franklin County House of Corrections, Greenfield, Massachusetts, Franklin County Jail, Vermont)

U.S. Appeals Court
CLASS ACTION

McDaniel v. County of Schenectady, 595 F.3d 411 (2nd Cir. 2010). Pretrial detainees appealed an order of the district court which approved the settlement of a class action arising from jail defendants' alleged violations of their constitutional rights during strip-searches, but awarding less than the requested fee to their attorneys. The appeals court affirmed, finding that the district court did not abuse its discretion by declining to award attorney fees using a percentage-of-fund approach, in the extent of its reliance on the modified lodestar approach, or in its application of the reasonableness factors. The court noted: "The parties vigorously litigated this action for a period of more than three years, with various attorneys for the plaintiff class spending more than 1,000 hours working on the case." The parties eventually agreed to injunctive relief which included the creation of a settlement fund totaling \$2.5 million. The detainees' suggested a fee award of 26% represented a multiplier of 1.98-2.24 beyond what counsel would have earned based on their hourly rates, and the court's award was the equivalent to 13% of the common fund, which the court found was squarely within the range of typical awards in similar cases. (Schenectady County Jail, New York)

U.S. District Court
SUPERVISORY LIABILITY
NEGLIGENT RETENTION

Mitchell v. Rappahannock Regional Jail Authority, 703 F.Supp.2d 549 (E.D.Va. 2010). A female inmate brought an action against a regional jail authority and correctional officers who held the ranks of colonel, lieutenant, captain, sergeant, and corporal, alleging under § 1983 that the defendants violated the Eighth Amendment, and asserting state-law claims for assault and battery, gross negligence, and negligent retention. The district court denied the defendants' motion to dismiss. The court held that the inmate's allegations in her complaint: (1) of over ten instances of sexual assaults by a correctional officer, under circumstances where his superiors were in a position to have knowledge of what was happening at various times; (2) that each named superior witnessed or participated in several of those actions; (3) that all superiors had direct knowledge of the officer's personal remarks to the inmate; (4) and that the officer's obsession with the inmate was a matter of commentary among all correctional staff, were sufficient to state a § 1983 Eighth Amendment claim for supervisory liability against the superiors. The inmate also alleged that each superior witnessed several incidents where the officer followed the inmate into a storage room and assaulted her. The inmate also alleged that a corporal, who was in charge of inmate workers, witnessed the correctional officer, in violation of jail regulations, approach her several times while working in the kitchen, and that the corporal told the inmate not to be rude to the officer or she would be fired from her job after the inmate asked the corporal to prevent the officer from moving behind the counter. (Rappahannock Jail Authority, Rappahannock Regional Jail, Virginia)

U.S. Appeals Court
CLASS ACTION
POLICIES/PROCEDURES
SETTLEMENT

Olson v. Brown, 594 F.3d 577 (7th Cir. 2010). An inmate at a county jail which served as a temporary detention center filed a class action in state court against a sheriff, alleging that procedures at the jail violated Indiana law and the inmates' First Amendment rights. The inmate challenged jail staff's alleged practices of opening inmates' legal mail, denying inmates access to the law library, and failing to respond to inmates' grievances. The case was removed to federal court. The inmate moved for class certification but he was transferred out of jail before the court's ruling. The district court granted the sheriff's motion for judgment on the pleadings and dismissed action as moot. The inmate appealed. The appeals court reversed and remanded, finding that the inherently transitory exception to the mootness doctrine prevented dismissal of the case. The court noted that even though the inmate was transferred out of the jail prior to certification of his class action, there would likely be a constant class of persons suffering the deprivation complained of in the inmate's complaint. (Tippecanoe County Jail, Indiana)

U.S. Appeals Court
FAILURE TO TRAIN
OFFICIAL CAPACITY
DELIBERATE
INDIFFERENCE

Parrish v. Ball, 594 F.3d 993 (8th Cir. 2010). A female detainee filed a § 1983 suit against a sheriff and a deputy, individually and in their official capacities, alleging failure to train the deputy, who had sexually assaulted the detainee. After bench trial the district court granted in part and denied in part the sheriff's motion for summary judgment. The sheriff and the detainee cross-appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the sheriff in his official capacity was not liable for the deputy's inadequate training, and that the sheriff in his individual capacity was entitled to qualified immunity from the failure to train claim. The court noted that although the deputy received minimal training at best for his law enforcement position, the inadequacy of his training was not so likely to result in violation of the constitutional rights of the detainee, so that the county could reasonably be said to have been deliberately indifferent to the need for training, especially when the county had no notice at all that a sexual assault was likely. According to the court, there was no patently obvious need to train the deputy not to sexually assault women, and the sexual assault was a consequence too remote to conclude that failure to train the deputy caused him to sexually assault the detainee. (Hot Spring County Sheriff's Department and Jail, Arkansas)

U.S. Appeals Court
CONSENT DECREE
PLRA-Prison Litigation
Reform Act
SPECIAL MASTER
TERMINATION OF
ORDER

Plata v. Schwarzenegger, 603 F.3d 1088 (9th Cir. 2010). After the State of California was unable to comply with consent orders in a prisoners' class action, which provided remedies to address deficiencies in prison medical care, the district court imposed a receivership on the California Department of Corrections and Rehabilitation (CDCR) to administer and improve prisoner health care. The state moved to terminate the receivership and challenged the receiver's construction plan for additional prison facilities. The district court denied the state's motion and refused to terminate the receiver's construction plan. The state appealed. The appeals court affirmed in part, and dismissed the appeal in part. The court held that the Prison Litigation Reform Act (PLRA) did not bar appointment of a receiver for CDCR after the State of California was unable to comply with consent orders that provided remedies for and addressed deficiencies in prison medical care. Although PLRA provided for appointment of a special master to hold hearings and make recommended findings, and it did not expressly authorize appointment of receivers, nothing in PLRA expressly prohibited appointment of a receiver, the role of special master was distinct from that of a receiver, and receiverships were a recognized equitable tool to address problems in prisons prior to enactment of PLRA. According to the court, imposition of a receivership on CDCR to administer and improve prisoner health care was the least intrusive means of remedying the State prison system's constitutionally inadequate medical care, as required by the Prison Litigation Reform Act (PLRA), where the State admitted that it was unable to comply with consent orders that provided stipulated remedial plans to address the constitutional violations, and the State failed to show that it could remedy the ongoing violations in the absence of the receivership. The appeals court held that it lacked jurisdiction on appeal to consider the State of California's challenge to the District Court's denial of its motion to terminate a construction plan for additional prison facilities. The court noted that the district court's ruling was not a final judgment, the plan itself was in flux, so that any challenge to it was premature, and the ruling did not involve a refusal to terminate or to wind up the receivership itself, so that it was not an appealable interlocutory order. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
FTCA- Federal Tort
Claims Act
POLICIES/PROCEDURES

Qureshi v. U.S., 600 F.3d 523 (5th Cir. 2010). A detainee filed a complaint against the United States seeking damages under the Federal Tort Claims Act based on his allegedly unlawful detention by the Department of Homeland Security. The district court issued an order requiring him to obtain the court's permission before filing suit in any federal court in the state of Texas, and the detainee appealed. The appeals court vacated and remanded. The appeals court held that the pre-filing injunction was invalid where the district court entered the injunction without affording the detainee prior notice or the opportunity to oppose the injunction or be heard on its merits.

U.S. District Court
POLICIES/PROCEDURES
OFFICIAL CAPACITY
RESPONDEAT SUPERIOR
DELIBERATE
INDIFFERENCE

Riley v. County of Cook, 682 F.Supp.2d 856 (N.D.Ill. 2010). The special administrator of the estate of a prisoner who committed suicide while incarcerated at a county jail brought a civil rights action under § 1981 and § 1983 against county defendants. Approximately three weeks after he was admitted to the jail the prisoner was found in his cell hanging by his neck from a bed sheet. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the county could not have been directly liable, under Illinois law, for failure to establish and implement the policies and procedures raised in the civil rights complaint, where it was within the purview of the sheriff's office, not the county, to implement policies and procedures within the county jail. The court noted that Illinois sheriffs were independently elected officials not subject to the control of the county. The county also could not have been vicariously liable for the acts of the sheriff and his employees under a respondeat superior theory under Illinois law, as the sheriff was an independently-elected official, answering directly to the electorate, and not having a master/servant relationship with the county board.

The court found that the special administrator stated a claim against the county department of correction's superintendent and the county sheriff, in their official capacities, for § 1983 violations, by alleging that the defendants were responsible for the care and management of the prisoners at the county jail, and had policymaking authority to implement appropriate procedures to do so, but acted with deliberate indifference by failing to institute suicide prevention practices. The administrator alleged that the prisoner's suicide was the result of this direct indifference. (Cook County Sheriff, Cook County Department of Corrections, Illinois)

U.S. District Court
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
SOVEREIGN IMMUNITY
SUPERVISORY
LIABILITY

Rupe v. Cate, 688 F.Supp.2d 1035 (E.D.Cal. 2010). A state prisoner brought an action against prison officials for violation of his rights under the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that the officials failed to accommodate his Druid religious practices and retaliated against him for protected activities. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner pled sufficient facts to state a claim against prison officials on a theory of supervisor liability under § 1983 by alleging that he wrote to the officials about violations of his rights, that the officials were "made completely aware of the inappropriate actions of their subordinates," and that they "actively chose to be deliberately indifferent to these actions."

The court found that the prisoner's claims for injunctive relief based on the California Department of Corrections' (DOC) alleged systemic discrimination against those practicing the Pagan religion were not moot, even though he had been transferred from the prison where many of the alleged violations of his rights occurred, where he was still incarcerated in a prison run by the DOC. The court held that the prisoner's claims for damages under RLUIPA against state prison officials in their official capacity were barred by Eleventh Amendment sovereign immunity, since RLUIPA did not provide a clear statement requiring states to waive immunity from liability for money damages. According to the court, the issue of whether prison officials violated the prisoner's rights under the Free Exercise Clause by failing to reasonably accommodate his Druid religious faith could not be resolved at the motion to dismiss phase because of factual disputes as to what interest justified the officials' alleged failure, the existing and potential alternatives for Druid religious exercise, and the impact of requested accommodations on prison officials and other inmates.

The court found that the prisoner stated claim for retaliation by prison officials for conduct protected by the Free Exercise Clause by alleging that he was strip-searched as harassment for writing letters to prison and government officials in which he complained about the lack of accommodations for his religion. The prisoner also alleged that officials conspired to place him in administrative segregation and ultimately to transfer him to require his complaints about their previous adverse actions against him, and that the actions taken against him were motivated solely by the officials' desire to inhibit his religious worship. The court found that the prisoner stated a claim against prison officials for violation of his right to equal protection by alleging that he and other Pagans were denied opportunities to practice their religion that were available to mainstream religions and that the officials engaged in a pattern of discrimination against Pagan practitioners. (Mule Creek State Prison, California Department of Corrections)

U.S. District Court
NEGLIGENT RETENTION
FAILURE TO PROTECT

Sexton v. Kenton County Detention Center, 702 F.Supp.2d 784 (E.D.Ky. 2010). Two female detainees brought a § 1983 action against a county detention center and officials, alleging deliberate indifference with respect to hiring and supervision of a deputy who sexually assaulted them while they awaited arraignment. The defendants moved for summary judgment. The district court granted the motion. The court held that the detainees failed to establish deliberate indifference with respect to the center's hiring of the deputy. The court noted that none of the deputy's prior misdemeanor offenses, including his driving infractions and domestic assault, demonstrated a propensity to commit rape. The court found that the detainees failed to demonstrate a causal link between the center's alleged policy of not terminating employees with excessive absenteeism and the deputy's conduct. The court noted that "...Absent evidence of prior complaints of sexual assault, the mere fact that a male guard supervises a female inmate does not lead to the conclusion that the inmate is at a great risk of being sexually assaulted by the guard."

According to the court, the detainees failed to establish that the county detention center was deliberately indifferent to their constitutional rights by not effectively monitoring surveillance equipment, and thus they could not recover in their § 1983 action against the center, where there was no evidence that the center had a policy or custom of ineffective surveillance. The detainees argued that only one person monitored the 89 cameras that were used throughout the Detention Center and that they were mainly monitored only for ingress and egress of secured doors. They asserted that the county should have had cameras in the video arraignment room for the inmates' protection. The court noted that state jail regulations do not require constant monitoring of video surveillance cameras or dictate where the cameras are to be placed inside a detention facility. (Kenton County Detention Center, Kentucky)

U.S. Appeals Court
FAILURE TO SUPERVISE
GOVERNMENTAL
IMMUNITY
NEGLIGENT
SUPERVISION

Smith v. County of Lenawee, 600 F.3d 686 (6th Cir. 2010). A female detainee's estate brought an action against a county, sheriff, on-call physician, police officers, and parole agent, under § 1983 and state law, arising out of the detainee's death while in the county's custody. The district court denied the parole agent's motion for summary judgment on a gross negligence claim. The agent filed interlocutory appeal. The appeals court reversed. The court held that the parole agent's failure to intercede on behalf of the detainee in county custody, upon arriving at the jail to serve the detainee a notice of parole violation charges and determining that the detainee was unable to be transported or served, was not the "proximate cause" of the detainee's death, so as to entitle the agent to governmental immunity from gross negligence liability under Michigan law. The court noted that the detainee was in the custody of county jail officials in the hours leading up to her death, the parole agent worked for the state Department of Corrections, not the county, the detainee had been experiencing delirium tremens (DT) symptoms for close to 48 hours prior to arrival at the jail, a physician had been notified of the detainee's condition and told jail officials to monitor the detainee, the agent was present at the jail for a matter of minutes only, and county jail officials failed to check the detainee until 40 minutes after the agent left the jail. (Lenawee County Sheriff's Department, and Michigan Department of Corrections)

U.S. Appeals Court
FTCA- Federal Tort Claims
Act

Spotts v. U.S., 613 F.3d 559 (5th Cir. 2010). High-security inmates at a federal prison, who were not evacuated in the aftermath of damage to the prison and the surrounding area caused by a hurricane, brought an action against the United States under the Federal Tort Claims Act (FTCA). The district court dismissed on jurisdictional grounds as barred by the "discretionary function" exception to the FTCA. The inmates appealed. The appeals court affirmed. The court held that the decision on the part of a regional director of the Bureau of Prisons (BOP), not to evacuate high-security inmates from the prison when damage caused by the hurricane deprived the facility of electricity and potable water for an extended period of time, was the type of policy decision protected by the "discretionary function" exception to the FTCA. (Federal Correctional Complex, United States Penitentiary, Beaumont, Texas)

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES
DELIBERATE
INDIFFERENCE

Tate v. Troutman, 683 F.Supp.2d 897 (E.D.Wis. 2010). A county jail inmate filed a § 1983 action alleging that officials failed to provide constitutionally sufficient medical care. The inmate moved for the entry of a default judgment. The district court granted the motion in part and denied in part. The court held that a county jail officer and medical officials were not personally involved in the allegedly inadequate medical treatment provided to the inmate after a fall in his cell, and thus were not liable under § 1983 for any compensatory or nominal damages for an Eighth Amendment violation. The court noted that even though the inmate suffered pain after the fall and had

blood in his bowel movements, the inmate had a history of severe low back and bilateral neck pain, headaches, and rectal bleeding before the fall. The court held that county jail officials failed to provide adequate medical care for the inmate's dislocated shoulder, in violation of the Eighth Amendment, and thus the inmate was entitled to an award of compensatory damages for past pain and suffering. The court noted that the jail physician refused to see the inmate or speak to him, jail officials rejected the inmate's grievances regarding his inadequate medical treatment, and the inmate experienced physical pain and emotional distress for three or four weeks due to his lack of adequate diagnosis and treatment of his shoulder injury by immobilization.

The court concluded that an award of \$27,000 was the appropriate amount to compensate the inmate for his past pain and suffering, where the inmate experienced pain and suffering for about one month. The court found that county jail officials showed callous indifference towards the inmate's medical needs, and thus a punitive damages award of \$9,000 was warranted to deter or punish the Eighth Amendment violation. The court also found that the inmate was entitled to prejudgment interest on the compensatory damage award at an average monthly prime rate compounded annually from the period beginning on the date of his injury through the date of the entry of judgment. (Milwaukee Country Jail, Wisconsin)

U.S. Appeals Court
INJUNCTIVE RELIEF
PLRA- Prison Litigation
Reform Act
POLICIES/PROCEDURES

Thomas v. Bryant, 614 F.3d 1288 (11th Cir. 2010). Inmates incarcerated at the Florida State Prison (FSP) brought a § 1983 action against various officers and employees of the Florida Department of Corrections (DOC), alleging that the use of chemical agents on inmates with mental illness and other vulnerabilities violated the Eighth Amendment's prohibition on cruel and unusual punishment. The claims against individual correctional officers responsible for administering the agents were settled. After a five-day bench trial on the remaining claims against the DOC Secretary and the FSP warden for declaratory judgment and injunctive relief, the district court entered findings of fact and conclusions of law. The court ended final judgment and a final permanent injunction in the inmates' favor. The Secretary and warden appealed. The appeals court affirmed.

The court held that, notwithstanding his untimely death, the inmate who obtained declaratory and injunctive relief could still be the "prevailing party" entitled to attorney fees for the cost of district court litigation under the Civil Rights Attorney's Fees Awards Act (42 U.S.C.A. §§ 1983, 1988.) The court found that in reaching its conclusion the district court did not clearly err in finding that an inmate was sprayed with chemical agents at times when he had no capacity to comply with officers' orders because of his mental illness, or in finding that those sprayings caused the inmate lasting psychological injuries.

According to the court, the repeated non-spontaneous use of chemical agents on an inmate with a serious mental illness constituted an extreme deprivation sufficient to satisfy the objective prong of the test for an Eighth Amendment violation. The court noted that the inmate's well-documented history of mental illness and psychotic episodes rendered him unable to comply at the times he was sprayed, such that the policy was unnecessary and without penological justification in his specific case. The court found that the DOC's policy and practice of spraying inmates with chemical agents, as applied to an inmate who was fully secured in his seven-by-nine-foot steel cell, was not presenting a threat of immediate harm to himself or others, and was unable to understand and comply with officers' orders due to his mental illness, were extreme deprivations violating the broad and idealistic concepts of dignity, civilized standards, humanity and decency embodied in the Eighth Amendment.

The court held that the district court did not clearly err in finding that the record demonstrated that DOC officials acted with deliberate indifference to the severe risk of harm an inmate faced when officers repeatedly sprayed him with chemical agents for behaviors caused by his mental illness. The appeals court held that the district court did not abuse its discretion in concluding that injunctive relief was warranted and necessary, despite contentions that an inmate was currently incarcerated at a facility where he was not subject to DOC's chemical agents policy. The court noted that the permanent injunction against violations of the mentally ill inmate's Eighth Amendment rights from sprayings with chemical agents did not extend further than necessary to correct a constitutional violation and was not overly intrusive. According to the court, in addition to being closely tethered to the identified harm, the district court's permanent injunctive relief was narrowly drawn and plainly adhered to the requirements of Prison Litigation Reform Act (PLRA). (Florida State Prison)

U.S. Appeals Court
COMPENSATORY
DAMAGES
FAILURE TO PROTECT
DELIBERATE
INDIFFERENCE

Thomas v. Cook County Sheriff's Dept., 604 F.3d 293 (7th Cir. 2010). A mother brought a § 1983 and state wrongful death action against a county, sheriff, and various officers and medical technicians at a county jail after her son died from pneumococcal meningitis while being held as a pretrial detainee. The mother asserted a claim of deliberate indifference to medical needs as well as a common-law claim for wrongful death. Following a jury verdict for the mother, the district court, ordered the reduction of the total damage award from \$4,450,000 to \$4,150,000. The defendants appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that the issue of whether county corrections officers were subjectively aware of the pretrial detainee's serious medical condition that culminated in death from pneumococcal meningitis, as required to support the detainee's survivor's § 1983 deliberate indifference action against a county and officers, was for the jury, given the cellmates' and other witnesses' accounts of the detainee's vomiting and exhibiting other signs of serious illness within plain view of officers without any response from them, and given testimony as to the inmates' various complaints to officers regarding his condition. According to the court, issues of whether the county had a custom or practice of failing to timely review jail inmates' medical requests, and a causal link between such failure and the death of the pretrial detainee from pneumococcal meningitis were for the jury. The court noted that the supervisor and individual medical technicians for the contractor that handled medical services for inmates testified to the practice of not retrieving inmate medical requests on a daily basis, and the detainee's fellow inmates testified to having filed numerous medical requests on the detainee's behalf.

The court found that a causal link was not shown between the county sheriff's department's alleged policy of understaffing the county jail and the pretrial detainee's death from pneumococcal meningitis. Although individual deputies employed as corrections officers were shown to have known of and ignored the detainee's medical needs, there was no evidence that such inaction was due to understaffing rather than other causes. The court found that a compensatory damages award of \$4 million was not excessive. The award was not out of line when measured against those in other similar cases, and the award had rational connection with evidence that the detainee was 32

years old, had three children whom he supported, and had died of a treatable illness after numerous fellow inmates had alerted corrections officers about his condition. (Cook County Jail, Illinois)

U.S. Appeals Court
CLASS ACTION
INJUNCTIVE RELIEF

Valdivia v. Schwarzenegger, 599 F.3d 984 (9th Cir. 2010). Parolees brought a class action alleging a state's parole revocation procedures violated their due process rights. After entering a permanent injunction for the parolees, the district court entered an order granting the parolees' motion to enforce a paragraph of the injunction concerning the use of hearsay evidence, and subsequently entered an order granting their motion to enforce the injunction notwithstanding passage of an allegedly conflicting voter proposition. An appeal was taken. The appeals court held that the district court did not abuse its discretion in determining that the use of hearsay evidence was subject to balancing, but the district court abused its discretion in denying the state's motion to modify the injunction to conform with the voter proposition. (California)

2011

U.S. Appeals Court
COMPENSATORY
DAMAGES
PLRA- Prison Litigation
Reform Act
PUNITIVE DAMAGES

Al-Amin v. Smith, 637 F.3d 1192 (11th Cir. 2011). A state prison inmate brought a § 1983 action against state corrections officials, alleging that the officials had repeatedly opened his privileged attorney mail outside of his presence, in violation of his rights of access to the courts and free speech. The district court denied the officials' motion for summary judgment. The appeals court affirmed in part and reversed in part, and denied rehearing en banc. The United States Supreme Court denied certiorari. On remand, the district court granted the officials' motion, precluding the inmate from offering evidence of either compensatory or punitive damages. The inmate appealed. The appeals court affirmed, finding that the prisoner could not seek punitive damages relief absent a physical injury, under the provisions of the Prison Litigation Reform Act. (Georgia State Prison)

U.S. District Court
CLASS ACTION
DAMAGES

Augustin v. Jablonsky, 819 F.Supp.2d 153 (E.D.N.Y. 2011). Arrestees brought a class action against a county challenging the county correctional center's blanket strip search policy for newly admitted, misdemeanor detainees. After the county admitted liability, the plaintiffs' class action involving more than 17,000 members was certified for the issue of general damages and the district court awarded general damages of \$500 per strip search. The county moved to decertify the class for purposes of determining the issue of arrestees' special damages. The district court granted the motion. The court held that the resolution of special damages could not proceed on a class-wide basis, since questions of law or fact common to the class no longer predominated over questions affecting individuals. (Nassau County Correctional Center, New York)

U.S. District Court
PUNITIVE DAMAGES
SOVEREIGN IMMUNITY

Barrington v. New York, 806 F.Supp.2d 730 (S.D.N.Y. 2011). A prisoner brought a § 1983 action against correctional officers and a state, alleging violation of his constitutional rights as the result of an assault from officers in retaliation for filing grievances about disciplinary actions taken against him. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the state was entitled to sovereign immunity. The court found that the prisoner's § 1983 excessive force suit against correctional officers in their individual capacities did not implicate a rule against double recovery, under New York law, despite the officers' contention that the prisoner had already won an excessive force suit in state court against the officers in their official capacities and now wanted "a second bite at the apple." The court noted that there was no court in which the prisoner could have brought both an excessive force claim under state law against the state and the officers in their official capacities and a § 1983 claim against the officers in individual capacities for which punitive damages were available. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner's filing of a grievance was the motivating factor for the alleged assault by the correctional officers. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
MUNICIPAL LIABILITY

Cash v. County of Erie, 654 F.3d 324 (2nd Cir. 2011). A pretrial detainee filed a § 1983 action against a county, sheriff, and deputy sheriff alleging that the deputy sexually assaulted her. After entry of a jury verdict in the detainee's favor, the district court granted the defendants' motion for judgment notwithstanding the verdict. The parties filed cross-appeals. The appeals court reversed and remanded. The appeals court held that there was sufficient evidence to support the jury's finding that the sheriff was deliberately indifferent to the risk of sexual misconduct, and the jury's determination that the county was subject to municipal liability was not irreconcilably inconsistent with its finding that the sheriff was not negligent. According to the court, trial evidence revealed that the detainee was housed in a female housing unit at the facility, that the deputy, acting alone, escorted some female detainees to the recreation center but ordered the plaintiff to remain behind. When the deputy returned, he grabbed the plaintiff, put his hands over her nose and mouth, forced her into the deputies' bathroom, and raped her. The plaintiff reported the assault the next morning, prompting an investigation that led to the deputy's arrest for first-degree rape. (Erie County Holding Center, New York)

U.S. District Court
FAILURE TO PROTECT
FAILURE TO SUPERVISE
FAILURE TO TRAIN
QUALIFIED IMMUNITY
SUPERVISORY
LIABILITY

Chao v. Ballista, 806 F.Supp.2d 358 (D.Mass. 2011). A female former inmate brought an action under § 1983 and the Massachusetts Civil Rights Act (MCRA) against a prison guard and superintendent, alleging that the guard violated her constitutional rights by sexually exploiting her while she was incarcerated, and that the superintendent failed to protect her from the guard's repeated sexual battery. Following a jury trial, the district court entered judgment in the inmate's favor. The defendants subsequently moved for judgment as matter of law or for a new trial. The district court denied the motions. The court held that the question of whether the prison guard's misconduct in sexually exploiting the inmate while she was incarcerated rose to the level of "sufficiently serious harm" necessary to establish an Eighth Amendment violation, was for the jury. The court also found that the issue of whether the prison guard and superintendent were deliberately indifferent to the rights, health, or safety of the inmate was for the jury. The court found that the jury verdict finding that the prison superintendent was not liable for punitive damages because the superintendent's conduct was not "willful, wonton, or malicious," was not inconsistent with the verdict finding that the superintendent was "sufficiently culpable" as to have been deliberately

indifferent to the inmate's needs, in violation of the Eighth Amendment. The court noted that malicious conduct is not required to sustain an Eighth Amendment claim for supervisory liability for deliberate indifference.

According to the court, issues of whether the prison guard knew, or should have known, that emotional distress would result from his sexually exploiting the inmate while she was incarcerated, and as to whether the guard's conduct, including demanding fellatio in 23 separate places with the inmate, was extreme and outrageous, were for the jury. The court found that the superintendent was not entitled to qualified immunity from the former inmate's § 1983 claim alleging that the superintendent failed to protect her from the prison guard's repeated sexual exploitation, in violation of the Eighth Amendment, where the law was clearly established that prison officials had a duty to protect their inmates by training and supervising guards, creating and sustaining a safe prison environment, and investigating allegations of sexual misconduct or abuse when they arose. (South Middlesex Correctional Center, Massachusetts)

U.S. District Court
FTCA- Federal Tort Claims
Act
NEGLIGENT SUPER-
VISION
SOVEREIGN IMMUNITY

Chess v. U.S., 836 F.Supp.2d 742 (N.D.Ill. 2011). An inmate who suffered personal injuries in an assault by a fellow inmate brought an action against the federal government under the Federal Tort Claims Act (FTCA), alleging it failed to properly screen the fellow inmate upon intake and also failed to monitor him. The inmate had suffered second-degree burns when the other inmate threw a cup of scalding water onto his face and then physically assaulted him by hitting him with the cup and punching him. The parties cross-moved for summary judgment. The district court denied the plaintiff's motion, and granted the defendants' motion in part and denied in part. The court held that the government failed to comply with certain directives aimed at monitoring federal prisoners suffering from mental illness, for the purposes of its attempt to avoid liability to the federal inmate who suffered personal injuries in an assault by a fellow inmate under the discretionary function exception to the Federal Tort Claims Act (FTCA) waiver of sovereign immunity. The court found that the inmate's claims relating to a corrections officer's alleged failure to monitor inmates during lockup were not barred by the Federal Tort Claims Act (FTCA) discretionary function exception.

According to the court, while there was a genuine issue of material fact as to whether Bureau of Prisons (BOP) officials complied with requirements to review the inmate's central file upon intake and to review the assaulting inmate's mental health on a monthly basis, the assaulted inmate failed to raise the issue for trial as to whether the Bureau's failure to review the assailing inmate's central file proximately caused his injury. The court found that summary judgment was precluded by a genuine issue of material fact, as to whether, after his second placement, BOP officials knew or reasonably should have known that the inmate should have been segregated from the administrative population. The court also found genuine issues of material fact as to whether a correctional officer's alleged failure to monitor the unit at the time of the attack constituted negligence and proximately caused the attacked inmate's injuries. (Federal Bureau of Prisons, Metropolitan Correctional Center Chicago, Illinois)

U.S. Appeals Court
DAMAGES
FAILURE TO PROTECT

Cobige v. City of Chicago, Ill., 651 F.3d 780 (7th Cir. 2011). The estate of a deceased female arrestee brought a § 1983 action against a city and police officers, alleging failure to provide medical care in violation of the Fourth Amendment and the Illinois wrongful death law. After a jury verdict in favor of the estate, the city and officers filed motions for judgment as a matter of law and/or for a new trial. The district court denied the motions. The city and officers appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that evidence presented at trial in the estate's § 1983 action was sufficient to establish causation of the arrestee's death, where evidence from one of the arrestee's cellmates, two deputy sheriffs and a civilian aide at the lockup, permitted a jury to find that she experienced severe abdominal pain throughout her confinement. A professor and head of coronary care at university hospitals testified that the pain led the arrestee to produce more epinephrine, which combined with a pre-existing heart condition caused her death, and uterine tumors found during a post-mortem examination led to his conclusion that the arrestee had suffered serious abdominal pain. The court held that the probative value of evidence of the deceased arrestee's police record, time in prison, and drug addiction outweighed the danger of unfair prejudice, where the evidence bore directly on the appropriate amount of damages and that a new trial on the issue of damages was warranted. (Chicago Police Department lockup, Illinois)

U.S. Appeals Court
FAILURE TO TRAIN
DELIBERATE
INDIFFERENCE

Coscia v. Town of Pembroke, Mass., 659 F.3d 37 (1st Cir. 2011). The estate of a detainee who committed suicide after being released from custody brought a § 1983 action against police officers, their supervisors, and a town, alleging that the officers and supervisors were deliberately indifferent to the arrestee's medical needs and that the town failed to train the officers to prevent detainee suicides. The district court denied the individual defendants' motion for judgment on the pleadings and they appealed. The appeals court reversed. The appeals court held that the estate failed to state a claim for deliberate indifference to a substantial risk of serious harm to health under the Fourteenth Amendment. According to the court, the estate failed to allege facts sufficient to demonstrate a causal relationship between the police officers' failure to furnish medical care to the detainee during a seven-hour period of custody and the detainee's act of committing suicide by walking in front of a train 14 hours after his release from custody. The court noted that the detainee had been thinking about suicide at the time he was arrested, the detainee was thinking about suicide at the time he was released from custody, and when the police released the detainee from custody they placed him in no worse position than that in which he would have been had they not acted at all. The court found that in the absence of a risk of harm created or intensified by a state action, there is no due process liability for harm suffered by a prior detainee after release from custody in circumstances that do not effectively extend any state impediment to exercising self-help or to receiving whatever aid by others may normally be available. The twenty-one-year-old detainee had been involved in a one-car accident, he was arrested about eleven o'clock in the morning and brought to the police station. On the way there he said he intended to throw himself in front of a train, and he continued to utter suicide threats at the station house accompanied by self-destructive behavior, to the point of licking an electrical outlet. As a consequence, the police did not lock him in a cell, but placed him in leg restraints and followed an evaluation protocol that showed a high suicide risk. He was not examined by a doctor, but was released on his own recognizance about six o'clock that evening. (Town of Pembroke, Massachusetts)

<p>U.S. District Court CONCENT DECREE- TERMINATION PLRA- Prison Litigation Reform Act SETTLEMENT</p>	<p><i>Davis v. Gunter</i>, 771 F.Supp.2d 1068 (D.Neb. 2011). State prisoners sued prison officials for allegedly violating the First and Fourteenth Amendments by restricting the prisoners' receipt of postage stamps through the mail. Following a settlement agreement that resulted in dismissal of the case pursuant to a joint motion of the parties, the prisoner moved 20 years later for a temporary restraining order and for discovery, and the officials moved to terminate the consent decree and dismiss the case. The district court denied all motions. The court held that the settlement agreement was not a consent decree within the meaning of the Prison Litigation Reform Act (PLRA), providing mutually exclusive definitions for a consent decree, which is relief entered by the court and enforceable by contempt power, and a "private settlement agreement," which is not subject to judicial enforcement by contempt power, but rather, only by a prisoner's new action for breach of contract. (Nebraska State Penitentiary)</p>
<p>U.S. District Court MUNICIPAL LIABILITY</p>	<p><i>Dean v. Walker</i>, 764 F.Supp.2d 824 (S.D.Miss. 2011). Vehicular accident victims brought an action against a county, sheriff and deputies, stemming from a head-on collision with an escaped inmate whom the defendants were chasing. The district court granted the defendants' motion for summary judgment. The court held that the accident victims failed to establish a pattern of unconstitutional conduct by county, as required to maintain a claim for municipal liability under § 1983. The court noted that the victims introduced no evidence at all with respect to other police pursuits in the county or other instances where inmates were not made to wear handcuffs. According to the court, the victims failed to establish that the sheriff acted with an intent to harm, unrelated to his pursuit of the inmate, as required to maintain a substantive due process claim. The court noted that the sheriff's pulling in front of the inmate in an attempt to stop him, even if reckless, was consistent with the sheriff's legitimate interest in apprehending the inmate. (Jefferson–Franklin Correctional Facility, Mississippi)</p>
<p>U.S. District Court DAMAGES QUALIFIED IMMUNITY</p>	<p><i>Drumgold v. Callahan</i>, 806 F.Supp.2d 405 (D.Mass. 2011). A former prisoner brought an action against former homicide detectives, a police commissioner, and a city for damages arising from his wrongful conviction and unlawful imprisonment for the murder of a twelve-year-old girl. Following a verdict against the detective in a second trial, the detective filed motions for judgment as a matter of law, for a new trial, and to reduce the jury award. The district court denied the motions. The court held that the detective was not entitled to qualified immunity for failing to turn over impeachment evidence to a prosecutor. The court held that an award of approximately \$1 million per year of the plaintiff's wrongful fourteen-year incarceration was not excessive in the suit against the detective who withheld impeachment evidence, and therefore a reduction in the award was not warranted. The court noted that the jury determined the value of non-economic damages. (City of Boston, Mass.)</p>
<p>U.S. Appeals Court CONTRACT SERVICES</p>	<p><i>Florer v. Congregation Pidyon Shevuyim, N.A.</i>, 639 F.3d 916 (9th Cir. 2011). A state prisoner brought an action under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA) against a Jewish organization that contracted with the prison to provide Jewish religious services to prisoners, a rabbi who was president of the organization, and an outreach program of the organization. The prisoner alleged that the defendants refused to provide basic religious reading materials, other basic materials, and spiritual leadership. The district court granted summary judgment in favor of the organization and the prisoner appealed. The appeals court affirmed. The court held that the prisoner, whose requests for a Torah, Jewish calendar, and rabbi visit were denied by the private Jewish organization could not establish that such denial was the result of a governmental policy, as required to hold the organization liable for any deprivation of the prisoner's free exercise rights under § 1983 or his rights under the RLUIPA. According to the court, there was no evidence that the organization was enforcing a department of corrections (DOC) or governmental policy, or that the organization's internal policy was adopted by the DOC. The court also held that the prisoner could not establish that the organization helped DOC staff determine whether other prisoners should be classified by the DOC as Jewish, as required to hold the organization liable. The court noted that the private Jewish organization and its rabbi were not "state actors" under the public function analysis, as would allow the defendants to be held liable on the prisoner's claims. (Washington State Penitentiary)</p>
<p>U.S. District Court ALIEN CLASS ACTION INJUNCTIVE RELIEF</p>	<p><i>Franco-Gonzales v. Holder</i>, 828 F.Supp.2d 1133 (C.D.Cal. 2011). Immigrant detainees brought a putative class action on behalf of mentally disabled detainees being held in custody without counsel during removal proceedings, asserting claims under the Immigration and Nationality Act (INA), Rehabilitation Act, and Due Process Clause. A detainee who was a native and citizen of Belarus, and who had been deemed mentally incompetent to represent himself in removal proceedings, moved for a preliminary injunction. The district court granted the motion in part. The court held that: (1) the detainee was entitled to a custody hearing at which the government had to justify his continued detention on the basis that he was a flight risk or would be a danger to the community; (2) a qualified representative for a mentally incompetent immigrant detainee may be an attorney, law student or law graduate directly supervised by a retained attorney, or an accredited representative; (3) the detainee's father could not serve as a qualified representative for detainee at a custody hearing; (4) appointment of a qualified representative to represent the detainee at a custody hearing was a reasonable accommodation under the Rehabilitation Act; (5) the likelihood of irreparable harm and the balance of hardships favored the detainee; and (6) a mandatory injunction was warranted. (Sacramento County Jail, California)</p>
<p>U.S. Appeals Court INJUNCTIVE RELIEF</p>	<p><i>Gilman v. Schwarzenegger</i>, 638 F.3d 1101(9th Cir. 2011). California state prisoners serving life imprisonment sentences with the possibility of parole filed a class action under § 1983, alleging that a provision of California's Victims' Bill of Rights Act of 2008, which reduced the availability and frequency of parole hearings for prisoners initially found not suitable for parole, violated the Ex Post Facto Clause and prisoners' substantive due process rights. The prisoners moved for a preliminary injunction to bar enforcement of the Act, and the state moved to dismiss. The district court granted preliminary injunctive relief in part, and the State appealed. The appeals court reversed. The appeals court held that, even assuming that the Act threatened to create the risk of prolonged incarceration for those convicted prior to its enactment, the prisoners' ability to apply for expedited hearings remedied any possible Ex Post Facto violation and warranted denial of the inmates' request for a preliminary injunction. (California)</p>

U.S. District Court
GOVERNMENTAL
IMMUNITY
NEGLIGENCE
PUNITIVE DAMAGES
QUASI-JUDICIAL
IMMUNITY
SOVEREIGN IMMUNITY

Harbeck v. Smith, 814 F.Supp.2d 608 (E.D.Va. 2011). A former pretrial detainee brought a § 1983 action against a public defender, clerk of court, and deputy clerk of court, alleging that she was unlawfully imprisoned for 87 days after criminal charges against her were dismissed, in violation of her rights under Fourth and Fourteenth Amendments, and false imprisonment under Virginia law. The defendants moved to dismiss for failure to state claim. The district court granted the motions in part and denied in part. The court held that the detainee failed to state § 1983 and false imprisonment claims against public defender and that the public defender was entitled to governmental immunity against a legal malpractice claim. The court found that the detainee's allegations were sufficient to state a § 1983 claim against the clerk and that the clerk was not entitled to quasi-judicial immunity against the § 1983 claim and was not entitled to sovereign immunity against the negligence claim. The court also found that the detainee alleged necessary conduct by the clerk and deputy clerk to state a claim for punitive damages. According to the court, the allegations that the clerk of court received at least two letters notifying her that the pretrial detainee should be released, and that she still failed to take action to effectuate that release after criminal charges against the detainee were dismissed, were sufficient to allege the clerk's personal involvement in the detainee's continued detention. The court noted that the clerk's alleged inaction in procuring the detainee's release after criminal charges were dismissed was not a choice within the clerk's discretion and was not taken pursuant to the state court's direction. The court also held that the clerk of court failed in her execution of a ministerial duty, precluding her entitlement to sovereign immunity against the pretrial detainee's negligence claim, where the clerk received orders for detainee to be released, which the clerk's office was then required to notify the jail of the detainee's change in status so as to effectuate her release. (Hampton Roads Regional Jail, Virginia, and Circuit Court of the City of Hampton, Virginia)

U.S. District Court
INJUNCTIVE RELIEF
POLICIES/PROCEDURES

Hughbanks v. Dooley, 788 F.Supp.2d 988 (D.S.D. 2011). A prisoner brought a § 1983 action alleging that the state Department of Corrections' correspondence policy prohibiting the delivery of bulk-rate mail was unconstitutional. The prisoner moved for preliminary injunctive relief and asked the court to invalidate portions of the policy. The district court denied the motion. The court found that the prisoner's mere allegation that his First Amendment rights were violated by the prison's denial of bulk-rate mail established the threat of irreparable harm, in determining whether to grant the prisoner a preliminary injunction seeking to invalidate the prison's bulk-rate mail policy, but the balance of hardships favored the prison in determining whether to grant the prisoner's request. The court noted that the bulk-rate mail policy was a state policy, and suspension of the policy for all inmates in the state would compromise the safety and security of every institution in the state. The court found that the policy was rationally-related to the prison's penological purpose of maintaining security and order, that prisoners could review catalogs in a prison property office and could pre-pay postage on any catalog to have it mailed first or second class, that the challenged policy was statewide and any accommodation would have a significant effect on state inmates and prison staff, and the policy was not an exaggerated response to security and other concerns.

Similarly, the court found that the prisoner's allegation that his Fourteenth Amendment due process rights were being violated by the prison's failure to notify him when prohibited bulk-rate mail was not delivered established the threat of irreparable harm, in determining whether to grant the prisoner a preliminary injunction requiring the prison to notify the intended recipient and sender when bulk-rate correspondence was confiscated. The court again found that the balance of hardships favored the prison, where the prison would have to expend substantial prison resources to implement the requested policy, and the current policy was implemented to preserve a prison resource. (Mike Durfee State Prison, South Dakota)

U.S. District Court
INJUNCTIVE RELIEF

Link v. Luebbers, 830 F.Supp.2d 729 (E.D.Mo. 2011). After federal habeas proceedings were terminated, federal-appointed counsel filed vouchers seeking payment under the Criminal Justice Act (CJA), for work performed on a prisoner's executive clemency proceedings and civil cases challenging Missouri's execution protocol. The district court held that counsel were entitled to compensation for pursuing the prisoner's § 1983 action for declaratory and injunctive relief alleging denial of due process in his clemency proceedings, but that counsel were not entitled to compensation for work performed in the § 1983 action challenging Missouri's execution protocol. The court noted that the prisoner's § 1983 action challenging Missouri's execution protocol was not integral to the prisoner's executive clemency proceedings. (Missouri)

U.S. District Court
FAILURE TO PROTECT
NEGLIGENCE
SOVEREIGN IMMUNITY

Maraj v. Massachusetts, 836 F.Supp.2d 17 (D.Mass. 2011). The mother of a deceased inmate brought an action, as administratrix of the inmate's estate, against the Commonwealth of Massachusetts, a county sheriff's department, a county sheriff, and corrections officers, alleging that the defendants violated the inmate's Fourth and Fourteenth Amendment rights. She also brought common law claims of wrongful death, negligence, and assault and battery. The defendants moved to dismiss for failure to state claim. The district court granted the motion in part and denied in part. The court held that the Commonwealth, in enacting legislation effectuating the assumption of county sheriff's department by the Commonwealth, did not waive sovereign immunity as to § 1983 claims filed against the Commonwealth, the department, and corrections officers in their official capacities after the transfer took effect. The court found that the correction officers who were no longer participating in the transfer of the inmate at the time inmate first resisted and the officers who took the first responsive measure by "double locking" the inmate's handcuffs were not subject to liability in their individual capacities as to the § 1983 substantive due process claim brought by inmate's mother arising from the inmate's death following the transfer.

According to the court, corrections officers who applied physical force to the resisting inmate during the transfer of the inmate, or were present when the inmate was unresponsive and requiring medical attention, were subject to liability, in their individual capacities, as to the § 1983 substantive due process claim brought by the inmate's mother. The court held that the county sheriff and corrections officers who participated in the transfer of the inmate, who died following the transfer, were immune from negligence and wrongful death claims brought by the inmate's mother under the Massachusetts Tort Claims Act (MTCA) provision which categorically protected public employees acting within the scope of their employment from liability for "personal injury or death" caused by their individual negligence. But the court found that the mother properly alleged that county corrections officers' contact with the inmate amounted to excessive force, and that a supervisor instructed the use of excessive force, as

required to state a claim for assault and battery, under Massachusetts law, against the officers. (South Bay House of Correction, Suffolk County, Massachusetts)

U.S. District Court
HECK RULE
INJUNCTIVE RELIEF
QUASI-JUDICIAL
IMMUNITY

McBride v. Cahoone, 820 F.Supp.2d 623 (E.D.Pa. 2011). A state prisoner filed § 1983 action against his probation officer, and others, alleging violation of his constitutional rights after he was sent to prison for 83 days without a hearing for violation of his electronic monitoring program. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) the state prisoner had a due process liberty interest in serving his sentence in home confinement; (2) his claim was not barred by *Heck v. Humphrey*; (3) the prisoner had standing to seek injunctive and declaratory relief; (4) the claim against the director of the state probation and parole department was not barred by the Eleventh Amendment; (5) the probation officer was not entitled to qualified immunity; (6) the probation officer was not entitled to quasi-judicial immunity; and (7) the director of the state probation and parole department was not entitled to quasi-judicial immunity. The court noted that the prisoner pled guilty after a judge advised him repeatedly that if he accepted the government's plea offer, he would not serve any time in prison, but would carry out his sentence in electronically-monitored home confinement. (Delaware County Office of Adult Probation and Parole Services, Pennsylvania)

U.S. District Court
FAILURE TO SUPERVISE
FAILURE TO TRAIN
POLICIES/PROCEDURES
NEGLIGENT HIRING

Morse v. Regents of University of California, Berkeley, 821 F.Supp.2d 1112 (N.D.Cal. 2011). A journalist arrested while covering a demonstration at a university sued the university's board of regents, its police department and various officers on the department, asserting § 1983 claims for violation of the First Amendment, the Fourth Amendment, and the Excessive Bail Clause of the Eighth Amendment, as well as a claim for violation of the Privacy Protection Act. The defendants filed a partial motion to dismiss. The district court granted the motion in part and denied in part. The court held that the journalist stated a § 1983 claim for violation of the Excessive Bail Clause of the Eighth Amendment on the theory that the defendants added unsupported charges for the sole purpose of increasing his bail. The court found that the theory was viable under the Excessive Bail Clause, despite the indirect means the defendants allegedly used to obtain the higher bail, and the intervening actions of the judicial officer who actually set bail. The court found that the journalist stated a § 1983 claim against the police chief in his individual capacity where the journalist asserted that the chief failed to train or supervise those individuals who directly deprived the journalist of his constitutional rights and that, by his policy decisions, he set in motion the acts that deprived the journalist of his constitutional rights. The court held that the journalist's claims that he was wrongfully arrested by university police and that his property was subject to searches and seizures without proper cause and without the proper warrants, stated a claim under the Privacy Protection Act (PPA) against the university police chief for failure to screen, train, and supervise. The court noted that the journalist's claim related specifically to the statutory provisions of the PPA, that he alleged sufficient facts to support his claim of a causal connection between the police chief's conduct and the statutory violation, and liability was not limited to those personally involved in the statutory violation. (University of California, Berkeley)

U.S. District Court
FAILURE TO ACT
FAILURE TO PROTECT
FAILURE TO SUPERVISE
FAILURE TO TRAIN

Plair v. City of New York, 789 F.Supp.2d 459 (S.D.N.Y. 2011). A pre-trial detainee at an adolescent jail brought an action against a city, city officials, and corrections officers, asserting claims under § 1983 and state law arising from an incident in which an officer allegedly punched him in the face. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee failed to state excessive force claims against supervisory officials and a § 1983 claim against the city. The court found that correctional officers and supervisors did not have immunity under New York law from state law claims and the city did not have immunity under New York law from state law claims brought on the respondeat superior basis. The court held that the determination of whether the pretrial detainee's claim against the city for its negligent hiring, training, and retention of officers and supervisors allegedly involved in the detainee's beating could not be resolved at the motion to dismiss phase because of factual issues as to whether the actions of these officers and supervisors were undertaken in the scope of their employment. (Davoren Center, Rikers Island, New York City)

U.S. District Court
NOMINAL DAMAGES
PUNITIVE DAMAGES

Ratray v. Woodbury County, Iowa, 788 F.Supp.2d 839 (N.D.Iowa 2011). A detainee sued a county, claiming that her civil rights were violated by a strip search conducted by jail employees. Following a jury verdict awarding substantial damages, the county moved for a new trial or for a reduction of the jury's award. The court granted the motion. The court held that a new trial was warranted because it was impossible to determine why the jury, in its first verdict, awarded \$5,000 for past emotional distress, and a few minutes later awarded her \$250,000 for past emotional distress in a second verdict. The court noted that, after the jury learned it could not award \$250,000 in nominal damages, it drastically increased its initial award of \$5,000 for past emotional distress to \$250,000 in the second verdict, and while the jury may have intended the \$250,000 award as punitive damages, such damages were not pled, and the jury had been instructed that such damages could not be awarded. (Woodbury Co. Jail, Iowa)

U.S. District Court
INDIVIDUAL CAPACITY

Reed v. Baca, 800 F.Supp.2d 1102 (C.D.Cal. 2011). A detainee brought a § 1983 action against a sheriff, county, and the sheriff's department, alleging wrongful arrest and detention. The defendants moved for summary judgment. The district court granted the motion. The court held that the county and the sheriff's department did not infringe on the pretrial detainee's Fourteenth Amendment rights by detaining him pursuant to a valid warrant but in the face of repeated protests of innocence, despite the detainee's argument that the county and the department knew or should have known that he was entitled to release prior to dismissal of the case against him. According to the court, even assuming a violation, the detainee failed to present evidence to show that his continued detention, beyond the point at which the county and the department allegedly knew or should have known he was entitled to release, was pursuant to a policy or custom evincing deliberate indifference to his constitutional rights, as would support liability. The court found that the county sheriff was not liable in his individual capacity under § 1983 for the pretrial detainee's over-detention, absent evidence that the sheriff had any direct contact with the detainee or actual knowledge of claimed constitutional violations, or condoned, ratified, or encouraged the alleged constitutional violations in any way. (Los Angeles County Sheriff's Department, California)

U.S. District Court
PUNITIVE DAMAGES

Rodriguez-Sanchez v. Acevedo-Vila, 763 F.Supp.2d 294 (D.Puerto Rico 2011). An inmate brought a § 1983 action against a prison warden and a director of corrections for alleged violation of his Eighth Amendment right to be free from cruel and unusual punishment. The district court held that the prison warden was liable for an Eighth Amendment violation but the inmate was not entitled to a judgment against the director of corrections. The court found that the inmate was entitled to \$1,000 per day for pain and suffering and to a punitive damages award of \$10,000 from the warden. According to the court, the warden was liable to the inmate for violating the inmate's Eighth Amendment right to be free from cruel and unusual punishment because the inhumane conditions to which the inmate was subjected in his cell included the lack of an adequate place to sit, no working toilet, shower runoff water channeled through the cell, and foul odors. The court held that these conditions were the result of design and not of accident or happenstance, and were known to the prison officials in charge and in control, including the warden. (Correctional Institution Annex 296, Guayama, Puerto Rico)

U.S. Appeals Court
DAMAGES
PUNITIVE DAMAGES

Schaub v. VonWald, 638 F.3d 905 (8th Cir. 2011). A paraplegic state prisoner brought an action against the director of a county adult detention center (ADC), the county, and others, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. Following a bench trial, the district court held that the director violated the prisoner's Eighth Amendment rights, and awarded the prisoner \$114,000 in lost wages, \$100,000 in pain and suffering, and \$750,000 in punitive damages. The director appealed. The appeals court affirmed. The appeals court held that: (1) the district court did not clearly err in finding that the prisoner's condition constituted a serious medical need; (2) the director was subjectively aware of the prisoner's serious medical needs; (3) the director knowingly and deliberately disregarded the prisoner's serious medical needs; (4) the prisoner's need for medical attention would have been obvious to a layperson, and thus submission of verifying medical evidence was unnecessary; (5) expert testimony on the causation of the prisoner's serious medical condition was unnecessary; (6) the director's conduct involved callous indifference to the prisoner's serious medical needs, and thus the award of punitive damages was warranted; and (7) the director had the burden to introduce evidence of his net worth to minimize a potential punitive damages award. The court noted that the prisoner's oozing sores and smell of infection due to pressure sores, made his serious medical needs obvious to a layperson, and a letter from the prisoner's doctor, summarizing the prisoner's medical condition and needs, and the prison medical staff's observations, documenting new areas of skin breakdown due to pressure sores, provided sufficient medical evidence verifying the escalating seriousness of the prisoner's condition. (Olmsted County Adult Detention Center, Minnesota)

U.S. Appeals Court
FAILURE TO PROTECT
FAILURE TO SUPERVISE
SUPERVISORY
LIABILITY

Starr v. Baca, 652 F.3d 1202 (9th Cir. 2011). A prisoner brought a § 1983 action for damages resulting from a violent attack he allegedly suffered while he was an inmate in a county jail. The district court dismissed the prisoner's supervisory liability claim for deliberate indifference against the sheriff in his individual capacity, and the prisoner appealed. The appeals court reversed and remanded. The court held that the inmate sufficiently alleged a supervisory liability claim of deliberate indifference against the sheriff in violation of the Eighth and Fourteenth Amendments based on allegations that the sheriff failed to act to protect inmates under his care despite his knowledge that they were in danger because of the culpable acts of his subordinates and despite his ability to take actions that would have protected them. The court noted that the complaint specifically alleged numerous incidents in which inmates in county jails had been killed or injured because of the culpable actions of the subordinates of the sheriff, that the sheriff was given notice of all of those incidents, was given notice, in several reports, of systematic problems in the county jails under his supervision that had resulted in deaths and injuries, and that the sheriff did not take action to protect inmates under his care despite the dangers created by the actions of his subordinates of which he had been made aware. (Los Angeles County Jails, California)

U.S. District Court
FTCA- Federal Tort Claims
Act
DAMAGES
FAILURE TO TRAIN
FAILURE TO SUPERVISE
STATUTES

Tookes v. U.S., 811 F.Supp.2d 322 (D.D.C. 2011). An arrestee brought an action under the Federal Tort Claims Act (FTCA) against the United States, alleging assault and battery, false imprisonment, and negligent training and supervision. The United States filed a motion for partial summary judgment. The district court granted the motion in part, and denied in part. The court held that the training and supervision of Deputy United States Marshals was a discretionary function, and therefore, the discretionary function exception to FTCA precluded subject matter jurisdiction of the arrestee's negligent training and supervision claims, following an alleged attack by marshals. The court noted that there were no statutes, regulations, or policies that specifically prescribed how to train or oversee marshals, and decisions involved social, economic, and political policy in that decisions had to balance budgetary constraints, public perception, economic conditions, individual backgrounds, office diversity, experience, public safety, and employee privacy rights, as well as other considerations. According to the court, there was no evidence that the arrestee should have known she could be diagnosed as suffering from post-traumatic stress disorder following an alleged false imprisonment by United States marshals, and therefore, the arrestee was not limited from seeking greater damages for her emotional injuries than the amount claimed in her administrative form, in her FTCA claim. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the United States marshals falsely imprisoned the arrestee by bringing her back into a courthouse. (United States Marshals Services, District of Columbia)

U.S. District Court
CONCENT DECREE-
MODIFICATION

U.S. v. Cook County, Illinois, 761 F.Supp.2d 794 (N.D.Ill. 2011). The U.S. Department of Justice (DOJ) brought an action against a county, alleging conditions in a county jail violated the Eighth and Fourteenth Amendment. Following entry of a consent decree, the county moved for entry of a prisoner release order. The district court denied the motion. The court held that while overcrowding was a primary cause of the unconstitutional conditions at the jail and a prisoner release order was the least intrusive form of relief for overcrowding in the jail, the proposed prisoner release order was not narrowly drawn or sufficiently specific, and thus the grant of the order was not warranted. The court noted that conditions of overcrowding caused guards to resort to excessive force, incidents involving guards' use of excessive force were more frequent on days the jail was overcrowded, overcrowding caused grossly unsanitary and unhealthy conditions, and chronic overcrowding of the jail's medical facilities resulted in inadequate medical and mental-health care. According to the court, the proposed order did not explain or justify the number of inmates who would be affected by the order or the number of inmates that would be re-

leased annually, did not specify which class or classes of prisoners would be eligible for release or what grounds were to be used in deciding whether an inmate should be released on their own recognizance or released on electronic monitoring, or provide assurance that adequate funding would be available for electronic monitoring equipment or that prisoners released to electronic monitoring would be effectively monitored. (Cook County Jail, Illinois)

U.S. Appeals Court
DAMAGES
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Vinning-El v. Evans, 657 F.3d 591 (7th Cir. 2011). A state inmate brought an action against correctional facility officials, alleging violations of § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA) based on their denial of his request for a vegan diet, which he claimed was required by his religious practices. The district court entered an order granting in part and denying in part the officials' motion for summary judgment, and they appealed. The appeals court held that the inmate could not recover monetary damages against officials under RLUIPA. According to the court, the inmate's action against the officials was treated as an action against the state, and monetary damages were not available against a state under RLUIPA. (Pinckneyville Correctional Center, Ill.)

U.S. District Court
DAMAGES

Webb v. Jessamine County Fiscal Court, 802 F.Supp.2d 870 (E.D.Ky. 2011). An inmate brought a § 1983 action against a county fiscal court, a judge, detention center, and jailers, alleging that the defendants were deliberately indifferent to his serious medical needs, resulting in her being forced to endure labor unassisted by medical personnel and to give birth to her child in a holdover cell. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the pregnant inmate had a "serious medical need" during the overnight hours in which she, at the end of her pregnancy term, experienced readily recognizable symptoms of labor, and as to whether the county jailer who communicated with the inmate on the night in question, and who was purportedly a certified nursing assistant (CNA), perceived the facts necessary to draw the inference that a serious medical condition existed and then disregarded that condition. According to the court, the fact that the inmate gave birth to a healthy baby in a holdover cell following a normal and, by all appearances, unremarkable course of labor and delivery, went to the amount of damages to be awarded in the inmate's § 1983 action against the county defendants, but did not change the fact that the type of injury the inmate allegedly suffered was cognizable under the Eighth Amendment. (Jessamine County Detention Center, Kentucky)

U.S. Appeals Court
NOMINAL DAMAGES
PUNITIVE DAMAGES

Williams v. Hobbs, 662 F.3d 994 (8th Cir. 2011). A state inmate brought a § 1983 action against deputy director of a department of correction and various wardens alleging that his approximately 14-year continuous detention in administrative segregation violated his procedural due process rights. Following a bench trial, the district court found that four of the five defendants had denied the inmate due process, awarded \$4,846 in nominal damages, and denied punitive damages. Both parties appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the inmate's administrative segregation reviews were not meaningful under the due process clause. The court noted that one warden testified that the inmate's seven-years' worth of clean history was irrelevant to him, another warden confirmed that even if the inmate proved to be a model prisoner his vote would always be that the inmate remain in administrative segregation in light of his past transgressions, and the wardens failed to explain to the inmate with any specificity why he constituted a continuing threat to the security and good order of prison. The court found that the director conducted his review in a meaningful fashion. The court ruled that the inmate was not entitled to a per-day nominal damages award for each day spent in administrative segregation, and that the district court did not abuse its discretion by not awarding punitive damages. (Tucker Maximum Security Unit, Arkansas)

2012

U.S. District Court
FTCA- Federal Tort Claims
Act
ATCA- Alien Tort Claims
Act

Al-Zahrani v. Rodriguez, 669 F.3d 315 (D.C.Cir. 2012). Survivors of detainees who died at the Guantanamo Bay Naval Base sued the United States and a host of government officials under the Alien Tort Claims Act (ATCA), the Federal Tort Claims Act (FTCA), and the Fifth and Eighth Amendments. The survivors asserted that the detainees had been subjected to physical and psychological torture and abuse, inadequate medical treatment and withholding of necessary medication, and religious abuse. The district court granted the government's motion to be substituted as the defendant on the ATCA claims and its motion to dismiss both the ATCA and the FTCA claims. The appeals court later denied the survivors' motion for reconsideration. The survivors appealed. The appeals court affirmed on other grounds. The appeals court held that habeas corpus statute amendments barred federal court jurisdiction over the action. (Guantanamo Bay Naval Base, Cuba)

U.S. District Court
SUPERVISORY
LIABILITY
DELIBERATE
INDIFFERENCE

Alexander v. Weiner, 841 F.Supp.2d 486 (D.Mass. 2012). An inmate, who was a male-to-female transsexual diagnosed with Gender Identity Disorder (GID), brought an action against prison medical staff, alleging violations of the Eighth and Fourteenth Amendments for failing to provide adequate medical treatment for her GID. The district court denied the defendants' motion to dismiss. The court held that allegations by the inmate that she was a male-to-female transsexual diagnosed with Gender Identity Disorder (GID), that laser hair removal or electrolysis was part of her treatment prescribed by doctors under contract with the prison, and that she was denied this medical care were sufficient to plead that her serious medical need was not adequately treated in violation of the Eighth Amendment. The court also held that allegations that she was denied this care on at least three separate occasions, despite a long history of administrative appeals and requests for doctors' orders to be followed, were sufficient to plead deliberate indifference by prison officials in violation of the Eighth Amendment. According to the court, allegations that the associate medical director at the prison had direct responsibility for administering medical care ordered by physicians, and that the director failed to permit the inmate to receive her prescribed treatment, were sufficient to plead personal involvement by the director in deliberate indifference to serious medical needs, as required for the inmate's § 1983 claim alleging violations of the Eighth Amendment. The court also found that the assistant deputy commissioner for clinical services at the prison was aware of the inmate's prescribed course of treatment, that the inmate was denied treatments, and that the commissioner responded to filed grievances by

claiming the grievances were resolved and then telling the inmate to address her concerns with primary care providers, were sufficient to plead the commissioner's personal involvement in deliberate indifference to her serious medical needs. (Massachusetts Department of Correction)

U.S. District Court
NEGLIGENCE
SOVEREIGN IMMUNITY
DELIBERATE
INDIFFERENCE

Allen v. Ford, 880 F.Supp.2d 407 (W.D.N.Y. 2012). A state inmate brought a § 1983 action against correction officers, alleging negligence in failing to provide adequate safety equipment while he was working in a cafeteria and in failing to provide treatment when he burned himself, as well as asserting deliberate indifference in instruction and supervision. The officers moved for summary judgment. The district court granted the motion. The court held that: (1) the negligence claims were precluded by sovereign immunity; (2) one officer did not know of and disregard the severity of the prisoner's injuries; and (3) the officer advising the prisoner to sign up for sick call for the following morning, rather than providing emergency sick call at that time, was not deliberately indifferent. The court noted that the prisoner reported the incident to the officer, who asked if he was badly burned, the prisoner responded that he did not know, the prisoner's skin did not blister until after he returned to his cell at the end of his shift, and the prisoner visited the medical department the next morning and was transferred to a county medical center. (New York State Department of Corrections, Wende Correctional Facility)

U.S. Appeals Court
INJUNCTIVE RELIEF
RLUIPA- Religious Land
Use and Institutionalized
Persons Act
SOVEREIGN IMMUNITY
DAMAGES

Alvarez v. Hill, 667 F.3d 1061 (9th Cir. 2012). A former inmate in the Oregon Department of Corrections (ODOC) sued prison officials, alleging that ODOC employees substantially burdened the practice of his religion in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed. The court held that Oregon's sovereign immunity barred the former inmate's Religious Land Use and Institutionalized Persons Act (RLUIPA) claims for money damages against corrections officials sued in their official capacity, where, for sovereign-immunity purposes, the official capacity claims were treated as claims against the state. The court found that the former inmate lacked a legally cognizable interest in the outcome of his claims for declaratory and injunctive relief, despite his contentions that his claims were capable of repetition, yet would continue to evade review, and that his claims challenged ongoing prison policies to which other inmates would remain subject. According to the court, there was no indication that the inmate, who had completed his sentence and his post-incarceration supervision, would again be subjected to the challenged prison policies, and current inmates could bring their own RLUIPA claims challenging the policies at issue. The court noted that an Inmate's release from prison while his claims are pending generally will moot any claims for injunctive relief relating to the prison's policies unless the suit has been certified as a class action. (Oregon Department of Corrections)

U.S. District Court
CLASS ACTION
INJUNCTIVE RELIEF

Armstrong v. Brown, 857 F.Supp.2d 919 (N.D.Cal. 2012). Disabled state prisoners and parolees brought a class action against state prison officials, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Seventeen years later, plaintiffs moved for an order requiring officials to track and accommodate the needs of class members housed in county jails and to provide a workable grievance procedure. Following remand to allow the development of additional evidence, the prisoners and parolees filed a renewed motion. The district court granted the motion and entered an enforce order. The court held that: (1) officials' efforts to comply with ADA, the Rehabilitation Act, and prior orders were inadequate and ineffective on a system-wide level; (2) system-wide injunctive relief was appropriate; (3) district court would not abstain from exercising its jurisdiction over matters pertaining to county jails; (4) a stay of the prior order was not warranted; and (5) the district court would exercise its retained jurisdiction to enforce the injunction. The court held that state officials were obliged to ensure ADA-compliant conditions for prisoners and parolees that they housed under their own authority in county jails. (California Youth and Adult Corrections Authority, Board of Prison Terms, California Department of Corrections)

U.S. Appeals Court
FTCA- Federal Tort Claims
Act

Baker v. U.S., 670 F.3d 448 (3rd Cir. 2012). A prisoner, proceeding pro se, brought an action against the government and others under the Federal Tort Claims Act (FTCA), alleging personal injuries caused by his exposure to second-hand smoke while incarcerated. The district court granted the defendants' motion to dismiss and the government's motion to dismiss. The appeals court affirmed on other grounds. (McKean Federal Correctional Institution, Pennsylvania)

U.S. District Court
CONTRACT SERVICES
FAILURE TO PROTECT
LIABILITY

Bektic-Marrero v. Goldberg, 850 F.Supp.2d 418 (S.D.N.Y. 2012). The wife of an inmate who died of cancer-related causes while in the custody of a county department of correction (DOC) brought an action against the county, DOC officials, and entities that contracted with the county to provide medical care and treatment to DOC inmates and employees of those entities. The wife alleged under § 1983 that the inmate received inadequate medical care, and asserted related state-law claims for wrongful death and medical malpractice. The defendants moved to dismiss for failure to state a claim and/or for summary judgment. The district court granted summary judgment for the defendants in part, and denied in part. The court held that the physicians who were under contract with the county to provide medical services to inmates at the county jail on a part-time basis acted under the color of state law, within the meaning of § 1983, when they treated the inmate, and thus the physicians were subject to liability under § 1983. The court held that the allegations that the health care coordinator for the DOC denied or delayed responding to the wife's request for the inmate's medical records, which she hoped to use to have the inmate's parole restored and to seek a second medical opinion, and that the coordinator expressly denied the wife's request to provide the inmate with a liquid dietary supplement which wife would supply at her own cost, sufficiently pled the coordinator's personal involvement in the alleged deprivation of necessary medical care to the inmate, so as to subject the coordinator to liability under § 1983. The court found that the United States Department of Justice (DOJ) report which concluded that the provision of medical care to inmates by the county department of correction (DOC) was constitutionally deficient in several respects sufficiently alleged that the county's "custom" of providing inadequate care to inmates was the cause of Eighth Amendment violations sustained by the inmate. (Westchester County Department of Correction, New York)

U.S. District Court
INJUNCTIVE RELIEF
POLICIES/PROCEDURES
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Benning v. Georgia, 845 F.Supp.2d 1372 (M.D.Ga. 2012). An inmate, who was a Torah-Observant Jew, proceeding pro se, brought an action against a state, a board of corrections, a department of corrections (DOC) and its commissioner, seeking injunctive relief on allegations that grooming policies violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court held that: (1) the inmate's beliefs were sincerely held; (2) the policy requiring the inmate to remove his earlocks substantially burdened a tenet of his religion; (3) requiring the inmate to purchase or obtain from a charity a depilatory to comply with the policy did not substantially burden a tenet of the inmate's religion; and (4) summary judgment was precluded by a genuine issue of material fact as to whether the prison policy of refusing to allow the inmate to grow earlocks was the least restrictive means of protecting the prison's compelling interests. The court noted that the Religious Land Use and Institutionalized Persons Act (RLUIPA) affords to prison inmates a heightened protection from government-imposed burdens by requiring that the government demonstrate that the substantial burden on the prisoner's religious exercise is justified by a compelling, rather than merely a legitimate, governmental interest. The court noted that the inmate had changed his religion of record with the department of corrections (DOC) to Judaism 10 years previously, he had not changed his religion since, and inmate had spent much of his time grieving and litigating issues related to his Jewish faith. (Astry State Prison, Georgia)

U.S. Appeals Court
FAILURE TO PROTECT
DELIBERATE
INDIFFERENCE

Bistran v. Levi, 696 F.3d 352 (3rd Cir. 2012). A federal inmate brought a civil rights action against prison officials and employees, alleging, among other things, that the defendants failed to protect him from inmate violence, and that the defendants placed him in a special housing unit (SHU) in retaliation for exercising his First Amendment rights. The inmate alleged that prison investigators used him to intercept notes being passed among other inmates, and then failed to protect him after they fouled up the operation and the inmates discovered his involvement. When the target inmates threatened to retaliate, the inmate contended he repeatedly begged the officials responsible for help, but no one took any preventive measures. Later, one of the inmates against whom inmate had cooperated, along with two others, beat him while they were together in a locked recreation pen. A few months later, an inmate wielding a razor-blade type weapon also attacked the inmate in the recreation pen. The district court denied the defendants' motion to dismiss. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that: (1) the officials' decision to keep the inmate, who had acted as an informant, in SHU after his cooperation with the officials was not unreasonable; (2) the officials were deliberately indifferent to the inmate's safety when they placed him in a recreation yard with prisoners who were aware of his complicity with officials by informing on them; (3) the officials were not deliberately indifferent to a risk of harm when they placed the inmate in the yard with a prisoner who had a history of violent assaults against other inmates; (4) the inmate stated a failure-to-protect claim with respect to the officer's failure to intervene in the assault, where he intervened in another prisoner's assault on the inmate in the special housing unit's (SHU) recreation yard "only after several minutes of continued pummeling;" and (6) the inmate stated a substantive due process claim. The court noted that the federal inmate, who was either not yet convicted, or convicted but not yet sentenced, when he was attacked by other inmates in the prison's recreation yard, had a clearly established due process right to have prison officials protect him from inmate violence. (Federal Detention Center, Philadelphia, Pennsylvania)

U.S. District Court
INJUNCTIVE RELIEF

Brooks v. Roy, 881 F.Supp.2d 1034 (D.Minn. 2012). A Native American state prisoner filed a § 1983 action, claiming that his required participation in a prison's substance abuse treatment program violated the Free Exercise Clause, the Religious Land Use and Institutionalized Persons Act (RLUIPA), the American Indian Religious Freedom Act (AIRFA), and the Minnesota Constitution. The prisoner sought an injunction assigning him at his own expense to a privately-run, Native American inpatient treatment program 200 miles from the prison, or readmitting him to the prison's program so that he would be eligible for prison benefits. The prisoner moved for a temporary restraining order or a preliminary injunction. The district court denied the motion. The court held that: (1) the Free Exercise Clause and RLUIPA claims were not actionable; (2) the First Amendment retaliation claim was not actionable; (3) the prisoner would not likely suffer irreparable harm absent a preliminary injunction; (4) the balance of hardships did not favor a preliminary injunction; (5) the public interest did not support a preliminary injunction; and (6) AIRFA lacked a private cause of action. The court noted that the prisoner failed to delineate any sincerely-held religious belief that was in any way infringed on by his participation in the prison substance abuse treatment program, as required to support his claim for infringement of his right to free exercise of religion. (Minnesota Correctional Facility, Faribault)

U.S. District Court
SUPERVISORY
LIABILITY
DELIBERATE
INDIFFERENCE

Bruner-McMahon v. Hinshaw, 846 F.Supp.2d 1177 (D.Kan. 2012). The administrator of the estate and the children of a deceased inmate brought a § 1983 action against a prison medical contractor, its employees, county officials, and prison employees, alleging violations of the Eighth Amendment. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a deputy knew that the inmate faced a risk of a serious medical condition and chose to ignore it. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether a deputy who found the inmate lying on the floor in his cell but did not contact the clinic was deliberately indifferent to the risk of serious medical need. The court found that a deputy who helped escort the inmate back to his cell was not deliberately indifferent to the inmate's serious medical need, as would violate the Eighth Amendment after the inmate died a couple days later, even though the deputy saw the inmate acting strangely and moving slowly, where the deputy believed the inmate had a mental health condition and did not need emergency care from a medical provider, and the deputy believed the deputy in charge at that time would address the matter, and the deputy had no other contact with the inmate. According to the court, a county custom, practice, or policy did not cause alleged constitutional violations by jail deputies in not getting medical care for inmate, as required for supervisory liability for the sheriff in his official capacity. The court noted that policy required that inmates receive necessary medical care without delay, deputies were expected to use common sense when responding to an inmate request or a known need, if an inmate appeared ill or a deputy otherwise recognized the need for medical attention the deputy was supposed to advise the inmate to place his name on sick call, contact a supervisor, or call the medical facility, and, in the event of a medical emergency, the

deputy could call an emergency radio code alerting a medical facility to respond immediately. (Sedgwick County Adult Detention Facility, Kansas)

U.S. Appeals Court
DAMAGES
HECK RULE

Burd v. Sessler, 702 F.3d 429 (7th Cir. 2012). A state prisoner brought a § 1983 action against prison officials, alleging that they deprived him of access to the courts by preventing him from using library resources to prepare a motion to withdraw his guilty plea. The district court dismissed the action and the prisoner appealed. The appeals court affirmed, finding that the claim was barred by *Heck v. Humphrey*. The court noted that such a claim for damages would require the prisoner to show that the deprivation of access hindered his efforts to successfully withdraw his guilty plea, which would necessarily implicate the validity of the prisoner's conviction that he incurred on account of that guilty plea. The court noted that even if the prisoner was no longer in custody at the time of his § 1983 suit, he could have pursued federal habeas relief while in custody, but failed to do so. Under Illinois practice, the prisoner had thirty days to file a motion to withdraw his guilty plea, but for the first twenty-nine days of this period, he was held at prison facilities that lacked library resources of any kind. (Sheridan Correctional Center, Illinois)

U.S. District Court
CLASS ACTION
POLICIES/PROCEDURES

Choquette v. City of New York, 839 F.Supp.2d 692 (S.D.N.Y. 2012). Female detainees filed § 1983 actions against a city and city officials alleging that the policy, practice, and custom of the city department of correction (DOC) of subjecting female detainees to a forced gynecological examination upon admission to DOC custody violated their constitutional rights. The detainees alleged that they were not informed of what the exam entailed and were subjected to, or threatened with, punishment if they questioned or refused the exam. The defendants moved to dismiss. The district court denied the motion. The court held that the statute of limitations for the detainees' claims was tolled until the gynecological exam class claims were dismissed from the class action challenging the DOC's alleged practice of conducting strip searches, where the potential gynecological exam class was pleaded in both the original complaint and the first amended intervenor complaint, and the settlement agreement did not provide unequivocal notice that the gynecological exam class claims were not being pursued. (New York City Dept. of Correction, Rose M. Singer Center, Rikers Island)

U.S. District Court
FAILURE TO PROTECT
FTCA- Federal Tort Claims
Act
NEGLIGENCE

Coffey v. U.S., 870 F.Supp.2d 1202 (D.N.M. 2012). The mother of a deceased inmate brought an action against the government under the Federal Tort Claims Act (FTCA), alleging, among other things, that Bureau of Indian Affairs (BIA) was negligent in failing to medically screen the inmate prior to his transfer to a different facility. The government moved to dismiss for lack of subject matter jurisdiction and for failure to state claim or, in the alternative, for summary judgment. The district court denied the motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact: (1) as to whether the Bureau of Indian Affairs (BIA), which transferred custody of the inmate with a heart condition to a county jail, where he died, engaged in conduct that breached its duty to conduct some screening of the inmate's condition; (2) as to whether BIA's conduct caused the inmate's death; (3) as to whether BIA engaged in conduct that breached its duty to take some steps to ensure that the jail would learn of his condition; (4) as to whether BIA's conduct caused the inmate's death; (5) as to whether BIA engaged in conduct that breached its duty to take some steps to ensure that the inmate's medical needs were addressed when it chose to transfer him; and (6) as to whether BIA engaged in conduct that breached its duty to act reasonably in terms of sending the inmate to the jail. (Reno Sparks Indian Colony, Nevada, and Washoe County Jail, Nevada)

U.S. District Court
FTCA- Federal Tort Claims
Act
NEGLIGENCE

Coffey v. U.S., 906 F.Supp.2d 1114 (D.N.M. 2012). The mother of a decedent, a Native American who died in a county correctional institution, brought actions on behalf of her son and his children against the government, alleging wrongful death and negligence claims arising from his treatment while in the institution. After a two-day bench trial, the district court found that: (1) the notice provided to the Bureau of Indian Affairs (BIA) in the mother's administrative claim was sufficient, thereby providing jurisdiction over the mother's wrongful death and negligence claims; (2) the BIA's decision whether to screen and transfer the inmate were not choices susceptible to policy analysis, and thus, the discretionary-function exception to the Federal Tort Claims Act (FTCA) did not preclude jurisdiction; (3) the mother's negligent screening claims were precluded; (4) the mother's negligent transfer claims were precluded; and (5) the mother's wrongful death claims, arising under FTCA, were precluded. The mother had filed a standard two-page form and submitted it to Indian Health Services and the Department of Health and Human Services (HHS), claiming that her son was denied medication, and that he was transferred by BIA to another correctional facility. The district court concluded that the United States Government was not liable for the detainee's death. (U.S. Department of the Interior-Bureau of Indian Affairs, McKinley County Detention Center, Nevada)

U.S. District Court
NOMINAL DAMAGES
PUNITIVE DAMAGES
QUALIFIED IMMUNITY
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Colvin v. Caruso, 852 F.Supp.2d 862 (W.D.Mich. 2012). A state prisoner filed a § 1983 action against prison officials, asserting that the prison's 16-day denial of kosher meals, mistakes in administering the kosher-meal program, and lack of Jewish services and literature at the prison violated his constitutional rights and Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the prisoner's motion for a preliminary injunction, and subsequently granted summary judgment in favor of the officials, and denied prisoner's motion to amend and second motion for preliminary injunction. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. On remand, the district court held that the prison's "zero tolerance" policy for possession of even one non-kosher food item violated the Free Exercise Clause and RLUIPA. But the court determined that the officials were entitled to qualified immunity where there had not been any determination that the regulation was in any way deficient at the time of the officials' actions. The court held that the prison's use of questionnaire about the inmate's knowledge of his designated religion was proper. According to the court, the officials' failure to reinstate the inmate to his kosher diet regimen violated the inmate's rights but punitive damages were not warranted. The court awarded \$1 in nominal damages where the inmate did not look like he missed many meals as a result of the officials' actions, and there was no evidence of physical injury. The court noted that even though the prison had economic interest in restricting kosher diet to prisoners who had a sincere belief that

the diet was necessary to practice their religion, where the inmate had no other means of eating, there was no evidence that providing a modicum of flexibility would have a ripple effect on prison staff or inmates or would escalate the cost of providing kosher meals. (Michigan Department of Corrections, Alger Correctional Facility)

U.S. District Court
FAILURE TO PROTECT
SUPERVISORY
LIABILITY

Covarrubias v. Wallace, 907 F.Supp.2d 808 (E.D.Tex. 2012). A state prisoner brought a pro se § 1983 action against prison guards and officials complaining of alleged violations of his constitutional rights, in connection with an alleged assault by guards and a subsequent disciplinary hearing. The district court held that: (1) picket officers could not be held liable under a supervisory liability theory for failing to intervene when the prisoner was subjected to pepper spray, where even if they had authority to intervene, they did not have a realistic opportunity to intervene; (2) the punishments imposed on the prisoner for assaulting a guard did not violate any due process liberty interest; (3) denial of the prisoner's grievance did not violate any due process liberty interest; and (4) the prisoner failed to state an Eighth Amendment claim for disregarding an excessive risk to his health or safety. But the court found that the prisoner's allegations, that corrections officers used excessive force against him in retaliation for requesting a supervisor and for attempts to informally resolve a complaint, stated § 1983 claims against the officers. The prisoner alleged that as he was being restrained, one officer fired a two- to three-second burst of pepper spray into his right eye, and the officers subsequently tackled him, using their elbows, knees, arms, and hands on his back, legs, arms, and face as they piled on him and pressed his face into the concrete. (Texas Department of Criminal Justice, Correctional Institutions Division, Beto Unit)

U.S. District Court
DELIBERATE
INDIFFERENCE
PUNITIVE DAMAGES

Currie v. Cundiff, 870 F.Supp.2d 581 (S.D.Ill. 2012). The administrator of the estate of a deceased detainee brought an action against a county, jail officials, and health care providers, alleging various claims, including claims pursuant to § 1983 and the Illinois Wrongful Death Act, as well as for punitive damages. The court held that allegations by the administrator of the estate of the deceased arrestee, that jail officials and health care providers acted with deliberate indifference in dealing with his diabetes while he was in custody, were sufficient to plead that they acted with reckless or callous disregard to federally protected rights, as required to seek punitive damages in the § 1983 proceedings alleging violations of the Fourth Amendment. The detainee died as a result of diabetic ketoacidosis while confined in the county jail. (Williamson County Jail, Illinois)

U.S. District Court
COMPENSATORY
DAMAGES
DELIBERATE
INDIFFERENCE
FAILURE TO PROTECT
NEGLIGENCE
PUNITIVE DAMAGES

Curtis v. TransCor America, LLC, 877 F.Supp.2d 578 (N.D.Ill. 2012). A prisoner's son brought a wrongful death action against a prisoner transport company, alleging that the company was liable for damages resulting from the death of the prisoner while in the company's custody. The district court held that it was necessary and proper for the court to resolve a narrow question of fact prior to trial for choice of law purposes, that Illinois law, rather than the law of Indiana, governed the issue of compensatory damages, and that the prisoner's son would be allowed to pursue punitive damages. The prisoner suffered a stroke that was allegedly caused, at least in part, by excessive temperatures in the prisoner compartment of the transport vehicle. According to the court, even though the complaint for wrongful death of the prisoner during a ride in a bus with a broken air conditioning unit had not requested punitive damages, the plaintiff could seek such damages against the prisoner transport company at trial. The court noted that although the company faced increased liability exposure, allegations suggesting that the employees ignored indications that the prisoner was in distress went beyond mere negligence. (TransCor America, LLC, Transport from Leavenworth, Kansas to the Federal Correctional Complex in Terre Haute, Indiana)

U.S. District Court
INJUNCTIVE RELIEF
RLUIPA- Religious
Land Use and
Institutionalized
Persons Act

Davis v. Abercrombie, 903 F.Supp.2d 975 (D.Hawai'i 2012). Inmates brought a state court action against the governor of Hawai'i, the Director of the Hawai'i Department of Public Safety (DPS), and the private manager of a correctional facility in Arizona at which they were housed, seeking declaratory relief that the defendants violated their rights to free exercise of their religion by depriving them of their prayer objects. The action was removed to federal court. The inmates moved for a preliminary injunction preventing the defendants from exercising the policies that infringed on their right to exercise their religion. The district court denied the motion. The court held that one inmate failed to exhaust his prison administrative remedies, as required under the Prison Litigation Reform Act (PLRA), prior to bringing the action. After submitting an informal resolution form, the inmate did not obtain the final recommendation from the warden or the administrative duty officer on his damaged property claim before initiating the grievance process under a prison policy, and the inmate did not appeal denial of his formal grievance. The court held that lack of an irreparable harm to the inmate as a result of damage to his prayer object, a turtle pendant, precluded the issuance of a preliminary injunction, where there was no imminent danger the his sacred items would be desecrated absent injunctive relief. The court noted that the inmate's possession and use of his prayer object, a kukui nut, was a "religious exercise" for purposes of the Religious Land Use and Institutionalized Persons Act (RLUIPA): the object was used in daily prayers and chants, in dances, and other individual religious protocol and communal religious activities, it provided the inmate with spiritual comfort, and it symbolized enlightenment, growth and accomplishment. The court found that the correctional facility's policy, prohibiting the inmate from possessing his prayer object, a kukui nut, and requiring him to donate it to charity, destroy it, or send it out of the institution, substantially burdened his religious exercise under RLUIPA. (Hawaii Department of Public Safety, Corrections Corporation of America, Saguaro Correctional Center, Arizona, and Red Rock Correctional Center, Arizona)

U.S. District Court
CLASS ACTION
FINES

De Luna v. Hidalgo County, Tex., 853 F.Supp.2d 623(S.D.Tex. 2012). Two students, on behalf of themselves and a purported class, brought a § 1983 action against state magistrates and a county, alleging violation of federal due process and equal protection rights based on their placement in jail for unpaid fines or costs related to violations of the Texas Education Code. The parties filed cross-motions for summary judgment and the students also moved for class certification. The district court held that: (1) the students lacked standing to seek equitable and declaratory relief from magistrates' practice of incarcerating individuals without an indigency determination; (2) the county's policy of jailing individuals charged with fine-only misdemeanor offenses who had failed to directly inform the arraigning magistrate of their indigency violated due process; and (3) the students did not waive their right to an affirmative indigency determination by waiving their right to counsel at arraignment. The court held that sum-

mary judgment was precluded on the § 1983 claim by a genuine issue of material fact existed as to whether one of the students placed in jail for unpaid fines or costs related to violations of Texas Education Code knew that she could tell a state magistrate that she could not pay the fines on her outstanding charges and obtain either a payment plan or community service. (Hidalgo County Jail, Texas)

U.S. District Court
PLRA-Prison Litigation
Reform Act
SETTLEMENT
CONSENT DECREE

Disability Law Center v. Massachusetts Dept. of Correction, 960 F.Supp.2d 271 (D.Mass. 2012). A nonprofit organization, which represented mentally ill prisoners, brought an action against a state's Department of Correction, alleging that the Department and its officials violated the federal constitutional rights of prisoners by subjecting them to disciplinary and other forms of segregation for prolonged periods of time. After extensive negotiations, the parties jointly moved for approval of a settlement agreement. The district court granted the motion, finding the agreement to be fair, reasonable, and adequate. The court noted that the agreement addressed the fundamental issue of prison suicides by providing a process for minimizing the possibility that inmates with serious mental illnesses would be confined in segregation, and for reviewing their mental health while in segregation. The court held that the agreement did not order any "prospective relief," or in fact any "relief" at all, thereby precluding the applicability of the requirement of the Prison Litigation Reform Act (PLRA), that prospective relief not extend further than necessary to remedy violation of a federal right. (Massachusetts Department of Correction)

U.S. District Court
FAILURE TO TRAIN
QUALIFIED IMMUNITY

Donahoe v. Arpaio, 869 F.Supp.2d 1020 (D.Ariz. 2012). In consolidated cases, members of a county board of supervisors, county staff, and judges of county courts, brought actions against members of county sheriff's office and county attorney's office, alleging various torts and constitutional violations. The defendants moved to dismiss. The district court granted the motions in part and denied in part. The court held that members of the county sheriff's office and county attorney's office were not entitled to absolute immunity in their filing of a federal Racketeer Influenced and Corrupt Organizations Act (RICO) lawsuit against members of county board of supervisors, county staff, and judges of county's courts, where the RICO suit was far removed from the judicial phase of the criminal process, and there was no basis for governmental enforcement under RICO itself. According to the court, the county sheriff's and county attorney's voluntary dismissal of their RICO suit constituted termination in favor of the members of the county board of supervisors, county staff, and judges of county's courts, as required to support Arizona law claims against the sheriff and attorney for wrongful institution of civil proceedings.

The court held that an abuse of process claim was stated against the sheriff and attorney when a judge in the county's criminal court alleged that county sheriff and county attorney hired a process server to serve the judge with the federal RICO suit, when the sheriff and the attorney knew or should have known that the server previously had been prosecuted for threatening to kill the judge. The court held that neither the county sheriff nor the deputy county attorney were entitled to qualified immunity at the motion to dismiss stage of the § 1983 action, where the plaintiffs' claims overlapped to some extent, there was asymmetry of the information between plaintiffs and the defendants regarding which defendants actually took, ordered, supervised, or approved certain actions, and the defendants would not be prejudiced by allowing these claims to proceed because they would already be subject to discovery in the plaintiffs' suit. According to the court, numerous constitutional violations allegedly undertaken by the county attorney, the county sheriff, and their subordinates, were sufficiently egregious and voluminous to raise a fair inference of failure to train in relation to the § 1983 claims asserted by the plaintiffs. (Maricopa County Sheriff's Office and County Attorney's Office, Phoenix, Arizona)

U.S. District Court
FAILURE TO PROTECT
FAILURE TO DIRECT
DELIBERATE
INDIFFERENCE
POLICIES/
PROCEDURES

Gabriel v. County of Herkimer. 889 F.Supp.2d 374 (N.D.N.Y. 2012). The administrator of a pretrial detainee's estate brought a § 1983 action against a county, jail officials, and jail medical personnel, alleging deliberate indifference to a serious medical need, due process violations, and a state claim for wrongful death. The county brought a third-party complaint against a hospital demanding indemnity. The defendants moved for summary judgment and the hospital moved to dismiss the third-party complaint. The district court held that severance of the third party complaint involving the hospital was warranted, where a separate trial regarding indemnity, following a verdict on liability, would be both economical and convenient. The court found that summary judgment was precluded by material fact issues as to: (1) whether a nurse practitioner was aware of the detainee's history of depression, anxiety, tachycardia, angina, mitral valve prolapsed, degenerative back disease, and sciatic nerve, but consciously disregarded the risk of harm to him; (2) whether the detainee had a serious medical condition; and (3) whether a policy or custom of the county led to the denial of medical treatment for the detainee. According to the court, there was no evidence that a corrections officer disregarded an excessive risk to the safety of the pretrial detainee, noting that when the officer witnessed the detainee fall, he assisted him and promptly contacted the medical unit. According to the court, a lieutenant was not a policymaker, as required to support a § 1983 claim by the estate, where the lieutenant was responsible for jail security and had no involvement in the jail's medical policies and procedures. (Herkimer County Jail, New York)

U.S. Appeals Court
COMPENSATORY
DAMAGES
NEGLIGENCE

Gonzalez v. U.S., 681 F.3d 949 (8th Cir. 2012). A former federal inmate filed suit under the Federal Tort Claims Act (FTCA), alleging that employees of the United States negligently caused a significant delay in the proper treatment of leg injuries that he suffered while playing softball in federal custody. Following a bench trial, the district court found the government liable and awarded compensatory damages of \$813,000. The government appealed. The appeals court affirmed, finding that the damages award of \$813,000 was not excessive. According to the court, the award was not excessive for the former federal inmate's pain and suffering and mental anguish suffered from the morning he sought medical treatment for an injury to his left leg and ankle sustained in a prison-sanctioned softball game until the date x-rays were taken approximately one month later, and the pain and suffering and mental anguish reasonably certain to be experienced for the remainder of the former inmate's expected life, which the district court determined to be 22 years, where the government breached a duty of care by failing to treat the ankle in four weeks prior to the taking of x-rays, and the inmate suffered a continuing injury following his surgery. (Federal Correctional Institution, Forrest City, Arkansas)

U.S. District Court
FAILURE TO TRAIN
OFFICIAL CAPACITY
POLICIES/PROCEDURES

Gooding v. Ketcher, 838 F.Supp.2d 1231(N.D.Okla. 2012). A musician brought an action against a marshal of the Cherokee Nation and a deputy county sheriff, sheriff, casino employees, county police officer, jail employees, and a nurse, alleging false imprisonment, assault and battery, and violation of his First, Fourth, and Fourteenth Amendment rights, and seeking declaratory judgment that Oklahoma law governing flag burning and desecration was unconstitutional. The musician had been arrested and detained at a local county jail. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the musician's allegations that his use of an American flag during his performance at a casino was a constitutionally protected activity, that the county sheriff failed to train his deputies as to the constitutional nature of the activity, and that the sheriff adopted an unconstitutional policy and/or custom which led to the musician's arrest and imprisonment, stated a § 1983 claim against the sheriff in his individual capacity as a supervisor. (Rogers County Jail, Oklahoma)

U.S. District Court
CLASS ACTION
POLICIES/PROCEDURES

Henderson v. Thomas, 891 F.Supp.2d 1296 (M.D.Ala. 2012). State prisoners, on behalf of themselves and a class of all current and future HIV-positive (HIV+) prisoners, filed a class action against prison officials, seeking declaratory judgment that the Alabama Department of Corrections' (ADOC) policy of segregating HIV+ prisoners from the general prison population violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and seeking an injunction against further enforcement of the policy. The district court denied the officials' motion to dismiss. The court held that the prisoners' class action complaint plausibly alleged that HIV-positive prisoners suffered from an impairment that substantially limited a major life activity, as required to state claims that the ADOC HIV-segregation policy discriminated against prisoners on the basis of a disability in violation of ADA and the Rehabilitation Act. According to the court, the complaint provided information on the contemporary medical consensus regarding HIV treatment and alleged that each named plaintiff was diagnosed with HIV, that HIV was an impairment of the immune system, that HIV substantially limited the named plaintiffs in one or more major life activities, and that HIV qualified as a disability. The court found that the prisoners' class action complaint plausibly alleged that they were otherwise qualified individuals with a disability due to their HIV-positive status on the grounds that reasonable accommodations could be made to eliminate the significant risk of HIV+ prisoners transmitting HIV while integrated with other prisoners. The complaint alleged details of the programs and accommodations for which HIV+ prisoners were ineligible, alleged that all but two state penal systems had integrated HIV+ prisoners into the general prison population, and alleged that the National Commission on Correctional Health Care counseled against segregation. (Alabama Department of Corrections)

U.S. Appeals Court
CLASS ACTION
CONSENT DECREE
DAMAGES
DELIBERATE
INDIFFERENCE

Hilton v. Wright, 673 F.3d 120 (2nd Cir. 2012). A state prison inmate infected with the Hepatitis C virus brought a class action against the New York State Department of Correctional Services and the Department's Chief Medical Officer, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment, as well as violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Following class certification, the parties entered into a settlement agreement resolving the injunctive and equitable claims. Defendants moved for summary judgment on the remaining damages claims. The inmate's attorneys moved for attorney's fees and out-of-pocket expenses incurred monitoring the settlement agreement. The district court granted the defendants' motion for summary judgment, awarded fees to the inmate's attorneys, but denied expenses. The inmate appealed. The appeals court vacated and remanded. The appeals court vacated the district court's decision granting summary judgment to the Chief Medical Officer on the Eighth Amendment claim, due to the extreme brevity of the district court's opinion. The appeals court also vacated the district court's decision granting summary judgment on the ADA claim on the ground that the Eleventh Amendment precluded damages. (New York Department of Correctional Services)

U.S. District Court
SUPERVISORY
LIABILITY

Jackson v. Gandy, 877 F.Supp.2d 159 (D.N.J. 2012). A state prisoner brought a § 1983 action against a department of corrections, corrections officers, and prison officials, alleging violations of his Eighth Amendment right against cruel and unusual punishment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that there was no evidence that prison officials were personally involved in a corrections officers' alleged assault on the state prisoner, as required to establish supervisory liability against the officials under § 1983, despite defense counsel's bare assertions of deliberate indifference and notice of assaultive history. The court ruled that summary judgment was precluded by genuine issues of material fact as to whether the force used by corrections officers to subdue the prisoner was excessive and in violation of Eighth Amendment, and whether a corrections officer participated in the alleged assault on the prisoner. The court held that the corrections officers were not entitled to qualified immunity where the prisoner's complaint alleged a violation of the constitutional right to be free from unnecessary and wanton infliction of pain, and such right was clearly established at the time of the officers' alleged misconduct. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner exhausted his administrative remedies regarding the excessive force claim against corrections officials in accordance with the requirements of the Prison Litigation Reform Act (PLRA). (N.J. Department of Corrections, Bayside State Prison)

U.S. District Court
CONTRACT SERVICES
NEGLIGENCE
POLICIES/PROCEDURES
SUPERVISORY
LIABILITY
DELIBERATE
INDIFFERENCE

Jones v. Correctional Medical Services, Inc., 845 F.Supp.2d 824 (W.D.Mich. 2012). The personal representative of the estate of an inmate, who died of viral meningoencephalitis while under the control of the Michigan Department of Corrections (MDOC), brought an action against prison officials and personnel, as well as the company which contracted to provide medical services to the inmate and the company's employees, alleging that the defendants violated the inmate's Eighth Amendment right to adequate medical care. The representative also asserted state law claims for gross negligence and intentional infliction of emotional distress. The court held that the company that provided medical services to inmates under a contract with the Michigan Department of Corrections (MDOC) could not be held liable under § 1983 on a supervisory liability theory in the action brought by the personal representative, but the company was subject to suit under § 1983. The court found that the personal representative failed to establish that policies or customs of the company which provided medical services to inmates under contract with the MDOC were involved in the inmate's treatment, as required to sustain a § 1983 Eighth Amendment claim against the company based on the inmate's alleged inadequate medical treatment. The court

held that summary judgment was precluded by genuine issues of material fact as to whether the doctor employed by company was aware of the serious medical needs of the inmate, as to whether the doctor's treatment of the inmate displayed deliberate indifference, and as to whether the doctor's inaction or delay proximately caused the inmate's death. (Ernest Brooks Facility, Michigan, and Correctional Medical Services)

U.S. District Court
COMPENSATORY
DAMAGES
DELIBERATE
INDIFFERENCE
INJUNCTIVE RELIEF

Kneen v. Zavaras, 885 F.Supp.2d 1055 (D.Colo. 2012). A state prisoner brought an action against prison officials in a state facility operated by a private corporation, for violations of his Eighth Amendment rights, seeking injunctive relief, as well as nominal damages, actual damages, and \$1 million in compensatory damages against each defendant. The defendants moved to dismiss and the prisoner moved to amend. The district court granted the defendants' motion, and granted in part and denied in part the plaintiff's motion. The court held that the prisoner failed to allege a factual basis demonstrating that a prison official's position as a warden impacted the prisoner's health or the decisions made with regard to his treatment, or lack thereof, as required to support the prisoner's § 1983 deliberate indifference claim against warden as an individual in his supervisory capacity based on the denial of treatment for Hepatitis. The court found that the prisoner stated a claim against the prison's health administrator as an individual in her supervisory capacity under § 1983 for deliberate indifference, based on the denial of his request for Hepatitis treatment, by alleging: (1) the health administrator was responsible for reviewing prisoner complaints regarding the denial and delay of medical care; (2) the health administrator reviewed the prisoner's complaints regarding the denial and delay of medical care; and (3) the health administrator knew that the prisoner had been diagnosed with chronic Hepatitis C, had lab results which indicated that treatment was immediately warranted, and had also suffered from Esophageal Varicies, a serious and life threatening complication of cirrhosis. (Colorado Department of Corrections, Crowley County Correctional Facility, operated by the Corrections Corporation of America)

U.S. District Court
CONTRACT SERVICES
INJUNCTIVE RELIEF
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Knows His Gun v. Montana, 866 F.Supp.2d 1235 (D.Mont. 2012). Native American state prisoners brought an action against a state, the state department of corrections (DOC), a private prison facility, and wardens, alleging violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA). Defendants filed motion to dismiss. The district court held that: (1) the allegations were sufficient to plead the searches were a substantial burden on their religious exercise; (2) the allegations were sufficient to plead the confiscations and prohibitions were a substantial burden on their religious exercise; (3) the allegations about relieving a prisoner from the pipe carrier position were sufficient to plead it was a substantial burden on his religious exercise; (4) transferred prisoners did not have standing for claims for injunctive and declaratory relief; (5) the private facility was a state actor; and (6) the private facility was an instrumentality of the state. The Native American prisoners' alleged that the prison subjected them to en masse strip searches before and after sweat lodge ceremonies, that the searches sometimes occurred in a hallway where other inmates could see them and at least one occurred in a gym with video cameras monitored by a female guard, and that some inmates declined to participate in the ceremony due to the degrading nature of the searches. According to the court, the prisoners' allegations that sacred items were confiscated or prohibited by the prison for their sweat lodge ceremonies, including smudge tobacco and antlers, and that the items were essential for the ceremony to be meaningful and proper were sufficient to plead confiscations and prohibitions were a substantial burden on their religious exercise, as required for their claims under RLUIPA. The prisoner also alleged that they were subject to pat down searches before and after entering the ceremonial sweat lodge grounds, that they were provided insufficient water and toilet facilities, that the size of the sweat lodge and the frequency of the ceremonies was inadequate, and that they were not provided a Native American spiritual advisor. (Montana Dept. of Corrections; Corrections Corporation of America; Crossroads Correctional Center)

U.S. District Court
INJUNCTIVE RELIEF
DELIBERATE
INDIFFERENCE

Kosilek v. Spencer, 889 F.Supp.2d 190 (D.Mass. 2012). A Massachusetts prisoner suffering from gender identity disorder (GID) brought an action, alleging his rights were being violated by the Massachusetts Department of Corrections' (DOC) refusal to provide him with male-to-female sex reassignment surgery for his GID, and seeking an injunction requiring the DOC to provide him with the surgery. The district court entered summary judgment for the prisoner, finding that: (1) the prisoner's gender identity disorder (GID) constituted a serious medical need that triggered Eighth Amendment protection; (2) DOC officials had actual knowledge of the prisoner's serious medical need; (3) the DOC Commissioner's refusal to provide the surgery in order to avoid public and political criticism was not a legitimate penological purpose; and (4) the DOC Commissioner's deliberate indifference would continue in the absence of injunction. (Massachusetts Department of Correction, MCI Norfolk)

U.S. Appeals Court
CLASS ACTION
INJUNCTIVE RELIEF
PRIVATE OPERATOR

Kress v. CCA of Tennessee, LLC, 694 F.3d 890 (7th Cir. 2012). Inmates at a county jail filed a § 1983 action against a sheriff, warden, jail doctor, and the private contractor which operated the facility, alleging that inadequate medical care and unsafe conditions at the jail violated the Eighth and Fourteenth Amendments. The inmates sought injunctive and monetary relief. The district court granted summary judgment in favor of the contractor and the inmates appealed. The appeals court affirmed. The appeals court held that: (1) the district court did not abuse its discretion in determining that the inmates failed to satisfy the typicality requirement for class certification; and (2) there was no evidence of a continuing violation, as would warrant injunctive relief. The inmates claimed that the change in the number of daily rounds of medicine given, from three per day to two per day, with exceptions for inmates with unique medical needs, amounted to inadequate medical care in violation of the inmates' rights under the Eighth Amendment. (Corrections Corporation of America, Marion County Correctional Center, Indianapolis, Indiana)

U.S. Appeals Court
PRIVATE PROVIDER

McCullum v. Tepe, 693 F.3d 696 (6th Cir. 2012). A deceased inmate's mother sued a prison psychiatrist under § 1983, claiming that he was deliberately indifferent to the serious medical need of the inmate, who hung himself from his bed. The district court denied the psychiatrist's motion for summary judgment and he appealed. The appeals court affirmed, finding that the psychiatrist could not invoke qualified immunity. According to the court, a physician employed by an independent non-profit organization, but working part-time for a county as a prison psychiatrist, could not invoke qualified immunity in a § 1983 suit arising out of his activities at the prison. The

court found that there was no common-law tradition of immunity for a private doctor working for a public institution at the time that Congress enacted § 1983. (Butler County Prison, Community Behavioral Health, Ohio)

U.S. Supreme Court
PRIVATE OPERATOR
PRIVATE PROVIDER

Minnecci v. Pollard, 132 S.Ct. 617 (2012). A prisoner at a federal facility operated by a private company filed a pro se complaint against several employees of the facility, alleging the employees deprived him of adequate medical care, in violation of the Eighth Amendment's prohibition against cruel and unusual punishment, and caused him injury. The district court dismissed the complaint and the prisoner appealed. The appeals court reversed and remanded, and, subsequently, amended its opinion. The U.S. Supreme court reversed, finding that the prisoner could not assert an Eighth Amendment *Bivens* claim for damages against private prison employees. (Wackenhut Correctional Corporation- Federal Correctional Institution at Taft, California)

U.S. Appeals Court
ALIEN
DAMAGES
FTCA- Federal Tort Claims
Act
SOVEREIGN IMMUNITY

Mirmehdi v. U.S., 689 F.3d 975 (9th Cir. 2012). Aliens who were not lawfully in the United States filed an action against the United States seeking monetary damages on a claim of constitutionally invalid detention, inhumane detention conditions, witness intimidation, and the intentional infliction of emotional distress. The district court dismissed some claims and the parties settled the remaining claims. The plaintiffs appealed. The appeals court affirmed. The appeals court held that: (1) *Bivens* did not provide a remedy for aliens not lawfully in United States to sue federal agents for monetary damages for wrongful detention pending deportation; (2) the aliens had not been prejudiced by witness intimidation; and (3) the decision to detain an alien pending resolution of immigration proceedings fell within the discretionary function exception to a waiver of sovereign immunity under the Federal Tort Claims Act (FTCA). (U.S. Immigration and Naturalization Service, Calif.)

U.S. District Court
DELIBERATE
INDIFFERENCE
NEGLIGENCE
QUALIFIED IMMUNITY

Moulton v. DeSue, 966 F.Supp.2d 1298 (M.D.Fla. 2012). The personal representative of a jail inmate's estate brought a § 1983 action against correctional officers, a nurse, and a sheriff, alleging deliberate indifference to the inmate's right to adequate medical care while in pretrial confinement, which resulted in her death. The defendants filed motions for summary judgment. The district court denied the motions in part and granted the motions in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officers' failure to call emergency rescue when the pregnant jail inmate complained of stomach cramps constituted more than grossly negligent disregard of a substantial risk of a serious harm, precluding summary judgment for the officers on the deliberate indifference to the inmate's serious medical need claim. According to the court, correctional officers were on notice that their alleged actions or inactions violated the jail inmate's clearly established Fourteenth Amendment right to adequate medical care, and, thus, the officers were not entitled to qualified immunity in § 1983 action. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officers acted with ill will or malice toward the jail inmate, or exhibited reckless indifference. (Bradford County Jail, Florida)

U.S. Appeals Court
CONTRACT SERVICES

Northfield Ins. Co. v. City of Waukegan, 701 F.3d 1124 (7th Cir. 2012). Insurers that, pursuant to commercial general liability policies, provided law enforcement liability coverage to a city and its employees acting within the scope of their employment, brought a declaratory judgment action, seeking declarations that they had no duty to defend or indemnify the city or its employees in a third-party action in which a civil rights plaintiff alleged that the city and its police officers played a role in his wrongful conviction. The district court granted summary judgment for the insurers and the defendants appealed. The appeals court affirmed, finding that coverage did not exist for a claim alleging false arrest and imprisonment. (Waukegan, Illinois)

U.S. Appeals Court
FAILURE TO PROTECT
QUALIFIED IMMUNITY

Paine v. Cason, 678 F.3d 500 (7th Cir. 2012). The guardian of the estate of an arrestee, who allegedly suffered from bipolar disorder, brought a § 1983 action against a municipality and police officers, alleging civil rights violations in connection with the arrest and subsequent release from custody without being provided access to mental health treatment. The arrestee was raped at knifepoint after her release and either jumped or was pushed from a window, causing permanent brain damage. The district court denied summary judgment in part for the defendants. The defendants sought relief through interlocutory appeal. The appeals court affirmed in part, denied in part, and remanded. The appeals held that: (1) the arrestee, as a person in custody, had clearly a established right for police to provide care for her serious medical condition; (2) whether the police should have understood that the arrestee had a serious medical condition, and thus should have provided care, was a factual issue that could not be decided on interlocutory appeal; (3) causation was a factual issue not suited to resolution on interlocutory appeal of denial of qualified immunity; (4) the arrestee did not have a clearly established constitutional right for her release to be delayed pending mental-health treatment; (5) the arrestee had a clearly established due process right for the police to not create danger, without justification, by arresting her in a safe place and releasing her in a hazardous one while unable to protect herself; (6) the arresting officer was entitled to qualified immunity; (7) the watch officer was not entitled to qualified immunity; and (8) a detention aide was not entitled to qualified immunity. According to the court, a police officer who was responsible for preparing the arrestee's individual-recognizance bond and collecting possessions that were to be returned on her release, and who received a telephone call from the mother of the arrestee regarding the arrestee's bi-polar condition and did nothing in response and who did not even note the call in a log, was not entitled to qualified immunity to the civil rights claims that the police had created a danger, without justification. The court found that the detention aide who was responsible for evaluating inmates, observed the arrestee behaving in a mentally unstable way, such as smearing menstrual blood on her cell walls, and transferred another person out of the arrestee's cell because of her inappropriate behavior, and yet did nothing to alert other personnel at the stationhouse, was not entitled to qualified immunity to the civil rights claims that the police did not arrange for medical treatment of serious conditions while the arrestee's custody continued. (Eighth District Station, Second District Station, Chicago Police Department)

U.S. District Court
BIVENS CLAIM
DELIBERATE
INDIFFERENCE
PLRA- Prison Litigation
Reform Act
RESPONDEAT SUPERIOR

Patel v. Moron, 897 F.Supp.2d 389 (E.D.N.C. 2012). A federal prisoner brought a *Bivens* action against prison officials, alleging, among other things, deliberate indifference to his medical needs in violation of the Eighth Amendment, violation of due process, retaliation in violation of the First Amendment, and denial of access to courts. The defendants moved to dismiss for failure to state a claim and for a protective order and stay, and the prisoner moved for a temporary restraining order, for a continuance to permit discovery, and to strike portions of the defendants' motion to dismiss. The district court held that: (1) the prisoner was not responsible for failure to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA); (2) the prisoner's allegations were sufficient to state an Eighth Amendment deliberate indifference claim; (3) the prisoner's allegations were sufficient to state a due process claim that he was placed in solitary confinement in violation of the Bureau of Prison's regulations and without having a legitimate investigation or a pending disciplinary charge; and (4) the allegations were sufficient to state a claim of retaliation in violation of the First Amendment. The court dismissed claims that were based on the theory of respondeat superior. According to the court, prison officials' refusal to provide grievance forms and interference with the prisoner's efforts to exhaust administrative remedies did not violate the prisoner's First Amendment right of access to courts. (Federal Correctional Center in Butner-N.C., and Rivers Correctional Institution, operated by the GEO Group, Inc)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
NEGLIGENCE

Reilly v. Vadlamudi, 680 F.3d 617 (6th Cir. 2012). An inmate brought a suit against a doctor and nurses who treated him in prison, claiming Eighth Amendment violations under § 1983 as well as medical malpractice under Michigan law. The district court denied immunity claims asserted by the doctor and one of the nurses, and they appealed. The appeals court reversed. The court held that the physician was not deliberately indifferent to the medical needs of the inmate who was found to have a serious form of bone cancer, thus precluding imposition of § 1983 liability on the inmate's Eighth Amendment claim, where the physician had made a single contact with the inmate who had no history of any symptoms suggesting cancer. The court held that the physician was not grossly negligent regarding an the inmate, thus precluding imposition of liability under Michigan law, where the physician examined the inmate ten months before his complaints of severe "headaches that cause[d] him to vomit," and during the physician's single contact with the inmate, the inmate had a headache and left eye swelling and no other symptoms. The court held that the nurse was not deliberately indifferent to the medical needs of an inmate found to have a serious form of bone cancer, thus precluding imposition of § 1983 liability on the inmate's Eighth Amendment claim. The court noted that the nurse examined the inmate only twice, his initial diagnosis, that a "small raised area over the left eye" appeared to be a calcium deposit, warranted no treatment, and following the second visit, the nurse made a referral to an optometrist. (Mound Correctional Facility, Michigan)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Rice ex rel. Rice v. Correctional Medical Services, 675 F.3d 650 (7th Cir. 2012). Following a pretrial detainee's death while incarcerated, his parents, representing his estate filed suit pursuant to § 1983, alleging among other things that jail officials and medical personnel had deprived the pretrial detainee of due process by exhibiting deliberate indifference to his declining mental and physical condition. The district court entered summary judgment against the estate. The estate filed a second suit reasserting the state wrongful death claims that the judge in the first suit had dismissed without prejudice after disposing of the federal claims. The district court dismissed that case on the basis of collateral estoppel, and the estate appealed both judgments. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether jail officials were deliberately indifferent to the pretrial detainee's conditions of confinement, and whether his conditions of confinement were sufficiently serious to support his Fourteenth Amendment due process claim. The court noted that whether the detainee himself created the unsanitary conditions was a fact relevant to the claim, but given detainee's mental condition, it did not foreclose the claim.

The court found that the estate failed to show that the detainee's assignment to an administrative segregation unit of the jail for approximately seven months violated the detainee's due process rights, where the estate failed to identify feasible alternatives and to tender evidence supporting the contention that the detainee likely would have fared better in one of those alternative placements.

The court held that jail officials did not employ excessive force, in violation of due process, to the pretrial detainee who had been fighting with his cellmate and failed to comply with a directive that he step out of his cell which he refused to leave for 18 hours, by spraying his face with pepper foam, and placing him in a restraint chair. The court held that jail officials did not have notice of a substantial risk that the mentally ill pretrial detainee might be assaulted by other inmates, as required to support the pretrial detainee's claim of deliberate indifference in violation of due process. The court noted that while jail personnel were aware that the detainee had a hygiene problem, they had no notice that he was at risk of assault because of that problem, particularly within the more secure confines of the administrative segregation unit.

The court found that neither jail guards or supervisors were deliberately indifferent to the risk that the mentally ill pretrial detainee might engage in a behavior such as compulsive water drinking that would cause him to die within a matter of hours and did not consciously disregard that risk, and therefore they were not liable for his death under § 1983. According to the court, while a factfinder might conclude that the guards exhibited a generalized recklessness with respect to the safety of the inmates housed in the administrative segregation unit by failing to conduct hourly checks of the unit, there was no evidence that the guards or supervisors were subjectively aware of the possibility that the detainee might injure himself to the point of death before anyone could intervene. (Elkhart County Jail, Indiana)

U.S. District Court
MUNICIPAL LIABILITY
POLICIES/PROCEDURES
DELIBERATE
INDIFFERENCE
42 U.S.C.A. Sec. 1983

Rigg v. City of Lakewood, 896 F.Supp.2d 978 (D.Colo. 2012). The wife of a detainee who died while in the custody of police officers filed suit, on her own behalf and as the personal representative of her decedent's estate, asserting due process claims pursuant to § 1983 and common law wrongful death claims against two cities and two police departments. The defendants moved to dismiss. The district court granted the motions. The court held that the representative failed to sufficiently allege a § 1983 claim for municipal liability against the two cities for deprivation of due process by their purported indifference to the detainee's medical needs, since the complaint did not allege the existence of a municipal custom or policy that was causally linked to the due process violation. (Lakewood Police Station, Colorado)

U.S. District Court
SUPERVISORY
LIABILITY

Santos v. Bush, 874 F.Supp.2d 408 (D.N.J. 2012). A mentally ill inmate brought an action under § 1983 against a doctor and a warden at the prison where he was formerly housed, alleging that the defendants forcibly medicated him without due process. The defendants moved for summary judgment. The district court granted the motion. The court held that the prison warden was not involved in any of the mental health evaluations the inmate received or the development of his treatment plans, nor did the warden have any direct involvement, or even actual knowledge, of the specific circumstances surrounding the involuntary administration of psychotropic medication to the inmate, as would subject her to liability under § 1983 on the inmate's due process claims. According to the court, the warden's letter to the inmate's grandmother related to issues of the inmate's unwillingness to take psychotropic medication voluntarily was insufficient to demonstrate personal involvement, or knowledge and acquiescence, by the warden in approving or otherwise deciding whether the inmate should have been involuntarily medicated, as would subject the warden to liability under § 1983. The court found that the prison's administration of psychotropic drugs to the mentally ill inmate under its involuntary medication administration (IMA) procedure did not violate the inmate's procedural due process rights, where: (1) the inmate was diagnosed with a serious mental illness, based on a series of well-documented delusions, paranoid beliefs, and behaviors exhibited by the inmate; (2) at least four psychiatrists evaluated the inmate at various points during his treatment; (3) four separate treatment review committees (TRC) were convened during the inmate's treatment; (4) the inmate received notice of each TRC hearing; and (5) the inmate's involuntary medication was periodically reviewed in accordance with the IMA procedure. (South Woods State Prison, New Jersey)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO TRAIN
MUNICIPAL LIABILITY
SUPERVISORY
LIABILITY

Schwartz v. Lassen County ex rel. Lassen County Jail (Detention Facility), 838 F.Supp.2d 1045 (E.D.Cal. 2012). The mother of a deceased pretrial detainee brought a § 1983 action on behalf of herself and as successor in interest against a county, sheriff, city, police department, and several officers, alleging violations of the Fourteenth Amendment. The defendants filed a motion to dismiss. The district court granted the motion in part and denied in part. The court held that allegations that: (1) the undersheriff knew the pretrial detainee from various encounters with the county, including his diverticulitis and congenital heart condition that required a restricted diet; (2) the undersheriff gave testimony to set bail for the detainee at \$150,000 on a misdemeanor offense; (3) the detainee's doctor sent a letter explaining the detainee should be put on house arrest as opposed to detention because of his medical condition; (4) the detainee had to be admitted to a hospital for emergency surgery during a previous confinement; (5) the detainee's mother requested he be released for medical attention; (6) the detainee lost over 40 pounds during two weeks of detention; (7) the detainee requested to see a doctor but was told to "quit complaining;" and (8) the undersheriff personally knew the detainee was critically ill, were sufficient to plead that the undersheriff knew of and failed to respond to the detainee's serious medical condition, as would be deliberate indifference required to state a § 1983 claim alleging violations of Fourteenth Amendment due process after the detainee died. According to the court, allegations that the pretrial detainee's health was visibly deteriorating, that he had requested medical care on numerous occasions, and that the undersheriff knew of his health issues but failed to ensure that the prison provided him medical care, were sufficient to plead a causal connection between the undersheriff's conduct and denial of medical care for the detainee's serious medical need, as required to state a § 1983 supervisory liability claim against the undersheriff alleging violations of Fourteenth Amendment due process after the detainee died. The court also found that allegations were sufficient to plead that training was obviously deficient, as required to state a § 1983 claim for municipal liability against the city, alleging violations of the Fourteenth Amendment due process after the detainee died. The court found that allegations that the undersheriff owed the pretrial detainee an affirmative duty to keep the jail and prisoners in it, and that he was answerable for their safekeeping, were sufficient to plead a duty, as required to state a claim of negligent infliction of emotional distress (NIED) under California law against the undersheriff after the detainee died. (Lassen County Adult Detention Facility, California)

U.S. District Court
SUPERVISORY
LIABILITY
42 U.S.C.A. Sec. 1983

Segura v. Colombe, 895 F.Supp.2d 1141 (D.N.M. 2012). An arrestee brought an action against a board of county commissioners, alleging claims pursuant to § 1983 and the New Mexico Tort Claims Act (NMTCA) following his arrest by a tribal police officer who was appointed and commissioned as a county deputy sheriff. The board moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the tribal police officer, who was appointed and commissioned as a county deputy sheriff, was not a salaried public employee of a governmental entity, as required to be a law enforcement officer under the New Mexico Tort Claims Act (NMTCA). Therefore, the court found that the officer's conduct could not be attributable to the board of county commissioners. The court noted that the commissioners did not have immediate supervisory responsibilities over the officer, and the officer was not subject to sheriff's department rules. (Santa Fe Board of County Comm'rs., New Mexico, and Santa Fe County Adult Detention Facility)

U.S. District Court
DAMAGES

Singletary v. District of Columbia, 876 F.Supp.2d 106 (D.D.C. 2012). A parolee brought a § 1983 action against the District of Columbia, seeking money damages for unlawful revocation of his parole by the Parole Board. The district court granted summary judgment in the parolee's favor as to the issue of liability. After a trial on damages, the jury returned a verdict of \$2.3 million for the parolee. The District of Columbia moved for a new trial. The district court denied the motion. The court held that the damages award was not excessive, that the parolee was properly allowed to testify as to what he experienced for the ten years that he was wrongly incarcerated, and that evidence concerning an alleged prior traffic offense was properly excluded. The court found that the jury's damage award to the parolee whose parole was unlawfully revoked, resulting in his serving an additional ten years in prison, of \$230,000 per year—or about forty-four cents per minute—for each year that he was stripped of the privileges of individual choice and physical freedom and subjected to the indignity of incarceration, was not excessive. (District of Columbia Parole Board)

U.S. District Court
FAILURE TO PROTECT
FTCA- Federal Tort Claims
Act

Sledge v. U.S., 883 F.Supp.2d 71 (D.D.C. 2012). A federal inmate's relatives brought an action under the Federal Tort Claims Act (FTCA) against the United States, alleging claims for personal injury and wrongful death based on the failure of Bureau of Prisons (BOP) employees to prevent or stop an attack on the inmate. The attack resulted in the inmate's hospitalization and death. The relatives also sought to recover for emotional distress that the inmate and his mother allegedly suffered when BOP employees denied bedside visitation between the mother and the inmate. Following dismissal of some of the claims, the United States moved to dismiss the remaining claims based on FTCA's discretionary function exception. The district court granted the motion. The court found that a correction officer's decision to position himself outside the housing unit, rather than in the sally port, to smoke a cigarette during a controlled move was discretionary, and thus the United States was immune from liability under the Federal Tort Claims Act's (FTCA) discretionary function exception. The court noted that the prison lacked mandatory guidelines that required correctional staff to follow a particular course of action regarding supervision of inmates during controlled moves, and the officer's decision implicated policy concerns, in that it required consideration of the risks posed by inmates moving throughout prison, and required safety and security calculations.

The court held that the mother of the deceased federal inmate failed to state a claim for negligent infliction of emotional distress, under Missouri law, arising from the Bureau of Prisons' (BOP) denial of bedside visitation between the mother and inmate, absent allegations that the BOP should have realized that its failure to complete a visitation memorandum involved an unreasonable risk of causing distress, or facts necessary to demonstrate that the mother's emotional distress was "medically diagnosable" and was of sufficient severity as to be "medically significant." The court found that the Bureau of Prisons' (BOP) alleged decision not to allow the mother of federal inmate, who was in coma after being severely beaten by a fellow inmate, to visit her son after the BOP allegedly failed to complete a visitation memorandum, was not so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in civilized community, thus precluding the mother's intentional infliction of emotional distress claim under Missouri law. (Federal Correctional Institution, Allenwood, Pennsylvania)

U.S. Appeals Court
CLASS ACTION

Smentek v. Dart, 683 F.3d 373 (7th Cir. 2012). Pretrial detainees and convicted prisoners brought a § 1983 class action against a county and county jail officials, alleging that the failure to make more than a single dentist available to 10,000 inmates violated their federal constitutional rights. The district court certified the class, and the defendants petitioned for leave to appeal from the grant of class certification. The appeals court affirmed. The appeals court held that the district court's earlier denial of class certification of the inmates' § 1983 suit did not bar, pursuant to the rule of comity, the subsequent certification by a different district judge of the same or a similar class in a § 1983 suit brought by an inmate who was a member of the class in the previous suit. (Cook County Jail, Illinois)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
INJUNCTIVE RELIEF

Snow v. McDaniel, 681 F.3d 978 (9th Cir. 2012). A state death-row inmate brought a § 1983 action for declaratory, injunctive, and monetary relief against prison officials and medical personnel, alleging, among other things, deliberate indifference to his medical needs in violation of his rights under the Eighth Amendment. The district court granted summary judgment for the defendants. The inmate appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that: (1) factual issues precluded summary judgment for the defendants on the issue of whether denial of a recommended treatment violated the inmate's Eighth Amendment rights; (2) factual issues precluded summary judgment for the defendants on the ground that the decision to treat the inmate pharmacologically, rather than surgically, was a mere difference of opinion over the course of treatment that did not establish deliberate indifference; (3) factual issues precluded summary judgment for the warden and the assistant warden on the claim for deliberate indifference to the inmate's serious medical needs; (4) factual issues precluded summary judgment for the head of the prison's utilization review panel on the claim for deliberate indifference to the inmate's serious medical needs; (5) the Eleventh Amendment applied to bar the claim against the state and the state corrections department for monetary damages based on the alleged custom or policy of refusing to provide certain types of medical care to inmates; and (6) factual issues precluded summary judgment for the defendants on the inmate's Eighth Amendment claim for injunctive relief. (Ely State Prison, Nevada Department of Corrections)

U.S. District Court
DELIBERATE
INDIFFERENCE
INJUNCTIVE RELIEF

Soneeya v. Spencer, 851 F.Supp.2d 228 (D.Mass. 2012). A state prisoner, a male-to-female transsexual, brought an action against the Commissioner of the Massachusetts Department of Correction (DOC), alleging violations of her Eighth Amendment rights. Following a bench trial, the district court held that the prisoner's gender identity disorder (GID) was a serious medical need and the treatment received by the prisoner was not adequate. The court found that the Commissioner was deliberately indifferent to the prisoner's serious medical need and the DOC's pattern of obstruction and delay was likely to continue, as required for the prisoner to obtain injunctive relief on her Eighth Amendment claim, where the DOC's policy for treating GID imposed a blanket prohibition on cosmetic and sex reassignment surgery without exception. The court noted that the transsexual prisoner's gender identity disorder was a "serious medical need" within the meaning of the Eighth Amendment, the prisoner's GID was diagnosed by a physician as needing treatment, and she had a history of suicide attempts and self castration while in custody. The court found that the treatment received by the transsexual prisoner was not adequate, although the DOC provided the prisoner with psychotherapy and hormone treatment, it failed to perform an individual medical evaluation aimed solely at determining appropriate treatment for her GID as a result of its blanket prohibition on cosmetic and sex reassignment surgery. (MCI-Shirley, Massachusetts)

U.S. Appeals Court
NOMINAL DAMAGES

Taylor v. Dormire, 690 F.3d 898 (8th Cir. 2012). A state prisoner brought a § 1983 action against prison officials, alleging that the officials refused to feed the prisoner for several days while he was restrained in connection with his removal from his cell, based on his declaration of his cellmate as an enemy. The district court entered judgment on the jury's verdict for the officials. The prisoner appealed. The appeals court reversed and remanded. The appeals court held that the district court's error was not harmless as to its failure to give the prisoner's requested instruction on nominal damages. The court noted that the jury had been instructed that damages constituted a

required element of a verdict in favor of the prisoner and that if any element was not proven then the verdict had to be in favor of prison officials. According to the court, the jury must have considered the damages issue, since it wrote a symbol for “zero” in the space on the verdict form for damages. (Jefferson City Correctional Center, Missouri)

U.S. District Court
FAILURE TO PROTECT
NEGLIGENCE
DELIBERATE
INDIFFERENCE

Todd v. Montoya, 877 F.Supp.2d 1048 (D.N.M. 2012). A pretrial detainee brought a § 1983 action against a corrections officer and prison officials, alleging cruel and unusual punishment, and state claims for negligence, gross negligence, and recklessness. The corrections officer moved for summary judgment and the detainee moved for additional discovery. The district court granted the officer’s motion and denied the detainee’s motion. The court found that there was evidence that the detainee suffered an injury that was more than de minimis, as required to meet the objective element of a § 1983 claim against corrections official for deliberate indifference to a substantial risk of serious harm, in violation of the Due Process Clause. According to the court, there was evidence showing that the detainee received a beating from two other prisoners, including having them hit him in the face and attacking him for two to three minutes. But the court held that there was no evidence that a corrections officer acted with deliberate indifference when the detainee was physically assaulted by the other prisoners. The court noted that the officer called other officers to come stop the fight almost immediately after the physical altercation involving the detainee began. The court held that there was no evidence that the corrections officer permitted two prisoners to discover the detainee’s criminal history as a sex offender in such a way that caused the detainee’s beating, as required to support the detainee’s negligence claim against the officer under New Mexico law. (Bernalillo County Metropolitan Detention Center, Albuquerque, New Mexico)

U.S. Appeals Court
NOMINAL DAMAGES
PUNITIVE DAMAGES

Washington v. Hively, 695 F.3d 641 (7th Cir. 2012). A federal pretrial detainee filed a § 1983 action alleging that a county jail guard improperly touched him during a pat down and strip search. The detainee alleged that while patting him down, the guard spent five to seven seconds gratuitously fondling the plaintiff’s testicles and penis through the plaintiff’s clothing and then while strip searching him fondled his nude testicles for two or three seconds, contrary to a jail policy which forbids touching the inmate in the course of a strip search, and again without any justification. The district court entered summary judgment in the guard’s favor, and the detainee appealed. The appeals court reversed and remanded. The appeals court held that: (1) the detainee’s allegation that the guard touched his private parts to humiliate him or to gratify the guard’s sexual desires was sufficient to state a claim, whether or not the force exerted by the guard was significant; (2) fact issues remained as to the guard’s subjective intent in conducting the pat down and strip search; and (3) a statute barring federal civil actions by prisoners for mental or emotional injuries absent a showing of physical injury did not bar the pretrial detainee from seeking both nominal and punitive damages in his § 1983 action, even though the detainee did not claim to have suffered any physical injury. (Waukesha County Jail, Wisconsin)

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Wells v. City of Chicago, 896 F.Supp.2d 725 (N.D.Ill. 2012). The representative of the estate of a detainee who died on the night he was to be released from custody brought an action against a city and city police officers, alleging under § 1983 that the defendants unlawfully detained the detainee and denied him medical care. Following a trial, the jury returned a verdict for the representative and against four defendants on the unlawful detention claim, and for the defendants on claims relating to denial of medical care. The defendants moved for judgment as a matter of law or, in the alternative, a new trial or remittitur on the issue of damages. The district court granted the motions in part and denied in part. The district court held that: (1) the issue of whether the defendants held the detainee for more than 48 hours before being taken before a judge or being released, or for less than 48 hours for an improper purpose, was for the the jury; (2) the officers had probable cause to arrest the detainee for a crime with an intent element; (3) the issue of whether individual officers participated in the unlawful detention was for the jury; (4) the officers were not entitled to qualified immunity from the unlawful detention claim; (5) the award of \$1 million in compensatory damages was excessive; and (6) the award of \$150,500 in punitive damages was not warranted where there was little to indicate that the defendants acted with evil intent or callous indifference to the detainee’s rights.. The court noted that, although the detainee suffered significant physical pain during the time he was detained, as well as intense humiliation and severe mental and emotional distress, he was in custody for, at most, 53 hours, and only the final five hours of his detention were unlawful. The detainee had driven a semi-trailer truck through a bus stop and into a Chicago Transit Authority “L” Station, killing two women and injuring 20 people. After brief treatment in a hospital, the police transported him to a police station, where he was interviewed and then placed in a holding cell. He ultimately only received a traffic citation, though police kept investigating the collision until the time of his death. Officers were making arrangements to take the detainee to a hospital for evaluation after finding that he had difficulty walking once removed from his cell. He died in the hospital 6 weeks later. (City of Chicago Police Department, Illinois)

U.S. Appeals Court
INJUNCTIVE RELIEF
PLRA- Prison Litigation
Reform Act
POLICIES/PROCEDURES

Westefer v. Neal, 682 F.3d 679 (7th Cir. 2012). Past and present inmates in the custody of the Illinois Department of Corrections (IDOC), who had been incarcerated in a supermax prison, brought a § 1983 action against IDOC officials and employees, alleging that defendants violated their right to procedural due process by employing unconstitutionally inadequate procedures when assigning inmates to the supermax prison, and seeking injunctive and declaratory relief. The district court granted injunctive relief, and the defendants appealed. The appeals court vacated and remanded with instructions. The appeals court held that the scope and specificity of the district court’s injunction exceeded what was required to remedy a due-process violation, contrary to the terms of the Prison Litigation Reform Act (PLRA) and cautionary language from the Supreme Court about remedial flexibility and deference to prison administrators. The court held that the IDOC’s ten–point plan should be used as a constitutional baseline, revising the challenged procedures and including a detailed transfer-review process. According to the court, this would eliminate the operational discretion and flexibility of prison administrators, far exceeding what due process required and violating the mandate of the PLRA. The court found that, under the Prison Litigation Reform Act (PLRA), injunctive relief to remedy unconstitutional prison conditions must be narrowly drawn, extend no further than necessary to remedy the constitutional violation, and use the least intrusive means to correct

the violation of the federal right. The court noted that informal due process, which is mandatory for inmates transferred to a supermax prison, requires some notice of the reasons for the inmate's placement and enough time to prepare adequately for the administrative review. The court found that, to satisfy due process regarding inmates transferred to a supermax prison, only a single prison official is needed as a neutral reviewer, not necessarily a committee, noting that informal due process requires only that the inmate be given an opportunity to present his views, not necessarily a full-blown hearing. Similarly, the informal due process does not necessarily require a written decision describing the reasons for an inmate's placement, or mandate an appeal procedure. (Closed Maximum Security Unit, Tamms Correctional Center, Illinois)

U.S. Appeals Court
CONTRACT SERVICES
FAILURE TO ACT
INJUNCTIVE RELIEF

Wheeler v. Wexford Health Sources, Inc., 689 F.3d 680 (7th Cir. 2012). A state prison inmate brought a § 1983 action alleging prison officials and the prison's medical provider refused to provide effective care for the inmate's golf-ball-size hemorrhoids, leaving him in excruciating pain, in violation of the Eighth Amendment. After receiving no ruling on his first two motions for preliminary injunctive relief, the inmate moved for preliminary injunctive relief for a third time, seeking to compel the defendants to arrange for an operation to address his condition. The district court denied the motion and the inmate appealed. The appeals court vacated and remanded. The appeals court held that the district court failed to comply with a statutory command to screen "as soon as practicable" the inmate's complaint. The district court still had not screened the complaint after ten months, and the appeals court required the district court to swiftly screen the complaint, to authorize service of process on all defendants involved in the inmate's medical treatment, to give the defendants a short time to respond to the inmate's motion for preliminary injunctive relief, and to promptly conduct an evidentiary hearing to determine whether the inmate was entitled to such relief. (Wexford Health Sources, Pinckneyville Correctional Center, Illinois)

2013

U.S. District Court
FTCA- Federal Tort Claims
Act
POLICIES/PROCEDURES

Alvarado-David v. U.S., 972 F.Supp.2d 210 (D.Puerto Rico 2013). A prisoner brought an action against the United States under the Federal Tort Claims Act (FTCA), alleging he fell out of his bunk and hit a toilet bowl, breaking his frontal teeth and upper lip because the United States' failed to provide prisoners with ladders to climb to their bunks. The United States moved to dismiss for lack of subject-matter jurisdiction under the FTCA's discretionary function exception. The district court granted the motion. The court held that the decision by Bureau of Prisons (BOP) personnel not to provide ladders or other equipment for the prisoners to climb to their bunks fit within the discretionary function exception to the FTCA. The court noted that no rules or regulations governed the use of ladders or bunk beds in correctional facilities, and the decision not to provide ladders in correctional facilities for safety reasons, as ladders could be broken off and used as weapons or escape devices, was grounded in considerations of public policy. (Metropolitan Detention Center, Guaynabo, Puerto Rico)

U.S. District Court
FAILURE TO PROTECT
OFFICIAL CAPACITY
DELIBERATE
INDIFFERENCE

Ames v. Randle, 933 F.Supp.2d 1028 (N.D.Ill. 2013). An inmate brought § 1983 Eighth Amendment claims against various employees of the Illinois Department of Corrections (IDOC) who allegedly were responsible for the conditions of the inmate's confinement. The defendants filed a motion to dismiss. The court denied the motion, finding that the inmate adequately pled that Illinois prison officials were deliberately indifferent, as required to state a § 1983 Eighth Amendment claim. According to the court, the inmate alleged that he repeatedly advised the official about the prison's detrimental living conditions and that the official did not make an effort to remedy the conditions, that he informed another official about the intolerable living conditions and that this official did not make an effort to remedy the conditions, and that he discussed the intolerable living conditions with other officials, each of whom also failed to make any efforts to remedy the living conditions. The inmate claimed that he was subjected to unsanitary conditions, a lack of ventilation, and continuous lighting that interfered with his sleep. He also alleged that his housing area had dried bodily fluids on the wall of his cell and a strong odor of ammonia from his uncleaned toilet, that there was pest infestation accompanied by filth and feces, and that there was a complete lack of basic cleaning supplies or even garbage bags. He also cited filthy soiled bedding, missing or dilapidated, and sometimes dangerously damaged cell furniture and fixtures, and badly peeling toxic paint. The inmate suffered from endocarditis, an infection of the lining of the heart, which he claimed was due to the conditions of his confinement, and from which his "numerous, almost constant, fungal infections" stemmed.

The court held that the inmate's official-capacity suit against Illinois prison officials seeking prospective relief was not barred by the Eleventh Amendment, as it fell within the *Ex parte Young* exception to Eleventh Amendment immunity. The court noted that the inmate named individual state officials as defendants in this action, and he alleged that those state officials failed to provide him with the minimal civilized measures of life's necessities, in violation of the Eighth Amendment, and the inmate sought a permanent injunction enjoining the officials from continuing to engage in the allegedly unlawful conduct. (Stateville Correctional Center, Illinois Department of Corrections)

U.S. District Court
INDIVIDUAL CAPACITY
INJUNCTIVE RELIEF
OFFICIAL CAPACITY
PLRA- Prison Litigation
Reform Act

Aref v. Holder, 953 F.Supp.2d 133 (D.D.C. 2013). Current and former prisoners brought an action against the Bureau of Prisons (BOP), BOP officials, and the Attorney General, claiming that their First and Fifth Amendment rights were violated when they were placed in Communications Management Units (CMUs), in which their ability to communicate with the outside world was seriously restricted. Following dismissal of all but the procedural due process and First Amendment retaliation claims, the defendants moved to dismiss the First Amendment claims. The district court granted the motion in part and denied in part. The court held that: (1) the prisoner's release from BOP custody rendered moot his official-capacity claims for equitable relief; (2) a second prisoner sufficiently alleged a First Amendment retaliation claim; but (3) the Prison Litigation Reform Act (PLRA) barred the prisoners' individual-capacity claims against a BOP official for mental or emotional injury. (Federal Correctional Institutions in Terre Haute, Indiana, and Marion, Illinois)

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Benton v. Rousseau, 940 F.Supp.2d 1370 (M.D.Fla. 2013). A pretrial detainee, who alleged that he was beaten by drivers while being transported to prison, brought a § 1983 action against drivers of a private company which was in the business of transporting prisoners throughout the State of Florida. The district court held that the inmate established a § 1983 First Amendment retaliation claim and a § 1983 Fourteenth Amendment excessive force claim. According to the court: (1) the prisoner engaged in constitutionally protected speech because he complained about conditions of his confinement in the transport vehicle; (2) the driver of transport vehicle engaged in adverse or retaliatory conduct by pulling the inmate out of the van and onto the ground and beating and kicking the inmate; and (3) there was a causal connection between the driver's retaliatory action and inmate's protected speech, in that the incident would not have occurred but for the inmate's complaints regarding conditions of his confinement. The court noted that the inmate's injuries included headaches and facial scars, and his injuries, although perhaps not serious, amounted to more than de minimis injuries. The court ruled that the inmate was entitled to \$45,012 in compensatory damages because the inmate had scarring on his face and suffered from headaches and numbness in his side, he suffered the loss of a \$12 shirt, and he suffered mental and emotional anguish as a result of actions of drivers of transport van, who kicked and beat him. The court held that the inmate was entitled to punitive damages in the amount of \$15,000 based on the violation of his First and Fourteenth Amendment rights by the drivers. The court noted that although the drivers were no longer employed by their private employer, the employer did not investigate after the incident nor did it punish the drivers for their actions, and imposition of punitive damages would deter the drivers from taking similar actions in the future. (United States Prisoner Transport, Hernando County Jail, Florida)

U.S. District Court
SUPERVISORY
LIABILITY

Canales v. Gatzunis, 979 F.Supp.2d 164 (D.Mass. 2013). A former county jail inmate brought an action in state court against a county sheriff's department, the sheriff, the jail superintendent, a state public safety commissioner, and others, alleging the defendants subjected him to reckless, negligent, and cruel medical treatment. Some defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court found that because the county sheriff's department and other county defendants voluntarily removed to inmate's action to federal court, the defendants did not enjoy Eleventh Amendment immunity against any Massachusetts Tort Claims Act (MTCA) claims they would be subject to in state court as a result of waiver. The court held that the former jail inmate's allegations that the county defendants had a "disorganized medical program" at the jail and failed to maintain a "quality assurance program," and that the jail failed "to maintain adequate and accurate medical records," insufficiently pled that the jail superintendent was personally involved in misinforming the inmate that he had HIV and mistakenly administering another prisoner's HIV medication to the inmate, as would subject the superintendent to supervisory liability for his subordinates' alleged Eighth Amendment violations under § 1983. (Suffolk County House of Correction, Massachusetts)

U.S. District Court
CONSENT DECREE

Coleman v. Brown, 922 F.Supp.2d 1004 (E.D.Cal. 2013). State prison inmates brought Eighth Amendment challenges to the adequacy of mental health care and medical health care provided to mentally ill inmates and the general prison population, respectively. The inmates moved to convene a three-judge panel of the district court to enter a population reduction order that was necessary to provide effective relief. The motions were granted and the cases were assigned to same panel, which ordered the state to reduce the prison population to 137.5% of its design capacity. The state moved to vacate or modify the population reduction order. The district court denied the motion. The three-judge panel of the district court held that: (1) the state's contention that prison crowding was reduced and no longer a barrier to providing inmates with care required by the Eighth Amendment did not provide the basis for a motion to vacate the order on the ground that changed circumstances made it inequitable to continue applying the order; (2) the state failed to establish that prison crowding was no longer a barrier to providing inmates with care required by the Eighth Amendment; and (3) the state failed to establish it had achieved a durable remedy to prison crowding. (California Department of Rehabilitation and Corrections)

U.S. District Court
CLASS ACTION
CONSENT DECREE
INJUNCTIVE RELIEF

Coleman v. Brown, 960 F.Supp.2d 1057 (E.D.Cal. 2013). California prisoners with serious mental disorders brought a class action against a Governor, alleging that due to prison overcrowding, they received inadequate mental health care, in violation of the Eighth Amendment prohibition of cruel and unusual punishment. Separately, California prisoners with serious medical conditions brought a class action asserting constitutional claims similar to those in the other action. In the case concerning mental health care, the district court found Eighth Amendment violations and appointed a special master to oversee the development and implementation of a remedial plan. In the case concerning medical care, the State stipulated to a remedial injunction, and, after the State failed to comply with that injunction, the district court appointed a receiver to oversee remedial efforts. A three judge district court panel consolidated the two cases and the panel entered a remedial order requiring the State to reduce its prison population to 137.5 percent of design capacity within two years. The Governor appealed. The United States Supreme Court affirmed the population reduction order. The district court subsequently denied the defendants' motion to vacate or modify the population reduction order, and directed the defendants to comply with the population reduction order. The defendants' moved to stay the order directing compliance pending appeal to the United States Supreme Court. The district court denied the motion, finding that: (1) the State was not likely to succeed on the merits of the prisoners' lawsuit challenging prison conditions; (2) the State would not be irreparably injured absent a stay; (3) issuance of a stay would substantially injure the prisoners; and (4) the public interest favored denying the stay. (California)

U.S. District Court
INJUNCTIVE RELIEF
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Conway v. Purves, 963 F.Supp.2d 708 (E.D.Mich. 2013). State prisoners brought an action against a state department of corrections (DOC) and its officials challenging the nutritional adequacy of the meals provided to the prisoners during the Islamic month of Ramadan, and asserting claims for violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and constitutional violations. The plaintiffs moved for a preliminary injunction or a temporary restraining order (TRO) to require the department of corrections and its officials to provide nutritionally balanced meals containing between 2600 and 2900 calories on any given day during Ramadan. The district court denied the motion, finding that the prisoners failed to show certain and immediate irrepara-

ble harm, as required for a preliminary injunction. The court noted that Ramadan had recently concluded, that any harm that the prisoners could suffer approximately one year in the future was speculative, and the action would likely be resolved prior to the next Ramadan observance. (Michigan Department of Corrections)

U.S. District Court
CONTRACT SERVICES
OFFICIAL CAPACITY

Duran v. Merline, 923 F.Supp.2d 702 (D.N.J. 2013). A former pretrial detainee at a county detention facility brought a pro se § 1983 action against various facility officials and employees, the company which provided food and sanitation services to the facility, and the medical services provider, alleging various constitutional torts related to his pretrial detention. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that fact issues precluded summary judgment on: (1) the conditions of confinement claim against a former warden in his official capacity; (2) an interference with legal mail claim against a correctional officer that alleged that the facility deliberately withheld the detainee's legal mail during a two-week period; (3) a First Amendment retaliation claim based on interference with legal mail; and (4) a claim for inadequate medical care as to whether the detainee's Hepatitis C condition was a serious medical condition that required treatment and whether the provider denied such treatment because it was too costly. The detainee asserted that overcrowding at the county detention facility, which allegedly led to the detainee being forced to sleep and eat his meals next to open toilet, and led to inmate-on-inmate violence, contributed to his assault by another inmate. According to the court, the long-standing conditions of confinement whereby the county detention facility was overcrowded for at least 24 years and facility officials "triple-celled" inmates, allegedly leading to unsanitary conditions, amounted to a "custom" for the purposes of the former detainee's § 1983 Fourteenth Amendment conditions of confinement claim against a former warden in his official capacity.

The court held that the food service provider's serving the detainee cold meals for a 45-day period while the kitchen in the county detention facility was being renovated, was not "punishment," as would support the inmate's § 1983 Fourteenth Amendment conditions of confinement claim against the provider, absent evidence that the food served to the detainee was spoiled or contaminated, that a significant portion of the detainee's diet consisted of such food, or that the food service caused more than a temporary discomfort. The court also held that the alleged actions of the food service provider in serving the detainee one food item when another ran out, failing to serve bread with the inmate's meal, serving the inmate leftovers from days before, serving juice in a dirty container on one occasion, serving milk after its expiration date, and serving meals on cracked trays that caused the detainee to contract food poisoning, did not amount to a substantial deprivation of food sufficient to amount to unconstitutional conditions of confinement, as would violate the inmate's due process rights. (Atlantic County Justice Facility, New Jersey)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROTECT
FAILURE TO
SUPERVISE
FAILURE TO TRAIN

E.A.F.F. v. U.S., 955 F.Supp.2d 707 (W.D.Tex. 2013). Unaccompanied alien minors brought an action against Office of Refugee Resettlement (ORR) officials, alleging they were physically and sexually abused while they were in detention awaiting final adjudication of their immigration status. The officials moved for partial summary judgment. The district court granted the motions. The court noted that a person detained for deportation is equivalent to a pretrial detainee, and a pretrial detainee's constitutional claims are considered under the Due Process Clause. The court held that the officials could not be held liable for due process violations that occurred when the unaccompanied alien minors were physically and sexually abused as a result of alleged overcrowding at a detention facility, where they were being held while awaiting final adjudication of their immigration status, and where there was no evidence that the officials were responsible for decisions regarding the facility's capacity.

According to the court, isolated incidents of physical and sexual abuse by staff members at the detention facility were insufficient to put the officials on notice of a substantial risk of future abuse, as required to hold the officials liable for deliberate indifference in failing to protect the minors' safety in violation of their due process rights. The court noted that other incidents of alleged abuse were investigated by the Texas Department of Family and Protective Services and did not result in any abuse findings. The court found that officials' failure to systematically interview minors concerning their abuse allegations did not amount to deliberate indifference to their safety in violation of their due process rights, where officials spoke to some of the minors during their monitoring visits, and clinicians were on-site and available to speak with the minors on a regular basis.

The court held that the officials could not be held liable in their supervisory capacities on a theory of failure to train or supervise, for due process violations arising from alleged physical and sexual abuse by staff members at the detention facility, where staff members received training in behavior management and de-escalation techniques, officials responded to reports of abuse by recommending or providing further training, officials adopted safety policies designed to prevent abuse, and officials recommended that staff members work in pairs and they were unaware that staff members were working individually. (Nixon facility Operated by Away From Home, Inc., Texas)

U.S. District Court
FAILURE TO
SUPERVISE
FAILURE TO TRAIN
QUALIFIED IMMUNITY

Eason v. Frye, 972 F.Supp.2d 935 (S.D.Miss. 2013). A pretrial detainee brought a pro se § 1983 action against an officer and a sheriff, alleging that the officer used excessive force by releasing his canine while responding to a fight between the detainee and another inmate, and that he did not receive immediate medical attention after the incident. The defendants moved for summary judgment. The district court granted the motion. The district court held that: (1) the detainee failed to allege that the sheriff was personally involved in the dog bite incident, as required for § 1983 liability; (2) the officer did not use excessive force; (3) prison officials were not deliberately indifferent to the detainee's serious medical needs where there was no evidence that the officials refused to treat the detainee, ignored his complaints, or intentionally treated him incorrectly; (4) the detainee failed to state a § 1983 failure to train or supervise claim; (5) the sheriff was entitled to qualified immunity from the failure to train claim, where the detainee made no specific allegations about how the sheriff was unreasonable in his training and supervising methods; and (6) the detainee could not maintain a claim for mental or emotional suffering. The court noted that the detainee refused to stop fighting when the officer ordered him to stop, thus causing an obvious threat to security. In response, the officer applied the amount of force necessary to restore order on the tier, and as soon as the detainee went to the ground and stopped fighting, the officer ordered the dog to release its grip. The detainee suffered a minor injury when he was bitten by the dog. According to the court, the detainee made no

specific allegations regarding how the training and supervision program at the detention facility was inadequate or defective, he contended that his numerous complaints and grievances went unanswered but provided no evidence of inadequate training or supervision, and he made no allegation of an official policy that caused the allegedly inadequate training and supervision. (Harrison County Adult Detention Center, Mississippi)

U.S. District Court
SUPERVISORY
LIABILITY

Estate of Henson v. Wichita County, 988 F.Supp.2d 726 (N.D.Tex. 2013). Family members of a pretrial detainee who died from chronic obstructive pulmonary disease (COPD) while being held in a county jail brought a § 1983 action against a county and a jail physician, among others, for violation of the detainee's Fourth and Fourteenth Amendment rights, and asserted claims under state law for negligence and breach of contract. The defendants moved for summary judgment based on qualified immunity. The district court granted the motions in part, and denied in part. The physician and the county moved for reconsideration. The district court granted the motion, finding that the physician was not subject to supervisory liability under § 1983, absent any finding that the nurse refused to treat the detainee, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical need. The court held that the county was not liable in the § 1983 claim brought by family members, absent a showing of an underlying constitutional violation by a county employee or a county policy that permitted or caused some constitutional violation. (Wichita County Jail, Texas)

U.S. District Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE
SUPERVISORY
LIABILITY

Estate of Prasad ex rel. Prasad v. County of Sutter, 958 F.Supp.2d 1101 (E.D.Cal. 2013). The estate of a deceased pretrial detainee brought an action against jail employees and officials, as well as medical staff, alleging violations of the Fourteenth Amendment. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) although the detainee died at a hospital, liability for the jail employees and officials was not precluded, where the jail employees and officials could have contributed to detainee's death despite the transfer to the hospital; (2) allegations were sufficient to plead deliberate indifference to serious medical needs by the deputies and medical staff; (3) allegations were sufficient to state a claim for supervisory liability; (4) allegations were sufficient to state a claim for supervisory liability against the corrections officers in charge; (5) allegations were sufficient to state a claim against the county; (6) allegations were sufficient to state a claim for wrongful death under California law; and (7) the health care provider was a state actor. The court found that a statement by health care providers, in an attachment to the complaint, that even if the detainee had been transferred to the hospital sooner, it "probably" would not have changed his death, was possibly self serving, and did not contradict the complaint's allegations that the detainee's death was unnecessary and unavoidable.

According to the court, allegations that the county maintained customs or practices whereby no medical staff whatsoever were at the jail for one-sixth of every day, that the staff lacked authority to respond to emergency and critical inmate needs, and that the jail records system withheld information from affiliated health care providers, were sufficient to state a § 1983 claim against the county, alleging violations of the Fourteenth Amendment after the pretrial detainee died. The court held that allegations that deficiencies in medical care at the jail, including lack of 24-hour emergency care, were longstanding, repeatedly documented, and expressly noted by officials in the past., and that the doctor who was employed by the health care provider that contracted with the prison was aware of the deficiencies, and that the doctor discharged the pretrial detainee to the jail were sufficient to plead deliberate indifference to serious medical needs, as required to state a § 1983 action against the doctor for violations of the Fourteenth Amendment after the detainee died. (Sutter County Jail, California)

U.S. District Court
DAMAGES
FTCA- Federal Tort Claims
Act

Ford-Sholebo v. U.S., 980 F.Supp.2d 917 (N.D.Ill. 2013). The wife of a deceased pretrial detainee who suffered from a seizure disorder, individually and as administrator of the detainee's estate, brought a wrongful death action against the United States pursuant to the Federal Tort Claims Act (FTCA). The district court held that: (1) evidence supported a finding that the detainee had a seizure disorder; (2) correctional facility employees breached the standard of care for treating the detainee's seizure disorder; (3) the employees' failures and breaches of the standard of care proximately caused the detainee's death; and (4) an award of damages to the wife in the amount of \$40,000 for the loss of consortium was appropriate. The court noted that the testimony of the administrator's expert physician and a pathologist who was subpoenaed to testify at trial, that the detainee suffered from a seizure disorder, was overwhelmingly credible, while testimony of the government's two experts, that the detainee did not have seizure disorder, was incredible and unreliable. According to the court, the standard of care for treating the detainee's seizure disorder required correctional facility personnel, including physicians and physician assistants, to examine the detainee on a monthly basis, review the detainee's medical records, draw the detainee's blood for the purpose of monitoring the level of anti-seizure medication in his blood and obtain corresponding lab reports, and inform the detainee about the risks and benefits of taking or not taking medication, and to counsel him about his medication. The court found that the facility breached the appropriate standard of care, where required monthly evaluations were not conducted, facility personnel failed to make any efforts to retrieve the detainee's medical records while they were treating the detainee, facility physicians were derelict in their duty to review medical records they actually possessed and then to meet with the detainee in light of information they derived from those records, and physicians failed to talk to the detainee about his medication, to ask him why he was not taking his medication, and to counsel him about his noncompliance. (Metropolitan Correctional Center, Chicago, and Kankakee County Detention Center, Illinois)

U.S. District Court
INJUNCTIVE RELIEF

Foster v. Ghosh, 4 F.Supp.3d 974 (N.D.Ill. 2013). A state inmate brought an action against Illinois Department of Corrections officials and an optometrist who treated him in prison, alleging under § 1983 that the defendants were deliberately indifferent to his serious medical needs, in violation of the Eighth Amendment. The inmate moved for a preliminary injunction requiring the defendants to grant him access to an ophthalmologist to evaluate his cataracts. The district court granted the motion. The court held that the optometrist and medical director were deliberately indifferent to the inmate's serious medical needs and that the inmate would suffer irreparable harm absent the issuance of an injunction. According to the court, the only treatment the inmate received in prison was a prescription for eyeglasses, which was not effective, and the inmate's request for a consultation was not expensive, uncon-

ventional, or esoteric. The court noted that the cost the defendants would bear providing adequate care to the inmate did not outweigh the irreparable harm the inmate would endure if his cataracts remained unevaluated. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROTECT
QUALIFIED IMMUNITY

Glaze v. Byrd, 721 F.3d 528 (8th Cir. 2013). A pretrial detainee who had been beaten by three fellow inmates brought an action against a correctional officer, a lieutenant, and jail officials, alleging deliberate indifference to a substantial risk of serious harm, in violation of the Fourteenth Amendment. The district court denied the defendants' motion for summary judgment based on qualified immunity. The officer and the lieutenant appealed. The appeals court affirmed in part and reversed in part. The court held that summary judgment for the correctional officer was precluded by a fact question as to whether the correctional officer was aware of a substantial risk of harm to the detainee and was deliberately indifferent to his safety. (Faulkner County Detention Center, Arkansas)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROTECT
POLICIES/PROCEDURES
SUPERVISORY
LIABILITY

Goodman v. Kimbrough, 718 F.3d 1325 (11th Cir. 2013). The wife of a pretrial detainee who suffered from dementia and who was severely beaten by his cellmate filed a § 1983 action against jail officials in their individual capacities for alleged violation of the Due Process Clause by deliberate indifference to a substantial risk of harm to the detainee. The wife also asserted a supervisory liability claim against the sheriff in his official capacity and a state law claim for loss of support and consortium. The district court granted summary judgment for the defendants. The wife appealed. The appeals court affirmed. The court held that there was no evidence that jail officials were subjectively aware of a risk of serious harm to which the pretrial detainee was exposed from his severe beating by a cellmate, and that the officials deliberately disregarded that risk, as required to support the detainee's § 1983 claim of deliberate indifference in violation of the Due Process Clause. According to the court, the officers' failure to conduct cell checks and head counts and their deactivation of emergency call buttons constituted negligence but did not justify constitutional liability under § 1983. According to the court, jail officials' policy violations by failing to enter every cell in conducting head counts and in deactivating emergency call buttons did not constitute a custom so settled and permanent as to have the force of law. (Clayton County Jail, Georgia)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROTECT
SUPERVISION

Grimes v. District of Columbia, 923 F.Supp.2d 196 (D.D.C. 2013). A juvenile detainee's mother filed a § 1983 action against the District of Columbia for violation of the Eighth Amendment and negligent hiring, training, and supervision, after the detainee was attacked and killed by other detainees. After the district court ruled in the District's favor, the appeals court vacated and remanded. On remand, the District moved for summary judgment. The district court granted the motion. The court held that officials at the juvenile detention facility were not deliberately indifferent to a known safety risk, and thus their failure to protect the detainee from an attack by another detainee did not violate the Eighth Amendment. According to the court, there was no evidence of a history of assaults on youth at the facility, such that any facility employee knew or should have known that a fight between the detainee and another youth was going to take place, or that the youth who fought with the detainee had a history of assaultive behavior while at the facility. The court also found no evidence that a municipal custom, policy, or practice caused any such violation. The court also held that the mother's failure to designate an expert witness barred her claim. (Oak Hill Detention Facility, District of Columbia)

U.S. District Court
CLASS ACTION
POLICIES/PROCEDURES

Haas v. Burlington County, 955 F.Supp.2d 334 (D.N.J. 2013). Arrestees filed a proposed class action under § 1983 alleging that their constitutional rights were violated when they were strip searched at a county jail. The district court granted the arrestees' motion for leave to file an amended complaint, and the county appealed. The district court affirmed in part and reversed in part. The court held that the arrestees' proposed amendment to their complaint, in which they alleged that they were arrested for minor offenses, that they either were held, or could have been held, outside of the general jail population, and that they were subjected to strip searches pursuant to the county's blanket policy before their detentions had been reviewed by a judicial officer, stated plausible claims for violation of their rights under Fourth and Fourteenth Amendments. (Burlington County Jail, New Jersey)

U.S. District Court
CONTRACT SERVICES
NEGLIGENCE
VICARIOUS LIABILITY

Harrelson v. Dupnik, 970 F.Supp.2d 953 (D.Ariz. 2013). The mother of 17-year-old inmate who died while housed at a county jail brought an action in state court against the county, the county sheriff, the healthcare provider which contracted with the county to provide medical and mental health care at the jail, and employees of the provider, individually and on behalf of the inmate's estate, alleging under § 1983 that the defendants were deliberately indifferent to the inmate's serious medical needs. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that: (1) the county defendants' duty to provide medical and mental health services to an inmate was non-delegable; (2) intervening acts of the medical defendants did not absolve the county defendants of liability for alleged negligence; (3) the mother failed to state a claim for wrongful death; (4) the county was not deliberately indifferent to the inmate's rights; (5) the provider was not subject to liability; but (6) a fact issue precluded summary judgment as to an Eighth Amendment medical claim against the employees.

According to the court, the duty of the county and the county sheriff to provide medical and mental health services to the 17-year-old county jail inmate, who suffered from bipolar disorder and depression, was non-delegable, and thus the county and sheriff were subject to vicarious liability, under Arizona law, for the alleged medical malpractice of the healthcare provider which contracted with the county to provide medical and mental health services at the jail. The court noted that there was no evidence that the legislature intended to permit the county or sheriff to delegate their duties and obligations they owned to the inmate. The court found that the intervening acts of the contract medical provider, in allegedly failing to properly diagnose and treat the inmate's medical and mental health needs, both before and after the inmate received an injection of a psychotropic medication, were not so extraordinary as to absolve the county and the county sheriff of liability for their failure to protect the inmate.

The court found that there was no evidence that the county jail's policy or custom of placing inmates in protective custody for their own protection amounted to deliberate indifference to the constitutional rights of the inmate, who died while on protective custody status. According to the court, there was no evidence that the county had

actual notice of a pattern of risk of harm or injury as a result of the county jail officials' use of isolation, or an administrative segregation policy in the juvenile detention housing unit at the county jail, or that any omissions in the county's policies necessarily gave rise to the situation in which the inmate, died from a purported cardiac event. The court found that summary judgment was precluded by genuine issues of material fact as to whether the inmate's prescribing physician knew of the inmate's serious medical need for a full psychiatric assessment, and failed to timely provide that assessment, and as to whether jail medical personnel were aware that the inmate was suffering from a reaction to a psychotropic medication or unknown serious medical illness, and, if so, whether they were deliberately indifferent. (Pima County Adult Detention Complex, and Conmed Healthcare Management, Inc., Arizona)

U.S. Appeals Court
DAMAGES

Harrison v. Michigan, 722 F.3d 768 (6th Cir. 2013). A prisoner filed an action against a state and state officers seeking damages and injunctive relief stemming from his unlawful confinement in a prison system. The district court dismissed the action. The prisoner appealed. The appeals court reversed and remanded. The appeals court found that the statute of limitations applicable to the prisoner's § 1983 complaint had not been triggered until the state court of appeals issued its holding that the prisoner had been improperly sentenced to consecutive terms for his convictions and remanded the case for entry of a corrected judgment. The court noted that although the prisoner apparently had learned that he was being held unlawfully while still in prison, he did not have knowledge of his injury until the state court of appeals established that he had suffered such an injury. (Michigan Department of Corrections, Michigan Parole Board)

U.S. Appeals Court
INJUNCTIVE RELIEF
OFFICIAL CAPACITY
RLUIPA- Religious
Land Use and
Institutionalized
Persons Act

Hartmann v. California Dept. of Corrections and Rehabilitation, 707 F.3d 1114 (9th Cir. 2013). California state prisoners brought a § 1983 action against, among others, the California Department of Corrections (CDCR), alleging that the defendants violated their state and federal constitutional rights to exercise their religious beliefs by refusing to hire a paid, full-time, Wiccan chaplain and by failing to apply neutral criteria in determining whether paid chaplaincy positions were necessary to meet the religious exercise needs of inmates adhering to certain religions. The district court dismissed claims against the California State Personnel Board and its individual members, and, dismissed claims against the state, its governor, and various other agencies and individuals. The prisoners appealed. The appeals court affirmed in part and reversed in part. The court held that: (1) the First Amendment did not require CDCR to provide inmates with chaplain of their choice, regardless of whether the number of Wiccan inmates was greater than the number of inmates practicing faiths for which CDCR did provide staff chaplain, because the prisoners had a reasonable opportunity to exercise their faith via the services of staff chaplains and a volunteer Wiccan chaplain that they already received; (2) the prison policy did not violate prisoners' rights under the Equal Protection Clause where the prison provided the plaintiffs with a volunteer Wiccan chaplain when available, made staff chaplains available to all prisoners to assist in their religious exercise, and the prison administration considered the prisoners' requests at three different levels of review before determining that services were sufficient without hiring a full-time Wiccan chaplain; (3) the prisoners did not plead that their religious exercise was so burdened as to pressure them to abandon their beliefs, precluding their claim that the prison administration violated their rights under Religious Land Use and Institutionalized Persons Act (RLUIPA); (4) two prison officials were proper official-capacity defendants on the prisoners' claim for injunctive relief where the prisoners sought an affirmative injunction requiring the prison administration to adopt and apply neutral criteria in determining chaplain hiring needs and they alleged that each official was responsible for the policies and practices of the California Department of Corrections (CDCR), as well as the day-to-day operation of the prison; and, (5) permitting prisoners to amend complaint was unwarranted on futility grounds.

But the court found that the prisoners did state a claim for violation of the First Amendment's Establishment Clause by alleging that the prison administration created staff chaplain positions for five conventional faiths, refused to hire a paid, full-time, Wiccan chaplain, and failed to apply neutral criteria in evaluating whether the growing membership in minority religions warranted reallocation of resources used in accommodating inmates' religious exercise needs. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
COMPENSATORY
DAMAGES
INJUNCTIVE RELIEF

Hazle v. Crofoot, 727 F.3d 983 (9th Cir. 2013). A parolee, who was an atheist, brought an action against various state officials and a state contractor, seeking damages and injunctive relief for the deprivation of his First Amendment rights, after his parole was revoked following his refusal to participate in a residential drug treatment program that required him to acknowledge a higher power, as a condition of his parole. The contractor, Westcare, was a private regional substance abuse coordination agency, and made the arrangements for the parolee's placement in the program. After the parolee was granted partial summary judgment by the district court, a jury awarded the parolee zero damages. The district court denied the parolee's motion for a new trial, and the parolee appealed. The appeals court reversed and remanded. The court held that the parolee was entitled to an award of compensatory damages for each day that he spent in prison as a result of the violation of his First Amendment rights by various state officials. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the contractor's conduct was the proximate cause of the parolee's unconstitutional imprisonment, when it contracted only with drug treatment facilities offering solely religious based programs or services, and counseled and arranged for the parolee to attend a religion-based facility as part of his state-imposed parole program, despite having been informed that the parolee was an atheist and that he objected to such religious programming. The court held that the parolee's claim under California law for an injunction preventing both a state contractor and various state officials from expending state funds in an unconstitutional manner that required parolees to participate in religious treatment programs in order to be eligible for parole, failed to provide parolees with secular or non-religious treatment alternatives, and revoked the parole of those who protested or resisted participation in religion-based treatment programs, was not rendered moot after the state issued a directive stating that parole agents could not require a parolee to attend any religious based program if the parolee refused to participate for religious reasons, where the state directive had not been implemented in any meaningful fashion. (California Department of Corrections and Rehabilitations, Board of Parole Hearings, Westcare, and Empire Recovery Center, California)

U.S. District Court
POLICY/PROCEDURE
SUPERVISORY
LIABILITY

Hernandez v. Cate, 918 F.Supp.2d 987 (C.D.Cal. 2013). An Hispanic state inmate, whose ethnicity was classified as “other,” brought an in forma pauperis civil rights action against California Department of Corrections and Rehabilitation (CDCR) officials, alleging, among other things, that the officials discriminated against him on basis of his race, in violation of his equal protection and due process rights, and that the officials violated his Eighth Amendment right to be free from cruel and unusual punishment. The officials moved to dismiss the complaint for failure to state claim. The district court granted the motion in part and denied in part. The court held that state prison officials applied a suspect racial classification to Hispanic inmates, who were ethnically classified as “other,” when the officials placed those inmates on modified program status in lockstep with the lockdown of Mexican inmates, while non-Hispanic inmates who associated with the Mexican inmates or disruptive inmates of other ethnic groups were not subjected to same lockstep treatment. According to the court, prison policies were not narrowly tailored to control prison disturbances, as required to survive strict scrutiny of the § 1983 equal protection claim brought by Hispanic inmate. The court held that the state prison warden's authority and discretion to justify modified programs imposed on the Hispanic inmate and to deny the inmate relief at the administrative level were sufficient to show the warden's personal involvement in the alleged deprivations of the inmate's equal protection and Eighth Amendment rights so as to subject the warden to supervisory liability under § 1983. The court found that state prison officials were not entitled to qualified immunity from the § 1983 equal protection claim brought by the Hispanic inmate where it would have been clear to a reasonable official that it was unlawful to place the inmate on a modified program on the basis of his race, ethnicity, or national origin. (Ironwood State Prison, California Department of Corrections and Rehabilitation)

U.S. District Court
FAILURE TO PROTECT
FTCA- Federal Tort
Claims Act

Hill v. U.S., 922 F.Supp.2d 174 (D.Mass. 2013). A federal prisoner brought an action against the United States under the Federal Tort Claims Act (FTCA) alleging that he was assaulted by another inmate while in custody and that a correctional officer on duty failed to respond to a “help” button and his calls for help. The United States moved to dismiss. The district court denied the motion, finding that dismissal pursuant to the FTCA's discretionary function exception was not warranted. The court found that the issue of whether BOP had any mandatory directive for immediate response to either a “help” button or inmate calls for help involved fact issues that could not be resolved on a motion to dismiss. (Federal Medical Center in Ayer, Massachusetts)

U.S. District Court
CLASS ACTION
DAMAGES
OFFICIAL CAPACITY

Hilton v. Wright, 928 F.Supp.2d 530 (N.D.N.Y. 2013). A state prison inmate infected with the Hepatitis C virus (HCV) brought a class action against the New York State Department of Correctional Services and Community Supervision (DOCCS) and its chief medical officer, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment, as well as violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Following class certification, the parties entered into a settlement agreement resolving injunctive and equitable claims. The defendants moved for summary judgment on the remaining damages claims. The inmate's attorneys moved for attorney's fees and out-of-pocket expenses incurred monitoring the settlement agreement. The district court granted the defendants' motion for summary judgment, awarded fees to the inmate's attorneys, but denied expenses. The inmate appealed. The appeals court vacated and remanded. On remand, the district court held that: (1) the Eleventh Amendment barred an Eighth Amendment claim against an officer in his official capacity; (2) the inmate waived the Eighth Amendment claim based on initial denial of treatment due to his short prison term; (3) a fact issue precluded summary judgment on the Eighth Amendment claim based on denial of treatment due to the inmate's failure to complete a substance abuse program;(4) a fact issue precluded summary judgment on the ADA and Rehabilitation Act claims; and (5) enlargement of the cap set forth in the agreement was appropriate. (New York State Department of Correctional Services and Community Supervision)

U.S. District Court
CONSENT DECREE
CONTEMPT
CONTRACT SERVICES
SETTLEMENT

Kelly v. Wengler, 979 F.Supp.2d 1104 (D.Idaho 2013). Prisoners brought a civil contempt action against a private prison contractor, alleging the contractor violated a settlement agreement that required it to comply with the staffing pattern specified in its contract with the Idaho Department of Correction. The district court found that the contractor was in civil contempt for violating the settlement agreement, that the contractor's non-compliance with staffing requirements were significant, and the contractor did not promptly take all reasonable steps to comply with settlement agreement. The court held that a two-year extension of the consent decree was a proper sanction for the contractor's civil contempt in willfully violating the settlement agreement, where the contractor's failure to comply with a key provision of the settlement agreement had lasted nearly as long as the duration of the agreement. According to the court, the use of an independent monitor to ensure the private prison contractor's compliance with the settlement agreement was an appropriate resolution, where such duty was most fairly handled by a monitor with a direct obligation to the district court and to the terms of the settlement agreement. The court noted that “...it is clear that there was a persistent failure to fill required mandatory positions, along with a pattern of CCA staff falsifying rosters to make it appear that all posts were filled.” The state assumed operation of the facility in July 2014, changing the name to the Idaho State Correctional Center. (Corrections Corporation of America, Idaho Dept. of Correction, Idaho Corr'l.)

U.S. District Court
CONTRACT SERVICES
FAILURE TO ACT
SETTLEMENT

Kelly v. Wengler, 979 F.Supp.2d 1237 (D.Idaho 2013). Prisoners moved for discovery and a hearing on the issue of whether a private prison contractor should be held in civil contempt for violating the parties' settlement agreement. The district court held that it had the power to enforce the settlement agreement, and that the prisoners were entitled to a hearing and to discovery on the issue of whether the private prison contractor should be held in civil contempt. The prisoners alleged that the contractor had been falsifying staffing records, and the district court ordered discovery, noting that prisoners had offered affidavits from current and former employees of the contractor, all alleging more unfilled posts than contractor had admitted to. (Corrections Corporation of America, Idaho Department of Correction, Idaho Correctional Center)

U.S. District Court
CONTRACT SERVICES
SETTLEMENT

Kelly v. Wengler, 979 F.Supp.2d 1243 (D.Idaho 2013). Prisoners seeking to have a private prison contractor held in civil contempt for violating the parties' settlement agreement moved to unseal related documents. The district court held that the filings in the civil contempt proceedings would not be kept under seal. The court noted that the

settlement agreement did not state that disputes would be private. And the court found: “It is hardly private spite, promotion of public scandal, or libelous, to contend that CCA is wrong, and to submit sworn affidavits from past and current employees in support of that argument. Idaho taxpayers pay CCA to operate one of their prisons. With public money comes a public concern about how that money is spent. Such a public interest cannot be swatted away by calling it a desire for ‘public spectacle,’ or a form of ‘private spite,’ or any of the other labels that CCA offers.” In July 2014 the Department of Corrections assumed control of the facility. (Corrections Corporation of America, Idaho Department of Correction, Idaho Correctional Center)

U.S. District Court
FTCA- Federal Tort
Claims Act
PLRA- Prison Litigation
Reform Act

Lineberry v. Federal Bureau of Prisons, 923 F.Supp.2d 284 (D.D.C. 2013). A federal prisoner brought an action against the Bureau of Prisons (BOP) and prison official under the Federal Tort Claims Act (FTCA) and Bivens, alleging he was denied access to the postal service in violation of his First Amendment rights. The district court granted the defendants’ motion to dismiss. The court held that the prisoner’s admitted failure to submit a claim to the Bureau of Prisons prior to filing his lawsuit under the Federal Tort Claims Act (FTCA) alleging BOP’s mail regulations violated his First Amendment rights, deprived the district court of subject matter jurisdiction. The court found that neither the requirement of a mailing label generated by the Bureau of Prisons’ (BOP) mail system, nor the return of mail lacking such a label, violated the prisoner’s First Amendment rights, and the prisoner provided no factual allegations to support his conclusory claims that the system denied him access to the press, the establishment or exercise of religion, and peaceable assembly. (Federal Correctional Institution in Texarkana, Texas)

U.S. District Court
FAILURE TO TRAIN
MUNICIPAL LIABILITY
NEGLIGENCE
SUPERVISORY
LIABILITY

Lucia v. City of Peabody, 971 F.Supp.2d 153 (D.Mass. 2013). The administrator of the estate of an individual who died from acute and chronic substance abuse while in protective custody brought an action against a city and its mayor, as well as the police department, its chief, and four other individual officers, alleging claims under § 1983 for various constitutional violations and claims of negligence and false imprisonment under state law. The defendants moved for summary judgment. The district court granted the motion. The district court held that: (1) the officers were entitled to qualified immunity on the claim that they violated the individual’s constitutional rights by failing to call a treatment center; (2) the officers were entitled to qualified immunity on the claim that they violated the individual’s constitutional rights by failing to monitor him and provide proper care; (3) the administrator failed to establish municipal liability based on failure to train; (4) the administrator failed to establish supervisory liability against the supervising officer; (5) police were immune from negligence liability under statutory exception to Massachusetts Tort Claims Act; and (6) the officers were not liable for false imprisonment. The court noted that at the time of the relevant events, a reasonable officer would not have known that determining that a suitable treatment facility was not available was a Fourth Amendment prerequisite to his ability to constitutionally detain an intoxicated individual who was not charged with any crime, as required for the right to be clearly established, and therefore the individual officers who detained the individual were entitled to qualified immunity under § 1983. (Peabody Police Department, Massachusetts)

U.S. District Court
FAILURE TO PROTECT
FTCA- Federal Tort Claims
Act
POLICIES/PROCEDURES
SOVEREIGN IMMUNITY

McKinney v. U.S., 950 F.Supp.2d 923 (N.D.Tex. 2013). A 79-year-old federal prisoner, who allegedly had been injured while being transported to a medical center, filed suit against the United States pursuant to the Federal Torts Claim Act (FTCA). The district court denied the defendants’ motion to dismiss, holding that the prisoner’s tort claim was not barred under the discretionary function exception to FTCA’s waiver of sovereign immunity. The court noted that a prisoner has the right to bring a cause of action under FTCA for a breach of the duty prescribed by federal statute requiring the Bureau of Prisons to provide for the safekeeping, care, and subsistence of all federal prisoners. The prisoner alleged that he was injured when officials failed to assist him on stairs when he was exiting an airplane, while he was fully restrained in handcuffs, shackles, and a belly chain. According to the court, there were no legitimate policy considerations at play in the officials’ choice not to assist a fully restrained, elderly, ill, and outnumbered prisoner on the stairs of an airplane. The prisoner alleged that, due to his fall, he suffered intense pain, has reoccurring medical issues, must now use a walker to get around, continues to need medication for pain, and requires counseling to address the mental and emotional stress he has suffered. (FCI–Fort Worth, Texas, and Federal Medical Center, Butner, North Carolina)

U.S. District Court
SUPERVISORY LIA-
BILITY
CONTRACT SERVICES

M.H. v. County of Alameda, 90 F.Supp.3d 889 (E.D. Cal. 2013). Children of a deceased inmate brought a § 1983 action against a doctor, a nurse, prison health services, a county, a sheriff, ten deputies, and a county social worker. The inmate died from anoxic encephalopathy due to cardiac arrest following excessive physical exertion, multiple blunt injuries, and taser, which occurred while he was incarcerated, and while he was experiencing severe alcohol withdrawal. The defendants moved to dismiss. The district court granted the motions in part and denied in part. The court held that the children sufficiently stated a claim under California law that the nurse was deliberately indifferent to the inmate’s medical needs, by alleging that the nurse knew that the inmate was at risk of severe alcohol withdrawal, violated prison and county procedure in failing to attend to his medical needs, and failed to satisfy the medical standard of care, which resulted in substantial harm to the inmate. According to the court, the children also stated valid *Monell* claims by alleging that the doctor’s and the prison health services corporation’s customs, practices, or lack thereof, constituted deliberate indifference to the prisoners’ medical needs, and also stated a claim for supervisory liability. The inmate had broken a food tray in his cell, blocked his toilet, and made a mess of his cell. A deputy allegedly entered his cell alone with a taser in one hand and handcuffs in the other. The deputy tased the inmate for two cycles, or ten seconds, causing the inmate to run for the door, slip on the wet floor, and fall. The children alleged that the deputy and at least nine other deputies then severely beat, punched, kicked, stomped, tased, and brutalized the inmate. The inmate was taken to a hospital where he was found to suffer anoxic brain damage, severe acidosis, several cardiac arrests, and respiratory failure. The inmate died two days later. An autopsy determined that the inmate died from anoxic encephalopathy due to cardiac arrest following excessive physical exertion, multiple blunt injuries, and taser. (Corizon Health Inc, and Santa Rita Jail, Alameda County Sheriffs’ Department, California)

U.S. District Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROTECT
INDIVIDUAL CAPACITY
OFFICIAL CAPACITY

Newell v. Kankakee County Sheriff's Department, 968 F.Supp.2d 973 (C.D.Ill. 2013). A disabled federal detainee who was housed at a county jail for two months brought an action against the county sheriff's department and county officials under § 1983 and the Americans with Disabilities Act (ADA). The defendants moved to dismiss. The district court denied the motion. The court held that the detainee's allegations that the county officials developed, supervised, and enforced policies and practices of the jail, ensured that grievances were received in the proper manner and were properly responded to, and were aware of his serious medical needs and his grievances, yet turned a blind eye to the situation, were sufficient to state a claim against the officials in their individual capacities in his civil rights action alleging he was denied medical care and kept in unsafe and unhealthy conditions while he was housed at the county jail. The detainee allegedly had multiple disabilities that he sustained in an auto accident, including weakness and numbness in his left side and he partially dragged his left leg. He also had incontinence with urine and bowel movements and required the use of adult diapers. He was unable to stand still without assistance, which made showering and using the toilet difficult. The detainee alleged that despite his obvious disabilities and medical issues, he was assigned to a regular dorm on the top floor of the jail, and a to a top bunk. He had to hop on one leg to go up or down the stairs and needed assistance from other inmates to get into and out of his bunk. He was allegedly not given adult diapers until his third day at the jail, and even then, he was not given an adequate supply of diapers and would sometimes sit in a soiled diaper for days, and in clothes with urine and feces on them. He alleged that he was not given enough biohazard bags, and the soiled diapers and bags piled up in his cell. One day, when there was no one to assist the detainee, he fell while attempting to get out of his bunk and he sat for two hours until someone came to help him. As a result, his left leg worsened and his right leg was numb, he could not walk at all and was forced to crawl down stairs on his buttocks, and scoot along the floor and walk on his hands.

The court found that the detainee's allegations that he was denied medical care and kept in unsafe and unhealthy conditions while he was housed at the county jail, and that the jail was not an exceptionally large facility, were sufficient to state claim against the corrections officer working at the jail in his individual capacity. According to the court, the situation described by the inmate, if true, would have been obvious to any correctional officer working in the area in which the inmate was housed.

The court held that the detainee's allegations that correctional staff at the county jail acted pursuant to an official policy or custom not to perform a medical intake, investigate inmates' medical issues or complaints about problems with walking if they were ambulatory, nor provide sufficient medically-necessary hygiene items such as adult diapers to inmates, among other things, were sufficient to allege that an official policy or custom was a "moving force" in the alleged violation of his rights, as required to state official capacity claims under Monell. The court held that the detainee's allegation that he was barred from basic facilities on the basis of his disabilities while he was housed at the county jail was sufficient to allege discriminatory intent, as required to state an ADA claim against the county sheriff's department. (*Jerome Combs Detention Center, Kankakee, Illinois*)

U.S. District Court
MUNICIPAL LIABILITY

Page v. Mancuso, 999 F.Supp.2d 269 (D.D.C. 2013). A pretrial detainee brought an action in the Superior Court for the District of Columbia, against the District of Columbia and a police officer, alleging unlawful arrest in violation of the Fourth Amendment, and deliberate indifference to the arrestee's over-detention and strip search. The detainee also alleged that the District maintained a custom and practice of strip searches in violation of the Fourth and Fifth Amendments. The defendants removed the action to federal court and filed a partial motion to dismiss. The district court granted the motion. The court held that the detainee's complaint failed to allege that the District of Columbia was deliberately indifferent to Fourth and Fifth Amendment violations jail officials inflicted upon the detainee when they subjected him to "over-detention" and strip searches, as required to state a claim against District for Fourth and Fifth Amendment violations under the theory of municipal liability. (D.C. Jail)

U.S. District Court
DELIBERATE INDIF-
FERENCE
GOVERNMENTAL
LIABILITY
FAILURE TO TRAIN

Poche v. Gautreaux, 973 F.Supp.2d 658 (M.D.La. 2013). A pretrial detainee brought an action against a district attorney and prison officials, among others, alleging various constitutional violations pursuant to § 1983, statutory violations under the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA), as well as state law claims, all related to her alleged unlawful detention for seven months. The district attorney and prison officials moved to dismiss. The district court granted the motions in part and denied in part. The court held that the detainee sufficiently alleged an official policy or custom, as required to establish local government liability for constitutional torts, by alleging that failures of the district attorney and the prison officials to implement policies designed to prevent the constitutional deprivations alleged, and to adequately train their employees in such tasks as processing paperwork related to detention, created such obvious dangers of constitutional violations that the district attorney and the prison officials could all be reasonably said to have acted with conscious indifference. The court found that the pretrial detainee stated a procedural due process claim against the district attorney and the prison officials under § 1983 related to her alleged unlawful detention for seven months, by alleging that it was official policy and custom of the officials to skirt constitutional requirements related to procedures for: (1) establishing probable cause to detain; (2) arraignment; (3) bail; and (4) appointment of counsel, and that the officials' policy and custom resulted in a deprivation of her liberty without due process. The court also found a procedural due process claim against the district attorney under § 1983 by the detainee's allegation that it was the district attorney's policy and custom to sign charging papers such as bills of information without reading them, without checking their correctness, and without even knowing what he was signing, and that the attorney's policy and custom resulted in a deprivation of her liberty without due process. The court found a substantive due process claim against the district attorney in the detainee's allegation that after obtaining clear direct knowledge that the detainee was being wrongfully and illegally held, the district attorney still failed to correct the mistakes that caused the detention, and to cover up his failures in connection with the case, the district attorney made a conscious decision to bring belated charges against the detainee. The court held that the detainee stated an equal protection claim against the prison officials under § 1983, by alleging that the officials acted with a discriminatory animus toward her because she was mentally disabled, and that she was repeatedly and deliberately punished for, and discriminated against, on that basis. (*East Baton Rouge Prison, Louisiana*)

U.S. District Court
INDIVIDUAL CAPACITY

Potts v. Moreci, 12 F.Supp.3d 1065 (N.D.Ill. 2013). A pretrial detainee brought a § 1983 action against a county, employees of the county jail in their individual capacities, and a sheriff, in his individual and official capacities, alleging retaliation in violation of his First Amendment rights, deprivation of his procedural due process and equal protection rights, denial of access to the courts, municipal liability, and statutory indemnification. The sheriff moved to dismiss the claims asserted against him. The district court granted the motion in part and denied in part. The court found that the detainee who allegedly was placed in a segregation unit at the county jail without adequate grounds and without an opportunity to contest such placement stated a claim for a procedural due process violation against the sheriff, in his individual capacity, under § 1983. The court noted that the sheriff's personal responsibility for the detainee's placement in segregation could be assumed in determining whether the detainee adequately pleaded the claim, and the detainee also sufficiently alleged the sheriff's knowledge of the detainee's allegedly unconstitutional confinement in segregation by asserting that the sheriff attended periodic meetings at which the detainee's confinement was discussed, which permitted the inference that sheriff knew about the challenged conduct and facilitated, approved, condoned, or turned a blind eye to it. The court held that the detainee sufficiently pleaded the sheriff's personal involvement in the alleged misconduct of jail employees in singling out the detainee for arbitrary treatment during his confinement in a segregation unit, subjecting him to living conditions that were inconsistent even with conditions of other detainees in a segregation unit, and thus stated a § 1983 claim for class-of-one equal protection violation against the sheriff. (Cook County Jail, Illinois)

U.S. Appeals Court
CLASS ACTION
DELIBERATE INDIF-
ERENCE

Pride v. Correa, 719 F.3d 1130 (9th Cir. 2013). A prisoner brought § 1983 action against two members of a prison's committee that reviewed medical notes, claiming that the members violated his Eighth Amendment rights by acting with deliberate indifference towards his serious medical needs in denying his prescribed knee brace and egg crate mattress. The district court granted summary judgment to the committee members. The prisoner appealed. The appeals court reversed and remanded with directions. The appeals court held that the prisoner's § 1983 action seeking an injunction was not duplicative of an earlier class action, *Plata v. Brown*, and was not conclusively in the *Plata* stipulation, where the prisoner's action did not refer to systemic relief for inmates generally. The court noted that the *Plata* stipulation stated that it only had preclusive effect on other actions seeking class or systemic relief, and the procedural provisions of the stipulation only applied to systemic reform goals and not individual claims. (Calipatria Prison, California)

U.S. District Court
PUNITIVE DAMAGES
POLICIES/PROCEDURES

Prison Legal News v. Babeu, 933 F.Supp.2d 1188 (D.Ariz. 2013). A non-profit organization that produced and distributed a monthly journal and books to inmates brought an action against county jail officers and mailroom employees, alleging that the defendants violated its First Amendment and due process rights by failing to deliver its materials to its subscribers at the jail. The parties cross-moved for partial summary judgment. The court granted the motions in part, denied in part, and deferred in part. The court held that the jail's policy limiting incoming inmate correspondence to one-page and postcards did not violate the First Amendment, where there was an apparent common-sense connection between the jail's goal of reducing contraband and limiting the number of pages a particular piece of correspondence contained, and sufficient alternative avenues of communication remained open for publishers who wished to communicate with inmates at the jail. But the court held that the jail's failure to give the non-profit organization notice and the opportunity to appeal the jail's refusal to deliver its materials to inmates violated the organization's procedural due process rights. The court held that there was no evidence that mailroom employees, their supervisors, or command staff at the county jail were motivated by evil motive or intent when they violated the non-profit publisher's First Amendment and due process rights by discarding publisher's materials without providing the publisher opportunity to contest or appeal the non-deliverability decision, or that those individuals' unconstitutional actions involved reckless or callous indifference to the publisher's federally protected rights, as would support an award of punitive damages against the individuals in the publisher's § 1983 action. (Pinal County Jail, Arizona)

U.S. District Court
INJUNCTIVE RELIEF
POLICIES/PROCEDURES

Prison Legal News v. Columbia County, 942 F.Supp.2d 1068 (D.Or. 2013). A publisher filed a § 1983 action alleging that a county and its officials violated the First Amendment by rejecting dozens of its publications and letters mailed to inmates incarcerated in its jail and violated the Fourteenth Amendment by failing to provide it or the inmates with the notice of, and opportunity to, appeal the jail's rejection of its publications and letters. A bench trial was held, resulting in a judgment for the publisher. The court held that: (1) the policy prohibiting inmates from receiving mail that was not on a postcard violated the First Amendment; (2) the county had a policy of prohibiting inmates from receiving magazines; (3) the county failed to provide adequate notice of withholding of incoming mail by jail authorities; (4) entry of a permanent injunction prohibiting officials from enforcing the postcard-only policy was warranted; and (5) a permanent injunction prohibiting officials from enforcing the prohibition against magazines was not warranted. (Columbia County Jail, Oregon)

U.S. Appeals Court
INJUNCTIVE RELIEF

Rodriguez v. Robbins, 715 F.3d 1127 (9th Cir. 2013). Aliens subject to detention pursuant to federal immigration statutes brought a class action against Immigration and Customs Enforcement (ICE) and others, challenging prolonged detention without individualized bond hearings and determinations to justify their continued detention. The district court entered a preliminary injunction requiring the holding of bond hearings before an immigration judge (IJ). The government appealed. The appeals court affirmed. The court held that: (1) the statute authorizing the Attorney General to take into custody any alien who is inadmissible or deportable by reason of having committed certain offenses for as long as removal proceedings are "pending" cannot be read to authorize mandatory detention of criminal aliens with no limit on the duration of imprisonment; (2) aliens subject to prolonged detention were entitled to bond hearings before IJs; (3) irreparable harm was likely to result from the government's reading of the immigration detention statutes as not requiring a bond hearing for aliens subject to prolonged detention; and, (4) the public interest would benefit from a preliminary injunction. The court ruled that the class was comprised of all non-citizens within the Central District of California who: (1) are or were detained for longer than six months pursuant to one of the general immigration detention statutes pending completion of removal proceedings, including judicial review, (2) are not and have not been detained pursuant to a national security de-

tention statute, and (3) have not been afforded a hearing to determine whether their detention is justified. (Los Angeles Field Office of ICE, California)

U.S. District Court
INJUNCTIVE RELIEF
OFFICIAL CAPACITY

Rother v. NYS Dept. of Corrections and Community Supervision, 970 F.Supp.2d 78 (N.D.N.Y. 2013). A female corrections officer brought an action against a state department of corrections, correctional facility, supervisors and coworkers, alleging sex discrimination and retaliation under Title VII, denial of equal protection pursuant to § 1983, denial of due process under the Fourteenth Amendment, First Amendment retaliation, conspiracy under § 1985, and various state claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The officer alleged that a coworker told the officer, in front of inmates, coworkers, and the officer's subordinates, that she had received an administrative-sergeant position by performing sexual favors and that she was a "bitch and a backstabber," "a stupid cunt," and a "whining bitch" who "sucked." She alleged that she was subjected to discriminatory coworker shunning and tire-slashing threats, assignment denials, performance criticisms, discipline, vigilant monitoring, and denial of overtime and leave pay denials. The appeals court held that, through the description of the emotional and psychological toll of her treatment, the officer subjectively perceived her work environment to be abusive.

The court found that the officer's complaint alleged the "materially adverse action" element of a Title VII retaliation claim against a correctional facility and the state department of corrections by alleging that she endured unmerited criticism and discipline, failure to remedy a coworker's mistreatment, repeated coworker shunning and threats of tire slashing, video-camera monitoring, denial of vacation pay, and delay in filling out workers' compensation paperwork. The court also held that the officer's complaint stated a § 1983 claim against the state department of corrections and the correctional facility for violation of the Equal Protection Clause, where her complaint alleged that no male employee was subjected to the treatment of which she complained, and that the officer was criticized and disciplined repeatedly for proper and innocuous conduct while a male coworker received no criticism or discipline for his patently improper and inappropriate verbal tirade, which included explicitly sexist language. According to the court, the state's commissioner of corrections, by virtue of his supervisory position, had both a direct connection to the alleged gender discrimination against the female corrections officer, and the authority to reinstate and transfer the officer, supporting her § 1983 equal protection claim against the commissioner in his official capacity seeking injunctive or declaratory relief. (Coxsackie Correctional Facility, N.Y. State Department of Corrections and Community Supervision)

U.S. Appeals Court
DELIBERATE INDIFFERENCE
INDIVIDUAL CAPACITY
OFFICIAL CAPACITY

Santiago v. Blair, 707 F.3d 984 (8th Cir. 2013). A state prisoner brought a § 1983 action against correctional officers, alleging excessive force and deliberate indifference to his medical needs in violation of the Eighth Amendment and retaliation in violation of the First Amendment. The district court granted the officers' motion for summary judgment with respect to official capacity claims, but denied summary judgment with respect to individual capacity claims. The officers appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court improperly applied the Fourth Amendment excessive force legal standard to the prisoner's § 1983 claim for excessive force in violation of the Eighth Amendment, warranting remand to the district court to inquire whether the force was applied to the prisoner in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. The appeals court held that summary judgment in prisoner's First Amendment retaliation action was precluded by a genuine dispute of material fact as to whether a correctional officer's threats of death would chill a prisoner of ordinary firmness from engaging in the prison grievance process. The court also found a genuine dispute of material fact as to whether the correctional officer issued death threats to the prisoner because the prisoner had filed and pursued an excessive force grievance. According to the court, summary judgment in the First Amendment retaliation action was precluded by a genuine dispute of material fact as to whether the correctional officer's placement of the prisoner in a cell without his personal property, proper facilities, bedding, or clothing, and the officer's threat that things would get worse, issued after hearing the prisoner complain that he was being retaliated against, were adverse actions sufficient to chill a prisoner of ordinary firmness from engaging in the prison grievance process. (Potosi Correctional Center, Missouri)

U.S. District Court
COMPENSATORY DAMAGES
PUNITIVE DAMAGES

Slevin v. Board of Com'rs for County of Dona Ana, 934 F.Supp.2d 1270 (D.N.M. 2013). A detainee brought an action against a county board of commissioners, detention center director, and medical director, alleging violations of his rights with regard to his medical care. The detainee alleged that, because of his mental illness, officials at the Detention Center kept him in administrative segregation for virtually the entire 22 months of his incarceration, without humane conditions of confinement or adequate medical care, and without periodic review of his confinement, causing his physical and mental deterioration, in violation of the Americans with Disabilities Act. The jury awarded the detainee \$3 million in punitive damages against the Detention Center Director, and \$3.5 million in punitive damages against the facility medical director. The jury fixed the amount of compensatory damages at \$15.5 million, which included \$500,000 for each month that detainee was incarcerated, plus an additional \$1 million for each year since the detainee's release from custody. The defendants moved for a new trial or for reduction of the damages awards. The district court denied the motion, finding that the compensatory damages award was supported by substantial evidence and it would not be set aside on the ground that it was the product of passion or prejudices. The court also declined to set aside the punitive damages awards as excessive. (Doña Ana County Detention Center, New Mexico)

U.S. District Court
COMPENSATORY DAMAGES
PUNITIVE DAMAGES

Slevin v. Board of Com'rs for County of Dona Ana, 934 F.Supp.2d 1282 (D.N.M. 2013). A detainee brought an action against a county board of commissioners, detention center director, and medical director, alleging violations of his rights with regard to his medical care. After a verdict in favor of the detainee, the defendants moved for a new trial based on nondisclosure of the existence of attorney-client relationship between the detainee's counsel and a witness, who was a lead plaintiff in other proceedings. The district court denied the motion, finding that failure to volunteer information about their representation of the witness was not fraud, misrepresentation, or misconduct, and did not substantially interfere with the defense. The detainee alleged that, because of his mental

illness, officials at the Detention Center kept him in administrative segregation for virtually the entire 22 months of his incarceration, without humane conditions of confinement or adequate medical care, and without periodic review of his confinement, causing his physical and mental deterioration, in violation of the Americans with Disabilities Act. The jury awarded the detainee \$3 million in punitive damages against the Detention Center Director, and \$3.5 million in punitive damages against the facility medical director. The jury fixed the amount of compensatory damages at \$15.5 million, which included \$500,000 for each month that detainee was incarcerated, plus an additional \$1 million for each year since the detainee's release from custody. (Doña Ana County Detention Center, New Mexico)

U.S. Appeals Court
DELIBERATE INDIF-
FERENCE
QUALIFIED IMMUNITY

Thompson v. King, 730 F.3d 742 (8th Cir. 2013). The estate of a detainee, who died in police custody from multiple drug intoxication, brought a § 1983 action against the arresting and detaining officers, alleging that the officers had shown deliberate indifference to the detainee's serious medical needs. The district court denied the officers' motion for summary judgment on the basis of qualified immunity. The officers appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the arresting officer's discovery of an empty bottle of a recently refilled anti-anxiety medication, and the detainee's statement that he had taken "a little" of the medication, did not amount to subjective knowledge that the detainee required medical attention, and thus the officer was entitled to qualified immunity in the § 1983 action arising from the subsequent death of the detainee in police custody. The court noted that the detainee presented no external injuries, and the detainee was conscious during the initial encounter, answering officers' questions and following instructions. The court found that summary judgment for the police officer in charge of the jail was precluded by a genuine issue of material fact as to whether the police officer had subjective knowledge of the serious medical need of the detainee and whether the officer deliberately disregarded that need. According to the court, a reasonable officer in charge of a jail would have known that a constitutional violation occurs by deliberately disregarding a detainee's serious medical needs, and thus the right was clearly established, and in turn the officer was not entitled to qualified immunity from the § 1983 claim arising from detainee's death while in police custody. (Saline County Detention Center, Arkansas)

U.S. District Court
BIVENS CLAIM
RLUIPA- Religious Land
Use & Institutionalized
Persons Act

Uduko v. Cozzens, 975 F.Supp.2d 750 (E.D.Mich. 2013). A prisoner bought claims under *Bivens*, the Religious Freedom Restoration Act of 1993 (RFRA), the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), and conspiracy, against corrections officers, alleging that the officers had retaliated and discriminated against him for lodging complaints and filing various grievances, by restricting his participation as a religious inmate representative and in religious activities. The officers moved to dismiss. The district court granted the motions in part and denied in part. The court held that the prisoner alleged a substantial burden on his ability to perform religious acts of significance to his faith. The court found that claims that a corrections officer failed to give the prisoner an administrative detention order that explained why the prisoner was placed in administrative detention and why the prisoner was cleared of all allegations against him after he was removed, along with claims that the officers recruited inmates to supply false allegations against the prisoner, plausibly alleged a conspiracy sufficient to survive a motion to dismiss the prisoner's *Bivens* conspiracy claim against the officers. The court held that claims that corrections officers restricted the prisoner's active participation in religious services, banned him from attending and participating in any and all religious services and programs held in the chapel area, and prohibited him from prophesying and laying hands on and praying for anyone, alleged a substantial burden on prisoner's ability to perform religious acts of significance to his faith, as required to support prisoner's First Amendment retaliation claims, and claimed violations of RFRA and RLUIPA. (Federal Correctional Institution in Milan, Michigan)

U.S. District Court
CONTRACT SERVICES
QUALIFIED IMMUNITY

Vollette v. Watson, 937 F.Supp.2d 706 (E.D.Va. 2013). Former food service and medical care contractors who worked at a city jail brought an action against a sheriff, who oversaw the jail, and sheriff's deputies, alleging under § 1983 that their being required to undergo strip searches at the jail violated their Fourth Amendment rights, and that they were retaliated against, in violation of the First Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to what triggered the strip searches of contractors who worked at city jail, the nature of such searches, and the factual predicate for revocation of the contractors' security clearances. According to the court, at the time the contractors were strip searched, it was clearly established, for qualified immunity purposes in the contractors' § 1983 Fourth Amendment unlawful search action against the sheriff and sheriff's deputies, that prison employees did not forfeit all privacy rights when they accepted employment, and thus, that prison authorities were required to have reasonable and individualized suspicion that employees were hiding contraband on their person before performing a "visual body cavity search." The court also found that summary judgment as to the contractors' claims for false imprisonment and battery was precluded by genuine issues of material fact as to what triggered the strip searches. (Aramark and Correct Care Solutions, Contractors, Portsmouth City Jail, Virginia)

U.S. District Court
INJUNCTIVE RELIEF

Vollette v. Watson, 978 F.Supp.2d 572 (E.D.Va. 2013). Employees of private contractors providing services to inmates housed at a jail brought a § 1983 action against a sheriff and deputy sheriffs, alleging that they were subjected to unlawful strip and visual body cavity searches at the jail. The next business day after the suit was filed, the sheriff issued a blanket order revoking the security clearances of the contractor's employees who were still working at the jail. The district court denied the employees' motion for a preliminary injunction ordering the sheriff to reinstate their security clearances at the jail pending the outcome of the litigation. The district court also partially granted and partially denied the defendants' summary judgment motion. A jury decided the constitutionality of the strip searches. This left the First Amendment retaliation claim by six of the nine plaintiffs. The district court entered summary judgment for the plaintiffs on the retaliation claim. The court held that: (1) the contractor's employees suffered irreparable injury from the sheriff's revocation of their security clearances for which there was no adequate remedy at law; (2) the balance of hardships plainly weighed in favor of a permanent injunction; (3) the public interest would be enhanced by the entry of a permanent injunction; and (4) the plaintiffs demonstrated

violation of their First Amendment rights, and the sheriff had to reinstate their security clearances and update any relevant internal jail records to reflect the same. The court noted that the sheriff's candid statements that he felt betrayed by the federal lawsuits filed by the employees who were subjected to strip searches for contraband, and that the suits "pushed [him] over the edge" were an admission that the adverse employment action of revoking the employees' security clearances was taken against them in response to their exercise of their First Amendment constitutional rights to free speech and to petition the government for redress of grievances. (Portsmouth City Jail, Virginia)

U.S. District Court
DAMAGES
CIVIL LIABILITY
LIBEL

Von Kahl v. Bureau of Nat. Affairs, Inc., 934 F.Supp.2d 204 (D.D.C. 2013). A prisoner brought an action against a legal publisher, alleging libel in summary of his mandamus petition published more than 20 years after his criminal convictions. The court held that: (1) the publisher's statement that the prisoner "showed no hint of contrition" with respect to the murders of deputy United States Marshals was actionable; (2) the prisoner was not "libel proof"; (3) the prisoner was a limited purpose public figure, but the complaint alleged sufficient facts supporting a claim of actual malice; (4) the summary did not falsely impute that the prisoner had been accused of a crime and thus was not libelous per se; and (5) the prisoner pled sufficient facts showing special harm to support a claim for special damages. (Bureau of National Affairs, Inc., Criminal Law Reporter, District of Columbia)

U.S. Appeals Court
DELIBERATE INDIFFERENCE

Walker v. Schult, 717 F.3d 119 (2nd Cir. 2013). An inmate, proceeding pro se and in forma pauperis, brought a § 1983 action against a warden and various other prison officials and employees, alleging violations of the Eighth Amendment. The district court granted the defendants' motion to dismiss. The inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prisoner's allegations were sufficient to plead that he was deprived of the minimal civilized measure of life's necessities and was subjected to unreasonable health and safety risks, as required to state a § 1983 claims against prison officials for violations of the Eighth Amendment. The prisoner alleged that: (1) for approximately 28 months he was confined in a cell with five other men with inadequate space and ventilation; (2) the heat was stifling in the summer and it was freezing in the winter; (3) urine and feces splattered the floor; (4) there were insufficient cleaning supplies; (5) the mattress was too narrow for him to lie on flat; and (6) noisy and crowded conditions made sleep difficult and created a constant risk of violence. The court also found that the prisoner's allegations were sufficient to plead that prison officials knew of and disregarded excessive risks to his health and safety, as required to find that the officials were deliberately indifferent. The prisoner alleged that officials knew of overcrowding in his cell, that he spoke with some officials about the conditions, that officials were aware noise was loud and constant, that they were aware of temperature issues, that the prisoner informed officials that his bed was too narrow, that one official failed to issue cleaning supplies, and that conditions did not change despite his complaints. (Federal Correctional Institution, Ray Brook, New York)

U.S. District Court
COMPENSATORY
DAMAGES
PUNITIVE DAMAGES

Wells v. City of Chicago, 925 F.Supp.2d 1036 (N.D.Ill. 2013). A representative of an arrestee's estate filed a § 1983 action against a city and its police officers and employees for claims arising from his arrest, confinement, and death. After the entry of a jury verdict in the plaintiff's favor, the plaintiff moved for the award of attorney fees and expenses. The district court granted the motion in part and denied in part. The court held that: (1) reduction of the attorney fee award was not warranted due to the fact that the plaintiff prevailed against only four of six individual defendants whom she sued; (2) a three-fourths reduction of the plaintiff's attorney fee award was warranted due to the plaintiff's failure to prevail on her medical care claim; (3) reduction was not warranted due to the fact that the pain and suffering award was less than requested; (4) a reduction was warranted based on the plaintiff's limited success on punitive damages; (5) a two-thirds reduction of the plaintiff's expense award was warranted; (6) housing expenses incurred during the trial by out-of-town counsel were recoverable; and (7) neither party was entitled to recover its costs. The jury had been asked to award punitive damages totaling \$1,750,000 against eleven defendants, but the jury awarded a total of \$150,500 against four officers, and the court later vacated the award completely. The jury awarded the plaintiff \$1 million in compensatory damages against all of the defendants found to have been liable. (City of Chicago, Illinois)

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act
DAMAGES

Wilkins v. Gaddy, 734 F.3d 344 (4th Cir. 2013). A state prisoner brought a § 1983 action alleging an officer maliciously and sadistically assaulted him with excessive force in violation of the Eighth Amendment. The prisoner alleged that the officer "lifted and then slammed him to the concrete floor where, once pinned, punched, kicked, kneed, and choked" him until the officer was removed by another member of the corrections staff. After a jury returned a verdict for the prisoner, the district court granted the prisoner's motion for attorneys' fees, but only in the amount of \$1. The prisoner appealed. The appeals court affirmed. The court held that the provision of the Prison Litigation Reform Act (PLRA), capping attorneys' fee award at 150% of the value of the prisoner's monetary judgment, satisfied a rational basis review. The court held that the PLRA provision did not violate the Fifth Amendment's equal protection component by treating the prisoner and non-prisoner litigants differently, where the provision rationally forestalled collateral fee litigation while ensuring that the incentive provided by an attorneys' fee award still attached to the most injurious civil rights violations. (Lanesboro Correctional Institute, North Carolina Department of Public Safety)

U.S. Appeals Court
FAILURE TO
SUPERVISE
FAILURE TO TRAIN
POLICIES/PROCEDURES
QUALIFIED IMMUNITY

Wilson v. Montano, 715 F.3d 847 (10th Cir. 2013). An arrestee brought a § 1983 action against a county sheriff, several deputies, and the warden of the county's detention center, alleging that he was unlawfully detained, and that his right to a prompt probable cause determination was violated. The district court denied the defendants' motion to dismiss. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded in part. The detainee had been held for 11 days without a hearing and without charges being filed. The appeals court held that the defendants were not entitled to qualified immunity from the claim that they violated the arrestee's right to a prompt post-arrest probable cause determination, where the Fourth Amendment right to a prompt probable cause determination was clearly established at the time. The court held that the arrestee sufficiently alleged that the arresting sheriff's deputy was personally involved in the deprivation of his Fourth Amendment right to a

prompt probable cause hearing, as required to support his § 1983 claim against the deputy. The arrestee alleged that he was arrested without a warrant, and that the deputy wrote out a criminal complaint but failed to file it in any court with jurisdiction to hear a misdemeanor charge until after he was released from the county's detention facility, despite having a clear duty under New Mexico law to ensure that the arrestee received a prompt probable cause determination. According to the court, under New Mexico law, the warden of the county's detention facility and the county sheriff were responsible for policies or customs that operated and were enforced by their subordinates, and for any failure to adequately train their subordinates. The court noted that statutes charged both the warden and the sheriff with responsibility to supervise subordinates in diligently filing a criminal complaint or information and ensuring that arrestees received a prompt probable cause hearing. The court found that the arrestee sufficiently alleged that the warden promulgated policies that caused the arrestee's prolonged detention without a probable cause hearing, and that the warden acted with the requisite mental state, as required to support his § 1983 claim against the warden, regardless of whether the arrestee ever had direct contact with the warden. The arrestee alleged that the warden did not require filing of written criminal complaints, resulting in the detainees' being held without receiving a probable cause hearing, and that the warden acted with deliberate indifference to routine constitutional violations at the facility.

The court held that the arrestee sufficiently alleged that the county sheriff established a policy or custom that led to the arrestee's prolonged detention without a probable cause hearing, and that the sheriff acted with the requisite mental state, as required to support his § 1983 claim against the sheriff, by alleging that: (1) the sheriff allowed deputies to arrest people and wait before filing charges, thus resulting in the arrest and detention of citizens with charges never being filed; (2) the sheriff was deliberately indifferent to ongoing constitutional violations occurring under his supervision and due to his failure to adequately train his employees; (3) routine warrantless arrest and incarceration of citizens without charges being filed amounted to a policy or custom; and (4) such policy was the significant moving force behind the arrestee's illegal detention. (Valencia County Sheriff's Office, Valencia County Detention Center, New Mexico)

2014

U.S. District Court
INJUNCTIVE RELIEF

American Civil Liberties Union Fund of Michigan v. Livingston County, 23 F.Supp.3d 834 (E.D.Mich. 2014). A civil rights organization brought a § 1983 action against a county and county officials alleging that the jail's postcard-only mail policy violated the First and Fourteenth Amendments. Following the grant of a temporary restraining order (TRO), the organization moved for preliminary injunction. The district court granted the motion. The organization had sought a preliminary injunction enjoining the jail policy of refusing to promptly deliver properly marked legal mail sent by an organization attorney and individually addressed to an inmate. The court held that there was a likelihood of success on the merits of its claim that the policy violated the First Amendment protection accorded inmates' legal mail. The court noted that the organization sent letters in envelopes that were individually addressed to individual inmates, were labeled "legal mail," clearly delineated that the mail came from an organization attorney, the letters asked if the inmate was interested in meeting with an organization attorney to obtain legal advice regarding the jail policy of limiting all incoming and outgoing mail to one side of a four by six-inch postcard, but the letters were not delivered. The jail opened the letters and read them, and the jail failed to notify the inmates or the organization that the letters were not delivered. (Livingston County Jail, Michigan)

U.S. District Court
PRELIMINARY INJUNCTION

Arpaio v. Obama, 27 F.Supp.3d 185 (D.D.C. 2014). The Sheriff of Maricopa County, Arizona, brought an action against the President of the United States, alleging that executive actions deferring action with respect to certain programs affecting undocumented immigrants were unconstitutional and otherwise illegal. The sheriff moved for a preliminary injunction to enjoin the programs, and the President moved to dismiss for lack of subject matter jurisdiction. The district court dismissed the action. The district court held that the sheriff did not suffer an injury in fact, and therefore lacked standing in his personal and official capacities to bring an action. The court noted that the sheriff sought to vindicate only a general interest in the proper application of the Constitution and laws, and, although the sheriff alleged that undocumented immigrants had targeted him for assassination as a result of his "widely known stance on illegal immigration," the programs in question did not cause threats to the sheriff's life, and the sheriff's stance pre-existed the instant action and the challenged programs. (Maricopa County Sheriff, Arizona)

U.S. District Court
PRIVATE PROVIDER

Awalt v. Marketti, 74 F.Supp.3d 909 (N.D.Ill. 2014). The estate and the widow of a pretrial detainee who died in a county jail brought civil rights and wrongful death actions against jail personnel and medical care providers who serviced the jail. The county defendants and the medical defendants moved for summary judgment. The district court held that: (1) the evidence was sufficient for a reasonable juror to find that the correctional officers and a jail superintendent were deliberately indifferent to the detainee's medical needs; (2) summary judgment was precluded by genuine issues of material fact as to whether the officers knew that the detainee was suffering seizures while in jail and failed to take appropriate action; (3) a reasonable juror could have found that neither a physician nor a nurse made a reasoned medical judgment not to prescribe a particular anti-seizure drug for the detainee; and, (4) in the Seventh Circuit, private health care workers providing medical services to inmates are not entitled to assert qualified immunity. The court also found that summary judgment was precluded by genuine issues of material fact: (1) concerning whether failure of the sheriff's office and the jail's medical services provider to provide adequate medical training to correctional officers caused the detainee's death; (2) as to whether the sheriff's office and the jail's medical services provider had an implicit policy of deliberate indifference to medical care provided to detainees; (3) regarding whether correctional officers knew that the detainee was suffering seizures and ignored his suffering; (5) as to whether the decision of the sheriff's office and the jail's medical services provider not to implement a standardized grievance mechanism led to a widespread practice at the jail of ignoring or delaying response to grievances and medical requests made by detainees, and as to whether this failure was the moving force behind the pretrial detainee's seizure-related death; and (6) as to whether the sheriff's office and the jail's medical services provider had an express policy that prevented a nurse from restocking a particular medication

until there were only eight pills left in stock and whether that policy was the moving force behind the pretrial detainee's seizure-related death. The court denied qualified immunity from liability to the correctional officers and the sheriff's office. (Grundy County Jail, Illinois)

U.S. District Court
INDIVIDUAL CAPACITY

Blossom v. Dart, 64 F.Supp.3d 1158 (N.D.Ill. 2014). A disabled detainee in a county jail brought an action against a county and a county sheriff, asserting a § 1983 claim for deprivation of his Fourteenth Amendment rights and alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The sheriff filed a motion to dismiss for failure to state a claim. The district court denied the motion. The court held that the disabled detainee, who suffered injuries due to the lack of accommodation for his disability, sufficiently alleged that the sheriff had personal knowledge of, or involvement in, the alleged deprivation of his Fourteenth Amendment rights, so as to state a § 1983 claim against the sheriff in his individual capacity. The detainee alleged that the sheriff acquired personal knowledge of the fact that disabled prisoners assigned to a certain jail division had sustained injuries because shower and toilet facilities were not equipped with appropriate grab bars, toilet seats, and shower seats, and the detainee alleged that despite revising the jail's housing assignment policy for detainees who used wheelchairs, the sheriff refused to revise the policy for other disabled detainees. The court also found that the detainee sufficiently alleged that there was an official policy allowing disabled detainees to be housed in non-accessible housing units that continued to exist despite the knowledge that the policy had caused serious injuries to disabled detainees. (Cook County Jail, Illinois)

U.S. District Court
CONSENT DECREE-
TERMINATION

Brown v. Livingston, 17 F.Supp.3d 616 (S.D.Tex. 2014). A prisoner brought an action, individually and on behalf of others similarly situated, alleging that various policies of the Texas Department of Criminal Justice (TDCJ) violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment. TDCJ moved to terminate a consent decree that prohibited it from discriminating against Muslims in the pursuit of their right to profess their religious beliefs and to exercise their religious practices. The district court denied the motion. The court held that TDCJ's volunteer policy violated the Establishment Clause of the First Amendment, the Free Exercise Clause of the First Amendment, and RLUIPA. The policy required that all religious activities not supervised by a prison chaplain or guard have an outside volunteer in attendance. According to the court, the policy meant that Muslim inmates who were in prisons near populations centers from which Muslim volunteers could not be recruited in greater numbers being able to participate in religious activities only one hour per week, while Catholic, Protestant, and Jewish inmates who could procure more outside volunteers had access to six hours or more of religious activities per week. (Texas Department of Criminal Justice)

U.S. District Court
SUPERVISORY
LIABILITY
FAILURE TO ACT
FAILURE TO
INTERVENE

Cash v. Wetzel, 8 F.Supp.3d 644 (E.D. Pa. 2014). A prisoner brought a § 1983 action against prison officials, alleging, among other things, violations of his civil rights in connection with destruction of his legal materials. The officials moved to dismiss, and the prisoner moved for leave to file a supplemental complaint alleging retaliation, and for entry of default. The district court granted the motions in part and denied in part. The court held that the claims against officials in their official capacities were barred by the Eleventh Amendment. The court held that the allegation that two prison officials separated the prisoner from his legal materials, causing him to be unable to adequately litigate his direct appeal, stated a claim for denial of his right of access to courts. But the court found that because the prisoner did not lose a legal claim as the result of the officials' alleged withholding of the prisoner's legal material during a meeting with his attorney, the officials could not be held liable for denying the prisoner's access to courts. The court found that the prisoner stated a claim under § 1983 for failure to intervene against two prison officials by alleging that the officials were present as another prison official destroyed prisoner's legal materials, and that two officials were aware of a conspiracy to deprive the prisoner of his right of access to courts, and that they did not investigate and stop the conspiracy. According to the court, a claim was also stated by allegations that two officials decided to withhold mitigation evidence from the prisoner in retaliation for bringing a lawsuit, in presence of the other official, and that each official failed to intervene in the other's withholding. The court held that the prisoner stated a claim under § 1983 for supervisory liability against a prison official by alleging that the official acquiesced in his subordinates' removal of the prisoner's legal documents. (State Correctional Institution- Graterford, SCI-Albion, Pennsylvania)

U.S. District Court
CONSENT DECREE

Coleman v. Brown, 28 F.Supp.3d 1068 (E.D.Cal. 2014). Nearly 20 years after mentally ill inmates prevailed on class action challenges to conditions of their confinement and a special master was appointed to implement a remedial plan, the inmates moved to enforce court orders and for affirmative relief related to the use of force, disciplinary measures, and housing and treatment in administrative segregation units (ASUs) and segregated housing units (SHUs). The district court granted the motions in part. The court held that prison officials' excessive use of force on seriously mentally ill inmates by means of pepper spray and expandable batons, pursuant to prison policies and without regard to the impact on inmates' psychiatric condition, was not yet remedied, as required by the prior judgment in favor of inmates. The court found that prison officials' changes in policies and practices of housing mentally ill inmates in administrative segregation units (ASUs) and segregated housing units (SHUs) were inadequate to remedy the systemic Eighth Amendment violations identified in the prior judgment in favor of inmates. According to the court, the placement of seriously mentally ill inmates in the harsh, restrictive, and non-therapeutic conditions of administrative segregation units (ASUs) for non-disciplinary reasons for more than the minimal period necessary to transfer the inmates to protective housing or a housing assignment violated the Eighth Amendment. The court noted that nearly half of the suicides in ASUs were by inmates placed there for non-disciplinary reasons, and such placement subjected inmates to significant restrictions including no contact visits, significant limits on access to both exercise yards and dayroom, eating all meals in their cells, being placed in handcuffs and restraints when moved outside their cells, and receiving mental health treatment in confined spaces described as "cages," with strip searches before and after treatment. (California Department of Corrections and Rehabilitation)

U.S. District Court
OFFICIAL CAPACITY
RECKLESS
INDIFFERENCE

Endl v. New Jersey, 5 F.Supp.3d 689 (D.N.J. 2014). The parents of an inmate who died in a state prison brought a § 1983 action, individually and the mother as administrator of the inmate's estate, against the state, the department of corrections (DOC), a prison, corrections officers, a medical care provider, and physicians and nurses, alleging the inmate had been deprived of necessary medical care. The defendants filed motions to dismiss. The district court granted the motions in part and denied in part. The court held that corrections officers, who were sued in their official capacities, were not immune from liability under the New Jersey Tort Claims Act (TCA) where there were not just errors in medical judgment, but claims of deliberate or reckless indifference, and the survivors' clearly alleged conduct that may have been outside the scope of the officers' employment or that may have constituted willful misconduct. The court found that allegations that individual medical providers responsible for the inmate misdiagnosed the inmate's congestive heart failure as bronchitis, failed to provide a medical workup following the inmate's complaint of chest cavity pain, and failed to properly medicate him, were sufficient to support an Eighth Amendment claim for cruel and unusual punishment in the § 1983 action against the providers. (Northern State Prison, New Jersey)

U.S. District Court
CONSENT DECREE

Graves v. Arpaio, 48 F.Supp.3d 1318 (D.Ariz. 2014). Pretrial detainees in the Maricopa County, Arizona, jail system brought a class action against the county and the county board of supervisors, seeking injunctive relief for alleged violations of their civil rights. The parties entered into consent decree which was superseded by amended judgments entered by stipulation of the parties. The defendants sought to terminate the remaining court-ordered injunctive relief regarding medical, dental, and mental health care for detainees. The district court denied the motion. The court held that: (1) termination of injunctive relief requiring the timely identification, assessment, and placement of detainees suffering from serious health conditions was not warranted; (2) termination of injunctive relief requiring the timely identification, assessment, and placement of detainees suffering from mental illness was not warranted; (3) termination of injunctive relief requiring the timely identification, segregation, and treatment of detainees with communicable diseases was not warranted; (4) termination of injunctive relief requiring that the detainees have ready access to care to meet their serious medical and mental health needs was not warranted; and (5) the detainees were the prevailing party for the purpose of awarding attorney's fees. (Maricopa Co. Jail, Ariz.)

U.S. District Court
CLASS ACTION
FAILURE TO TRAIN

Hernandez v. County of Monterey, 70 F.Supp.3d 963 (N.D.Cal. 2014). Current and recently released inmates from a county jail brought an action against the county, the sheriff's office, and the private company that administered all jail health care facilities and services, alleging, on behalf of a class of inmates, that substandard conditions at the jail violated the federal and state constitutions, the Americans with Disabilities Act (ADA), the Rehabilitation Act, and a California statute prohibiting discrimination in state-funded programs. The inmates sought declaratory and injunctive relief. The defendants filed motions to dismiss. The district court denied the motions. The court held that both current and recently released inmates had standing to pursue their claims against the county and others for allegedly substandard conditions at the jail, even though the recently released inmates were no longer subject to the conditions they challenged. The court noted that the short average length of stay of inmates in the proposed class, which was largely made up of pretrial detainees, was approximately 34 days, and that short period, coupled with the plodding speed of legal action and the fact that other persons similarly situated would continue to be subject to the challenged conduct, qualified the plaintiffs for the "inherently transitory" exception to the mootness doctrine.

The court found that the inmates sufficiently alleged that the private company that administered all jail health care facilities and services operated a place of public accommodation, as required to state a claim for violation of ADA Title III. The court noted that: "The complaint alleges a litany of substandard conditions at the jail, including: violence due to understaffing, overcrowding, inadequate training, policies, procedures, facilities, and prisoner classification; inadequate medical and mental health care screening, attention, distribution, and resources; and lack of policies and practices for identifying, tracking, responding, communicating, and providing accessibility for accommodations for prisoners with disabilities." (Monterey County Jail, California)

U.S. District Court
PUNITIVE DAMAGES
INDIVIDUAL CAPACITY

Imhoff v. Temas, 67 F.Supp.3d 700 (W.D.Pa. 2014). A pretrial detainee brought an action against employees of a county correctional facility, alleging deliberate indifference to his serious medical need, violation of his rights under the Fourteenth Amendment with regard to conditions of his confinement, and excessive force in violation of the Eighth Amendment. The employees moved to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee stated a claim against the employees for deliberate indifference to a serious medical need under the Fourteenth Amendment, where the detainee alleged that he informed facility personnel of his extensive drug use, that he had repeatedly requested medical assistance when he began experiencing seizures and hallucinations in conjunction with his drug withdrawal in the presence of facility personnel, and that he was provided no medical treatment for at least eight days despite his requests for medical attention. The court held that the employees were not entitled to qualified immunity from liability because a county correctional facility's constitutional obligation to provide care to inmates suffering unnecessary pain from a serious medical need was clearly established at the time the pretrial detainee allegedly began experiencing seizures in conjunction with drug withdrawal and was not provided medical treatment.

The court found that the detainee's allegations against the employees in their individual capacities regarding the intentional denial of medical treatment, excessive use of force, and violation of his rights under Fourteenth Amendment with regard to conditions of his confinement were sufficient to set forth a plausible claim for punitive damages. The detainee alleged that he was denied basic human needs such as drinking water, access to a toilet and toilet paper, and toiletries such as soap and a toothbrush. (Washington County Correctional Facility, Penn.)

U.S. District Court
DAMAGES
CLASS ACTION

In re Nassau County Strip Search Cases, 12 F.Supp.3d 485 (E.D.N.Y. 2014). Arrestees brought a class action against county officials and others, challenging the county correctional center's blanket strip search policy for newly admitted, misdemeanor detainees. Following a bench trial, the district court awarded general damages of \$500 per strip search for the 17,000 persons who comprised the class. Subsequently, the arrestees moved for attorney fees in the amount of \$5,754,000 plus costs and expenses of \$182,030. The court held that it would apply

the current, unadjusted hourly rates charged by the various attorneys in determining counsel fees using the lodestar method as a cross-check against the percentage method. The court found that the lodestar rates were \$300 for all associates, with two exceptions for requested rates below \$300, and \$450 for all partners. The court awarded \$3,836,000 in counsel fees, which was equivalent to 33 1/3 % of the total amount recovered on behalf of the class, and \$182,030.25 in costs and expenses. (Nassau County Correctional Center, New York)

U.S. Appeals Court
PERSONAL LIABILITY

Jackson v. Nixon, 747 F.3d 537 (8th Cir. 2014). A state prisoner brought an action against various state prison officials, challenging the prison's drug treatment program as in violation of his free exercise rights under the First Amendment. The district court dismissed the action. The prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner stated a § 1983 claim against prison officials for violation of his First Amendment free exercise rights with allegations that he was an atheist, that he was required to attend and complete a substance abuse treatment program that had religious components and invoked religious tenets in order to be eligible for early parole, that due to the religious components of the program and the prison's failure to transfer the prisoner to a secular treatment program, his choices were to withdraw from the program or remain exposed to those religious elements. He chose to withdraw from the program, and was denied early release as a result. The court found that the director of the state department of corrections (DOC) could be held personally liable under § 1983 for the alleged violation of the atheist state prisoner's First Amendment free exercise rights, where under Missouri law, the director was responsible for administering the treatment program, and establishing rules and policies determining how, when, and where offenders could be admitted into or removed from the treatment program. According to the court, the director of the prison's substance abuse treatment program could be held personally liable under § 1983 for the alleged violation of the prisoner's First Amendment free exercise rights, where the program director allegedly could have allowed the prisoner to avoid the religious portions of the program, but still remain enrolled in the program. (Western Reception, Diagnostic, and Correctional Center, Missouri)

U.S. Appeals Court
FTCA- Federal Tort Claims
Act

Keller v. U.S., 771 F.3d 1021 (7th Cir. 2014). A federal inmate brought an action under the Federal Tort Claims Act (FTCA), alleging that federal prison employees negligently failed to protect him from being attacked by another inmate. The government moved for summary judgment. The district court granted the motion and the inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prison intake psychologist failed to comply with mandatory regulations by not examining all of the inmate's medical records before releasing the inmate into the general prison population, and whether prison guards violated post orders by failing to attentively monitor their assigned areas of the prison yard. (United States Penitentiary, Terre Haute, Indiana)

U.S. District Court
SETTLEMENT
CONSENT DECREE
CONTEMPT
COURT MONITOR
CONTRACT SERVICES
PRIVATE OPERATOR

Kelly v. Wengler, 7 F.Supp.3d 1069 (D.Idaho 2014). State inmates filed a class action against a warden and the contractor that operated a state correctional center, alleging that the level of violence at the center violated their constitutional rights. After the parties entered into a settlement agreement the court found the operator to be in contempt and ordered relief. The inmates moved for attorney fees and costs. The district court granted the motions. The court held that the settlement offer made in the contempt proceeding, by the contractor that operated the state correctional facility, which provided an extension of the settlement agreement, required a specific independent monitor to review staffing for the remainder of the settlement agreement term, and offered to pay reasonable attorney fees, did not give the inmates the same relief that they achieved in the contempt proceeding, and thus the inmates' rejection of the offer did not preclude them from recovering attorney fees and costs they incurred in the contempt proceeding. The court noted that the inmates were already entitled to reasonable attorney fees in the event of a breach, and the inmates achieved greater relief in the contempt proceeding with regard to the extension and the addition of an independent monitor. After considering the totality of the record and the arguments by counsel, the court awarded the plaintiffs' counsel \$349,018.52 in fees and costs. (Idaho Correctional Center, Corrections Corporation of America)

U.S. District Court
INSURANCE

LCS Corrections Services, Inc. v. Lexington Ins. Co., 19 F.Supp.3d 712 (S.D.Tex. 2014). An insured prison operator brought an action seeking declaratory judgment that an insurer had a duty under a commercial umbrella liability policy to defend it in an underlying civil rights action. The underlying case was brought by the representative of a deceased inmate who allegedly died because of the operator's policy of not giving inmates their scheduled medications. The insurer moved for partial summary judgment. The district court granted the motion. The court held that the underlying claim for refusing to provide prescribed medications fell within the scope of the policy's professional liability exclusion, despite the operator's contention that the claim addressed administrative rather than professional conduct because it was a global administrative decision to deprive inmates of that particular medical care, where the exclusion extended to "failure to provide professional services." (Lexington Insurance Company, LCS Corrections Services, Inc., Texas)

U.S. District Court
MUNICIPAL LIABILITY

Little v. Municipal Corp., 51 F.Supp3d 473 (S.D.N.Y. 2014). State inmates brought a § 1983 action against a city and city department of correction officials, alleging Eighth Amendment and due process violations related to conditions of their confinement and incidents that occurred while they were confined. The defendants moved to dismiss for failure to state a claim. The district court granted the motion, finding that: (1) the inmates failed to state a municipal liability claim; (2) locking the inmates in cells that were flooding with sewage was not a sufficiently serious deprivation so as to violate the Eighth Amendment; (3) the inmates failed to state an Eighth Amendment claim based on the deprivation of laundry services; (4) the inmates failed to state that officials were deliberately indifferent to their conditions of confinement; (5) the inmates' administrative classification did not implicate their liberty interests protected by due process; and (6) cell searches did not rise to the level of an Eighth Amendment violation. The court noted that the cells flooded with sewage for up to eight-and-a-half hours, during which they periodically lacked outdoor recreation and food, was undeniably unpleasant, but it was not a significantly serious deprivation so as to violate the inmates' Eighth Amendment rights. According to the court, there was no constitutional right to outdoor recreation, and the inmates were not denied food entirely, but rather, were not allowed to eat during periods of lock-down. (N.Y. City Department of Corrections)

U.S. District Court FTCA- Federal Tort Claims Act DAMAGES	<p><i>Morales v. U.S.</i>, 72 F.Supp.3d 826 (W.D.Tenn. 2014). A federal prisoner brought an action against the United States under the Federal Tort Claims Act (FTCA), alleging the Bureau of Prisons (BOP) breached its duty of care, resulting in his assault and injury by another prisoner. The district court held that: (1) the prisoner’s administrative claim satisfied FTCA’s notice requirements; (2) the BOP breached its duty of care to the prisoner by placing him in a recreation cage with a prisoner with whom he was in “keep-away” status; and (3) the prisoner was entitled to damages under FTCA in the amount of \$105,000. The court noted that officers were not monitoring the recreation cage at the time of attack, and, as a result of such failures, the prisoner suffered 14 stab wounds, nerve damage, and psychological harm. (Federal Bureau of Prisons, FCI- Memphis, Tennessee)</p>
U.S. District Court INDIVIDUAL LIABILITY	<p><i>Mori v. Allegheny County</i>, 51 F.Supp.3d 558 (W.D.Pa. 2014). An inmate who was seven and one-half months into a “high risk” pregnancy brought an action under § 1983 against a county for deliberate indifference to her health in violation of the Eighth Amendment prohibition of cruel and unusual punishment, and survival and wrongful death claims for violations of the Fourteenth Amendment, after the loss of the child following a placental abruption. The county moved to dismiss. The district court denied the motion. The court held that the prisoner: (1) stated an Eighth Amendment claim based on failure to monitor the unborn child after the prisoner complained of vaginal bleeding; (2) stated a claim against the county based on custom and practice; (3) sufficiently alleged a causal link between the policies and the loss of the child; (4) stated a claim against county officials for individual liability; and (5) stated wrongful death and survivor claims for the death of the child. The inmate alleged that individual policy makers, including the chief operating officer of the county jail’s health services, and the jail’s nursing supervisor, were responsible for the policies that led to failure to provide adequate medical treatment. The prisoner also alleged that she was made to wait over 24 hours before being sent to a hospital after her vaginal bleeding started, that she was transported by a police cruiser rather than ambulance, that it was well known that bleeding late in pregnancy often indicated serious medical issues, that the child was alive during birth, and that the delay in medical treatment contributed to the injuries during birth and the death of the child shortly after birth. (Allegheny County Jail, Pennsylvania)</p>
U.S. District Court VICARIOUS LIABILITY	<p><i>Nagle v. Gusman</i>, 61 F.Supp.3d 609 (E.D.La. 2014). Siblings of a mentally ill pretrial detainee who committed suicide brought an action against numerous employees of a parish sheriff’s office, alleging a due process violation under § 1983, and asserting claims for wrongful death and negligence under state law. The siblings moved for partial summary judgment. The district court granted the motion. The court held that: (1) a deputy had a duty to take reasonable measures to protect the detainee from self-inflicted harm; (2) the deputy breached his duty by failing to observe the detainee for long periods of time; (3) the deputy’s abandonment of his post was the cause of the detainee’s suicide; (4) the sheriff was vicariously liable; and (5) the deputy’s repeated decision to abandon his post violated the detainee’s due process right to adequate protection from his known suicidal impulses. According to the court, the detainee was suffering from psychosis and was suicidal while in custody, the detainee was placed on a suicide watch, suicide watch policies and training materials of the sheriff’s office explicitly required officers to continuously monitor detainees on a suicide watch and to document that they had done so, and it was during one of the deputy’s extended absences that the detainee succeeded in killing himself. The officer left his post at least three times during his suicide watch shift, to help another employee distribute meals to other inmates, to take a restroom break, and to visit the nurses’ station. During these absences, the detainee went unobserved for an hour and a half, fifteen minutes, and two hours respectively. No other staff took the officer’s place observing the detainee during the times when the officer abandoned his post. During the officer’s final absence, an inmate notified an on-duty officer that the detainee was lying on the floor of his cell, unresponsive. It was later determined that the detainee had asphyxiated after his airway became blocked by a wad of toilet paper. (Orleans Parish Sheriff’s Office, House of Detention at Orleans Parish Prison, Louisiana)</p>
U.S. Appeals Court FINES SANCTIONS	<p><i>Neal v. LaRiva</i>, 765 F.3d 788 (7th Cir. 2014). A federal prisoner filed a habeas corpus petition alleging prison officials sanctioned him without due process for violating a prison rule forbidding the forging of any document, article of identification, money, security, or official paper. The district court denied the petitioner’s motion to stay and to compel arbitration, and denied the petition on the merits. The petitioner appealed. The appeals court affirmed, finding that the Bureau of Prisons was not required to arbitrate the prisoner’s habeas claim, and the petitioner’s repeated flouting of his duty to be honest with the court warranted a fine and referral to the United States Attorney for possible prosecution for perjury. The appeals court opened its decision by asserting that the detainee “...seems unable to resist dishonesty.” (Federal Correctional Institution, Terre Haute, Indiana)</p>
U.S. Appeals Court CLASS ACTION	<p><i>Parsons v. Ryan</i>, 754 F.3d 657 (9th Cir. 2014). State prisoners, and the state’s authorized protection and advocacy agency, filed a class action for declaratory and injunctive relief against senior officials from the Arizona Department of Corrections (ADC), asserting Eighth Amendment claims, based on allegedly serious systemic deficiencies in conditions of confinement in isolation cells, and in the provision of privatized medical, dental, and mental health care services. The district court granted class certification and prison officials appealed. The appeals court affirmed. The court found that the prisoners were not merely aggregating many claims of individual mistreatment, and instead were alleging that ADC policies and practices of statewide and systemic application exposed all inmates in ADC custody to substantial risk of serious harm, to which the senior officials allegedly were deliberately indifferent, even if the risk might ultimately result in different future harm for different inmates. (Arizona Department of Corrections)</p>
U.S. District Court PUNITIVE DAMAGES PRIVATE PROVIDER	<p><i>Pierce v. Pemiscot Memorial Health Systems</i>, 25 F.Supp.3d 1198 (E.D.Mo. 2014). A mental health detainee brought a § 1983 action against a medical director and a program director employed by the company that contracted to provide psychiatric services to a county hospital, alleging violations of her due process rights and Missouri law. The parties cross-moved for summary judgment. The district court denied the motion, granted the defendants’ motion in part and denied in part. The court held that summary judgment on the issue of punitive damages was precluded by genuine issue of material fact as to whether the conduct of the medical director and the</p>

program director in continuing to detain the mental health detainee was motivated by an evil motive or involved reckless indifference to the detainee's rights. The detainee brought the action to challenge her detention in an inpatient psychiatric unit following the expiration of a 96-hour detention order. She alleged that her continued detention violated her due process rights under the United States and Missouri Constitutions, governing involuntary commitment procedures. (Pemiscot Memorial Hospital, Missouri)

U.S. District Court
INJUNCTIVE RELIEF

Reid v. Donelan, 2 F.Supp.3d 38 (D.Mass. 2014). Following the grant of a detainee's individual petition for habeas corpus, and the grant of the detainee's motion for class certification, the detainee brought a class action against, among others, officials of Immigration & Customs Enforcement (ICE), challenging the detention of individuals who were held in immigration detention within the Commonwealth of Massachusetts for over six months and were not provided with an individualized bond hearing. The detainee also moved, on his own behalf, for a permanent injunction prohibiting the defendants from shackling him during immigration proceedings absent an individualized determination that such restraint was necessary. The defendants cross-moved for summary judgment. The district court granted the defendants' motion. The court held that an individual assessment is required before a detainee may be shackled during immigration proceedings, but that the individual assessment performed by ICE satisfied the detainee's procedural due process rights, such that an assessment by an independent Immigration Judge was unnecessary in the detainee's case. The court denied the motion for an injunction, finding that the detainee would not suffer irreparable harm absent a permanent injunction. The court noted that the detainee had an interest in preservation of his dignity, but ICE had safety concerns about his immigration proceedings, including the logistical issues of escorting the detainee through multiple floors and public hallways, and an Immigration Judge would be unlikely to overturn a decision by ICE to shackle the detainee, given the detainee's extensive criminal history. (Immigration and Customs Enforcement, Massachusetts)

U.S. District Court
SUPERVISORY
LIABILITY
INDIVIDUAL CAPACITY

Revilla v. Glanz, 7 F.Supp.3d 1207 (N.D.Okla. 2014). Four pretrial detainees or representatives of their estates brought an action against a county sheriff, asserting claims under § 1983 and the Oklahoma Constitution, relating to allegedly deficient medical care. The sheriff filed a motion to dismiss. The district court denied the motion, finding that the plaintiffs stated a § 1983 claim against the sheriff for supervisory liability in his individual capacity, and a § 1983 claim against the sheriff for liability in his individual capacity. The court noted that the Due Process Clause of the Oklahoma Constitution protects pretrial detainees against the denial of medical attention. The plaintiffs alleged: (1) that the sheriff was responsible for ensuring that pretrial detainees received appropriate medical care; (2) that he was responsible for creating, adopting, approving, ratifying, and enforcing the policies that his subordinates allegedly violated; (3) that he failed to provide prompt and adequate care in the face of known and substantial risks to each detainee's health-, and (4) that he had long known of systemic deficiencies in the jail's medical care. The plaintiffs cited numerous incidents and reports, as well as inmate deaths, which they alleged provided clear notice to the sheriff of seriously deficient medical and mental health care which placed inmates at a serious risk of injury or death. One such notice included a report by the United States Department of Homeland Security's Office of Civil Rights and Civil Liberties which "found a prevailing attitude among clinic staff [at the Jail] of indifference." (Tulsa County Jail, Oklahoma)

U.S. District Court
PUNITIVE DAMAGES
MUNICIPAL LIABILITY
CONTRACT SERVICES

Revilla v. Glanz, 8 F.Supp.3d 1336 (N.D.Okla. 2014). Pretrial detainees or representatives of their estates brought an action against healthcare providers, doctors, and nurse, asserting claims under § 1983 and the Oklahoma Constitution, relating to allegedly deficient medical care. The defendants moved to dismiss. The district court denied the motion, finding that: (1) allegations were sufficient to plead the provider, doctors, and nurse were acting under the color of state law; (2) allegations were sufficient to state a § 1983 claim against the provider under the theory of municipal liability; and (3) the provider was not entitled to immunity from punitive damages afforded to municipalities. The court noted that the healthcare provider was endowed by the county with powers or functions that were governmental in nature, that provider was responsible for providing medical services at the jail, including creating and implementing policies and practices governing provision of care, as well as training and supervision, that doctors and nurse were employees of the provider, that they had responsibility for overseeing and treating detainees, and that doctors served as the medical director. The pretrial detainees and representatives of their estates also alleged that the provider refused to send detainees to a hospital for financial reasons, understaffed the medical unit, failed to properly train and supervise employees, and the provider was on notice of these deficiencies from reports by the National Commission on Correctional Health Care, the Oklahoma Department of Health, the United States Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL), and the Jail's own medical auditor. (Correctional Healthcare Companies, Inc.)

U.S. District Court
DAMAGES

Rodriguez v. County of Los Angeles, 96 F.Supp.3d 1012 (C.D. Cal. 2014). State detainees brought an action against numerous defendants, including a county, a sheriff's department, and individual jail guards and supervisors, alleging excessive force under § 1983. Following a jury verdict in their favor, the detainees moved for attorney fees. The district court granted the motion, holding that: (1) the detainees were entitled to recover fully compensatory attorney fees, notwithstanding the fact that some individual defendants were dismissed or prevailed at trial and that the detainees did not succeed on all motions, where the detainees succeeded on all of their claims; (2) the detainees were entitled to a lodestar multiplier of 2.0; and, (3) the district court would apply only a 1% contribution of the detainees' \$950,000 damages award to their attorney fee award, where the defendants' conduct involved malicious violence leaving some detainees permanently injured. The court awarded over \$5.3 million for attorney fees. (Men's Central Jail, Los Angeles, California)

U.S. District Court
PUNITIVE DAMAGES
COMPENSATORY
DAMAGES

Rodriguez v. County of Los Angeles, 96 F.Supp.3d 990 (C.D. Cal. 2014). Former and current inmates brought an action against a county, a county sheriff's department, and individual deputies, claiming that the deputies used excessive force to remove the inmates from their cells, in violation of the right to be free from excessive force under the Eighth and Fourteenth Amendments. After a jury verdict in favor of the inmates, the defendants moved for judgment as a matter of law, to vacate the judgment, and for a new trial. The district court denied the motion.

The court held that evidence that supervising law enforcement officials in the county sheriff's department saw or heard inmates being beaten and knowingly and intentionally permitted the use of unconstitutional force, and that deputies engaged in malicious conduct with the intent to harm in removing the inmates from their cells, was sufficient to demonstrate that the officials and deputies used threats, intimidation, or coercion to violate the inmates' constitutional rights, as required to hold the officials and deputies liable. According to the court, the conduct of enforcement officials in supervising the extraction of inmates from their cells was not discretionary, and thus the supervising officials were not immune from liability resulting from the exercise of discretion, where the supervising officials saw or heard inmates being beaten and saw the injuries caused by these beatings.

The court found that evidence that the deputies engaged in malicious conduct with intent to harm, by using stun guns on sensitive body parts and on unconscious inmates, was sufficient to demonstrate that the deputies acted without a legitimate purpose in using the force, as required to hold the deputies liable.

According to the court, evidence that officials directed the deployment of riot-control rounds and grenades, and the use of stun guns, to forcibly extract inmates from their cells, and that the force surpassed what was necessary to gain control of the situation, was sufficient to show that the officials directed the use of excessive force and encouraged their subordinates' use of force with the intent to harm, warranting denial of qualified immunity to the officials. The court noted that the force was used on inmates who were not resisting and after the inmates had been incapacitated.

The court found that the jury's award of \$210,000 in punitive damages to current and former inmates was not so grossly excessively as would violate the Due Process Clause, despite the contention that the award of punitive damages exceeded the officials' ability to pay, where the jury found that the officials acted maliciously, causing serious physical harm to the inmates. The court noted that there was no major disparity between the award of punitive damages and the \$740,000 awarded as compensatory damages. (Los Angeles County Men's Central Jail, California)

U.S. District Court
FAILURE TO INTERVENE
FAILURE TO TRAIN

Rowlery v. Genesee County, 54 F.Supp.3d 763 (E.D.Mich. 2014). A detainee brought an action against a county and officers and deputies in the county sheriff's department, alleging that he was assaulted by deputies on two occasions when he was lodged at the county jail. The defendants moved for partial summary judgment. The district court granted the motion in part and denied in part. The district court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the county adequately trained officers and deputies regarding the use of force; (2) whether certain officers and deputies came into physical contact with the detainee; (3) whether certain officers and deputies failed to act reasonably when they did not act to prevent or limit other deputies' use of force on the detainee; and (4) whether the alleged failure of certain officers and deputies to put a stop to other deputies' use of force on the detainee was the proximate cause of the detainee's injuries. (Genesee County Jail, Michigan)

U.S. District Court
INJUNCTION

Sassman v. Brown, 73 F.Supp.3d 1241 (E.D.Cal. 2014). A male prisoner filed a civil rights action against the Governor of California and the Secretary of the California Department of Corrections and Rehabilitation (CDCR), claiming violation of the Equal Protection Clause by exclusion of men from California's Alternative Custody Program (ACP). The California Penal Code allows only female inmates to participate in the voluntary ACP in lieu of confinement in a state prison. The prisoner moved for a preliminary injunction to prevent continued exclusion of male prisoners from ACP based on their gender. The district court denied the motion for an injunction. The district court held that the prisoner had a likelihood of success on the merits of the claim, but that it was unlikely that the prisoner could show irreparable harm absent an injunction. The prisoner had unsuccessfully applied to participate in the ACP and was similarly situated to female state prisoners who applied and were approved. According to the court, where the male prisoner met all gender-neutral eligibility criteria required by regulations implementing the ACP, and assuming that female prisoners and their children would benefit more from ACP than male prisoners and their children, perpetuated the stereotype that women were more fit to parent and more important to their families than men. The court found that restricting applicants to only women state prisoners was not substantially related to the important government interests of family reunification and community reintegration, and thus, the male prisoner had a likelihood of success on the merits of his claim. (Alternative Custody Program, California)

U.S. District Court
CLASS ACTION
CONTRACT SERVICES

Scott v. Clarke, 61 F.Supp.3d 569 (W.D.Va. 2014). Female inmates brought a § 1983 action alleging that a correctional facility failed to provide adequate medical care and that Commonwealth of Virginia Department of Corrections (VDOC) officials were deliberately indifferent to that failure, in violation of the inmates' Eighth Amendment rights. The inmates moved for class certification. The district court held that class certification was warranted under the subsection of the class action rule pertaining to cases where predominantly injunctive or declaratory relief was appropriate. The court found that the proposed class of approximately 1,200 female inmates housed at the state correctional facility who were subject to its medical care system was sufficiently large, on its face, to satisfy the size requirement for class certification, and that the "commonality" requirement for class certification was met. The court noted that one of the questions of fact was whether the VDOC medical contract system permitted improper cost considerations to interfere with the treatment of serious medical conditions. (Fluvanna Correctional Center for Women, Commonwealth of Virginia Department of Corrections)

U.S. Appeals Court
FAILURE TO
INTERVENE

Smith v. Conway County, Ark., 759 F.3d 853 (8th Cir. 2014). A pretrial detainee brought a § 1983 action against two jailers, a county jail administrator, the county, and the sheriff, alleging claims for excessive force and failure to supervise under the Fourteenth Amendment. The district court denied qualified immunity to the administrator and jailers and denied summary judgment to the county and individual defendants. The defendants appealed. The appeals court affirmed in part and dismissed in part. The court held that a nonviolent pretrial detainee's right to be free from being shot with a stun gun for non-compliance was clearly established at the time a jailer used a stun gun on the detainee for the purpose of achieving compliance, and thus, the jailer was not entitled to qualified immunity from the detainee's § 1983 claim of excessive force in violation of the Fourteenth Amendment. The court

found that at the time a jailer failed to intervene when another jailer warned the pretrial detainee and then shot him with a stun gun, that a jail official violated a pretrial detainee's due process rights if the official knew that another official was using excessive force against the detainee but failed to intervene, and thus the jailer was not entitled to qualified immunity from the detainee's § 1983 claim of excessive force in violation of the Fourteenth Amendment. (Conway County Jail, Arkansas)

U.S. Appeals Court
INDIVIDUAL CAPACITY
OFFICIAL CAPACITY

Stauffer v. Gearhart, 741 F.3d 574 (5th Cir. 2014). A state prisoner brought a civil rights action against prison employees in their individual and official capacities, claiming that they violated his First Amendment rights by confiscating his magazines under a Sex Offender Treatment Program (SOTP) rule, violated his due process rights by failing to provide any meaningful review of a mailroom employee's decisions, and violated his equal protection rights by applying the policy solely to inmates participating in the SOTP. The district court granted summary judgment for the prison employees. The prisoner appealed. The appeals court affirmed. The court held that the state prison's rule providing for confiscation of the magazines of prisoners in the Sex Offender Treatment Program (SOTP) was neutral, as required to not violate the prisoner's free speech rights, despite not banning newspapers and religious materials, since the purpose of the rule was to facilitate treatment and the prison did not have any ulterior motive in promulgating the rule. According to the court, the rule was rationally related to the prison's legitimate interest in sex-offender rehabilitation, as required to not violate the prisoner's free speech rights, since the rule placed restrictions on reading material in order to facilitate treatment by preventing distractions. The court noted that the magazines that the prisoner requested undermined the goals of the SOTP in the professional judgments by prison officials tasked with overseeing program. According to the court, confiscation of the magazines of the prisoner in the SOTP, pursuant to the rule, did not deprive the prisoner of due process, since the prisoner could, and did, use the prison's grievance system to claim that he had been wrongly denied those magazines, and prison administrators responded by investigating his claims and giving written justification that explained why he was not entitled to relief. (Texas Department of Criminal Justice, Goree Unit)

U.S. District Court
FAILURE TO ACT

Taylor v. Swift, 21 F.Supp.3d 237 (E.D.N.Y. 2014). A pro se prisoner brought a § 1983 action against city jail officials, alleging that officials failed to protect him from an assault from other inmates, and that officials used excessive force in uncuffing the prisoner after escorting him from showers to his cell. The officials moved to dismiss based on failure to exhaust administrative remedies, and the motion was converted to a motion for summary judgment. The district court denied the motion. The prisoner claimed indifferent supervision of jail officers, when members of the Crips gang served him and other non-gang members "tiny food portions while serving gang members large food portions." The prisoner complained to officials and this resulted in the Crips gang members being admonished and chided. The day after this chiding, the prisoner alleged that he and two other non-Crips-affiliated inmates "were victims of gang assault where [plaintiff] & [another inmate] got cut & stabbed." According to the inmate, while the attack was occurring, a corrections officer allowed the Crips to act with impunity and waited 20 to 30 minutes to press an alarm, and another officer failed to open a door that would lead the prisoner to safety, and failed to use mace to break up the alleged gang assault. (New York City Department of Correction, Riker's Island)

U.S. Appeals Court
FAILURE TO TRAIN
FAILURE TO
INTERVENE

Thomas v. Cumberland County, 749 F.3d 217 (3rd Cir. 2014). Following an attack by other inmates at a county correctional facility, an inmate brought an action against the county and corrections officers at the facility pursuant to § 1983 and the New Jersey Civil Rights Act, alleging failure to train, failure to protect, failure to intervene, and incitement. The district court granted summary judgment in favor of the county and an officer. The inmate's claims against the other officer proceeded to trial, and a jury found in favor of the officer. The inmate appealed the district court's grant of summary judgment in the county's favor on the § 1983 failure to train claim. The appeals court vacated. The court held that a triable issue remained as to whether the county exhibited deliberate indifference to the need for pre-service training for officers in conflict de-escalation and intervention and whether the lack of such training caused the inmate's injuries. (Cumberland County Correctional Facility, New Jersey)

U.S. Appeals Court
CONSENT AGREEMENT
CRIPA- Civil Rights of
Institutionalized Persons
Act

U.S. v. Erie County, N.Y., 763 F.3d 235 (2nd Cir. 2014). The United States Department of Justice (DOJ) brought an action against a county pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA) alleging that the county's correctional facility deprived inmates of their constitutional right to provide safe and sanitary conditions of confinement. After the parties entered into a settlement agreement the district court granted a civil rights organization's motion to intervene, but denied its motion to unseal the compliance reports prepared pursuant to the settlement agreement. The organization appealed. The appeals court reversed, finding that the reports were "judicial documents," and that the public had a First Amendment right of access to the reports. The court noted that every aspect of the litigation was public, such reports were made available to the public in similar cases, the issues involved were manifestly ones of public concern, and access would enable the public to decide whether the court and the parties were doing their jobs in fulfilling the terms of the settlement agreement. (Erie County, Pennsylvania)

2015

U.S. District Court
CONTEMPT
INJUNCTIVE RELIEF

Armstrong v. Brown, 103 F.Supp.3d 1070 (N.D. Ca. 2015). Disabled state prisoners filed a motion for further enforcement of an injunction applicable to all California Department of Corrections and Rehabilitation (CDCR) prisons, alleging that corrections officials were continuing to place class members in administrative segregation due to a lack of accessible housing, in violation of the district court's orders and the Americans with Disabilities Act (ADA). The district court granted the motion, holding that further enforcement would not be limited to the least compliant correctional institutions. The court noted that while the majority of the violations took place at one institution, the violations occurred at other institutions as well, and that transfers of disabled prisoners into non-complying institutions occurred with the involvement of CDCR officials. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act
INJUNCTIVE RELIEF

Ball v. LeBlanc, 792 F.3d 584 (5th Cir. 2015). Death row inmates brought a § 1983 action against a state department of corrections and state officials, seeking declaratory and injunctive relief based on allegations that heat in the prison violated the Eighth Amendment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act (RA). Following a bench trial, the district court sustained the Eighth Amendment claims, rejected the disability claims, and issued a permanent injunction requiring the state to install air conditioning throughout death row. The department and officials appealed and the inmates cross-appealed. The appeals court affirmed in part, vacated and remanded in part. The court held that: (1) the district court did not abuse its discretion by admitting evidence of, or relying on heat index measurements of death-row facilities; (2) the district court did not clearly err in finding that heat in death-row cells posed a substantial risk of serious harm to inmates and that prison officials were deliberately indifferent to the risk posed to death-row inmates by the heat in prison cells; (3) housing of death-row inmates in very hot prison cells without sufficient access to heat-relief measures violated the Eighth Amendment; (4) inmates were not disabled under ADA or RA; and (5) permanent injunctive relief requiring the state to install air conditioning throughout death-row housing violated the Prison Litigation Reform Act (PLRA), where acceptable remedies short of facility-wide air conditioning were available. (Department of Public Safety and Corrections, Louisiana State Penitentiary)

U.S. District Court
SPECIAL MASTER
CONTEMPT
SANCTIONS

Balla v. Idaho State Bd. of Correction, 119 F.Supp.3d 1271 (D. Idaho 2015). State inmates filed a class action against the state board of correction and prison officials challenging conditions of their confinement. After the court found in the inmates' favor, a special master was appointed. Inmates filed a motion for sanctions or contempt after the officials destroyed and altered documents and otherwise presented misleading information to the special master when he visited a state correctional institution. The district court granted the motion. The court held that the institution's pattern of allowing its employees to manipulate inmate medical files warranted imposition of sanctions for spoliation of evidence, and an appropriate sanction was to restart the two-year monitoring period in the institution's compliance plan. (Idaho State Board of Correction, Idaho State Correctional Institution)

U.S. District Court
DECLARATORY
RELIEF
INJUNCTIVE RELIEF
SUPERVISORY
LIABILITY

Barrett v. Premo, 101 F.Supp.3d 980 (D. Or. 2015). An inmate brought a claim under § 1983 against several corrections officials for violation of his First Amendment rights arising out of rejection of a piece of mail he sent to another inmate because it had artwork on the front of the envelope. The district court ordered declaratory and injunctive relief. The court found that: (1) the Department of Corrections did not have a consistently enforced policy or practice prohibiting artwork on the front of incoming envelopes, and thus the rejection of the inmate's envelope violated his First Amendment rights; (2) monetary damages were inadequate to address the inmate's loss of First Amendment freedoms; (3) the constitutional hardship to prison inmates was far greater than the insignificant potential impact on the prison's time and resources from having to look more closely at envelopes to read a recipient's address if artwork was present; (4) a permanent injunction enjoining the Department from enforcing the policy would permit inmates and nonparty members of the public to more easily and effectively communicate, and thus the public interest weighed in favor of an injunction; (5) a permanent injunction did not extend any further than necessary to correct the First Amendment violations and was the least intrusive means necessary to correct the violations; and (6) supervisory prison officials were sufficiently involved in alleged violation of the inmate's First Amendment rights to be liable under § 1983. (Oregon State Penitentiary)

U.S. Appeals Court
FACILITY DESIGN
MUNICIPAL LIABILITY

Castro v. County of Los Angeles, 797 F.3d 654 (9th Cir. 2015). An arrestee brought an action against a county, its sheriff's department, and two officers under § 1983 for violation of his Fourth Amendment right to be protected from harm by other inmates, arising out of an attack against the arrestee by another arrestee with whom he was jailed. A jury returned a verdict for the arrestee, and the district court denied the defendants' motion for judgment as a matter of law. The defendants appealed. The appeals court affirmed in part and reversed in part. The court held that: (1) the right of inmates to be protected from attacks by other inmates was established with sufficient clarity to guide a reasonable officer; (2) substantial evidence supported the jury's determination that the officer was deliberately indifferent to a substantial risk of serious harm to the arrestee; (3) sufficient evidence supported the jury's determination that the officer's deliberate indifference was the actual and proximate cause of harm to the arrestee; (4) sufficient evidence supported the jury's determination that the supervising officer was aware of, but disregarded, the risk to the arrestee posed by the other inmate; (5) the design of a jail by a municipality is the result of a series of deliberate choices that render the design a formal municipal policy for the purposes of municipal liability under § 1983; (6) arrestee failed to establish that the county had actual knowledge of a risk of harm from the design of the jail, as required to establish liability under § 1983; and (7) the award of future damages to the arrestee was supported by the record. The jury returned a verdict for the arrestee on all counts and awarded him \$2,605,632 in damages. The parties later stipulated to \$840,000 in attorney fees, \$18,000 in punitive damages. The arrestee had been placed in a "sobering cell" after his arrest for public drunkenness and was seriously injured by another drunken inmate in the sobering cell. When the other inmate was admitted, staff determined that he posed a threat to officers, requiring supervision by two officers at all times. The other arrestee was placed in the same cell as the plaintiff, even though the jail policy was to place combative inmates in a separate cell, and separate cells were available but left unused on the night of the incident.

The court noted that the arrestee submitted billing records from his cognitive assistant and his treating psychologist and a chart detailing the charges for medical expenses he already had incurred, and proffered several medical experts who testified to his need for ongoing medical care.

The jail was purportedly in violation of a state regulation requiring monitoring equipment in sobering cells, as required to establish that the county was deliberately indifferent to the Fourth Amendment right of pretrial detainees to be protected from harm by other inmates and was liable under § 1983 for injuries sustained by the arrestee. According to the court "One would assume that for any given construction project, including jails, the municipality's governing body—or a committee that it appoints to act in its stead—reviews bids, considers designs, and ultimately approves a plan for the facility and allocates funds for its construction. These choices are sufficient, in our opinion, to meet the definition of a formal municipal policy..." (Los Angeles Sheriff's West Hollywood Station, California)

U.S. Appeals Court
PERSONAL LIABILITY
FAILURE TO TRAIN
OFFICIAL CAPACITY
MEDICAL CARE

Coley v. Lucas County, Ohio, 799 F.3d 530 (6th Cir. 2015). The administrator of a pretrial detainee's estate brought a state court action against a county, county sheriff, police officer and police sergeant, alleging § 1983 violations of the detainee's constitutional rights and various state law claims. The district court denied the defendants' motions to dismiss and denied individual defendants' requests for qualified immunity. The defendants appealed. The appeals court affirmed. The court held that a police officer's act of shoving a fully restrained pretrial detainee in a jail booking area, causing the detainee to strike his head on the wall as he fell to the cement floor without any way to break his fall, constituted "gratuitous force" in violation of the detainee's Fourteenth Amendment right to be free from excessive force. The court noted that the detainee's state of being handcuffed, in a belly chain and leg irons, led to a reasonable inference that the officer's actions were a result of his frustration with the detainee's prior restraint behavior, since the detainee was not in any condition to cause a disruption that would have provoked the officer to use such force. The court held that the police officer was on notice that his actions were unconstitutional, and therefore he was not entitled to qualified immunity from liability under § 1983. According to the court, the officer's attempts to cover up the assault by filing false reports and lying to federal investigators following the death of the detainee led to a reasonable conclusion that the officer understood that his actions violated the detainees' clearly established right not to be gratuitously assaulted while fully restrained and subdued.

The court held that a police sergeant's continued use of a chokehold on the unresisting, fully-shackled pre-trial detainee, after hearing the detainee choke and gurgle, and when a fellow officer was urging him release his chokehold, was objectively unreasonable, in violation of the detainee's Fourteenth Amendment right to be free from excessive force. The court noted that the sergeant's subsequent acts of telling other officers to leave the medical cell after the detainee was rendered unconscious, failing to seek medical help, and refusing to mention the use of a chokehold in incident reports, led to the inference that the sergeant was aware he violated the law and sought to avoid liability. According to the court, the police sergeant was on notice that his actions were unconstitutional, and therefore, he was not entitled to qualified immunity under § 1983.

The court found that the county sheriff could be held personally liable under § 1983, based on his failure to train and supervise employees in the use of excessive force, the use of a chokehold and injuries derived therefrom, and to ensure that the medical needs of persons in the sheriff's custody were met. According to the court, evidence that the sheriff helped his employees cover up their unconstitutional actions by making false statements to federal officials about his knowledge of his employees' assault, chokehold, and deliberate failure to provide medical attention to the detainee demonstrated that the sheriff at least implicitly authorized, approved or knowingly acquiesced in the unconstitutional conduct of the offending employees. The court noted that under Ohio law, allegations by the estate of the pretrial detainee that the county sheriff had full knowledge of the assault but intentionally and deliberately made false statements to federal officials were sufficient to state a claim that the sheriff ratified the conduct of his officers and, thus, was potentially personally liable for his officers' actions.

The court concluded that the officers' use of excessive force, failure to provide medical care, assault and battery, and wrongful death could be imputed to the sheriff in his official capacity since the sheriff's false statements to federal investigators were a position that was inconsistent to non-affirmance of the officers' actions. (Lucas County Jail, Ohio)

U.S. Appeals Court
FAILURE TO INTERVENE
NEGLIGENCE

Cortez v. Skol, 776 F.3d 1046 (9th Cir. 2015). The mother of a state inmate who suffered severe brain damage, after he was attacked by two fellow prisoners while being escorted through an isolated prison passage by a corrections officer, brought an action alleging a § 1983 Eighth Amendment claim against the officer and a gross negligence claim against the state. The district court granted summary judgment in favor of the defendants and the mother appealed. The appeals court reversed, finding that summary judgment was precluded by issues of material fact as to whether the corrections officer exposed the high-security inmate to a substantial risk of serious injury when he: (1) escorted the inmate and two fellow high-security prisoners through the isolated prison passage by himself; (2) did not require the prisoners to wear leg restraints; and (3) failed to physically intervene once the prisoners attacked the inmate. The court also found fact issues as to whether the officer was subjectively aware of the risk involved in the escort and acted with deliberate indifference to the inmate's safety. The court held that the mother was not the prevailing party for purposes of awarding attorney's fees. (Morey Unit, Lewis Prison Complex, Arizona)

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act

Doe v. Cook County, Illinois, 798 F.3d 558 (7th Cir. 2015). Detainees at a county juvenile detention center brought a class action against the center and the county, alleging that some employees at the center violated their constitutional rights by abusing their charges. The facility administrator, who was appointed to run the detention center as part of a settlement between the parties, proposed to terminate the employment of 225 direct-care employees and require them to apply to fill the new positions. The union for the employees intervened to oppose the administrator's plan, arguing that the proposal violated Illinois employment law by overriding the collective bargaining and arbitration statutes. The district court authorized the administrator to implement the plan. The union appealed. The appeals court reversed and remanded. The appeals court held that the district court's approval of the administrator's plan was not a simple enforcement of the order appointing the administrator, and thus the district court was required pursuant to the Prison Litigation Reform Act (PLRA) to make findings that the relief requested by the administrator was narrowly drawn, extended no further than necessary to correct the violation of a federal right, and was the least intrusive means. (Cook County Juvenile Temporary Detention Center, Illinois)

U.S. District Court
PERSONAL LIABILITY

Doe v. New York, 97 F.Supp.3d 5 (E.D.N.Y. 2015). A former inmate brought a § 1983 action against a former governor, prison doctors, and various other officials, alleging medical indifference to his Hepatitis infection in violation of the Eighth Amendment. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the inmate's allegations were sufficient to plead the governor's personal involvement in the creation of an alleged prison policy of not disclosing infections to inmates and only treating those with obvious symptoms. The inmate alleged that testing during routine physical and medical examinations revealed that he was infected and that he was not informed or treated, and that he was

subjected to a variety of tests and that results should have put doctors on notice that he was infected, but he was never advised of an infection. The inmate alleged that a prison policy was implemented “in or about 1994” to not disclose to inmates Hepatitis infections and to only treat those with obvious symptoms, that the former governor took office in 1995, and that the governor was part of meetings discussing infection treatment and prevention. (New York State Department of Correctional Services)

U.S. District Court
FAILURE TO INTERVENE

Ewing v. Cumberland County, 152 F.Supp.3d 269 (D. N.J. 2015). A former arrestee brought a § 1983 action, bringing claims against county correctional officers, police officers, and a number of municipal entities for use of excessive force and other constitutional violations. The defendants filed nine motions for summary judgment. The district court held that (1) issues of fact existed as to whether the force used on detainee was imposed maliciously and sadistically to cause harm; (2) issues of fact existed as to whether two officers who were not in the room when excessive force was allegedly used on the pre-trial detainee knew of and failed to intervene in the assault; (3) issues of fact existed as to whether five correctional officers conspired to cover up their actions; (4) issues of fact existed as to whether the police officer who had taken the detainee back to the jail after a trip to the hospital had reason to believe that the detainee's safety was in jeopardy when the officer left the jail, and (5) genuine issues of material fact existed as to whether the county trained its correctional officers on the use of force, whether the other trainings that took place were inadequate and untimely, whether that failure to train amounted to deliberate indifference, and whether there was a causal link between that lack of training and the injuries the detainee sustained at the hands of correction officers, precluding summary judgment for the defendants in the failure to train claim. According to the court, the detainee, while unarmed, suffered life-threatening injuries while in an isolated room with five officers, and that none of the officers were injured, indicated that the officers used force beyond what was necessary to take down the detainee, in a manner intended to inflict pain. The court noted that it was clearly established, at the time of the incident, that prisoners were protected from excessive force and wanton beatings that exceed good-faith efforts to maintain discipline and order, and a reasonable officer would have known that the force used was excessive. (Cumberland Co. Correctional Facility and Vineland Police Dept., New Jersey)

U.S. District Court
FINES

Fant v. City of Ferguson, 107 F.Supp.3d 1016 (E.D. Mo. 2015). City residents brought a class action lawsuit against a city, asserting claims under § 1983 for violations of Fourth, Sixth, and Fourteenth Amendments based on allegations that they were repeatedly jailed by the city for being unable to pay fines owed from traffic tickets and other minor offenses. The residents alleged that pre-appearance detentions lasting days, weeks, and in one case, nearly two months, in allegedly poor conditions, based on alleged violations of a municipal code that did not warrant incarceration in the first instance, and which were alleged to have continued until an arbitrarily determined payment was made, violated their Due Process rights. The residents alleged that they were forced to sleep on the floor in dirty cells with blood, mucus, and feces, were denied basic hygiene and feminine hygiene products, were denied access to a shower, laundry, and clean undergarments for several days at a time, were denied medications, and were provided little or inadequate food and water. The plaintiffs sought a declaration that the city's policies and practices violated their constitutional rights, and sought a permanent injunction preventing the city from enforcing the policies and practices. The city moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) allegations that residents were jailed for failure to pay fines without inquiry into their ability to pay and without any consideration of alternative measures of punishment were sufficient to state a claim that the city violated the residents' Due Process and Equal Protection rights; (2) the residents plausibly stated a claim that the city's failure to appoint counsel violated their Due Process rights; (3) allegations of pre-appearance detentions plausibly stated a pattern and practice of Due Process violations; (4) allegations of conditions of confinement were sufficient to state a plausible claim for Due Process violations; and (5) the residents could not state an Equal Protection claim for being treated differently, with respect to fines, than civil judgment debtors. The court noted that the residents alleged they were not afforded counsel at initial hearings on traffic and other offenses, nor were they afforded counsel prior to their incarceration for failing to pay court-ordered fines for those offenses. (City of Ferguson, Missouri)

U.S. District Court
FCTA- Federal Tort Claims
Act

Garcia-Feliciano v. U.S., 101 F.Supp.3d 142 (D.P.R. 2015). A detainee who was injured while walking restrained down a flight of stairs at a courthouse brought an action against the federal government under the Federal Tort Claims Act (FTCA), alleging that the U.S. Marshals Service was negligent in not providing him with assistance while walking down the steps while restrained. After a bench trial, the district court held that: (1) the leg irons attached to the detainee's legs were the cause of his fall; (2) a policy directive that required the marshals to not leave detainees unattended did not require a deputy to physically assist the detainee down stairs; and (3) the deputy's actions were a discretionary function, not subject to FTCA. The court dismissed the case. (U.S. Marshals Service, Puerto Rico)

U.S. District Court
INJUNCTIVE RELIEF

Hernandez v. County of Monterey, 110 F.Supp.3d 929 (N.D. Cal. 2015). The plaintiffs, current and recently released jail inmates seeking relief on behalf of a class, brought an action against the county, the sheriff's office, and the private company that administered jail health care facilities and services, alleging that substandard conditions constituted deliberate indifference in violation of the Eighth and Fourteenth Amendments and failure to accommodate in violation of the Americans with Disabilities Act (ADA). The plaintiffs moved for a preliminary injunction. The district court granted the motion. The court held that the plaintiffs were likely to succeed on the merits in their action, alleging that county jail conditions constituted deliberate indifference in violation of Eighth and Fourteenth Amendments and failure to accommodate in violation of ADA. According to the court, there was significant evidence that the jail's policies and practices with regard to tuberculosis (TB) screening, suicide and self-harm prevention, alcohol and drug withdrawal, and continuing medical prescriptions, were noncompliant with contemporary standards and guidelines, placing inmates at risk and constituting deliberate indifference to their serious medical needs. The court also found that the preliminary injunction, targeting discrete county jail conditions, would be in the public interest where the public had an interest in preventing the spread of communicable diseases, enforcing the Americans with Disabilities Act (ADA), and eliminating discrimination on the basis of

<p>U.S. District Court ACTA- Alien Tort Claim Act FTCA- Federal Tort Claims Act</p>	<p>disability. (Monterey County Jail, California) <i>Jawad v. Gates</i>, 113 F.Supp.3d 251 (D.D.C. 2015). A plaintiff, a citizen of Afghanistan and a former detainee at the United States Naval Facility at Guantanamo Bay, Cuba, and at other U.S. military bases, brought an action against the U.S. Government and four individual defendants under the Alien Tort Claims Act (ATCA), the Federal Tort Claims Act (FTCA), the Torture Victim Protection Act (TVPA), and the Fifth and Eighth Amendments. The plaintiff alleged that he was detained without adequate due process, tortured, and otherwise subjected to inhumane treatment. Government moved to dismiss the ATCA and FTCA claims, and the individual defendants moved to dismiss the TVPA and constitutional claims. The district court granted the motions, finding that the United States was properly substituted as the defendant, the complaint failed to state claim for violation of TVPA, and the Military Commissions Act (MCA) divested the district court of jurisdiction to hear claims regarding a former detainee’s detention, transfer, treatment, and conditions of confinement. (Forward Operating Base 195, Afghanistan, and United States Naval Base in Guantanamo Bay, Cuba)</p>
<p>U.S. Appeals Court COMPENSATORY DAMAGES PUNITIVE DAMAGES INJUNCTIVE RELIEF</p>	<p><i>King v. Zamirara</i>, 788 F.3d 207 (6th Cir. 2015). A prisoner brought an action against prison officials under § 1983, alleging First Amendment retaliation arising from his transfer to a higher security prison due to his participation in a state-court class action against the prison officials. After a bench trial, the district court found in favor of the prison officials. The appeals court reversed with respect to three officials. On remand, the district court entered judgment in favor of the prisoner and ordered compensatory damages and attorney fees, but denied the prisoner’s request for punitive damages and injunctive relief. Both parties appealed. The appeals court vacated and remanded. The court held that: (1) the district court properly awarded prisoner compensatory damages; (2) the district court’s award of compensatory damages to equal \$5 a day for each day he was kept in a higher security prison was not a reversible error; (3) the district court relied on an incorrect legal standard in concluding that the prisoner was not entitled to punitive damages; (4) the prisoner was not entitled to injunctive relief requiring the department of corrections to remove certain documents from his file that allegedly violated his due process rights; and (5) the district court abused its discretion in failing to charge up to 25% of the attorney fees awarded to the prisoner against his compensatory damages award. (Conklin Unit at Brooks Correctional Facility, Chippewa Correctional Facility, Michigan)</p>
<p>U.S. District Court INDIVIDUAL CAPACITY FAILURE TO PROTECT</p>	<p><i>Kruger v. Nebraska</i>, 90 F.Supp.3d 874 (D. Neb. 2015). A murder victim’s husband and the administrator of her estate brought an action in state court against the state of Nebraska, the Department of Correctional Services, and several corrections officers, asserting § 1983 claims, due process violations, and various negligence claims arising out of the release of a prisoner who murdered the victim shortly after his release from prison. The defendants removed the case to federal court and moved for dismissal. The district court granted the defendants’ motion for dismissal, finding that the officers did not have a special relationship with the victim that created an affirmative duty, under the due process clause, to protect her, the officers were acting solely within the scope of their employment when they released the prisoner, and thus the husband could not assert claims under state law against the officers in their individual capacities. The court noted that the officers were engaged in discretionary functions when they released the prisoner, and thus were shielded from liability. (Nebraska Department of Correctional Services)</p>
<p>U.S. District Court MUNICIPAL LIABILITY</p>	<p><i>Kucharczyk v. Westchester County</i>, 95 F.Supp.3d 529 (S.D.N.Y. 2015). An inmate who was allegedly denied surgery to repair a hernia brought a pro se action against a county and county jail officials under § 1983, alleging deliberate indifference to his health in violation of the Eighth Amendment prohibition of cruel and unusual punishment. The defendants moved to dismiss. The district court denied the motion, finding that the inmate had sufficiently alleged an objective deprivation of medical care and failure to act in spite of a known risk to his health. The court found that the inmate stated a claim for municipal liability, and was not required to exhaust administrative remedies. The inmate claimed that he had a hernia that required surgery, and was repeatedly denied a date for surgery to correct the hernia, and that county jail officials engaged in a widespread practice of denying necessary medical care. The court noted that a Department of Justice report had found significant medical care deficiencies at the jail. (Westchester County, N.Y., and Correct Care Solutions LLC)</p>
<p>U.S. Appeals Court FAILURE TO PROTECT</p>	<p><i>Makdessi v. Fields</i>, 789 F.3d 126 (4th Cir. 2015). A prisoner brought an action against prison officials, claiming that the officials failed to protect the prisoner from repeated physical and sexual abuse by other prisoners, even after the prisoner lodged numerous complaints, in violation of the prisoner’s Eighth Amendment right to be free from cruel and unusual punishment. The district court entered judgment for the prison officials and the prisoner appealed. The appeals court vacated and remanded. The court noted that “...the Supreme Court has stated, however, that the subjective ‘actual knowledge’ standard required to find prison officials deliberately indifferent to a substantial risk of serious injury may be proven by circumstantial evidence. Prison officials may not simply bury their heads in the sand and thereby skirt liability. Rather, they may be held accountable when a risk is so obvious that it had to have been known. Because we do not believe that the court below appreciated this nuance, we vacate the dismissal of Makdessi’s claims...” (Wallens Ridge State Prison, Virginia)</p>
<p>U.S. District Court FTCA- Federal Tort Claims Act BIVENS CLAIMS</p>	<p><i>McGowan v. U.S.</i>, 94 F.Supp.3d 382 (E.D.N.Y. 2015). A federal prisoner, who was serving the remainder of his sentence at a halfway house, brought an action against a U. S. Bureau of Prisons (BOP) employee who managed the halfway house, alleging violations of his right to free speech, and asserting claims for false arrest, false imprisonment, and negligence under the Federal Tort Claims Act (FTCA). The defendants moved to dismiss. The district court granted the motion and dismissed the action. The court held that the prisoner could not bring a Bivens claim alleging his free speech right was violated when he was transferred from the halfway house to a prison for violating a BOP regulation against publishing under a byline, where the prisoner could have challenged his transfer through a habeas petition after exhausting BOP’s administrative remediation process. The court noted that the prisoner’s reassignment to prison was rescinded when his lawyers notified the BOP that the byline regulation had been repealed. The court held that the prisoner’s confinement was unconditionally privileged, and thus,</p>

under state law, he could not assert a claim for false imprisonment against the United States pursuant to the Federal Tort Claims Act (FTCA) based on his brief transfer from the halfway house. (Community First Services, Inc., and Metropolitan Detention Center, New York)

U.S. District Court
INDIVIDUAL CAPACITY

McNeill v. Allen, 106 F.Supp.3d 711 (W.D. N.C. 2015). A pre-trial detainee in a county detention facility brought an action against county sheriff's office captain under § 1983, alleging deliberate indifference to his medical needs in violation of the Fourteenth Amendment. The district court dismissed the case, finding that the detainee failed to plead personal involvement as required to maintain claim against sheriff's captain in his individual capacity under § 1983. The detainee alleged that jail staff did not adequately treat him for injuries he suffered after slipping on water in his jail cell. (Buncombe County Sheriff's Office and Jail, N. Carolina)

U.S. District Court
TVPA- Trafficking Victims
Protection Act

Menocal v. GEO Group, Inc., 113 F.Supp.3d 1125 (D. Colo. 2015). Current and former detainees at a private, for-profit immigration detention facility brought an action against the facility's owner-operator, alleging that a work program violated the Colorado Minimum Wage Order (CMWO) because detainees were paid \$1 per day instead of the state minimum wage, that forcing detainees to clean living areas under the threat of solitary confinement violated the Trafficking Victims Protection Act's (TVPA) prohibition on forced labor, and that the owner-operator was unjustly enriched through the work program. The detainees participate in a "Voluntary Work Program" at the facility where they perform tasks such as maintaining the on-site medical facility that is owned and operated by the same company, doing laundry, preparing meals, and cleaning various parts of the facility for compensation of \$1 per day. They also alleged that each day, six randomly selected detainees (whether they participate in the Voluntary Work Program or not) are required to clean the facility's "pods" without compensation under the threat of solitary confinement. The owner-operator moved to dismiss. The court found that the detainees adequately alleged that the owner-operator obtained the detainees' labor by threats of physical restraint, as required to state a claim for violation of TVPA.

The court held that the detainees were not the facility owner-operator's "employees" who could bring claim alleging that a work program violated CMWO. The court noted that the detainees apparently fell within CMWO's broad definition of employee, but so did prisoners to whom the state labor department found CMWO's definition of employee should not apply, and detainees, like prisoners, did not use the wages to provide for themselves, and thus the purposes of CMWO were not served by including them in the definition of employee. (Aurora Detention Facility, Owned and Operated by the GEO Group, Colorado)

U.S. District Court
INJUNCTIVE RELIEF

Norsworthy v. Beard, 87 F.Supp.3d 1104 (N.D.Cal. 2015). A transsexual female prison inmate brought a § 1983 action against prison officials and medical staff for denying necessary medical treatment for the inmate's gender dysphoria in violation of Eighth Amendment. The inmate also alleged that the officials were deliberately indifferent to her medical needs and deprived her of her right to equal protection under the law when they denied her sex reassignment surgery. The officials moved to dismiss for failure to state a claim. The district court granted the motion in part and denied the motion in part. The court held that: (1) the inmate stated a claim for prospective injunctive relief; (2) the inmate stated an Eighth Amendment deliberate indifference claim based on denial of the request for sex reassignment surgery; (3) the inmate stated an equal protection claim; but (4) the inmate failed to state an Eighth Amendment deliberate indifference claim based on denial of a request for a legal name change. (Mule Creek State Prison, California)

U.S. District Court
INJUNCTIVE RELIEF
PLRA- Prison Litigation
Reform Act

Norsworthy v. Beard, 87 F.Supp.3d 1164 (N.D.Cal. 2015). A transsexual female prison inmate brought a § 1983 action against prison officials and medical staff for denying necessary medical treatment for the inmate's gender dysphoria in violation of Eighth Amendment. The inmate moved to strike expert testimony and for a preliminary injunction requiring the defendants to provide her with sex reassignment surgery (SRS). The defendants moved for judicial notice. The district court granted the motions in part and denied in part. The district court found that the expert report of a psychiatrist retained by the officials and medical staff would not be stricken for failure to comply with the requirements for disclosure of expert qualifications, and that the expert was qualified to testify regarding prison culture and the treatment that incarcerated persons with gender dysphoria should receive. The court noted that notwithstanding years of treatment in the form of hormone therapy and counseling, the inmate continued to experience severe psychological pain, and that the treating and examining psychologists agreed the inmate met the eligibility criteria for SRS under the standards of care for treating transsexual patients.

The court held that: (1) the inmate was likely to succeed on the merits of the Eighth Amendment claim; (2) the inmate was suffering irreparable harm that would likely continue absent a preliminary injunction; (3) the balance of equities weighed in favor of granting an injunction; (4) it was in the public interest to grant an injunction; and (5) an injunction would meet the requirements of the Prison Litigation Reform Act (PLRA). (Mule Creek State Prison, California)

U.S. District Court
PRIVATE OPERATOR

Pena v. Greffet, 108 F.Supp.3d 1030 (D.N.M. 2015). A former inmate at a privately operated correctional facility brought a civil rights action against a correctional officer, among others, asserting a claim under § 1983 for violation of her Eighth Amendment rights and asserting a claim for battery under state law. The officer moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate failed to state a claim for excessive force under the Eighth Amendment, but sufficiently stated a claim for battery under New Mexico law. According to the court, the inmate's allegations that a privately employed correctional officer pursued the inmate down a hallway after she refused to answer a question, grabbed her from behind, and slammed her against a wall, were insufficient to allege that the officer acted maliciously and sadistically to cause harm, as required to state a claim for excessive force under the Eighth Amendment, since the allegations were just as much in line with the officer's legitimate pursuit of penological goals as they were with his desire to harm or humiliate the inmate. (New Mexico Women's Correctional Facility, operated by Corrections Corporation of America)

U.S. District Court
PRIVATE OPERATOR

Pena v. Greffet, 110 F.Supp.3d 1103 (D.N.M. 2015). A female prison inmate brought an action under § 1983 for numerous violations of her constitutional rights, including under the Fourth, Eighth, and Fourteenth Amendments against employees of the contractor that operated the correctional facility, and against the contractor under the theory of vicarious liability, for alleged physical and sexual assault by employees while she was incarcerated. The defendants moved for judgment on the pleadings. The district court denied the motion. The court held that the “aided-in-agency” theory of vicarious liability applied to the female prison inmate’s claims under § 1983 against the contractor after the contractor’s employee repeatedly sexually assaulted the inmate. According to the court, the employee’s relationship with the inmate by virtue of his employment conferred “extraordinary power” upon him, the employee’s authority to do as he wished appeared to be delegated to him, and the inmate was unlikely to be able to successfully complain about the employee’s actions. The court noted that the issue of whether the employer was vicariously liable for the employee’s repeated rape and sexual assault of the inmate was for a jury to decide in the inmate’s claim under § 1983 for violations of numerous constitutional rights, including the right to bodily integrity under the Fourteenth Amendment. The court found that while state-employee prison guards are entitled to qualified immunity against federal suits under § 1983, private prison guards receive no such benefit. (New Mexico Women’s Correctional Facility, operated by Corrections Corporation of America)

U.S. District Court
COMPENSATORY
DAMAGES

Pierce v. District of Columbia, 128 F.Supp.3d 250 (D.D.C. 2015). A deaf inmate who communicated with American Sign Language (ASL), but who had been forced to communicate with staff and other inmates only through lip-reading and written notes due to the lack of an interpreter to assist him, filed suit against the District of Columbia alleging discrimination and retaliation in violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Both sides moved for summary judgment. The district court granted the inmate’s motion in part and denied the defendant’s motion. The court held that: (1) the prison had affirmative duty to evaluate the newly incarcerated deaf inmate’s accommodation requirements, and its failure to do so denied the inmate benefits under the Rehabilitation Act and ADA; (2) the prison was deliberately indifferent to the deaf inmate’s need for accommodation, as would support an award of compensatory damages; and (3) summary judgment was precluded by a genuine issue of material fact as to whether the prison had placed the inmate in protective custody, and kept him there, because of the inmate’s constant requests for accommodation. The court noted that the inmate’s need for accommodation was obvious, in that the inmate did not speak and communicated only through American Sign Language (ASL), and the prison was required to identify precise limitations resulting from the disability and potential reasonable accommodations by way of an interactive assessment of the inmate. According to the court, the inmate’s request for an American Sign Language (ASL) interpreter to assist him during anger management and substance abuse classes was sufficient to put the prison on notice that deaf inmate might need a similar accommodation to communicate effectively in other prison situations, such as in inmate programs, hall meetings, the orientation process, protective custody proceedings, graphic arts class, and medical consultations. (Correctional Treatment Facility, District of Columbia)

U.S. Appeals Court
INJUNCTIVE RELIEF

Rodriguez v. Robbins, 804 F.3d 1060 (9th Cir. 2015). A petitioner sought a writ of habeas corpus, on behalf of himself and a class of aliens detained during immigration proceedings for more than six months without a bond hearing, seeking injunctive and declaratory relief providing individualized bond hearings with the burden on the government, certification of the class, and appointment of class counsel. The district court denied the petition. The petitioner appealed. The appeals court reversed and remanded. On remand, the district court entered a preliminary injunction and the government appealed. The appeals court affirmed. The district court then granted summary judgment to the class and entered a permanent injunction, and the parties appealed. The appeals court affirmed in part and reversed in part. The court held that the aliens were entitled to automatic individualized bond hearings and determinations to justify their continued detention. The court ruled that the government had to prove by clear and convincing evidence that an alien was a flight risk or a danger to the community to justify denial of a bond at the hearing. (Immigration and Customs Enforcement, Los Angeles, California)

U.S. Appeals Court
NEGLIGENCE
FAILURE TO TRAIN
PRIVATE PROVIDER

Shadrick v. Hopkins County, Ky., 805 F.3d 724 (6th Cir. 2015). The mother of deceased inmate brought a § 1983 action against a county and a medical provider, which contracted with county to provide medical services to county inmates, alleging that the medical provider’s failure to train and supervise its nurses violated the inmate’s constitutional right to adequate medical care and that the medical provider was negligent under state law. The twenty-five year old inmate had entered the jail to serve a short sentence for a misdemeanor offense. He died three days later from complications of an untreated methicillin-resistant staphylococcus aureas (MRSA) infection. The district court granted summary judgment in favor of the medical provider. The mother appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether the medical provider’s training program was inadequate, whether the inadequacy resulted from its deliberate indifference to inmate’s right to adequate medical care, and whether the inadequacy caused, or was closely related to, the inmate’s death. The court noted that the nurses were required to make professional judgments outside their area of medical expertise, and unless training was provided, the nurses lacked knowledge about the constitutional consequences of their actions or inactions in providing medical care to inmates.

The court found that the medical provider did not derive its existence and status from the county, and thus was not entitled to share the county’s governmental immunity on a Kentucky negligence claim. The court noted that nearly all of the inmate’s medical conditions-- high blood pressure, rheumatoid arthritis, gout, osteoporosis, and staph infection-- had been diagnosed by a private physician as mandating treatment, and deputy jailers could tell that the inmate needed prompt medical treatment even though they did not have the same medical training as the nurses who were employed at the county jail. (Hopkins County Detention Center, Southern Health Partners, Inc., Kentucky)

U.S. District Court
SUPERVISORY LIABILITY
FAILURE TO TRAIN
FAILURE TO PROTECT
FAILURE TO SUPERVISE

Shaidnagle v. Adams County, Miss., 88 F.Supp.3d 705 (S.D.Miss. 2015). After a detainee committed suicide while being held in a county jail, his mother, individually, on behalf of the detainee's wrongful death beneficiaries, and as administratrix of the detainee's estate, brought an action against the county, sheriff, jail staff, and others, asserting claims for deprivation of civil rights, equitable relief, and declaratory judgment. The defendants brought a § 1988 cross-claim for attorney fees and costs against the plaintiff, and subsequently moved for summary judgment. The court held that neither the sheriff nor another alleged policymaker could be held liable on a theory of supervisory liability for failure to train or supervise, where the mother did not show that the training jail staff received was inadequate, and the policy in place to determine whether the detainee was a suicide risk was not the "moving force" behind a constitutional violation. The court held that the correct legal standard was not whether jail officers "knew or should have known," but whether they had gained actual knowledge of the substantial risk of suicide and responded with deliberate indifference. The court held that neither party was entitled to attorney fees as the "prevailing party." (Adams County Jail, Mississippi)

U.S. District Court
PUNITIVE DAMAGES
NEGLIGENCE
PRIVATE PROVIDER

Simmons v. Corizon Health, Inc., 122 F.Supp.3d 255 (M.D.N.C. 2015). The guardians and conservators of a county jail inmate, who suffered a catastrophic hypoxic brain injury after going into cardiac arrest caused by excessive internal bleeding from a perforated ulcer, brought an action against the jail medical provider, the county, the sheriff, and the local government excess liability fund, asserting claims for deliberate indifference, negligence, and loss of consortium. The provider moved to dismiss for failure to state a claim, and the remaining defendants moved to dismiss for failure to state a claim and for lack of personal jurisdiction. The district court granted the motions in part and denied in part. The court held that the medical provider's alleged violation of its contract with the county, which required it to comply with standards set by the National Commission on Correctional Health Care, with respect to its treatment of the county jail inmate could not serve as a basis for the inmate's negligence claim under North Carolina law.

The court found that the inmate and his guardians and conservators stated a deliberate indifference claim against the medical provider by alleging that the inmate made the provider's staff aware that he was experiencing severe stomach pain and was vomiting blood, that medical records documented the vomiting of blood, decreased urine output, and no bowel movements for two weeks, that despite his repeated complaints of severe stomach pain and vomiting blood, he received no further medical care and was not provided a physician consultation, and that shortly thereafter, he went into cardiac arrest caused by excessive internal bleeding from a perforated ulcer. The court also found that the allegations were sufficient to support a claim for punitive damages under § 1983. According to the court, the fact that the county allegedly contracted out to the private medical provider did not preclude its obligation to provide inmates with medical care and the county could be held liable under § 1983 for the provider's allegedly constitutionally inadequate medical care of the inmate. The court noted that the provider was allegedly delegated some final policymaking authority and the county allegedly failed to review the provider's policies, such that some of the provider's policies became those of the county. (Corizon Health, Inc., and Guilford County Jail, North Carolina)

U.S. District Court
NEGLIGENCE
POLICIES/PROCEDURES

Simmons v. Corizon Health, Inc., 136 F.Supp.3d 719 (M.D.N.C. 2015). A county jail inmate, who suffered a catastrophic hypoxic brain injury after going into cardiac arrest caused by excessive internal bleeding from a perforated ulcer, brought a § 1983 action against the jail medical provider, the county, the sheriff, and the local government excess liability fund, asserting claims for deliberate indifference, negligence, and loss of consortium on the part of the inmate's guardian and conservator. After the district court denied the sheriff's motion to dismiss, the sheriff moved for reconsideration. The district court granted the motion, finding that a single, isolated prior alleged incident was insufficient to establish the sheriff's office policy or custom of deliberate indifference to the medical needs of prisoners, and the inmate failed to state a claim for deliberate indifference to the inmate's serious medical needs based on failure to train sheriff's deputies. (Corizon Health Inc. and Guilford County Sheriff, North Carolina)

U.S. District Court
CONTRACT SERVICES
QUALIFIED IMMUNITY

Stojcevski v. County of Macomb, 143 F.Supp.3d 675 (E.D. Mich. 2015). A former county jail inmate, individually and as the administrator of the estate of his brother, who died after being incarcerated at the same jail, brought an action against a county, county officials and employees, the jail's private medical provider, and the provider's employees, alleging deliberate indifference to medical needs and municipal liability under § 1983 and gross negligence under state law. The defendants moved to dismiss. The court held that the employees' delegation of medical care of the inmate to an outside contractor did not entitle them to qualified immunity on Eighth Amendment deliberate indifference claims arising from the inmate's death. According to the court, regardless of the county's reliance on the contractor, if the employees were aware of a risk to the inmate's health, drew the inference that a substantial risk of harm to the inmate existed, and consciously disregarded that risk, they too would be liable for the inmate's injuries under § 1983.

The court found that allegations by the administrator of the estate were sufficient to state a *Monell* claim against the county and the jail's private medical provider for municipal liability under § 1983. The court noted that although many of the policies and procedures set forth by the administrator in support of his claim, such as failure to adhere to national standards, did not state a constitutional violation, the examples of where such standards were not followed were factual allegations supporting his assertion that inmates at the jail were not afforded adequate medical treatment. (Macomb County Jail, Michigan)

U.S. District Court
INJUNCTIVE RELIEF

Trueblood v. Washington State Dept. of Social and Health, 101 F.Supp.3d 1010 (W.D. Wash. 2015). Members of a class of pretrial detainees suspected of being mentally incompetent, the next friends of such pretrial detainees, and a disability rights organization brought an action seeking a permanent injunction and a declaratory judgment establishing a time frame within which due process required that the Department of Social and Health Services provide a competency evaluation and restoration of services to such detainees. After a bench trial, the district court held that: (1) the disability rights organization had standing to bring the action; (2) the next friends of the

pretrial detainees had standing to bring an action; and (3) due process balancing favored the interests of the pretrial detainees, and thus seven days was the maximum justifiable period of incarceration while awaiting a competency evaluation and restoration of services. A permanent injunction was ordered. The court noted that jails could not provide an environment or type of care required for such detainees, especially as they were often held in solitary confinement without access to medication, and that confinement in jails actively damaged detainees' mental condition and each additional day of incarceration caused further deterioration of the detainees' mental health, increased the risk of suicide and victimization by other inmates. (State of Washington, Department of Social and Health Services)

U.S. Appeals Court
INJUNCTIVE RELIEF
PLRA- Prison Litigation
Reform Act

U.S. v. Secretary, Florida Dept. of Corrections, 778 F.3d 1223 (11th Cir. 2015). The federal government brought an action against the Florida Department of Corrections (DOC), alleging that the DOC's failure to provide a kosher diet to all of its prisoners with sincere religious grounds for keeping kosher violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the DOC's motion for a preliminary injunction and the federal government appealed. The appeals court vacated the district court decision and dismissed the appeal. The court held that the preliminary injunction did not comply with the Prison Litigation Reform Act (PLRA), and thus, expired after 90 days. The court noted that injunctive relief was not narrowly drawn, extended further than necessary to correct the violation of the federal right, and was not the least intrusive means necessary to correct the violation, in violation of PLRA. (Florida Department of Corrections)

2016

U.S. Appeals Court
INDIVIDUAL CAPACITY

Heard v. Tilden, 809 F.3d 974 (7th Cir. 2016). A state prisoner brought a § 1983 action against the medical director of a corrections department, the health care provider that contracted with the department to provide medical care for inmates, and a provider's employee, alleging that they violated the Eighth Amendment's ban on cruel and unusual treatment by delaying surgery for his recurrent hernia. The district court entered summary judgment in the director's, provider's, and employee's favor. The prisoner appealed. The appeals court affirmed in part, vacated and remanded in part. The court held that the prisoner's allegation that the medical director was involved directly in the choice to stall necessary surgery for the prisoner's recurrent hernia was sufficient to state a claim against the director, in his individual capacity, for deliberate indifference to the prisoner's medical need in violation of the Eighth Amendment. (Illinois Department of Corrections, Wexford Health Sources)

SECTION 28: MAIL

Detention and Corrections Caselaw Catalog *All Rights Reserved*
CRS, Inc. 925 Johnson Drive, Gettysburg PA 17325 (717) 338-9100 www.correction.org/

The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1968

- U.S. District Court
RELIGION
- Peek v. Ciccone, 288 F.Supp. 329 (W.D. Mo. 1968). Inmate who believed he was Christ incarnate, is allowed to write to the Pope, since prison officials had failed to demonstrate that prison discipline or administration would be endangered by this correspondence. (United States Medical Center For Federal Prisoners, Springfield, Massachusetts)

1970

- U.S. District Court
CORRESPONDENCE
WITH COURT
- Carothers v. Follette, 314 F.Supp. 1014 (S.D. N.Y. 1970). Mail from inmates to the court cannot be censored, read, or refused delivery. (Green Haven State Prison, New York)
- U.S. District Court
PROHIBITION-
PUBLICATIONS
- Fortune Society v. McGinnis, 319 F.Supp. 901 (S.D. N.Y. 1970). Prohibition of a publication which contains distorted or untrue articles about prisons or which might embarrass institution officials is not justified. (New York Prison System)

1971

- U.S. District Court
ISOLATION
- Conklin v. Hancock, 334 F.Supp. 1119 (D. N.H. 1971). Inmate in isolation should have all privileges of other inmates except those that involve mixing with the general population. Outgoing mail of security risk, except mail to public officials and attorney of record may be read to determine whether escape plans are being made. Incoming "legal" mail is to be delivered promptly and unopened. Other incoming mail may be inspected for contraband and read to extent necessary to foil escape plans or censor pornography or inflammatory writing. (New Hampshire State Prison, Concord, New Hampshire)

1972

- U.S. Appeals Court
CORRESPONDENCE
WITH COURT
- Christman v. Skinner, 468 F.2d 723 (2d Cir. 1972). Where the plaintiff alleged that jail guards had refused to mail his letters to counsel, a suit against guards' superiors could not be dismissed since the plaintiff might be able to prove their participation or acquiescence. Where defendants censored mail pursuant to state regulations, and it was not claimed that they acted maliciously or in wanton disregard of plaintiff's rights, defendants are protected from suit by a qualified privilege. (Monroe County Jail, New York)
- U.S. District Court
PROHIBITION-
PUBLICATIONS
- Collins v. Schoonfield, 344 F.Supp. 257 (D. Md. 1972). Racial minority publications may be excluded if an official can show prison security is threatened. About the only justification for opening mail to the courts would be the reasonable belief that the letter contained something which presented a physical danger to persons who might handle the letter. (Baltimore City Jail, Maryland)

- U.S. Supreme Court
RELIGION
- Cruz v. Beto, 405 U.S. 319 (1972). Claiming a cause of action under 42 U.S.C. Section 1983, Cruz, an alleged Buddhist, incarcerated in a Texas prison, complained that he was not allowed to use the prison chapel, that he was prohibited from corresponding with his religious advisor, and that he was placed in solitary confinement for sharing his religious materials with other inmates. The U.S. District Court dismissed the complaint on the grounds that it was in an area that should be left "to the sound

discretion of prison administration." The Fifth Circuit Court of Appeals affirmed, and the U.S. Supreme Court granted certiorari.

HELD: "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." 405 U.S. at 322 Citing Conley v. Gibson, 355 U.S. at 45-46. (Texas Department of Corrections, Ellis Unit)

U.S. Appeals Court
WAIVER

Moore v. Ciccone, 459 F.2d 574 (8th Cir. 1972). Waiver signed by detainee held for psychiatric observation cannot effectively authorize opening and inspection of legal mail. (United States Medical Center For Federal Prisoners, Springfield, Missouri)

1973

U.S. Appeals Court
OPENING MAIL

Frye v. Henderson, 474 F.2d 1263 (5th Cir. 1973). Opening incoming mail violates no inmate right. (United States Penitentiary, Atlanta)

U.S. District Court
PACKAGES

Inmates of Suffolk Co. Jail v. Eisenstadt, 360 F.Supp. 676 (D. Mass. 1973), aff'd, 494 F.2d 1196 (1st Cir. 1974). Inmates may get packages in the mail containing items which would be delivered if personally brought by visitors. Packages may be inspected for contraband. (Suffolk County Jail, Massachusetts)

1974

U.S. District Court
CORRES.- FRIENDS,
RELATIVES

Berch v. Stahl, 373 F.Supp. 412 (W.D. N.C. 1974). Inmates may not be deprived of visits from attorneys, mail from courts and attorneys, telephone calls to attorneys, writing materials or legal papers, nor may they be deprived of correspondence with friends or relatives for disciplinary reasons. (Mecklenburg County Jail, North Carolina)

U.S. Appeals Court
LIMITING CORRES.

Finney v. Arkansas Board of Corrections, 505 F.2d 194 (8th Cir. 1974). A prison may maintain an approved list of correspondents for each prisoner as long as the list is supported by government interests in order of security or rehabilitation. (Arkansas Board of Corrections)

U.S. Appeals Court
SEIZURE- OUTGOING
MAIL

McKinney v. Debord, 507 F.2d 501 (9th Cir. 1974). A prison can seize a letter sent to a publisher to protest the fact that the publisher had not delivered certain books when the books would have been in violation of prison rules if they were delivered. (California Prison System)

U.S. Supreme Court
CENSORSHIP

Procunier v. Martinez, 416 U.S. 396 (1974). This is a class action brought on behalf of all inmates incarcerated in California penal institutions challenging inmate mail censorship regulations and a ban against the use of law students and legal paraprofessionals to conduct interviews with inmates. The U.S. District Court of the Northern District of California found the regulations unconstitutional and enjoined their enforcement. Procunier, Director of the California Department of Corrections, appealed directly to the U.S. Supreme Court. (Affirmed.)

OTHER RULINGS: Comity did not require that the federal court abstain from declaring the constitutionality of the California Department of Correction regulation relating to inmate mail. 44 S.Ct. at 1805.

Traditionally, federal courts have adopted a broad hands-off attitude toward problems of prison administration. In part this policy is the product of various limitations on the scope of federal review of conditions in state penal institutions. But a policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims whether arising in a federal or state institution. When a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights. 94 S.Ct. at 1807.

HELD: [C]ensorship of prisoner mail is justified if the following criteria are met. First the regulation or practice in question must further an important or substantial governmental interest unrelated to the suppression of expression. Prison officials may not censor inmate correspondence simply to eliminate unflattering or unwelcome opinions or factually inaccurate statements. Rather they must show that a regulation authorizing mail censorship furthers one or more of the substantial governmental interests of security, order and rehabilitation. Second, the limitation of first amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved. Thus, a restriction of inmate correspondence that furthers an important or substantial interest of penal administration will nevertheless be invalid if its sweep is unnecessarily broad. This does not mean... that prison administrators may be required to show with certainty that adverse consequences would flow from the failure to censor a particular letter. Some latitude in anticipating the probable consequences of allowing certain speech in a prison environment is essential to the proper discharge of the Administrator's duty. But any regulation or practice that restricts inmate correspondence must be generally necessary to protect one or more of the legitimate governmental interests identified above. 94 S.Ct. at 1811-1812. (Department of Corrections, California)

U.S. Supreme Court
ATTORNEY MAIL

Wolff v. McDonnell, 418 U.S. 539 (1974). McDonnell, an inmate in a Nebraska state prison, brought this 42 U.S.C. Section 1983 action on behalf of himself and other inmates, alleging that disciplinary proceedings did not comply with the due process clause of the fourteenth amendment; that the inmate legal assistance program did not meet constitutional standards, and that regulations governing the inspection of mail to and from attorneys were unconstitutionally restrictive. Wolff, warden of the prison was named as the defendant. McDonnell sought injunctive relief and damages.

The U.S. District Court rejected the procedural due process claim; held the prison's policy of inspecting all incoming and outgoing mail to and from attorneys violated prisoners' access to the courts; and that restrictions on inmate legal assistance were not in violation of the Constitution.

The Eighth Circuit Court of Appeals reversed with respect to the due process claim, holding disciplinary proceedings in prisons must comply with the procedural requirements of parole revocation and probation revocation proceedings. On the basis of Preiser v. Rodriguez, 411 U.S. 475, the court affirmed the district court's decision on the attorney-inmate correspondence issue but ordered further proceedings to determine if the state was complying with the directives of Johnson v. Avery, 393 U.S. 483 (1969), in providing legal assistance to inmates. From this decision Wolff petitioned for a writ of certiorari.

HELD: "We think it entirely appropriate that the state require any [letters from attorneys to inmates] to be specifically marked as originating from an attorney, with his name and address being given if they are to receive special treatment." 418 U.S. at 576.

HELD: "It would also certainly be permissible that prison authorities require that a lawyer desiring to correspond with a prisoner, first identify himself and his client to the prison officials, to assure that the letters marked privileged are actually from members of the bar." 418 U.S. at 576-577.

HELD: "As to the ability to open the mail in the presence of inmates, this could in no way constitute censorship, since the mail would not be read. Neither could it chill such communications, since the inmate's presence ensures that prison officials will not read the mail. The possibility that contraband will be enclosed in letters, even those from apparent attorneys, surely warrants prison officials opening the letters." 418 U.S. at 577.
(Nebraska State Prison)

1975

U.S. Appeals Court
CORRESPONDENCE

Bryan v. Werner, 516 F.2d 233 (3rd Cir. 1975). An institution may not refuse to mail court directed letters. (State Correctional Institution, Dallas, Pennsylvania)

U.S. District Court
CORRESPONDENCE

Farmer v. Loving, 392 F.Supp. 27 (W.D. Vir. 1975). A rule prohibiting correspondence between inmates and former inmates is unconstitutional. A rule prohibiting visiting with former inmates is upheld. (Correctional Unit, Virginia)

U.S. District Court
CORRESPONDENCE

Lawrence v. Davis, 401 F.Supp. 1203 (W.D. Vir. 1975). Correspondence between prisoners in different institutions in the same prison system may be prohibited. (Virginia Department of Corrections, Unit #10)

U.S. District Court
INSPECTION OF
MAIL

Stone v. Schmidt, 398 F.Supp. 768 (W.D. Wisc. 1975), cert. denied, 429 U.S. 865 (1976). Prison officials limit the prisoner's right to correspond by forcing the prisoners to allow prison officials to examine the mail. (Wisconsin Home For Women, Taycheedah, Wisconsin)

U.S. District Court
INDIGENT INMATES
ATTORNEY MAIL
ISOLATION

Sykes v. Kreiger, 451 F.Supp. 421 (N.D. Oh. 1975). Indigent inmates must be allowed to send five free letters per week. No limitations are allowed on attorney-client mail. Inmates in isolation are entitled to correspond with attorney. (Cuyahoga County Jail, Ohio)

1976

U.S. Appeals Court
CENSORSHIP
PROHIBITION-
PUBLICATIONS

Carpenter v. South Dakota, 536 F.2d 759 (8th Cir. 1976), cert. denied, 431 U.S. 931 (1976). Censorship of sex manuals is upheld where prurient interest and sexual arousal are the only purpose of the material, and where material was of questionable literary value. (South Dakota State Penitentiary)

U.S. Appeals Court
RELIGION

Taylor v. Sterrett, 532 F.2d 462 (5th Cir. 1976), reh'g denied, 420 U.S. 983 (1974). A prisoner's freedom of religion under the first amendment affords protection to correspondence of a religious nature. (Dallas County Jail, Texas)

1977

U.S. Appeals Court
PROHIBITION-
PUBLICATIONS

Hopkins v. Collins, 548 F.2d 503 (4th Cir. 1977). Restricting a Black Panther Newspaper could be justified with adequate due process. (Maryland Penitentiary, Baltimore, Maryland)

U.S. District Court
INSPECTION
DELIVERY

Vest v. Lubbock County, 444 F.Supp. 824 (N.D. Tex. 1977). Neither incoming nor outgoing mail may be censored but may be opened and inspected. Incoming mail must be delivered to an inmate within twenty-four hours. (Lubbock County Jail, Texas)

U.S. District Court
READING OF MAIL

Vienneau v. Shanks, 425 F.Supp. 676 (W.D. Wisc. 1977). Suicide prevention is held insufficient to justify reading detainee's mail. (Sauk County Jail, Wisconsin)

1978

U.S. Appeals Court
INSPECTION

Feeley v. Sampson, 570 F.2d 364 (1st Cir. 1978). Outgoing mail may be searched. (Rockingham County Jail, New Hampshire)

U.S. District Court
INDIGENT INMATES
CORRESPONDENCE

O'Bryan v. Saginaw, 446 F.Supp. 436 (E.D. Mich. 1978). Indigent inmates are to be provided postage and materials for at least one letter per week for personal use and more for correspondence to court. (Saginaw County Jail, Michigan)

U.S. Supreme Court
CORRESPONDENCE
OUTGOING MAIL

Procunier v. Navarette, 434 U.S. 555 (1978). Navarette, an inmate of Soledad Prison, California, brought this 42 U.S.C. Section 1983 action against the director of the State Department of Corrections, the warden, and assistant warden, two correctional counselors, and a member of the prison staff in charge of handling inmate mail. The question on which the Supreme Court granted certiorari involved Navarette's third claim for relief. In that claim, Navarette alleged that his personal mail had not been mailed from the prison due to the subordinate staff's negligent application of prison mail regulations and the supervisory officer's failure to provide sufficient training and direction, all in violation of Navarette's constitutional rights. The U.S. District Court granted summary judgment for the prison officials, the Ninth Circuit Court of Appeals reversed, and the officials petitioned for a writ of certiorari and the Supreme Court reversed the lower court decision.

HELD: The court ruled that as prison officials, the defendants were not absolutely immune from liability in the Section 1983 damages suit and could only rely on qualified immunity as described in the cases of Scheur v. Rhodes, 416 U.S. 232 (1974); and Wood v. Strickland, 420 U.S. 308 (1975). 434 U.S. at 561 (Citing the Scheur holding).

HELD: Using the first standard put forth in Wood v. Strickland, the immunity defense would be unavailing to [the prison officials] if the constitutional right allegedly infringed by them was clearly established at the time of their challenged conduct, if they knew or should have known of that right, and if they knew or should have known that their conduct violated the constitutional norm. 434 U.S. at 562.

HELD: [T]here was no 'clearly established' first and fourteenth amendment right with respect to the correspondence of convicted prisoners in 1971-1972. As a matter of law, therefore, there was no basis for rejecting the immunity defense on the ground that petitioners knew or should have known that their alleged conduct violated a constitutional right. Because they could not reasonably have been expected to be aware of a constitutional right that had not been yet declared, petitioners did not act with such disregard for the established law that their conduct 'cannot reasonably be characterized as being in good faith.' [Citing Wood v. Strickland] 434 U.S. at 565.

HELD: In applying the second standard of Wood v. Strickland, authorizing liability where the official has acted with malicious intention to deprive a person of a constitutional right or to cause him other injury the court ruled,

"[t]he prison officers were charged with neglect and inadvertent interference with the mail and the supervisory personnel with negligent failure to provide proper training. To the extent that a malicious intent to harm is a ground for denying immunity, that consideration is clearly not implicated by the negligence claim now before us." 434 U.S. at 566.

DICTA: "Although the court has recognized that in enacting Section 1983 Congress intended to expose state officials to damages liability in some circumstances, the section has been consistently construed as not intending wholesale revocation of the "common-law" immunity afforded government officials." 434 U.S. at 561.

NOTE: Navarette's complaint contained a total of nine claims for relief. The first three involved interference with outgoing mail, and though this issue reached the Supreme Court, it was disposed of by an immunity analysis. The six other claims for relief were dismissed by the U.S. District Court for failure to state a federal claim. These claims involved:

- Termination of a law student visitation program;
- Removal of inmate plaintiff from post of prison librarian;
- The remainder sought to hold supervisory officials liable on a theory of vicarious rather than personal liability. 434 U.S. at 558 N.4. (Soledad Prison, California)

U.S. Supreme Court
"PUBLISHER-ONLY"
RULE
PACKAGES

Bell v. Wolfish, 441 U.S. 520 (1979). Pretrial detainees confined in the Metropolitan Correction Center (MCC) in New York City challenged virtually every facet of the institution's conditions and practices in a writ of habeas corpus, alleging such conditions and practices violate their constitutional rights.

MCC is a federally operated, short-term detention facility constructed in 1975. Eighty-five percent of all inmates are released within sixty days of admission. MCC was intended to include the most advanced and innovative features of modern design in detention facilities. The key design element of the facility is the "modular" or "unit" concept, whereby each floor housing inmates has one or two self-contained residential units, as opposed to the traditional cellblock jail construction. Within four months of the opening of the twelve-story, 450 inmate capacity facility, this action was initiated. The U.S. District Court for the Southern District of N.Y. enjoined no less than twenty practices at the MCC on constitutional and statutory grounds, many of which were not appealed. See, United States Ex Rel Wolfish v. Levi, 439 F.Supp. 114 (S.D.N.Y.). The Second Circuit Court of Appeals affirmed the district court decision, See, Wolfish v. Levi, 573 F.2d 118 (2d Cir. 1978), and reasserted the "compelling-necessity" test as the standard for determining limitations on a detainee's freedom. The U.S. Supreme Court granted certiorari "to consider the important constitutional questions raised by [recent prison decisions] and to resolve an apparent conflict among the circuits." 441 U.S. at 524: Do the publisher-only rule, the prohibition on receiving packages from outside sources, the search of living quarters, and the visual inspection of body cavities after contact visits constitute punishment in violation of the rights of pretrial detainees under the due process clause of the fifth amendment?

HELD: "Nor do we think that the four MCC security restrictions and practices...constitute 'punishment' in violation of the rights of pretrial detainees under the due process clause of the fifth amendment." 441 U.S. at 560, 561.

REASONING:

a. [T]he determination whether these restrictions and practices constitute punishment in the constitutional sense depends on whether they are rationally related to a legitimate nonpunitive governmental purpose and whether they appear excessive in relation to that purpose. 441 U.S. at 561.

b. Ensuring security and order at the institution is a permissible nonpunitive objective, whether the facility houses pretrial detainees, convicted inmates, or both...[W]e think that these particular restrictions and practices were reasonable responses by MCC officials to legitimate security concerns. [Detainees] simply have not met their heavy burden of showing that these officials have exaggerated their response to the genuine security considerations that activated these restrictions and practices. 441 U.S. at 561, 662.

CLOSING COMMENTS OF MAJORITY OPINION: "[T]he inquiry of federal courts into prison management must be limited to the issue of whether a particular system violates any prohibition of the constitution, or in the case of a federal prison, a statute. The wide range of 'judgment calls' that meet constitutional and statutory requirements are confined to officials outside of the judicial branch of government." 441 U.S. at 562.

GENERAL NOTES: The Court saw this case, a challenge to virtually every aspect of the operation of a state of the art detention facility, as an opportunity to clarify the judiciary's role in the operation of prisons. The five-four decision indicates there was no general consensus as to what that role is, or how it should be applied. No less than three possible standards of review are contained in the majority and dissenting opinions: 1) A "rational basis", subjective test; 2) A balancing of interests test; 3) An objective standard of review.

Despite J. Rehnquist's statement that "our analysis does not turn on the particulars of the MCC concept or design," the majority's reasoning frequently looks to that concept or design for justification of its positions. 441 U.S. at 525. Clearly, the "double-bunking" holding should be interpreted as applicable only to facilities where:

- a) Inmates are locked in their cells a maximum of eight hrs. a day and have access to a wide range of activities and programs; and
- b) No inmate is detained longer than sixty days.

Situations other than these likely will not fall within the strict holding on this issue. (Metropolitan Correction Center (MCC), New York)

U.S. District Court
CORRESPONDENCE

Carwile v. Ray, 481 F.Supp. 33 (E.D. Wash. 1979). If opening of "judicial mail" actually occurred, it was in direct disobedience to the sheriff's orders and, therefore, the sheriff could not be liable. (County-City Jail, Spokane County, Washington)

U.S. District Court
"PUBLISHER-ONLY"
RULE

Cotton v. Lockhart, 476 F.Supp. 956 (E.D. Ark. 1979). The "publisher only" rule is found to be valid as a protection of institutional security. (Arkansas Department of Corrections, Cummins Unit)

U.S. District Court
PROHIBITION-
PUBLICATIONS

Goodson v. United States, 472 F.Supp. 1211 (E.D. Mich. 1979). Court finds the National Socialist Bulletin to be racist and may cause violence between races. Its exclusion is proper as it constitutes a threat to security. (Federal Correctional Institute, Michigan)

U.S. Appeals Court
CENSORSHIP
LIMITATION
LIMITING CORRES.
INSPECTION
ATTORNEY MAIL
MEDIA

Jones v. Diamond, 594 F.2d 997 (5th Cir. 1979), cert. denied, 102 S.Ct. 27 (1980). In this opinion, the U.S. Fifth Circuit Court of Appeals reviewed Mississippi District Court Judge William Cox's ruling on what the Fifth Circuit termed a "challenge to nearly every conceivable facet of the Jackson County Jail at Pascagoula, Mississippi." The court first noted that the conditions at the Jackson County Jail were not "uncivilized" or "barbaric and inhumane", as the court had found rulings on the conditions of other jails. A peculiar aspect of this case was that convicted felons were being held in the jail while the state penitentiary was being brought up to constitutional standards. Consequently, there were convicted felons, convicted misdemeanants and pretrial detainees in the jail. Accordingly, the court, in reviewing the conditions at the jail, applied different standards depending on whether the inmate was pretrial detainee or a convicted felon or misdemeanant. The court then reviewed the history of corrections in the State of Mississippi and specifically in Jackson County. It noted that Jackson County officials had spent a considerable amount of money and instituted several new programs in the last ten years. In addition, at the time of this opinion, the county was in the process of erecting a new jail. After noting these facts, the court made rulings in several areas.

MAIL. The court clearly spelled out the rights of inmates with regard to mail:

[P]rison officials may constitutionally censor incoming and outgoing general correspondence. No numerical limitations may be placed upon prison correspondence, but jail officials may employ a 'negative mail list' to eliminate any prisoner correspondence with those on the outside who affirmatively indicate that they do not wish to receive correspondence from a particular prisoner. Officials may not require prior approval of the names of individuals with whom prisoners may correspond. Finally, letters which concern plans for violations of prison rules or which contain a graphic presentation of sexual behavior in violation of the law may be withheld.

Outgoing mail to licensed attorneys, courts, and court officials must be sent unopened, and incoming mail from such sources may be opened only in the presence of the inmate recipient, if considered necessary to determine authenticity or to inspect for contraband. Prisoners may be required to submit the names of attorneys reasonably in advance of proposed mailings so that officials can ascertain whether the named attorney is licensed. Prisoners have the same general rights as to media mail.

(Jackson County Jail, Pascagoula, Mississippi)

1980

U.S. District Court
PROHIBITION-
PUBLICATIONS

Brown v. Hilton, 492 F.Supp. 771 (D. N.J. 1980). The seizure of literature on the making of bombs and weapons from an inmate does not violate the first amendment. (New Jersey State Prison, Trenton)

U.S. District Court
SEIZURE

Henderson v. Ricketts, 499 F.Supp. 1066 (D. Colo. 1980). While jailhouse lawyers cannot be prevented from providing services, they can be prevented from charging fees. Therefore, the state could properly intercept and seize a check mailed by one inmate to another for legal services. (Canon Correctional Facility, Colorado)

U.S. District Court
PROHIBITION-
CORRES. WITH
JURORS

Intersimone v. Carlson, 512 F.Supp. 526 (M.D. Penn. 1980). An institutional prohibition on correspondence with the individual's trial jurors was valid and did not violate the right of access to the courts where it was required by a court order limiting such correspondence. The court notes that the limitation could easily violate the right of access to the courts in a different situation. (United States Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
CORRESPONDENCE

Mahler v. Slattey, 489 F.Supp. 798 (E.D. Vir. 1980). A limit of free postage for five legal letters per day is reasonable. Free postage does not include letters to Congress. (Petersburg Facility, Virginia)

U.S. District Court
DELAY
SEIZURE

Taylor v. Leidig, 484 F.Supp. 1330 (D. Colo. 1980). Allegations of delay and/or confiscation of mail state a claim upon which relief can be granted. (Colorado State Penitentiary)

1981

U.S. District Court
LIMITING CORRES.

Hearn v. Morris, 526 F.Supp. 267 (E.D. Calif. 1981). State prison officials violated the first amendment rights of a prisoner when they refused to allow him to mail letters addressed to a female minor to whom he was not related by blood or marriage. The rule under which they acted, requiring prior parental approval for such communication, swept unnecessarily broad. The court reasoned that the prison officials could meet the legitimate state interest in facilitating parental censorship of the correspondence by mailing a postcard contemporaneously with the inmate's letter notifying the child's parents of the salient facts concerning the communication and telling them the correspondence could be halted if they objected to it. (Folsom State Prison, California)

U.S. District Court
PROHIBITION-
PUBLICATIONS
RELIGION

Parnell v. Waldrep, 511 F.Supp. 764 (W.D. N.C. 1981). The institutional prohibition against receiving any paperback books, magazines or newspapers violates the first amendment. The regulation is not merely a reasonable time, place, and manner restriction as the defendants suggest. It would be possible to avoid the security problems of these publications (fires and plugging of plumbing) without totally prohibiting them. The actions of the defendants in establishing library services since the filing of the suit and permitting receipt of such material are noted and affect the remedy. Permitting receipt of Bibles and religious tracts while prohibiting all other soft cover publications is the establishment of religion in violation of the first amendment. (Gaston County Jail, North Carolina)

U.S. Appeals Court
LIMITING
LANGUAGE
DELIVERY

Ramos v. Lamm, 639 F.2d 559 (10th Cir. 1980), cert. denied, 450 U.S. 1041. Where a substantial portion of the population of the institution does not speak English (at least as a primary language), limiting all correspondence to English is irrational and violates the first amendment. A restriction of delivery of mail which would cause severe psychiatric or emotional disturbance to the inmate is invalid where there is essentially no psychiatric staff to deal with the inmate. Where outgoing privileged mail is opened and inspected for contraband, it must be opened in the presence of the inmate. Mail concerning the prison administration or civil litigation is entitled to privileged status. (State Penitentiary, Canon City, Colorado)

1982

U.S. Appeals Court
LEGAL MAIL

Davidson v. Scully, 694 F.2d 50 (2d Cir. 1982). Inmate is allowed to send unopened mail to ACLU and Army legal offices. An inmate protested prison regulations which prohibited four of his sealed letters to be mailed. The U.S. District Court for the Southern District of New York dismissed the case, citing Oswald v. Sostre, 442 F.2d 178 (1971). The inmate had attempted to send mail to the Army legal offices and the ACLU. The inmate was informed that his mail could not be sent sealed since it was not legal mail, although he had marked it as legal mail. He was told that legal mail had to be addressed to an attorney. Regulations also required for nonlegal mail that the individual first receive permission from the recipient to send the letter. The United States Court of Appeals, Second Circuit, reversed the lower court decision, finding the institutional practices constituted an interference with the right of access to the courts. The court noted that the fact that incoming mail from such sources can be opened and inspected for contraband does not imply that outgoing mail can be opened and inspected, and found no legitimate purpose served by such inspection. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
RELIGION

Mosby v. Mabry, 697 F.2d 213 (8th Cir. 1982). Opening religious mail not in presence of inmate is upheld. The court of appeals upheld the institutional practice of opening religious mail out of the presence of the inmate, finding it did not violate first amendment rights. (Arkansas Department of Correction)

1983

U.S. District Court
SEIZURE
ISOLATION

Guajardo v. Estelle, 568 F.Supp. 1354 (S.D. Tex. 1983). Some types of mail may be kept from an inmate in punitive segregation. The federal court has upheld the practice of denying all publications received through the mail to inmates in punitive segregation (solitary confinement) since it served legitimate security interests of the institution. Officials contended that the threat of solitary confinement deters inmates from violating prison rules and to permit them access to books, magazines, newspapers, and other publications would "water down" the conditions; making the threat of solitary confinement meaningless. The officials asserted that, without the threat, it would be difficult to maintain security and order within the prison. The court upheld the practice reasoning that a prison rule may infringe on an inmate's first amendment rights in the interest of prison security, order or rehabilitation. (Texas DOC)

U.S. District Court
READING OF MAIL

Heimerle v. Atty. Gen. U.S.A., 558 F.Supp. 1292 (S.D. N.Y. 1983). Federal court reviews guidelines regarding reading of inmate general correspondence. The defendants, prison officials, contended that they were allowed to open and read all outgoing and incoming correspondence to and from prisoners. They based this contention on Oswald v. Sostre, 405 U.S. 978, 92 S.Ct. 1190 (1972). The court found that reliance on Sostre was misplaced in light of the subsequent adoption by the Supreme Court in Procunier v. Martinez, 416 U.S. 396, 94 S.Ct. 1800 (1974) of a more stringent test for restrictions on prisoners' first amendment rights than that utilized in Sostre. See also Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861 (1979). The court interpreted Wolfish to require that an inmate's general correspondence mail may only be read with good cause. The court stated: "At a minimum, Wolfish can be read as limiting Sostre's sweep to those situations where the challenged interference substantially furthers a plausible security interest in a rational manner."

The court also stated that prison authorities may not routinely open and read a prisoner's outgoing mail:

While we recognize that the security level of a prison, and presumably, of the majority of its inmate population, may properly influence the restraints placed on all inmates, we nevertheless note that were he incarcerated at a prison with a security level commensurate with his individual status, prison authorities would not be permitted to open and read his outgoing mail unless they had reason to believe it would interfere with the orderly running of the institution, that it would be threatening to the recipient, or that it would facilitate criminal activity.' 28 C.F.R. Section 540.13 (c).

However, the court was incapable of redressing the inmate's claim because he could not show that he had first resorted to his administrative remedies. (Federal Correctional Institution, Otisville, New York)

U.S. Appeals Court
READING OF MAIL
REJECTING MAIL
INDIGENT INMATES
PRIVILEGED
CORRESPONDENCE

Meadows v. Hopkins, 713 F.2d 206 (6th Cir. 1983). Officials at a high security facility are allowed to read all inmate general correspondence. A federal court of appeals has ruled that prison officials may routinely read all inmate general correspondence as a security measure. Correspondence may be rejected by officials if:

- it violates legal or postal regulations;
- it contains information of escape plots, plans to violate laws or institutional rules;
- it contains threats, extortion, or obscenity;
- it contains a code; or
- it contains contraband.

The ruling did not effect the prisoners' rights to confidential incoming and outgoing "Special Mail" (federal and state officials, legal officers, and news media).

Another claim was rendered moot by a change in institutional policy, which withdrew the five per month limit on free postage stamps provided. (Federal Correctional Institution, Memphis, Tennessee)

U.S. District Court
DELIVERY

Odom v. Tripp, 575 F.Supp. 1491 (E.D. Mo. 1983). Pretrial detainee in city jail is not entitled to receive mail on Saturday. A detainee at the St. Louis City Jail sued the city, alleging that the practice of not delivering mail to prisoners on Saturday amounted to punishment. Based on the reason presented by administrators (lack of personnel) and the lack of intent to punish, the federal district court found the practice "reasonably related" to a legitimate nonpunitive governmental objective, and therefore, found no violation of the plaintiff's constitutional rights. (St. Louis City Jail, Missouri)
1984

U.S. District Court
MEDIA
INSPECTION

Burton v. Foltz, 599 F.Supp. 114 (E.D. Mich. 1984). Prison officials are not allowed to inspect mail to media representatives. A federal district court judge in Michigan has found that prison regulations which permit inspection of mail from inmates in administrative segregation to media representatives infringes on prisoner first amendment rights. The court ruled that security considerations did not outweigh prisoner free speech rights. (State Prison of Southern Michigan)
1985

U.S. District Court
PROHIBITION

Esposito v. Leddy, 618 F.Supp. 1362 (D.C. Ill. 1985). A federal prison inmate's first amendment rights were not violated by prison regulations under which letters from the co-defendant, who was incarcerated in a state prison, concerning pending criminal charges in the state court, were returned to the co-defendant and under which the prison official refused to mail a letter from the federal inmate to the co-defendant until the inmates had utilized administrative grievance procedures and obtained permission to correspond.

Prison officials are not necessarily free to invoke administrative regulations concerning inmate correspondence to arbitrarily prohibit one inmate from writing another. Prison officials did not apply administrative regulations concerning inmate correspondence in an arbitrary or unconstitutional manner where a federal prison inmate was not allowed to communicate by letter with his state-incarcerated co-defendant until he gained approval from the appropriate authorities. (Metropolitan Correctional Center, Illinois)

State Appeals Court
INDIGENT INMATES

Flowers v. Smith, 496 N.Y.S.2d 149 (A.D. 4 Dept. 1985). A New York appellate court reversed a lower court and held that compelling inmates to reimburse the state for postage costs that exceed their limited free amount is constitutionally permissible. A department directive which provides free postage for five letters per week requires inmates to pay postage for letters in excess of that amount. The money is deducted from their inmate accounts, and there is no provision for recoupment after the inmate is released from prison. (Attica Correctional Facility, New York)

U.S. Appeals Court
ISOLATION

Gregory v. Auger, 768 F.2d 287 (8th Cir. 1985), U.S. cert. denied in 106 S.Ct. 601. Mail Restrictions for Prisoners in Disciplinary Detention Upheld. An Iowa reformatory policy of allowing only first class mail of a personal, legal or religious nature to prisoners in disciplinary detention was challenged by a prisoner when literature was

withheld. The U.S. Court of Appeals for the Eighth Circuit upheld the practice. Corrections administrators argued that the mail restrictions served a safety purpose (preventing cellblock fires and facilitating cell searches) and made disciplinary detention unattractive to other prisoners. The court agreed, stating that solitary confinement is a disciplinary measure designed to deprive prisoners of certain rights in order to promote a legitimate governmental interest in maintaining discipline. (Iowa Men's Reformatory)

1986

U.S. Appeals Court
OPENING MAIL
PRIVILEGED MAIL

Chinchello v. Fenton, 805 F.2d 126 (3rd Cir. 1986). A prisoner failed to establish a Bivens claim against the director of the Bureau of Prisons for failing to train officers allegedly responsible for opening the prisoner's mail and keeping the prisoner in administrative detention. The prisoner did not allege that the director had contemporaneous knowledge of the offending incidents or knowledge of a prior pattern of similar incidents and did not allege circumstances under which the director's inaction could have been found to have communicated a message of approval to the offending officers. "Special mail" is mail from a federal prisoner directed to attorneys, designated state and federal officials, and representatives of news media, and it is not to be opened by prison officials. (Federal Correctional Institution in El Reno, Oklahoma)

U.S. Appeals Court
CENSORSHIP
INDIGENT INMATES
MEDIA
LIMITATION

Gaines v. Lane, 790 F.2d 1299 (7th Cir. 1986). Appeals court upholds limitations on free postage for prisoner legal mail and other mail practices.

In two separate cases, prisoners challenged Illinois Department of Corrections policies regarding prisoner mail. Both complaints were dismissed and were consolidated on appeal. The appeals court held that: (1) regulations governing nonprivileged mail were constitutionally valid (mail is censored, reproduced or withheld if it presents a threat to prison security); (2) regulations which allow incoming privileged mail to be opened to determine that nothing other than legal or official matter was enclosed was justifiable; (3) the first amendment requires only that media mail be treated like all other nonprivileged mail; and (4) regulations which limited the number of first class letters mailed at state expense to three per week for indigent prisoners were "a reasonable attempt to balance the right of prisoners to use the mails with prison budgetary considerations....it is indisputable that inmates must be provided at state expense with the basic material necessary to draft legal documents and with stamps to mail them...however, although prisoners have a right of access to courts, they do not have a right to unlimited free postage." (Illinois Department of Corrections)

U.S. Appeals Court
LIMITATION

Hernandez v. Estelle, 788 F.2d 1154 (5th Cir. 1986). Prison officials properly suppressed the distribution of a publication and were entitled to qualified immunity even though they did not accurately follow their own procedures.

A prison inmate brought a federal civil rights action alleging that prison officials violated his free speech rights by suppressing distribution of a revolutionary publication within the prison system. The United States District Court for the Southern District of Texas dismissed the suit, and the inmate appealed. The court of appeals held that: (1) censorship was justified to avoid a perceived threat to prison security, and (2) officials were entitled to qualified immunity. The court ruled that the decision of Texas Department of Corrections not to distribute an issue of a bilingual revolutionary publication to subscribers within the prison system did not violate the subscribers' first amendment rights where the decision was supported by proven objective factors relating to prison security.

The court also held that the state prison officials did not act outside the scope of their qualified immunity from inmate's federal civil rights action for allegedly violating his free speech rights by failing to clip those portions of the publication which officials found threatening to prison security and allowing remainder to be distributed. The state prison officials' violation of prison rules requiring notification that a publication is being withheld from inmate to be given to inmates within forty-eight hours did not entitle inmates to relief under federal civil rights law. The mere failure to give timely notice, but with complete and adequate due process procedures after notice actually was given, did not violate the Constitution. (Ellis Unit, Texas Department of Corrections)

U.S. District Court
ISOLATION
WITHHOLDING
CORRESPONDENCE

Jackson v. Brookhart, 640 F.Supp. 241 (S.D. Iowa 1986). A prisoner, whose mail (except for religious or legal mail) was withheld for the 286 days she served in disciplinary detention, as a result of thirty-eight separate disciplinary proceedings, brought action against prison officials alleging violation of her first amendment right to read and possess literature. The district court held that the prison policy furthered a substantial governmental interest in deterring future misconduct. Limitation on the prisoner's first amendment freedoms was no greater than was necessary or essential to governmental interests involved. (Iowa Medical and Classification Center)

U.S. District Court
INDIGENT INMATES
CORRESPONDENCE

Jackson v. Procnier, 789 F.2d 307 (5th Cir. 1986). A prisoner's allegations that he was deprived of his constitutional right of access to the courts when his petition in forma pauperis was intentionally delayed by prison mailroom personnel stated a cause of action under Section 1983. The delay resulted in the dismissal of his state appeal from an adverse judgment in a civil suit. The prisoner alleged that mail officers deliberately held up his mail, that in violation of prison policy he was denied the opportunity to calculate the proper postage needed, and that there was a long history of deliberate and malicious indifference in the handling of inmate legal mail. (Department of Corrections, Texas)

U.S. District Court
LEGAL MAIL

Jeffries v. Reed, 631 F.Supp. 1212 (E.D. Wash. 1986). A death row inmate challenged the constitutionality of his transfer to the intensive management unit of the prison and also challenged the conditions of his incarceration in that unit. On cross motions for summary judgment, the district court held that: (1) the transfer of an inmate to a unit on the grounds that he inherently imposed a security risk in light of his sentence did not deny the inmate due process; (2) inspection of the inmate's legal mail by staff of the unit did not violate the inmate's rights of free speech or equal protection; (3) digital rectal search which the inmate underwent prior to being transferred to the unit and strip and visual body-cavity searches he underwent each time he left his cell did not constitute unreasonable searches and seizures; (4) denial of contact with other inmates did not violate the first, sixth, or fourteenth amendments; and (5) the telephone schedule, permitting the inmate to place a collect call to his attorney at least three times per week between the hours of 8:00 a.m. and 4:00 p.m. did not deny the inmate adequate access to counsel and the courts. (Intensive Management Unit, State Prison, Washington)

U.S. Appeals Court
ISOLATION
LIMITATION

Little v. Norris, 787 F.2d 1241 (8th Cir. 1986). An inmate of a maximum security unit brought civil rights complaints challenging the constitutionality of prison policies which restricted his mail privileges, his right to attend group religious services and his right to receive legal assistance from another inmate. The United States District Court entered summary judgment dismissing the complaints, and the inmate appealed. The court of appeals held that the prison policy denying the inmate a right to receive or send personal correspondence during thirty days in punitive isolation did not violate the inmate's constitutional rights.

A prison policy which prohibited an inmate from possessing loose postage stamps did not violate the inmate's constitutional rights, where the policy was enacted in order to eliminate exchange of contraband among inmates, and the inmates were allowed to purchase envelopes with postage stamps embossed on them at the commissary. The fact that while the inmate was in punitive isolation, the inmate was denied the right to receive or send personal correspondence but was entitled to receive legal and media mail, did not deny the inmate's constitutional rights, where the purpose of withholding personal mail was to make punitive isolation unpleasant, and thereby discourage improper behavior and promote security within the prison, and such sanction was only imposed for thirty days. (Tucker Maximum Security Unit, Arkansas Department of Corrections)

U.S. District Court
SEIZURE

Nakao v. Rushen, 635 F.Supp. 1362 (N.D.Cal. 1986). A prison inmate and his wife brought Section 1983 action, seeking damages for violation of their constitutional rights, arising from the disposition of letters seized during a search of the inmate's cell. The United States District Court entered summary judgment in favor of the inmate and his wife, and the state prison official appealed. The court of appeals, 766 F.2d 410, vacated and remanded. On remand, the district court held that the action of the prison official in sending copies of official correspondence received by the inmate from his wife, then a county social worker, to the wife's supervisor did not constitute a violation of the first amendment or the privacy provision of the California Constitution.

The action of a prison official in sending copies of official letters received by the inmate from a county social worker to the social worker's supervisor did not deprive the inmate and social worker of their liberty without due process of law under privacy article of the California Constitution, considering that provision does not protect the recipient of official correspondence from having the author's supervisor discover the contents thereof. The inmate could not reasonably expect that the county would be unaware of the contents of official letters he received, and the social worker could not assert an expectation that letters she wrote in her official capacity could not be read by her supervisor. (San Quentin, California)

State Appeals Court
PROHIBITION

People v. McCaslin, 223 Cal. Rptr. 587 (Cal.App. 1 Dist. 1986). Intercepting and reading a letter sent from one inmate to another did not violate statutory or constitutional rights, held a California appellate court. The court upheld introducing the letter in the inmate's conviction for escape. (Contra Costa County Sheriff's Department, California)

U.S. District Court
INSPECTION OF
MAIL
OPENING MAIL
PRIVILEGED
CORRESPONDENCE
LEGAL MAIL

Evans v. Jenne, 660 F.Supp. 426 (S.D. Miss. 1986). By alleging that legal mail from the Department of Corrections was opened, a prisoner stated a legal claim under federal civil rights law. He claimed that mail from the Mississippi Department of Corrections concerning his probation violation had been opened by prison officials. The federal district court refused to dismiss the inmate's complaint concerning the opening of his legal mail because prison regulations state that incoming mail from "privileged communicants" such as attorneys, courts or government agencies was not to be opened unless believed to be counterfeit or contain contraband--and then only in the presence of the inmate after filing a form noting the reason why opened. Prison regulations concerning the opening and inspection of other incoming non-legal personal mail were upheld as justified by security requirements. (Jackson Co. Adult Deten., Mississippi)

1987

U.S. Appeals Court
PROHIBITION-
BETWEEN
INMATES
PROHIBITION-
PUBLICATIONS
REJECTING MAIL
CENSORSHIP

Abbott v. Meese, 824 F.2d 1166 (D.C. Cir. 1987). Inmates brought an action challenging the regulation of correspondence between inmates of different prisons, and the rejection of publications directed to the inmates. The U.S. District Court entered a judgment permanently enjoining prison officials from applying certain regulations, but granting judgment for prison officials in all other respects, and both parties appealed. The court of appeals, reversing and remanding in part, and affirming in part, found that prison officials had a burden of showing that the rejection of a publication was at least generally necessary to protect one or more of legitimate governmental interests of security, order, or rehabilitation. The prison regulation prohibiting inmate-to-inmate correspondence except for correspondence between family members or correspondence between inmates involved in the same legal action did not prevent the inmate from seeking and obtaining legal assistance from other inmates, in violation of the inmates' constitutional right of access to the courts, where the warden of the prison was required to establish an inmate law library and procedures for access to legal reference materials and legal counsel for the preparation of legal documents. The prison regulation allowing the warden to reject a publication to which an inmate had subscribed or which had been otherwise sent to the inmate if the publication is determined to be detrimental to security, good order or discipline of the institution or if it might facilitate criminal activity, failed to satisfy a minimum first amendment requirement that censorship of a publication is generally necessary. The regulation allowed for the rejection of material which met any one of several criteria but required no finding of causal nexus between the possession of listed material and breaches of security or the order or impairment of rehabilitation. The Federal Bureau of Prisons' practice of rejecting and returning an entire publication to which an inmate had subscribed or which had otherwise been sent to an inmate once a portion of the publication was deemed objectionable, even assuming that the portion was appropriately rejected as generally necessary to protect legitimate governmental interests, was inconsistent with the first amendment. The offending material could be deleted and the remainder turned over to the inmate. Although deference was to be accorded to the Federal Bureau of Prisons' expertise in determining which publications inmates had subscribed to or which had been otherwise sent to inmates were likely to produce a breach of security or order or impairment of rehabilitation, the prison administrators had a burden of showing that rejection of the publication was at least generally necessary to protect one or more of legitimate governmental interests of security, order or rehabilitation. Each rejection should be addressed individually and none upheld unless consistent with minimum first amendment standards applicable to such publications. (District of Columbia)

U.S. District Court
INSPECTION OF
MAIL
OPENING MAIL
INDIGENT INMATES
LEGAL MAIL

Averhart v. Shuler, 652 F.Supp. 1504 (N.D.Ind. 1987), cert. denied, 108 S.Ct. 1045. An Indiana inmate brought action against prison officials concerning their handling of inmate's mail. The District Court held that: (1) The inmate failed to show that prison authorities violated his constitutional rights by opening legal mail addressed to him in his absence; (2) the inmate did not establish a constitutional rights violation by prison officials' delay in mailing his correspondence; and (3) the inmate is required to pay postage costs on mail sent to elected officials. (Indiana State Prison)

State Appeals Court
POSTAGE

Jordan v. Department of Corrections, 418 N.W.2d 914 (Mich. App. 1987). A state penal inmate filed a lawsuit claiming he had been denied a "reasonable quantity of postage stamps" to which he was entitled under a Department of Corrections rule that provided free postage to inmates. It was then shown that the plaintiff was not indigent and therefore not entitled to free postage stamps under the language of a Department of Corrections policy directive. A state appeals court found that a policy directive regarding free postage for inmates was not promulgated as a rule under the state's Administrative Procedures Act. State law prohibits adopting a guideline or policy directive in lieu of a rule to avoid the procedural requirements. The policy directive, the court found, was not a "mere interpretive statement or explanatory guideline" exempt from the law's requirement, since it contradicted the general rule concerning providing of free postage to inmates. The inmate was awarded the amount of postage he would have otherwise received. (Michigan Department of Corrections)

U.S. District Court
INSPECTION OF
MAIL
PRIVILEGED MAIL

Knop v. Johnson, 667 F.Supp. 467 (W.D. Mich. 1987). A federal district court ruled that a corrections department's legal mail policy violated inmates' constitutional right to be present when prison officials opened their legal mail. The court found that it was not a violation of the inmates rights to require prisoners to request privileged status for their legal mail, but the way in which the policy was implemented did unconstitutionally infringe upon the inmates' right to be present when such mail was opened. Not only were differences in the way in which different facilities implemented the policy not adequately explained to inmates, but the inmates were also required to renew their request for confidential treatment of their legal mail upon transfer to a new institution. (State Prison of Southern Michigan, Michigan Reformatory, Riverside Correctional Facility, Marquette Branch Prison)

U.S. Appeals Court
INSPECTION OF
MAIL
PRIVILEGED MAIL

Martin v. Brewer, 830 F.2d 76 (7th Cir. 1987). A federal appeals court held that a prison practice of treating all incoming mail as general correspondence which could be opened and read before delivery unless the envelope was specially marked did not violate the inmate's free speech rights with respect to mail from attorneys. However, the court found that an evidentiary hearing was required on the inmates' claims with respect to mail from public officials other than court personnel. (WI State Prison)

U.S. Appeals Court
PROHIBITION-
PUBLICATIONS
CENSORSHIP
RELIGION

Murphy v. Missouri Department of Corrections, 814 F.2d 1252 (8th Cir. 1987). Inmates brought action against prison officials because they were not allowing them to receive mail and publications relating to Aryan Nations. Prison officials said they denied the prisoners access to this material because they were enforcing the policy on the basis that any support of white supremacy increased tension and racial unrest, and threatened prison security. The court ruled, however, that only those materials that advocate violence or "are so racially inflammatory as to be reasonably likely to cause violence at the prison" may be restricted in the mail. Therefore, the broader mail policy of the prison violated prisoner rights to free speech and to the free exercise of religion. As a result, the court told prison officials they must open, read and review each piece of mail to determine if it advocates violence or is racially inflammatory. The court summarized that censorship of inmate mail must not only be justified by the legitimate need for prison security, but must also be no more restrictive than necessary to protect prison security. (Missouri Training Center for Men)

State Appeals Court
LEGAL MAIL

Rochon v. Maggio, 517 So.2d 213 (La. App. 1 Cir. 1987). An inmate alleged that prison officials violated his constitutional right of access to court when they opened an envelope the prisoner had in his possession during a shakedown search. The prisoner had attempted to walk out of his cell with the envelope after being told not to bring anything with him, contending that the letter was "legal mail." The court found that the inspection of the envelope, even though no contraband was found, was justified by suspicious actions of the prisoner. (Angola State Penitentiary, Louisiana)

U.S. Appeals Court
INSPECTION OF
MAIL
OUTGOING MAIL

Rodriguez v. James, 823 F.2d 8 (2nd Cir. 1987). An inmate sued prison officials alleging they violated his rights when they refused to mail his sealed business correspondence that was addressed to two suppliers of electronic equipment. Department of Corrections Services regulations state that business mail must be submitted unsealed and is subject to inspection and that mail that obligates an inmate's funds must receive prior approval to verify that the inmate has sufficient funds to make payment. The court ruled that the refusal to send sealed business mail was the implementation of the correctional policy of the State and granted summary judgment in favor of all defendants. (Collins Correctional Facility)

U.S. District Court
LEGAL MAIL

Thornley v. Edwards, 671 F.Supp. 339 (M.D. Pa. 1987). An inmate stated a colorable violation of his Sixth Amendment right of free access to the courts by alleging that prison officials opened his legal mail outside his presence. Regulations of the Bureau of Prisons requiring a "special mail" marking inscribed on the front of an envelope for correspondence to be subject to the requirement that it be opened in the inmate's presence affronted the Sixth Amendment, according to a federal district court. A prisoner's constitutional right of free access to courts is meaningful only if it provides them reasonable assurance that their legal mail will not be opened and read before it reaches them. (U.S. Penitentiary, Lewisburg, Pennsylvania)

U.S. Supreme Court
CORRESPONDENCE
PROHIBITION

Turner v. Safley, 107 S.Ct. 2254 (1987). A class action was brought to determine the constitutionality of mail regulations. The U.S. District Court declared that the regulations were unconstitutional, the appeals court affirmed, and the plaintiffs petitioned for a writ of certiorari. The Supreme Court found that the inmate-to-inmate correspondence rule, permitting correspondence between immediate family members who were inmates at different institutions or to extent it related to legal matters, but allowing other inmate correspondence only if it was in the best interest of the parties, was "reasonably related" to the legitimate security concerns of prison officials, so as not to be facially invalid. (Missouri Division of Corrections)

U.S. Appeals Court
CENSORSHIP
DELAY
INSPECTION OF
MAIL
OPENING MAIL
RELIGIOUS
LITERATURE

Valiant-Bey v. Morris, 829 F.2d 1441 (8th Cir. 1987). A federal appeals court held that a prison mail policy, which expressly required that any censorship of mail be justified on the basis of institutional security and safety of employees and prisoners, was not unconstitutionally overbroad. However, the court found that the prisoner's allegations concerning the interception and delay of mail from religious organizations stated a claim under Section 1983. A prisoner's allegations that prison officials wrongfully confiscated memorandum mailed to him by the local chapter of the Moorish Science Temple of America, and did not follow minimum procedural safeguards in doing so, and that prison officials handled and delayed delivery of mail from the religious organization in a manner that discriminated on the basis of race and religion were legally sufficient to state a claim under section 1983. (Missouri Training Center)

1988

U.S. Appeals Court
LIMITATION
CORRESPONDENCE-
FRIENDS,
RELATIVES

Coleman v. Turner, 838 F. 2nd 1004 (8th Cir. 1988). An inmate and her future husband filed a lawsuit against the Correctional Center's superintendent and a corrections officer. They alleged that officials had violated their right to send and receive mail, had harassed them, had violated their right of access to the courts, and had denied the future husband the opportunity to visit and punished him in a cruel and unusual manner. In a jury trial, the court agreed with the plaintiffs on the claim of retaliation, but the court denied a request for an injunction against future harassment. The court then ruled that since the plaintiffs acted as their own attorney, they were not entitled to attorney's fees under 42 U.S.C. Section 1988; however, they may be able to recover costs, which would be considered during future court appearances. (Renz Correctional Center)

U.S. Appeals Court
OUTGOING MAIL
CORRESPONDENCE-
COURT
LEGAL MAIL

Richardson v. McDonnell, 841 F.2d 120 (5th Cir. 1988). According to a federal appeals court, delaying or even losing an inmate's legal mail will not always amount to a violation of the inmate's constitutional rights. An inmate sued local jail officials after two writs of habeas corpus were never received by the clerk of court's officer for filing. The court found the evidence showed, at most, that prison officials had negligently lost the mail and nothing indicated that the mail had intentionally been mishandled. The court also noted that the facility had reasonable mail procedures in place for the handling of prisoner mail. Officials were not liable, the court found, because to find a constitutional violation it would be necessary to show that the officials had engaged in intentional misconduct in handling of the mail. Further, even if intentional conduct had been shown, there would still be no liability in this case because the prison's error was noted in time so that the inmate could re-prepare and timely file his writs without harming his case. (Louisiana State Prison)

U.S. District Court
OUTGOING MAIL

Therault v. Magnusson, 698 F.Supp. 369 (D.Me. 1988). An inmate sought a preliminary injunction prohibiting the prison from enforcing a mail regulation requiring inmates to use envelopes stamped with language that the correspondence was forwarded from prison and the prison was not responsible for the substance or content of the enclosed communication. The policy was enacted in response to complaints from merchants seeking payment for goods ordered by mail on credit, often involving unauthorized use of credit card numbers, as well as complaints of harassment and abuse through mail sent to members of the public from inmates, and the message stamped did not have a severe intrusive effect on the inmate's right to communicate freely. Adoption of the policy resulted in a substantial decrease in such complaints. The inmate claimed that the policy damaged his freedom of speech and association and that his family had requested that he not write them anymore because the envelope "lets everyone know he is in prison." He further alleged that his son was harassed by other children who saw that statements on the envelopes and thereby learned that his father was in prison. The district court found that the inmate failed to establish the likelihood of prevailing on merits of the claim that the mail regulation violated the first and fourteenth amendments, and thus, the inmate was not entitled to a preliminary injunction. (Maine State Prison)

1989

U.S. District Court
LEGAL MAIL
OPENING MAIL
PRIVILEGED MAIL

Faulkner v. McLocklin, 727 F.Supp. 486 (N.D. Ind. 1989). A pretrial detainee brought a civil rights action against the county sheriff, alleging the opening of his legal mail outside of his presence. The district court found that the county jail, which had adopted no policy or procedure concerning the marking of legal mail, violated the pretrial detainee's civil rights by opening letters from the American Civil Liberties Union, legal services program, and the U.S. Senate committee outside of the detainee's presence. The letters were from attorneys or a senator and bore designations sufficient, absent specific requirements articulated by the jail, to alert the jail personnel to their privileged nature. Inmate mail from elected officials or government agencies is entitled to the same

protection from opening outside of the inmate's presence as mail from attorneys. Just as attorney mail touches upon the sixth amendment right to counsel and the first amendment right to access to courts, mail from elected officials and government agencies touches upon the inmate's first amendment. The court found that the pretrial detainee was entitled only to nominal damages. Jail officials had honored the detainee's rights more scrupulously than necessary with respect to the vast majority of the detainee's legal mail, and there was no showing of actual damage. (Fulton County Jail, Indiana)

U.S. Appeals Court
PROHIBITION-
PUBLICATIONS

Harper v. Wallingford, 877 F.2d 728 (9th Cir. 1989). An inmate brought a Section 1983 suit alleging that prison authorities had violated his first amendment rights by withholding mail. The U.S. District Court awarded summary judgment in favor of the defendants, and the inmate appealed. The appeals court, affirming the decision, found that the inmate's first amendment rights were not violated when mail from an organization espousing consensual sexual relationships between adult males and juvenile males was withheld from him. Factors to be considered in determining the reasonableness of a challenged prison regulation include: whether the regulation has a logical connection to legitimate government interests invoked to justify it; whether alternative means of exercising the right on which the regulation impinges remain open to prison inmates; the impact that that accommodation of an asserted right will have on guards, other inmates, and prison resources; and the absence of ready alternatives that fully accommodate the prisoner's rights at de minimis cost to valid penological interests. The mail in question was from the North American Man/Boy Love Association ("NAMBLA") and consisted of a membership application and a copy of the organization's bulletin. The prison mail room employees refused to deliver the material to the plaintiff and notified the plaintiff of their intentions. Prison officials refused to deliver the materials to the plaintiff because they felt the material threatened prison security and therefore violated the Washington State Department of Corrections Policy Directive 450.020(6)(c). The plaintiff unsuccessfully appealed the decision through the prison grievance system. (Washington State Penitentiary)

U.S. Appeals Court
DELAY
REJECTING
MAIL

Holloway v. Pigman, 884 F.2d 365 (8th Cir. 1989). Inmates filed a prisoner civil rights action, and the U.S. District Court granted defense motions for summary judgment and to dismiss, and the inmates appealed. The appeals court affirmed and found that the inmate who did not show that he was being deprived of all opportunity to practice his religion did not show a violation of constitutional rights in the claim that certain Native American religious items were being withheld from him. The random misapplication of a reasonable regulation involving the delay of mail received while the inmate was on punitive status did not violate his constitutional rights. Regulations allowing prison officials to return to sender mail violating prison regulations without allowing inmates the opportunity to protest were reasonable. (Maximum Security Unit, Arkansas Department of Corrections)

U.S. Appeals Court
REJECTING MAIL
"PUBLISHER-ONLY"
RULE

Jackson v. Elrod, 881 F.2d 441 (7th Cir. 1989). A detainee in a county jail sued officials for damages resulting from the denial of his request to receive hardbound books directly from the publisher. The U.S. District Court denied the officials' motion for a summary judgment and the officials appealed. The appeals court found that an order denying the motion for a summary judgment on the grounds of qualified immunity was a final order for appeal purposes, and qualified immunity did not extend to the officials' prohibition against the detainee receiving hardcover books. The county prison officials were not entitled to qualified immunity when they barred the detainee from obtaining hardcover books which he had ordered directly from the publisher. The officer's interest in preventing the smuggling of contraband in hardcover books and the use of such books as weapons could have been accommodated by removing hard covers before turning over the books to the detainee. (Cook County Jail, Illinois)

U.S. District Court
OUTGOING MAIL

Rogers v. Isom, 709 F.Supp. 115 (E.D. Va. 1989). A Virginia inmate filed a complaint pursuant to Section 1983 alleging that the detention center's practice of rubber stamping outgoing mail violated his first amendment rights. The district court dismissed the action as frivolous. It found that the detention center's policy of stamping its address on the back of envelopes of all outgoing inmate mail did not violate the inmate's first amendment rights, even if the stamped address covered part of a religious message placed by the inmate on the back of an envelope. The practice insured that the recipient would be aware of the origin of the mail, and the limitation was not greater than that needed to serve a governmental interest and the practice was not shown to be part of an intentional effort to censor the inmate's religious message. For purposes of the exercise of the court's discretion to dismiss frivolous complaints without an issuance of process, the determination of frivolousness on the basis of affirmative defense is appropriate even though no responsive pleadings have been filed. (Loudoun County Adult Detention Center, Virginia)

U.S. Appeals Court
CORRES.-
COURTS
INDIGENT
INMATES
LEGAL MAIL
POSTAGE

Smith v. Erickson, 884 F.2d 1108 (8th Cir. 1989). An inmate filed a civil rights lawsuit claiming that he was being denied access to the courts because of an alleged prison policy of not supplying indigent inmates with postage and writing supplies for legal correspondence. A federal appeals court overturned the trial court dismissal of the claim. The court held that the prison officials may not constitutionally refuse to provide free postage or supplies to indigent inmates for their legal mail. The court also held that the inmate stated a claim for a violation of his constitutional rights because of a purported policy of requiring inmates to use for their legal correspondence only envelopes purchased from the prison canteen. The inmate asserted that the mail room refused to mail two pieces of his legal correspondence because he used manila envelopes not purchased from the canteen, which he had brought with him to the prison, and thus impeded his access to the courts. (Minnesota Correctional Facility, Stillwater)

U.S. Appeals Court
INSPECTION OF
MAIL

Stevenson v. Koskey, 877 F.2d 1435 (9th Cir. 1989). An inmate filed a civil rights action against a probation officer, claiming that the probation officer permitted a guard to inspect the inmate's mail in violation of the inmate's constitutional rights. The U.S. District Court entered judgment for the inmate, and the officer appealed. The appeals court, reversing and remanding, found that once the inmate's mail was out of the officer's hands, she was powerless to influence the further conduct of the guard, and, thus, she was completely out of the chain of causation for the alleged constitutional deprivation that occurred when the guard opened the mail outside of the inmate's presence, and the officer's conduct was at most negligent and, thus, did not reach the level of intent necessary to permit a finding of liability. The probation officer who was attempting to deliver the mail to the inmate was at most negligent in permitting the guard to inspect the mail for contraband and, thus, the probation officer could not be held liable for an alleged deprivation of the inmate's rights that occurred when the guard opened the mail outside of the inmate's presence. The probation officer's culpability did not rise to the level of intent constitutionally required for civil rights liability. (Washington County Jail, Oregon)

U.S. District Court
PRIVILEGED MAIL

Summers v. Salt Lake County, 713 F.Supp. 1415 (D. Utah 1989). An inmate brought a civil rights action for alleged denial of rights to access to courts in a manner insuring privacy. The district court found that the inmate failed to state a cause of action, and the inmate was liable for costs. According to the court, the inmate's civil rights complaint failed to avert any facts implicating any defendants, other than the "mail officer" at the county jail, in the alleged denial of the inmate's rights to access to courts in a manner insuring privacy and failed to allege facts showing policy, ordinance or custom of the defendant county of opening legal mail. Therefore, the inmate failed to state an action against any defendant except the "mail officer" and was not entitled to vacation of the magistrate's opinion dismissing the complaint as to all defendants except the "mail officer."

The frivolity of the inmate's in forma pauperis civil rights action, when combined with his disregard of a prior court order, the number of lawsuits the inmate had filed in court, and his dilatory tactics in the action, compelled the district court to tax the inmate for costs and prohibit him from filing further in forma pauperis actions unless the judge to whom the case is assigned certifies that action is in good faith or until the inmate has paid the costs taxed. (Salt Lake County Jail, Utah)

U.S. Supreme Court
PROHIBITION-
PUBLICATIONS

Thornburgh v. Abbott, 109 S.Ct. 1874 (1989). Action was brought challenging the regulations governing the receipt of subscription publications by federal prison inmates. The Federal Bureau of Prisons regulations generally permit prisoners to receive publications from the "outside," but authorize wardens, pursuant to specified criteria, to reject an incoming publication if it is found "to be detrimental to the security, good order, or discipline of the institution or if it might facilitate criminal activity." Wardens may not reject a publication "solely because its content is religious, philosophical, political, social[,] sexual, or ... unpopular or repugnant," or establish an excluded list of publications, but must review each issue of a subscription separately. Respondents, a class of inmates and certain publishers, filed a suit in the district court, claiming that the regulations, both on their face and as applied to 46 specifically excluded publications, violated their first amendment rights under the standard set forth in Procunier v. Martinez, 416 U.S. 396, 94 S.Ct. 1800, 40 L.Ed.2d 224. The district court refrained from adopting the Martinez standard in favor of an approach more deferential to the judgment of prison authorities, and upheld the regulations without addressing the propriety of the 46 exclusions. The appeals court, however, utilized the Martinez standard, found the regulations wanting, and remanded the case for an individualized determination on the constitutionality of the 46 exclusions. The U.S. District Court upheld the regulations. The appeals court reversed. The Supreme Court, vacating and remanding, found that the proper inquiry was whether the regulations were reasonably related to legitimate penological interests, and the regulations were facially valid.

According to the Court, regulations such as those at issue that affect the sending of publications to prisoners must be analyzed under the standard set forth in Turner v. Safley, 482 U.S. 78, 89, 107 S.Ct. 2254, 2262, 96 L.Ed.2d 64, and are therefore "valid if [they are] reasonably related to legitimate penological interests." It was found that the regulations at issue are facially valid under the Turner standard. (Federal Bureau of Prisons, District of Columbia)

U.S. Appeals Court
SEIZURE-
OUTGOING MAIL

U.S. v. Brown, 878 F.2d 222 (8th Cir. 1989). The defendant was convicted in the U.S. District Court of bank robbery and he appealed. The appeals court, affirming the decision, found that the jailer had probable cause to seize the inculpatory letter written by the bank robbery defendant while in pretrial detention. The defendant had repeatedly displayed suicidal tendencies, and the jailer was aware that inmates planning to commit suicide often mailed letters beforehand. The jailer's seizure of the letter did not violate the inmate's first amendment rights. The jailer reasonably believed that the defendant was contemplating suicide, and his seizure of the letter in order to predict and thwart the suicide attempt, was a legitimate penological objective. Even if the jailer's seizure of the pretrial detainee's outgoing mail violated the detainee's constitutional rights, the admission of the letter was harmless given the overwhelming evidence of the defendant's guilt. (Scott County Jail, Minnesota)

U.S. Appeals Court
ATTORNEY MAIL
POSTAGE

White v. White, 886 F.2d 721 (4th Cir. 1989). An inmate filed a pro se civil rights action alleging he was deprived of meaningful access to the courts as a result of the prison policy requiring nonindigent inmates to pay cash for postage. The district court dismissed the pro se complaint as frivolous, and the inmate appealed. The appeals court, affirming the decision, found that dismissal of the complaint was not an abuse of discretion absent an allegation of any detriment to the inmate resulting from his inability to mail letters to his attorney. (Huttonsville Correctional Center, West Virginia)

U.S. District Court
LEGAL MAIL
LIMITATION
POSTAGE
PRIVILEGED
MAIL

Willis v. Lane, 738 F.Supp. 1198 (C.D.Ill. 1989). A former inmate brought a civil rights action alleging that prison officials violated his constitutional rights by interfering with his legal or privileged mail. On the parties' cross motion for summary judgment, the district court found that prison officials did not violate the inmate's constitutional rights. Although the prisoner has a right to access to courts, which necessarily includes the right to use the mail system, he does not have a right to unlimited free postage. The prison authorities are permitted to make a reasonable attempt to balance the right of the prisoners to use mails with the prison budgetary concerns. The prisoner's so-called "privileged" mail did not fall within the Illinois Department of Corrections' definition of privileged mail, and prison officials acted in good faith and consistently with constitutional and regulatory guidelines in returning those items to the prisoner. The prison officials properly refused to send out an oversized envelope which was not privileged and exceeded the allowance of three one-ounce letters per week. (Danville Correctional Center, Illinois)

U.S. Appeals Court
REGULATIONS
SECURITY
PRACTICES
OUTGOING MAIL
RELIGION

Woods v. O'Leary, 890 F.2d 883 (7th Cir. 1989). A defendant sued state prison authorities, claiming a deprivation of first amendment rights in connection with the prison's refusal to permit him to mail documents relating to a group that was allegedly a church. The U.S. District Court entered a judgment for the prison, and the prisoner appealed. The appeals court, affirming the decision, found that the regulation requiring approval of mailings was not unconstitutional, as applied to the prisoner's mailings on behalf of the alleged church. Three inmates at an Illinois state correctional facility were all ministers of the "Universal Life Church" (ULC). They attempted to establish a ULC congregation at the prison and one of them attempted to mail out fifty letters soliciting contributions or sales of church paraphernalia. The prison prevented the mailings on the grounds that the inmate was attempting to operate an inmate run business venture, relying in part on the IRS's denial of tax exempt status to the ULC. The refusal would continue, the prison stated, until the inmate complied with institutional regulations requiring approval. The inmate sued, claiming that the prevention of the mailings violated his first amendment right to free exercise of religion. Numerous security implications arise by increased prison mail volume, the court noted, including increases in the costs of mail monitoring, decreased in the amount of personnel available for other security purposes, and the potential overburdening of the mail system "and its negative impact on other inmates' mail." (Stateville Correctional Center, Joliet, Illinois)

1990

U.S. Appeals Court
PROHIBITION-
PUBLICATIONS

Allen v. Higgins, 902 F.2d 682 (8th Cir. 1990). An inmate filed a civil rights action against prison officials alleging 21 separate constitutional violations concerning treatment and conditions of confinement. The U.S. District Court awarded the inmate \$1 in damages on the claim involving a prison official's failure to allow the inmate to receive a government surplus catalog, and awarded the plaintiff's attorney \$19,927.64 in

attorney fees. The defendant appealed. The court of appeals held that the prison official who did not examine the requested catalog before disallowing availability was not entitled to qualified immunity from damages, because he could not have reasonably assessed whether his conduct violated clearly established law. The court also ruled that an attorney fee award of nearly \$20,000 to an inmate who succeeded on a civil rights claim against only one of ten defendants and only one of 21 original claims, for a total damage award of only \$1, was excessive, and would be reduced to \$10,000; each of the eight claims dismissed either on the day of trial or at the close of evidence were unrelated to the claim on which the plaintiff ultimately prevailed and thus work on those unsuccessful and related claims could not be compensated. (Central Missouri Correctional Center)

U.S. District Court
ATTORNEY MAIL
OPENING MAIL
PRIVILEGED MAIL

Bryant v. Winston, 750 F.Supp. 733 (E.D. Va. 1990). An inmate brought an action against jail officials to recover for the opening of the inmate's mail from his attorney outside the inmate's presence. The district court found that the officials' allegedly negligent opening of the inmate's mail was constitutional. The defendants admit that the letter was opened out of the inmate's presence, but contended that opening the letter was purely a mistake, and the court viewed this unfortunate occurrence as an isolated event and not part of any pattern or practice. (Richmond City Jail, Virginia)

U.S. District Court
LEGAL MAIL
OPENING MAIL

Burt v. Carlson, 752 F.Supp. 346 (C.D. Cal. 1990). An inmate brought a civil rights action against prison officials, alleging improper opening of legal mail. The district court found that the prison practice of opening legal mail outside the presence of an inmate where the envelope contains markings which make it readily identifiable as legal mail, but which are not in the precise form specified by institutional rules, violated the inmates' constitutional rights and was an unnecessarily strict regulation to serve the admitted interest of the prison. Such practice violated the inmate's right of access to the court and to assistance of counsel. (United States Prison, Lompoc, California)

U.S. Appeals Court
CENSORSHIP
READING OF MAIL
PRIVILEGED MAIL

Burton v. Nault, 902 F.2d 4 (6th Cir. 1990). A prisoner appealed a decision by the U.S. District Court to grant summary judgment for the prison officials that the prisoner had brought a civil rights action against. The appeals court affirmed the lower court decision finding that the prison officials were justified in reading an unmailed letter addressed to the prisoner's attorney which was found next to the prisoner after an attempted suicide. Prison officials must demonstrate that regulations authorizing the censorship of a prisoner's mail furthers one of the substantial interests of security, order, or rehabilitation and the limitation of the prisoner's first amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved. If there were any first amendment concerns arising out of actions of prison officials in reading the letter, the actions were justified by the need of prison officials to determine if the letter mentioned any drug use in the attempted suicide. (Marquette Branch Prison, Michigan)

U.S. District Court
POSTAGE

Chandler v. Coughlin, 733 F.Supp. 641 (S.D.N.Y. 1990). Inmates filed a civil rights action challenging, among other things, a prison directive that limited the amount of free postage available to the inmates. The U.S. District Court dismissed the suit and the inmates appealed. The appeals court reversed and remanded the case for further proceedings. After the cases were coordinated, the prison officials moved for a summary judgment. The New York Department of Corrections free postage program supplies free postage in a sum that is equivalent to five domestic first class letters of one ounce or less per week to all inmates. Inmates are not permitted to accumulate the unused postage from week to week; but under the policy, funds may be advanced for additional postage for sending legal mail only. Up to \$20 is routinely advanced for sending legal mail. The district court found that the inmates' due process right of access to court was not violated by a prison directive that limited the amount of free postage available to the inmates. In most cases, the legal mailings of inmates could be carried out within the authorized postage allowances and, in unusual cases, advances were available. (Bedford Hills Correctional Facility, New York)

U.S. Appeals Court
PROHIBITION
REJECTING MAIL

Diamontiney v. Borg, 918 F.2d 793 (9th Cir. 1990). An inmate filed civil rights actions and sought a preliminary injunction to require delivery of incoming mail that used a surname other than the name under which the inmate had been committed. The U.S. District Court granted the preliminary injunction, but refused to hold the prison officials in contempt for refusing to send out the inmate's mail. Appeal and cross appeal were taken. The court of appeals found that the inmate was entitled to a preliminary injunction against prison practices that had the effect of interfering with his access to court, but the inmate failed to present clear and convincing evidence that prison officials were in civil contempt of the preliminary injunction that obligated them to deliver mail addressed to the inmate in a surname other than that under which he had been committed by refusing to deliver outgoing mail on which the inmate did not use the name under which he had been committed. The inmate did not resubmit the questioned mail, and, thus, failed to show that a violation was anything other than inadvertent. (Folsom Prison, California)

U.S. Appeals Court
PROHIBITION
REGULATIONS
WITHHOLDING
CORRESPONDENCE

Fallon v. Lockhart, 919 F.2d 1304 (8th Cir. 1990). An inmate sued prison officials, alleging that officials violated his First and Fourteenth Amendment rights when they twice withheld from him, mail publications sent to him by a church. The U.S. District Court dismissed the action, and the inmate appealed. The court of appeals found that the action was legally frivolous. Officials notified the inmate the materials were withheld because they promoted Aryan views, contained racial statements, and degraded other religions, and thereby threatened good order and security of the institution. (Cummins Unit, Arkansas Department of Correction)

U.S. District Court
OPENING MAIL

Jackson v. Mowery, 743 F.Supp. 600 (N.D. Ind. 1990). A former inmate in a county jail brought a suit against the sheriff alleging the interference with his mail. On the sheriff's motion for summary judgment, the U.S. District Court found that there was insufficient evidence to support the conclusion that the sheriff was personally involved and thus legally responsible for any interference with the inmate's mail. (Grant Co. Jail, Indiana)

U.S. District Court
LEGAL MAIL
OPENING MAIL
PRIVILEGED MAIL

Jackson v. Norris, 748 F.Supp. 570 (M.D. Tenn. 1990), affirmed, 928 F.2d 1132. An inmate brought a Section 1983 action against a Commissioner of Corrections, a warden, and a mailroom clerk to recover for alleged constitutional violations stemming from the mailroom clerk's handing of legal mail. It was also found that the conduct of the prison mailroom clerk in opening the inmate's privileged legal mail out of the inmate's presence and depositing a check from the Tennessee Claims Commission directly into the inmate's prison account amounted to no more than mere negligence and was not actionable under Section 1983. The inmate failed to allege any facts which would suggest that the clerk was motivated by personal prejudice, that the clerk intended to interfere with the inmate's access to the courts, or otherwise acted in a capricious manner. In addition, it was found that the Section 1983 claims against the Commissioner of Corrections and the warden did not state a basis for relief. The conduct of the mailroom clerk was not actionable and, thus, the claims against the superior officers had to fail. (DeBerry Corr. Inst., Tennessee)

U.S. District Court
OUTGOING MAIL
POSTAGE
CORRESPONDENCE-
COURT

Rentschler v. Campbell, 739 F.Supp. 561 (D. Kan. 1990). An inmate of a county jail brought a civil rights suit alleging that his constitutional right of access to courts was violated by the refusal of defendants to mail letters and pleadings from the inmate to the court of appeals. On defense motion to dismiss, the district court granted the motion, finding that the jail policy requiring a nonindigent inmate seeking to mail a package with postage with more than 25 cents to sign an official form releasing the amount necessary to pay the postage and then requiring the jail personnel to take the released funds and mail the package did not violate the inmate's constitutional right of access to courts, even though the letters and brief the inmate had attempted to mail to the appeals court, on which the inmate had placed sufficient postage stamps, were returned unmailed to the inmate for lack of compliance with the policy. (Leavenworth County Jail, Leavenworth, Kansas)

U.S. Appeals Court
LEGAL MAIL
OPENING MAIL

Smith v. Maschner, 899 F.2d 940 (10th Cir. 1990). An inmate filed a civil rights action claiming that prison officials interfered with his mail and that he was denied procedural due process in disciplinary hearings. The appeals court found that the prison regulation of incoming correspondence did not violate any protected rights; and factual issues existed on the inmate's claim that he was deprived of procedural due process by virtue of the denial of a request to call a witness. The prison's regulation of incoming mail consisting of chain letters or correspondence that contained labels and stickers was content neutral and did not violate the inmate's protected rights. The isolated incident in which prison officials accidentally opened one piece of the inmate's constitutionally protected legal mail did not give rise to a constitutional violation, absent evidence of an improper motive or resulting interference with the inmate's right to counsel or access to court. (Kansas Prison)

U.S. District Court
REJECTING MAIL

Thomas v. U.S. Secretary of Defense, 730 F.Supp. 362 (D.Kan. 1990). White inmates brought an action challenging the decisions by officials at the United States Disciplinary Barracks to reject certain incoming mail and to deny their request to form a "white ethnic club." The district court found that the regulation authorizing officials to reject incoming mail that might be disruptive did not violate the first amendment either on its face or as applied to white inmates, and the officials did not violate the inmates' rights of due process, equal protection, or association by denying their request to form an ethnic club. The United States Disciplinary Barracks regulation that allowed officials to reject incoming mail that communicated "information designed to encourage prisoners to disrupt the institution by strikes, riots, racial or religious hatred" was not violative of the first amendment on its face. The regulation was rationally related to a legitimate interest in protecting the barracks security, operated in a neutral fashion, and was narrow in its restrictions, and there were no other alternatives that would both accommodate the inmate's first amendment rights and serve security interest. Each publication was reviewed by an advisory board with an eye toward the regulation's security purposes, and there was no evidence of wholesale exclusion. (United States Disciplinary Barracks, Leavenworth, Kansas)

1991

U.S. District Court
POSTAGE

Chilton v. Atwood, 769 F.Supp. 267 (M.D. Tenn. 1991). A nonindigent inmate brought a civil rights action, claiming that prison officials interfered with his access to courts by not providing postage stamps for a notice of appeal. The district court found that the inmate was not denied the right to meaningful access to courts when he ran out of stamps before he could order more from the commissary and when the inmate counselor refused to mail the notice of appeal for him, with the result that the appeal was not considered, notwithstanding inmate's reference to the corrections policy dealing with indigent inmates. The inmate had economic means to purchase stamps and had an opportunity to purchase them each week, and policy did not impose a duty on the counselor to obtain postage for a nonindigent inmate who simply failed to timely purchase stamps. (Riverbend Maximum Security Institution, Nashville, Tennessee)

U.S. District Court
OPENING MAIL
PRIVILEGED MAIL

Chinchello v. Fenton, 763 F.Supp. 793 (M.D. Pa. 1991). An inmate, a nonprofit corporation, and a staff attorney employed by the corporation brought a civil rights action against a former warden who allegedly conspired with various federal officials to obtain, open and display the inmate's privileged legal correspondence. On the defendant's motion to dismiss, the U.S. District Court found that the plaintiffs' allegation was sufficient to state a valid First Amendment claim based on a violation of freedom of speech and right of access to courts, and the plaintiffs alleged a valid claim concerning deprivation of liberty interest without due process in violation of the Fifth Amendment. (FCI-El Reno, Pennsylvania)

U.S. District Court
PROHIBITION
REGULATIONS
LIMITING
CORRESPONDENTS
REJECTING MAIL

Eckford-El v. Toombs, 760 F.Supp. 1267 (W.D. Mich. 1991). An inmate filed a civil rights action, claiming that his First Amendment rights were violated when he was not allowed to receive an educational brochure that had been mailed to him by another inmate. The prison officials moved for summary judgment. The district court found that neither the prison policy that permitted officials to read inmate-to-inmate correspondence, nor the rule against allowing inmates to enter into some contractual relationships, warranted refusal to allow the inmate to receive an educational brochure mailed to him by another inmate; therefore, preventing the inmate from receiving the brochure violated his First Amendment rights. The particular brochure at issue was not pornographic or obscene, did not contain escape plans, incitement to violence, or any other matter obviously harmful to prison order or safety. The court found no possible penological justification existed for confiscating the brochure. To establish liability under Section 1983 against an individual defendant, the plaintiff must plead and prove that the defendant was personally involved in the activity that forms the basis of the complaint. Officials who did not participate in the rejection of the material could not be held liable. (Ionia Maximum Correctional Facility, Michigan)

U.S. Appeals Court
PROHIBITION
WITHHOLDING
CORRESPONDENCE

Foster v. Basham, 932 F.2d 732 (8th Cir. 1991). Inmates sued a prison mailroom supervisor alleging that a mailroom policy of preventing inmates' access to telephone directory listings of attorneys sent to them was unconstitutional. The mailroom supervisor moved for summary judgment. The U.S. District Court concluded that the policy was unconstitutional but that the supervisor was entitled to qualified immunity, and the inmate appealed. The court of appeals agreed that the policy was unconstitutional. As the supervisor believed that the inmates had reasonable alternatives to acquiring names of attorneys, she was entitled to qualified immunity; however, the court found that having caseworkers supply inmates with a limited number of attorney names was not a reasonable alternative, particularly when the inmate might be suing the caseworker or his friends and associates. (Missouri State Penitentiary)

U.S. Appeals Court
REJECTING MAIL

Griffin v. Lombardi, 946 F.2d 604 (8th Cir. 1991). An inmate brought a Section 1983 action against officials of the Department of Corrections, claiming that their refusal to deliver his original diploma and grade transcript violated his right to receive mail in violation of the First, Fourth, and Fourteenth Amendments. The U.S. District Court denied the officials' motion for summary judgment, and the officials appealed. The court of appeals found that genuine issues of material fact, precluding a summary judgment for the officials on qualified immunity grounds, existed as to whether they could have reasonably believed that their conduct did not violate the inmate's constitutional rights. There was evidence that numerous other inmates at the facility possessed their original diplomas and transcripts, and that several other Missouri correctional institutions allowed inmates to receive original diplomas and transcripts. (Missouri Training Center for Men, Moberly, Missouri)

U.S. Appeals Court
SEIZURE
INSPECTION OF MAIL

Harris v. Bolin, 950 F.2d 547 (8th Cir. 1991). A former inmate at a county detention center brought a civil rights action seeking damages from prison officials who opened and retained nonprivileged mail. The action was dismissed by the U.S. District Court, and the plaintiff appealed. The court of appeals found that there was no violation of the First

Amendment or procedural due process. Withholding of a former prisoner's mail by detention center officials after they determined it was obscene, and the failure to notify the former prisoner of the mail, even during the time that he was later again incarcerated at the detention center, did not rise to a level of deprivation of procedural due process. (Pope County Detention Center, Arkansas)

U.S. District Court
CENSORSHIP
INSPECTION OF
MAIL

Johnson v. Daniels, 769 F.Supp. 230 (E.D. Mich. 1991). An Africa-American inmate brought a Section 1983 action against an assistant warden and a mail room supervisor, claiming that black inmates, unlike white inmates, were not allowed to have nude pictures of white women. Following remand of original dismissal, the district court found that a genuine issue of material fact as to whether the mail room supervisor violated the inmate's constitutional rights by selectively enforcing prison regulations regarding erotic photographs based on racial animus precluded summary judgment; the allegation made by the inmate stated a triable claim of race discrimination. The fact that the supervisor was on the job when the alleged constitutional violation occurred did not, alone, render the inmate's action against the supervisor one against a state official in his official capacity, such that the Eleventh Amendment would bar imposition of liability under Section 1983. However, the record did not suggest that the assistant warden's alleged liability in connection with the alleged selective enforcement of the prison regulations, regarding erotic photographs based on racial animus stemmed from anything other than his supervisory role in that official capacity and, thus, he could not be held liable in his individual capacity, and neither the supervisor nor the assistant warden could be held liable under Section 1983 for official acts undertaken in their capacities as state officials. (Michigan Department of Corrections)

U.S. District Court
SEIZURE
WITHHOLDING
CORRESPONDENCE

Knight v. Lombardi, 952 F.2d 177 (8th Cir. 1991). A state inmate brought a suit against corrections officials for violation of his First and Fourteenth Amendment rights in connection with seizure of certain mail addressed to him. The U.S. District Court dismissed the suit, and the inmate appealed. The court of appeals, affirming the lower court decision, found that investigative and security interests justified interception of the inmate's mail from a particular addressor as part of an investigation into the possibility that the inmate was having an affair with a female prison guard, and the interception did not violate the inmate's First Amendment rights. The guard would be violating prison rules by having an affair with and corresponding with the inmate, and the prison authorities were concerned that the guard might use her knowledge of prison security to help the inmate escape. It was also found that the inmate did not state a viable procedural due process claim in connection with an allegation regarding the lack of notice of seizure of certain mail addressed to him, even though he alleged that notice was required by internal prison regulations. Although the failure to promptly notify the inmate of the seizure was arguably in violation of procedural due process, there was no allegation or evidence of injury flowing from that violation, and undisputed facts showed that the inmate failed to avail himself of available prison procedures to review the propriety of withholding the mail. (Missouri State Penitentiary)

U.S. Appeals Court
ATTORNEY MAIL
OPENING MAIL
LEGAL MAIL
READING OF MAIL

Lemon v. Dugger, 931 F.2d 1465 (11th Cir. 1991). A prisoner brought a civil rights action against prison officials for their alleged violation of his constitutional rights in opening and reading a letter from his attorney. The U.S. District Court denied the officials' motions for summary judgment and for judgment on the pleadings and entered judgment in favor of the prisoner; the officials appealed. Upholding a jury verdict for the plaintiff inmate, the court of appeals noted that prisoners have a clearly established legal right to receive mail from their counsel uncensored by prison officials. Legal mail may be opened in the presence of the inmate, but not read. The court noted that the Department of Corrections itself has a rule providing that legal mail be forwarded unopened when it can be determined from the envelope that the correspondence is legal in nature and does not contain contraband. While the defendants argued that they had "probable cause" to read the mail, the jury found that no such probable cause existed, and the appeals court found that the trial judge did not err in allowing the jury to decide this question. (Florida State Prison)

U.S. Appeals Court
WITHHOLDING
CORRESPONDENCE

Martucci v. Johnson, 944 F.2d 291 (6th Cir. 1991). A former pretrial detainee filed a Section 1983 action alleging various constitutional violations by sheriff's department officials in concert with a State Bureau of Investigation agent. The U.S. District Court entered summary judgment against the detainee, and he appealed. The court of appeals found that the jailers' decision to withhold both incoming and outgoing mail of the pretrial detainee who was believed to be planning an escape did not violate the detainee's First Amendment rights. Any size or type of package or envelope could have contained information relating to an escape scheme. Withholding mail destined for a prisoner believed to be planning an escape, the court noted, is "reasonably related" to the legitimate penological interest of maintaining institutional security, and the jailers were "lawfully motivated" to regulate, on a content-neutral basis, the prisoner's ability to correspond with people outside the jail as long as there existed reason to believe that an escape attempt was imminent. (Anderson County Jail, Tennessee)

U.S. District Court
OUTGOING MAIL

Martyr v. Bachik, 755 F.Supp. 325 (D. Or. 1991). A mental patient/resident in a state hospital brought an action against hospital personnel seeking a preliminary and permanent injunction prohibiting hospital personnel from imposing any restrictions on outgoing mail. The district court found that the patient was not entitled to a preliminary and permanent injunction. Although the First and Fourteenth Amendments may have been violated by the state hospital's restriction on the mental patient, who was committed after being found not guilty of criminal charges by reason of insanity and was confined in a high security building and who was not permitted to leave the hospital grounds, to send outgoing mail to attorneys and elected public officials, the inmate was not entitled to preliminary and permanent injunctive relief which would prohibit hospital personnel from placing any restrictions whatsoever on his mail. Such an order would prevent personnel from imposing even valid restrictions which were a necessary result of involuntary confinement and, accordingly, relief he sought was too broad. (Oregon State Hospital)

U.S. District Court
LEGAL MAIL
CENSORSHIP
PROHIBITION
REJECTING MAIL

Moore v. Branson, 755 F.Supp. 268 (E.D. Mo. 1991), affirmed, 950 F.2d 728. An inmate brought a Section 1983 action claiming a violation of due process in the handling of his mail. On cross motions for summary judgment, the U.S. District Court found that the inmate did not establish a due process violation based on the allegation that his mail was censored when an employee of the mailroom issued a conduct violation against the inmate for attempting to mail a letter to a newspaper by sealing and labeling it "Legal Mail;" the conduct violation was not based on the contents of the letter, which the employee did not read, but on the face of the envelope; moreover, charges against the inmate were dismissed, and the conduct violation was expunged from his record. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
PROHIBITION
SECURITY
PRACTICES

Skelton v. Pri-Cor, Inc., 963 F.2d 100 (6th Cir. 1991). An inmate brought a Section 1983 action alleging the unconstitutional refusal to deliver a hardbound Bible. The U.S. District Court entered summary judgment in favor of the defendant, and the inmate appealed. The court of appeals found that the refusal to deliver a hardbound Bible to the inmate was reasonably related to legitimate penological interests and did not violate the inmate's First and Eighth Amendment rights. (Greene Co. Detention Center, Tennessee)

U.S. District Court
INSPECTION OF
MAIL
LEGAL MAIL
OUTGOING MAIL
PRIVILEGED MAIL

Stone-El v. Fairman, 785 F.Supp. 711 (N.D. Ill. 1991). A prisoner brought a civil rights action against prison officials who opened his mail. On motion for summary judgment, the U.S. District Court found that although mail addressed to a judge and clerk of court was legal mail which could not be opened by prison officials, the officials were entitled to qualified immunity as there was no controlling law in the jurisdiction on the issue of whether privileged outgoing mail could be inspected for contraband. (Illinois Department of Correction)

U.S. District Court
OUTGOING MAIL

Turner v. Ralls, 770 F.Supp. 605 (D.Kan. 1991). An inmate filed a pro se civil rights suit challenging prison officials' placement of a notice containing a description of his record and circumstances in his outgoing nonprivileged correspondence. On motion to dismiss, the U.S. District Court found that the placement of the notice containing a brief, factually accurate description of the inmate's record, which included sexual offenses involving children, in outgoing correspondence did not violate the inmate's First Amendment rights after prison officials discovered that he had written to female students pictured in elementary and junior high school directories found in his cell. (Correctional Facility, Lansing, Kansas)

U.S. Appeals Court
LEGAL MAIL
OPENING MAIL
REGULATIONS

U.S. v. Stotts, 925 F.2d 83 (4th Cir. 1991). An inmate filed a complaint alleging that prison officials were violating his constitutional rights by opening and reading his confidential legal mail. The inmate specifically challenged regulations specifying how incoming mail must be marked to qualify for confidential treatment as special or legal correspondence. The U.S. District Court declared the regulations unconstitutional as applied to the inmate, and enjoined the defendants from reading or opening mail bearing a return address of an attorney, law firm, court official or any government official, whether or not there were particular markings on the envelope. The Bureau of Prisons appealed. The court of appeals, reversing the decision, found that requirements that the legal sender be specifically identified on envelope and the requirement that confidential mail be marked as such were reasonably related to legitimate penological interests, and did not violate the inmate's constitutional right of access to the courts or his freedom of expression. (United States Bureau of Prisons, North Carolina)

1992

U.S. District Court
CENSORSHIP
PROHIBITION
REGULATIONS

Cox v. Embly, 784 F.Supp. 685 (E.D. Mo. 1992). An inmate brought an action against prison officials challenging confiscation of certain sexually explicit materials. The district court found that prison mail regulations were valid. There did not appear to be any ready alternative to fully accommodate the inmates' First Amendment rights to possess and read

sexually explicit materials which advocate acts in violation of state and federal law and which threatened the security of the prison. The regulations were not an "exaggerated response" to the problem at hand and provided a reasonable compromise between the prison authorities' need to maintain order and security in the prison and the prisoners' First Amendment rights to possess and read sexually explicit materials. Although there were no alternative means for the plaintiff to read such materials, the plaintiff still possessed the means to read sexually explicit materials. The regulations permitted a broad range of publications to be sent, received, and read by the plaintiff. The court also found that the inmate was not deprived of procedural due process. The regulations at issue provide for written notice to the inmate of the confiscation of any portion of his incoming mail, review by the Censorship Committee within five working days of receipt of the prisoner's mail, and a grievance procedure for the prisoner. All parties agreed that the plaintiff received written notice of the confiscation of his books and the reasons for the confiscation. The defendants' supporting materials clearly showed that the plaintiff was allowed and did file a grievance and three successive appeals to prison officials not involved in the original censorship decision. The court concluded that the plaintiff's right to procedural due process was not violated by the prison mail regulations or their implementation. (Farmington Correctional Center, Missouri)

U.S. Appeals Court
LIMITATION

Farrell v. Peters, 951 F.2d 862 (7th Cir. 1992). An Illinois state prisoner brought a civil rights suit against prison officials who forbade him to correspond with his alleged "common-law" wife, who was an inmate of another Illinois prison. The U.S. District Court entered judgment against the prisoner, and he appealed. The court of appeals found that the prisoner's First Amendment rights were not violated by a Illinois Department of Corrections rule providing that permission for committed persons to correspond between intrastate and interstate correctional facilities required approval of chief administrative officers of both facilities based on safety and security concerns. Forbidding the prisoners to correspond did not violate any "right to marry," where the prisoners had not been validly married under Illinois law and Illinois did not recognize common-law marriage. There was no suggestion that the two might have formed a common law marriage in a state that recognizes such marriage, which would be valid in Illinois. (Illinois Department of Corrections)

U.S. Appeals Court
CENSORSHIP
OPENING MAIL
REGULATIONS
ATTORNEY MAIL

Henthorn v. Swinson, 955 F.2d 351 (5th Cir. 1992). A federal prisoner filed a Section 1983 suit against prison officials alleging that he was denied access to courts by the opening of his legal mail outside his presence. The U.S. District Court dismissed the complaint as frivolous, and the prisoner appealed. The court of appeals found that clearly marked legal mail could not be censored but prison officials could establish reasonable regulations such as requiring an attorney to identify himself in writing to prison officials before they needed to treat mail as legal mail. Special mail regulations did not infringe on the attorney-client privilege; regulations protected the privilege as long as the legal mail was properly marked. (Federal Bureau of Prisons, Texas)

U.S. Appeals Court
CORRESPONDENCE-
FRIENDS,
RELATIVES
READING OF MAIL

Jolivet v. Deland, 966 F.2d 573 (10th Cir. 1992). An inmate brought a civil rights action against prison employees who were allegedly responsible for intercepting his personal mail. The U.S. District Court awarded the inmate \$250 against one employee, and the inmate appealed. The court of appeals, affirming the decision, found that awarding the inmate \$250 in compensatory damages for emotional distress he suffered when a prison employee copied love letters the inmate had written to another inmate's ex-wife and showed the copies to the other inmate was not an abuse of discretion in the inmate's civil rights action. Denying punitive damages was also not an abuse of discretion where the employee thought his actions were permissible and stopped his actions after he was informed they were unconstitutional. (Utah State Prison)

U.S. District Court
MEDIA

Mujahid v. Sumner, 807 F.Supp. 1505 (D. Hawaii 1992), affirmed, 996 F.2d 1226. An inmate of a Hawaiian prison filed a suit under Section 1983 against prison officials alleging that an administrative rule restricting personal correspondence between inmates and members of the news media was unconstitutional. The district court found that the rule was facially unconstitutional. Although prison security might be compromised by allowing inmates to become media news sources, the regulations acted to categorically prohibit a class of communications, many of which the prison had no legitimate penological interest in prohibiting. However, the fact that other inmates had been allowed to write to the editor of the local newspaper did not render the rule restricting personal correspondence between the inmates and members of the news media in violation of the equal protection clause, where the inmate failed to show any evidence that other inmates were allowed to engage in specific correspondence restricted by the regulation. In addition, state prison officials were entitled to qualified immunity in the inmate's suit against them in their individual capacities because they did not violate clearly established rights of the inmate by enforcing the rule since the unconstitutionality of the rule was not plainly apparent. (Halawa Correctional Facility, Hawaii)

U.S. Appeals Court
LEGAL MAIL
OPENING MAIL

Reneer v. Sewell, 975 F.2d 258 (6th Cir. 1992). A former inmate brought a pro se civil rights action against correctional officials, alleging they violated his First Amendment rights by reading his incoming legal mail. The U.S. District Court granted the defendants' motion for summary judgment, and the former inmate appealed. The appeals court, reversing and remanding, found that the prison officials were not entitled to summary judgment. If the inmate's mail was actually read, and the action was motivated by retaliation as the inmate alleged, the behavior would constitute the type of arbitrary, unjustifiable interference strictly proscribed in the Sixth Circuit. (Kentucky State Reformatory)

U.S. Appeals Court
INDIGENT INMATES
LEGAL MAIL
POSTAGE

Smith v. Erickson, 961 F.2d 1387 (8th Cir. 1992). A prisoner brought a Section 1983 complaint against prison officers alleging that prison mailing policies were illegal. The U.S. District Court granted summary judgment against the prisoner, and appeal was taken. The court of appeals found that providing indigent inmates with one free mailing per week for legal correspondence complied with the requirement that the prison give indigent inmates free postage. Inmates needing additional financial assistance for mailing legal correspondence were allowed to maintain a negative balance in their account indefinitely. It was also found that the provision of free paper and pens for inmates through the prison library satisfied constitutional standards. (Minnesota State Prison, Stillwater, Minnesota)

U.S. District Court
CENSORSHIP

Williams v. ICC Committee, 812 F.Supp. 1029 (N.D.Cal. 1992). An inmate filed a pro se Section 1983 action against prison officials alleging that he had been deprived of his eyeglasses although he was legally blind, deprived of access to courts, denied an opportunity to make legal phone calls, and was discriminated against based upon his race. He also sought appointment of counsel pursuant to the in forma pauperis statute. The court found that allegations that prison authorities confiscated a letter written to the inmate by his mother stated a cause of action for censorship in violation of the First Amendment. (San Quentin Prison, California)

U.S. District Court
CONFISCATION

Wilson v. Holman, 793 F.Supp. 920 (E.D. Mo. 1992). An inmate brought an action against a prison mailroom official alleging denial of due process concerning confiscation of mail. The district court found that the confiscation of any portion of an inmate's mail should be accomplished by minimal procedural safeguards, including notice to the inmate, opportunity to be heard, and opportunity for appeal to a prison official who was not involved in the original censorship decision. However, due process does not require prison officials to notify an inmate when they confiscate his letter containing threats and plans concerning criminal conduct. (Potosi Correctional Center, Missouri)

1993

U.S. District Court
LEGAL MAIL
OPENING MAIL

Bledsoe v. Biery, 814 F.Supp. 58 (D. Kan. 1993), affirmed, 992 F.2d 1222. An inmate brought a federal civil rights cause of action against prison officials arising out of the opening of his legal mail. The defendants brought a motion for summary judgment. The district court, granting the motion, found that the opening of the inmate's legal mail outside his presence was an inadvertent act that did not rise to a constitutional dimension. It was noted that upon the plaintiff's complaint regarding these instances of opened mail, the facility took corrective action by providing additional training for officers who handle inmate mail. (Norton Correctional Facility-East, Stockton, Kansas)

U.S. District Court
CENSORSHIP
REGULATIONS

Bressman v. Farrier, 825 F.Supp. 231 (N.D. Iowa 1993). An inmate brought an action against prison officials challenging discipline imposed for uncomplimentary statements about prison officials contained in a letter that the inmate wrote to his brother. The district court found that the inmate could not be disciplined for comments made in the letter to his brother although he knew that the comments would be read by prison officials. (Iowa Men's Reformatory)

U.S. Appeals Court
LEGAL MAIL
OPENING MAIL
OUTGOING MAIL

Brewer v. Wilkinson, 3 F.3d 816 (5th Cir. 1993), cert. denied, 114 S.Ct. 1081. Inmates brought a Section 1983 suit against a mail room supervisor and a mail room clerk, alleging a constitutional violation arising from the handling of their mail. The United States District Court granted the defendants' motion for summary judgment and dismissed. The inmates appealed. The appeals court, affirming in part, reversing in part and remanding, found that the inmates, who claimed that their incoming legal mail was opened and inspected for contraband outside their presence in violation of prison rules, stated no cognizable claim for violation of their constitutional right of access to courts and free speech. The inmates did not assert that their ability to prepare or transmit necessary legal documents had been affected or that mail had been censored. They also conceded that opening and inspecting the mail was for the legitimate penological objective of prison security. However, one inmate's allegation that his outgoing legal mail was opened and material removed, thus preventing a "writ of mandamus" from arriving in district court, stated a cognizable claim for violation of his rights of free speech and access to courts.

There was no suggestion that a legitimate penological interest justified the alleged removal of legal material. (Texas Department of Criminal Justice)

U.S. Appeals Court
LEGAL MAIL
OPENING MAIL

Castillo v. Cook County Mail Room Dept., 990 F.2d 304 (7th Cir. 1993). An inmate brought a civil rights claim alleging that the mail room at the Cook County Department of Corrections had opened three letters addressed to him that were labeled legal mail. The prisoner sought to file in forma pauperis. The U.S. District Court denied leave to file in forma pauperis, and dismissed the prisoner's complaint with prejudice; the prisoner appealed. The court of appeals found that the prisoner's in forma pauperis complaint against the mail room for opening letters addressed to him from the United States District Court and the Department of Justice marked with the warning "LEGAL MAIL--OPEN IN PRESENCE OF INMATE" was not frivolous. The incidents may have shown an ongoing activity, rather than merely an isolated incident of mishandled mail that was not a concern of constitutional magnitude. Upon remand, the district court was instructed to appoint counsel for the inmate. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
PROHIBITION
REGULATIONS

Hall v. Singletary, 999 F.2d 1537 (11th Cir. 1993). A prisoner brought an action against Florida prison authorities alleging they violated his constitutional rights under the First Amendment by applying Florida Department of Correction mail regulations to preclude him from sending a letter to an inmate at another Florida prison. The U.S. District Court entered summary judgment for the prison authorities and the prisoner appealed. The appeals court, affirming the decision, found that the defendants have a legitimate security concern in restricting correspondence between inmates. However, it was noted that the inmate may request the state court to order that he be permitted to communicate with the other inmate. The defendants indicated that such correspondence would be permitted upon entry of an order by the state court. (Central Florida Reception Center, Orlando, Florida)

U.S. District Court
CONFISCATION
DELAY

Herrera v. Scully, 815 F.Supp. 713 (S.D.N.Y. 1993). An inmate sued prison officials under Section 1983 and New York law alleging the violation of his constitutional and state law rights in the handling of his mail that was allegedly delayed, lost, given to another inmate,

LEGAL MAIL
POSTAGE

or withheld. On the defendant's motion for summary judgment, the district court found that the prison officials did not act in an intentional and deliberate manner to deprive the inmate of his constitutional rights by preventing his legal mail from arriving at court in a timely manner due to insufficient funds in the inmate's account. The prison officials' behavior was consistent with Department of Correction's policies and procedures regarding processing of inmate mail. The prison official had offered to write to the court on the inmate's behalf explaining any untimeliness in the arrival of the inmate's reply affirmation. The prison officials and their subordinates actions were consistent with policies and procedures set forth in various department of corrections directives relating to incoming mail and possession of photographs by inmates when they opened the inmate's mail and confiscated photographs. Therefore, prison officials did not deliberately violate the inmate's constitutional rights by confiscating, misplacing or destroying the photographs so as to state a claim under Section 1983. It was also found that although the prison official's actions in giving the inmate's mail to another inmate to hold until the inmate, who was absent from the prison, returned did not conform with the Department of Correction's policies and procedures, they did not rise to a level of deliberate indifference to the inmate's constitutional rights to generate a sustainable claim under Section 1983. (Green Haven Correctional Facility, New York)

U.S. District Court
INDIGENT INMATES
LEGAL MAIL
POSTAGE

Hershberger v. Scaletta, 861 F.Supp. 1470 (N.D. Iowa 1993). Inmates sued prison officials, alleging that prison policies regarding legal postage for indigent inmates were unconstitutional. The district court found that, in accordance with the inmate's right of access to courts, the prison was required to provide each indigent inmate weekly with at least one free stamped envelope, or such other larger number of free stamped envelopes as was deemed appropriate by prison officials, for use for legal mail. (Iowa Men's Reformatory, Anamosa, Iowa)

U.S. District Court
LEGAL MAIL
OPENING MAIL
READING OF MAIL

Hinderlitter v. Hungerford, 814 F.Supp. 66 (D. Kan. 1993). An inmate brought a civil rights action against prison officials alleging that the officials opened and read privileged correspondence from the inmate to his attorney. The defendants brought a motion for summary judgment. The district court found that a material issue of fact, precluding granting of summary judgment, existed as to whether the inmate's civil rights were violated when prison officials mistakenly opened a letter the inmate had written to his attorney about bringing a claim based on a slip-and-fall in a prison shower. The inmate alleged that officials undertook retaliatory conduct based on information that he asserted only could have been obtained from reading his legal mail. (Kansas State Industrial Reformatory)

U.S. District Court
ATTORNEY MAIL
OPENING MAIL
READING OF MAIL
SEIZURE

Hunter v. Quinlan, 815 F.Supp. 273 (N.D.Ill. 1993). An inmate whose letter to his attorney had been opened, read, and temporarily retained by a prison official, brought an action seeking a temporary restraining order, permanent injunction, declaratory judgment, and compensatory and punitive damages, and moved for leave to file the complaint pro se without payment of a filing fee. The district court found that the inmate's constitutional rights were not violated by the prison official's actions and, thus, the inmate had no arguable basis for his complaint and would be denied leave to file in forma pauperis. The attorney's effectiveness was not compromised by the failure to receive the letter, which merely expressed the inmate's thanks and did not set out anything of legal substance. In addition, the district court would not issue an order directing that the mail be released. The issue was moot because the single letter was promptly returned to the inmate and there was no likelihood of a recurrence of a single illegal seizure. The district court declined to issue a permanent injunction against violation of constitutional rights of the inmate considering the isolated and nonrecurring nature of the incident. (Metropolitan Correctional Center, Illinois)

U.S. Appeals Court
INSPECTION OF
MAIL
LEGAL MAIL

Kindred v. Duckworth, 9 F.3d 638 (7th Cir. 1993). An inmate moved to hold in contempt prison officials who allegedly violated a consent decree by instituting a policy under which inmates were required to open all incoming legal mail in the presence of prison staff. The U.S. District Court denied the motion, and the inmate appealed. The appeals court, reversing and remanding, found that the policy violated the consent decree. The relative ease with which contraband could be smuggled into prison under the guise of confidential correspondence did not provide the prison with reasonable grounds to believe that physical contraband could be found in every piece of incoming mail. (Indiana Reformatory at Pendleton)

U.S. Appeals Court
ATTORNEY MAIL
INSPECTION

McMaster v. Pung, 984 F.2d 948 (8th Cir. 1993), affirmed, 984 F.2d 950. An inmate brought a civil rights action against department of corrections officials, alleging violation of his constitutional rights to due process, assistance of counsel, and access to courts. The U.S. District Court granted the officials' motion for summary judgment, and the inmate appealed. The appeals court, affirming the decision, found that the inmate's due process rights were not violated by the corrections officials' refusal to allow his wife to testify in person at a disciplinary hearing. Because corrections officers had reason to believe that the defendant was an escape risk and that the presence of his wife inside the prison posed a security risk, the wife's testimony was submitted by an affidavit. The court also found that the inmate's Sixth Amendment right to effective assistance of counsel was not violated by a ban on contact visits with his female attorney because the defendant was being disciplined for his intimate contact with that attorney. The inmate was allowed telephonic contact and consultation through the mail with that attorney while he was not in administrative segregation, and the inmate was also represented by a male attorney whose contact visits were not restricted. The correctional officers were justified in inspecting the inmate's legal mail to and from his female attorney in his presence, where the attorney was a threat to security and the orderly administration of the prison. The court found that the inmate failed to establish that his right of access to courts was violated by a cumulative effect of a ban on contact visits with his female attorney, mail restrictions, and restrictions on his telephone privileges while in administrative segregation. The prisoner made no showing that he was denied access to courts or that he was prejudiced by the prison officials' actions. (Minnesota Correctional Facility, Oak Park Heights, Minnesota)

U.S. Appeals Court
RELIGION
MEDIA
INSPECTION OF
MAIL

Smith v. Delo, 995 F.2d 827 (8th Cir. 1993), cert. denied, 114 S.Ct. 710. An inmate in a state correctional system filed a suit alleging that a regulation requiring outgoing mail to members of the media or clergy to be sent to the prison mailroom unsealed for inspection violated his First Amendment rights. The U.S. District Court granted the prison officials' motion for summary judgment, and the inmate appealed. The appeals court, affirming the decision, found that the prison regulation requiring the inspection of outgoing mail for contraband and proper addressing was reasonably related to the legitimate purpose of screening mail for escape plans, contraband, threats, or evidence of illegal activity. It did not prohibit inmates from communicating permissible messages, and there was no less restrictive manner by which officials could vindicate their interests. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
REGULATIONS
OUTGOING MAIL
INSPECTION OF
MAIL

Stow v. Grimaldi, 993 F.2d 1002 (1st Cir. 1993). An inmate brought a civil rights action challenging a prison regulation prohibiting him from sending college transcripts to a university in a sealed envelope. The U.S. District Court dismissed the action as frivolous, and the inmate appealed. The appeals court, affirming the decision, found that the challenged regulation did not violate the defendant's rights under the Constitution or under Family Educational and Privacy Rights Act. The court noted that surveillance of outgoing mail was justified as a security measure. There was no other way to detect whether escape plans or other proscribed matter was being sent except by looking. Also, nothing in the Family Education and Privacy Rights Act required prison officials to take

the inmate's word that the envelope contained transcripts and to accept the sealed mailing. (New Hampshire State Prison)

1994

U.S. Appeals Court
INSPECTION OF
MAIL
LEGAL MAIL
SECURITY
PRACTICES

Aldade v. Lambert, 34 F.3d 619 (8th Cir. 1994). A state penitentiary inmate brought an action against a warden and correctional officers, alleging a violation of the Eighth Amendment and contempt of court. The U.S. District Court entered a judgment against one officer on the Eighth Amendment claim, and against all defendants on the contempt claim. The defendants appealed. The appeals court, affirming in part and reversing in part, found that the state penitentiary warden was in civil contempt of a prior consent decree governing searches of inmate legal papers. The warden had ordered correctional officers to search the legal papers of the inmate, who was suspected of possessing a knife, outside of the inmate's presence without the inmate's consent while the inmate was secured in a locked area. The consent decree provided that an inmate's legal papers would be searched outside an inmate's presence without an inmate's consent only in exigent circumstances. In this instance, any exigency ceased when the officer seized the legal files and placed the inmate in restraints. As the correctional officers were acting under a direct order of the warden, they were not found to be in civil contempt of the consent order. The court also found that evidence supported a jury finding that a correctional officer violated the inmate's Eighth Amendment rights when he handcuffed the inmate from behind. The inmate was under a medical order that should have precluded correctional officers from handcuffing him from behind and the inmate testified that he informed the officers of his condition. The court found that the officer intentionally inflicted pain for a significant period of time. (Iowa State Penitentiary)

U.S. District Court
INSPECTION OF
MAIL
LEGAL MAIL

Brown v. Quigley, 853 F.Supp. 325 (N.D. Cal. 1994). An inmate in a state prison filed a pro se Section 1983 complaint against a secret service agent, arising out of the agent's alleged order requiring the state medical facility and state prison to keep the inmate's legal mail. The district court found that the inmate failed to state a claim under Section 1983, but rather stated a claim under the Bivens doctrine for constitutional torts committed by federal employees, where the prisoner named a federal secret service agent as the defendant responsible for his alleged constitutional injury. The inmate's allegations that the secret service agent interviewed him at the state medical facility regarding a letter the inmate had written regarding a plot to assassinate the president, and that the agent ordered the medical facility and the state prison to keep all of the inmate's legal mail, stated a cognizable claim that his First Amendment rights had been violated as a result of censorship of his mail without legitimate government interest. However, absent facts indicating that the prisoner had suffered "actual injury" amounting to denial of access to courts by virtue of orders to the medical facility and state prison, the prisoner failed to state a due process claim against the agent relating to inspection of the mail. (California Medical Facility)

U.S. Appeals Court
OUTGOING MAIL
READING OF MAIL

Gassler v. Wood, 14 F.3d 406 (8th Cir. 1994). Inmates brought a Section 1983 action alleging that prison authorities violated their First and Fourteenth Amendment rights by providing a third party with photocopies of their nonlegal mail. The U.S. District Court awarded summary judgment in the defendants' favor, and the inmates appealed. The appeals court found that the authorities did not violate the inmates' First Amendment free speech rights by providing an investigator with photocopies of their outgoing nonlegal mail. Authorities have a right to examine outgoing nonlegal mail. Even if letting an investigator see correspondence was a separate and greater intrusion upon the First Amendment rights, it was justified by legitimate governmental interest to see if the mail revealed plans to intimidate or murder witnesses in an upcoming trial. (Minnesota Correctional Facility, Oak Park Heights, Minnesota)

U.S. District Court
PROHIBITION-
PUBLICATIONS

Hodges v. Com. of Virginia, 871 F.Supp. 873 (W.D.Va. 1994). Prison inmates and a publisher of a sexually explicit magazine brought an action against prison officials, alleging that a prison policy which restricted inmate access to such publications infringed upon First Amendment rights. The district court found that the prison did not violate the procedural due process rights of the publisher when it failed to notify the publisher that the delivery of the magazine to the inmates had been denied. The publisher's interest in communicating with inmates was attenuated since the magazine was aimed at a general audience and the inmates could have the magazines sent to other persons. The interest of the publisher was protected when the inmates were notified and allowed to challenge the denial; requiring the prison to notify the publisher each time it denied access to a publication would be an onerous burden. (Keene Mountain Correctional Center, Virginia)

U.S. District Court
LIMITATION
PROHIBITION

Kalasho v. Kapture, 868 F.Supp. 882 (E.D. Mich. 1994). A prisoner filed a Section 1983 action against a prison warden, alleging a prison policy directive banning bulk mail delivery of a catalog to the prisoner violated his First Amendment and due process rights. The prison warden moved for summary judgment. The district court found that the prison

policy directive barring prisoners from receipt of bulk rate mail did not violate the provision of the state Administrative Code generally allowing prisoners to receive catalogs from authorized vendors, in light of the exception under the Code authorizing the Department of Corrections to prevent the delivery of any mail deemed to be a threat to the order and security of the institution or to rehabilitation of a prisoner. The objective underlying the state prison policy directive barring prisoners from receipt of most bulk rate mail was legitimate in light of the tremendous volume of bulk mail which would create a security risk from incoming contraband, fire hazards, and accumulations of excess property in which contraband could be hidden. In addition, the catalog desired by the inmate was available for use at the prison store, and the prisoner could also have prepaid the postage and had the catalog sent to him through first or second class mail. A state rule providing that prisoners "may" receive any mail subject to limitations of the rule was permissive rather than mandatory in nature. It did not impose limits on prison officials' authority to prohibit the introduction of publications in prison, and thus did not create any due process liberty interest in favor of the prisoner to receive a catalog through bulk mail. (Standish Maximum Corrections Facility, Michigan)

U.S. Appeals Court
LIMITING
LANGUAGE
MAIL-
PROHIBITION

Kikumura v. Turner, 28 F.3d 592 (7th Cir. 1994). A prisoner brought a Bivens action against federal prison officials challenging their policy of refusing to allow him any Japanese-language mail. The U.S. District Court entered summary judgment for the prison and appeal was taken. The appeals court found that prison officials had qualified immunity from the damage suit, as the right to have materials in Japanese language was not a clearly established constitutional right at the time in question. The court also found that the prisoner's claim that he was wrongfully denied an opportunity to receive materials in the Japanese language was not rendered moot by the prison warden's adoption of a new policy under which efforts would be made to find a Japanese translator who could screen the materials. As the warden had rejected an earlier draft of the policy change, requiring the prison to take specific actions to find a translator, it could not be said the problem would not recur. In addition, fact issues existed as to whether an outright ban on the receipt of materials violated the prisoner's constitutional rights. Evidence showed that the prison had failed to make any case-by-case determination as to the suitability of particular items. There was also a question of whether the prisoner had enough fluency in the English language so as to be able to receive information that way. Furthermore, the cost to the government of checking to see if anyone within the Bureau of Prisons had expertise to translate Japanese materials was not high. (United States Penitentiary, Marion, Illinois)

U.S. District Court
PROHIBITION-
PUBLICATIONS
REJECTING MAIL

Lawson v. Dugger, 844 F.Supp. 1538 (S.D. Fla. 1994); appealed, 897 F.2d 536. Inmates brought a class action suit challenging the refusal of prison officials to allow inmates professing adherence to the Hebrew Israelite faith to receive religious literature of that faith. The U.S. District Court found that a prison rule governing the procedures to inform an inmate of the denial of an incoming publication addressed to him or her satisfied minimal due process requirements. The rule required written notification to an inmate of a rejection of mail. It provided that a publisher or sender could submit written comments for review, and provided that the inmate could appeal to the office of the Secretary. In addition, the publisher or sender could obtain an independent review of the superintendent's decision by writing to the library services administrator. (Florida Department of Corrections)

U.S. Appeals Court
REGULATIONS
REJECTING
RELIGION

Malik v. Brown, 16 F.3d 330 (9th Cir. 1994). An inmate brought a civil rights action alleging that prison officials violated his statutory and constitutional rights by refusing to process mail and documents in which he used his religious name. The U.S. District Court granted summary judgment in favor of the officials and the inmate appealed. The appeals court, reversing and remanding, found that a ten-year gap between the time when the inmate legally changed his name to an Islamic name and when he began to use it exclusively did not attenuate his free exercise claim. Prison regulations requiring the inmate to use his committed name, rather than his religious name, on correspondence, legal documents, and in daily affairs impinged on his First Amendment rights. Genuine issues of material fact existed as to whether the prison officials violated the inmate's right to use both his religious and committed names on correspondence and whether they improperly disciplined him, precluding summary judgment. (Clallam Bay Corrections Center, Washington)

U.S. Appeals Court
LEGAL MAIL
OPENING MAIL
PRIVILEGED MAIL

Muhammad v. Pitcher, 35 F.3d 1081 (6th Cir. 1994). An inmate brought a Section 1983 action against a correctional facility for treating inmate mail from the State Attorney General's Office as ordinary mail, rather than legal mail. On cross-motions for summary judgment the U.S. District Court found the policy unconstitutional. The court of appeals, affirming the decision, found that opening of the mail burdened the inmate's First Amendment rights. Even though the Attorney General represents the government and the prison, the Attorney General also undertakes cases on behalf of prisoners and the correspondence could pertain to a prisoner's inquiry about legal rights, to negotiations about future prosecutions, or to complaints about prison conditions. In addition, the inmate showed actual prejudice from the opening by prison staff of mail sent to the inmate from the state Attorney General. Even though the piece of mail was not confidential, a policy of opening such mail would have a chilling effect on correspondence with the Attorney General, which is a legitimate avenue for redress of an inmate's legal problems or grievances. The prison's policy was invalid where it was not reasonably related to legitimate penological interests. No evidence showed that a substantial amount of mail was sent to inmates from the Attorney General. Furthermore, an

inmate had no alternative means of communicating privately with the Attorney General, and there were no other alternatives to protect the inmate's rights other than to treat mail from the Attorney General's office as legal mail. (Standish Correctional Facility, Michigan)

REDRESS OF
GRIEVANCES

O'Keefe v. Murphy, 860 F.Supp. 748 (E.D. Wash. 1994), reversed 82 F.3d 301 An inmate brought a Section 1983 action against penitentiary administrators, seeking to enjoin them from treating certain of his mail as regular mail that could be opened and read rather than as legal mail. The defendants moved for summary judgment. The district court found that the policy permitting prison officials to read prisoners' grievances to government agencies or officials violates the prisoners' First Amendment right to petition the government for redress of grievances. However, grievance mail may be opened and inspected in a prisoner's presence. Upon the government's motion for reconsideration and the inmate's motion for sanctions, the court found that the requirement that inmates' correspondents label incoming mail as grievance mail was unconstitutional. On appeal, the appeals court reversed, finding that the practice of refusing to treat grievances as legal mail did not violate the First Amendment. (Washington State Penitentiary)

U.S. Appeals Court
LIMITING
LANGUAGE

Thongvanh v. Thalacker, 17 F.3d 256 (8th Cir. 1994). An inmate brought a Section 1983 action alleging constitutional violations in connection with a requirement that his incoming and outgoing correspondence be in English, except for correspondence with his parents and grandparents. Following a jury verdict in the amount of \$4,000 for the inmate, the U.S. District Court entered a judgment for \$2,000. On appeal, the court found that there was no fundamental miscarriage of justice in the district court's denial of the prison officials' motion for a new trial. Also, the record did not explain the district court's reduction of the damage award to the inmate from \$4,000 to \$2,000, and, thus, the jury's award of \$4,000 would be restored. (Iowa Men's Reformatory)

1995

U.S. Appeals Court
CENSORSHIP
CONFISCATION
PROHIBITION

Allen v. Coughlin, 64 F.3d 77 (2nd Cir. 1995). An inmate filed a civil rights action against prison authorities alleging violation of his constitutional rights by the removal of newspaper clippings from his incoming mail. The district court granted summary judgment and dismissed the case, and the appeals court affirmed in part and reversed in part. The appeals court agreed that the prison officials were entitled to qualified immunity, but also held that fact questions precluded summary judgment regarding the validity of the prison policy which prohibits inmates from receiving newspaper clippings through the mail. The policy considers clippings as contraband and authorizes their removal from mail. The appeals court reviewed the clippings that were removed and found them to be "entirely innocuous." The appeals court remanded the case to determine if the prison policy violated the inmate's rights to due process and equal protection. (Green Haven Correctional Facility, New York)

U.S. District Court
OPENING MAIL
PRIVILEGED MAIL

Bagguley v. Barr, 893 F.Supp. 967 (D.Kan. 1995). Two prisoners challenged prison officials alleging improper opening of three letters containing legal material. The district court entered judgment for the defendants, finding that the fact that prison officials may have opened three envelopes which contained legal mail did not rise to the level of a constitutional violation where the inmates had each received approximately 100 pieces of mail over a period of 15 months. (U.S. Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
LEGAL MAIL

Bieregu v. Reno, 59 F.3d 1445 (3rd Cir. 1995). An inmate brought an action against prison officials alleging violation of his constitutional rights by repeatedly opening his properly marked incoming legal mail outside of his presence. The district court entered summary judgment for the officials and the appeals court affirmed in part and reversed in part. The appeals court held that the prison's pattern and practice of opening court mail outside his presence impinges on his constitutional rights to free speech and court access, and that no showing of an actual injury is necessary to establish that his rights have been infringed. The court noted that a single, inadvertent opening of properly marked legal mail outside the prisoner's presence would not infringe on the prisoner's rights absent a showing of actual injury. The court found that the officials were not entitled to qualified immunity. The court also held that prison officials violate an inmate's First Amendment rights when they refuse to deliver incoming personal mail simply because it is written in a language other than English, or when they refuse to deliver mail that allegedly could be emotionally disturbing to an inmate absent a psychiatric determination that the mail would indeed be upsetting. (Federal Correctional Institution, Fairton, New Jersey)

U.S. Appeals Court
INDIGENT INMATES
LEGAL MAIL
POSTAGE

Blaise v. Fenn, 48 F.3d 337 (8th Cir. 1995). An inmate challenged a state prison regulation limiting funds provided to indigent inmates out of which inmates purchased postage for legal mail. The U.S. District Court granted summary judgment for the prison and the officials, and the inmate appealed. The appeals court, affirming the decision, found that the prison regulation placing some limits on the amount of free postage to which an inmate is entitled for legal mail was rationally related to the legitimate penological goal of preserving prison resources and encouraging sound fiscal decisions and discipline in inmates. (Iowa State Penitentiary)

- U.S. District Court
POSTAGE
INDIGENT INMATES
- Dawes v. Carpenter, 899 F.Supp. 892 (N.D.N.Y. 1995). A prison inmate sued state officials alleging civil rights violations. The district court dismissed the case, finding that the prison's restriction on free postage did not violate the inmate's rights. The inmate had alleged that the prison's elimination of a postage subsidy for non-legal mail violated the First Amendment. The court found that the new policy did not overly restrict most prisoners' ability to conduct nonprivileged communication with people outside prisons, where the inmates could receive incoming mail and visitors, make collect phone calls, and purchase stamps with money earned while in prison. (Great Meadow Correctional Facility, New York).
- U.S. District Court
REGULATIONS
RELIGION
- Fawaad v. Herring, 874 F.Supp. 350 (N.D. Ala. 1995). An inmate brought a Section 1983 action claiming that prison officials violated his right to freely practice his chosen religion by requiring him to use the name under which he was convicted and committed as well as his chosen religious name on both his outgoing and incoming mail. The district court found that the requirement did not violate the inmate's rights to free speech or religion. The sure and immediate identification of the sender and intended recipient of questionable mail was of great importance in prison, and the use of both names allowed the inmate to use his religiously adopted name while also providing a means by which prison officials could control the inmates' use of prison mail to further unlawful activities in a way which was least restrictive of the inmates' exercise of religion. (Alabama Department of Corrections)
- U.S. District Court
PRIVILEGED MAIL
- Jermosen v. Coughlin, 877 F.Supp. 864 (S.D.N.Y. 1995). An inmate brought a Section 1983 civil rights action against correspondence clerks and various prison officials, alleging that the defendants improperly tampered with his privileged correspondence. On the parties' motion for summary judgment the district court found that the inmate failed to demonstrate that any prison official, with the possible exception of one correspondence clerk, came in contact with the inmate's mail which was allegedly tampered with, nor did the inmate demonstrate that any of the supervisory officials had any knowledge of or personal involvement in any of the alleged incidents, as required to support the Section 1983 claim. Furthermore, even if prison officials had tampered with the inmate's privileged mail, the officials were no more than negligent and did not act with deliberate or callous indifference to the inmate's constitutional rights. (Sing Sing Correctional Facility, New York)
- U.S. Appeals Court
CENSORSHIP
- Leonard v. Nix, 55 F.3d 370 (8th Cir. 1995). A prison inmate who lost good time credits and had other disciplinary sanctions imposed brought a habeas corpus petition alleging violation of his First Amendment rights. The district court denied habeas corpus relief and the appeals court affirmed. The appeals court held that the sanctions against the inmate were necessary to preserve the prison's penological interest in order and did not violate the inmate's First Amendment rights. The inmate was disciplined for writing scurrilous comments about the prison warden in his "jail house lawyer" communications directed to a former inmate outside the prison. The court found that the inmate's letters were not genuine, personal outgoing mail, but rather were diatribes directed at and toward the warden and prison staff; the inmate knew that his letters would be read by staff. (Iowa State Penitentiary)
- U.S. District Court
PRIVILEGED MAIL
READING OF MAIL
- Riley v. Kurtz, 893 F.Supp. 709 (E.D.Mich. 1995). A prisoner brought a civil rights action against a prison official alleging retaliation for assertion of his First Amendment rights. The court also held that the prisoner stated a case of interference with his First Amendment rights in connection with officials' reading of his confidential mail from a court, where the prisoner had referred to the alleged reading of material related to a specifically-identified federal court lawsuit. (Gus Harrison Correctional Facility, Michigan)
- U.S. District Court
OUTGOING MAIL
- Sisneros v. Nix, 884 F.Supp. 1313 (S.D.Iowa 1995). A prisoner incarcerated in an Arizona facility brought suit against Iowa prison officials alleging deprivation of his First Amendment rights while he was confined in Iowa before his transfer. The district court held that the prison regulation which required that mail sent and received by the prisoner be in the English language did not violate the inmate's First Amendment rights. (Iowa State Penitentiary)
- U.S. Appeals Court
INSPECTION OF
MAIL
OUTGOING MAIL
- Witherow v. Paff, 52 F.3d 264 (9th Cir. 1995). A state prison inmate brought a Section 1983 civil rights suit alleging that a prison regulation permitting inspection of outgoing inmate mail violated the inmate's First Amendment right to send mail. The U.S. District Court granted summary judgment in favor of the defendants and the inmate appealed. The appeals court, affirming the decision, found that the prison mail regulation was closely related to the legitimate penological interest of preventing prisoners from disseminating offensive or harmful materials and the regulation avoids unnecessary intrusion by requiring that an officer will not read the contents of the mailing except to verify the return address. (Nevada State Prison)
- 1996
- U.S. Appeals Court
DELAY
OPENING MAIL
PRIVILEGED
CORRESPONDENCE
- Antonelli v. Sheahan, 81 F.3d 1422 (7th Cir. 1996). A county jail resident filed a pro se § 1983 action against jail officials, alleging constitutional deprivations. The district court dismissed the suit and the inmate appealed. The appeals court affirmed the lower court decisions regarding some conditions of confinement and issues, including floor-sleeping, theft of his property, lockdowns, denial of access to courts, and denial of opportunity to participate in rehabilitative programs to earn good-time credits. But the appeals court reversed the lower

court by finding that several allegations were sufficient to state claims. The court also found that the inmate's claims that his legal mail was opened, that mail delivery had been delayed for an inordinate amount of time, and that mail had been stolen, were sufficient to state a claim. (Cook County Jail, Illinois)

U.S. Appeals Court
POSTAGE
PRIVILEGED
CORRESPONDENCE
INSPECTION OF MAIL

Bell-Bey v. Williams, 87 F.3d 832 (6th Cir. 1996). An inmate filed a pro se civil rights action claiming violation of his First Amendment right of access to courts by a prison official. The prisoner was denied a loan for postage unless he allowed the official to inspect his outgoing legal mail. The district court dismissed the case and the appeals court affirmed. The appeals court found that the official was entitled to qualified immunity because she neither knew nor should have known of the relevant legal standard. The court also held that the policy requiring inspection of outgoing legal mail if an indigent inmate sought a loan for postage after using his allotment of ten stamps per month, did not overburden the inmate's First Amendment right of access to courts. The policy was triggered only if an inmate sought subsidized postage, the inspection was limited to scanning legal mail, the inspection was conducted in the inmate's presence, and the inmate could seal his mail after the inspection was completed. The court held that the policy contained sufficient safeguards to limit prison officials' review of mail and therefore did not violate the inmate's First Amendment rights. (Ionia Maximum Security Facility, Michigan)

U.S. Appeals Court
INSPECTION OF MAIL
OUTGOING MAIL

Beville v. Ednie, 74 F.3d 210 (10th Cir. 1996). An inmate brought a § 1983 action against deputies of a detention facility alleging violations of his rights of access to courts and free speech. The district court granted the deputies' motion for summary judgment and the appeals court affirmed the lower court decision. The court held that the detainee, who was temporarily held for 18 days in the facility without a law library and without adequate assistance of persons trained in the law, was not prejudiced by the denial of legal resources during his stay. The court also held that prison officials' examination of the inmate's outgoing mail did not violate the inmate's free speech rights. The court noted that although inspection of mail could chill some speech, it was necessary to protect an important government interest in prison security. (Teton County Jail, Wyoming)

U.S. Appeals Court
MEDIA
PACKAGES
DELAY

Crawford-El v. Britton, 93 F.3d 813 (D.C. Cir. 1996). An inmate sued a correctional official under § 1983 alleging that the official had intentionally misdelivered boxes containing his legal papers and personal possessions. The district court denied summary judgment and dismissal for the official and the official appealed. The appeals court affirmed and remanded, and the district court dismissed the case on remand. The inmate appealed and the appeals court affirmed dismissal of two of the inmate's claims and suggested an en banc consideration of the third claim. En banc, the appeals court vacated in part and remanded, finding that the claim that the official misdelivered a box in retaliation for the inmate's communication with the press alleged a violation of the inmate's First Amendment rights, and could withstand a motion for summary judgment based on qualified immunity. (District of Columbia)

U.S. District Court
LEGAL MAIL

Hall v. Conklin, 966 F.Supp. 546 (W.D.Mich. 1996). A prisoner brought a § 1983 action against prison officials challenging mail policies. The district court found that the Michigan Department of Corrections' new mail policy was constitutional and granted qualified immunity to the officials. The new policy instructed personnel to treat mail from the Attorney General or prosecuting attorneys as legal mail, which was not previously required. The court also held that the prisoner did not suffer any denial of access to court as the result of the officials' refusal to photocopy forms for him, where a court rule required the court to provide forms for the action upon request. (Michigan Department of Corrections)

U.S. Appeals Court
LEGAL MAIL
REJECTING MAIL
DELIVERY

Kensu v. Haigh, 87 F.3d 172 (6th Cir. 1996). A state prisoner filed a civil rights action against corrections officials under § 1983, the district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that boxes of materials that were delivered to the prisoner at the prison, which were clearly marked as legal mail, had to be examined in the presence of the prisoner, even though the boxes were delivered by a private individual not the postal service or a private delivery service. The court noted that prison officials may screen incoming packages to protect prison employees, and if screening devices detect the presence of prohibited devices or instruments the packages may be opened for inspection outside the presence of the prisoner-addressee. The court held that prison officials did not improperly deny the inmate access to courts by not permitting him to receive a copy of a cassette tape from his attorney, which allegedly contained a statement from a witness in his criminal trial retracting his testimony, because the prisoner was not prejudiced because he received a transcript of the cassette. (Michigan Department of Corrections)

U.S. Appeals Court
PROHIBITION-
PUBLICATIONS

Montcalm Pub. Corp. v. Beck, 80 F.3d 105 (4th Cir. 1996). Prisoners who were denied issues of sexually explicit magazines to which they had subscribed were joined by the publisher in their suit against prison officials. The district court found that the prison policy under which the publications were denied was constitutional, in spite of its failure to provide notice to the publishers. The inmates and publisher appealed and the appeals court reversed the lower court decision, finding that the publishers were entitled to notice and an opportunity to be heard when their publication was disapproved for receipt by inmate subscribers. The court found that

there is a clearly recognized First Amendment interest in those who wish to communicate with prison inmates. The court noted that inmates could challenge the denial of a publication but they could hardly mount an effective challenge because they could not see the publication. Although inmates are free to notify a publisher to ask for help if a publication is denied by prison officials, the court found that the publisher's First Amendment right must not depend on notification by inmates. (Keen Mountain Correctional Center, Virginia)

U.S. District Court
PROHIBITION-
PUBLICATIONS

Packett v. Clarke, 910 F.Supp. 469 (D.Neb. 1996). An inmate sued correctional officials and staff alleging violations of his First Amendment rights and of the civil rights statute. The district court granted summary judgment for the defendants, finding that their policy regarding distribution of material designated as contraband was reasonably related to legitimate penological interests. The inmate had sought to obtain a catalog which contained illustrations depicting weapons concealed in everyday items and offering items such as lock picks for sale. Prison officials refused to deliver the catalog to the inmate under their policy of prohibiting incoming mail deemed to be a threat to the safety, security or good order of the facility. An alternative proposed by the inmate--restricting orders from the catalog and confining inmates to a limited area in which the catalog could be read--would not prevent the risk of disorder from prisoners who might be inspired to create weapons concealed in everyday items and was not reasonable with regard to cost, according to the district court. (Lincoln Correctional Center, Nebraska)

U.S. Appeals Court
LIMITATION

Sheets v. Moore, 97 F.3d 164 (6th Cir. 1996). An inmate brought a § 1983 action against the resident manager of a correctional facility, alleging that a regulation prohibiting inmates from receiving bulk mail violated his First Amendment rights. The district court held that the regulation was unconstitutional and denied qualified immunity to the manager. The appeals court reversed and remanded, finding that the regulation did not violate the First Amendment and that the manager was entitled to qualified immunity. The inmate had objected to the rejection of a catalog that was mailed to him. The appeals court found that the regulation was legitimate and neutral, and that it was rationally related to underlying government objectives in preventing the concealment of contraband and preventing fires. The court noted that inmates had access to catalogs at the prison store. (Carson City Temporary Facility, Michigan)

U.S. Appeals Court
DELIVERY
LEGAL MAIL

Treff v. Galetka, 74 F.3d 191 (10th Cir. 1996). An inmate filed a § 1983 suit against a prison mailroom supervisor, individually and in his official capacity, alleging violation of his rights by failing to process his outgoing mail. The district court granted summary judgment for the supervisor and the inmate appealed. The appeals court affirmed, finding that the inmate failed to prove that his mail was not delivered, that the mailroom supervisor was responsible for the alleged nondelivery, and that the supervisor acted intentionally or with deliberate indifference. The court also ruled that the improved financial condition of the inmate during the course of the litigation warranted the imposition of a requirement that he pay fees and costs. (Utah State Prison)

U.S. Appeals Court
LIMITATION

U.S. v. Sotelo, 94 F.3d 1037 (7th Cir. 1996). An offender convicted of mailing threatening and extortionate communications appealed a sentence requirement that restricted his communications with persons outside the prison. The appeals court affirmed in part, vacated in part, and remanded, finding that the district court lacked the authority to restrict the inmate's communication but that the restrictions were modified and construed as recommendations to the Bureau of Prisons, which is authorized to restrict communications. (Indiana State Prison, and Federal Bureau of Prisons)

U.S. District Court
READING OF MAIL

U.S. v. Walton, 935 F.Supp. 1161 (D.Kan. 1996). A defendant in a criminal case who was a detainee in a correctional institution moved to suppress a letter which was seized by a correctional officer. The district court ruled that the detainee did not have a reasonable expectation of privacy in the contents of an envelope he gave to an officer to be delivered to a visitor. The court found that the detainee's Fourth Amendment rights were not violated when the officer opened the envelope and read the letter it contained, where the envelope was not sealed, was not properly marked as legal mail, was addressed to the detainee rather than a court or his lawyer, and where the detainee knowingly and voluntarily gave the envelope to the officer. (Corrections Corporation of America's Leavenworth Detention Center, Kansas)

U.S. Appeals Court
SEIZURE
OUTGOING MAIL

U.S. v. Workman, 80 F.3d 688 (2nd Cir. 1996). After being convicted in district court for various charges relating to their participation in a narcotics trafficking conspiracy, the three defendants appealed their convictions. The court found that interception of an inmate's correspondence to his alleged conspirators did not violate his First Amendment rights because the interception was requested on the basis of telephone conversations in which the inmate continued to conduct drug trade and discussed committing contract murders. (Shawangunk Correctional Facility, New York)

1997

U.S. District Court
REJECTING MAIL
POSTAGE

Allen v. Wood, 970 F.Supp. 824 (E.D.Wash. 1997). An inmate brought a civil rights action against prison officials challenging the rejection of some of his mail. The district court held that the rejection of sexually explicit homosexually oriented materials did not violate the inmate's First Amendment rights, nor was the rejection cruel and unusual punishment in violation of the Eighth Amendment. The inmate was given notice of each mail rejection and was provided with the opportunity to appeal. The court also held that the rejection did not violate due process or equal protection. The court upheld a policy which prohibited inmates from receiving oversized greeting cards. The court also found that a prison rule that prohibited inmates from receiving loose postage stamps in the mail did not violate the inmate's First Amendment free speech rights. According to the court, the policy advanced interests in penal security and order and prohibited contraband trading. The prisoner was afforded reasonable opportunities to buy loose postage stamps at a prison store. (Washington State Penitentiary)

U.S. District Court
DELIVERY

Buckley v. Gomez, 36 F.Supp.2d 1216 (S.D.Cal. 1997). An inmate who was an African-american Hebrew brought a § 1983 action against corrections officials and staff. The district court held that prison staff were not deliberately indifferent to the inmate's medical needs for treatment of his injured thumb even though there may have been a delay in treatment, since the delay did not cause substantial harm and the inmate was able to see a medical technician the same date of the injury. The district court held that a prison guard's negligent or intentional failure to follow proper mail procedures was insufficient to constitute a violation of the Due Process Clause of the Fourteenth Amendment. The inmate had alleged that a guard had called him inappropriate names and dropped his mail to the floor and kicked it under the inmate's cell door. Although the court concluded that name-calling alone was not enough to raise a cognizable claim, the court denied summary judgment for the guards. The court found material issues of fact to be resolved as to whether the treatment the prisoner received was invidiously dissimilar to that received by other non-African-American or non-Jewish inmates.(California Department of Corrections)

U.S. Appeals Court
LIMITATION

Davidson v. Mann, 129 F.3d 700 (2nd Cir. 1997). An inmate brought a § 1983 action against corrections officials alleging that a prison regulation that limited access to stamps for nonlegal mail violated their First Amendment rights. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court found that a regulation that limited inmates' access to stamps for nonlegal mail to 100 per month, or 50 for inmates in special housing, was rationally related to institutional interests in avoiding a backlog of mail, allocating prison staff efficiently, and limiting thefts and disputes. The regulation allowed inmates to show extenuating circumstances and it prevented delays. The court noted that the inmate did not make specific allegations that the regulation ever actually prevented him from purchasing stamps, much less from sending outgoing nonlegal mail. (New York State Department of Correctional Services)

U.S. Appeals Court
LEGAL MAIL

Gardner v. Howard, 109 F.3d 427 (8th Cir. 1997). An inmate brought a § 1983 action against prison officials alleging improper opening of his legal mail. The district court denied the officials' motion for summary judgment on qualified immunity grounds and the officials appealed. The appeals court reversed and remanded, finding that the prison's policy regarding legal mail met minimum constitutional standards. The court held that an isolated incident of opening an inmate's incoming legal correspondence, without any evidence of improper motive or a resulting interference with the inmate's right to counsel or to access to courts, does not give rise to a constitutional violation. A mail clerk had inadvertently opened the inmate's incoming legal mail; when she discovered her mistake, she stapled the envelope shut without reading it, attached a confidential mail receipt form to the envelope, and delivered it to the inmate. (Omaha Correctional Center, Nebraska)

U.S. Appeals Court
LEGAL MAIL
PROHIBITION

Goff v. Nix, 113 F.3d 887 (8th Cir. 1997). Jailhouse lawyers sought an injunction against a penitentiary's prohibition of legal correspondence between inmates in different prison units. The district court enjoined the prohibition and the state appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the prohibition did not unconstitutionally burden an inmate's right of access to courts, but that failure to provide for the return of an inmate's legal documents when a jailhouse lawyer was transferred to another unit violated the inmate's right of access to courts. According to the court, a jailhouse lawyer has no independent right to provide legal service, but may assert the right on behalf of other inmates who are otherwise unable to obtain access to courts. (Iowa State Penitentiary)

U.S. District Court
OPENING MAIL
LIMITING CORRESPONDENTS

Malsh v. Garcia, 971 F.Supp. 133 (S.D.N.Y. 1997). An inmate brought a civil rights action against prison employees arising from restrictions on his mail correspondence. The district court found that the employees did not violate the inmate's First Amendment rights to free speech and access to courts, but that fact issues precluded summary judgment for the employees on the inmate's due process claim because the inmate was disciplined for a mail correspondence infraction. The prison regulations permitted

disciplinary action if an inmate submitted mail to a person on his "negative correspondence" list, prohibited "kiting" of mail, and allowed correspondence which violated the regulation to be opened and returned to the inmate. (Sullivan Correctional Facility, New York)

U.S. District Court
OUTGOING MAIL

Minigan v. Irvin, 977 F.Supp. 607 (W.D.N.Y. 1997). A prison inmate brought a § 1983 action against prison officials alleging violation of his First Amendment rights as the result of the screening of his outgoing mail. The district court granted summary judgment for the officials, finding that the screening of an outgoing letter which was reclassified as "incoming" after it was returned for insufficient postage did not violate the First Amendment. The court found that the screening of incoming mail was made in compliance with prison regulations and directives which were reasonably related to legitimate penological interests. (Wende Correctional Facility, New York)

U.S. District Court
REJECTING MAIL
REGULATIONS

Miniken v. Walter, 978 F.Supp. 1356 (E.D.Wash. 1997). A prisoner brought a § 1983 action against prison officials after the officials rejected delivery of a legal newsletter under a prison mail regulation governing bulk mail delivery. The district court found that application of the prison bulk mail regulation to exclude the newsletter, which did not come within the regulation's definition of bulk mail, violated the prisoner's First Amendment rights. The court also held that the officials' failure to provide a notice of rejection to either the publisher or the prisoner violated the due process clause, and that the defendants were not entitled to qualified immunity. The court noted that the prohibition of the newsletter, "Prison Legal News," was not connected to any legitimate neutral purpose and the prison had ready alternatives to the total prohibition of the newsletter. According to the court, the state does not have a statewide policy or definition for "bulk mail" and the publication is mailed via third class non-profit mail, which the post office now calls "standard mail." The prisoner had paid for a subscription to the newsletter with postage stamps and it was individually addressed to him using his name of commitment and DOC number. The prisoner had been receiving the newsletter when he was housed at another state prison. (Airway Heights Correction Center, Washington)

U.S. Appeals Court
OUTGOING MAIL
OPENING MAIL

Oliver v. Fauver, 118 F.3d 175 (3rd Cir. 1997). An inmate brought a § 1983 action against state corrections officers and the district court entered summary judgment against the inmate. The appeals court affirmed, finding that the inmate was required to show that he was actually injured by the officers' alleged interference with his access to courts. The inmate had alleged that the officers had on three separate occasions returned his outgoing mail to him without mailing it, and on at least one occasion they had opened his outgoing mail. (Adult Diagnostic and Treatment Center, New Jersey)

U.S. Appeals Court
PUBLICATIONS
CENSORSHIP

Owen v. Wille, 117 F.3d 1235 (11th Cir. 1997). A prisoner brought a § 1983 action against prison officials alleging that he was unconstitutionally deprived of access to various publications. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed, finding that prison officials did not violate the prisoner's First Amendment rights by depriving him of access to publications with nude photos, given the prison practice under which each publication sent to the prisoner underwent review by at least three prison officials before being rejected. (Palm Beach County Detention Facility, Florida)

U.S. District Court
CENSORSHIP

Powell v. Riveland, 991 F.Supp. 1249 (W.D.Wash. 1997). Prisoners brought a civil rights action alleging that the policy of a corrections department in restricting incoming mail that contained sexually explicit material violated their First Amendment rights. The district court granted summary judgment for the defendants, finding that the policy was facially valid and that the copies of magazines were appropriately restricted under the First Amendment. The court noted that prisoners still had access to incoming mail and even to "nude" mail, and that the introduction of sexually explicit materials into the prison environment could be harmful to other prisoners and prison staff. Each publication was personally reviewed by prison staff to determine if it fell under the Department of Correction's restriction policy. (Washington Department of Corrections)

U.S. Appeals Court
RELIGION
PROHIBITION-
PUBLICATIONS

Shabazz v. Parsons, 127 F.3d 1246 (10th Cir. 1997). A prison inmate sued prison officials under § 1983 alleging that the officials violated his First Amendment right to free exercise of religion by denying him access to issues of a magazine. The prison had determined that the issues would create a danger of violence by advocating racial, religious or national hatred. The district court entered judgment for the officials and the appeals court affirmed, holding that the officials had a rational basis for denying the inmate access to entire issues of the magazine, rather than merely redacting the offending portions. The officials offered evidence showing that the costs to implement redacting procedures for the magazine "Muhammad Speaks" would be prohibitive. (Oklahoma)

U.S. District Court
REJECTING MAIL
CENSORSHIP

Snelling v. Riveland, 983 F.Supp. 930 (E.D.Wash. 1997). An inmate sued prison officials for rejection of his letters and magazines, challenging prison regulations that ordered the rejection of sexually explicit materials mailed to inmates. The district court granted summary judgment for the officials and dismissed the inmate's First Amendment claim with prejudice. The court held that the prison regulation was not a complete prohibition of materials of

a sexual nature, that prisoners had an alternative means of exercising their First Amendment rights, and that the only way to control the flow of sexually explicit material into the prison was to eliminate entry at its source. (Wash. State Penitentiary)

U.S. Appeals Court
INDIGENT INMATES
LIMITATION
POSTAGE

Van Poyck v. Singletary, 106 F.3d 1558 (11th Cir. 1997). Inmates brought an action against the Department of Corrections challenging the constitutionality of a rule that limits free writing material provided to indigent inmates for nonlegal mail to quantities sufficient for one letter per month and limiting the number of stamps that inmates could possess to 20. The district court entered judgment for the Department and the inmates appealed. The appeals court affirmed, holding that the rule limiting free writing materials did not violate the Sixth Amendment or the First Amendment. The court also held that the rule limiting possession of stamps did not violate the First Amendment because it was related to a legitimate security interest in eliminating the exchange of contraband among inmates. (Florida Department of Corrections)

U.S. Appeals Court
RELIGIOUS
LITERATURE

Williams v. Brimever, 116 F.3d 351 (8th Cir. 1997). A prison inmate brought a § 1983 action against a deputy warden and mail room clerk, alleging they violated his First Amendment free exercise rights by twice denying him materials sent by the Church of Jesus Christ Christian (CJCC). The district court awarded the inmate \$1 in compensatory damages and \$500 punitive damages from each of the two defendants. The appeals court affirmed, finding that a blanket ban on CJCC materials--without review of their individual contents--was unconstitutional and that punitive damages were warranted. According to the court, the inmate had a right to receive materials mailed to him by the Church of Jesus Christ Christian (CJCC), even though those materials expressed racist and separatist views, because the materials did not counsel violence and there was no evidence that they ever caused a disruption. The court found that the deputy warden and mail room clerk were "callously indifferent" to the inmate's First Amendment free exercise rights, warranting punitive damages. The deputy warden knew that the blanket ban on CJCC materials was unconstitutional when the materials were first withheld, and the clerk did not consult a list naming CJCC materials as approved because she believed the blanket ban remained in effect, despite her knowledge that the ban was unconstitutional. (Iowa Men's Reformatory)

U.S. District Court
RELIGION
PROHIBITION-
PUBLICATIONS

Winburn v. Bologna, 979 F.Supp. 531 (W.D.Mich. 1997). A prison inmate brought a pro se action under § 1983 alleging that the application of a prison mail regulation to bar his receipt of materials that advocated racial supremacy violated the First and Fourteenth Amendments and the Religious Freedom Restoration Act (RFRA). The district court granted summary judgment for the officials, finding that the application of the regulation did not violate the inmate's First Amendment free exercise rights or RFRA, and that the officials were entitled to qualified immunity in any event. The mail regulation barred inmates from receiving materials advocating racial supremacy or ethnic purity or attacking a racial or ethnic group. The court found that the regulation was reasonable and that there was no easy alternative to barring the materials. (Chippewa Correctional Facility, Michigan)

1998

U.S. District Court
PRIVILEGED COR-
RESPONDENCE
READING MAIL
SECURITY PRACTICES

DiRose v. McClennan, 26 F.Supp.2d 550 (W.D.N.Y. 1998). An inmate challenged corrections officials' placement of a mail watch on his incoming and outgoing correspondence. The district court found that the mail watch did not violate the inmate's free speech rights because the inmate had been found to be an escape risk due to letters discovered in his cell during a routine search. The letters indicated that the inmate had carefully thought out all details of a plan of escape and was willing to urge the use of deadly force to effect his plan. The court held that prison officials had properly classified as "contraband" the inmate's incoming mail that contained a corrections officer's motor vehicle driving abstract record because the prison needed to keep such addresses confidential to avoid intimidation of corrections officers. According to the court, even though prison officials improperly opened privileged mail outside of the inmate's presence, in violation of a departmental directive, this was an insufficient basis for a federal civil rights claim. (Southport Correctional Facility, New York)

U.S. District Court
DELAY
RELIGION

Sutton v. Stewart, 22 F.Supp.2d 1097 (D.Ariz. 1998). A state prisoner sued prison officials alleging denial of his rights to free exercise of religion under the First Amendment and the Religious Freedom Restoration Act (RFRA), denial of his equal protection rights, and obstruction of his mail. The district court granted summary judgment for the officials. The court held that regulations that barred the inmate's possession of scented oils that he wanted for use in a prayer ritual did not violate his free exercise rights because they were reasonable in light of the oil's flammable nature and because possession by only Muslim inmates would pose safety and security threats. The court found that a regulation that limited where the prisoner could wear a kufi prayer cap was reasonable and did not violate his right to free exercise of religion. The regulation restricted wearing of the cap to his cell, designated living areas and during religious ceremonies, and was found reasonable by the court because the cap provided a potential symbol of group affiliation that threatened prison security. The court also found that a prohibition on inmate beards did not violate the inmate's rights because beards obscured inmates' identities and thereby presented a security risk. According to the court, failing to provide clergy of

the inmate's faith did not violate equal protection; the inmate had requested that clergy representing the Sahih variant of the Muslim faith, which was not found to be a mainstream religion that would be in demand by other faiths. The court ruled that officials were not liable to the inmate for obstruction of mail due to a ten-month delay in processing a brochure sent to the inmate by his mother. According to the court, it was reasonable for officials to deny the inmate access to a vendor with which he was not permitted to transact, and the brochure was distinguishable from magazines other inmates received because it was exclusively devoted to the advertisement of unauthorized items. (Arizona State Prison Complex-Winslow)

U.S. District Court
READING OF MAIL
INSPECTION OF
MAIL

U.S. v. Carrozza, 2 F.Supp.2d 126 (D.Mass. 1998). Two defendants who were being prosecuted for violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) moved to suppress prison correspondence between them. The district court denied the motion, finding that the defendants had no reasonable expectation that the contents of their letter would remain private. The court also held that the forwarding of a letter to other law enforcement officials did not violate prison regulations governing the handling of incoming mail, and did not violate the defendants' due process rights. (Correctional Facility, Plymouth, Massachusetts)

U.S. Appeals Court
SEIZURE
OUTGOING MAIL
LIMITATIONS

U.S. v. Felipe, 148 F.3d 101 (2nd Cir. 1998). A defendant who pleaded guilty in federal court to conspiracy and firearms offenses, and a codefendant, asked the district court to modify restrictions on their communications with persons outside of prison. The district court affirmed the restrictions, finding that prison officials had reasonable cause to intercept the prisoner's correspondence, given their knowledge that the prisoner was a leader of a suspect organization, had violated prison regulations relating to mail, was actively recruiting new members, and had written about the commission of illegal acts. The appeals court held that a Postal Service regulation that indicated that the Service was usually the only agency that was legally permitted to maintain postal cover did not apply to the prison officials' interception of the prisoner's outgoing mail, given the exception for correctional facilities. The appeals court found that the portion of the prisoner's sentence that restricted communications with all persons except counsel and close family members did not exceed the court's authority to limit the associational rights of defendants convicted of racketeering offenses because the conditions were reasonably formulated to prevent the defendant from continuing his illegal activities while incarcerated. The defendant had previously ordered at least six murders while in prison, resulting in several deaths and injuries to the targets and bystanders. (Collins Corr. Facility and Attica Corr. Facility, New York)

U.S. Appeals Court
LEGAL MAIL
PACKAGES

Weiler v. Purkett, 137 F.3d 1047 (8th Cir. 1998). An inmate challenged the confiscation of his package in a civil rights action against a prison superintendent and mail room supervisor, seeking six million dollars in damages. The district court denied summary judgment for the defendants but the appeals court reversed and remanded. The inmate challenged two prison rules: one allows inmates to receive packages only from attorneys and approved vendors; the other affords special treatment for "privileged mail" but limits this category to correspondence from judges, attorneys, courts, or government officials. The inmate had received a package marked "legal materials" that was mailed by his son and it was not delivered to the inmate. The appeals court held that the prison regulation did not violate the inmate's right of access to courts or his due process rights. (Farmington Correctional Facility, Missouri)

U.S. District Court
DELAY
MEDIA

Zimmerman v. Tippecanoe Sheriff's Dept., 25 F.Supp.2d 915 (N.D.Ind. 1998). A state prisoner brought a § 1983 action against county officials and employees alleging constitutional violations during his pretrial detention period in a county jail. The district court found in favor of the defendants for all but one of the allegations. The court held that even if a county jail employee hid the prisoner's outgoing mail rather than delivering it, the action did not violate the Fourth Amendment because another employee found the mail and ensured that it was mailed, so that the prisoner suffered no harm. The court found no constitutional violation of access to court because a jail official required the prisoner to hold conversations with his attorney in a room equipped with a two-way intercom system because the official did not actually listen to the conversation but merely stood in a control room. But the court found triable issues of fact regarding whether the prisoner suffered an injury when a jail employee handcuffed him immediately after an escape attempt. (Tippecanoe County Jail, Indiana)

1999

U.S. Appeals Court
OUTGOING MAIL
INSPECTION OF MAIL

Altizer v. Deeds, 191 F.3d 540 (4th Cir. 1999). A prisoner brought a § 1983 action alleging interference with his outgoing mail. The district court granted partial summary judgment to the prisoner and the defendants appealed. The appeals court reversed, finding that the opening and inspecting of an inmate's outgoing mail does not violate the First Amendment. (Keen Mountain Correctional Center, Virginia)

U.S. Appeals Court
LEGAL MAIL
OPENING MAIL
PRIVILEGED COR-
RESPONDENCE

Boswell v. Mayer, 169 F.3d 384 (6th Cir. 1999). An inmate brought a civil rights action against a prison warden and prison employee, alleging that they violated his rights by opening a piece of his mail from the state attorney general's office outside of his presence. The district court dismissed the suit and the appeals court affirmed. The appeals court held that the prison policy, which treated mail from the attorney

general as legal mail if certain conditions were met, did not violate the inmate's First Amendment rights. The policy designated attorney general mail as legal mail if the envelope contained the return address of a licensed attorney and if the envelope had markings that warned of its privileged contents. If both conditions were met, the inmate was entitled to request that the prison mail room open the letter in his presence. The letter to the inmate was not marked confidential or privileged by the sender, and was therefore opened outside the presence of the inmate. (Baraga Maximum Security Correctional Facility, Michigan)

U.S. Appeals Court
PROHIBITION
RELIGIOUS
LITERATURE

Chriceol v. Phillips, 169 F.3d 313 (5th Cir. 1999). A state prisoner brought a § 1983 action against prison officials alleging violation of his right to free exercise of religion and denial of his access to the courts. The district court granted summary judgment for the officials and the appeals court affirmed. The appeals court held that the officials' policy of withholding prisoner mail that had a potential of producing violence by advocating racial, religious or national hatred did not violate the prisoner's right to free exercise of religion. The prisoner claimed he was an ordained minister associated with the Aryan Nations/Church of Jesus Christ Christian. The facility policy provided for notice to the prisoner whenever mail was withheld, and the opportunity to file a grievance to protest the decision. The court also held that denial of the prisoner's request to withdraw money from his prison account to pay court costs to institute a civil rights action against them did not constitute denial of his right to court access, where there was no evidence of any actual injury in that the prisoner's fee was paid and the complaint was successfully filed. (Winn Correctional Center, Louisiana)

U.S. Appeals Court
DELAY
"Publisher Only" RULE

Crofton v. Roe, 170 F.3d 957 (9th Cir. 1999). A prisoner challenged a prison regulation that prohibited the receipt of any book, magazine, or other publication unless the prisoner ordered it from the publisher and paid for it out of his/her own prison account. The district court enjoined the enforcement of the regulation but denied the prisoner's claim for damages, finding the defendants were entitled to qualified immunity. The appeals court affirmed, finding that a blanket prohibition on gift publications violated the First Amendment. The appeals court also found that a temporary delay in the delivery of publications did not violate the First Amendment because the policy of diverting publications through the property room was reasonably related to the prison's interest in inspecting mail for contraband. (Washington Department of Corrections)

U.S. Appeals Court
CONFISCATION
PACKAGES
REJECTING MAIL

Frost v. Symington, 197 F.3d 348 (9th Cir. 1999). An inmate brought a suit seeking damages from Arizona Department of Corrections officials who allegedly withheld issues of pornographic magazines and returned without authorization music CDs he had ordered. The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the inmate had a Fourteenth Amendment due process liberty interest in receiving notice that his incoming mail was being withheld by prison authorities. But the appeals court held that the prison regulation that banned sex-based publications depicting penetration did not violate the inmate's First Amendment rights. The court found that there was a rational connection between the policy and the government's interests of ensuring the safety of inmates and prison officers, and protecting female officers and others from abuse and harassment. The court noted that inmates could access sexually explicit publications that did not depict actual penetration. The court also found that the inmate's First Amendment rights were not violated when, at the request of the seller, the Department returned music CDs the inmate had ordered upon determining that the inmate had not paid for them. (Arizona Department of Corrections)

U.S. Appeals Court
LEGAL MAIL

Powells v. Minnehaha County Sheriff Dept., 198 F.3d 711 (8th Cir. 1999). A Black jail inmate filed five separate actions under § 1983 alleging violations of his constitutional rights. The district court dismissed all five actions and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the inmate stated a constitutional claim by alleging that officers opened his "legal mail" when he was not present. (Minnehaha County Jail, South Dakota)

U.S. Appeals Court
DELAY
DELIVERY

Rowe v. Shake, 196 F.3d 778 (7th Cir. 1999). A state prisoner and a person who was his frequent correspondent filed a § 1983 complaint against prison employees alleging violations of their First Amendment rights and of the prisoner's due process rights resulting from delays in incoming mail sent by the correspondent. The district court dismissed the claims and the appeals court affirmed. The appeals court held that although the correspondent had standing to assert a violation of his First Amendment rights, the relatively short-term and sporadic delays in the prisoner's receipt of mail did not violate either the correspondent's First Amendment rights or the prisoner's due process rights. The court noted that non-prisoners have a First Amendment right to correspond with prisoners and that the government's unjustifiable interference would violate the First Amendment rights of both the recipient and the sender. (Wabash County Correctional Facility, Indiana)

U.S. Appeals Court
SEIZURE
READING OF MAIL

U.S. v. Gordon, 168 F.3d 1222 (10th Cir. 1999). A defendant convicted of possession with the intent to distribute cocaine base appealed, challenging the interception of letters he mailed to an inmate at a correctional facility. The appeals court held that the defendant did not have a reasonable expectation of privacy in letters he mailed to an inmate at a correctional facility, which were intercepted by a prison officer. The court noted that the defendant was fully

aware that prison officials could lawfully, and were in fact likely to, inspect his letters. (El Dorado Correctional Facility, Kansas)

U.S. District Court
READING OF MAIL

U.S. v. Heatley, 41 F.Supp.2d 284 (S.D.N.Y. 1999). A pretrial detainee moved to suppress evidence seized from his nonlegal correspondence. The district court denied the motion, finding that although the detainee had an expectation of privacy in his nonlegal mail, the evidence was secured under a valid warrant. The court noted that even though the detainee had signed a form acknowledging that prison staff could open and read his general correspondence, the detainee was not "signing away any remnant of protection the law otherwise might have afforded him." (Metropolitan Correctional Center, New York)

U.S. District Court
SEIZURE

U.S. v. Rollack, 90 F.Supp.2d 263 (S.D.N.Y. 1999). A defendant moved to suppress evidence seized in prison mail and cell searches that occurred during his pretrial detention. The district court held that the defendant had a reasonable expectation of privacy in his prison mail when a search is performed or initiated by law enforcement officials other than those in charge of a prison and is unrelated to institutional security concerns. The court noted that a prisoner had a reasonable expectation to privacy in his mail as to searches that did not target concealed weapons, drugs or other items clearly related to security inside the prison. The court held that seizure of letters from his jail cell and mail was valid despite the overbreadth of warrants that authorized seizure. The court found that seizure of non-mail writings and photographs from the defendant's cell was invalid. (Charlotte-Mecklenburg County Central Jail, North Carolina)

2000

U.S. District Court
REJECTING MAIL
REFUSAL

Aiello v. Litscher, 104 F.Supp.2d 1068 (W.D.Wis. 2000). Prisoners brought an action on behalf of themselves and as representatives of a class of similarly situated prisoners contending that a policy enacted by the state corrections department that prohibited access to allegedly sexually explicit materials violated their rights to freedom of speech and due process of law. The district court denied summary judgment in favor of the defendants, finding that the regulation was an impermissible violation of the prisoners' First Amendment rights and that the defendants failed to establish that the regulation was not unconstitutionally vague. According to the court, the regulation prohibited access to "such great works of art and literature as Michelangelo, the Bible and Walt Whitman, as well as countless others whose depictions of nudity and sexual intimacy were enlightening and inspiring rather than 'degrading and disrespectful.'" The court found that the prisoners did not have an alternative means to exercise their First Amendment rights. The prison regulation prohibited prison officials from distributing certain incoming correspondence to inmates for reasons that included if it was "in whole or in part, pornography." The regulation defined pornography as "...any materials, whether written, visual, video or audio representation or reproduction that depicts any of the following: (a) human sexual behavior; (b) sadomasochistic abuse... (c) unnatural preoccupation with human excretion; (d) nudity which appeals to the prurient interest in sex; (e) nudity which is not part of any published or printed materials, such as a personal nude photograph." (Wisconsin Department of Corrections, Division of Adult Institutions)

U.S. District Court
CONFISCATION
PRIVILEGED CORRES.

Ballance v. Young, 130 F.Supp.2d 762 (W.D.Va. 2000). A state prisoner brought a pro se federal civil rights suit against prison officials, arising out of their seizure of several items of his personal property. The district court held that the prisoner had no reasonable expectation of privacy in his cell that would make seizure of a letter from his cell a Fourth Amendment violation that could be addressed in a § 1983 suit. The court found that the decision by officials to confiscate the prisoner's scrapbook and clippings, in accordance with a prison regulation that prohibited such items, was reasonable in light of security concerns that the metal parts of scrapbooks could be used as weapons and that razors and other contraband could be hidden in the clippings or scrapbooks, and in light of the time-consuming or extreme nature of other alternatives, such as x-raying cells. The court noted that the officials did not need reasonable suspicion to search prisoner cells as part of their policy of performing random searches. The court also held that the prisoner was afforded sufficient post-deprivation remedies to satisfy any due process concerns arising from the seizure of an attorney's letter that contained hair samples and, allegedly, two money orders, where the inmate did receive notice of a disciplinary hearing held under the prison regulation forbidding abuse of mail. (Wallens Ridge State Prison, Virginia)

U.S. District Court
DELIVERY

Benjamin v. Kerik, 102 F.Supp.2d 157 (S.D.N.Y. 2000). Corrections officials who had entered into consent decrees governing the conditions of New York City jails moved for immediate termination of the decrees under the Prison Litigation Reform Act (PLRA). The district court terminated provisions of the decree that addressed several operational issues. The court held that city jail officials did not inflict punishment upon pretrial detainees by subjecting them to restrictive housing, because disciplinary due process was required within 72 hours of an infraction leading to the housing assignment. The court found that jail practices with respect to inmate correspondence did not constitute a current and ongoing violation of federal court relief under the provisions of PLRA, where mail was transmitted in a timely manner, without intrusion on the property rights of the inmates and occasional problems were only isolated incidents of negligence. (New York City Department of Corrections)

U.S. Appeals Court
DELAY

Zimmerman v. Tribble, 226 F.3d 568 (7th Cir. 2000). An inmate brought a pro se civil rights action against state prison officials complaining about prison conditions. The district court dismissed the complaint under the Prison Litigation Reform Act (PLRA) and the inmate appealed. The appeals court affirmed in part and reversed and remanded in part. The appeals court held that the inmate did not state a claim for violation of his First Amendment rights by alleging his mail was delivered in an untimely manner where he alleged only one instance in which his mail was delayed. (Wabash Valley Correctional Center, Indiana)

2001

U.S. District Court
PROHIBITION-
PUBLICATIONS

Broulette v. Starns, 161 F.Supp.2d 1021 (D.Ariz. 2001). A state inmate brought a § 1983 action alleging that prison officials wrongfully withheld copies of an adult magazine to which he subscribed. The district court held that the magazines were not obscene, the prison officials were not entitled to qualified immunity from liability, and that punitive damages were not warranted. The court found the magazines, *Hustler*, were not obscene, even though the court noted that taken as a whole, the magazines clearly appealed to prurient interest and depicted or described sexual activity in a patently offensive way. But the magazines could not be withheld from the inmate as obscene because they appeared to "deliberately include content" that required anyone applying the constitutional standard to conclude that it had some serious, literary, artistic, political or scientific value. The court denied qualified immunity to the prison officials because it concluded that no state prison official who objectively applied the obscenity standard could have believed that the adult magazines did not comply with the standard. But the court held that an official's refusal to deliver copies of the magazines to the inmate was not in reckless or callous disregard of the inmate's First Amendment rights, but rather that the official suffered from a lack of training and understanding of the fact that pornography and obscenity were not the same thing. The court declined to subject the official to punitive damages. (Arizona Department of Corrections)

U.S. Appeals Court
PROHIBITIONS-
PUBLICATIONS
REGULATIONS

Prison Legal News v. Cook, 238 F.3d 1145 (9th Cir. 2001). Prisoners and the publisher of a non-profit newsletter brought a § 1983 action against corrections officials, challenging a corrections department policy that prohibited prisoners from receiving standard rate mail (also known as bulk mail), including subscriptions to non-profit organizational mail. The district court entered summary judgment for the officials and the plaintiffs appealed. The appeals court reversed and remanded, finding that the ban on the receipt of subscription non-profit organization mail implicated the First Amendment interests of both inmates and publishers. The court held that the ban was not rationally related to the department's asserted penological interests in preventing the receipt of contraband, reducing fire hazards, increasing the efficiency of random cell inspections, and enhancing prison security. The appeals court found that subscription non-profit organization mail was entitled to procedural protections under the due process clause. The court noted that the speech at issue was a core protected speech, not commercial speech or speech that was objectionable on security or other grounds. (Oregon Department of Corrections)

2002

U.S. District Court
PACKAGES
REGULATIONS

Ashker v. California Dept. of Corrections, 224 F.Supp.2d 1253 (N.D.Cal. 2002). State prisoners brought a § 1983 action challenging a prison requirement that books received from vendors have a special shipping label attached, alleging violation of their First Amendment rights. The district court granted summary judgment in favor of the prisoners and held that injunctive relief was warranted. The court held that the policy unduly burdened the prisoners' First Amendment rights, noting that the policy was not applied to non-book packages. The court also noted that the goal of reducing opportunities for contraband smuggling could be met by comparing a generic package label with an invoice inside a package, and that the prison was already searching all mail for contraband. (Security Housing Unit, Pelican Bay State Prison, California)

U.S. Appeals Court
CORRESPONDENCE-
COURT
PACKAGES
MEDIA

Brown v. Williams, 36 Fed.Appx. 361 (10th Cir. 2002). A state prisoner brought a pro se § 1983 action against prison officials, challenging the handling of his mail from his attorney and from a radio station. The district court dismissed the case and the appeals court affirmed. The appeals court held that the fact that a mail package sent by an attorney was never received by the prisoner, and that another package from the attorney was opened in the prisoner's presence by prison officials, did not amount to a deprivation of the prisoner's First Amendment right or his right to counsel or right of access to the courts. The court also found that prison officials' interception of incoming correspondence addressed to the prisoner from a radio station and an outgoing letter to the radio station's address, was reasonable in light of the personal nature of the correspondence. The incoming letter contained a check for the prisoner and was sent by his godmother, who worked for the radio station. The court noted that prison officials may regulate correspondence thought to be disguised as privileged mail. (Lea County Correctional Facility, Oregon)

U.S. District Court
REGULATIONS

Clement v. California Dept. of Corrections, 220 F.Supp.2d 1098 (N.D.Cal. 2002). A prisoner brought a civil right action regarding his medical treatment for colon cancer, and a First Amendment claim challenging a prison mail policy that banned the inclusion of Internet-generated materials in regular mail received by prisoners. The district court held that a three-month delay in providing a colonoscopy to a prisoner who was subsequently diagnosed with colon cancer, and a delay in providing a special diet, did not violate the Eighth Amendment. The court granted injunctive relief

to the prisoner, finding that the policy of banning Internet-generated materials in regular mail violated the prisoner's First Amendment right to receive information through incoming mail. The court concluded that the policy was not rationally related to any penological interest in controlling the volume of mail, and was an arbitrary substitute for a more direct means of regulating the volume of mail. The court noted that no evidence supported the assertion that Internet-generated materials were more likely to contain coded criminal correspondence, or that such materials were any more difficult to trace than permissible anonymous mail. The court did not view transcription and summarization of Internet-produced material as a viable alternative to downloading and transmitting such materials by regular mail to prisoners who did not have access to the Internet. (Pelican Bay State Prison, California)

U.S. District Court
PROHIBITION
REGULATIONS

Dixon v. Kirby, 210 F.Supp.2d 792 (S.D.W.Va. 2002). A state inmate filed a § 1983 action challenging a prison directive that prohibited inmates from receiving catalogs. The district court granted summary judgment in favor of the defendants, finding that the directive did not violate the First Amendment. According to the court, the directive was rationally related to the prison's legitimate and neutral administrative interests. The court noted that catalogs were available to inmates at the prison commissary, and that processing bulk mail would have reduced prison resources. (Mount Olive Correctional Complex, West Virginia)

U.S. Appeals Court
CENSORSHIP

Duamutef v. Hollins, 297 F.3d 108 (2nd Cir. 2002). A prison inmate brought a pro se § 1983 action against prison officials alleging arbitrary censorship of his mail. The district court denied summary judgment for the officials and they appealed. The appeals court reversed and remanded, finding that prison officials had acted in pursuit of legitimate penological interests by imposing a temporary mail watch on the inmate. The mail watch was imposed after the inmate received a book with the phrase "Blood in the Streets" in its title. Even though the book was a "harmless economics book" the appeals court held that the title could easily arouse concern in the prison officials, and they could base a security decision on the title alone. The court noted that the inmate had an extensive disciplinary history involving prohibited organizational activities, and the officials' actions were limited. (Oneida Correctional Facility, New York)

U.S. District Court
OUTGOING MAIL
SEIZURE
DELAY

Gatlin Ex Rel. Gatlin v. Green, 227 F.Supp.2d 1064 (D.Minn. 2002). The estate of a cooperating witness in a murder investigation brought civil rights, civil rights conspiracy, and state law claims against a police officer and city. The witness had been murdered after police released a prisoner's letter that identified the witness. The district court granted the defendants' motion for summary judgment. The court found that there was no clearly established right at the time of the murder, that required police or jail officers to embargo or detain threatening prison mail or to protect cooperating confidential informants from retaliatory violence. The court noted that the officer who released the prisoner's letter repeatedly warned the informant and took steps to help the informant leave the state and to protect him. The court found that the city's failure to provide more training to police officers in prisoner-rights law or the regulation of jail correspondence, was inadequate to support civil rights liability for the city under a failure-to-train theory. (Carver County Jail, Minnesota)

U.S. District Court
LIMITATION

Hall v. Johnson, 224 F.Supp.2d 1058 (E.D.Va. 2002). A state prison inmate sued a state corrections department under § 1983 claiming that a policy that limited incoming mail to one ounce per envelope violated his First Amendment rights. The district court entered judgment for the defendant. The court found that the regulation served a legitimate penological interest in reducing avenues for smuggling contraband into the facility, that the aggregate amount of mail an inmate could receive was not affected, and that there would be an adverse negative ripple effect on prison security if the ban were to be lifted. The court noted that no viable alternatives had been put forward by the plaintiff. (Red Onion State Prison, Virginia)

U.S. District Court
OUTGOING MAIL

Knight v. Keane, 247 F.Supp.2d 379 (S.D.N.Y. 2002). An inmate brought an action against the superintendent of a correctional facility and other officers and officials under § 1983. The court denied the defendants' motion to dismiss. According to the court, the issue of whether legitimate penological interests existed for interference with the prisoner's outgoing mail could not be resolved at the motion to dismiss phase. The court noted that there was a factual dispute as to whether prison officials possessed an independent source of information concerning the prisoner's alleged participation in events giving rise to the mail watch. (Shawangunk Correctional Facility, New York)

U.S. District Court
LIMITATION
CENSORSHIP
INSPECTION OF MAIL
READING OF MAIL

Oliver v. Powell, 250 F.Supp.2d 593 (E.D.Va. 2002). A prisoner brought a civil rights action alleging various constitutional violations. The prisoner and the defendants moved for summary judgment. The district court granted summary judgment in favor of the defendants on all of the prisoner's claims. The court upheld the prison policy of opening and reading inmates' incoming general correspondence, finding it was content neutral and that it was reasonably related to legitimate penological interests in maintaining security and discipline and in suppressing contraband. The court also upheld the prison regulation that limited the size and weight of incoming general correspondence, to one envelope and one ounce, finding that it did not violate the

prisoner's First Amendment rights. The court noted that the regulation was a reasonable response to the need to expedite mail processing time, preventing a strain on prison resources, and that no ready alternatives were presented. The court approved of the prison regulation that authorized personnel to open, examine, and censor any outgoing prisoner mail upon reasonable suspicion of illegal activity, noting that the regulation was narrowly drawn to reach only material that might pose a security risk to inmates, officials, and the institution. (Southampton Correctional Center, Virginia)

U.S. Appeals Court
PROHIBITION-
PUBLICATIONS

Rogers v. Morris, 34 Fed.Appx. 481 (7th Cir. 2002). A state prisoner brought a § 1983 action alleging that prison regulations violated his First Amendment rights. The district court granted summary judgment to the defendants and the appeals court affirmed. The appeals court held that prison regulations banning pornography and material that teaches or advocates behavior consistent with a gang did not violate the prisoner's First Amendment rights. Under the regulation, prison officials had withheld various magazines devoted to hip-hop music and culture, and certain "internet materials" sent to him by mail. (Wisconsin)

U.S. District Court
LIMITATION

Simpson v. Gallant, 223 F.Supp.2d 286 (D.Me. 2002). A pretrial detainee filed a §1983 action alleging his constitutional rights were violated when county jail officials denied him access to telephone and mail services. The district court granted summary judgment in favor of the defendants. The court held that the refusal to permit the pretrial detainee access to a telephone to arrange bail, after he was placed in disciplinary segregation for violations of jail rules, did not violate the detainee's Fourteenth Amendment rights, where the detainee retained the ability to use the mail and to meet with his attorney. (Penobscot County Jail, Maine)

U.S. Appeals Court
PROHIBITED
PUBLICATIONS

Sorrels v. McKee, 290 F.3d 965 (9th Cir. 2002). A state prisoner brought a § 1983 action against prison officials, alleging that enforcement of a prison policy that prohibits a prisoner from receiving publications as a gift violated his First Amendment and due process rights. The district court granted summary judgment for the prison officials and the appeals court affirmed. The appeals court held that the officials were entitled to qualified immunity because the unconstitutionality of the ban on gift publications had not been established at the time of their actions. In an earlier decision (*Crofton v. Roe*, 170 F.3d 957), the appeals court had found the policy unconstitutional and the state corrections department subsequently changed the policy. (Airway Heights Corrections Center, Washington)

U.S. District Court
SECURITY PRACTICES
READING OF MAIL

U.S. v. Flores, 214 F.Supp.2d 1193 (D.Utah 2002). A prisoner who was indicted for alleged Racketeer Influenced and Corrupt Organizations Act (RICO) violations, filed a writ of habeas corpus challenging restrictions placed on his conditions of confinement. The district court denied the petition. The court held that the secure confinement of the prisoner was justified and that restrictions placed upon his confinement were warranted because the prisoner was a flight risk, and a danger to others. The court upheld restrictions on the prisoner's mail that required mail to be read for threats, conspiracy, or obstruction of justice efforts, because members of the prisoner's gang outside the prison could act on his instructions. The court also upheld that the limitation of one visitor per day and telephone restrictions. The court clarified that the prisoner's right of access to counsel included investigators or other special assistants working for the prisoner's attorney. (Utah State Prison)

2003

U.S. Appeals Court
SECURITY PRACTICES

Ashker v. California Dept. of Corrections, 350 F.3d 917 (9th Cir. 2003). A state prisoner brought a § 1983 action challenging a prison policy that requires books and magazines mailed to a prison to have approved vendor labels affixed to them. The district court granted summary judgment in favor of the prisoner and issued a permanent injunction against the defendants. The appeals court affirmed, finding that the policy was not rationally related to the prison's asserted interest in security and order, and therefore violated the prisoner's First Amendment rights. The court noted that the prison already required that books be sent directly from approved vendors, allowing officials to reduce contraband smuggling by checking address labels and invoices, and that the prison was still searching all mail for contraband. The court also noted that the policy was not applied to non-book packages. (Security Housing Unit, Pelican Bay State Prison, California)

U.S. District Court
PROHIBITION

Canadian Coalition Against Death Penalty v. Ryan, 269 F.Supp.2d 1199 (D.Ariz. 2003). A prisoner rights advocacy group that maintained Internet websites brought an action seeking a declaration that a state statute that prohibited prison inmates from sending mail to, or receiving mail from, a communication service provider or from having access to the Internet through a provider, was unconstitutional. The district court held that the plaintiffs had standing to challenge the statute, and that the statute was not rationally related to legitimate penological objectives, and was therefore unconstitutional. The court noted that the actual enforcement of the statute was directed at prisoners, and that existing regulations and statutes already precluded the targeted conduct. (Arizona Department of Corrections)

U.S. Appeals Court
REGULATIONS

Krug v. Lutz, 329 F.3d 692 (9th Cir. 2003). A state prison inmate brought a § 1983 action against corrections officials, alleging a procedural due process violation in connection with the review of decisions that excluded incoming publications as obscene. The district court found that the officials enjoyed qualified immunity, but granted injunctive relief for the inmate. The district court ordered a review by a different decision-maker when a publication was excluded, if the exclusion was challenged. The officials and inmate appealed. The appeals court affirmed. The appeals court held that the inmate had a protected liberty interest in the receipt of his subscription mailings and therefore had a constitutional right to a two-level review of a corrections official's determination that a publication was excludable as obscene. The court noted that a different official from the one who made the initial determination had to review the challenge to the exclusion. (Arizona Department of Corrections)

U.S. District Court
INDIGENT INMATES
LEGAL MAIL

Lebron v. Armstrong, 289 F.Supp.2d 56 (D.Conn. 2003). A state inmate petitioned pro se for a writ of mandamus to require state corrections officials to provide him, and all other inmates, with legal materials on request. The district court decided that the petition would be construed as a motion for a preliminary injunction. The court held that the inmate had no authority to appear in federal court as an attorney for other inmates, and that the inmate failed to state a claim for violation of his constitutional right of access to the courts. The court found that the delay in the inmate's obtaining of paper, envelopes and copies of legal documents, was not a violation of his rights, and denied the petition for a preliminary injunction. The court noted that the inmate's right of access to the courts did not encompass a right to an immediate and unlimited supply of pre-paid envelopes and other supplies, without any requirement that he balance his need for these items against other commissary purchases when determining how to spend his available funds. The inmate had challenged an indigency policy that requires an inmate to have less than \$5.00 in his inmate account for ninety days before being considered indigent, and thereby receive free mailing services. (Connecticut Department of Correction)

U.S. Appeals Court
PROHIBITION

Nasir v. Morgan, 350 F.3d 366 (3rd Cir. 2003). A state inmate brought a § 1983 action against prison employees, alleging that they violated the First Amendment by banning correspondence between the inmate and a former prisoner, and violated the former prisoner's due process rights by failing to inform him of the ban on correspondence. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the prohibition on correspondence between inmates and former inmates did not violate the First Amendment, as applied to incoming mail and outgoing mail. The court noted that the regulation did not bar all forms of correspondence, leaving ample alternative means to communicate open to the inmates. (State Correctional Institution at Greensburg, Pennsylvania)

U.S. District Court
DELAY
LEGAL MAIL

Pearson v. Simms, 345 F.Supp.2d 515 (D.Md. 2003). A state prisoner filed a civil rights action, alleging that prison defendants denied him access to the courts, and that he had been retaliated against for filing administrative procedures. The district court granted summary judgment in favor of the defendants. The court held that the prisoner failed to establish a § 1983 claim for unconstitutional denial of access to the courts, even though the prisoner demonstrated that there was up to a week long delay in the posting of certain legal mail. The court noted that there was no evidence that the prison officials attempted to interfere with the posting of his mail, and the prisoner showed no actual injury or specific harm as the result of the delay. (Maryland House of Correction-Annex)

2004

U.S. District Court
LEGAL MAIL

Allah v. Brown, 351 F.Supp.2d 278 (D.N.J. 2004). Inmates sued state prison officials, claiming that their policy of opening and inspecting their legal mail looking for contraband, especially anthrax, outside of their presence violated their First Amendment rights. The district court held that the policy violated the inmates' First Amendment rights but that the officials were entitled to qualified immunity from damages. According to the court, the risk of anthrax infection was minimal and was not reduced by the policy, except for the protection of the affected inmates, who were free to waive. The court granted qualified immunity to the officials due to uncertainties created by major terrorist attacks on September 11, 2001, finding that it would not be clear to a reasonable official that the policy violated the inmates' First Amendment rights. (East Jersey State Prison, New Jersey)

U.S. Appeals Court
BULK MAIL
PROHIBITIONS-
PUBLICATIONS
REGULATIONS

Bahrampour v. Lampert, 356 F.3d 969 (9th Cir. 2004). A state prisoner sued prison officials under § 1983, challenging a prison regulation that prohibited prisoners from receiving certain types of publications. The district court granted summary judgment in favor of the prison officials and the prisoner appealed. The appeals court affirmed in part, vacated and remanded in part. The appeals court held that the state regulation that prohibited prisoners from receiving sexually explicit materials, and a regulation that prohibited the receipt of "role playing" materials, were related to legitimate penological interests and were not vague or overly broad. The regulations were found to be neutral because they targeted the effect of certain types of materials. The court found that a body-building magazine received by the prisoner contained prohibited sexually explicit material,

including an advertisement for a video depicting "Painful Erotic Domination." According to the court, the role-playing prohibition was intended to prevent prisoners from placing themselves in fantasy roles that reduced accountability and substituted raw power for legitimate authority. The court noted that such games often contained dice, which were prohibited gambling paraphernalia. The appeals court found that state prison officials were entitled to qualified immunity on the prisoner's claim that a regulation prohibiting materials by bulk mail was unconstitutional. Although an appeals court established that the prohibition of commercial bulk mail was unconstitutional, the officials could not be expected to have known this at the time of the incidents. Officials had rejected the inmate's receipt of a Green Lantern comic book because it was delivered by bulk mail. The court noted that unpublished decisions may be considered in determining whether a constitutional right was clearly established at the time of a government official's alleged violation of the right. (Snake River Correctional Institution, Oregon)

U.S. Appeals Court
PROHIBITION
REGULATION

Clement v. California Dept. of Corrections, 364 F.3d 1148 (9th Cir. 2004). A state inmate brought a § 1983 action, alleging that a regulation prohibiting inmates from receiving mail that contained material downloaded from the Internet violated his First Amendment rights. The district court granted summary judgment for the inmate and issued a permanent, statewide injunction against enforcement of the Internet mail policy. The state corrections department appealed, and the appeals court affirmed. The appeals court held that the regulation violated the First Amendment and that a statewide injunction was appropriate. The court found that the regulation was an arbitrary way to achieve a reduction in the volume of mail, and that the corrections department did not support its assertion that coded messages were more likely to be inserted into Internet-generated materials than into word-processed documents. The court noted that the origin of printed electronic mail was usually easier to trace than that of handwritten or typed mail. The court held that entering a statewide injunction barring enforcement of the policy was consistent with the provisions of the Prison Litigation Reform Act, where evidence showed that at least eight state prisons had adopted virtually identical policies and other prisons were considering it. The court held that the injunction was no broader than necessary to remedy the First Amendment violations. (Pelican Bay State Prison, California)

U.S. Appeals Court
LEGAL MAIL
DELAY

Deleon v. Doe, 361 F.3d 93 (2nd Cir. 2004). A state prisoner filed a § 1983 action alleging that mail room personnel at a correctional facility violated his constitutional rights. The district court dismissed the complaint, imposed a monetary sanction on the prisoner, and issued "one strike" against the prisoner. The prisoner appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that the district court should not have issued a "strike" under the provisions of the Prison Litigation and Reform Act (PLRA) because the case was dismissed on its merits after a bench trial. The prisoner had alleged that mail room personnel had deliberately delayed mailing some of his submissions in an ongoing federal action. (Great Meadows Correctional Facility, New York)

U.S. District Court
CENSORSHIP
OUTGOING MAIL

Koutnik v. Brown, 351 F.Supp.2d 871 (W.D.Wis. 2004). A state prisoner sued prison officials under § 1983 alleging that they violated his First and Fourteenth Amendment rights by refusing to deliver his outgoing letter and disciplining him for writing it. The district court granted the prisoner permission to proceed in forma pauperis, but only with his claim against a prison captain. The court held that the captain's alleged refusal to send a letter from the inmate, whose contents were not gang-related and did not advocate violence or other disruptive behavior, and that the captain disciplined him for sending the letter, were sufficient to state a claim for violation of his free speech rights. (Wisconsin Secure Program Facility, Boscobel, Wisconsin)

U.S. Appeals Court
"PUBLISHER ONLY"
RULE
REFUSAL

Lindell v. Frank, 377 F.3d 655 (7th Cir. 2004). A prisoner brought an in forma pauperis civil rights suit against state prison officials, alleging numerous constitutional violations and seeking injunctive, declaratory and monetary relief. The district court dismissed some claims, entered summary judgment in favor of the defendants on other claims, and granted injunctive relief to the prisoner on the one remaining claim. The prisoner and the defendants appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that a general ban on the receipt of clippings from noncommercial sources violated the prisoner's First Amendment right to receive information, but that the district court injunction was overly broad and violated the Prison Litigation Reform Act (PLRA.) The state prison had applied a general policy, that banned the receipt of publications from noncommercial sources, to the prisoner's receipt of magazine clippings and photocopies of clippings. According to the appeals court, the injunction should have been limited to the receipt of clippings by the litigating prisoner, but the injunction improperly prevented the prison from banning any photocopies rather than just photocopies from published sources. (Wisconsin Secure Program Facility)

U.S. District Court
INTERFERENCE

Nash v. McGinnis, 315 F.Supp.2d 318 (W.D.N.Y. 2004). A prisoner filed a suit seeking injunctive relief in his civil rights action against prison officials and prison employees. The district court held that the prisoner's allegations were sufficient to state a § 1983 claim for violation of his First Amendment right to free flowing mail. The prisoner alleged that prison employees deliberately tampered with his legal, personal and political incoming and outgoing mail without justification or

cause. The court also held that the prisoner did not have a legitimate expectation of privacy in his prison cell that was protected by the Fourth Amendment. (Southport Correctional Facility, New York)

U.S. Appeals Court
LANGUAGE

Ortiz v. Fort Dodge Correctional Facility, 368 F.3d 1024 (8th Cir. 2004). A state prisoner sued a prison and a unit manager, challenging a policy that prohibited him from writing letters to family members in Spanish. The district court entered judgment in favor of the prison and the unit manager, and the inmate appealed. The appeals court affirmed, holding that the policy was reasonably related to the state's interest in preventing prisoners from using a language officials could not decipher to plan an escape or to smuggle contraband into the prison. The court noted that the prisoner had other avenues for communicating with his family, and the prisoner had failed to identify cost-free ways that the prison could interpret letters written in Spanish. (Fort Dodge Correctional Facility, Iowa)

U.S. District Court
"PUBLISHER-ONLY"
RULE
REJECTING MAIL

Waterman v. Commandant, U.S. Disciplinary Barracks, 337 F.Supp.2d 1237 (D.Kan. 2004). A military prisoner brought an action challenging the policy that allows mail room personnel to reject incoming mail that contains photocopies of publications or materials that do not come directly from a publisher or commercial vendor. The court upheld the policy, finding that it was rationally related to the goal of promoting prison security and therefore did not violate the prisoner's First Amendment free speech rights. But the court found that it was improper for the prison to reject a legal newsletter on the ground that it contained an advertisement for the illegal exchange of stamps for currency. The court noted that the advertisement did not instruct an inmate to send in postage stamps in exchange for currency, but rather instructed the inmate to send a self-addressed stamped envelope to obtain details and an application. (United States Disciplinary Barracks, Fort Leavenworth, Kansas)

2005

U.S. Appeals Court
POSTAGE

Cannon v. Washington, 418 F.3d 714 (7th Cir. 2005). A state prisoner brought a federal civil rights and state law action challenging two incidents involving strip searches and alleged beatings. Default judgment was entered for one defendant and the remaining defendants were granted summary judgment. The prisoner appealed. The appeals court vacated and remanded in part, and affirmed in part. The court held that the prisoner failed to exhaust administrative procedures for the purposes of the Prison Litigation Reform Act (PLRA) when he ignored the proper format for seeking reconsideration of denial of a late claim. The court found that confiscation of the prisoner's legal papers did not excuse noncompliance with a grievance deadline. The court concluded that a grievance that was deposited in the prison mail system on the last day of the State's filing deadline, but which was returned for insufficient postage, was not timely filed under the prison mailbox rule because it was not re-mailed with sufficient postage until after the expiration of the filing period. (Centralia Correctional Center, Shawnee Correctional Center, Illinois)

U.S. District Court
LEGAL MAIL

Evans v. Vare, 402 F.Supp.2d 1188 (D.Nev. 2005). A state prisoner and his attorney-friend brought a civil rights action against prison officials alleging violation of their First and Fourteenth Amendment rights. The plaintiffs moved for a preliminary injunction, which the district court granted. The court held that the plaintiffs demonstrated irreparable injury to their rights from the officials' blanket prohibition of all legal mail perceived by the officials to not directly pertain to the prisoner's cases. The court found the ban to be more restrictive than was necessary. The officials suspected that the prisoner was providing paralegal services for cases not related to his own. (Nevada)

U.S. District Court
LEGAL MAIL
INTERFERENCE

Johnson v. Hornung, 358 F.Supp.2d 910 (S.D.Cal. 2005). A state inmate filed a § 1983 action alleging that he was deprived of his right of access to courts when a prison official threw his legal mail in the trash rather than mailing it. The district court granted summary judgment in favor of the official. The court held that the inmate did not raise a genuine issue of material fact as to whether the official mishandled mail and the inmate did not suffer an actual injury. The court noted that numerous other officials were responsible for processing the mail after it was handed to the official. (Donovan Correctional Facility, California)

U.S. Appeals Court
CENSORSHIP

Harbin-Bey v. Rutter, 420 F.3d 571 (6th Cir. 2005). A state prisoner filed a pro se § 1983 action alleging that his designation as a member of a security threat group without a hearing violated his constitutional rights. The district court dismissed the case and the prisoner appealed. The appeals court affirmed, finding that the prisoner's designation without a hearing did not violate equal protection due process, or the prisoner's right of access to the courts. The court held that the alleged censorship of the prisoner's periodicals did not violate the inmate's First Amendment rights. The prison policy prohibited prisoners from receiving mail depicting gang symbols or signs and required that the magazine be accepted or rejected as a whole. The court noted that the inmate's contention that officials should go through each magazine and remove all prohibited material would be unduly burdensome. The inmate's subscription was ultimately terminated by the publisher, and the prison rejected only a single issue. (Alger Max. Security Facility, Michigan)

U.S. Appeals Court
PRIVILEGED CORRES-
PONDENCE
REGULATIONS

Kaufman v. McCaughtry, 419 F.3d 678 (7th Cir. 2005). A state prison inmate brought a § 1983 First Amendment action against corrections officials, challenging their refusal to permit him to organize an atheism study group among inmates, and challenging his right to receive certain publications by mail. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part and vacated and remanded in part. The court held that the inmate's atheism qualified as a "religion" for the purposes of the First Amendment, where the inmate maintained that his atheistic beliefs played a central role in his life, and there was no dispute that those beliefs were deeply and sincerely held. The court held that officials' refusal to permit an atheism study group did not violate the Free Exercise Clause because the infringement on the inmate's free exercise was not significant, since he was not prohibited from studying atheist literature on his own, consulting informally with other atheist inmates, or corresponding with members of atheist groups. But the court found that the officials violated the Establishment Clause because other religious groups were permitted to meet at the prison, and the officials offered no secular reason why the security concerns cited as the reason for denying the inmate's request did not apply to those other groups. The court held that mail addressed to the inmate from the federal Department of Justice, a non-profit civil liberties organization, and other legally-oriented entities was not shown to be "legal mail" that was entitled to heightened protections under the First Amendment, and therefore opening the items outside of the inmate's presence did not violate the inmate's rights to receive mail and to have access to courts. The court held that including materials that depict sadomasochistic abuse within the definition of prohibited "pornography" did not constitute an overbroad definition of the term, noting that the officials were bound by the inclusion of such materials under the provisions of an earlier class action in which the inmate was a class member. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
LEGAL MAIL

Moore v. Schuetzle, 354 F.Supp.2d 1065 (D.N.D. 2005). A state prison inmate brought a § 1983 action against corrections officials and against a physician, alleging that his legal mail was repeatedly opened out of his presence. The district court granted summary judgment in favor of the defendants. The court held that correspondence from a city police department and from a state corrections department was not constitutionally-protected "legal mail." According to the court, assuming that a letter from a legal advocacy group was protected legal mail, the mistaken opening of the letter did not amount to a First Amendment violation, since the opening was the letter was an isolated incident and there was no evidence of interference with the inmate's right of access to courts. (North Dakota State Penitentiary)

U.S. Appeals Court
BULK MAIL
PUBLICATIONS

Prison Legal News v. Lehman, 397 F.3d 692 (9th Cir. 2005). A nonprofit corporation that published and distributed prison-related publications sued a state corrections department and its policy-making employees, challenging the constitutionality of the department's inmate mail directive. The district court granted summary judgment in part, denied in part, and granted injunctive relief. The parties appealed. The appeals court affirmed. The court held that the department's ban on inmates' receipt of non-subscription bulk mail and catalogs violated the First Amendment, where the department's asserted interest in preventing the receipt of contraband, reducing fire hazards, increasing the efficiency of random cell inspections, and enhancing prison security were not rationally related to the mail directive. The court found that the employees were entitled to qualified immunity regarding the First Amendment claims because the law was not clearly established at the time. According to the court, where prisoners had a First Amendment right to receive non-subscription bulk mail and catalogs, the same procedural protections had to be afforded to prisoners with regard to this mail as with first-class, periodical, or subscription bulk-rate mail. (Washington Department of Corrections)

U.S. Appeals Court
INTERFERENCE
FORWARDING
LEGAL MAIL

Simkins v. Bruce, 406 F.3d 1239 (10th Cir. 2005). A prisoner brought a pro se § 1983 action alleging that corrections officials failed to forward his mail to him while he was temporarily housed in another facility, causing him to lose a lawsuit. The district court granted summary judgment for the officials and the prisoner appealed. The appeals court reversed and remanded. The court held that a prison mail room supervisor's conduct of holding the prisoner's mail rather than forwarding it to him constituted intentional conduct that violated the prisoner's right of access to the courts. The court noted that a prisoner's right to receive his legal mail was clearly established. (Hutchinson Correctional Facility, Kansas)

U.S. District Court
PROHIBITION-
PUBLICATIONS

Willson v. Buss, 370 F.Supp.2d 782 (N.D.Ind. 2005). A former inmate sued a prison superintendent, claiming that a rule that denied him receipt of magazines having homosexual content violated his First Amendment rights. The district court entered judgment in favor of the superintendent. The court held that there was a valid, rational connection between the prison's ban on inmate receipt of "blatantly homosexual material" and that the ban furthered a legitimate, penological objective of protecting homosexual inmates from injury by the prison population which is traditionally hostile to them. The court noted that the impact of accommodating the inmate's interest in having access to the magazines included the possibility that the materials could get into the hands of other inmates who were not homosexual, and they could be subjected to assaults by homophobic fellow inmates. The court found that the rule was not void for vagueness under the

homophobic fellow inmates. The court found that the rule was not void for vagueness under the First Amendment. (Westville Correctional Facility, Indiana)

2006

U.S. District Court
OUTGOING MAIL
PRIVILEGED CORRESPONDENCE

Barber v. U.S. Attorney General, 458 F.Supp.2d 1378 (S.D.Ga. 2006). An inmate filed a pro se action against the United States Attorney General. The district court held that the inmate's repeated filing of frivolous pro se actions in district courts warranted imposition of a sanction permitting the warden to open and inspect each outgoing envelope from the inmate addressed to a court, to withhold postage from any document that was not a notice of appeal (NOA) from the sanction order, and to block all of the inmate's mail to court if he used his own resources to pay postage. The court opened its opinion by stating "inmate-plaintiff Edward Barber's recreational-litigation days have come to an end." (Georgia)

U.S. District Court
LEGAL MAIL
OUTGOING MAIL
INTERFERENCE

Felton v. Lincoln, 429 F.Supp.2d 226 (D.Mass. 2006). Federal prisoner brought civil rights action under § 1983 against jail officials, in their individual and official capacities, asserting claims for violations of his constitutional rights. The prisoner alleged that jail personnel wrongfully reviewed and confiscated material which was part of the discovery in his underlying criminal case and which had been sent to him by counsel, that he was wrongfully disciplined for possessing such material, and that there was wrongful interference with other incoming and outgoing mail, in violation of various regulations. The district court held that: (1) the temporary confiscation of the prisoner's legal materials did not violate his rights to due process and to meaningful access to courts, where the prisoner's counsel engaged in extensive discussions with prison personnel to make sure that the material was available for the prisoner's review in preparation for his trial, and the prisoner's defense was in no way impaired as a result of having the material temporarily confiscated; (2) the alleged wrongful disciplinary isolation imposed against the prisoner for possessing the legal material did not violate prisoner's right to due process; (3) officials' alleged failure to allow prisoner to be represented at disciplinary hearing did not amount to a violation of the prisoner's constitutional rights; (4) any wrongful interference with the prisoner's incoming and outgoing mail, in violation of various regulations, was de minimis, and did not rise to level of a constitutional violation; (5) the sheriff had qualified immunity where the prisoner failed to show that the sheriff actually participated in acts that allegedly deprived prisoner of his constitutional rights, formulated a policy of tolerating such violations, or was deliberately indifferent; but (6) a genuine issue of material fact existed as to whether a prison director, captain, and deputy superintendent were personally involved in acts that allegedly deprived the prisoner of his constitutional rights, precluding summary judgment for those officials on basis of qualified immunity. (Plymouth County Correctional Facility, Massachusetts)

U.S. District Court
PUBLICATIONS
REJECTING MAIL

George v. Smith, 467 F.Supp.2d 906 (W.D.Wis. 2006). A state prisoner sued prison officials under § 1983, alleging deprivation of his free speech rights and deliberate indifference to his serious medical needs. The officials moved for summary judgment and the district court granted the motion in part and stayed in part. The court held that: (1) the officials' ban on the prisoner's receipt of a newsletter on the ground that the newsletter solicited gifts did not violate the prisoner's free speech rights; (2) a prohibition against the prisoner possessing an atlas did not violate his free speech rights; (3) the officials did not violate the prisoner's speech rights in concluding that a magazine advocated behavior consistent with a gang and thus was prohibited by regulation; and (4) the prisoner was not exposed to unreasonably high levels of environmental tobacco smoke. The court found that the prison officials' ban on the prisoner's receipt of a newsletter that advocated for healthcare improvements in the prison and encouraged readers to "(s)end donations" and to urge their families to "join in the fight," did not violate the prisoner's free speech rights, in that it was a reasonable application of the prison policy prohibiting delivery of correspondence soliciting gifts. Similarly, the court held that the prohibition against the prisoner possessing an atlas had a reasonable relationship to a legitimate penological interest, and thus did not violate his free speech rights, in that the possession of an atlas might allow the prisoner to plot escape routes. The court held that prison officials did not violate the prisoner's speech rights in concluding that a magazine advocated behavior consistent with a gang, and thus was prohibited by a prison regulation, in as much as it was neither arbitrary nor irrational for the prison officials to conclude that a picture in the magazine portrayed gang-related hand signs. (Oshkosh Correctional Institution, Wisconsin)

U.S. District Court
RELIGIOUS LITERATURE
RESTRICTIONS

Jesus Christ Prison Ministry v. California Department of Corrections, 456 F.Supp.2d 1188 (E.D.Cal. 2006). A prison ministry program and state prisoners brought an action against the California Department of Corrections and Rehabilitation (CDCR), alleging that a correctional facility's policy prohibiting the sending of free softbound Christian literature, compact discs, and tapes to prisoners who have requested those materials violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) and their First Amendment rights. The court held that the policy violated prisoners' free exercise and free speech rights under First Amendment. According to the court, the asserted penological goals of preventing the receipt of contraband, reducing fire hazards, increasing the efficiency of random cell inspections or enhancing prison security did not

justify the policy, and the distinction between approved vendors and unapproved vendors was arbitrary and not reasonably related to legitimate penological interests. The court also found that the policy violated prisoners' rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) where the approved vendor policy placed a "substantial burden" on the exercise of the prisoners' religious beliefs because prisoners were unable to engage in conduct that is motivated by their sincere religious beliefs without access to the materials provided by the unapproved vendor at no cost, and the unique study and worship materials provided by the unapproved vendor were unavailable through any of the approved vendors. (California State Substance Abuse Treatment Facility)

U.S. Appeals Court
POSTAGE

Johnson v. Goord, 445 F.3d 532 (2nd Cir. 2006). An inmate brought a civil rights action against prison officials, challenging a regulation governing possession of stamps. The district court entered judgment in favor of the officials and inmate appealed. The appeals court held that the inmate did not have a constitutional right to unlimited free postage for non-legal mail, and the regulation was reasonably related to legitimate penological interests, and thus did not violate the inmate's First Amendment right to send outgoing non-legal mail. The prison regulation prevented certain inmates in keeplock from receiving stamps through the mail and permitted them to receive only one free stamp per month for personal use. The court noted that stamps could be used by inmates as a form of currency, and the regulation furthered the legitimate goals of reducing thefts, disputes, and unregulated prisoner transactions. (New York State Department of Correctional Services)

U.S. Appeals Court
LEGAL MAIL

Jones v. Brown, 461 F.3d 353 (3d Cir. 2006). State prisoners brought an action against prison officials, claiming that a policy of opening and inspecting their legal mail outside of their presence violated their First Amendment rights. The district court granted judgment for the prisoners and the officials appealed. Another district court on similar claims granted judgment for the officials and the prisoners in that case also appealed. The cases were consolidated on appeal. The court entered judgment for the prisoner, finding that the policy of opening legal mail outside the presence of the addressee prisoner impinged upon the prisoner's right to freedom of speech under the First Amendment, and that the legal mail policy was not reasonably related to the prison's legitimate penological interest in protecting the health and safety of prisoners and staff. The court held that reasonable prison administrators would not have realized that they were violating the prisoners' First Amendment free speech rights by opening prisoners' legal mail outside of the prisoners' presence, entitling them to qualified immunity. The court noted that although the administrators maintained the policy after three relatively uneventful years had passed after the September 11 terrorist attacks and subsequent anthrax concerns, the policy was reasonable when it was established. (New Jersey Department of Corrections)

U.S. Appeals Court
OUTGOING MAIL
WITHHOLDING
CORRESPONDENCE
REGULATIONS

Koutnik v. Brown, 456 F.3d 777 (7th Cir. 2006). A state prisoner brought a pro se § 1983 action, challenging the confiscation of his outgoing letter, which contained a swastika and a reference to the Ku Klux Klan. The prisoner alleged violations of his First Amendment free speech rights, and his due process rights. The district court dismissed the due process claim, and granted summary judgment in favor of defendants on remaining claim. The prisoner appealed. The appeals court affirmed. The court held that the prison regulation, prohibiting prisoners from possessing symbolism that could be associated with any inmate group not approved by the warden, was not impermissibly vague, for the purpose of determining whether the regulation was facially violative of the prisoner's First Amendment free speech rights. According to the court, although the regulation gave some discretion and flexibility to prison officials, the prison setting required it to ensure order and safety. The appeals court deferred to state prison officials' assessment of whether a swastika and a reference to the Ku Klux Klan in the prisoner's outgoing letter were gang-related symbols, for the purpose of the prisoner's claim that seizure of the letter by prison officials violated his First Amendment right to free speech, where knowledge of gang symbolism was acquired primarily through interaction with and observation of prisoners, and the symbolism was constantly changing. According to the court, the confiscation of the prisoner's outgoing letter furthered the substantial governmental interest in prisoner rehabilitation, and thus, it did not violate the prisoner's First Amendment free speech rights. The court noted that the letter was an attempt to express the prisoner's affiliation with racially intolerant groups, which thwarted the state's goals of encouraging the prisoner to live crime-free when released from custody, and fostering the prisoner's ability to resolve conflicts without violence. (Wisconsin Secure Program Facility)

U.S. District Court
LEGAL MAIL

Strong v. Woodford, 428 F.Supp.2d 1082 (C.D.Cal. 2006). A prisoner filed a § 1983 action, alleging prison officials mishandled or destroyed his outgoing legal mail. The defendants filed a motion to dismiss. The district court held that the prisoner failed to state a First Amendment violation with respect to access to the courts and that the prisoner's allegations that prison officials negligently destroyed or mishandled his legal mail did not support an actionable claim under § 1983. The court held that the prisoner's allegations of supervisor liability did not state a claim under § 1983 and that the officials were immune from liability for money damages or other retroactive relief. According to the court, a delay in filing a legal document without any attendant adverse

consequences does not constitute actual harm, as required for an inmate to assert claims based on a denial of his First Amendment rights in legal correspondence. (California)

2007

U.S. District Court
LEGAL MAIL
OPENING MAIL

Banks v. York, 515 F.Supp.2d 89 (D.D.C. 2007). A detainee in a jail operated by the District of Columbia Department of Corrections (DOC), and in a correctional treatment facility operated by the District's private contractor, brought a § 1983 action against District employees and contractor's employees alleging negligent supervision under District of Columbia law, over-detention, deliberate indifference to serious medical needs, harsh living conditions in jail, and extradition to Virginia without a hearing. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that the detainee's allegations that his legal mail was opened by officials at the jail outside of his presence on numerous occasions during a four-month period, and that such actions were intentional and pursuant to a policy or systemic practice, stated a claim under § 1983 for violation of First Amendment free speech rights. (Central Detention Facility, D.C. and Corr'l Treatment Facil. operated by Corrections Corporation of America)

U.S. District Court
LEGAL MAIL
OPENING MAIL

Fontroty v. Beard, 485 F.Supp.2d 592 (E.D.Pa. 2007). Inmates sued state prison officials, claiming that a policy of opening legal and court mail outside their presence violated the First Amendment. The district court granted summary judgment for the inmates, in part. The court held that the policy of opening inmate legal and court mail outside of their presence, inspecting for contraband, and resealing the mail without reading it, violated the First Amendment right of inmates to have mail opened in their presence. The court noted that the policy did not further the prison's objective of blocking contraband entering prison through the mails, over an alternate procedure of opening mail in inmate's presence. On appeal (559 F.3d 173) the appeals court reversed. (SCI-Graterford, Pennsylvania)

U.S. Appeals Court
PROHIBITIONS-
PUBLICATIONS

Jones v. Salt Lake County, 503 F.3d 1147 (10th Cir. 2007). County jail prisoners and a legal publication for prisoners filed § 1983 suits against county jails, county officials, and a state Department of Corrections (DOC), challenging the constitutionality of mail regulations in the jails and state prisons. The district court dismissed the actions and the plaintiffs appealed. The two actions were consolidated for appeal. The appeals court affirmed in part, reversed in part, and remanded. The court held that: (1) a jail regulation banning prisoners' receipt of technical and sexually explicit publications did not violate the First Amendment; (2) the jail regulation barring prisoners from ordering books from the outside did not violate the First Amendment; and (3) the prison's refusal to accept legal publications did not amount to a violation of prisoners' First Amendment or due process rights where the refusal to accept the magazines was not based on any prison policy, but was due to a prison mailroom personnel's negligence. The court remanded the case to the district court to conduct a four-part Turner analysis of the validity of the county jail's ban on prisoners' receipt of all catalogs. The court held that the regulation banning ordering books from outside was reasonably related to the jail's legitimate penological goal of security, as it prevented contraband from being smuggled into the jail, and that prisoners had access to thousands of paperbacks through the jail library, prisoners could request permission to order books directly from a publisher, prisoners could also obtain paperback books donated to them through a program at local bookstore, prisoners had access to other reading materials such as newspapers and certain magazines. The court noted that allowing prisoners to have unrestricted access to books from all outside sources would significantly impact jail resources. (Utah State Prison, Salt Lake County Jail and San Juan County Jail, Utah)

U.S. District Court
CORRESPONDENCE
REGULATIONS

Jordan v. Pugh, 504 F.Supp.2d 1109 (D.Colo. 2007). A federal inmate brought an action alleging that a prison regulation prohibiting inmates from acting as reporters or publishing under bylines violated the First Amendment. After a bench trial was held, the district court entered judgment for the inmate. The court found that the inmate had constitutional standing to raise the First Amendment challenge against the regulation, where the inmate had been punished twice for publishing under a byline. The court held that the federal Bureau of Prisons (BOP) regulation violated the First Amendment, despite the BOP's concerns of creating "big wheel" inmates who presented a security risk, a chilling effect on the performance or speech of prison staff, or permitting inmates to conduct business. The court noted that a myriad of similar publishing opportunities were available to inmates, there was no particular security risk associated with an inmate publishing under a byline in the news media that was not present with other inmate publications, the BOP had adequate authority to screen and exclude dangerous content coming into the prison, and there was no evidence linking inmates' outgoing news media correspondence to inmates conducting business. (Federal Bureau of Prisons, Administrative Maximum Unit ["ADX"], Florence, Colorado)

U.S. District Court
PROHIBITION-
PUBLICATIONS
RELIGIOUS
LITERATURE

Kaufman v. Schneider, 524 F.Supp.2d 1101 (W.D.Wis. 2007). A former state inmate sued prison officials for declaratory, injunctive, and monetary relief, alleging that he was subjected to retaliatory transfer and that his rights under the First and Eighth Amendments and Religious Land Use and Institutionalized Persons Act (RLUIPA) were violated. The court granted the officials' motion for summary judgment. According to the court, there were no facts in evidence that the former state inmate was prevented from ordering publications about his religion of atheism while incarcerated at a maximum security facility, was in the facility's step program, or was in any other way injured by the step program's no-publications policy, and therefore the former inmate lacked standing to litigate his claim that the policy violated his free exercise rights and rights under Religious Land Use and Institutionalized Persons Act (RLUIPA). (Wisconsin Secure Program Facility)

U.S. District Court
OUTGOING MAIL
INSPECTION OF MAIL

Maddox v. Berge, 473 F.Supp.2d 888 (W.D.Wis. 2007). A state prisoner brought a civil rights action under § 1983 against prison officials and employees, alleging that his administrative confinement for participating in a riot violated his Eighth and Fourteenth Amendment rights. The court found that allegations that the prisoner was confined to his cell 23 hours a day and that he was denied "outside recreation" while he was in administrative confinement demonstrated injuries from an objectively serious deprivation, for the purposes of his conditions or confinement claim. The court ruled that a prison requirement that the prisoner leave all of his outgoing nonlegal mail open to be inspected by prison officials did not violate the prisoner's First Amendment rights, where his outgoing mail was not censored or delayed. (Green Bay Correctional Institution, Wisconsin)

- U.S. District Court
CENSORSHIP
PROHIBITIONS-
PUBLICATIONS
- Strope v. Collins*, 492 F.Supp.2d 1289 (D.Kan. 2007). Inmates brought a civil rights action against prison officials, stemming from censorship of magazines containing alleged nudity. The parties moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that summary judgment on the inmates' claims alleging First Amendment violations was precluded by genuine issues of material fact, regarding whether prison officials' withholding of publications containing alleged nudity was reasonably related to legitimate penological interests. The court found that an inmate who sued prison officials was afforded adequate procedural due process in the denial of access to magazines containing alleged nudity, where the inmate was given written notice of withholding of the magazine by way of an "Appeal of Censored Material," was told verbally about the refusal to process a Special Purpose Order (SPO) for a supplemental issue, and had the opportunity to grieve the censorship and appeal decisions to prison officials who were not involved in original process. The court held that officials were not entitled to qualified immunity to the extent that they were being sued in their individual capacities, where the claim that the censorship was not related to legitimate penological interests implicated clearly-established First Amendment rights. The court held that genuine issues of material fact, regarding the extent to which the prison warden personally participated in the alleged deprivation of the inmates' First Amendment right to receive information by censoring magazines containing alleged nudity, precluded summary judgment on claims alleging the warden's vicarious liability under a federal civil rights statute. (Lansing Correctional Facility, Kansas)
- U.S. District Court
LEGAL MAIL
OPENING MAIL
DELIVERY
- Vasquez v. Raemisch*, 480 F.Supp.2d 1120 (W.D.Wis. 2007). A prisoner sought leave to proceed under the in forma pauperis statute in a proposed civil rights action for declaratory, injunctive and monetary relief brought against prison officials and corrections officers. The court held that the prisoner failed by state a First Amendment claim by alleging that his legal mail was opened by prison officials three times outside his presence, and that his legal mail was given to another prisoner with the same last name on one occasion, where the prisoner did not suggest that any of the four instances he described prevented him from litigating a case, and none of the mail at issue involved correspondence from his criminal defense lawyer. (Wisconsin)
- U.S. District Court
PROHIBITIONS-
PUBLICATIONS
- West v. Frank*, 492 F.Supp.2d 1040 (W.D.Wis. 2007). A prisoner sued prison officials under § 1983, alleging that they violated his speech and equal protection rights by enforcing a policy prohibiting prisoners from receiving publications in the mail. The prisoner wanted to stay abreast of the nation's current events while he was incarcerated and had subscribed to *USA Today* using his own funds. Authorities at the Wisconsin Secure Program Facility where the prisoner was incarcerated refused to deliver the newspaper. The officials moved for summary judgment. The court granted the motion. The court held that the officials who had no involvement in the adoption or implementation of the policy could not be liable under § 1983 for any violation of the prisoner's speech rights that occurred when the policy was applied to him. The court held that genuine issues of material fact existed as to whether the prison violated the prisoner's free speech rights by enforcing its policy against him, instituted as part of a behavior modification program, precluding summary judgment. But the court found that the action was moot, where the state had abandoned the policy, and the prisoner had been transferred from the only prison in the state that imposed such a policy. (Wisconsin Secure Program Facility)
- 2008**
- U.S. Appeals Court
LEGAL MAIL
OPENING MAIL
- Al-Amin v. Smith*, 511 F.3d 1317 (11th Cir. 2008). A state prison inmate brought a § 1983 action against state corrections officials, alleging that the officials repeatedly opened his privileged attorney mail outside of his presence in violation of his rights to access to the courts and free speech. The district court denied the officials' motion for summary judgment and the officials appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the prisoner's constitutional right of access to the courts requires that incoming legal mail may be opened only in the inmate's presence and only to inspect for contraband. According to the court, the inmate's right to have properly marked incoming attorney mail opened only in his presence was clearly established. The court found that the lack of showing of actual injury precluded recovery on the right-of-access claim. The court held that the inmate had a free speech right to communicate with his attorneys separate from his right of access to the courts and that the pattern and practice of opening the prisoner's attorney mail outside his presence impinges on his freedom of speech. The court noted that actual injury is not required for the prisoner to state a free speech claim arising from the opening of attorney mail and that the First Amendment prohibition against opening the inmate's attorney mail outside his presence was clearly established. (Georgia State Prison)
- U.S. Appeals Court
CENSORSHIP
LANGUAGE
OUTGOING MAIL
- Barrett v. Belleque*, 544 F.3d 1060 (9th Cir. 2008). A prisoner brought a pro se § 1983 action alleging that prison officials violated his rights under the First and Fourteenth Amendments by punishing him for writing letters using vulgar and offensive racist language to describe prison officials. The district court dismissed the complaint and the prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner's allegations that the prison censored his outgoing mail and punished him for its contents stated a § 1983 claim that his First Amendment rights were violated. The prisoner had attempted to mail a series of letters to his grandmother and mother. The letters used vulgar and offensive racist language to describe prison officials. After reviewing the letters, prison officials cited the prisoner for violation of various prison disciplinary rules, resulting in a loss of good time, revocation of certain privileges, and other punitive measures. The appeals court found that the district court's dismissal relied on an incorrect legal standard. (Oregon State Penitentiary)
- U.S. District Court
DELAY
LEGAL MAIL
- Dolberry v. Levine*, 567 F.Supp.2d 413 (W.D.N.Y. 2008). A prisoner brought a § 1983 action against prison officials asserting his constitutional rights were violated in a number of ways. Both parties moved for summary judgment. The court granted summary judgment for the defendants in part and denied in part. The court found that an isolated incident of mail tampering is usually insufficient to establish a constitutional violation for violating a prisoner's right to the free flow of incoming and outgoing mail under the First Amendment; rather, the inmate must show that prison officials regularly and unjustifiably interfered with the incoming legal mail. (Wyoming Corr'l Facility, New York)

U.S. District Court INTERFERENCE SEIZURE	<i>Frazier v. Diguglielmo</i> , 640 F.Supp.2d 593 (E.D.Pa. 2008). A prisoner brought an action against several prison officers and supervisors, alleging that the defendants violated his rights by interfering with his mail and seizing legal materials from his cell. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the prisoner's bare allegation, that prison officials' seizure of a writ of coram nobis "obstructed" his right to "petition the government for redress of grievances," was insufficient to allege the infringement of an exercise of a First Amendment right of access to the courts to secure judicial relief, as required to state a claim for violation of the right of access. The court noted that the prisoner did not describe the contents of the writ or the judgment he sought to challenge, nor did the prisoner allege or even allude to any prejudice in any legal action caused by the writ's confiscation. The court found that the prisoner's allegation that prison officials seized legal documents relating to his criminal and habeas cases was insufficient to state a claim for violation of First Amendment right of access to the courts, absent an allegation that the alleged seizure caused him prejudice in a legal challenge to his conviction or to his conditions of confinement. (State Correctional Institution at Graterford, Pennsylvania)
U.S. District Court CENSORSHIP PROHIBITION- PUBLICATIONS	<i>Johnson v. Raemisch</i> , 557 F.Supp.2d 964 (W.D.Wis. 2008). An inmate sued prison officials under § 1983, contending that their censorship of a newsletter violated his First Amendment right to free speech. The district court held that the challenged censorship was not logically connected to a legitimate penological interest and therefore violated the inmate's First Amendment rights. The court found that many of the proffered reasons for the censorship suggested that it was the critical nature of the newsletter that prompted the decision, rather than any true interest in security or rehabilitation. According to the court, to the extent that there was a true concern for security or rehabilitation, censorship of the newsletter, which did not advocate violence or any other unlawful activity, was an exaggerated response to those concerns. The court held that the appropriate injunctive relief for a violation of the inmate's First Amendment rights in the officials' blocking the inmate's subscription to a newsletter addressing prisoner rights issues was to provide the inmate with a copy of the newsletter. (Waupun Correctional Institution, Wisconsin)
U.S. District Court PROHIBITION- PUBLICATIONS	<i>Jordan v. Sosa</i> , 577 F.Supp.2d 1162 (D.Colo. 2008). A federal prisoner brought an action against a prison and officials, alleging a prison regulation prohibiting the prisoner from receiving sexually explicit material in the mail was unconstitutional. The district court held that the regulation did not violate the prisoner's First Amendment rights nor did it violate the inmate's or publishers' due process rights. But the court found that the portion of the regulation that allowed the prison to fail to retain the rejected publication violated due process. (United States Penitentiary-Administrative Maximum, Florence, Colorado)
U.S. District Court CENSORSHIP PUBLICATIONS	<i>Prison Legal News v. Schwarzenegger</i> , 561 F.Supp.2d 1095 (N.D.Cal. 2008). In an action arising from a publisher's allegations that a state corrections department illegally censored its publications, the parties' settlement agreement provided that the publisher was the prevailing party for the purposes of a reasonable attorney fee award and costs. The publisher, Prison Legal News, had alleged that the California Department of Corrections and Rehabilitation (CDCR) illegally censored its publications. The publisher moved for a fee award for work performed by its counsel after the settlement agreement was executed, and for the establishment of a semi-annual fees process. The defendants opposed the motion. The district court granted the motion in part and denied in part. The court held that: (1) the allegedly minimal nature of work performed after the agreement was executed did not preclude the publisher from being the prevailing party entitled to the fee award; (2) the publisher could recover fees for time spent by its counsel on such activities as drafting press releases and responding to media inquiries; (3) clerical tasks could not be billed at the paralegal or attorney rate; (4) a reduction in the fee award was not warranted on grounds that the publisher had multiple attorneys in attendance at two telephone conferences; (5) a fee reduction was not warranted on grounds that the requested fees included hours spent on duplicative and excessive tasks; and (6) the establishment of a semi-annual fees process was not warranted. (California Department of Corrections and Rehabilitation)
U.S. District Court ATTORNEY MAIL OPENING MAIL	<i>Shine v. Hofman</i> , 548 F.Supp.2d 112 (D.Vt. 2008). A federal pretrial detainee in the custody of the Vermont Department of Corrections brought a pro se action, alleging violation of his constitutional rights. The detainee alleged that his mail was opened and returned to him, thereby impeding his ability to communicate with his attorney, that his placement in close custody limited his ability to access legal materials, and that his placement in segregation barred him from contacting his attorney and potential witnesses. The district court dismissed in part. The court held that the inmate did not state a First Amendment claim for deprivation of access to courts, absent an allegation of actual injury in connection with his challenge to his conviction or sentence. (Vermont Department of Corrections)
U.S. District Court DELAY PACKAGE	<i>Williamson v. Black</i> , 537 F.Supp.2d 792 (M.D.N.C. 2008). A state prisoner brought a § 1983 action against a corrections officer, alleging that the officer received the prisoner's legal mail and withheld it from the prisoner. The district court granted summary judgment for the officer. The court held that the prisoner's constitutional rights were not violated by the corrections officer's alleged withholding of his incoming mail, since the alleged withholding involved only one package that did not contain legal mail, the package was incoming mail, and the prisoner subsequently received copies of the documents contained in the package. (North Carolina)

2009

U.S. Appeals Court LEGAL MAIL PACKAGES REJECTING MAIL	<i>Bonner v. Outlaw</i> , 552 F.3d 673 (8 th Cir. 2009). An inmate filed a Bivens action against prison officials, alleging their handling of his incoming legal mail violated his constitutional rights. The district court granted the defendants' motion to dismiss. The appeals court affirmed in part and remanded in part. On remand, the district court denied the warden's motion to dismiss and his motion for summary judgment on qualified immunity grounds. The warden appealed. The appeals court held that the inmate's allegations were sufficient to state a procedural due process claim against the warden, and that the due process right to receive notice was clearly established. The court held that the Federal Bureau of Prison's (BOP) regulation governing an inmate's notification of rejected correspondence, which distinguished between letters and other correspondence by requiring notification for rejections of the former but not for the latter,
--	---

was unreasonable under procedural due process principles. The court found that there was no governmental interest advanced by the regulation, that inmates did not have an alternative means of receiving notice, and that there was no additional burden placed on prison officials by having to give notice. According to the court, the inmate's allegations that the warden had responsibility for lack of notice as to the prison's rejection of packages containing legal mail were sufficient to state a procedural due process claim against the warden. The inmate had alleged that the warden was personally involved in creating, applying, or interpreting a policy that failed to adhere to notice requirements, and that even if the warden had no role in deciding what notice procedures to follow, the inmate alleged that the warden failed to train or supervise mail room employees to follow notice requirements. (Federal Corr'l Inst., Waseca, Minnesota)

U.S. District Court
LEGAL MAIL
LIMITATION
SECURITY PRACTICES

Covell v. Arpaio, 662 F.Supp.2d 1146 (D.Ariz. 2009). A prisoner brought a § 1983 action against a county sheriff, alleging that the sheriff violated his First Amendment rights by instituting a policy that banned incoming letters and restricted incoming mail to metered postcards. The prisoner alleged that the mail policy prevented him from receiving legal mail from witnesses in his criminal case. The sheriff moved for summary judgment and the district court granted the motion. The court held that the jail's non-privileged mail policy which banned incoming letters and restricted incoming mail to metered postcards was reasonably related to a legitimate penological interest in reducing contraband smuggling. The court noted that alternative means, including postcards, telephones, and jail visits, existed. According to the court, allowing stamped mails would increase the likelihood of smuggling contraband into the jail, which would in turn lead to conflicts and violence, and there was no evidence that the prisoner's suggested alternative, by having staff inspect each piece of mail and remove the stamps, would accommodate the right at a de minimis cost to the jail. The court held that even if correspondence from a witness on the prisoner's witness list was improperly excluded by the county jail, in violation of the prisoner's right of access to the courts, the prisoner failed to allege any violation of the policy that was at the direction of the county sheriff, as required to render him liable under § 1983. (Maricopa County Lower Buckeye Jail, Arizona)

U.S. District Court
LIMITING
CORRESPONDENTS

Doss v. Gilkey, 649 F.Supp.2d 905 (S.D.Ill. 2009). Federal prisoners brought an action against prison officials, alleging that the officials' failure to acknowledge the validity of their marriage and to grant them a spousal exemption to the rule that inmates could not correspond with each other violated their equal protection and due process rights. The officials moved for summary judgment. The district court granted the motion. According to the court, the prison officials' failure to acknowledge the validity of the marriage of two prisoners and to grant them a spousal exemption to the rule that inmates could not correspond with each other did not violate the prisoners' equal protection rights where there was no showing that officials singled out the prisoners based on their Islamic religion or any other improper consideration. The court found that the prison had a legitimate security interest in generally preventing unrelated prisoners from corresponding, the face of the prisoners' marriage certificate did not strictly comport with the statutory requirements, the marriage certificate was not registered, as required by state law, and there was some evidence that the marriage was not valid due to one prisoner's failure to terminate a prior marriage. (Federal Correctional Institution, Greenville, Illinois)

U.S. Appeals Court
CORRESPONDENCE-
COURT
INSPECTION OF MAIL
LEGAL MAIL
OPENING MAIL

Fontroy v. Beard, 559 F.3d 173 (3rd Cir. 2009). Inmates sued state prison officials, claiming that a policy of opening legal and court mail outside their presence violated the First Amendment. The district court declared the policy unconstitutional in violation of the First Amendment. The prison officials appealed. The appeals court reversed, finding that the policy did not violate the First Amendment right of inmates to have mail opened in their presence. According to the court, the policy of requiring a control number on legal and court mail sent to inmates, opening mail without control numbers outside of inmates' presence, and inspecting for contraband before delivering mail to inmates, did not violate the First Amendment right of inmates to have mail opened in their presence. The court noted that the new legal mail policy was implemented to avoid abuse of the legal mail privilege, that the new policy was less burdensome on prison employees than the prior policy, that the inmates' proposed alternative could not be achieved at de minimis cost, and while inmates could not control whether courts or attorneys actually obtained control numbers, that alternatives were provided by new policy. (Pennsylvania Department of Corrections)

U.S. District Court
DELAY

Johnson v. Boyd, 676 F.Supp.2d 800 (E.D. Ark. 2009). A state prisoner filed a civil rights action against a detention center and its personnel alleging several violations. The defendants moved for summary judgment and the district court granted the motion in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether detention center personnel failed to protect the prisoner from an attack by another prisoner. According to the court, the prisoner's First Amendment freedom of association and speech rights had not been violated by denial of his visitation, phone, and mailing privileges for two days as the direct result of the prisoner committing a disciplinary infraction while he was in protective custody. (Crittenden County Detention Center, Arkansas)

U.S. Appeals Court
CONFISCATION
OUTGOING MAIL
PROHIBITION
REGULATIONS

Jones v. Caruso, 569 F.3d 258 (6th Cir. 2009). State prison officials filed a motion to reconsider an order enjoining them from enforcing a rule preventing prisoners from possessing books, pamphlets, forms or other material regarding actions that could be taken under Uniform Commercial Code (UCC). The district court denied the motion, and the prison officials appealed. The appeals court affirmed and remanded. The appeals court held that the letter which the prisoner attempted to mail to the Michigan Secretary of State's office, requesting information about copyrighting and trademark registration in Michigan, was not "legal mail," and thus its confiscation pursuant to the prison regulation was not subject to heightened review under the First Amendment. But the court found that the prisoner was likely to succeed on the merits of his First Amendment claim and the balancing of the relevant factors favored issuance of a preliminary injunction. The court noted that the harms that prisoners would face from the enforcement of the rule outweighed those which the prison defendants would face if the court upheld the injunction, and public interest in preventing prisoners' abusive filings would not be harmed by the preliminary injunction. (Saginaw Correctional Facility, Michigan)

U.S. Appeals Court
CENSORSHIP

Mays v. Springborn, 575 F.3d 643 (7th Cir. 2009). A prisoner brought an action against prison officials, asserting claims based on strip searches at prisons and alleged retaliation for his complaints about the searches, denial of his request for dietary supplements which he considered to be religious necessities, alleged inadequacy of his diet, failure to issue certain winter clothing items, and censorship of pages in a magazine mailed to him. The district court granted summary judgment in favor of the officials on the claims about prison food and clothing and granted the officials judgment as a matter of law on the claims about strip searches, retaliation, and censorship. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prison's censorship of a magazine mailed to the prisoner, by removing an article that described a prison riot and pictures of people believed to have been making gang signs, was reasonable, even if the prisoner had access to other writings and to television shows about prison riots. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
LEGAL MAIL
OPENING MAIL
REGULATIONS

Merriweather v. Zamora, 569 F.3d 307 (6th Cir. 2009). A former federal prisoner filed a Bivens complaint claiming deprivation of his First, Fifth, and Sixth Amendment rights by prison mailroom employees' routinely opening and reading prisoner's mail outside of his presence, although the mail was marked as "legal mail" or "special mail" pursuant to Bureau of Prisons' (BOP) regulations. The district court denied the employees summary judgment on the grounds of qualified immunity. The employees appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that: (1) a fact issue precluded summary judgment as to whether two envelopes from the prisoner's attorney were opened outside the presence of the prisoner; (2) an envelope from federal community defenders was properly labeled legal mail; (3) nine envelopes containing the word "attorney/client" were properly labeled legal mail; (4) prison employees' opening of the prisoner's legal mail outside his presence violated his clearly established First and Sixth Amendment rights; (5) prison mailroom supervisors were not protected by qualified immunity; but (6) prison mailroom employees were protected by qualified immunity. According to the court, the former prisoner's allegations that prison mailroom employees opened his legal mail outside his presence despite his repeated complaints to mailroom supervisors were sufficient to find that mailroom supervisors acted unreasonably in response to the prisoner's complaints, precluding the supervisors' protection by qualified immunity from the prisoner's claims. The prisoner alleged that the supervisors' conduct encouraged an atmosphere of disregard for proper mail-handling procedures, where one supervisor stated that the prison did not have to follow case law but only the Bureau of Prisons' (BOP) policy, and that other supervisors knew of the prisoner's complaints but did nothing to correct the admitted errors. (Michigan Federal Detention Center. Federal Bureau of Prisons)

U.S. District Court
LEGAL MAIL
OUTGOING MAIL
REJECTING MAIL

Proctor v. Applegate, 661 F.Supp.2d 743 (E.D.Mich. 2009). State prisoners brought a § 1983 action against Michigan Department of Corrections (MDOC) employees and multiple prison facilities, alleging violations of their constitutional rights. The defendants moved to dismiss on statute of limitations grounds and for failure to state a claim upon which relief could be granted. The district court granted the motion in part and denied in part. The court held that state prison regulations which permitted the confiscation of certain types of mail and prohibited "copyrighting" of names served a legitimate and neutral government purpose, and thus did not violate the prisoners' constitutional rights. According to the court, an employee's rejection of the prisoner's letters to nine state senators and representatives because the prisoner did not pay for postage and because the letters did not qualify as legal mail, as they were not addressed to a court, attorney, or a party to a lawsuit, did not implicate the prisoner's constitutional rights. (Michigan Department of Corrections)

U.S. Appeals Court
LIMITATION

Samford v. Dretke, 562 F.3d 674 (5th Cir. 2009). A state prison inmate brought an in forma pauperis § 1983 action against a corrections official, alleging that a prohibition against any communication between the inmate and his sons constituted a violation of his First Amendment rights to freedom of speech and association. The district court dismissed the petition and the inmate appealed. The appeals court affirmed. The court held that the enforcement of a "negative mail list" that included the inmate's sons did not unduly infringe upon the inmate's First Amendment rights, and the officials' removal of the inmate's sons from the approved visitors list was reasonable. The court found that the restriction was rationally related to the prison's legitimate interest in protecting crime victims and their families from unwanted communications, given the inmate's wife's request that the sons be placed on the list and the fact that the inmate had been imprisoned after violating a probation condition of no contact with the sons. The court noted that an alternate means of communication remained open via the inmate's mother. (Texas Department of Criminal Justice)

U.S. District Court
CENSORSHIP
REFUSAL
REJECTING MAIL

Sikorski v. Whorton, 631 F.Supp.2d 1327 (D.Nev. 2009). A state prisoner and his mother and sister brought a § 1983 action against prison officials and correctional officers, alleging violation of their First and Fourteenth Amendment rights by censoring, refusing to deliver, and returning various pieces of mail addressed to the prisoner and failing to provide them with notice and the opportunity to appeal their decisions. The prisoner also alleged that officials retaliated against him for his use of the prison grievance system. The court held that the prison's policy of not allowing inmates names and addresses of private citizens without express, informed consent of the citizens did not violate the First Amendment rights of the prisoner who was issued an "unauthorized mail notification" relating to a citizens' petition for recommendations regarding parole and sentencing procedures, which was forwarded to the prisoner by a third-party. According to the court, there was a valid, rational connection between the policy and a legitimate governmental interest of protecting citizens, there were alternative means of exercising rights that remained open to the prisoner, accommodation of the asserted rights would have had a significant impact on guards and other inmates, and on the allocation of prison resources generally, and that there were no alternatives to the policy. The court found that the prison's practice of returning mail to the sender unopened when such mail contained tape or stickers did not violate the First Amendment where the policy was rationally related to a legitimate governmental interest in preventing illegal chemical drugs from coming into the prison. The court held that the prison's policy of not giving notice and the opportunity to appeal to inmates regarding mail that was returned to the sender because of noticeable violations on the outside of the envelope did not violate the First Amendment or due process. The court noted that providing the accommodation of giving notice and opportunity to appeal for every piece of mail with a noticeable violation would have placed a significant burden on prison resources. The court found that the prisoner failed to establish that a correctional officer retaliated against him, in violation of § 1983, for exercising the prison

grievance system by issuing notices of charges against the prisoner, returning unopened letters addressed to the prisoner, and issuing an unauthorized mail notification. The court held that the officer acted for legitimate correctional reasons, and the prisoner's exercise of his First Amendment rights was not chilled. (Nevada State Prison)

U.S. District Court
DELAY
INDIGENT INMATES
LEGAL MAIL
OUTGOING MAIL

Wesolowski v. Washburn, 615 F.Supp.2d 126 (W.D.N.Y. 2009). A state prisoner brought a § 1983 action against corrections employees, alleging that the employees violated his rights by interfering with his ability to send outgoing mail. The employees moved for summary judgment and the district court granted the motion. The court held that the employees did not violate the prisoner's right of access to the courts protected under the First Amendment when they correctly determined that certain mail did not qualify as "legal mail" under applicable corrections department regulations, and rejected certain letters and other items that the prisoner sought to mail because of his noncompliance with the regulations. The court noted that, at most, the prisoner was inconvenienced and had some delays in his outgoing mail. The court held that the employees did not violate the prisoner's right to the free flow of mail as protected under the First Amendment when they correctly determined that certain mail did not qualify as "legal mail" and rejected certain letters and other items. According to the court, all the employees did was to require the prisoner's compliance with regulations concerning outgoing mail. The court found that even if the employees had incorrectly determined that some of the prisoner's outgoing mail was not legal mail, and thus did not qualify for free postage, employees were entitled to qualified immunity from the prisoner's § 1983 action because the employees did not violate any of the prisoner's clearly established rights of which a reasonable person in the employees' position would have known. (Southport Correctional Facility, New York)

2010

U.S. District Court
INTERFERENCE
OUTGOING MAIL

Akers v. Watts, 740 F.Supp.2d 83 (D.D.C. 2010). A federal inmate brought a civil rights action against various officials, employees, and agents of the Federal Bureau of Prisons (BOP), Federal Bureau of Investigation (FBI), United States Attorney's Office for the District of Kansas, and the United States Marshals Service (USMS) in their individual capacities, alleging, among other things, that the defendants conspired to violate his constitutional rights by restricting his communications with persons outside the prison. The district court granted the federal defendants motion to dismiss. The court held that it did not have personal jurisdiction in the federal inmate's civil rights action against the Bureau of Prisons (BOP) officials, employees, and agents, a Federal Bureau of Investigation (FBI) agent, a Kansas Assistant United States Attorney (AUSA), or the United States marshals, where the complaint made no allegations that such defendants had any personal connection with District of Columbia other than their federal employment, and the mere fact that the defendants were federal government employees, affiliated with agencies that were headquartered or maintained offices in the District of Columbia, was insufficient to render them subject to suit in their individual capacities. The court held that restrictions imposed upon, and the Bureau of Prisons (BOP) interferences with, the correspondence of federal inmate, who had initiated fraudulent schemes from prison on more than one occasion and used the mail in furtherance of his efforts, served a legitimate penological interest by limiting the inmate's ability to manipulate or swindle others, and thus did not violate the inmate's First Amendment rights. The court noted that the inmate had no reasonable expectation of privacy in his non-legal mail, and therefore restrictions placed upon the inmate's correspondence following his repeated efforts to initiate new fraudulent schemes while incarcerated did not violate the Fourth Amendment. (Administrative Maximum, Florence, Colorado, Federal Bureau of Prisons)

U.S. District Court
DELIVERY
DELAY

Antonetti v. Skolnik, 748 F.Supp.2d 1201 (D.Nev. 2010). A prisoner, proceeding pro se, brought a § 1983 action against various prison officials, alleging various constitutional claims, including violations of the First, Fifth, Sixth, Eighth and Fourteenth Amendments. The district court dismissed in part. The court held that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim that prison officials violated the Eighth Amendment by depriving him of needed medical care. The prisoner alleged that he was housed in segregation/isolation, leading to a mental health breakdown, and: (1) that he was seen by mental health professionals eight times over a five year period instead of every 90 days as required by administrative regulations; (2) that mental health professionals recommended he pursue art and music for his mental health but that prison officials denied him the materials; (3) and that the officials' actions resulted in the need to take anti-psychotic and anti-depression medications due to suffering from bouts of aggression, extreme depression, voices, paranoia, hallucinations, emotional breakdowns and distress, unreasonable fear, and systematic dehumanization. According to the court, the prisoner's allegations that officials deprived him of incoming mail without notice and without a post-deprivation remedy were factually sufficient to state a § 1983 claim under the First and Fourteenth Amendments. (High Desert State Prison, Nevada)

U.S. Appeals Court
CONFISCATION
OUTGOING MAIL

Gee v. Pacheco, 627 F.3d 1178 (10th Cir. 2010). A state prisoner, proceeding pro se, brought a § 1983 action against prison officials, alleging violations of the First, Eighth and Fourteenth Amendments. The district court dismissed the complaint with prejudice. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner's allegations that a prison official intentionally confiscated and destroyed letters sent to him by persons outside the prison "under the guise" of sticker and perfume violations, for the purpose of harassing him, were sufficient to plead violations of his First Amendment speech rights. The court also found that the prisoner's allegations that a prison official returned to him outgoing letters that had "appropriate postage affixed without reason" for failure to mail them, were sufficient to plead a violation of the prisoner's First Amendment speech rights. The court found an alleged First Amendment speech rights violation with the prisoner's allegations that he was given a letter from his sister and that it was confiscated from him due to his incommunicado status, but that it was never returned to him. The court held that the prisoner's allegations that prison officials confiscated canteen items, deprived him of hygiene items for 25 hours and incarcerated him for four weeks in an isolation cell with limited outdoor recreation and lack of access to hygiene items, were insufficient to state a § 1983 claim for violations of the Eighth Amendment. (Wyoming State Penitentiary)

U.S. District Court
WITHHOLDING
CORRESPONDENCE

Hawkins v. Brooks, 694 F.Supp.2d 434 (W.D.Pa. 2010). A state prisoner brought a pro se § 1983 action against various prison officials and corrections officers, alleging retaliation, harassment, due process violations, defamation of character, and mental anguish. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner's conduct of pressing charges against a corrections officer who the prisoner claimed raped and impregnated her and complaining about other officers' alleged harassment amounted to a "constitutionally protected activity," as required for the prisoner to state a § 1983 retaliation claim.

The court found that corrections officers' alleged conduct of withholding the prisoner's incoming and outgoing mail in retaliation for the prisoner's pressing rape charges against an officer at another prison amounted to an "adverse action," as required to establish a prima facie pro se § 1983 retaliation claim against the officers. But the court found that a prison official's alleged conduct of reassigning the prisoner to a different unit in the same prison did not rise to the level of an "adverse action," as required to establish a prima facie pro se § 1983 retaliation claim. The court found that the prisoner had no liberty interest in her place of confinement, transfer, or classification, and thus, prison officials' alleged refusal to have the prisoner transferred to an out-of-state institution did not violate her due process rights. The court found that the prisoner's assertions that she made supervisory prison officials aware of the harassment and retaliation she allegedly suffered at the hands of correctional officers as a result of her pressing rape charges against a correctional officer at another facility, and that none of the supervisory officials offered assistance or took any corrective action, were sufficient to state a claim for supervisory liability, in her § 1983 retaliation action. (State Correctional Institution at Cambridge Springs, Pennsylvania)

U.S. District Court
CONFISCATION

Kendrick v. Faust, 682 F.Supp.2d 932 (E.D. Ark. 2010). A female state prison inmate brought a § 1983 action against employees of the Arkansas Department of Correction (ADC), alleging various violations of her constitutional rights. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the inmate failed to allege that she sustained an actual injury or that an Arkansas Department of Correction (ADC) official denied her the opportunity to review her mail prior to its being confiscated, as required to support a claim that the official violated the inmate's constitutional right of access to the courts and her First Amendment right to send and receive mail. The court found that summary judgment was precluded by genuine issues of material fact as to whether there was a legitimate penological interest for the alleged destruction of the prison inmate's bible, precluding summary judgment as to whether ADC employees violated the inmate's right to freedom of religion by destroying her bible. (Arkansas Department of Corrections)

U.S. Appeals Court
LIMITATION
LIMITING
CORRESPONDENTS

Keup v. Hopkins, 596 F.3d 899 (8th Cir. 2010). A prisoner brought a § 1983 action against prison officials, alleging that they violated his First Amendment rights by preventing him from mailing drawings. The prisoner had tried to send drawings of a marijuana leaf and a bare-breasted woman to his mother and the Maoist Internationalist Movement (Maoists). The district court entered a directed verdict in the prisoner's favor at the close of a jury trial, and granted the prisoner's motion for attorney fees. The officials appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the correctional services department's decision to amend an operational memorandum to ban only drawings that advocated or were likely to incite violent or illegal activity did not render moot the prisoner's claim for monetary damages for any violations of his constitutional rights that had occurred prior to such an amendment. According to the court, the prisoner was the "prevailing party," entitled to attorney fees. The court found that the prisoner's award of \$1.00 in nominal damages was subject to the 150% cap sent by the Prison Litigation Reform Act (PLRA) and he thus was entitled to only \$1.50 in fees, rather than the \$25,000 awarded by the district court. (Lincoln Correctional Center, Nebraska).

U.S. Appeals Court
CORRESPONDENCE
DELIVERY

Prison Legal News v. Schwarzenegger, 608 F.3d 446 (9th Cir. 2010). A nonprofit charitable organization that published a monthly magazine containing news and analysis relating to the legal rights of prisoners brought an action against state officials, in their individual and official capacities, seeking monetary, injunctive, and declaratory relief under § 1983 for violations of the First and Fourteenth Amendments. The organization challenged state institutions' refusal to deliver the organization's magazine to certain prisoners. After a settlement agreement was reached, the district court granted the organization's first motion for attorneys' fees and costs, and granted in part the organization's second motion for attorneys' fees and costs. State officials appealed. The appeals court affirmed in part, vacated in part, and remanded with instructions. The court held that the civil rights attorneys' fee statute authorized the organization, that prevailed in its § 1983 action against state officials by obtaining a legally enforceable settlement agreement relating to the delivery of its magazine to prisoners, to recover attorneys' fees for monitoring the state officials' compliance with the parties' settlement agreement. The appeals court held that the district court did not abuse its discretion by awarding fees for 31.5 hours of "correspondence with inmates" where without such correspondence it would have been difficult for the organization to discover or to document violations of the terms of the settlement. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
LEGAL MAIL
READING OF MAIL

Stanley v. Vining, 602 F.3d 767 (6th Cir. 2010). A prisoner filed a § 1983 action against prison officials, claiming deprivation of his constitutional rights by a prison guard who was allegedly reading the prisoner's legal mail in the prisoner's presence in his cell in violation of a prison regulation, and by issuing a prison misconduct charge against the prisoner after an exchange of angry words. The district court granted the defendants' motion to dismiss for failure to state a claim. The prisoner appealed. The appeals court affirmed. The court held that although the prisoner had a liberty interest in receiving his mail, under the First Amendment, the prisoner was not deprived of his procedural due process rights based on the prison guard allegedly violating a prison regulation by reading the prisoner's mail in the prisoner's presence in his cell. The court noted that the prisoner received a post-deprivation hearing, as part of the prison grievance procedure, which determined that the guard had not read mail in violation of regulation. The court found that the prisoner's allegation that the guard issued a misconduct charge against him over their dispute that the guard allegedly read the prisoner's legal mail did not rise to the level of a valid § 1983 claim, where the prisoner failed to allege that the charge interfered in any way with his rights to counsel, access to courts, equal protection, or procedural due process. The court noted that the complaint stated no facts or theories from which the court could

devise a plausible constitutional claim, and did not even divulge what the disposition of the charge was. According to the court, no constitutional provision flatly prohibits, as unlawful censorship, a prison from opening and reading a prisoner's mail, unless it can be shown that the conduct interferes with the prisoner's right to counsel or access to the courts, or violates his rights of equal protection or procedural due process. "We find no per se constitutional rule that such conduct automatically violates a broad, general rule prohibiting censorship, as our dissenting colleague seems to imagine. (Alger Maximum Correctional Facility, Michigan Department of Corrections)

U.S. District Court
INTERFERENCE
LEGAL MAIL

Tafari v. McCarthy, 714 F.Supp.2d 317 (N.D.N.Y. 2010). A state prisoner brought a § 1983 action against employees of the New York State Department of Correctional Services (DOCS), alleging, among other things, that the employees violated his constitutional rights by subjecting him to excessive force, destroying his personal property, denying him medical care, and subjecting him to inhumane conditions of confinement. The employees moved for summary judgment, and the prisoner moved to file a second amended complaint and to appoint counsel. According to the court, one incident in which state correctional officers allegedly interfered with the prisoner's outgoing legal mail did not create a cognizable claim under § 1983 for violation of the prisoner's First and Fourteenth Amendment rights, absent a showing that the prisoner suffered any actual injury, that his access to courts was chilled, or that his ability to legally represent himself was impaired. The court found that, even if a state prisoner's right to file prison grievances was protected by the First Amendment, a restriction limiting the prisoner's filing of grievances to two per week did not violate the prisoner's constitutional rights, since the prisoner was abusing the grievance program. The court noted that the prisoner filed an exorbitant amount of grievances, including 115 in a two-month period, most of which were deemed frivolous. The court held that state prison officials' alleged retaliatory act of leaving the lights on in the prisoner's cell in a special housing unit (SHU) 24 hours per day did not amount to cruel and unusual treatment, in violation of the Eighth Amendment. According to the court, the prisoner failed to demonstrate a causal connection between his conduct and the adverse action of leaving the lights on 24 hours per day, since the illumination policy applied to all inmates in SHU, not just the prisoner, and constant illumination was related to a legitimate penological interest in protecting both guards and inmates in SHU. (New York State Department of Correctional Services, Eastern New York Correctional Facility)

U.S. Appeals Court
PROHIBITION-
PUBLICATIONS

Torres v. O'Quinn, 612 F.3d 237 (4th Cir. 2010). An inmate brought an action against state prison officials, complaining that the officials failed to repair a malfunctioning night-light in his prison cell, resulting in a disturbing strobe effect. The district court dismissed the complaint for failure to state a claim upon which relief could be granted. The inmate appealed and the appeals court affirmed. The inmate then brought a separate action against prison officials, alleging a constitutional violation due to the prison's prohibition of his subscription to commercially available pictures of nude women. The district court dismissed the action for failure to state a claim upon which relief could be granted, the inmate appealed, and the appeals court dismissed the appeal. The inmate then moved for a partial refund of filing fees that had been collected from his prison trust account, challenging the prison's practice of withholding 40 percent of his account to satisfy the filing fee requirement for his two appeals. The appeals court found that PLRA required that no more than 20 percent of an inmate's monthly income be deducted to pay filing fees, irrespective of the total number of cases or appeals the inmate had pending at any one time. The court held that granting the inmate a partial refund of fees was not warranted since the amounts withheld from the inmate's account were actually owed and were properly, if excessively, collected. (Red Onion State Prison, Virginia)

U.S. District Court
INTERFERENCE

Webster v. Fischer, 694 F.Supp.2d 163 (N.D.N.Y. 2010). An inmate brought a civil rights action against prison officials, alleging discrimination, retaliation, harassment, and violations of his constitutional rights, federal statutes, state law, and regulations. The inmate sought declaratory judgment and injunctive relief, as well as money damages in the amount of \$500,000. The district court granted the defendants' motion for summary judgment. The court held that misbehavior reports and disciplinary actions were not in retaliation for the inmate's participation in an inmate liaison committee, where the inmate was found guilty of the charges in the misbehavior reports based on admissions at a disciplinary hearing. The court held that there was no evidence that the inmate was placed on a mail watch or that any of his mail was illegally opened or intentionally misdirected. (Cayuga Correctional Facility, New York State Department of Correctional Services)

2011

U.S. Appeals Court
ATTORNEY MAIL
PRIVILEGED
CORRESPONDENCE

Al-Amin v. Smith, 637 F.3d 1192 (11th Cir. 2011). A state prison inmate brought a § 1983 action against state corrections officials, alleging that the officials had repeatedly opened his privileged attorney mail outside of his presence, in violation of his rights of access to the courts and free speech. The district court denied the officials' motion for summary judgment. The appeals court affirmed in part and reversed in part, and denied rehearing en banc. The United States Supreme Court denied certiorari. On remand, the district court granted the officials' motion, precluding the inmate from offering evidence of either compensatory or punitive damages. The inmate appealed. The appeals court affirmed, finding that the prisoner could not seek punitive damages relief absent a physical injury, under the provisions of the Prison Litigation Reform Act. (Georgia State Prison)

U.S. District Court
OUTGOING MAIL
REGULATIONS

Hamilton v. Hall, 790 F.Supp.2d 1368 (N.D.Fla. 2011). A female county jail inmate brought a class action under § 1983 against a county sheriff, challenging a jail policy requiring all outgoing mail, except legal and other privileged correspondence, to be in postcard form. The sheriff moved to dismiss. The district court denied the motion. The court held that the inmate stated a claim against the county sheriff under § 1983 for violation of her First Amendment right to freedom of speech, by alleging that the jail's policy of requiring all outgoing mail, other than legal and otherwise privileged correspondence, to be in postcard form inhibited her ability to communicate with those outside the jail. (Santa Rosa County Jail, Florida)

- U.S. Appeals Court
DELIVERY
LEGAL MAIL
- Haury v. Lemmon*, 656 F.3d 521 (7th Cir. 2011). A prisoner, proceeding pro se, brought a § 1983 action against prison personnel, alleging they interfered with delivery of his legal mail and failed to provide a sufficient law library. The district court denied the prisoner's motion to proceed in forma pauperis and the prisoner appealed. The appeals court reversed and remanded. The appeals court held that dismissal of the prisoner's prior lawsuit for lack of jurisdiction did not warrant imposing a strike for filing frivolous actions in determining whether the prisoner could proceed in forma pauperis under the Prison Litigation Reform Act (PLRA) in his current § 1983 action. (Indiana)
- U.S. Appeals Court
PROHIBITION-
PUBLICATIONS
REFUSAL
- Hrdlicka v. Reniff*, 631 F.3d 1044 (9th Cir. 2011). A publisher and his criminal justice publication brought two suits claiming that their First Amendment rights were being violated by the mail policies at two county jails in California that refused to distribute unsolicited copies of the publication to inmates. The district court granted summary judgment to the defendants, and the plaintiffs appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether the jails were justified in refusing to distribute unsolicited copies of the publication to inmates. According to the court, the facts to be considered included the degree to which allowing distribution of the publication would produce additional clutter in cells or otherwise adversely affect jail security, the extent to which the jails would be forced to expend additional resources to deliver the publication, and whether the publisher could effectively reach inmates by delivery only upon request. (Sacramento County, Butte County, California)
- U.S. District Court
BULK MAIL
NOTICE
DELIVERY
- Hughbanks v. Dooley*, 788 F.Supp.2d 988 (D.S.D. 2011). A prisoner brought a § 1983 action alleging that the state Department of Corrections' correspondence policy prohibiting the delivery of bulk-rate mail was unconstitutional. The prisoner moved for preliminary injunctive relief and asked the court to invalidate portions of the policy. The district court denied the motion. The court found that the prisoner's mere allegation that his First Amendment rights were violated by the prison's denial of bulk-rate mail established the threat of irreparable harm, in determining whether to grant the prisoner a preliminary injunction seeking to invalidate the prison's bulk-rate mail policy, but the balance of hardships favored the prison in determining whether to grant the prisoner's request. The court noted that the bulk-rate mail policy was a state policy, and suspension of the policy for all inmates in the state would compromise the safety and security of every institution in the state. The court found that the policy was rationally-related to the prison's penological purpose of maintaining security and order, that prisoners could review catalogs in a prison property office and could pre-pay postage on any catalog to have it mailed first or second class, that the challenged policy was statewide and any accommodation would have a significant effect on state inmates and prison staff, and the policy was not an exaggerated response to security and other concerns.
- Similarly, the court found that the prisoner's allegation that his Fourteenth Amendment due process rights were being violated by the prison's failure to notify him when prohibited bulk-rate mail was not delivered established the threat of irreparable harm, in determining whether to grant the prisoner a preliminary injunction requiring the prison to notify the intended recipient and sender when bulk-rate correspondence was confiscated. The court again found that the balance of hardships favored the prison, where the prison would have to expend substantial prison resources to implement the requested policy, and the current policy was implemented to preserve a prison resource. (Mike Durfee State Prison, South Dakota)
- U.S. District Court
CENSORSHIP
RELIGIOUS LITER-
ATURE
- Murphy v. Lockhart*, 826 F.Supp.2d 1016 (E.D.Mich. 2011). An inmate at a maximum correctional facility in Michigan brought a § 1983 action against various Michigan Department of Corrections (MDOC) employees alleging that his placement in long-term and/or indefinite segregation was unconstitutional, that he was prohibited from communicating with his friends and family, and that his ability to practice his Christian religion was being hampered in violation of his First Amendment rights. The inmate also alleged that the MDOC's mail policy was unconstitutional. The defendants moved for summary judgment and for a protective order. The court held that the prisoner's statements in a published magazine article discussing an escape attempt were protected speech, and that a fact issue precluded summary judgment on the retaliation claims against the other facility's warden, resident unit manager, and assistant resident unit supervisor stemming from the prisoner's participation in that article. The Esquire Magazine article discussed security flaws at the correctional facility, detailing the prisoners' escape plan and revealing which prison staff he manipulated and how he obtained and built necessary tools to dig a tunnel. The court noted that the prisoner's statements were not directed to fellow inmates, and rather he spoke on issues relating to prison security and was critical of the conduct of Michigan Department of Corrections personnel, which resulted in his near-successful prison break. The court found that summary judgment was precluded by a genuine issue of material fact, as to whether the defendants' proffered legitimate grounds for removing the prisoner from his coveted administrative segregation work assignment as a porter/painter/laundry worker--discovery that he possessed contraband--were a pretext to retaliate for his protected speech in the published magazine article. The court found that the alleged violation of the prisoner's right to free exercise of his religion from the rejection of a claimed religious publication, *Codex Magica*, was justified by the prison's legitimate penological interest in limiting prisoners' access to books that included instructions on how to write in code. According to the court, because the prison had a valid penological interest in restricting access to the publication, which contained instructions on how to write in code, the prisoner mail regulation used to censor that book could not be unconstitutional as applied on the ground that it prevented the prisoner's access to that publication. (Ionia Maximum Correctional Facility, Kinross Correctional Facility, Standish Correctional Facility, Michigan)
- U.S. District Court
LEGAL MAIL
INTERFERENCE
- Neff v. Bryant*, 772 F.Supp.2d 1318 (D.Nev. 2011). A prisoner brought a § 1983 action against a warden, caseworker and correctional officers, alleging violations of the First, Eighth and Fourteenth Amendments. After dismissal of the prisoner's claims, the prisoner filed an amended complaint. The court held that the prisoner's allegations that he was denied parole due to his security classification were insufficient to state a § 1983 claim for denial of Fourteenth Amendment due process. The court found that the prisoner's allegations that legal materials mailed to him were intercepted and withheld, and that as a result he lost a motion related to a civil claim, were insufficient to state a § 1983 claim for denial of access to the courts in violation of the First Amendment, absent allegations as to the nature of the motion, or that the result of the failed motion was the loss of a non-frivolous direct criminal appeal, habeas corpus petition, or § 1983 claim. (Ely State Prison, Nevada)

U.S. Appeals Court LIMITATION PROHIBITION	<i>Perry v. Secretary, Florida Dept. of Corrections</i> , 664 F.3d 1359 (11 th Cir. 2011). An individual who operated two pen pal services that solicited pen pals for prisoners, as well as another pen pal service, brought a civil rights action challenging the constitutionality of a Florida Department of Corrections (FDOC) rule prohibiting inmates from soliciting pen pals. The district court granted the FDOC's motion for summary judgment and the plaintiffs appealed. The appeals court affirmed. The appeals court held that the plaintiffs, whose interests as publishers in accessing prisoners had been harmed, had standing to bring their claims, but that the FDOC rule at issue was rationally related to a legitimate penological interest. The court found that the plaintiffs had a liberty interest in accessing inmates and they were afforded constitutionally required due process. The court noted that the U.S. Supreme Court's decision in <i>Procunier v. Martinez</i> set forth a three-part test to decide whether there are proper procedural safeguards for inmate correspondence of a personal nature: (1) the inmate must receive notice of the rejection of a letter written by or addressed to him, (2) the author of the letter must be given reasonable opportunity to protest that decision, and (3) complaints must be referred to a prison official other than the person who originally disapproved the correspondence. (Florida Department of Corrections)
U.S. Appeals Court DELIVERY PROHIBITION- PUBLICATION	<i>Van den Bosch v. Raemisch</i> , 658 F.3d 778 (7 th Cir. 2011). The publisher of a newsletter about the Wisconsin state prison system and a pro se state prisoner who wrote an article for that newsletter brought separate actions challenging a regulation imposed by the Wisconsin Department of Corrections (DOC) on distribution of incoming prisoner mail. The district court granted summary judgment in favor of the DOC officials. The plaintiffs appealed and the actions were consolidated for appeal. The appeals court affirmed. The court held that the officials' decision to bar distribution of the newsletter to prisoners did not violate the First Amendment and the officials' refusal to deliver copies of the article that the state prisoner had written to the newsletter did not violate the prisoner's First Amendment rights. The court noted that one newsletter article described the Wisconsin parole commission as totalitarian and abusers of prisoners, and another urged its readers to employ any and all tactics to bring about change in prison life, so that it was reasonable for the officials to perceive the newsletter articles as posing a potential threat to rehabilitation and security. (Green Bay Correctional Institution, Wisconsin)
U.S. Appeals Court REGULATIONS PROHIBITION	<i>Woods v. Commissioner of the Ind. Dept. of Corrections</i> , 652 F.3d 745 (7 TH Cir. 2011). State inmates brought a class action against the Indiana Department of Corrections (IDOC), alleging violations of the First Amendment related to a regulation prohibiting advertising for pen-pals and receiving materials from websites and publications that allowed advertisements for pen-pals. The district court granted the IDOC's motion for summary judgment and the inmates appealed. The appeals court affirmed. The court held that the regulation related fairly directly to the IDOC's stated goal of preventing fraud by limiting inmates' access to potential victims, thus weighing in favor of a finding that the regulation was reasonably related to a legitimate penological interest in the inmates' class action. The court noted that ample alternative means of communication existed regardless of the regulation, where inmates were free to obtain pen-pals through various groups that visited the prison or to cultivate contacts through other inmates, their attorneys, and by their own initiative. (Indiana Department of Corrections)
2012	
U.S. Appeals Court CORRESPONDENCE- FRIENDS RELATIVES PROHIBITION- PUBLICATIONS SECURITY PRACTICES	<i>Al-Owhali v. Holder</i> , 687 F.3d 1236 (10 th Cir. 2012). A federal inmate brought a suit against the Attorney General, the Director of the Federal Bureau of Prisons (BOP), a prison warden, and the FBI, alleging that several special administrative measures imposed upon him violated his First and Fifth Amendment rights. The inmate had been convicted of several terrorism-related offenses stemming from the 1998 bombing of the United States embassy in Nairobi, Kenya. The district court dismissed the complaint and the inmate appealed. The appeals court affirmed. The appeals court held that: (1) the inmate failed to address whether the ban on his communications with his nieces and nephews was supported by a rational penal interest; (2) the measure preventing the inmate's subscription to two Arabic-language newspapers fell within the warden's broad discretion to limit incoming information, and was rationally related to a penal interest to prevent the inmate from acting upon contemporary information or receiving coded messages; and (3) the inmate offered only a vague allegation regarding the measure that purportedly barred him from obtaining a book authored by former President Jimmy Carter, where the inmate offered no factual context to show that the measure was unrelated to any legitimate penal interest, and instead merely implied the existence of a secret list of banned publications. (United States Penitentiary, Administrative Maximum, Florence, Colorado)
U.S. District Court LEGAL MAIL	<i>Blalock v. Eaker</i> , 845 F.Supp.2d 678 (W.D.N.C. 2012). A pretrial detainee brought a § 1983 action against prison officials, alleging they lost his legal mail. The district court granted the defendants' motion for summary judgment. The court held that when prison staff ignored the detainee's subpoenas it did not violate his right of access to the courts. The court noted that the detainee was represented by counsel, the subpoenas were invalid as the detainee was a criminal defendant who had no right under North Carolina common law to pretrial discovery, North Carolina statutes did not authorize the use of subpoenas "duces tecum" as a criminal discovery tool, and North Carolina law did not allow criminal defendants to depose witnesses. (Lincoln County Detention Center, North Carolina)
U.S. District Court RELIGIOUS LITERATURE SECURITY PRACTICES	<i>Forter v. Geer</i> , 868 F.Supp.2d 1091 (D.Or. 2012). A state inmate, who was a member of the Christian Identity Faith and proceeding pro se, brought a § 1983 action against department of corrections (DOC) employees, alleging violations of the First and Fourteenth Amendments, as well as the Religious Land Use and Institutionalized Persons Act (RLUIPA). The defendants filed a motion to dismiss and for summary judgment. The district court granted the motions. The court held that the inmate did not file grievances for most claims, even though such procedures were available to him, and he did not appeal those grievances that he did file, and therefore failed to exhaust his administrative remedies under the provisions of the Prison Litigation Reform Act of 1995. The court held that withholding of a religious poster did not substantially burden the religious exercise of the inmate, who was a member of the Christian Identity Faith, as would violate the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court also held that size restrictions which prevented the inmate from possessing the religious poster did not violate his First Amendment free exercise rights, where the regulations

prevented any items, except subscription newspapers, over a certain size. According to the court, prison officials withholding of certain religious pamphlets from the mail of the inmate, was validly and rationally connected to a legitimate interest in ensuring order and safety, for the purposes of the inmate's § 1983 claim alleging that the withholding violated his First Amendment free exercise and Fourteenth Amendment equal protection rights. The court noted that the pamphlets contained racially inflammatory material and that the prison population was racially mixed. (Oregon Department of Corrections)

- U.S. District Court
DELIVERY
INTERFERENCE
LEGAL MAIL
- Galeas v. Inpold*, 845 F.Supp.2d 685 (W.D.N.C. 2012). An inmate, proceeding pro se, brought a § 1983 action against a mailroom officer, alleging mishandling of his legal mail. The district court granted the officer's motion to dismiss. The court held that the inmate's allegations that his mother sent him two packages by certified mail containing his legal papers, that the mailroom officer signed the receipt, and that the inmate never received the packages were insufficient to plead intentional interference by the officer, as required to state a § 1983 claim for denial of access to the courts in violation of the Fourteenth Amendment. The court also held that the allegations were insufficient to plead an actual injury, as required to state a § 1983 claim against the mailroom officer for denial of access to the courts, absent allegations as to the contents of those papers or of the legal to issue to which they were vital. (Lanesboro Correctional Institution, North Carolina)
- U.S. District Court
INDIGENT INMATES
POSTAGE
MAIL
- Gaskins v. Dickhaut*, 881 F.Supp.2d 223 (D.Mass. 2012). A state prisoner brought a § 1983 action against a prison's superintendent and treasurer, alleging the defendants violated his constitutional right of access to courts under the Fourteenth Amendment. The prisoner challenged a Massachusetts Department of Corrections' (DOC) regulation that determined that an inmate was not indigent, and thus ineligible for free postage, if he had more than \$10 in his prison account during 60-day period. The defendants moved to dismiss and the district court allowed the motion. The court held that the inmate failed to allege that the policy prevented him from pursuing a legal claim or caused him to suffer an actual injury, as required to state a § 1983 claim against prison officials for denial of access to courts under Fourteenth Amendment, where his complaint lacked such allegations. (Massachusetts Department of Corrections, Souza Baranowski Correctional Center)
- U.S. District Court
CENSORSHIP
LEGAL MAIL
LIMITING
CORRESPONDENTS
REGULATIONS
- Hill v. Terrell*, 846 F.Supp.2d 488 (W.D.N.C. 2012). A state prisoner, proceeding pro se, brought an action against a department of correction (DOC) and prison officials, alleging denial of access to the courts. The district court granted the defendants motion for judgment on the pleadings. The court held that the prison's censorship of the prisoner's outgoing mail did not violate his First Amendment rights, where two individuals contacted the prison with notice that they did not wish to be contacted by the prisoner, the prison policy permitted withdrawal of the prisoner's privilege to write to a particular person upon request by that person, and the prisoner was informed that letters would be censored to those people. According to the court, the prisoner's allegations that prison staff censored his legal mail, preventing him from communicating adequately or confidentially with his attorneys, were insufficient to state a § 1983 claim for denial of access to the courts in violation of the First Amendment, absent allegations of any specific instances where his legal mail was censored or of an actual injury from the censorship. (Marion Correctional Institution, North Carolina)
- U.S. Appeals Court
LIMITING
CORRESPONDENCE
REGULATIONS
- Lane v. Williams*, 689 F.3d 879 (7th Cir. 2012). Convicted sex offenders who, after completing their sentences, remained in state custody as civil detainees pursuant to the Illinois Sexually Violent Persons Commitment Act, brought a § 1983 action, alleging constitutional problems with the conditions of their confinement at a treatment facility. The district court granted summary judgment to the defendants and the detainees appealed. The appeals court affirmed. The appeals court held that security restrictions on face-to-face interactions between the civil detainees held in different units within the state's treatment facility for sexually violent persons (SVP) did not constitute treatment decisions which, as a matter of due process, had to be made by health professionals, merely because the security restrictions affected treatment options. The court found that requiring the civil detainees to use United States Mail, rather than the facility's internal mail system, to send letters to detainees in the facility's other units did not violate the detainees' First Amendment associational rights, even if the facility's internal mail system was a superior means of sending letters. The court noted that commitment under the Illinois Sexually Violent Persons Commitment Act is civil and may be for purposes such as incapacitation and treatment, but not for punishment. As a general matter, persons who have been involuntarily civilly committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. (Rushville Treatment and Detention Center, Illinois)
- U.S. District Court
LIMITING
CORRESPONDENTS
RELIGION
- Moorehead v. Keller*, 845 F.Supp.2d 689 (W.D.N.C. 2012). A state inmate, a Messianic Jew, brought a pro se § 1983 action against North Carolina Department of Corrections (DOC) officials, alleging that the officials prevented him from writing to his "spiritual advisor" and discontinued Messianic Jewish services at the prison, in violation of his constitutional rights. The defendants moved for judgment on the pleadings. The district court granted the motion. The court held that the state prison regulation prohibiting prison volunteers from corresponding with inmates was reasonably related to the prison's legitimate penological interest in preventing volunteers from becoming unduly familiar with inmates, and thus the actions of North Carolina Department of Corrections (DOC) officials in preventing the Messianic Jewish inmate from corresponding with his "spiritual advisor," who was a volunteer at the prison, pursuant to regulation did not violate the inmate's constitutional rights. (Mountain View Correctional Institution, North Carolina)
- U.S. Appeals Court
PROHIBITION-
PUBLICATIONS
- Prison Legal News v. Livingston*, 683 F.3d 201 (5th Cir. 2012). A non-profit publisher of a magazine about prisoners' rights filed a § 1983 suit claiming violation of the First Amendment and the Due Process Clause by the Texas Department of Criminal Justice's (TDCJ) book censorship policy and procedures, as applied to the publisher that was prohibited from distributing five books to prisoners. The district court granted the TDCJ summary judgment. The publisher appealed. The appeals court affirmed. The court held that the TDCJ book censorship policy that prohibited

the publisher's distribution of two books graphically depicting prison rape was rationally related to a legitimate penological goal of protecting prisoners from a threat to safety and security by use of descriptions as templates to commit similar rapes, and thus, the policy as applied to the publisher's distribution of the two books to prisoners did not contravene the publisher's First Amendment right to free speech. According to the court, the TDCJ book censorship policy that prohibited the publisher's distribution of a book containing racial slurs and advocating overthrow of prisons by riot and revolt was rationally related to the legitimate penological goal of protecting the prison's safety and security from race riots, and thus, the policy as applied to the publisher's distribution of book to prisoners did not contravene the publisher's First Amendment right to free speech. The court also noted that the prison had a legitimate penological goal of protecting prisoners from the threat of violence due to the existence of race-based prison gangs and the prevalence of racial discord. The court found that the TDCJ book censorship policy that formerly prohibited the publisher's distribution of a book recounting sexual molestation of a young child was rationally related to the legitimate penological goal of protecting the prison from impairment of the rehabilitation of sex offenders and from disruptive outbursts by prisoners who were similarly victimized, and thus, the policy as applied to the publisher's distribution of the book to prisoners did not contravene the publisher's First Amendment right to free speech. The court noted that the TDCJ policy left prisoners and the publisher with ample alternatives for exercising their free speech rights by permitting prisoners to read the publisher's newsletter and the majority of books that the publisher distributed. (Prison Legal News, Texas Department of Criminal Justice)

U.S. Appeals Court
DELIVERY

Swann v. Secretary, Georgia, 668 F.3d 1285 (11th Cir. 2012). A former inmate at a county jail brought a civil rights action against a state and county officials, alleging that the officials failed to mail him a presidential absentee ballot at the jail. The district court granted summary judgment in favor of the defendants. The former inmate appealed. The appeals court vacated and remanded with instructions. The appeals court held that the former inmate lacked standing to bring an action against county officials for their failure to mail him an absentee ballot for the presidential election at the county jail, where the inmate's non-receipt of a ballot was not fairly traceable to any action of the officials, but only to inmate's own conduct, since the inmate failed to provide the address of the jail on his absentee ballot application. (DeKalb County Jail, Georgia)

U.S. District Court
INSPECTION OF MAIL
OUTGOING MAIL

U.S. v. Ligambi, 886 F.Supp.2d 492 (E.D.Pa. 2012). A detainee who was charged with various crimes, including racketeering, moved to suppress an outgoing prison letter seized by prison officials. The district court denied the motion. The court held that the defendant, who was in prison while charged with various crimes, including racketeering, did not have a reasonable expectation of privacy in his outgoing non-privileged mail. The court noted that prison regulations permitted officials to seize correspondence when it might contain information concerning criminal activities, it was established practice to inspect non-privileged mailings to promote discipline in the institution, and the defendant had a reputation for involvement with organized crime. (South Woods State Prison, Southern State Correctional Facility, New Jersey)

2013

U.S. District Court
DELAY
INTERFERENCE
LEGAL MAIL

Duran v. Merline, 923 F.Supp.2d 702 (D.N.J. 2013). A former pretrial detainee at a county detention facility brought a pro se § 1983 action against various facility officials and employees, the company which provided food and sanitation services to the facility, and the medical services provider, alleging various constitutional torts related to his pretrial detention. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that fact issues precluded summary judgment on: (1) the conditions of confinement claim against a former warden in his official capacity; (2) an interference with legal mail claim against a correctional officer that alleged that the facility deliberately withheld the detainee's legal mail during a two-week period; (3) a First Amendment retaliation claim based on interference with legal mail; and (4) a claim for inadequate medical care as to whether the detainee's Hepatitis C condition was a serious medical condition that required treatment and whether the provider denied such treatment because it was too costly. (Atlantic County Justice Facility, New Jersey)

U.S. District Court
PROHIBITION-
PUBLICATIONS
SECURITY PRACTICES

Gray v. Cannon, 974 F.Supp.2d 1150 (N.D.Ill. 2013). State inmates brought an action against prison officials, alleging that the officials' refusal to let them receive mail that included photographs depicting nudity and sexual activity violated the Free Speech Clause of the First Amendment, and that grievance procedures for challenging the refusals violated the Due Process Clause of the Fourteenth Amendment. The district court granted the officials' motion for summary judgment. The court held that a state prison regulation preventing inmates from obtaining nude or sexually explicit photographs was reasonably related to legitimate penological interests, and thus did not violate the inmates' First Amendment rights. The court noted that: (1) the regulation was expressly aimed at protecting prison security; (2) the regulation permitted withholding reading materials only if it furthered interests in security, good order, or discipline, and there existed a valid and rational connection between the regulation and prison security; (3) the prison left open alternative means of exercising the restricted right by permitting inmates to receive a wide range of publications; (4) the restrictions fell within the broad limits of deference to prison officials regarding what was detrimental to security; and (5) the inmates did not point to an alternative that fully accommodated inmates' rights at a de minimus cost to valid penological interests. The court found that there was no evidence regarding how the state prison's grievance and appeal procedures operated, as required to support the inmates' claim that they were provided with insufficient opportunities to challenge prison's rejections of sexually explicit photographs and publications sent to them, in violation of due process. (Stateville Correctional Center, Illinois)

U.S. District Court
PACKAGES
RELIGIOUS
LITERATURE

Kramer v. Conway, 962 F.Supp.2d 1333 (N.D.Ga. 2013). A pretrial detainee at a county jail brought an action against the jail, the jail administrator, and a county sheriff, alleging that conditions of his confinement violated his right to practice his Orthodox Jewish faith, that the defendants violated his right to possess legal reference books, and that the defendants failed to accommodate his physical disabilities. The detainee moved for a preliminary and a permanent injunction and moved for leave to file a second amendment to his verified complaint. The defendants moved for

summary judgment. The district court denied the motions in part and granted the motion in part. The court held that the pretrial detainee's allegation that the county jail denied him books needed to practice his Orthodox Jewish religious faith failed to establish a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA), absent evidence that the county jail received federal funds in connection with its policies limiting the number and type of books allowed in cells. The court held that the county jail's policy of limiting the number of religious books that the pretrial detainee, an Orthodox Jew, could keep in his cell, but providing him access to others that were not in his cell, was based on legitimate penological interests, and thus, did not violate the detainee's rights under the Free Exercise Clause. According to the court, a uniformly applied books-in-cell limitation was reasonable in a facility that housed 2,200 inmates, the limitation was applied in a neutral way and the expressive content of books was not considered, books in sufficient quantities could be used as weapons and presented fire and obstacle hazards, access to other books was made by exchanging out titles and by allowing the copying of parts or all of a text, and the detainee was not denied access to nine religious books he claimed were required in practicing his faith, but rather, argued only that access was required to be more convenient.

The court found that the jail's policy of prohibiting hard cover books in cells, including limiting religious texts to those that did not have hard covers, was based on legitimate penological interests, and thus, did not violate rights of the pretrial detainee, an Orthodox Jew, under the Free Exercise Clause. The court noted that evidence at hearing on the detainee's motion for injunctive relief showed that hardcover books posed safety and security risks because hard covers could be used to conceal contraband and because of their potential use as weapons, the policy was applied in a neutral way, and the expressive content of books was not considered.

The court found that the jail's policy of limiting package mail to four pounds was based on legitimate penological interests, and thus, did not violate rights as applied to the pretrial detainee, an Orthodox Jew, under the Free Exercise Clause when the jail rejected one of detainee's packages that contained more than four pounds of books. The court noted that the jail received a large volume of mail and other items each day, all of which had to be searched for contraband and threats their contents could pose to the safety and security of inmates and jail officials, the policy was applied in a neutral way, and the expressive content of books was not considered. The court held that the jail's policy that limited the number and type of books allowed in a cell did not violate the pretrial detainee's Due Process rights, where there was no evidence that the policy was intended to punish the detainee, the jail's policies prohibiting hard cover books and limiting the number of books allowed in a cell were reasonably related to legitimate penological interests, and the jail gave the detainee substantial access to legal materials by increasing the time he was allowed in the library and liberally allowing him to copy legal materials to keep in his cell. (Gwinnett County Jail, Georgia)

U.S. District Court
CORRESPONDENCE
INTERFERENCE

Lineberry v. Federal Bureau of Prisons, 923 F.Supp.2d 284 (D.D.C. 2013). A federal prisoner brought an action against the Bureau of Prisons (BOP) and prison official under the Federal Tort Claims Act (FTCA) and Bivens, alleging he was denied access to the postal service in violation of his First Amendment rights. The district court granted the defendants' motion to dismiss. The court held that the prisoner's admitted failure to submit a claim to the Bureau of Prisons prior to filing his lawsuit under the Federal Tort Claims Act (FTCA) alleging BOP's mail regulations violated his First Amendment rights, deprived the district court of subject matter jurisdiction. According to the court, the prisoner's allegations that neither his counselor nor his unit manager provided him the appropriate form for submitting a formal inmate grievance, and that without access to the first step of the process, he could not have been expected to complete the process, were sufficient to allege that circumstances rendered administrative remedies effectively unavailable, such as would excuse the prisoner from exhausting his administrative remedies, as required by the Prison Litigation Reform Act (PLRA). The court found that neither the requirement of a mailing label generated by the Bureau of Prisons' (BOP) mail system, nor the return of mail lacking such a label, violated the prisoner's First Amendment rights, and the prisoner provided no factual allegations to support his conclusory claims that the system denied him access to the press, the establishment or exercise of religion, and peaceable assembly. (Federal Correctional Institution in Texarkana, Texas)

U.S. Appeals Court
BULK MAIL
CENSORSHIP

Mays v. Springborn, 719 F.3d 631 (7th Cir. 2013). A former state prisoner brought an action against prison officials, asserting claims based on strip searches at prisons and alleging retaliation for his complaints about the searches, denial of his request for a dietary supplements which he considered to be religious necessities, inadequacy of his diet, failure to issue certain winter clothing items, and censorship of pages in a magazine mailed to him. The district granted summary judgment in favor of the officials on the claims about prison food and clothing and granted the officials judgment as a matter of law on the claims about strip searches, retaliation, and censorship. The prisoner appealed. The appeals court affirmed in part, vacated the judgment with respect to the strip searches, and remanded. On remand, the district court entered judgment, upon a jury verdict, in favor of the officials as to the strip search claims, and the prisoner again appealed. The appeals court reversed and remanded. The appeals court held that: (1) even if there was a valid penological reason for the strip searches conducted on a prisoner, the manner in which the searches were conducted was itself required to pass constitutional muster, and (2) a jury instruction requiring the prisoner to negate the possibility that strip searches would have occurred even if there had been no retaliatory motive was plain error. (Stateville Correctional Center, Illinois)

U.S. District Court
BULK MAIL
DELIVERY
PROHIBITION-
PUBLICATIONS
REFUSAL
REJECTING MAIL

Prison Legal News v. Babeu, 933 F.Supp.2d 1188 (D.Ariz. 2013). A non-profit organization that produced and distributed a monthly journal and books to inmates brought an action against county jail officers and mailroom employees, alleging that the defendants violated its First Amendment and due process rights by failing to deliver its materials to its subscribers at the jail. The parties cross-moved for partial summary judgment. The court granted the motions in part, denied in part, and deferred in part. The court held that the jail's policy limiting incoming inmate correspondence to one-page and postcards did not violate the First Amendment, where there was an apparent common-sense connection between the jail's goal of reducing contraband and limiting the number of pages a particular piece of correspondence contained, and sufficient alternative avenues of communication remained open for publishers who wished to communicate with inmates at the jail. But the court held that the jail's failure to give the non-profit organization notice and the opportunity to appeal the jail's refusal to deliver its materials to inmates violated the organization's procedural due process rights.

The court ruled that the blanket ban on newspapers and magazines violated clearly established law, and therefore neither the county jail mailroom employees nor their supervisors were entitled to qualified immunity from the § 1983 First Amendment claim arising from employees' failure to deliver the organization's materials to inmates. According to the court, the law was clear that blanket bans on newspapers and magazines in prisons violated the First Amendment, and it was objectively unreasonable for the employees to throw away mail, or refuse to deliver it, based upon a perceived blanket ban on newspapers and magazines. Because the county jail mailroom uniformly enforced the unconstitutional county policy and allowed books from only four publishers, the county was subject to liability for First Amendment violations in § 1983 action.

The court held that there was no evidence that mailroom employees, their supervisors, or command staff at the county jail were motivated by evil motive or intent when they violated the non-profit publisher's First Amendment and due process rights by discarding publisher's materials without providing the publisher opportunity to contest or appeal the non-deliverability decision, or that those individuals' unconstitutional actions involved reckless or callous indifference to the publisher's federally protected rights, as would support an award of punitive damages against the individuals in the publisher's § 1983 action. (Pinal County Jail, Arizona)

U.S. District Court
BULK MAIL
DELIVERY
LIMITATION
NOTICE
PROHIBITION-
PUBLICATIONS
REGULATIONS

Prison Legal News v. Columbia County, 942 F.Supp.2d 1068 (D.Or. 2013). A publisher filed a § 1983 action alleging that a county and its officials violated the First Amendment by rejecting dozens of its publications and letters mailed to inmates incarcerated in its jail and violated the Fourteenth Amendment by failing to provide it or the inmates with the notice of, and opportunity to, appeal the jail's rejection of its publications and letters. A bench trial was held, resulting in a judgment for the publisher. The court held that: (1) the policy prohibiting inmates from receiving mail that was not on a postcard violated the First Amendment; (2) the county had a policy of prohibiting inmates from receiving magazines; (3) the county failed to provide adequate notice of withholding of incoming mail by jail authorities; (4) entry of a permanent injunction prohibiting officials from enforcing the postcard-only policy was warranted; and (5) a permanent injunction prohibiting officials from enforcing the prohibition against magazines was not warranted. (Columbia County Jail, Oregon)

2014

U.S. District Court
LEGAL MAIL
WITHHOLDING
CORRESPONDENCE
NOTICE
LIMITATION

American Civil Liberties Union Fund of Michigan v. Livingston County, 23 F.Supp.3d 834 (E.D.Mich. 2014). A civil rights organization brought a § 1983 action against a county and county officials alleging that the jail's postcard-only mail policy violated the First and Fourteenth Amendments. Following the grant of a temporary restraining order (TRO), the organization moved for preliminary injunction. The district court granted the motion. The organization had sought a preliminary injunction enjoining the jail policy of refusing to promptly deliver properly marked legal mail sent by an organization attorney and individually addressed to an inmate. The court held that there was a likelihood of success on the merits of its claim that the policy violated the First Amendment protection accorded inmates' legal mail. The court noted that the organization sent letters in envelopes that were individually addressed to individual inmates, were labeled "legal mail," clearly delineated that the mail came from an organization attorney, the letters asked if the inmate was interested in meeting with an organization attorney to obtain legal advice regarding the jail policy of limiting all incoming and outgoing mail to one side of a four by six-inch postcard, but the letters were not delivered. The jail opened the letters and read them, and the jail failed to notify the inmates or the organization that the letters were not delivered. (Livingston County Jail, Michigan)

U.S. District Court
LANGUAGE
READING OF MAIL
PROHIBITION
EMAIL

Grønning v. Klemme, 34 F.Supp.3d 1144 (E.D.Wash. 2014). A state inmate brought a § 1983 action alleging that prison officials and employees retaliated against him, in violation of the First Amendment, for the content of letters and manuscript he authored, as well as his filing of grievances and a lawsuit. The district court granted the inmate's motion for a protective order. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the inmate's incoming mail from his creative writing instructor and his outgoing mail to his mother were restricted by prison officials due to the legitimate penological interest of prohibiting inmates from receiving or sending sexually explicit mail, and thus the restriction of the mail did not violate the inmate's First Amendment rights. The court found that summary judgment was precluded by genuine issues of material fact as to whether prison mailroom staff members selectively applied the foreign language mail policy as a pretext to prevent the inmate, who filed grievances, from receiving mail from his overseas parents written in Norwegian, as to whether the staff members made an effort to seek translations, and as to whether the policy as applied amounted to a de facto ban on all of the inmate's incoming non-English mail. The court also found that summary judgment was precluded by genuine issues of material fact as to whether a correctional officer who screened the inmate's outgoing e-mail to his family and a correctional sergeant with whom the screening officer shared the e-mail colluded to penalize the inmate for opinions expressed in the e-mail, and as to whether the actions of the screening officer and the sergeant chilled the inmate's exercise of protected rights. The court held that the correctional sergeant was not entitled to qualified immunity from the inmate's § 1983 claim that the sergeant retaliated against him, in violation of the First Amendment, when he disciplined the inmate based on disparaging remarks contained in the inmate's outgoing e-mail to his mother, where a reasonable official would have understood that punishing the inmate for the unflattering content of personal correspondence directed to another was unlawful. (Airway Heights Corrections Center, Washington)

U.S. District Court
CENSORSHIP
PUBLICATIONS
LIMITATIONS

Karsjens v. Jesson, 6 F.Supp.3d 916 (D.Minn. 2014). Patients who were civilly committed to the Minnesota Sex Offender Program (MSOP) brought a § 1983 class action against officials, alleging various claims, including failure to provide treatment, denial of the right to be free from inhumane treatment, and denial of the right to religious freedom. The patients moved for declaratory judgment and injunctive relief, and the officials moved to dismiss. The district court granted the defendants' motion in part and denied in part, and denied the plaintiffs' motions. According to the court, the patients stated a § 1983 First Amendment free exercise claim against state officials with allegations that MSOP's policies, procedures, and practices caused the patients to be monitored during religious services and during private meetings with clergy, did not permit patients to wear religious apparel or to possess certain religious property,

and did not allow patients to “communally celebrate their religious beliefs by having feasts,” and that such policies and practices were not related to legitimate institutional or therapeutic interests. The court also found that the patients’ allegations that state officials limited their phone use, limited their access to certain newspapers and magazines, and removed or censored articles from newspapers and magazines, stated a § 1983 First Amendment claim that officials unreasonably restricted their right to free speech. (Minnesota Sex Offender Program)

U.S. Appeals Court
LEGAL MAIL
READING OF MAIL

Nordstrom v. Ryan, 762 F.3d 903 (9th Cir. 2014). A state death-row inmate brought a § 1983 action for declaratory and injunctive relief against Arizona Department of Corrections (ADOC) officials and a prison guard who allegedly read the inmate’s legal mail. A district court dismissed for failure to state a claim. The inmate appealed. The appeals court reversed and remanded, finding that the inmate stated claims for a violation of his Sixth Amendment right to counsel. According to the court, the inmate, by alleging that the prison guard read, rather than merely inspected or scanned for contraband the inmate’s outgoing legal mail related to the appeal of his murder conviction and death sentence, and that prison officials had asserted their entitlement to read a prisoner’s legal mail while in the prisoner’s presence, stated a claim for violation of his Sixth Amendment right to counsel. (Arizona State Prison)

U.S. District Court
PUBLICATIONS
NOTICE
LIMITATIONS

Prison Legal News v. Chapman, 44 F.Supp.3d 1289 (M.D.Ga. 2014). The publisher of a periodical that addressed prisoners’ rights brought a civil rights action against a county sheriff and a county jail commander, alleging that mail policies at the jail restricting the distribution of the periodical violated the First and Fourteenth Amendments. A bench trial was held. The district court entered judgment in favor of the publisher in part and in favor of the defendants in part. The court held that: (1) the jail’s postcard-only policy did not violate the publisher’s First Amendment right of free speech; (2) the jail policy totally banning individual inmates’ receipt of publications through the mail violated the First Amendment; and, (3) the postcard-only policy violated due process. According to the court, the jail’s postcard-only policy, which restricted a jail inmate’s receipt of mail to postcards only, was reasonably related to the jail’s legitimate penological interests in security and efficiency, and thus, did not violate the periodical publisher’s First Amendment right to communicate with inmates. The court noted that by limiting the space in which correspondents could communicate with inmates, the policy impeded the ability to conceal illegal schemes in lengthy correspondence, reduced the likelihood of inmates’ receipt of contraband, saved jail employees’ four to six hours per day screening inmate mail, and the publisher could still communicate via postcards or by phone, and no easy, low-cost alternative existed. But the court found that the postcard-only policy did not provide appropriate notice and appeal procedures for non-postcard mail, and thus, violated the publisher’s procedural due process rights, where no jail policy required the sender to be notified each time the jail decided not to deliver to an inmate a book, a magazine, or a multi-page letter. (Walton County Jail, Georgia)

U.S. Appeals Court
CONFISCATION
LIMITATION
REGULATIONS

Stauffer v. Gearhart, 741 F.3d 574 (5th Cir. 2014). A state prisoner brought a civil rights action against prison employees in their individual and official capacities, claiming that they violated his First Amendment rights by confiscating his magazines under a Sex Offender Treatment Program (SOTP) rule, violated his due process rights by failing to provide any meaningful review of a mailroom employee’s decisions, and violated his equal protection rights by applying the policy solely to inmates participating in the SOTP. The district court granted summary judgment for the prison employees. The prisoner appealed. The appeals court affirmed. The court held that the state prison’s rule providing for confiscation of the magazines of prisoners in the Sex Offender Treatment Program (SOTP) was neutral, as required to not violate the prisoner’s free speech rights, despite not banning newspapers and religious materials, since the purpose of the rule was to facilitate treatment and the prison did not have any ulterior motive in promulgating the rule. According to the court, the rule was rationally related to the prison’s legitimate interest in sex-offender rehabilitation, as required to not violate the prisoner’s free speech rights, since the rule placed restrictions on reading material in order to facilitate treatment by preventing distractions. The court noted that the magazines that the prisoner requested undermined the goals of the SOTP in the professional judgments by prison officials tasked with overseeing program. According to the court, confiscation of the magazines of the prisoner in the SOTP, pursuant to the rule, did not deprive the prisoner of due process, since the prisoner could, and did, use the prison’s grievance system to claim that he had been wrongly denied those magazines, and prison administrators responded by investigating his claims and giving written justification that explained why he was not entitled to relief. (Texas Department of Criminal Justice, Goree Unit)

2015

U.S. Appeals Court
POSTCARDS
INCOMING MAIL
PRIVILEGED
CORRESPONDENCE
REGULATIONS
NOTICE
REFUSAL

American Civil Liberties Union Fund of Michigan v. Livingston County, 796 F.3d 636 (6th Cir. 2015). A civil rights organization brought a § 1983 action against a county and county officials alleging that the jail’s mail policy, pursuant to which all incoming and outgoing mail except “bona-fide legal mail” had to be on standard four-by-six-inch postcards, violated the First and Fourteenth Amendments. Following the grant of a temporary restraining order (TRO), the organization moved for a preliminary injunction. The district court granted the motion and the county appealed. The appeals court affirmed. The court held that the organization had a likelihood of success on the merits of its claim that the policy violated the Fourteenth Amendment’s due process protections. The court noted that the organization alleged that the jail blocked delivery of letters sent by the organization’s attorney without providing the organization or the intended inmate recipients notice and opportunity to contest the decision. (Livingston County Jail, Michigan)

U.S. District Court
LEGAL MAIL

Angulo v. Nassau County, 89 F.Supp.3d 541 (E.D.N.Y. 2015). An inmate brought a pro se action against a county and its correctional facility personnel, alleging the defendants violated his constitutional rights through the destruction of various legal documents and his legal mail. The defendants moved for summary judgment. The district court granted the motion. The court held that: (1) the inmate’s letter of complaint did not comply with the correctional facility’s grievance procedure, and thus the inmate failed to properly exhaust his administrative remedies; (2) administrative remedies were “available” to the inmate, and thus the inmate was not excused from filing a grievance; (3) the inmate’s allegations that personnel acted willfully and maliciously were insufficient to support the claim that personnel

interfered with his ability to access the courts; and (4) personnel did not conspire to destroy the inmate's legal mail. (Nassau County Correctional Center, and Downstate Correctional Facility, New York)

U.S. District Court
REGULATIONS
POSTCARDS

Barnes v. Wilson, 110 F.Supp.3d 624 (D. Md. 2015). An inmate brought an action against certain county jail officials, alleging that a deputy used excessive force when she slammed a door slot on the inmate's hand. The deputy and a supervisor moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by an issue of material fact as to whether the deputy closed the door on the inmate's hand maliciously or in response to a breach of security by the inmate. The court found that the jail's policy of restricting the inmate's mail to postcards did not violate his First Amendment right to send and receive mail, where the policy did not foreclose all avenues of communication, the inmate's stay at the jail was transitional and temporary, and the policy did not impact the inmate's ability to communicate with legal counsel regarding his criminal case. (Washington County Detention Center, Maryland)

U.S. District Court
REFUSAL
INSPECTION OF MAIL
SECURITY PRACTICES

Barrett v. Premo, 101 F.Supp.3d 980 (D. Or. 2015). An inmate brought a claim under § 1983 against several corrections officials for violation of his First Amendment rights arising out of rejection of a piece of mail he sent to another inmate because it had artwork on the front of the envelope. The district court ordered declaratory and injunctive relief. The court found that: (1) the Department of Corrections did not have a consistently enforced policy or practice prohibiting artwork on the front of incoming envelopes, and thus the rejection of the inmate's envelope violated his First Amendment rights; (2) monetary damages were inadequate to address the inmate's loss of First Amendment freedoms; (3) the constitutional hardship to prison inmates was far greater than the insignificant potential impact on the prison's time and resources from having to look more closely at envelopes to read a recipient's address if artwork was present; (4) a permanent injunction enjoining the Department from enforcing the policy would permit inmates and nonparty members of the public to more easily and effectively communicate, and thus the public interest weighed in favor of an injunction; (5) a permanent injunction did not extend any further than necessary to correct the First Amendment violations and was the least intrusive means necessary to correct the violations; and (6) supervisory prison officials were sufficiently involved in alleged violation of the inmate's First Amendment rights to be liable under § 1983. (Oregon State Penitentiary)

U.S. Appeals Court
CENSORSHIP

Murchison v. Rogers, 779 F.3d 882 (8th Cir. 2015). A former state prisoner filed a § 1983 action, alleging that prison officials violated his First Amendment rights by censoring his weekly news magazine (Newsweek). The district court dismissed claims against certain officials, and granted summary judgment in favor of the remaining officials. The prisoner appealed. The appeals court affirmed, finding that censorship of the prisoner's weekly news magazine was rationally connected to the officials' legitimate penological interest in prohibiting materials that promoted violence, disorder, or violation of the law. The court noted that the prisoner had alternative means of exercising his First Amendment right. (South Central Correctional Center, Missouri)

U.S. Appeals Court
PROHIBITION

Payton v. Cannon, 806 F.3d 1109 (7th Cir. 2015). A prisoner brought a § 1983 action challenging a prison policy banning all sexually explicit material as violative of the First Amendment. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed, finding that the policy did not violate the prisoner's First Amendment right of free expression. The court held that the policy was reasonably related to the prison's legitimate penological interests in preventing prison violence and black-market trading among prisoners. (Stateville Prison, Illinois)

U.S. District Court
NOTICE
PROHIBITION-
PUBLICATIONS

Prison Legal News v. Jones, 126 F.Supp.3d 1233 (N.D. Fla. 2015). The publisher of a monthly legal magazine brought a § 1983 action against the Secretary of the Florida Department of Corrections (FDOC), alleging violations of its First Amendment and procedural due process rights arising out of impoundment and rejection of magazine publications. Following a bench trial, the district court held that the regulation prohibiting prisoner access to publications with a specific type of advertisements did not violate the First Amendment. The court noted that advertisements for three-way calling and call-forwarding services in the magazine presented a security threat, warranting the FDOC's decision to impound and reject the magazine under a Florida administrative rule. The court held that FDOC's repeated failure to provide an impoundment notice to the publisher violated the publisher's substantive due process rights. (Florida Department of Corrections)

U.S. District Court
INTERFERENCE

Quiroz v. Short, 85 F.Supp.3d 1092 (N.D.Cal. 2015). A state prisoner brought an action against prison officials, alleging that the officials retaliated against him for filing a prior federal civil rights complaint and for participating in another inmate's civil rights suit. One official moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the official acted with a retaliatory motive when he sent to the prisoner's fiancée a letter intended for another woman; (2) whether the prison official acted with a retaliatory motive when he issued a rules violation report (RVR) against the prisoner; and (3) whether officials had an agreement to retaliate against the prisoner by issuing the RVR against him. The court found that: (1) the official did not have a retaliatory motive in investigating an administrative grievance; (2) the prisoner's assertion that one of the official's duties was to monitor incoming and outgoing mail was insufficient to show that the official destroyed two specific pieces of the prisoner's mail; (3) the official was entitled to qualified immunity on the prisoner's right to intimate association claim; and (4) the official's act of sending a letter to the prisoner's fiancée that was intended for another woman did not prevent the prisoner from continuing to associate with his fiancée and did not prevent the prisoner from marrying his fiancée. (Pelican Bay State Prison, Secure Housing Unit, California)

SECTION 29: MEDICAL CARE

Detention and Corrections Caselaw Catalog *All Rights Reserved*
CRS, Inc. 925 Johnson Drive, Gettysburg PA 17325 (717) 338-9100 www.correction.org/

The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1969

- U.S. Appeals Court
FAILURE TO
PROVIDE CARE
- Church v. Hegstrom, 416 F.2d 449 (2nd Cir. 1969). The court stated that the failure to provide medical care must be some "barbarous act" or "some conduct that shocks the conscience (of a reasonable prudent person)." Note- later rulings have established a different standard. (Connecticut State Jail, Hartford, Connecticut)

1970

- U.S. District Court
INTAKE SCREENING
- Hamilton v. Schiro, 338 F.Supp. 1016 (E.D. La. 1970). The lack of a medical intake survey upon an inmate's arrival at the jail contributes to the court's finding of a constitutional violation. (Orleans Parish Prison, Louisiana)

1971

- U.S. District Court
FACILITIES
INTAKE SCREENING
SICK CALL
MEDICATION
DENTAL CARE
- Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Oh. 1971), aff'd, 456 F.2d 854 (6th Cir. 1972). Adequate facilities for examinations, treatment of emergencies and minor injuries and illnesses, and dental examination and treatment must be provided. Medical quarantine facilities will be provided. Jail is required to have a physician on call and to examine "entering prisoners". Sick call must be held daily. Nurse may not prescribe medicine. Dentist is to be available part-time. (Lucas County Jail, Ohio)
- U.S. District Court
RESTRAINTS
DENTAL CARE
EXAMINATIONS
SICK CALL
- Collins v. Schoonfield, 344 F.Supp. 257 (D. Md. 1972). Suicidal inmates, inmates suffering from narcotics withdrawal, and inmates with psychological problems may not be shackled to beds with metal restraints. The jail is constitutionally required to provide inmates with adequate dental care, reasonable medical examinations, and access to sick call. Pretrial detainees may not be forced to change the length or manner in which they wear their hair, except where jail officials can demonstrate a health or identification need for so doing. (Baltimore City Jail, Maryland)
- U.S. Appeals Court
FAILURE TO
PROVIDE CARE
- Fitzke v. Shappell, 468 F.2d 1072 (6th Cir. 1972). Where the circumstances are clearly sufficient to indicate the need for medical attention for injury or illness, the denial of such aid constitutes the deprivation of constitutional due process. (Eaton County Jail, Michigan)
- U.S. District Court
RESTRAINTS
DENTAL CARE
TRANSPORTATION
MENTAL HEALTH
- Hamilton v. Landrieu, 351 F.Supp. 549 (E.D. La. 1972). Mentally deranged prisoners shall never be unsupervised or unescorted. The practice of chaining mentally disturbed inmates shall be stopped. Humane restraints must be provided. Arrangements shall be made for a program of psychiatric care. Arrangements shall be made to introduce dental care services. Jail officials shall provide drivers and vehicles to transport inmates to the local hospital. A medical aid shall be on jail premises during evening hours when no other medical personnel are present. (Orleans Parish Prison, Louisiana)

1973

- U.S. Appeals Court
FAILURE TO
PROVIDE CARE
- Johnson v. Glick, 481 F.2d 1028 (2nd Cir. 1973), cert. denied, 414 U.S. 1033. Guard's denial of prisoner's access to medical care may constitute a Section 1983 brutality claim. (Manhattan House of Detention, New York)

- U.S. District Court
FAILURE TO
PROVIDE CARE
- U.S. District Court
- U.S. Appeals Court
42 U.S.C.A.
Section 1983
- Johnson v. Lark, 365 F.Supp. 289 (E.D. Mo. 1973). Inadequate access to medical care, including use of "tier bosses" in screening requests, did not amount to obvious neglect or intentional mistreatment. (St. Louis County Jail, Missouri)
- Mills v. Oliver 367 F.Supp. 77 (D. Vir. 1973). There is a constitutional right to "reasonable medical care" that is "adequate under the circumstances." (State Prison, Virginia)
- Page v. Sharpe, 487 F.2d 567 (1st Cir. 1973). Denial of medical care to inmate is actionable under Section 1983 only if the complaint alleges: 1) intent to harm inmate, 2) an injury obviously requiring medical attention. Mere negligence, unless it shocks the conscience, will not suffice. (Cumberland County Jail, Maine)

1975

- U.S. District Court
QUARANTINE
INTAKE SCREENING
ALCOHOL/DRUGS
MENTAL HEALTH
- U.S. District Court
MENTAL HEALTH
RESTRAINTS
- U.S. District Court
EYE CARE
- U.S. District Court
DENTAL CARE
- U.S. Appeals Court
FAILURE TO
PROVIDE CARE
- U.S. District Court
FAILURE TO
PROVIDE CARE
- U.S. District Court
MENTAL HEALTH
- Alberti v. Sheriff of Harris Co., 406 F.Supp. 649 (S.D. Tex. 1975). All persons detected at intake as having communicable diseases or other serious medical problems shall be quarantined to be sent immediately to a local hospital or other medical institution for treatment. Jail officials shall establish a regular medical intake screening procedure, and no incoming inmate shall be housed in the jail until he has been medically examined and approved. Alcoholic and drug-dependent inmates shall be housed in an incarcerative environment specifically designed and equipped for the treatment of withdrawal problems. Jail officials shall establish a separate diversion program for alcoholic and drug-dependent inmates, including hiring a specialist in drug and alcohol withdrawal treatment and developing specially equipped facilities. Jail officials shall establish a psychiatric screening and examination program, utilizing the services of a volunteer or paid psychiatrist, and shall design new procedures for housing inmates with mental or emotional difficulties. Jail officials shall obtain the voluntary, or if necessary, paid services of doctors or medical students to provide medical intake services. (Harris County Jail, Texas)
- Campbell v. McGruder, 416 F.Supp. 100 (D. D.C. 1975). If a detainee displays unusual behavior suggestive of possible mental illness, such behavior shall be immediately reported to the medical staff. The inmate will be seen by a psychiatrist within twenty-four hours and if mentally ill will be transferred to an appropriate hospital within forty-eight hours. Restraints will be used only in a hospital setting or medical authorization, with strict recordkeeping. (D.C. Jail)
- DiFebo v. Keve, 395 F.Supp. 1350 (D. Del. 1975). Inmate's glasses were broken in a scuffle, at which inmate was innocent bystander. Despite requests, he was not examined for three months, at which time the physician found the inmate's vision to have been permanently impaired. The court said the facts did not constitute a claim under Section 1983, but the facts would be sufficient to establish a claim under tort law. (Delaware Correctional Center)
- Padgett v. Stein, 406 F.Supp. 287 (M.D. Penn. 1975). Adequate medical and dental care contributes to the absence of cruel and unusual punishment. (York Co., PA)
- Shannon v. Lester, 519 F.2d 76 (6th Cir. 1975). Persons in custody are entitled to medical care. Denial of treatment is violation of due process. (Warren County Jail, Tennessee)
- Stokes v. Hurdle, 393 F.Supp. 757 (D. Md. 1975), aff'd, 535 F.2d 1250. The deprivation or inadequacy of essential medical care is unreasonable. (Maryland Penitentiary)
- Sykes v. Kreiger, 451 F.Supp. 421 (N.D. Oh. 1975). A psychiatric unit is to be built in the jail, and a plan for treatment is to be established. Emergency dental service must be provided. (Cuyahoga County Jail, Ohio)

1976

- J.S. District Court
DENTAL CARE
INTAKE
SCREENING
MENTAL HEALTH
- Barnes v. Government of the Virgin Islands, 415 F.Supp. 1218 (D. VI. 1976). Medical services shall be provided only by appropriately trained personnel. A thorough medical exam shall be given to each inmate as part of intake and classification. A dentist shall be available on call. A psychiatrist is to be present at least once a week. Programs are to be developed to help staff deal with inmates' mental problems. A mental status exam is to be given as part of intake procedure. (Golden Grove Adult Correctional Facility, Virgin Islands)

U.S. Supreme Court
FAILURE TO
PROVIDE CARE
42 U.S.C.A.
Section 1983

Estelle v. Gamble, 429 U.S. 97 (1976), cert. denied, 429 U.S. 1066 (1976).
Gamble, a Texas state inmate, brought this 42 U.S.C. Section 1983 action against Estelle, Texas Corrections Director, the state corrections department medical director, and two correctional officials, claiming inadequate treatment of a back injury sustained while engaged in prison work constituted cruel and unusual punishment in violation of the eighth amendment. The U.S. District Court dismissed the complaint for failure to state a cause of action upon which relief could be granted. The Fifth Circuit Court of Appeals ruled the complaint must be reinstated, and the state officials petitioned for a writ of certiorari from the U.S. Supreme Court. (Reversed and Remanded.)

HELD: "[D]eliberate indifference to serious needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the eighth amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under Section 1983." 429 U.S. at 104-105.

CAVEAT: "This conclusion does not mean, however, that every claim by a prisoner that he has not received adequate medical treatment states a violation of the eighth amendment. An accident, although it may produce added anguish, is not on that basis alone to be characterized as wanton infliction of unnecessary pain.... Similarly, in the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain' or to be 'repugnant to the conscience of mankind.' Thus a complaint stating that a physician has been negligent in dispersing or treating a medical condition does not state a valid claim of medical mistreatment under the eighth amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner."
429 U.S. at 105-106.

GENERAL RATIONALE: "An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, his needs will not be met. In the worst cases, such a failure may actually produce 'physical torture or a lingering death'... In less severe cases, denial of needed care may result in pain and suffering which no one suggests would serve any penological purpose.... The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency as manifested in modern legislation [both statutory and model correctional standards] codifying the common-law view that 'it is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself.'" 424 U.S. at 103-104. (Texas Department of Corrections)

U.S. District Court
SPECIAL DIETS
TRANSFER

Mitchell v. Untreiner, 421 F.Supp. 886 (N.D. Fla. 1976). Jail inmates shall be furnished such special diets as prescribed by a physician or any other member of the jail medical staff. Any inmate requiring hospitalization due to a potentially infectious or contagious disease, mental illness, or any other ailment requiring hospitalization, shall not be housed in the jail except upon emergency application to the court. (Escambia County Jail, Pensacola, Florida)

U.S. District Court
EXPERIMENTATION

Roach v. Kligman, 412 F.Supp. 521 (E.D. Penn. 1976). Claim for improper medical treatment must rise to the level of an eighth amendment violation to be actionable. The plaintiff claimed to have been improperly coerced into medical experimentation by jail conditions, rejected by the court. (Holmesburg Prison, Pennsylvania)

U.S. District Court
FAILURE TO
PROVIDE CARE

Sandlin v. Pearsall, 427 F.Supp. 494 (E.D. Tenn. 1976). Where an inmate appears in need of medical attention but does not get it for a long time, her rights are violated, notwithstanding jury verdict. (County Jail, Tennessee)

U.S. District Court
FAILURE TO
PROVIDE CARE

Tate v. Kassulke, 409 F.Supp. 651 (W.D. Ky. 1976). Denial of needed medical attention justifies injunctive relief. (Jefferson County Jail, Kentucky)

1977

U.S. District Court
SPECIAL HOUSING
INTAKE SCREENING
EXAMINATION
FACILITIES

Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. There shall be a special housing unit for detainees who need it for psychiatric, psychological or other medical reasons. The screening officer shall inquire as to detainee's need for psychological or counseling care and shall report to the correctional staff. Facilities for medical examinations shall be provided. (Platte County Jail, Missouri)

U.S. District Court
HOSPITAL

Anderson v. Redman, 429 F.Supp. 1105 (D. Del. 1977). Use of hospital for general housing is unacceptable because it interferes with proper medical operations. (Delaware Correctional Center)

- U.S. Appeals Court
MENTAL HEALTH Bowring v. Godwin, 551 F.2d 44 (4th Cir. 1977). There is no underlying distinction between right to medical care and its psychological or psychiatric counterpart; the prisoner is entitled to the latter if physician or other health care provider, in exercise of ordinary care, concludes with reasonable medical certainty that: 1) there are symptoms of serious disease or injury, 2) which may be cured or alleviated, 3) and the potential for harm is substantial if untreated. (Virginia State Prison)
- U.S. District Court
PERSONNEL
TRAINING
FACILITIES
MEDICATION Goldsby v. Carnes, 429 F.Supp. 370 (W.D. Mo. 1977). There shall be a Unit Manager of the Health Service Unit who shall oversee and be responsible for the overall health care program at the jail. All jail staff is ordered to undergo forty hours of annual in-service training. Jail personnel shall be trained to recognize illness. There shall be sufficient examining rooms and short-term examining rooms and short-term observation rooms in order to provide adequate primary medical care. At no time are inmates to assist in dispensing medication. (Jackson County Jail, Kansas City, Missouri)
- U.S. District Court
SICK CALL
INTERFERENCE Johnson v. O'Brien, 445 F.Supp. 122 (E.D. Mo. 1977). Guards are prohibited from interfering in medical treatment. The sick call procedures are delineated. A physician is to visit the facility at least three times each week. (St. Louis County Jail, Missouri)
- U.S. District Court
DENTAL CARE Laaman v. Helgemoe, 437 F.Supp. 269 (D. N.H. 1977). Inmates are entitled to reasonable dental care. (New Hampshire State Prison)
- U.S. Appeals Court Newman v. State of Alabama, 559 F.2d 283 (5th Cir. 1977), cert. denied, 438 U.S. 915 (1977). The Constitution does not require that prisoners, as individuals or as a group, be provided with any and every amenity which some person may think is needed to avoid mental, physical, and emotional deterioration. (Alabama Penal Institution)
- U.S. Appeals Court
EXAMINATIONS
MEDICATION Smith v. Sullivan, 553 F.2d 373 (5th Cir. 1977). Person with a contagious disease should not be left without medical treatment in the midst of other inmates. Prisoners who are sick or injured must get an examination by a licensed physician immediately after the sickness or injury is reported. Prescribed medications are to be provided to inmates. (El Paso County Jail, Texas)
- U.S. District Court
FAILURE TO
PROVIDE CARE Todaro v. Ward, 431 F.Supp. 1129 (S.D. N.Y. 1977), aff'd, 652 F.2d 54 (1981). The Federal District Court found the medical system to violate the cruel and unusual punishment clause of the eighth amendment because it constitutes "deliberate indifference" to the inmates' needs. (Bedford Hills Correctional Facility, New York)
- U.S. District Court
SICK CALL
EXAMINATION
FACILITIES Vest v. Lubbock County, 444 F.Supp. 824 (N.D. Tex. 1977). Sick call is to be held by a physician at least twice a week. Examination facilities are to be provided. (Lubbock County Jail, Texas)
- U.S. Appeals Court
FAILURE TO
PROVIDE CARE Vinnedge v. Gibbs, 550 F.2d 926 (4th Cir. 1977). Willful denial of medical treatment may constitute cruel and unusual punishment. (Fairfax County Jail, Virginia)
- U.S. District Court
42 U.S.C.A.
Section 1983 Ward v. Johnson, 437 F.Supp. 1053 (E.D. Vir. 1977). In an action by a state prisoner under the 1871 civil rights statute, the district court held that: questions of medical judgment are not subject to judicial review, and a prisoner cannot be the ultimate judge of what medical treatment is necessary and appropriate for him. States, not federal courts are supervisors of state prisons, and federal court will intervene only to protect constitutional interests. (Virginia Department of Corrections)
- 1978
- U.S. Appeals Court
MENTAL HEALTH Campbell v. McGruder, 580 F.2d 521 (D.C. Cir. 1978). An order requiring that mentally ill prisoners be removed from the jail within twenty-four hours of discerning such mental condition is upheld. (D.C. Jail)
- U.S. District Court Finney v. Mabry, 458 F.Supp. 720 (E.D. Ark. 1978). By agreement of the parties, the prisoners are to receive reasonable and necessary medical and dental care. (Arkansas Department of Corrections)
- U.S. Appeals Court
EQUIPMENT
EMERGENCY CARE
FAILURE TO
PROVIDE CARE Green v. Carlson, 581 F.2d 669 (7th Cir. 1978), aff'd, 100 S.Ct. 1468 (1980). Institution's medical equipment is found not operative. Institution had no medical emergency plan or no staff trained in emergency first aid. These conditions constituted deliberate indifference to known medical needs of a prisoner who died as a result.

- U.S. District Court
HOSPITAL
- M.C.I. Concord Advisory Bd. v. Hall, 447 F.Supp. 398 (D. Mass, 1978). In a civil rights action brought to challenge conditions of confinement at a state correctional institution, the district court held that: (1) plaintiff prisoners sustained the burden of proving that incarceration of inmates in protective custody cells, in awaiting action cells and in institutional holding cells violated eighth amendment standards, but (2) plaintiffs failed to sustain their burden of proving that double ceiling in one area and use of a hospital wardroom for a dormitory violated eighth amendment standards. Injunctive relief was granted in part. An eighth amendment proscription against cruel and unusual punishment is flexible, drawing its meaning from evolving standards of decency that mark the progress of maturing society, and penal measures are to be evaluated against broad and idealistic concepts of dignity, civilized standards, humanity and decency. Prisoners failed to sustain burden of proof that dormitory use of a hospital wardroom violated constitutional rights of inmates who slept therein and failed to show that use of the wardroom infringed on constitutional rights of inmates to adequate medical care. (Massachusetts Correctional Institution, Concord)
- U.S. Appeals Court
METHADONE
- Norris v. Frame, 585 F.2d 1183 (3rd Cir. 1978). An inmate awaiting trial who is on methadone maintenance has a protected liberty interest in continuation of the methadone program while in jail. Jail officials cannot remove inmate from the program unless they show legitimate security considerations or can show that the administration of the jail would be disrupted by continuation of the methadone program. Without such a showing, removal of the inmate from the program is deliberate indifference to known medical needs. (Chester County Farm Prison, Pennsylvania)
- 1979
- U.S. Appeals Court
FAILURE TO
PROVIDE CARE
- Daily v. Byrnes, 605 F.2d 858 (5th Cir. 1979). Where county jail prisoner is struck and injured by a guard and no effort is made to secure medical attention, guard and county could be held liable for deliberate indifference. (Escambia Co., Alabama)
- U.S. Appeals Court
FAILURE TO
PROVIDE CARE
INTERFERENCE
- Davis v. Zahradnick, 600 F.2d 458 (4th Cir. 1979). If a warden fails to properly supervise his officers and if improper supervision resulted in the guards' denial of access to medical treatment to a prisoner who had been beaten, the warden could be found vicariously liable for his failure to carry out the duty of supervision. (State Prison, Virginia)
- U.S. District Court
EXAMINATIONS
RECORDS
FACILITIES
EQUIPMENT
MENTAL HEALTH
- Feliciano v. Barcelo, 497 F.Supp. 14 (D.P.R. 1979). All inmates are to receive a physical examination within one week of receipt at the institution. Proper medical records are to be kept. Adequate medical facilities and equipment are to be achieved and maintained. The current population is to be surveyed for psychiatric problems. A medical director is to be appointed and his powers are set forth in the opinion. (Correctional System, Puerto Rico)
- U.S. Appeals Court
FAILURE TO
PROVIDE CARE
- Fielder v. Bosshard, 590 F.2d 105 (5th Cir. 1979). Jury awarded \$99,000 damages against jailer and sheriff for death of county jail prisoner. The deceased prisoner was arrested and jailed for nonsupport. Although informed of the prisoner's need for medication jail officials did not respond to his repeated requests. The jury found the officials were callously indifferent to the prisoner's known medical needs. (Williamson County Jail, Texas)
- U.S. District Court
FAILURE TO
PROVIDE CARE
- Holly v. Rapone, 476 F.Supp. 226 (E.D. Penn. 1979). Prisoner underwent withdrawal symptoms and received no treatment until twenty-four hours after the onset of symptoms. This was not deliberate indifference to known medical needs because treatment was rendered within the stated time limit according to state law. (Delaware County Prison, Pennsylvania)
- U.S. District Court
DELAY IN
TREATMENT
- Isaac v. United States, 490 F.Supp. 613 (S.D. N.Y. 1979). A delay of three days in obtaining medical attention for the plaintiff while he was in substantial discomfort, with no permanent effect, states a basis for recovery. (Federal House of Detention, New York City, New York)
- U.S. District Court
FAILURE TO
PROVIDE CARE
- Maynard v. Kear, 474 F.Supp. 794 (N.D. Oh. 1979). Failure of police to take an inmate suffering from "slight bleeding" to a physician or hospital is not sufficient to claim a violation of the eighth amendment where no permanent injury results. (City of North Olmsted, Ohio)
- U.S. District Court
STAFF
TRANSPORTATION
- Ramos v. Lamm, 485 F.Supp. 122 (D. Colo. 1979), cert. denied, 101 S.Ct. 1759. The medical care unit within the institution was constitutionally inadequate because of the lack of adequate staff and the lack of transportation to outside specialists in case of emergencies. (State Penitentiary, Canon City, Colorado)

U.S. District Court
MEDICATION

Russell v. Enser, 496 F.Supp. 320 (D. S.C. 1979), aff'd, 624 F.2d 1095 (4th Cir. 1980). The unavailability of prescribed medication for plaintiff where he was transferred from the prison to the jail for a hearing is not in regard to so serious a medical problem as to constitute deliberate indifference to known medical needs where there were no permanent injuries. (Horry County Jail, South Carolina)

1980

U.S. District Court
MEDICATION

Bourgeois v. Hongisto, 488 F.Supp. 304 (S.D. N.Y. 1980). Where the plaintiff is given the proper medication but refuses to take it because he is placed in general population rather than the infirmary, he is not denied adequate medical care. Refusal of the institutional physician to discuss his findings with the plaintiff prior to his discharge from the infirmary did not constitute deliberate indifference to known medical needs. (Ossining Correctional Facility, New York)

U.S. District Court
"REASONABLE CARE"
FAILURE TO
PROVIDE CARE

Brown v. Beck, 481 F.Supp. 723 (S.D. Ga. 1980). Medical care afforded in a correctional institution need not be the best possible. Where reasonable care has been given to the individual, the fact that further treatment might be deemed desirable by some physicians does not impose a duty on the institutional staff to provide that treatment. Failure to provide treatment was not deliberate indifference to known medical needs. (Richmond County Jail, Augusta, Georgia)

State Appeals Court
FAILURE TO
PROVIDE CARE

Burns v. Town of Leesville, 383 So.2d 109 (Ct. App. La. 1980). Court of appeals affirms judgment against pretrial detainee. The plaintiff, Bill Burns, was arrested and charged with drunkenness and was admitted to the Leesville City Jail. He was assigned an upper bunk in a double cell. After several hours, he attempted to leave the bunk and fell across the bottom bunk, striking his back on its metal railing. He said that he was not able to move after his fall, requested medical attention several times, and it was refused.

Burns was released from custody the following morning and sought treatment for his back. His injuries were diagnosed as a contusion, abrasion and acute sprain, and he spent several days in the hospital. Burns filed suit against the town of Leesville, the chief of police, and the Village of New Llano (where he was initially arrested), claiming they were responsible for his injuries. The plaintiff claimed that the defendants should not have placed him in an upper bunk because of his physical condition, and that they were negligent in failing to provide medical services.

The defendants argued that the plaintiff was negligent in attempting to get down from his bunk and should be held responsible for his own actions. The trial judge concluded that the plaintiff was not unreasonably intoxicated, and was therefore responsible for his actions. The appeals court concurred, and ordered Burns to pay all court costs. (Leesville City Jail, Louisiana)

U.S. Supreme Court
FAILURE TO
PROVIDE CARE

Carlson v. Green, 100 S.Ct. 1468 (1980). In this case, Green as administratrix of the estate of her deceased son, brought suit in an Indiana U.S. district court, alleging that while her son was an inmate in a Federal prison, officials failed to give him proper medical attention, causing personal injuries from which he died. Green claimed this violated her son's eighth amendment protection against cruel and unusual punishment. Asserting jurisdiction under 28 U.S.C. Section 1331 (a.), Green sought compensatory and punitive damages. The U.S. District Court held that the complaint gave rise to a cause of action under Bivens for damages, but dismissed the complaint because Illinois survivorship and wrongful death laws limited recoverable damages to less than the \$10,000 required to meet 1331 (a.) jurisdiction. The Seventh Circuit Court of Appeals agreed with the district court, but held that Section 1331 (a.) was satisfied because whenever a state survivorship statute would preclude a Bivens action, the federal common law allows survival of the action.

HELD: In ruling that a Bivens remedy against individual federal agents was permissible in this case, as well as an action against the federal government under the Federal Tort Claims Act, the court stated: "Plainly FTCA is not a sufficient protector of the citizens' constitutional rights, and without a clear congressional mandate we cannot hold that Congress relegated [Green] exclusively to the FTCA remedy." 100 S.Ct. at 1474. (Federal Correctional Center, Indiana)

U.S. District Court
FAILURE TO
PROVIDE CARE

Crow v. Washington Co. Bd. of Prison Inspectors, 504 F.Supp. 412 (W.D. Penn. 1980). Where the county board only contracted for medical care for the institution during the daytime, it knew or should have known that there would be no care available at the institution during the nighttime. Where the plaintiff's decedent was received at the institution in need of medical care during the nighttime and alleged that death resulted from the lack of medical care, the complaint states a claim upon which relief can be granted. (Washington County Prison, Pennsylvania)

U.S. Appeals Court
ADEQUACY OF CARE

Cummings v. Roberts, 628 F.2d 1065 (8th Cir. 1980). The mere fact that the plaintiff received medical care does not defeat a claim that the medical care received was inadequate. (St. Louis City Jail)

- U.S. District Court
MEDICATIONS Davis v. Hubbard, 506 F.Supp. 915 (N.D. Oh. 1980). Administration of mood altering drugs to a mental patient without the consent of the patient requires procedural due process absent an emergency. An emergency is a situation where the patient presents an imminent danger of physical harm to himself or others. Due process requires a hearing with an impartial decision maker. The decision maker need not be a judge or even a lawyer. (State Mental Institution, Ohio)
- U.S. Appeals Court
DELAY OF CARE Gibson v. McEvers, 631 F.2d 95 (7th Cir. 1980). A delay of thirteen hours in providing treatment for a cold is not deliberate indifference to known medical needs. (Logan Correctional Center, Illinois)
- U.S. District Court
MALPRACTICE
ADEQUACY OF CARE Green v. Ferrell, 500 F.Supp. 870 (S.D. Miss. 1980), rev'd, 664 F.2d 1292. A Mississippi District Court Judge had dismissed a suit brought by inmates of the Adams County, Mississippi Jail; on appeal the higher court ordered the case to continue. The inmates challenged conditions at the jail, which was built in 1978 at a cost of \$2,000,000. Among the inmate's complaints were cold food, inadequate medical care, improper mail regulations and unsatisfactory classification procedures. In addition, one inmate alleged that he received constitutionally inadequate medical care and offered a sworn affidavit from a physician in support of his claim. Regarding the general claims brought by the inmates, the court ruled in favor of the jail administration on every item. The court also ruled that the inmate with the malpractice charge had failed to state a claim of constitutional significance. Notwithstanding the physician's affidavit, that the man had not received optimum medical care, the court ruled that the claim was not sufficient to confer jurisdiction. It stated that in order to confer jurisdiction on the court, the inmate was required to demonstrate nothing less than "deliberate indifference" to his medical needs. Estelle v. Gamble 429 U.S. 97 (1976). The court further noted that the standard used in civil rights claims is higher than that for medical malpractice claims. (Adams County Jail, Mississippi)
- U.S. Appeals Court
FAILURE TO
PROVIDE CARE Hamilton v. Roth, 624 F.2d 1204 (3rd Cir. 1980). Evidence of a failure to treat or to provide follow-up treatment is at most malpractice and does not state a claim for violation of civil rights. (State Correctional Institute, Pennsylvania)
- U.S. District Court
STAFF
INTAKE SCREENING
MEDICATION Inmates of Allegheny County Jail v. Pierce, 487 F.Supp. 638 (W.D. Penn. 1980). The court issued an extensive order regarding the provision of medical care to jail inmates. The order requires that there be a nurse on duty at the jail every shift, that all incoming inmates receive medical screening and that the medical staff rather than the guard staff dispense medication. (Allegheny County Jail, Pennsylvania)
- U.S. District Court
ADEQUACY OF CARE Lightfoot v. Walker, 486 F.Supp. 504 (S.D. Ill. 1980). The court required the state to demonstrate that it is capable of providing medical and related services to the population housed at the institution. (Menard Correctional Center, Menard, Illinois)
- U.S. District Court
ADEQUACY OF CARE McEachern v. Civiletti, 502 F.Supp. 532 (N.D. Ill. 1980). Medical records which demonstrate numerous referrals of the plaintiff to medical experts for diagnosis and treatment are sufficient to demonstrate a lack of deliberate indifference to the plaintiff's medical needs. (Metropolitan Correctional Center, Chicago)
- U.S. Appeals Court
DELAY OF CARE
SPECIAL DIET
MEDICATION Murrell v. Bennett, 615 F.2d 306 (5th Cir. 1980). Delay in provision of medical treatment as well as failure to provide either a prescribed diet or the prescribed medication for a period of time following return from a hospital states a claim for deliberate indifference to known medical needs. (Alabama State Prison)
- U.S. District Court
MEDICATION
INTAKE SCREENING
TRAINING
RECORDS
DENTAL CARE Nicholson v. Choctaw Co., Ala., 498 F.Supp. 295 (S.D. Ala. 1980). Trustees are not to pass medication. The jail personnel are to be trained in emergency medical care. All incoming inmates are to be tested for venereal disease and tuberculosis, and those individuals showing positive test results are to be segregated from the rest of the inmate population. There is no requirement that a professional medical staff be hired because the jail is too small to justify such. However, all guards are to be given some training in diagnosis, and all decisions refusing to permit an inmate to see a physician are to be reviewed by trained personnel within twenty-four hours. All incoming inmates are to complete a health screening form. Adequate medical and medication records are to be maintained. Dental care is to include work other than extraction. (Choctaw County Jail, Alabama)
- U.S. Appeals Court
INTAKE SCREENING
FAILURE TO
PROVIDE CARE Wood v. Woracheck, 618 F.2d 1225 (7th Cir. 1980). Where the inmate, at the time of his booking, complains of physical injuries, some of which are clearly visible, the jail staff is deliberately indifferent in failing to seek medical care for the inmate for a considerable period of time. (City Jail, Milwaukee, Wisconsin)

U.S. Appeals Court
INTAKE SCREENING

Lareau v. Manson, 651 F.2d 96 (2nd Cir. 1981). Adopting most of the findings of the district court, the United States of Appeals for the Second Circuit has ordered major reforms in the Hartford Community Correctional Center (HCCC), dealing generally with overcrowding. The constitutional standard for the legality of conditions of confinement is different for pretrial detainees and for convicted inmates. For pretrial detainees, the test is whether the conditions amount to punishment without due process in violation of the fourteenth amendment. With respect to convicted inmates, the criterion is whether the punishment is cruel and unusual as defined under the eighth amendment. Reviewing the numerous findings of the district court, the appellate court looked to the supreme court case of Bell v. Wolfish, 441 U.S. 520. Viewing overcrowding at the HCCC as related to pretrial detainees, the court cited the following standard of whether such conditions amount to punishment: "It must be shown that the overcrowding subjects a detainee over an extended period to genuine privation and hardship not reasonably related to a legitimate governmental objective." Based upon this standard the court found that double-bunking in cells originally designed for one person, compounded by overcrowded dayrooms, imposed unconstitutional punishment on pretrial detainees in all cases except where such hardship was related to a legitimate governmental purpose. The court here found that these hardships promoted neither security nor the effective management of the institution. Other conditions were even less acceptable. The use of a glass enclosed dayroom (dubbed the "fish tank") as a dormitory room housing numerous inmates on a full time basis was held to amount to punishment and was thus unconstitutional with regard to pretrial detainees. In addition, the placing of mattresses on the floors of cells to accommodate more inmates and the assignment of healthy inmates to medical cells (sometimes with mentally or physically ill cellmates) to alleviate overcrowding were held to constitute impermissible punishment. The court further stated that the length of incarceration of pretrial detainees becomes relevant in such determination: "Conditions unacceptable for weeks or months might be tolerable for a few days." As such, the court indicated that while double-bunking and overloaded dayrooms might be tolerable, and thus constitutionally permissible for a few days, after 15 or so days, they would become unacceptable punishment. The use of the "fish tank" and floor mattresses, however, were held to constitute punishment regardless of the number of days imposed. Viewing the conditions as they related to convicted persons, the court pointed out that it was to be guided by a wholly different standard. Here, in order to constitute a constitutional violation, the conditions had to be such as to amount to cruel and unusual punishment. Nevertheless, the court found the overcrowded conditions intolerable. Noting that the thirty to thirty-five square feet of living space per inmate fell far short of the standards promulgated by groups such as the Connecticut Department of Corrections, the American Correctional Association, the United Nations and the National Sheriffs' Association, and further noting that the dayroom at the HCCC offered the "relief of a noisy subway platform" the court held that double-bunking, with respect to convicted inmates, was unconstitutional except where inmates are confined no more than about thirty days. As with the pretrial detainees, the court found that the constitutional rights of the convicted inmates were immediately violated by confinement in the "fish tank" and by policies requiring them to sleep on mattresses on the floors and to be assigned to medical holding cells for no reason other than to alleviate overcrowding. Finally, the court ordered that all newly admitted inmates, with minor exceptions, be given a medical examination within forty-eight hours of admission. (Hartford Community Correctional Center, Connecticut)

U.S. District Court
WORK ASSIGNMENT

McDaniel v. Rhodes, 512 F.Supp. 117 (S.D. Oh. 1981). Allegations that the plaintiff was given a job assignment which aggravated his allergies and that nothing was done to change the assignment when it was brought to the administration's attention state a claim for deliberate indifference to known medical needs. (London Corr. Center, Ohio)

U.S Appeals Court
MENTAL HEALTH

Woodall v. Foti, 648 F.2d 268 (5th Cir. 1981). Allegations that the plaintiff needed psychiatric care, that he was suicidal without such care and the concurrence of the prison psychiatrist indicating that he was unable to provide such care, state a claim upon which relief could be granted for deliberate indifference to known medical needs. In reviewing the case on its merits, the court should balance:

1. The seriousness of the illness;
 2. The need for immediate treatment;
 3. The likely duration of incarceration;
 4. The possibility of harm through postponement of treatment;
 5. The possibility of cure or improvement in the condition;
 6. The extent to which the inmate is a danger to himself or others;
- against:
1. The availability and expense of psychiatric treatment;
 2. The effect of such treatment on the operation of the institution.

The court suggests that this test will not require a full hearing in most cases, and that it frequently can be resolved on the pleadings. (Orleans Parish Prison, Louisiana)

1982

U.S District Court
 MEDICATION
 FAILURE TO
 PROVIDE CARE
 RECORDS- ACCESS

Goodman v. Wagner, 553 F.Supp. 255 (E.D. Penn. 1982). Failure to provide medication and treat a wound are a claim for deliberate indifference to medical needs. The plaintiff alleged that prescribed medication for an illness which existed prior to admission to the institution was withheld after notification of need for such medication. The United States District Court found that this deprivation states a claim for deliberate indifference to known medical needs. Allegations of failure to properly treat a wound sustained while in the institution, resulting in pain and permanent injury, were also found to state a claim for deliberate indifference to known medical needs. The court found that the inmate was entitled to production of his medical records when he sued alleging inadequate medical care, as the records are obviously relevant and the defendants did not show that the production would be burdensome. (Berks County Prison, Pennsylvania)

State Supreme Court

Valadez v. City of Des Moines, 324 N.W.2d 475 (Iowa Sup. Ct. 1982). Award of \$3,800 overturned by appellate court. Arrested for hit and run and assault on an officer, Valadez was taken to a hospital shortly after admission to the jail. Upon his return to the jail, he was released on bail. In a jury trial, he was awarded \$300 in damages and \$3,500 in punitive damages for false imprisonment. On appeal, the Iowa Supreme Court reversed the decision and ordered the lower court to rule in favor of the defendants. The supreme court noted that although the plaintiff proved that detention and restraint were against his will, the evidence at the trial failed to prove the unlawfulness of the restraint. (Des Moines Police Department, Iowa)

U.S. Appeals Court
 MEDICATION

Williams v. Treen, 671 F.2d 892 (1982), cert. denied, 103 S.Ct. 762 (1982). Insofar as the conditions of confinement at a Louisiana prison contravened clearly established state law, the state prison officials' belief in the lawfulness of those conditions was per se unreasonable. Thus, they could not claim an immunity based on reasonable good faith. If the officials knowingly deprived a prisoner of needed medication, they violated the constitutional prohibition against cruel and inhuman punishment and would not be entitled to qualified immunity. (State Penitentiary, Angola, Louisiana)

1983

U.S. Appeals Court
 FAILURE TO
 PROVIDE CARE
 42 U.S.C.A.
 Section 1983
 SPECIAL DIET

Byrd v. Wilson, 701 F.2d 592 (6th Cir. 1983). A civil rights claim was made for indifference to medical needs. The Sixth Circuit Court of Appeals held that, even though deprivation of medical attention was for only a short period of time, the plaintiff inmate had alleged a cause of action under 42 U.S.C. Section 1983. The plaintiff, after being released from the hospital after one of several visits for stomach problems, was denied his medication and no special diet was provided to him (as ordered by the treating physician) for a period of two days. The inmate then requested transfer back to the hospital and this request was immediately granted. Because the deprivation of medication and special diet was of a relatively short duration, the federal district court dismissed the complaint; the inmate appealed. The Sixth Circuit, relying on Estelle v. Gamble, 429 U.S. 97 (1976), reversed the lower court decision and remanded the case for further proceedings. (Kentucky State Penitentiary)

U.S. Supreme Court
 COSTS

City of Revere v. Massachusetts General Hospital, 103 S.Ct. 2979 (1983). Supreme Court ruled that a city is not automatically liable for medical bills of suspect. The Court held that responsibility for medical expenses of persons injured while being apprehended is a matter for state, not federal, law to determine.

State Court
 SPECIAL DIETS
 ADEQUACY OF CARE

Craven v. Richmond City, (Superior Court of CA, #207934, 1983). Diabetic awarded \$1,118,434 because city jail failed to provide three meals a day. A female arrested in Richmond City, California, was housed in the Richmond City Jail. Upon admission her husband notified jail personnel that she was diabetic, and that she required daily insulin injections. She was taken to a hospital each day, and a hospital physician notified jail staff in writing that she was to receive three meals each day, instead of the two meals which were being served to all prisoners. The written notice was lost, and the prisoner received only two meals. After three days she was admitted to a local hospital by jail staff, where she lapsed into a coma. After a jury trial, the plaintiff was awarded a total of \$1,718,434, which was reduced by \$600,000, the amount of a previous settlement with the city. (City Jail, Richmond, California)

U.S. District Court
 ADEQUACY OF CARE

Ellison v. Scheipe, 570 F.Supp. 1361 (E.D. Penn. 1983). Reasonable care was provided for an inmate's injury. Since the prisoner was given ice treatment immediately after he sustained an injury, the treatment was repeated the following day and a physician was contacted within twenty-four hours of the injury, the court held that the plaintiff inmate failed to establish "deliberate indifference" to his needs. The inmate had sustained a wrist injury during a recreation period. (Berks County Prison, Pennsylvania)

U.S. Appeals Court
METHADONE

Fredericks v. Huggins, 711 F.2d 31 (4th Cir. 1983). Pretrial detainees are not entitled to methadone treatment in jail. A federal circuit court has upheld the practices of the sheriff of Fairfax County with regard to the treatment of pretrial detainees who were participating in methadone detoxification programs prior to detention.

The sheriff had developed a procedure for handling inmates with drug withdrawal problems, and the procedure had been approved by the American Medical Association. The procedure required consistent monitoring of detainees during withdrawal.

The court found that the sheriff's security concerns about introducing drugs into the facility, even those administered on a controlled basis, were legitimate, and that subsequent refusal to detoxify detainees did not amount to unconstitutional punishment. (Fairfax County Jail, Virginia)

U.S. District Court
MEDICATION

Marchant v. City of Little Rock, Ark., 557 F.Supp. 475 (E.D. Ark. 1983), aff'd, 741 F.2d 201 (8th Cir. 1984). Officials are not liable under Section 1983 for failing to give a pretrial detainee prescribed medicine. A federal district court in Arkansas found no liability on the part of the city or jail officials concerning a claim of improper medical care. The court noted that although the jail matrons may have been negligent in not giving the prisoner her prescribed medicine on a regular basis, there could be no recovery for damages since the matrons defense of good faith entitled them to qualified immunity in this Section 1983 action. Recovery under state laws was not prohibited because the matron had not intentionally denied the detainee any constitutional rights. Because no policy had been promulgated that violated the prisoner's constitutional rights, the city, the chief of police, and the jail administrator could not be liable. (Little Rock City Jail, Arkansas)

State Court
INTAKE SCREENING
FAILURE TO
PROVIDE CARE

Solberg v. County of Yellowstone, 659 P.2d 290 (Mont. 1983). County may be liable for alcoholic prisoner's death. An appeals court has remanded this case to trial for resolution. A prisoner found lying face down in his cell died from a high temperature resulting from alcohol withdrawal and delirium tremens (DT's). The plaintiff alleges that the jailer should have recognized the symptoms of the DT's. (Yellowstone County Jail, Montana)

U.S. District Court
CONTAGIOUS
DISEASES

Sypert v. U.S., 559 F.Supp. 546 (D. D.C. 1983). No liability is found for exposure of inmate to tuberculosis. An inmate at the Federal Correctional Center in Petersburg, Virginia, was placed in a holding cell which had been previously occupied by an inmate who had tuberculosis. A suit filed by the inmate under the Federal Tort Claims Act was dismissed, when the court found that the mere presence of tubercle bacilli in his body did not amount to physical injury. (Federal Correctional Center, Petersburg, Virginia)

1984

U.S. District Court
AIDS

Cordero v. Coughlin, 607 F.Supp. 9 (S.D. N.Y. 1984). Court upholds practice of segregating prisoners with AIDS. Noting that fellow prisoners ostracize those diagnosed with the disease, and the uncertainty in the medical community concerning its cause and transmission, a federal court upheld the practice of segregating AIDS victims from the general population. (Department of Corrections, New York State)

State Appeals Court
COSTS

Cuyahoga County Hospital v. City of Cleveland, 472 N.E.2d 757 (Ohio App. 1984). Ohio appeals court rules that agency who controls prisoner is liable for medical costs. On appeal, the City of Cleveland was ordered to pay \$13,045 for medical care provided to prisoners who were detained by the city. The city had argued earlier that the liability for costs was determined by the offense (state or municipal). The appeals court stated that:

...the responsibility for the care and sustenance of a prisoner falls upon the one who exerts actual, physical dominion and control over the prisoner. When physical control is transferred, the responsibility is transferred along with it and the cost of care can be properly prorated. The care the prisoner receives is not incident to the crime but to the custody.

(City Jail, Cleveland, Ohio)

U.S. Appeals Court
DENTAL CARE
FAILURE TO
PROVIDE CARE

Fields v. Gander, 734 F.2d 1313 (8th Cir. 1984). Circuit court of appeals rules sheriff may be liable for denying dental care to prisoner. A former inmate has sued the sheriff of the jail in which he was housed, claiming that the sheriff's indifference to his pain was cruel and unusual punishment.

The prisoner claimed that despite the swelling in his face and his repeated complaints and requests for attention, dental treatment was denied until three weeks after his first appointment with the dentist. The sheriff had denied the second visit in an attempt to compel payment for the earlier bill. (Shelby County Jail, Missouri)

U.S. District Court
FAILURE TO
PROVIDE CARE

Gibson v. Babcock, 601 F.Supp. 1156 (N.D. Ill. 1984). Supervisors liable for detainee beating. A federal district court has held supervisors responsible for failing to protect a detainee from an assault by another prisoner. The court found that

knowledge of a history of violence within a jail, rather than a specific risk of harm to a particular prisoner, was enough to hold the supervisors liable. The court found that the eighth amendment proscription against cruel and unusual punishment does not apply to pretrial detainees, and that a detainee need not demonstrate deliberate indifference to state a claim for denial of medical care under the due process clause of the eighth amendment. (Lake County Jail, Waukegan, Illinois)

State Appeals Court
INTAKE SCREENING
MEDICATION

Harris County v. Jenkins, 678 S.W.2d 639 (Tex. App. 1984). Prisoner receives \$60,000 from sheriff, county and state because medication withheld. A prisoner who suffers from epilepsy reached a \$20,000 settlement with the State of Texas and was awarded \$40,000 by a state jury because he suffered seizures after his medication was taken from him upon admission to the Harris County Jail.

A jury found the sheriff seventy percent liable and the county thirty percent liable for the \$40,000 award. The jury found the sheriff liable not only for withholding the medication, but for failing to forward the prisoner's medical records when he was transferred to a state facility. The verdict was upheld upon appeal. (Harris County Jail, Texas)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE
DELAY IN CARE
ADEQUACY OF CARE

Matzker v. Herr, 748 F.2d 1142 (7th Cir. 1984). Appeals court reverses lower court ruling; finds that pretrial detainee's due process rights may have been violated by alleged denial of competent medical care, and Section 1983 action possible for failure to protect. The plaintiff sought damages for injuries received while a pretrial detainee at the St. Clair County Jail in Belleville, Illinois. A federal magistrate had dismissed the action; the Seventh Circuit Court of Appeals reversed the decision.

The plaintiff was admitted to the jail as a detainee. A Caucasian, he "had some trouble" with black inmates shortly after admission and was transferred to another cell block. In his new cell block he was involved in another interracial fight and was transferred to segregation. His attorney brought his assignment to segregation to the attention of the court, and he was subsequently transferred to Cell Block A.

The plaintiff requested transfer from Cell Block A, fearing additional problems with black inmates. Four days later he was beaten by two black inmates and suffered the loss of three teeth, a fractured nose and an eye injury. The plaintiff alleged that he was beaten for over fifteen minutes before the corrections officer came to investigate. Although taken to a hospital the next day, injuries to his teeth and eye were not treated for three months, and he allegedly suffered permanent injury.

The appeals court reversed the dismissal, ordering the case to proceed to trial. (St. Clair County Jail, Illinois)

U.S. District Court

Monmouth County Correctional Institution Inmates v. Lanzaro, 595 F.Supp. 1417 (D. N.J. 1984). Federal court sets cap on New Jersey county jail population and orders relief for prisoners. After an extensive review of the conditions at the Monmouth County jail the U.S. District Court for the District of New Jersey has concluded that both pretrial and sentenced inmates are being denied constitutional rights. The court placed a cap on the population of the jail and ordered relief in the areas of physical conditions, bedding, recreation, medical care, classification and visiting. (Monmouth County Correctional Institution, New Jersey)

State Supreme Court
COSTS

Smith v. Linn County, 342 N.W.2d 861 (Iowa 1984). County must provide for medical treatment, not pay for it. The Supreme Court of Iowa has ruled that a county is only responsible for making medical treatment available to prisoners, and must not always pay for it. The plaintiff involved was in a fight at a bar, was arrested, and was transported to a local hospital for treatment of a broken jaw. Two weeks later, after incurring over \$3,000 in medical bills, he was released from the hospital. He sued the county seeking reimbursement of the hospital bill. A lower court ordered the county to pay.

In its decision, the Iowa Supreme Court described reasons for denying free medical attention to prisoners: "Prisoners who could afford to pay the costs of their medical and hospital care would often receive a windfall-- free medical care resulting from their own wrongful acts which necessitated incarceration. Insurers of prisoners might reap the same windfall...if the county were always required to indemnify the prisoner for the cost of medical care county officials might become hesitant to provide adequate care in borderline cases." (Linn County Jail, Iowa)

State Appeals Court
COSTS

University Emergency Serv. v. City of Detroit, 367 N.W.2d 344 (Mich. App. 1984). Michigan appeals court determines county responsible for medical costs of prisoners housed by city. Although prisoners were in the custody of the city police, the appeals court held that the county was liable for their medical costs under Michigan law, because the prisoners were being held for violation of state laws. Under a contract, the city agreed to pay for the medical care of prisoners charged with violating city laws. (Wayne County, Detroit, Michigan)

U.S. District Court
DELAY IN CARE

Cook v. Housewright, 611 F.Supp. 828 (D. Nev. 1985). Officials not liable for isolated incident of improper medical care. A prisoner sued officials of the Nevada Department of Prisoners alleging indifference to his medical needs (in delaying a knee operation). The director of the department and the warden argued that they were not liable because they were not directly involved with the incident. Although the court noted that direct involvement is not the only basis for determining liability, it found that the prisoner's rights had not been violated. Since other prisoners were regularly provided with medical care and there was no evidence of a policy discouraging the provision of care, the court viewed this as an isolated incident, relieving officials from responsibility. (Nevada State Prison)

U.S. Appeals Court
INTAKE SCREENING
FAILURE TO
PROVIDE CARE

Garcia v. Salt Lake County, 768 F.2d 303 (10th Cir. 1985). Appeals court affirms \$147,000 judgment against county for admitting unconscious detainee who died after admission. Although the county had a policy of taking all unconscious arrestees to a hospital, evidence showed that they were routinely admitted to the jail if they were suspected of being intoxicated. In this case, the arrestee was taken to the hospital following a traffic accident. While there he ingested some barbiturates which had been prescribed earlier and escaped while unattended. He was found unconscious in front of the hospital, was examined by a doctor, and then admitted to the jail. He was checked every thirty minutes by an officer, but was not examined by a medic until four hours after admission. He eventually died after being placed on life support systems. The appeals court agreed that jail practices differed from policies, and practices therefore became "policy" for the purpose of determining liability. In this case, the county was held liable for implementing the "policy" and was ordered to pay \$147,000 plus costs. The court noted that eighth amendment protections do not apply until after an adjudication of guilt, but that pretrial detainees are entitled to the same degree of protection and care as convicted offenders under the due process standard (fourteenth amendment). (Salt Lake County Jail, Utah)

State Court
EMERGENCY CARE

Hake v. Manchester Township, 486 A.2d 836 (N.J. 1985). Court finds dispatcher with CPR training qualified as expert on rescue attempts. A police dispatcher who was present when a teenage detainee was discovered to have hanged himself was qualified by the court to give expert testimony on the lifesaving potential of the aid given to the prisoner. The court noted that testimony can be given by a witness whose competence in this field is demonstrated by education, training or experience, and that a professional license or degree in medicine is not a prerequisite. The court remanded the case for reconsideration in light of the qualification of the witness. (Manchester Township, New Jersey)

State Court
COSTS

Harrison Memorial Hospital v. Kitsap County, 700 P.2d 732 (Wash. Sup. Ct. 1985). County required to pay hospital costs associated with prisoner suicide. Kitsap County had contended that the hospital could pay medical expenses associated with a prisoner's suicide with Hill-Burton funds (established by federal government). The court found that, since the county had an obligation to pay for the costs under Washington statutes, Hill-Burton funds could not be used, as "other means of payment were available." (Washington)

U.S. Appeals Court
DELAY IN
TREATMENT

Lewis v. Cooper, 771 F.2d 334 (7th Cir. 1985). A guard, who was told about a cell fight about to begin, stood in front of the cell apparently hoping that his presence would deter the violence. He could not enter the cell to break up the fight because he didn't have the cell keys with him at the time. He radioed to fellow guards to bring the keys. The attack lasted nearly twenty minutes before guards could enter the cell to break it up. A verdict was directed in favor of the defendants on the failure to protect issue. However, the court found a deliberate indifference on the guards' part to provide prompt medical treatment following the incident and awarded the inmate \$2,000 in compensatory damages and \$3,500 in punitive damages. The guards disputed the claim by asserting the inmate never asked for medical treatment. Given that the beating lasted for nearly twenty minutes, and the inmate claimed he was bleeding from the nose, mouth, and back of the head, the court said that a jury could reasonably conclude that a deliberate indifference to medical needs existed. The issue of whether medical treatment would have improved the inmate's condition was not reached because it was not preserved for review. (Joliet Correctional Center, Illinois)

U.S. District Court
FACILITIES

Miles v. Bell, 621 F.Supp. 51 (D.C.Conn. 1985). The focus of this complaint was overcrowding, particularly in the housing unit, which once consisted of open dormitories. Pretrial detainees brought a class action suit primarily alleging that the overcrowded dorms increased the spread of disease among them and were psychologically harmful because of the stress, lack of control over their areas and lack of privacy. Most of the plaintiffs' proof on the issue was based on comparisons between illness rates in dormitories and other housing methods such as cubicles or single or

double cells. Testimony did show higher levels of complaints and a higher level of illness among inmates housed in the open dorms. A doctor testified that the installation of cubicles could correct many of these problems. In fact, the defendants had corrected the situation by installing cubicles, rendering much of the pretrial detainees' complaint moot. The cubicles mitigate the spread of disease, as well as afford privacy, testified the doctor. He said that the decrease in stress would likely improve both the physical and mental states of the inmates. Although there was no testimony as to what effect the cubicles had on ventilation, the court found no violation on the matter. The barriers were likely to decrease the effects of smoking and body odor of other inmates. The inmates complained of drafts if windows were left open and of stifling heat if left closed. The living units made up of cubicles were not challenged by the inmates.

The court also found no constitutional violation in that the number of toilets and showers did not conform to the standards set by the American Correctional Association (ACA) and by the American Public Health Association (APHA).

The ACA advised one toilet and shower facility for every eight inmates, and the APHA advised one toilet for every eight inmates and one shower for every fifteen inmates. The defendants provided one toilet for every ten to fifteen inmates, and one shower for every fourteen to twenty-four inmates, depending on the housing unit. These figures were nearly twice that advised. Still, the court found no violation absent a showing that waiting in line led to either physical or mental problems. Sanitary conditions were not challenged. Although there were certain violations of the health code in the food service in that maggots and weevils were occasionally found, the court found no constitutional violation. With regards to recreational opportunities, the inmates had enough forms of exercise and equipment available regularly. (Federal Correctional Institution at Danbury, Connecticut)

U.S. Appeals Court
ADEQUACY OF CARE

Miranda v. Munoz, 770 F.2d 255 (1st Cir. 1985). A civil rights action was brought by the mother and brother of a pretrial detainee who suffered from an epileptic condition, who became critically ill while committed to the jail and who died three days after being transferred to a local hospital. The United States District Court entered judgment on jury verdict against the jail's doctor, the warden and the assistant warden, and directed verdict at close of evidence in favor of the supervisory officials in the Puerto Rican correctional system. Appeals were taken. The court of appeals held that: (1) evidence presented a question for the jury as to whether the doctor, warden and assistant warden ignored the warning that the medical treatment provided for the detainee was inadequate and allowed his condition to deteriorate beyond recovery, in violation of the eighth amendment, and (2) evidence that the director of correctional administration, director and deputy director of penal institution program, and coordinator of medical services were in office for some time before the incarceration of the pretrial detainee, but that medical conditions at the jail arguably were still inadequate presented a question for the jury as to whether such officials were deliberately indifferent to the detainee's medical needs. (Arecibo District Jail, Puerto Rico)

U.S. Appeals Court
INTAKE SCREENING

Partridge v. Two Unknown Police Officers, 751 F.2d 1448 (5th Cir. 1985). City can be sued for failing to prevent prisoner suicide in lockup. An arrestee apparently became violent and agitated when he was arrested, attempting to kick the doors and windows out of the police car in which he was transported. By the time he arrived at the city jail he was composed, and the transporting officers did not call attention to his behavior during booking. The booking officer did not check the prisoner's previous record, which showed a prior suicide attempt. The prisoner's father told officials that his son was unstable, and the son was wearing medical alert bracelets.

The prisoner was placed in solitary confinement, where he hanged himself within a few hours of his arrest. The parents sued the City of Houston, and the Circuit Court of Appeals ruled that their suit alleged a legitimate constitutional claim because the city had been deliberately indifferent to the prisoner's serious medical needs, determining that suicidal behavior constituted a serious need and that protecting prisoners from themselves is "an aspect of the broader constitutional duty to provide medical care... ." (City Jail, Houston, Texas)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE

Rock v. McCoy, 763 F.2d 394 (10th Cir. 1985). City to pay \$100,000 damages to prisoner for excessive force and failing to provide treatment while detained. The plaintiff was arrested by city police following a complaint by his mother-in-law who had called them because he was drunk. After following his car home, two officers grabbed his feet as he left his car, pulled him out and kicked him several times in the ribs, legs and face, and repeatedly slammed the car door against his shins. Upon admission to the city jail he received no medical treatment beyond wiping the blood from his nose. He was released the next day. A district court jury found for the plaintiff, awarding \$100,000 actual damages against the city, \$2,100 actual damages against each police officer, and \$1,000 in punitive damages against each officer. On appeal, the Tenth Circuit Court of Appeals upheld both the verdict and the awards. (Chelotah, Oklahoma Police)

U.S. Appeals Court
COSTS

Shapley v. Nevada Board of State Prison Commissioners, 766 F.2d 404 (9th Cir. 1985). Appeals court upholds three dollar fee for medical visits. A prisoner incarcerated at the Northern Nevada Correctional Center alleged that a state practice of charging prisoners three dollars for each medical visit violated his rights. The Ninth Circuit Court of Appeals held that the prisoner failed to show how the fee had affected his access to medical care and upheld the lower court decision for the defendants. (Northern Nevada Correctional Center)

1986

U.S. District Court
RELIGION

Ballard v. Woodard, 641 F.Supp. 432 (W.D.N.C. 1986). Prison officials were not liable to a prisoner under Section 1983 for physically forcing him, over his religious objections, to submit to a test for tuberculosis by injection. Any violation of the prisoner's first amendment rights to practice his Muslim religion was overridden by the state's paramount interest in maintaining the health of its prison population, even though the testing was not prompted by the discovery of an active case of tuberculosis within the prison. (Huntersville, North Carolina)

U.S. District Court

Bean v. Cunningham, 650 F.Supp. 709 (D.N.H. 1986). An inmate filed a suit seeking money damages and declaratory and injunctive relief alleging violations of the eighth amendment and the due process clause. Following a bench trial, the district court held that: (1) the inmate failed to establish that the force applied by corrections officers during the transfer of the inmate from a medium security to a maximum security housing unit was unreasonable; (2) the inmate failed to establish that he was afflicted by serious medical needs; (3) the inmate failed to establish that the loss of folders of legal papers was intentional; and (4) the inmate failed to establish that the withholding of his books was unreasonable, given readily available alternative legal library resources, or that access to his personal books was necessary in order for him to obtain meaningful access to the courts. (New Hampshire State Prison)

U.S. Appeals Court
DELAY IN
TREATMENT
DENTAL CARE

Cookish v. Cunningham, 787 F.2d 1 (1st Cir. 1986). An inmate brought action alleging he had been denied proper medical care and access to the law library, and that the law library was inadequate. The United States District Court declined to appoint counsel to represent the inmate and entered judgment against him, and the inmate appealed. The court of appeals held that: (1) the court did not abuse its discretion in not appointing counsel for the inmate; (2) the court did not abuse its discretion in quashing certain trial subpoenas; and (3) there was no reason to disturb the judgment on the inmate's claims. The prison inmate failed to show deliberate indifference to serious medical needs due to an alleged delay in treating an infected tooth. Evidence included testimony that when complaints were initially made the inmate was given pain killer and scheduled for a dental appointment. Upon examination, the inmate was informed by the dentist that the tooth would have to be pulled and the inmate then delayed treatment for several days due to possibility of obtaining private treatment while released on bail. (State Prison, New Hampshire)

State Appeals Court
EYE CARE

DeFlumer v. Dalsheim, 505 N.Y.S.2d 919 (A.D. 2 Dept. 1986). A prisoner brought an Article 78 proceeding to compel prison authorities to issue him metal frame as opposed to plastic frame glasses. The Supreme Court granted the petition, and appeal was taken. The Supreme Court Appellate Division held that the prisoner failed to demonstrate that prison authorities acted in a manner sufficiently harmful to evidence deliberate indifference to his serious medical needs, though officials refused to supply him with metal as opposed to plastic frame glasses, where prison optometrist indicated that plastic frame glasses were medically suited for prisoner's visual problems, and that metal frame glasses were not necessary or medically indicated. (Downstate Correctional Facility, New York)

State Appeals Court
AIDS

Doe v. Coughlin, 509 N.Y.S.2d 209 (A.D. 3 Dept. 1986), *cert. denied*, 109 S.Ct. 196. An inmate who was diagnosed as having Acquired Immune Deficiency Syndrome and his wife brought action seeking judgment directing that they be allowed to participate in a family reunion program at the correctional facility which provides for conjugal visitation in a private trailer. The Supreme Court, 505 N.Y.S.2d 534, dismissed the petition, and the inmate and his wife appealed. The Supreme Court, appellate division, held that: (1) the policy of not allowing inmates with AIDS to participate in the program was rational, and (2) the Federal Rehabilitation Act which prohibits discrimination against otherwise qualified handicapped individuals does not apply where the correctional facility used no federal funds to support the program.

The participation of an inmate in a family reunion program is not a right, but rather a privilege, the granting of which is committed to the discretion of the commissioner of correctional services, and a review of that determination is in nature of mandamus. The issue on review was whether the commissioner's determination had a rational basis such that it was not arbitrary or capricious. (Auburn Correctional Facility, New York)

U.S. District Court
STAFF

Duran v. Anaya, 642 F.Supp. 510 (D.N.M. 1986). State prisoners sought a preliminary injunction to halt layoffs of staff and filling of staff vacancies. The district court held that New Mexico prison inmates were entitled to a preliminary injunction prohibiting implementation of proposed staff reductions with respect to medical care, mental health care, and security where there was no evidence that staffing reductions of the magnitude contemplated would permit the maintenance of minimal constitutional standards in those areas. However, the court would not prohibit staff reductions other than those relating to medical care, mental health care and security where there was no evidence that any such proposed reductions would adversely affect the minimal constitutional rights of prisoners. The state has a constitutional obligation to make available to prisoners a level of medical care that is reasonably designed to meet routine and emergency health care needs of prisoners, including medical treatment for inmates' physical ills, dental care and psychological or psychiatric care. Gross deficiencies in staffing establishes deliberate indifference to prisoners' health needs. A lack of financing is not a defense to a failure to satisfy minimum constitutional standards in prisons. (Department of Corrections, New Mexico)

U.S. District Court
DENIAL OF CARE
TRANSPORTATION

Goff v. Bechtold, 632 F.Supp. 697 (S.D. W.Va. 1986). A county prisoner brought a Section 1983 action alleging denial of medical care. The district court held that the prisoner was not denied medical care and attention in violation of the eighth amendment, holding that the prisoner cannot state a constitutional claim for denial of medical care if he has only minor medical needs or if his needs are inadvertently neglected.

The fact that the state circuit court had issued three orders directing the sheriff's department to transport the prisoner to see a local chiropractor of his choice was not evidence of deliberate indifference by the county, but at most manifested a compromise by which the prisoner was able to obtain a preferred course of treatment. (Wood County Correctional Center, West Virginia)

U.S. Appeals Court
DELAY IN
TREATMENT

H.C. by Hewett v. Jarrard, 786 F.2d 1080 (11th Cir. 1986). A juvenile, who had been confined at a juvenile detention center pending a trial on delinquency charges, brought action for imposition of isolation without notice or hearing, excessive length and conditions of isolation, unjustified and excessive force applied to him by superintendent of the center, and denial of medical care. The United States District Court awarded nominal damages on claims that isolation without notice and hearing and conditions of isolation violated due process and determined that the juvenile had not been deliberately deprived of medical attention, and that battery of the juvenile by the superintendent did not rise to a constitutional violation.

The juvenile appealed. The court of appeals held that: (1) the superintendent's battery of the juvenile violated the juvenile's liberty interests protected by the fourteenth amendment; (2) the superintendent was liable both personally and in his capacity as the center's superintendent for denying the juvenile medical care; (3) compensatory damages should have been awarded to the juvenile for imposition of isolation without procedural due process, for being a period beyond the maximum period set out in relevant regulations, and for his humiliation and dejection sustained as a result of such isolation; and (4) the superintendent's conduct warranted the award of punitive damages.

The superintendent of the juvenile detention center shoved the juvenile and slammed him against a wall and a metal bunk of the isolation cell after the juvenile laughed at a prank of another detainee and protested imposition of isolation of that detainee. This violated liberty interests protected by the fourteenth amendment, where the juvenile had not threatened to harm any property, employees, or other detainees at the center. The juvenile's injuries required medical treatment, and the superintendent's act was one of a series intended to punish the juvenile rather than maintain discipline at the center.

A three-day refusal to provide medical attention to the juvenile detained at the juvenile detention center pending trial on delinquency charges was a reckless disregard of the juvenile's medical needs.

Instead of an award of nominal damages of one dollar, the juvenile, who had been a pretrial detainee at the juvenile detention center, should have been awarded compensatory damages for imposition of isolation without procedural due process, for being a period beyond the maximum period set out in regulations of the Florida Department of Health and Rehabilitative Services, and for his humiliation and dejection sustained as a result of such isolation, where the juvenile was isolated for several days, shackled and handcuffed to a metal bunk for part of that time, and deprived of virtually every physical or emotional stimulus. (Volusia Regional Juvenile Detention Center, Florida)

U.S. District Court
STAFF
ADEQUACY OF CARE

Inmates of Occoquan v. Barry, 650 F.Supp. 619 (D.D.C. 1986). A class of inmates confined at state medium security facilities brought a federal civil rights action seeking declaratory and injunctive relief for deprivation under color of state law of fifth and eighth amendment rights. The district court held that overcrowding and systemically deficient conditions constituted cruel and unusual punishment justifying equitable relief.

Overcrowding and systemically deficient conditions at state medium security institutions constituted cruel and unusual punishment in violation of the eighth amendment justifying equitable relief of imposition of cap on a number of inmates at each facility and requirement of periodic reports indicating what steps were being taken to address deficiencies. The plaintiffs contend that an excessive inmate population, deficiencies in environmental health and safety, food services, and mental health care, alone or in combination, violate their rights guaranteed by the United States Constitution. Medical services experts agreed that deficiencies in the medical care delivery system at Occoquan exist which are likely to cause harm to the inmates. These deficiencies are systemic in nature, concerning staffing, facilities, and procedures. (Lorton Correctional Complex, District of Columbia)

State Appeals Court
MEDICATION

Keyhea v. Rushen, 223 Cal. Rptr. 747 (Cal.App. 1st Dist. 1986). Taxpayers brought an action challenging involuntary psychiatric medication of prisoners. The Superior Court issued an injunction against long-term medication without adherence to certain procedural requisites, and the state appealed. The court of appeals held that prisoners were entitled to judicial determination of their competency to refuse treatment before they could be subjected to long-term involuntary psychotropic medication. By statute, prisoners could be deprived only of those rights whose deprivation was required to maintain reasonable security of the institution, and attendance of the prisoners at judicial hearings on competency to refuse treatment did not threaten the prison security. (California Medical Facility)

U.S. District Court
TRANSSEXUAL

Lamb v. Maschner, 633 F.Supp. 351 (D. Kan. 1986). Court rules that transsexual inmate is not entitled to transfer to women's facility, hormone treatments, sex change operation or female clothing and cosmetics. An inmate who claimed he was transsexual moved for partial summary judgment seeking transfer to women's facility, female clothing and cosmetics, or preoperative hormone treatment and sex change operation. Prison officials moved for summary judgment. The federal district court held that: (1) the inmate did not have constitutional right to transfer to women's facility or to receive cosmetics and female clothing; and (2) the inmate did not have a constitutional right to preoperative hormone treatment and sex change operation.

There was some question as to whether the plaintiff was in fact a transsexual. A transsexual is someone who sincerely feels they are a member of the opposite sex, or who has actually had a sex change. Evaluations from various medical doctors and psychiatrists did not recommend surgery for a sex change. The court noted that if a transsexual fears sexual harassment or molestation, a request for protection is valid, and officials may order segregation. However, denying transfer to a women's prison of a male inmate who claims he is transsexual served a rational purpose of segregating sexes and did not deny inmate's constitutional rights. (State Security Hospital, Kansas)

U.S. District Court
MEDICATION

McClung v. Camp County, Tex., 627 F.Supp. 528 (E.D. Tex. 1986). District court rules against all prisoner claims in conditions of confinement suit against jail. An inmate who had been incarcerated in a county jail brought action against the county and various county officials alleging that conditions in jail violated his constitutional rights. The federal district court held that: (1) evidence supported a finding that conditions placed on the inmate's physical exercise at the jail did not constitute a violation of inmate's constitutional rights; (2) evidence supported a finding that inmate's constitutional rights were not violated by alleged failure to provide clean bedding, clothing and toiletries; (3) administering insulin to a diabetic inmate three times daily rather than four times daily did not violate the inmate's rights.

Evidence that county jail cells had enough room for inmates to exercise, and that the inmate's health had not suffered during short periods he was confined in the jail supported the court's finding that conditions did not constitute a violation of inmate's constitutional rights. Evidence that a diabetic inmate at the jail was administered insulin three times a day instead of the prescribed four times a day was insufficient to support a finding that such treatment had violated the inmate's constitutional rights, absent evidence that the inmate suffered any actual harm. (Camp County Jail, Texas)

U.S. District Court
ABORTION

Monmouth County Correct. Inst. Inmates v. Lanzaro, 643 F.Supp. 1217 (U.S.D.C. N.J. 1986). In a class action suit against county correctional officials, a sheriff and state defendants, a federal district court in New Jersey granted a preliminary injunction against policies that denied pregnant inmates the right to abortions. It ruled: (1) the county was financially obligated to assume the full cost of its inmates' elective, as well as medically necessary, abortions in view of the fact that these abortions were simply one type of elective medical treatment to which inmates were legally and equitably entitled; (2) the county was required to provide counseling services to pregnant inmates to assist them in their decisions concerning an abortion to the same extent as was required of federal prisons; (3) the county's refusal to appropriate funds for nonlife-threatening abortions violated the New Jersey Constitution, and under New Jersey law it was required to fund all medically

necessary abortions upon request; and (4) the county's requirement that pregnant inmates first obtain a court-ordered release imposed a significant burden on a woman's right to choose an abortion and delayed the procedure itself so to cause substantial injuries to the plaintiffs. (Monmouth County Correctional Institution, New Jersey)

U.S. District Court
ADEQUACY OF CARE
EXAMINATIONS

Nash v. Wennar, 645 F.Supp. 238 (U.S.D.C. Vt. 1986). A prisoner brought a Section 1983 action against a private physician, prison superintendent, and the commissioner of the Vermont Department of Corrections for deprivations of fourth, eighth, and fourteenth amendment rights. The physician, superintendent, and Commissioner moved to dismiss. The district court held that: (1) the physician could fairly be said to be a state actor by helping state to fulfill public function to provide medical treatment to prisoners, and (2) the physician, who contracted with state to provide medical services to prisoners, who allegedly intentionally frightened the prisoner while the prisoner was shackled, and who allegedly performed a colonoscopy while the examining room door was open, was not exercising some right or privilege created by the state or rule of conduct imposed by the state or by a person for whom the state was responsible and was not engaged in "state action."

The test for determining whether a person acts "under color of state law" within the meaning of Section 1983 which prohibits deprivation of federal statutory or constitutional rights under color of state law is the same as the test used for determining whether acts constitute "state action" as required for violation of the fourteenth amendment.

The statute which requires officers and employees of any correctional facility to render available medical assistance to any inmate when there is reason to believe that that inmate is in need of assistance did not interfere with ethical duties that form a primary proscription against unprofessional conduct by physicians, did not grant the physician the right to behave unprofessionally when treating the prisoner, and therefore, did not make acts of the physician "state action" for purposes of fourth, eighth, and fourteenth amendments and Section 1983 which prohibits deprivation of federal statutory or constitutional rights under color of state law. (Northwest State Correctional Facility in St. Albans, Vermont)

U.S. Appeals Court
MENTAL HEALTH

Partridge v. Two Unknown Police Officers of Houston, 791 F.2d 1182 (5th Cir. 1986). Parents of a pretrial detainee who committed suicide brought a Section 1983 action against city and police department personnel. The appeals court ruled that police officers at the municipal jail had a duty, at minimum, not to be deliberately indifferent to the pretrial detainee's serious medical needs, including need for psychological or psychiatric treatment. (Houston Police Department, Texas)

U.S. District Court
AIDS

Powell v. Department of Corrections, State of Okl., 647 F.Supp. 968 (N.D. Okl. 1986). A state prisoner who had tested positive for the AIDS virus brought a Section 1983 action against the Oklahoma Department of Corrections alleging violation of his constitutional rights in his segregation from the general prison population. The prisoner also sought writ of mandamus raising similar issues. The district court held that: (1) conditions of the prisoner's confinement were not violative of his constitutional rights; (2) the prisoner was not denied his right to worship; (3) the prisoner was not denied equal protection of law; and (4) the prisoner was not denied his constitutional right of access to courts. A prisoner does not have a federal constitutional right to be placed in the general prison population. The conditions of a prisoner's confinement after he tested positive for the AIDS virus, in which the prisoner was segregated from the general prison population but provided limited access to all prison programs and services and allowed to exercise, were not violative of the prisoner's constitutional rights. (Department of Corrections, Oklahoma)

U.S. District Court
MEDICATION
ADEQUACY OF CARE

Quarrels v. Breton, 645 F.Supp. 211 (E.D. Mich. 1986). A prison nurse's alleged failure to transmit a letter to prison officials from a consulting physician recommending that an inmate be prescribed an anti-inflammatory drug did not constitute a violation of the inmate's eighth amendment right to be free from cruel and unusual punishment. At most, the nurse committed negligence, and her action did not amount to deliberate indifference to the inmate's serious medical needs. (State Prison for Southern Michigan)

U.S. District Court
SICK CALL
RELIGION

Rahman v. Stephenson, 626 F.Supp. 886 (W.D. Tenn. 1986). Prison officials not required to recognize prisoner's informal name and acted properly in removing his name from daily sick call roster. Prison officials acted properly when they refused to allow a prisoner who had informally changed his name for religion reasons to register for sick call using only his newly-adopted name. As a result, the prisoner missed one sick call. The federal court noted that if prisoners refuse to accept identification cards provided by the prison, they violate important prison rules. The same district court recently ruled that prison officials were not required to recognize names which inmates informally adopted for religious reasons, unless prisoners used established legal channels. When such legal proceedings are followed, officials need only give limited

recognition of it; there is no requirement to change internal record keeping. The court ruled that the inmate's constitutional rights were not violated when he missed sick call or by the refusal of prison officials to recognize his newly-adopted name. (Lake County Regional Prison, Tennessee)

U.S. District Court

Robinson v. Moses, 644 F.Supp. 975 (N.D.Ind. 1986). The medical care given a pretrial detainee while he was incarcerated in a county jail did not violate his right to due process under the fourteenth amendment. The allegations of the complaint demonstrated that the detainee was treated on numerous occasions, had an ear, nose, and throat specialist appointed, and received medicine. The standard under the fourteenth amendment was the same as that applied to prisoners bringing claims under the eighth amendment. A pretrial detainee did not establish that his being held in a city-county lockup rather than the county jail amounted to punishment without due process in violation of the fourteenth amendment, where the only difference between the city-county lockup and the county jail was the absence of television and a common area. The pretrial detainee's bare allegation that he was denied the use of a telephone for three days while in the city-county lockup was insufficient to create a genuine issue of material fact, precluding summary judgment, in view of the affidavit of the jail commander indicating that prisoners were permitted to use telephones while in the lockup and had direct access to phones while in holding cells. (Allen County Jail, Indiana)

U.S. Appeals Court
FEMALE PRISONERS
CHILDREN

Southerland v. Thigpen, 784 F.2d 713 (5th Cir. 1986). Female prisoner not entitled to breast-feed infant while confined. The United States Court of Appeals for the Fifth Circuit affirmed a District Court decision upholding prison regulations which prohibited a female prisoner from breast-feeding her infant child while in prison. The plaintiff was sentenced to prison while pregnant for embezzling \$388. While in prison, she was transferred to a medical center, where she gave birth. While at the medical center, she was able to breast-feed her child. When she was returned to the state prison, she was denied further opportunities to breast-feed the infant. She filed suit, arguing that nursing her child would decrease his chances of getting allergies or diabetes that were in her family history, and that breast-feeding generally aids infants to develop immunities and has positive psychological benefits. The lower court found that discontinuing the breast-feeding would not pose a life threatening situation to the baby. The court noted that the state's interest in deterrence and retribution would be undermined by allowing temporary suspensions for female prisoners, and that the practice would interfere with the maintenance of internal security. (Mississippi State Prison, Parchman)

U.S. Appeals Court
DELAY IN
TREATMENT

Toombs v. Bell, 798 F.2d 297 (8th Cir. 1986). A prisoner stated a claim against a prison doctor and his nurse under Section 1983 for their alleged deliberate indifference to his serious medical needs. In his complaint, the prisoner alleged that his gallbladder condition was not treated for three weeks, even though he requested treatment daily. According to the prisoner, the nurse dismissed his complaints in a disparaging manner, and the doctor likewise failed to treat him, which misconduct eventually resulted in a loss of the gallbladder. (Arkansas Department of Correction)

U.S. District Court
RESTRAINTS

Young v. City of Atlanta, 631 F.Supp. 1498 (N.D. Ga. 1986). Use of wrist and ankle cuffs on injured misdemeanor arrestee while receiving treatment at public hospital upheld. A federal district court upheld standard operating procedures of Atlanta, Georgia, which call for the use of wrist and ankle cuffs on injured arrestees who need to go to the hospital before jail. A female attorney had been arrested for violation of minor traffic laws, and had been injured in the accident which led to her arrest. She was taken to a local public hospital for treatment, and consistent with operating procedures of the police agency, she was taken in handcuffs and manacles. She claimed she was humiliated and embarrassed by being in public view for several hours at the hospital in these restraints. The court noted that "...since most detainees treated at Grady [hospital] are brought there directly from the streets, there is no opportunity to screen and classify them to determine the potential for escape and for harm to others." The federal court concluded that police procedures were justified by the security considerations associated with taking a pretrial detainee to a public hospital where emergency treatment was provided in public areas, stating that "...the use of physical restraints, as directed in the procedures, is also intended to allow efficient use of corrections officers and to avoid the expense of building a hospital detention facility or of requiring a corrections officer to accompany each detainee through the frequently lengthy hospital treatment process." (Atlanta, Georgia)

1987

U.S. District Court
SMOKE

Beeson v. Johnson, 668 F.Supp. 498 (E.D.N.C. 1987). A federal district court declined to hold that an inmate has a constitutional right to be housed in a smoke-free environment, but allowed his Federal Civil Rights lawsuit alleging that smoke aggravated his medical problems to proceed. (Central Prison, North Carolina)

U.S. Appeals Court
DENTAL CARE
ADEQUACY OF CARE
FAILURE TO
PROVIDE CARE

Boring v. Kozakiewicz, 833 F.2d 468 (3rd Cir. 1987), cert. denied, 108 S.Ct. 1298. Three inmates of the Pittsburgh, Pennsylvania jail filed suit against jail officials alleging inadequate medical care as follows: (1) Denial of elective surgery for Ulnar nerve injury and pre-existing knee injury; (2) Denial of special shampoo for a scalp condition; (3) Denial of special diet to control migraine headaches; and (4) Use of temporary rather than permanent fillings in teeth. The federal appeals court ruled that expert testimony is usually necessary for inmates to prove their claims of inadequate medical care. According to the court, it was necessary for the inmates to show that these acts and omissions were sufficiently harmful to show deliberate indifference to serious medical needs, in order to prevail on their claims. The court suggested that while there are some situations in which the seriousness of injury or illness would be readily apparent to the lay person and no expert testimony would be required, those circumstances were not present in this case. As laymen, the jury would not be in the position to decide whether any of the conditions described by the inmates could be classified as "serious," said the court. In such circumstances, expert medical opinion is required. The prisoners argued in return that they were indigent and, if expert medical witnesses were required, their fee should be paid by the court. But, the court found that it had no power to pay such fees. Additionally, "the plaintiff's dilemma of being unable to proceed in this damage suit because of inability to pay for expert witnesses does not differ from that of non-prisoner claimants who face similar problems," the court said. "By seeking government funding in this case, plaintiffs are in effect asking for better treatment than their fellow citizens who have not been incarcerated but who had at least equal claims for damages," the court concluded. (Allegheny County Jail)

U.S. Appeals Court
ADEQUACY OF CARE

Cupit v. Jones, 835 F.2d 83 (5th Cir. 1987). A pretrial detainee, who allegedly had a heart attack approximately three months prior to detention brought a 1983 civil rights action against parish prison officials. The federal district court granted summary judgment dismissing the action with prejudice. The pretrial detainee appealed. The appeals court ruled that the detainee was not entitled to a stress-free atmosphere while incarcerated. The court held that: (1) the pretrial detainee failed to establish that he had been denied reasonable medical care; (2) the magistrate did not abuse discretion by refusing to appoint counsel to assist the pretrial detainee; (3) the magistrate did not abuse discretion by refusing to subpoena witnesses; and (4) the magistrate did not abuse discretion by denying requests for production of jail documents. According to the court, pretrial detainees are entitled to reasonable medical care unless failure to supply that care is reasonably related to a legitimate governmental objective. Furthermore, pretrial detainees are entitled to protection from adverse conditions of confinement created by prison officials for a punitive purpose or with punitive intent. (Richmond Parish Jail)

U.S. District Court
AIDS

Dinger v. City of New Albany, 662 F.Supp. 929 (S.D. Ind. 1987). A civil rights action was filed against the city and a police officer by three inmates. They claimed that they were exposed to AIDS while confined, violating their Eighth Amendment right against cruel and unusual punishment. They requested that all inmates be given AIDS screening tests and all homosexual inmates be segregated. The court said that exposing inmates to a communicable disease may violate their constitutional rights, but that the problem of protecting inmates against AIDS is "best left to the legislature and prison administrators." (City of New Albany, Indiana)

U.S. Appeals Court
INTERFERENCE
WITH TREATMENT

Gill v. Mooney, 824 F.2d 192 (2nd Cir. 1987). According to a federal court of appeals, employees may be liable if they overrule a doctor's orders that an inmate participate in a prescribed exercise program. As treatment for injuries sustained from falling off a ladder during a work assignment, a doctor ordered Anthony Gill to be permitted additional time in the facility gym for rehabilitative therapy. On two separate occasions, Gill was refused access to the prescribed exercise program by both the gym supervisor and a correctional officer. Gill was again denied access to the gym after the doctor had heard about the incidents and allegedly signed a new order directing additional exercise. The deliberate defiance of expressed instructions of a prisoner's doctor by prison officials is deliberate indifference to the prisoner's medical needs, ruled the federal appeals court. Further, if Gill's allegations are true, the employees could be liable for causing him unnecessary pain, even though he suffered no permanent injuries. (Great Meadow Correctional Facility, New York)

U.S. District Court
ADEQUACY OF CARE
MEDICATION
REASONABLE CARE

Henderson v. Harris, 672 F.Supp. 1054 (W.D. Ill. 1987). A state correctional facility prisoner who was temporarily housed at a federal institution so he could testify in a federal trial, claims that while he was there, he contracted hemorrhoids. He alleged that he was repeatedly denied access to medical personnel and care, and that he was deprived of treatment which a physician had prescribed as medically necessary. The inmate also alleged that prescribed medicine was taken from him, and he was operated on without his consent by a clinician who had no license to practice surgery nor any relevant surgical experience. The plaintiff was also accused of having a venereal

disease. The federal court allowed the inmate to proceed with his claims against the prison warden and his lieutenant. Since the standard of care necessary had been clearly established years earlier in *Estelle v. Gamble*, 429 U.S. 97, (1976), the court said the defendants were not entitled to qualified or absolute immunity from an allegation that they deprived the inmate of seriously needed medical treatment. Because the duty to provide medical care was nondelegable, and the fact that the government had contracted with a private agency to perform these services would not relieve it of liability, it approved the suit against the U.S. government for alleged negligence in providing medical care under the Tort Claims Act, 28 U.S.C. Section 1346 (b) and 2674. Contracting out aspects of prison administration or services will not lead to lessened exposure to governmental liability. Finally, the federal court stated that the Tort Claims Act did not give it jurisdiction to hear a defamation complaint. (Metropolitan Corr. Center, Chicago, Illinois)

U.S. District Court
AIDS
HANDICAP

Judd v. Packard, 669 F.Supp. 741 (D.Md. 1987). After noticing that an inmate suffered from various illnesses and weight loss, prison officials put him in medical isolation on three separate occasions for testing, diagnostic and treatment purposes, including testing for exposure to AIDS. After testing positive for the HTLV-III antibody present in those exposed to AIDS, the inmate filed a federal lawsuit claiming that each placing of him in isolation was an act of discrimination on the basis of a handicap, i.e., a positive HTLV-III test, and consequently, a violation of his civil rights. The federal district court found that there was no claim under the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794, because the inmate had not alleged any "nexus" between the allegedly discriminatory conduct of the defendant prison officials and a specific program receiving federal funding. The court also that, even assuming that testing positive for HTLV-III constituted a handicap, discrimination against handicapped individuals "is not invidious discrimination, and thus, it is not subject to strict or heightened judicial scrutiny." Therefore, the court found that the correct test to be applied was whether the prison's actions had a legitimate purpose and whether it was rational to believe that the treatment afforded the individual would promote that purpose. (Mayo Correctional Institution, Maryland)

U.S. Appeals Court
HANDICAP
CELLS
ADEQUACY OF CARE
FAILURE TO
PROVIDE CARE

Lafaut v. Smith, 834 F.2d 389 (4th Cir. 1987). A paraplegic inmate was placed in a private room that had no handicap facilities shortly after he was admitted to a federal correctional facility. Because of his physical condition and the absence of a railing for support, the inmate would slip down into the toilet bowl water and also risk falling off the toilet. The appellant was finally transferred to a room that contained adequate toilet facilities more than three months after his arrival and after he had contracted a kidney infection. Because of inaccessible toilets at his work assignments, he suffered another infection which, in addition to being placed in a disciplinary segregation without the use of a catheter for several days nor adequate access to the toilet facilities resulted in hardships for the inmate which included falling off a toilet in the segregation unit and, as a result, breaking his right leg. Despite repeated requests for adequate rehabilitation therapy, and the reports of an orthopedic specialist that he was in need of such therapy, none was provided. A federal appeals court found that the Eighth Amendment was violated because these conditions constituted "deliberate indifference." (Federal Correctional Institution, Butner, North Carolina)

State Appeals Court
ALCOHOL/DRUGS

Lahey v. Kelly, 524 N.Y.S.2d 30 (Ct. App. 1987). Following the determination that they had used illegal drugs, a number of inmates brought lawsuits to challenge the imposition of discipline. The New York Court of Appeals held that the results of an EMIT test, when confirmed with a second EMIT test or its equivalent, is sufficiently reliable to constitute substantial evidence to support a finding of a use of illegal drugs. While acknowledging that some courts had questioned the reliability of the test, it found these cases factually distinguishable since most involved a single unconfirmed test. It was also shown that a study of the New York State Department of Correctional Services' procedures for testing urine samples conducted by the American Association of Bioanalysts presented a 98.7 to 99.7 percent reliability for a confirmed test. (Attica Correctional Facility, New York)

U.S. District Court
ADEQUACY OF
CARE
DELIBERATE
INDIFFERENCE

Lawhorn v. Duckworth, 736 F.Supp. 1501 (N.D. Ind. 1987). A prisoner brought an action against the prison physician, the prison medical technician, and the prison superintendent to recover for allegedly inadequate medical treatment, and the defendants moved for summary judgment. The district court found that the medical treatment of the prisoner was not deliberately indifferent to medical needs and complied with the eighth amendment. During the period of approximately two and three-quarter years, the prisoner was examined by at least 20 different doctors and had over 100 appointments with medical staff at the prison infirmary. The physicians prescribed several medications and the prisoner was transferred to outside hospitals. A claim grounded on sincere disagreement about the type and quality of diagnosis of treatment does not rise to a level of constitutional deprivation under the eighth amendment. (Indiana State Prison)

U.S. District Court
MALPRACTICE
AIDS
SPECIAL HOUSING

McDuffie v. Rikers Island Medical Department, 668 F.Supp. 328 (S.D.N.Y. 1987). A federal district court ruled against a prisoner who filed a civil rights suit against prison officials, alleging that misdiagnosis of an AIDS-related ailment resulted in his placement in segregated housing for five months. The court found that the prisoner's allegations failed to establish a claim of deliberate indifference to serious medical needs. The diagnosis was made in 1982, prior to the development of a test for the AIDS virus, and was on the basis of two skin biopsies which were consistent with Kaposi's Sarcoma, which is a form of cancer common to AIDS patients. The court concluded that the diagnosis was not grossly negligent when the prisoner was later determined not to have AIDS. The court further ruled that the prisoner's allegations failed to establish a claim of deliberate indifference to serious medical needs--the prisoner did not allege that he suffered any physical harm due to the misdiagnosis or that medical officials deliberately ignored his serious medical needs, and there was no indication of gross negligence in the initial AIDS diagnosis. (Downstate Correctional Facility, New York)

U.S. Appeals Court
MEDICAL CARE
FAILURE TO
PROVIDE CARE

Meriwether v. Faulkner, 821 F.2d 408 (7th Cir. 1987), cert. denied, 108 S.Ct. 311. According to a federal appeals court, there is no reason to treat transsexualism differently from any other psychiatric disorder in determining whether treatment of the condition presents a "serious medical need." Therefore, the plaintiff stated a valid claim under the Eighth Amendment which, if proven, would entitle her to some kind of medical treatment. In addition to stating a serious medical need, the complaint contained allegations indicating that the defendants were deliberately indifferent to that need. Not only did the defendants fail to provide the plaintiff with any kind of medical treatment, not merely hormone therapy, for her gender dysphoria, but one doctor allegedly ridiculed the plaintiff about her condition. (Indiana State Reformatory in Pendleton, Indiana State Prison)

Florida Appeals Court
COSTS

Metro. Dade County v. P.L. Dodge Foundations, 509 So.2d 1170 (Fla. App. 3 Dist. 1987). According to a state appeals court, the requirement of duty to provide medical care for a person in custody does not, in itself, create a duty to pay. In order for duty to pay to arise, it must first be established that the prisoner-patient is indigent. (Dade County Jail)

U.S. Appeals Court
RESTRAINTS

O'Donnell v. Thomas, 826 F.2d 788 (8th Cir. 1987). According to a federal appeals court, it is not cruel and unusual punishment to bind an inmate to a hospital bed with leather restraints and metal handcuffs upon advice of a physician. An inmate incarcerated at a county jail complained of stomach pains and an inability to sleep. Sleeping pills were prescribed and the inmate was admitted to the hospital for tests where he was diagnosed as having an ulcer and was prescribed medication and a bland diet. The inmate attempted suicide when he returned to the jail by swallowing a number of hoarded sleeping pills. He was again hospitalized and the doctor ordered that physical restraints be used when necessary as a suicide precaution. He was bound by leather restraints around each wrist and ankle for most of the five days he was in the hospital, and for a six hour period on the second day of hospitalization, a second set of restraints, metal handcuffs, were added because he was belligerent, abusive and fighting. The inmate was constantly monitored for physical discomfort during the entire period he was restrained. Because the restraints were used on the advice of a physician and were no more severe than necessary to prevent the inmate from harming himself, the court found that the practice was constitutional. (Sarpy County Jail, Nebraska)

State Appeals Court
AIDS
RECORDS-ACCESS

Shelvin v. Lykos, 741 S.W.2d 178 (Tex.App. 1987). A prosecutor asked that an inmate who had been charged with two sexual assaults, and suspected of others involving young males, be compelled to take an AIDS test and a district court ordered the test. A state appeals court ruled that the judge could not release the test results to the sheriff or the alleged sexual assault victims, because of legally mandated confidentiality. The appeals court also found that the judge did not have authority to order the blood test performed at all, although the state legislature has amended state law to now give trial courts authority to order such blood tests. (Harris County Jail)

U.S. Appeals Court
42 U.S.C.A.
SECTION 1983
ADEQUACY OF CARE

Thompkins v. Belt, 828 F.2d 298 (5th Cir. 1987). An inmate brought a Section 1983 action in which he claimed that his Eighth Amendment rights were violated on the basis that he was denied access to medical treatment for a back injury he suffered while incarcerated. The federal appeals court found that an award of \$4,500 for a period of three and one-half months during which the prisoner was found to have suffered pain and discomfort caused by a lack of proper treatment while he was incarcerated was not inadequate. The delay in providing proper medical treatment did not in itself cause the prisoner's back surgery or his later ailments and thus, the prisoner was not entitled to an award of damages for subsequent suffering or future economic losses which occurred after his release from jail. The court ruled that the Sheriff could not be held liable on theory that he implemented an unconstitutional policy which deprived the inmate of necessary medical care.

The record only showed that the system may have failed in this particular instance. The misconduct of the Sheriff's employees could not be imputed to the Sheriff individually. Remand was required for determination as to whether the Sheriff was aware of the inmate's back condition and his requests for medical treatment during his incarceration. (Avoyelles Parish Jail, Marksville, Louisiana)

U.S. District Court
INVOLUNTARY
MEDICATION
MENTAL HEALTH

U.S. v. Ballard, 704 F.Supp. 620 (E.D.N.C. 1987). The Government filed a motion for the authority to involuntarily treat and medicate defendants who had been found incompetent to stand trial and were committed based on a finding of the danger they posed to themselves and others. The district court found that the government failed to establish that the defendants, who had been found to be incompetent to stand trial and had been committed based on a finding that they posed a danger to themselves or others, were mentally incompetent to make decisions regarding their medical treatment. The defendants suffered from severe mental problems, including paranoid schizophrenia and hallucinations, and the prison psychiatrist had testified that each of them was incompetent to make decisions regarding their medical treatment; however, the psychiatrist who testified on behalf of the defendants stated that they were competent to make their own decisions as to their medical care, and each defendant listed as one reason for discontinuing the medication the possible side effects of the drugs administered. (Federal Correctional Institution, Butner, North Carolina)

U.S. District Court
MEDICATION

U.S. v. Bryant, 670 F.Supp. 840 (D. Minn. 1987). Determination in court hearing that a federal inmate needs psychiatric treatment does not automatically authorize the Bureau of Prisons to provide the inmate with whatever treatment it feels appropriate. The opportunity for exercise of professional judgment must still be provided as condition precedent to forcibly medicating inmate. According to a federal district court, while a prisoner did have a liberty interest in avoiding unwanted administration of the drug, this liberty interest must be balanced against the competing governmental interest. This balancing should be performed by the prison authorities, and not the court. The court must simply make sure that "professional judgment in fact was exercised." (FCI, Talledega, Alabama and Federal Medical Center, Rochester, Minnesota)

U.S. Appeals Court
MEDICATION

U.S. v. Charters, 829 F.2d 479 (4th Cir. 1987), cert. denied, 110 S.Ct. 1317. The government sought order permitting medical personnel to forcibly medicate the defendant, who had been found incompetent to stand trial and ordered confined, with antipsychotic drugs. The federal district court entered an order permitting forcible medication, and the defendant appealed. The appeals court held that: (1) cause would be remanded for determination of whether defendant could be kept in federal custody; (2) forcible medication of defendant could not be justified based on Government's need to prevent violence or Government's interest in trying defendant; (3) to determine competence of defendant to make decisions regarding his medical treatment, court should evaluate whether defendant had followed rational process in deciding to refuse antipsychotic medication and could give rational reasons for choice he had made; (4) if patient were incompetent to make decisions regarding his medical treatment, and clear and convincing evidence established what decision patient would have made if he were competent, it was proper to honor determination that incompetent patient would have made; but (5) if there were not clear and convincing evidence of what the patient's choice would have been, the best interests of patient test should be applied in determining proper medical treatment. (Federal Corr. Inst., Butner, North Carolina)

U.S. Appeals Court
ADEQUACY OF
CARE
REASONABLE
CARE

U.S. v. DeCologero, 821 F.2d 39 (1st Cir. 1987). Noting that although an inmate deserves adequate medical care, he cannot insist that his institutional host provide him with the most sophisticated care that money can buy, and the federal appeals court refused to reduce the inmate's sentence. The inmate asserted that his chronic, worsening back injury was not treated in the manner he preferred by prison officials, and that he should therefore have a shorter sentence. The court stated that a correctional institution's obligation to afford decent, timely health care to inmates is met by provision of services at level reasonably commensurate with modern medical science and of quality acceptable within prudent professional standards, and noted that the inmate's health did not deter him from engaging in the felonious activities which brought about his present predicament. (Federal Correctional Institution, Lexington, Kentucky)

U.S. Appeals Court
AIDS

U.S. v. Kazenbach, 824 F.2d 649 (8th Cir. 1987). A federal appeals court ruled that evidence sustained an inmate's convictions for assaulting correctional officers. The inmate suffered from AIDS or AIDS Related Complex. There was sufficient evidence for the jury to find the requisite intent to assault each of the officers, although the inmate specifically denied spitting, kicking or swinging at the officers, and denied intentionally or willfully biting one of the officers. Moreover, the evidence sufficiently demonstrated that the inmate's actions constituted more than a single blow or act. (United States Medical Center for Prisoners, Springfield, Missouri)

U.S. District Court
ADEQUACY OF
CARE
MEDICATION

Wolfel v. Ferguson, 689 F.Supp. 756 (S.D. Ohio 1987). An inmate who suffered from a chronic spinal condition brought an action against prison officials, seeking damages, declaratory judgment and injunctive relief based on medical treatment he had received. The district court denied the request for an injunction, finding that the prison medical staff's refusal to continue to supply the inmate with chronic spinal conditions with the drugs Valium and Talwin did not violate the inmate's eighth amendment right to be free of cruel and unusual punishment. The staff determined that the inmate should be treated with medicine other than those drugs based on the belief that the use of the drugs could cause addiction abuse and that their presence could encourage the barter system in the prison. Rather than exhibiting "deliberate indifference" to the inmate's medical needs, the prison authorities had allowed him to consult with a physician 31 times, including examinations by specialists in neurology and orthopedics. Further, he had been seen by the nursing staff approximately 100 times and was furnished alternative medication. (Southern Ohio Correctional Facility)

1988

U.S. District Court
AIDS

Baez v. Rapping, 680 F.Supp. 112 (S.D.N.Y. 1988). An inmate charged that he was segregated and discriminated against after he tested positive for the AIDS virus. According to the inmate, he was denied access to courts, the law library, church and recreational activities after medical authorities issued advice to staff to avoid his body fluids. The district court held that the medical director and his staff were entitled to qualified immunity against the lawsuit. The claim against the warden was allowed to proceed. The warden claimed the detainee was in segregation because of his "deviant behavior," not because of his medical condition. There was no evidence given to the court that the inmate had been given any notice of the reason for his segregation or a chance to be heard. Therefore, there was a question of fact as to whether or not he had been deprived of his rights without due process. Although an earlier decision by the court had upheld the authority of the jail to segregate inmates with AIDS, the court found in this case that the inmate had a right to know if AIDS was the reason for his segregation. The court allowed the claim for punitive damages to proceed, since the prisoner's charges were that he "may be the victim of malicious and discriminatory treatment" because of his condition. (Westchester County Jail, New York)

U.S. District Court
FAILURE TO
PROVIDE CARE

Brassfield v. County of Cook, 701 F.Supp. 679 (N.D. Ill. 1988). A prisoner filed a civil rights action against the county, former county department of corrections' executive director, the executive director's immediate subordinate, unnamed supervisor of guards at the county jail, and a guard, alleging the failure to provide the prisoner with prompt and effective medical care after he suffered a severe beating at the hands of fellow inmates. In a sua sponte opinion, the district court found that the responsibility for the county jail was vested in the sheriff, not the county, and the potential respondeat superior liability on the county for the jail officials' actions did not extend to civil rights actions. The court also found a complaint alleging that the sheriff, executive director, executive director's immediate subordinate, and the guard supervisor failed to train and supervise jail personnel was insufficient to sustain a civil rights action against them. (Cook County Jail, Illinois)

U.S. Appeals Court
ADEQUACY OF CARE

Cabrales v. County of Los Angeles, 864 F.2d 1454 (9th Cir. 1988). A civil rights suit was brought against the county, the commander of the county jail, and others for the death of a pretrial detainee. Following a verdict against the county and jail commander, motion for judgment was denied by the U.S. District Court and attorney fees were awarded. The appeals court affirmed the lower court ruling, noting that the sufficiency of evidence could not be reviewed except for plain error absent a motion for directed verdict at the close of all the evidence. There were issues of the fact as to the liability of the county and the jail commander on the ground of the policy of deliberate indifference to the detainee's medical needs. In order to impose liability on the county under a civil rights statute in the suicide on a theory that the county had a policy of deliberate indifference to the detainee's medical needs, it was not necessary to establish that any policymaker may have, by affirmative acts, established or adopted such a policy; rather, the notion of deliberate indifference connoted a regime where neglect of medical and psychological needs would suffice to prove a constitutional violation; acts of omission, as well as commission, may constitute predicate for finding of liability. Even though the detainee was not denied access to medical and psychiatric help, but was in fact evaluated on several occasions by medical personnel, this did not preclude the finding of deprivation of constitutional rights without due process based on a deliberate indifference to medical needs, in light of the demonstration of inadequate staff such that psychiatric staff could only spend minutes per month with disturbed inmates, so that any psychological illness would go undiagnosed and untreated.

It was also found by the court that the plaintiff's unsuccessful claims against individual county officers were related to successful claims against the county and the commander of the county jail that inadequate psychiatric care led to the pretrial detainee's suicide. There was

no abuse of discretion in reducing the attorney fee award by 25% to reflect limited success, where the plaintiff's overall relief was materially diminished for a failure to make out claims against individual defendants who could have been found individually liable for their own deliberate indifference to a detainee's medical and psychiatric needs. (Los Angeles County Jail, California)

State Appeals Court
ADEQUACY OF CARE

Calloway v. City of New Orleans, 524 So.2d 182 (La. App. 4 Cir. 1988). The mother of a prematurely born infant brought a wrongful death action against the sheriff of the jail in which she was held prior to the birth; she also sued the hospital. A lower court found the sheriff and hospital liable and awarded the mother \$150,000 in damages. On appeal, the court reduced the damages award to \$30,000, cited the mother's neglect to seek out and carry out proper medical care and contracting syphilis, as well as her reluctance to see the child. According to the court, in all negligence cases, the responsible party must have breached a duty which encompasses a foreseeable risk of harm to the plaintiff. While the court ruled that a jail corpsman should not be held to the same standard of care as a medical doctor, his standard is above that of an ordinary layman. When determining an award of damages for the wrongful death of a baby, the determination is predicated on the bond between parent and child, and presumably the longer a child lives, the greater parental bond and greater loss upon a child's death. Finally, when a damage award is excessive, the reviewing court's function is to lower it to the highest reasonable amount. (Orleans Parish Prison)

U.S. Appeals Court
MENTAL HEALTH

Cortes-Quinones v. Jimenez-Nettleship, 842 F.2d 556 (1st Cir. 1988), cert. denied, 109 S.Ct. 68. The death of a psychiatrically disturbed prisoner whose body was dismembered a few months after his transfer to a district jail was caused by the "deliberate indifference" of prison officials to his health or safety problems, according to a federal appeals court. The court ruled found that information about the prisoner's psychiatric history was, or should have been, in his prison files, and that prison officials who approved of the transfer should have known of the inmate's psychological problem and that there was evidence that the inmate should never have been in the general prison population. According to the court, it was unlikely that the inmate would have been killed if any of the officials had acted to segregate him from mentally sound prisoners at the jail. According to the appeals court, when prison officials intentionally place prisoners in dangerous circumstances, when they intentionally ignore prisoners' serious medical needs, or when they are deliberately indifferent either to a prisoner's health or safety, they violate the constitution. (Arecibo District Jail)

U.S. Appeals Court
ADEQUACY OF
CARE

Gardner v. Cato, 841 F.2d 105 (5th Cir. 1988). An inmate filed a civil rights lawsuit against the county jail and its personnel, after he had without notice or warning, gotten a dark liquid thrown in his face by his mentally unstable cellmate. The court found that placement of the prisoner in a cell with a mentally unstable inmate who had access to cleaning chemicals at best raised an issue of negligence by the defendants, a claim not seen as a violation of the Fourteenth Amendment in a civil rights action. Because he was given extensive medical treatment, the court found that it was "frivolous" to claim that the defendants displayed a deliberate indifference or disregard for the inmate's medical needs. (Guadalupe County Jail)

U.S. Appeals Court
AIDS

Glick v. Henderson, 855 F.2d 536 (8th Cir. 1988). A civil rights suit was dismissed by a federal trial court alleging failure and refusal of various prison officials to protect inmates from exposure to AIDS, and the dismissal was upheld by the appeals court. The plaintiffs in this case claimed that at least five inmates in the facility have tested positive for the virus which causes AIDS. The inmates also argued that the prison neither tested inmates and personnel for exposure to the AIDS virus nor segregated all those who did test positive. The inmates felt that the combination of these factors, along with the existence of practicing homosexuals within the facility, placed them in immediate danger of contracting AIDS because of the daily interactions which take place among inmates and jail officials. Medical authorities testified that the inmates' complaint was based on "unsubstantiated fears and ignorance," which included allegations that they face a risk of contracting AIDS by: (1) coming into contact with the sweat of other inmates during work detail; (2) being subjected to bites from mosquitoes which have bitten other inmates; (3) being sneezed on by known homosexuals; (4) having food prepared by officials who are not tested for AIDS; and/or (5) the regular transfer of prisoners from cell to cell throughout the facility. The court found that these means are too remote to provide the proper basis for a grievance. These, along with other significant risks, which are not comprehended by medical science as creating a genuine concern for transmission of AIDS, were insufficient to entitle court intervention. (Arkansas Department of Corrections)

State Supreme Court
INVOLUNTARY
MEDICATION
MENTAL HEALTH

Harper v. State, 759 P.2d 358 (Wash. 1988). A prisoner brought a civil rights claim seeking injunctive and monetary relief against the State, alleging the administration of antipsychotic medications to him against his will and without a judicial hearing violated his due process rights. The superior court

dismissed, and the prisoner appealed. The state Supreme Court, reversing and remanding, found that the prisoner had a protected liberty interest in refusing antipsychotic drug treatment. A judicial hearing was constitutionally required before the State could administer antipsychotic drugs to a prisoner against his will. The state officials were immune from liability under Section 1983 for promulgating and subsequently following the Special Offenders Center policy in administering antipsychotic drugs against a prisoner's will. Upon determining that there is a compelling state interest in administering antipsychotic drugs against a prisoner's will, the court must determine whether such treatment is both necessary and effective, considering a medical prognosis with and without treatment, as well as alternative treatments. (Special Offenders Center, Monroe, Washington)

U.S. District Court
DENTAL CARE

Jackson v. Lane, 688 F.Supp. 1291 (N.D. Ill. 1988). An inmate sought \$100,000 in compensatory damages and \$500,000 in punitive damages (the latter figure being sought from each named defendant) from correctional officials, correctional employees and a prison dentist. His request to have his teeth cleaned by a dental hygienist was responded to, by the prison dentist, by stating that there was no longer a hygienist on the staff. The court denied the inmate's request to file, without payment of the filing fee, a self-prepared nine-page typed complaint because the complaint was legally frivolous. The court found that the prisoner's complaint does not state an Eighth Amendment claim because denial of a dental hygienist does not rise to the level of deliberate indifference to serious medical needs of prisoners. (Illinois State Prison)

U.S. District Court
DENTAL CARE

Jackson v. Wharton, 687 F.Supp. 595 (M.D. Ga. 1988). An inmate brought a civil rights action against prison officials, alleging that officials had failed to provide him with dentures. The federal district court dismissed the complaint as frivolous because the inmate had been provided with dentures after filing the complaint, and he could not establish a "serious" nature of his medical needs because he admitted that he removed his dentures to eat as it is easier for him to chew without them. The court noted that the dentures are basically worn for cosmetic purposes. (Men's Correctional Institution, Hardwick, Georgia)

U.S. District Court
MEDICATION
ADEQUACY OF
CARE

McCloud v. Delaney, 677 F.Supp. 230 (S.D.N.Y. 1988). An inmate and his wife and son brought a civil rights action alleging that a registered physician's assistant was deliberately indifferent to the inmate's medical needs. The district court granted the defendants' motion for summary judgment, finding that the wife and son lacked a standing to bring action, and the registered physician's assistant was not deliberately indifferent to the inmate's medical needs, even though the assistant prescribed penicillin for the inmate with knowledge that the inmate's medical chart indicated that he was allergic to penicillin. The assistant took time to learn if the inmate had any allergies and, upon learning that the inmate believed he was allergic to penicillin, investigated the basis for that belief. He then used his professional judgment to determine that penicillin was still the best treatment, and he advised the inmate himself, and those supervising him, that they should keep a close watch for adverse reactions. (New York State Department of Corrections)

U.S. Appeals Court
AIDS

Muhammand v. Carlson, 845 F.2d 175 (8th Cir. 1988), cert. denied, 109 S.Ct. 1346. An inmate alleged that he was deprived of a constitutionally protected liberty interest when he was transferred to, and confined in, a restricted AIDS unit. The appeals court ruled that the prison regulations for identifying, treating, and isolating prisoners carrying the AIDS virus did not give the inmate a reasonable expectation that he would not be transferred to the AIDS unit without a chance to challenge his medical classification and the regulations governing administrative detention did not apply to medical determinations. The court found that the true purpose of the transfer was for diagnostic, treatment and security purposes, and although the inmate was stigmatized by his classification in confinement in restricted unit for inmates carrying AIDS virus, that stigma arose primarily from public fear of, and misunderstanding about, disease, not from prison medical officials' misconduct and, therefore, stigma did not amount to infringement of inmate's constitutionally protected liberty interest. (United States Medical Center for Federal Prisoners in Springfield, Missouri)

U.S. District Court
DELAY IN CARE
DENTAL CARE

Vester v. Murray, 683 F.Supp. 140 (E.D. Va. 1988). When an inmate did not receive services from the prison dentists as quickly as he felt necessary he filed a lawsuit against the dentists and several jail administrators alleging "cruel and unusual punishment." The court found that the dentists were not "under color of law" since the dentists did not exercise custodial or supervisory duties in the prison. Further, no allegation of inadequate medical treatment or injury was shown - only "dissatisfaction" with the wait. The inmate was directed by the court to pay attorneys' fees and costs to the defendants for this meritless lawsuit. The court also noted that the inmate plaintiff was a "renown" writ writer.

U.S. Supreme Court
ADEQUACY OF
CARE

West v. Atkins, 108 S.Ct. 2250 (1988). Private doctor who provides medical services to inmates under contract can be held liable under civil rights statute. The Supreme Court ruled that a private doctor who renders medical services to prison inmates pursuant to a contract with the state acts "under color of state law" pursuant to the Civil Rights Act, 42 U.S.C.A. Section 1983, and thus can be sued under that Act for services that fall below constitutional minimum standards under the cruel and unusual punishment or deliberate indifference aspects of the Eighth Amendment. The fact that such a doctor is an independent contractor rather than a state employee does not change this result: "It is the physician's function within the state system, not the precise terms of his employment, that determines whether his actions can fairly be attributed to the State." An inmate brought this civil rights action against North Carolina officials and a physician who was under contract with the state to provide medical services. The physician, a private practitioner under contract with North Carolina to provide orthopedic services at a state-prison hospital on a part-time basis, treated the inmate for a leg injury sustained while he was incarcerated at a state prison. The inmate was barred by state law from employing or electing to see a physician of his own choosing. Alleging that he was given inadequate medical treatment, he sued in federal district court under 42 U.S.C. Section 1983 for violation of his eighth amendment right to be free from cruel and unusual punishment, relying on Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285. The United States District Court for the Eastern District of North Carolina entered summary judgment for the defendants, holding that, as a "contract physician," the doctor was not acting "under color of state law," a jurisdictional prerequisite for a Section 1983 action. The inmate appealed the summary judgment. The Court of Appeals for the Fourth Circuit remanded the case to the district court for rehearing. 799 F.2d 923. The district court then dismissed the claim and the inmate once again appealed. The Court of Appeals affirmed the lower court's dismissal of the complaint and the inmate filed an appeal with the Supreme Court. 815 F.2d 993. Justice Blackmun wrote the majority opinion for the Supreme Court, which held that a physician who was under contract with a state to provide medical services to inmates at a state prison hospital on a part-time basis acted under the color of state law, within meaning of 42 U.S. C. Section 1983, when he treated inmate. The Supreme Court reversed the lower court decision, and remanded the case for rehearing. The Supreme Court found that generally, a public employee acts under the color of state law within the meaning of Section 1983 while acting in his official capacity or while exercising his responsibilities pursuant to state law. Therefore, a physician who was under contract with the state to provide medical services to inmates at a state prison hospital on a part-time basis acted under the color of state law, within meaning of Section 1983, when he treated the inmate, and such conduct was fairly attributable to state. The Supreme Court noted that physicians are not removed from the purview of a Section 1983 action simply because they are professionals acting in accordance with professional discretion and judgment. However, there is no rule that professionals are subject to suit under Section 1983 unless they were exercising custodial or supervisory authority. According to the Court, it is a physician's function within a state system, providing treatment to prison inmates, not the precise terms of his employment, that determines whether his actions can fairly be attributed to the state under Section 1983. The fact that the physician's employment contract with the state did not require him to work exclusively for the prison in treating prisoners did not make him any less a state actor than if he performed duties as a full-time, permanent member of the state prison medical staff. Rather, it was the physician's function while working for the state, not the amount of time he spent in performance of those duties or the fact that he might be employed by others to perform similar duties, that determined whether he was acting under the color of state law. The Court also held that contracting out prison medical care does not relieve the state of its constitutional duty to provide adequate medical treatment to those in its custody, and does not deprive the state's prisoners of a means of vindication of their eighth amendment rights under Section 1983. Finally, the Supreme Court noted that the fact that a state employee's role parallels one in the private sector is not, by itself, reason to conclude that the employee is not acting under color of state law within the meaning of Section 1983 in performing his duties. (North Carolina)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE

White v. Farrier, 849 F.2d 322 (8th Cir. 1988). An inmate brought a civil rights action against prison officials, alleging that officials were deliberately indifferent to his serious medical need, transsexualism. The federal district court granted summary judgment in favor of the inmate, and officials appealed. The appeals court held that fact issues as to whether the inmate was a transsexual and whether officials were deliberately indifferent to his medical needs precluded summary judgment, reversing the lower court decision and remanding it. The court ruled that an inmate's transsexualism is a serious medical need to which prison officials may not act with deliberate indifference. However, evidence created fact issue as to whether prison officials were deliberately indifferent to the inmate's transsexualism, precluding summary judgment in inmate's action alleging that officials were deliberately indifferent to a serious medical need in

violation of Eighth Amendment. Although warden received memos and grievances from the inmate demanding hormones and female clothes, the warden relied on psychiatrist's opinion that no medical need existed. (Iowa State Penitentiary)

U.S. Appeals Court
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE
42 U.S.C.A.
SECTION 1983
MEDICATION
RECORDS

Wood v. Sunn, 865 F.2d 982 (9th Cir. 1988). A prisoner brought a suit against state prison officials alleging that they had been deliberately indifferent to his serious medical problems, thus violating his right to be free of cruel and unusual punishment. The U.S. District Court entered judgment in favor of the prisoner, and the state defendants appealed. The appeals court, affirming in part, reversing in part, and remanding, found that the issue of whether defendants were entitled to qualified immunity was not preserved for appeal. The prison's physician consultant and its registered nurse engaged in deliberate indifference to serious medical problems of the prisoner in violation of his eighth amendment rights. The director of the State Social Services Department and the administrator of the prison could not be held vicariously liable. The failure to consider appropriate factors in determining the reasonableness of the award of attorney fees was an abuse of discretion.

Evidence in a Section 1983 suit brought by a prisoner alleging cruel and unusual punishment in deprivation of medical treatment was sufficient to establish that the physician consultant and registered nurse could have taken steps to avert the pain and suffering of the prisoner, who had serious urological problems. The absence of patient records was sufficient to support the determination that medicine was not delivered to the prisoner in the suit alleging cruel and unusual punishment in deprivation of medical treatment for urological and other medical problems. There was also sufficient evidence to sustain a finding that the prisoner in the medical unit did not receive the doctor's attention for a five-month period during his incarceration in the Section 1983 suit alleging cruel and unusual punishment and deprivation of medical treatment. (Oahu Community Correctional Center, Hawaii)

U.S. District Court
AIDS
PRIVACY

Woods v. White, 689 F.Supp. 874 (W.D.Wis. 1988). A prison inmate brought a suit against prison medical service personnel, alleging that they had violated his constitutional right to privacy by disclosing to nonmedical staff and other inmates the fact that the inmate had tested positive for AIDS (Acquired Immune Deficiency Syndrome). On motion by medical service personnel for judgment on the pleadings, the district court denied the motion, finding that the constitutional right to privacy extended to the fact that the prison inmate had tested positive for AIDS, which allegedly was disclosed by prison medical service personnel to nonmedical staff and other inmates. The inmate retained such a right to privacy even though he was incarcerated. The prison medical service personnel were not acting within their discretionary function in allegedly disclosing in casual discussion, the fact that the prison inmate had tested positive for AIDS, and thus, the defense of qualified immunity was not available. Despite many invasions of privacy that are inherent in the fact of incarceration or even probation, convicted persons retain some constitutional right to privacy. (Waupun Correctional Institution, Wisconsin).

1989

U.S. District Court
AIDS
ADEQUACY OF CARE

Bird v. Figel, 725 F.Supp. 406 (N.D. Ind. 1989). After a civil rights plaintiff was awarded compensatory and civil damages arising out of his incarceration in the county lockup facility, the defendant sheriff and deputy sheriffs moved for judgment notwithstanding the verdict or, in alternative, a new trial. The district court found that the evidence supported the jury award and the instruction on punitive damages was proper.

There was testimony that, during the plaintiff's two incarcerations, he was stripped and given only a white suicide gown to wear. He was placed in a cell with nothing in it but a steel bed frame, he was told to drink from the toilet, he was ridiculed for being gay and for having AIDS syndrome, and he was denied access to the telephone and other amenities.

The plaintiff alleged that the conditions of his confinement, pursuant to the sheriff's suicide watch policy, were unconstitutionally restrictive. He also alleged that correctional officers intentionally or recklessly violated his constitutional rights during one period of confinement. As to the allegations pertaining to the correctional officers, the plaintiff specifically alleged that they denied him water and told him to drink out of the toilet, denied him access to the telephone, denied him all personal hygiene effects, denied him visitation, denied him writing materials and postage, made unauthorized disclosures of the fact that he suffers from AIDS-related complex and were deliberately indifferent to his medical needs.

The jury returned a verdict for the plaintiff with an award of \$600 compensatory damages against all three defendants for one period of incarceration, \$1000 punitive damages against two correctional officers for first period of incarceration and \$200 compensatory damages against another correctional officer on the second period of incarceration. (Allen County Lockup Facility, Indiana)

U.S. District Court
AIDS
RELEASE

Botero Gomez v. U.S., 725 F.Supp. 526 (S.D. Fla. 1989). A prison inmate suffering from Acquired Immune Deficiency Syndrome (AIDS), Stage IV, brought a motion for release on bond pending a determination of his habeas corpus petition. The district court granted the motion, and found that the inmate was entitled to release on bond because the treatment provided by the facility in which he was incarcerated did not provide the required continuous medical and psychological care required for patients with advanced AIDS and the prisoner, who was a resident alien and who had a son who was an American citizen, had no prior criminal record, and his medical condition left no possibility of risk of flight. (MCC-Miami, Florida)

U.S. District Court
FAILURE TO
PROVIDE CARE
TRAINING

Brock v. Warren County, Tenn., 713 F.Supp. 238 (E.D. Tenn. 1989). An action was taken under a federal civil rights statute and the Tennessee wrongful death statute by the children of a prisoner who died from heat prostration. The district court found that the conditions in the cell where the prisoner was housed, including virtually nonexistent ventilation and extremely high temperature and humidity, were cruel and inhumane. The court also found that the failure of the county commissioners and the sheriff to provide even minimal medical training to jail guards or to provide the prisoner who died from heat prostration with adequate medical care, which might have been simply moving the prisoner, a nondangerous 62-year-old man, to a cooler cell, constituted deliberate indifference to the prisoner's medical needs and were proximate causes of the inmate's death. The county was liable under a civil rights statute for the prisoner's death from heat prostration, where the county commissioners made no effort despite being warned to rectify excessive heat and lack of ventilation problem in the jail and, specifically, in the cell where the deceased prisoner was housed. The deprivation of the prisoner's constitutional rights was the result of a municipal policy. The sheriff, who was the chief supervisor in charge of the county jail, could be held vicariously liable under a civil rights statute for the prisoner's death in light of evidence he directly participated in and knowingly acquiesced in the housing of the prisoner in a cell with inadequate ventilation and extremely high temperature and humidity. The sheriff argued that there was nothing he could do to improve the temperature and humidity conditions in a cell where the prisoner died because funds were controlled by the county commission. Remedial steps, subsequently taken, such as the removal of a metal cover and the placement of a large fan in the hallway outside the cell, could have alleviated adverse conditions without requiring any expenditure of money, and the failure to try to improve the conditions could result in the sheriff being assessed \$10,000 in punitive damages for the prisoner's death from heat prostration. The court awarded the prisoner's children \$100,000 in compensatory damages against the county and the sheriff. (Warren County Jail, Tennessee)

U.S. District Court
ALCOHOL/DRUGS
FAILURE TO
PROVIDE CARE
INTAKE SCREENING

Carapellucci v. Town of Winchester, 707 F.Supp. 611 (D. Mass. 1989). The administratrix of a deceased pretrial arrestee's estate brought a civil rights action and state law claim against police officers and the town for violation of the eighth amendment right to medical treatment. On the motion for summary judgment, the federal district court found that in light of the similarity between the symptoms of drug ingestion and alcohol intoxication, the police officers and the town were not grossly negligent in failing to arrange for the medical treatment of the arrestee. Both the expert and the lay testimony were insufficient to raise a genuine issue of material fact. The court also found that the booking procedures recommended by the American Correctional Association were insufficient to determine what standard was applicable to the town jail. It was determined that the officers had qualified immunity, and under Massachusetts law, the police officers and the policy chief had immunity. The police officers' failure to supervise a pretrial arrestee was not an adequate basis for a finding of gross negligence or worse after the arrestee died in his cell from a prearrest drug ingestion, sufficient to impose liability on them, where the officers were unaware of a serious medical need. The symptoms of the arrestee were barely distinguishable from alcohol intoxication. The police officers' failure to give a blood test or a medical examination to a drunk driving arrestee was not grossly negligent or sufficient to impose liability following the arrestee's death. The evidence that was found was inadequate to show that the town was grossly negligent for failing to have a policy or facilities to allow for the treatment of the drunk driving arrestee who died in custody as a result of the previous ingestion of alcohol, glutethimide and large quantities of codeine; the lack of evidence that any agency used the expert's recommended procedures, or that any government unit had adopted the expert's suggested guidelines rendered the opinion insufficient.

The difference of seven minutes from the recommended schedule for checking on an intoxicated pretrial arrestee would not support the finding of negligence, nonetheless gross negligence, after the arrestee died in his cell as the result of a prearrest drug ingestion.

The jail's failure to have booking forms inquiring whether the arrestee had consumed medication or drugs was not evidence of gross negligence of a minimally accepted standard booking practice for holding jail facilities, notwithstanding the recommendation for the use of such forms by the American Correctional Association. (Winchester Police Department, Massachusetts)

U.S. Appeals Court
ADEQUACY OF CARE

Cleveland-Perdue v. Brutsche, 881 F.2d 427 (7th Cir. 1989). The mother of a deceased inmate brought an action against prison officials to recover for allegedly inadequate medical treatment of the inmate. The death of William Lowe prompted an investigation by the defendant Robert Brutsche, the medical director of the federal prison system. Based on interviews and his own observations, Brutsche recommended that the prison hospitals' only full-time physician be relieved of his duties and that the record-keeping procedures at the hospital be improved. He did not, however, check to see if his proposed changes were implemented. Between January 6, 1975, which was the date of Lowe's death, and August, 1975, two more inmates died at the prison's hospital. These deaths prompted another investigation by Brutsche. As a result of this investigation, a series of recommendations were made to the warden by Brutsche. These recommendations included keeping full in-patient records on anyone admitted to the prison hospital, utilizing outside facilities, encouraging better communications among the staff, and implementing a policy concerning the availability of physicians during off-duty hours. The court of appeals found that the failure to correct systematic deficiencies in the delivery of the health care services at the prison violated clearly established law in 1975, and, thus, the medical director was not entitled to qualified immunity for allegedly deliberate indifference to the inmate's medical needs in violation of the eighth amendment; the right was established by federal appellate courts in the second, fifth, and eighth circuits. (Federal Penitentiary, Terre Haute Prison, Indiana)

U.S. Appeals Court
ADEQUACY OF
CARE
MEDICATION
CONTRACT
SERVICES

Crooks v. Nix, 872 F.2d 800 (8th Cir. 1989). An inmate suffering from granulocytic leukemia brought a Section 1983 action against prison officials for the officials' alleged improper denial of pain medication and necessary treatment. The U.S. District Court granted the defendants' motion for summary judgment, and the inmate appealed. The appeals court found that the material question of fact, whether prison policy contributed to the health professionals' alleged improper denial of pain medication to the inmate, precluded the entry of a summary judgment for the defendants on the inmate's "denial of medication" claims. According to the court, the state may not, by contracting with other parties to provide medical treatment to prisoners, immunize itself from a claim for damages arising from the failure to provide necessary medical treatment to prisoners. Although the officials had contracted with a private company, Correction Medical Services, to furnish medical services, this did not give them absolute immunity, the court said. If a prisoner claims that prison policies contributed to the denial of proper medical care, the state can still be liable. On the other hand, "if the alleged denial of medical care was based on a wrongful diagnostic judgment by a physician, the warden or prison director, lacking professional medical expertise, would not be liable for any constitutional wrong." The courts held that Iowa officials could be liable in this case if they failed to properly train, supervise, direct or control the actions of the private contractor. (Iowa State Penitentiary)

U.S. District Court
ADEQUACY OF CARE
CONTAGIOUS
DISEASES
42 U.S.C.A.
SECTION 1983

DeGidio v. Pung, 704 F.Supp. 922 and 723 F.Supp. 135 (D. Minn. 1989). State prison inmates sought relief from prison officials' allegedly inadequate response to a tuberculosis epidemic. The federal district court found that the prison officials' inadequate response to a tuberculosis epidemic, even if violative of the inmates' eighth amendment rights, did not warrant injunctive relief in that, since the initiation of the litigation, the officials had significantly remedied the deficiencies to a point where the medical care and tuberculosis control were not inconsistent with contemporary standards of decency, and there was no evidence that past problems were likely to recur unless enjoined. The court also ruled that a consent decree setting forth the level of medical care to be provided for prison inmates did not create any procedural due process interest in inmates actionable under Section 1983, in that the decree did not create any procedural standards to guide the prison officials' conduct with regard to any particular inmate. To the degree that the decree was violated, it was through omission or neglect, rather than intentional conduct; the inmates' remedies for breaches of the decree lay in either action for breach of contract or motion for contempt.

The district court found that the prisoners were prevailing parties entitled to an award of attorneys' fees, even though some of their claims were unsuccessful, and they were ultimately denied injunctive relief and that an hourly rate of \$150 was reasonable for the prisoners' attorneys. The court also found that the award of attorneys' fees would be 35% of the lodestar figure, to reflect the limited relief that was obtained and the incomplete and otherwise deficient time records. The prisoners would be awarded 25% of the amount of costs and expenses which they claimed, to reflect the partial relief obtained, and to avoid any award for expenses which were not properly assessed. (State Prison, Minnesota)

U.S. Appeals Court
ADEQUACY OF CARE
MEDICATION

Ellis v. Butler, 890 F.2d 1001 (8th Cir. 1989). An inmate brought a claim against prison personnel alleging a violation of his civil rights through the provision of improper medical care. The U.S. District Court dismissed the claim sua sponte, and appeal was taken. The appeals court, reversing and remanding the case, found that the inmate, who asserted he was denied pain medication for a knee injury, that the nurse stated that the infirmary personnel did not want to see the inmate in the

infirmery for any medical reason unless it was an emergency, and that the doctor had cancelled an appointment with a knee specialist, stated a civil rights cause of action for improper medical care. According to the court, while an emergency or nonemergency nature of a prisoner's condition may be relevant to his claim for inadequate medical care, the medical condition need not be an emergency to be considered serious for the purposes of stating a civil rights claim for the failure to provide adequate medical care. (Maximum Security Unit, Arkansas Prison)

U.S. District Court
ADEQUACY OF CARE
CONTAGIOUS
DISEASES
MEDICATION

Fambro v. Fulton County, Ga., 713 F.Supp. 1426 (N.D. Ga. 1989). The matter regarding conditions at a county jail came before the court ex mero motu after the court received a monitor's tentative findings of fact. The district court found that the substandard delivery of medical care in the jail was unconstitutional because it denied sentenced prisoners and pretrial detainees access to adequate health care in violation of the eighth and fourteenth amendments. The medical system subjected inmates to unnecessary risk of contracting dangerous or fatal communicable diseases, required inmates to suffer unnecessary pain and discomfort without the help of medical science, and, under the system, whole classes of inmates who were dependent on pharmaceuticals were required to wait for up to three days to receive their medicine. In light of the overcrowding, resulting in unconstitutional operation of the county jail, and failure of other means to reduce jail population, a release order was appropriate remedy. (Fulton County Jail, Georgia)

U.S. District Court
AIDS
TRAINING

Feigley v. Fulcomer, 720 F.Supp. 475 (M.D. Pa. 1989). An inmate brought action against prison officials, alleging officials were violating his eighth amendment right by not protecting him adequately from contracting Acquired Immune Deficiency Syndrome (AIDS). On the prison officials' motion for summary judgment, the district court found that the officials' practice of not testing inmates routinely for AIDS-causing virus at the time they were received or subsequently, and not testing other inmates for the virus upon request, did not violate the plaintiff inmate's eighth amendment rights. The court also found that the material issue of fact precluded a summary judgment as to whether the officials' refusal to test the inmate for the virus upon request involved unnecessary and wanton infliction of pain which is a violation of the eighth amendment. It allowed the inmate to continue with this claim that it constitutes such a punishment to fail to relieve the anxiety which might accompany an inmate's uncertainty as to whether he or she has a fatal disease. It was further found by the court that the absence of evidence that prison officials had knowledge and acquiesced in behavior by any of their subordinates who allegedly failed to prevent, or tacitly condoned and allowed, such conduct, precluded recovery by the inmate on the claim that officials failed adequately to prevent the spread of the virus in violation of his eighth amendment right to be free from cruel and unusual punishment. (State Correctional Institution, Huntingdon, Pennsylvania)

U.S. Appeals Court
ADEQUACY OF
CARE

Frazier v. King, 873 F.2d 820 (5th Cir. 1989), cert. denied, 110 S.Ct. 502. After being stymied in her attempts to correct nursing practice violations first by her supervisor and later by the warden, the plaintiff contacted the Louisiana State Board of Nursing. She reported that inmates were being denied medical care and that nurses were changing doctors' orders, completing prescription forms and making medical diagnosis. In making her charges to the board, she forwarded copies of inmate records to them.

After learning of her actions, the warden called her into his office and accused her of making malicious, derogatory and slanderous statements. Shortly thereafter, she was fired on the grounds that she made malicious statements and that she had violated department rules when she had copied confidential inmate records without the inmates' consent. The nurse then brought a suit against numerous state officials under the federal civil rights statute for violations of her rights under the first and fourteenth amendments and under state law for claims of retaliatory discharge and infliction of emotional, physical, and mental injuries. The U.S. District Court entered judgment from which the defendants appealed. The appeals court found that the discharged nurse was not barred from bringing a federal civil rights suit seeking lost wages, compensatory and punitive damages and attorney's fees following the Louisiana Civil Service Commission determination that she was entitled to reinstatement with back pay, under federal law or Louisiana principles of res judicata. The nurse's speech involved a matter of public concern, disruption from the nurse's "whistle-blowing" was minimal interest when weighed against the exposure of unethical medical practices affecting hundreds of inmates, and the warden's warning that the nurse would lose her job if she filed a complaint with the State Board of Nursing was sufficient evidence that her speech motivated the decision to fire her. The court also found that the state officials were not shielded by an eleventh amendment grant of sovereign immunity or by qualified immunity. (Wade Correctional Center, Louisiana)

U.S. Appeals Court
INVOLUNTARY
NOURISHMENT

Garza v. Carlson, 877 F.2d 14 (8th Cir. 1989). A Jewish inmate brought a civil rights action against prison officials. The U.S. District Court denied relief and the inmate appealed. The appeals court found that the prison policy prohibiting an inmate from worship in a minyan while he was in administrative segregation was reasonably related

to an institutional security concern, and the Jewish inmate's rights were not violated by the threat of receiving involuntary nourishment while he was engaged in a religious fast. The preservation of the prisoner's health is a legitimate objective, and prison officials may take reasonable steps to accomplish that goal. (United States Medical Center for Federal Prisoners, Springfield, Missouri)

U.S. District Court
ABORTION
FAILURE TO
PROVIDE CARE

Gibson v. Matthews, 715 F.Supp. 181 (E.D. Ky. 1989). A female prisoner sued prison officials in both their individual and official capacities based on allegations that while incarcerated she was not provided access to abortion facilities as she had requested. On the defendants' motion for summary judgment, the U.S. District Court found that claims brought against the defendants in their official capacities were barred by sovereign immunity, and the mere negligence of the prison officials in denying the prisoner access to abortion facilities did not constitute a denial of substantive due process rights for the purposes of the prisoner's damage claims against officials in their individual capacity. The court stated that the conduct alleged by the plaintiff amounts "at best to negligence," and the mere negligence of prison officials in denying the prisoner access to abortion facilities based on an incorrect estimation of her due date was not sufficiently egregious to constitute a violation of her substantive due process rights or the eighth amendment. Therefore, the prisoner could not recover money damages from the prison officials in their individual capacities. (Federal Correctional Institution, Lexington, Kentucky)

U.S. District Court
DELAY OF CARE

Gilland v. Owens, 718 F.Supp. 665 (W.D. Tenn. 1989). Convicted inmates and pretrial detainees brought a Section 1983 action challenging conditions at a county jail. The U.S. District Court found that the inmates and detainees failed to establish that incidents of delayed medical attention occurred with sufficient frequency to violate the eighth amendment and due process rights to medical care. The amount of the sheriff's budget for various categories and sources of revenue was irrelevant in the action challenging the constitutionality of the conditions at the county jail. (Shelby County Jail, Memphis, Tennessee)

U.S. District Court
SMOKE

Gorman v. Moody, 710 F.Supp. 1256 (N.D. Ind. 1989). A prisoner brought an action challenging the failure of prison officials to segregate him from smoking inmates. The district court found that the failure of prison officials to segregate smokers from nonsmokers among the inmate population did not violate the eighth amendment because the eighth amendment draws its meaning from the evolving standards of decency in society as a whole. It is relevant that society cannot yet completely agree on the propriety of nonsmoking areas and a smoke-free environment. However, there might come a time when the evolving standards of decency would demand a smoke-free environment in a prison setting. The deliberate indifference standard was applicable to determine whether the failure of prison officials to segregate smokers from nonsmokers, thus exposing nonsmokers to secondhand smoke, violated their eighth amendment rights, and the prisoner asserting such a claim would have to show that prison officials intentionally exposed them to a known risk of harm and actually intended to harm him. Indiana's Clean Indoor Air Act does not create a protected liberty interest for nonsmoking prisoners to be segregated from smoking prisoners. (Westville Correctional Center, Indiana)

U.S. District Court
ADEQUACY OF
CARE
AIDS
EXPERIMENTATION
MEDICATION

Hawley v. Evans, 716 F.Supp. 601 (N.D.Ga. 1989). Prison inmates who had tested positive for Human Immunodeficiency Virus (HIV) brought an action alleging that they were not receiving adequate treatment. The district court found that the inmates did not have a constitutional right to a private physician or to experimental drugs. The Georgia Department of Corrections was not deliberately indifferent to the serious medical needs of prisoners who had tested positive for the antibodies to the Human Immunodeficiency Virus, the precursor to Acquired Immune Deficiency Syndrome, (AIDS) even though it did not provide them with experimental drugs which they requested. The prisoner's claim of inadequate medical treatment which reflects a mere disagreement with prison authorities over proper medical treatment does not state a claim of constitutional magnitude. (Georgia Department of Corrections)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE
DENTAL CARE

Hunt v. Dental Dept., 865 F.2d 198 (9th Cir. 1989). An inmate at the Arizona State Prison at Florence sued prison officials for failing to promptly replace dentures which he lost during a prison riot. (He claimed that he was not involved in the riot, that his dentures were soaking in a cup in the area of the prison where he lived, that the riot extended into this area, and when the riot ended his dentures were gone). He made his request for replacement of the lost dentures in October 1986, but it wasn't until July 1987 that they were finally delivered to him. He claimed that in the interim his remaining teeth were breaking off and his gums were bleeding and infected. He also complained that he suffered pain and weight loss due to his inability to eat properly.

The inmate appealed from an order of the district court which granted a summary judgment for defendants in the inmate's action under Section 1983 to recover for the defendants' deliberate indifference to his serious dental needs in violation of the eighth amendment. The appeals court found that the director of the state Department of Corrections could not be vicariously liable for the fault of the prison personnel. The dental department of the state prison was immune from Section 1983 actions; and fact question as to whether prison employees were deliberately indifferent to the inmate's serious dental needs precluded a summary judgment. The inmate's allegations that prison officials were aware of his bleeding gums, breaking teeth and his inability to eat properly due to the loss of his dentures, and failed to take any action to relieve his pain or to prescribe a soft food diet until new dentures could be fitted were sufficient to state a claim of deliberate medical indifference under Section 1983. (State Prison, Florence, Arizona)

U.S. District Court
ADEQUACY OF
CARE
SICK CALL

Inmates of Occoquan v. Barry, 717 F.Supp. 854 (D.D.C. 1989). Inmates confined at a state prison brought a civil rights action seeking declaratory and injunctive relief. The judgment for the inmates, 650 F.Supp. 619, was vacated and remanded, 844 F.2d 828. Upon remand, the district court found that the prison conditions violated the inmates' eighth amendment rights, even though the District of Columbia had implemented a number of new procedures. The housekeeping manual was not followed, fire inspection was lacking, new evacuation plans had not been posted and proper training had not occurred. Sick call had been increased to five days from three days but had not cured other chronic problems. New procedures for medical problems, and new procedures for medical records transfers and follow-up had either not been implemented or had failed to work. The court also found that the housing of "protective custody" inmates in a block with punitive segregation inmates violated the protective custody inmates' eighth amendment rights, and inmates with mental health problems could not be housed with punitive segregation inmates. Officials at the medium security federal prison were prohibited from exceeding the current population at the facility pending renovation, and they were required to submit a written report on their proposals for correcting the constitutional violations in areas of sanitation, bathroom facilities, fire safety, health care, and staffing. The court of appeals also found error with the court's "continuous resort to the standards articulated by professional agencies in evaluating the constitutionality of the conditions at Occoquan." (District of Columbia's Occoquan Facility, Lorton Correctional Complex)

U.S. Appeals Court
ADEQUACY OF
CARE
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE

Johnson v. Bowers, 884 F.2d 1053 (8th Cir. 1989). An inmate brought a civil rights action against prison officials, alleging that prison officials violated his constitutional rights by denying him recommended surgery to repair nerve damage to his arm, beating him when he complained about the denial of surgery, and failing to properly treat a finger broken in the beating incident. The U.S. District Court entered a judgment for the defendants, and the inmate appealed. The appeals court, affirming in part, and remanding with direction in part, found that substantial evidence existed for the jury to reject the inmate's claim for damages due to a deliberate indifference to the need for surgery, and an injunction should be issued requiring the prison physician or properly substituted successor to schedule the inmate's forearm surgery forthwith. The record indicated that the inmate suffered a substantial disability from the injury which occurred in the prison setting, and a nine-year delay since the original recommendation of surgery suggested that the prison had exhibited a deliberate indifference to the inmate's medical needs. The hospital's gratuitous classification of the inmate's surgery as "elective" did not abrogate the prison's duty, or power, to promptly provide necessary medical treatment for the inmate. (Missouri State Penitentiary)

U.S. District Court
MEDICATION

Jones v. Ehlert, 704 F.Supp. 885 (E.D. Wis. 1989). A prisoner brought a Section 1983 action against nurses, a physician, and the Wisconsin Department of Health and Social Services to recover for a violation of the eighth amendment arising out of the discontinuation of a valium prescription. The defendants moved for a summary judgment. The district court found that the prisoner failed to establish cruel and unusual punishment in connection with the discontinuation of valium. The prisoner failed to establish that defendants were deliberately indifferent to medical needs in connection with the discontinuation of valium after the sergeant at the correctional facility accused the prisoner of palming off medication. In this case, the undisputed facts showed that the prescribed Valium was provided for 27 days and discontinued after a patdown search of the inmate revealed that he had indeed "palmed" the medication rather than swallowing it. There was no evidence that the inmate had experienced seizures or extreme emotional distress, although he told a nurse that he feared withdrawal symptoms and seizures. Further, the valium was resupplied to the inmate when he lied to the doctor, telling him he had been cleared of charges of misuse of medication, and then discontinued again when the truth was revealed. The doctor's affidavit indicated that the stress which the medication was designed to treat was not a "life threatening" medical problem, nor had the medicine been taken long enough for "withdrawal" to be a problem.

Further, the inmate continued to receive frequent medical attention and nonprescription pain medicine. No cruel and unusual punishment was therefore shown. (Kettle Moraine Correctional Institution, Plymouth, Wisconsin)

U.S. District Court
FAILURE TO
PROVIDE CARE
MENTAL HEALTH
FEMALE
PRISONERS

Langley v. Coughlin, 709 F.Supp. 482 (S.D.N.Y. 1989). Female inmates brought a class action against correctional authorities alleging violations of their eighth amendment rights arising from conditions of confinement in a "solitary" unit. Correctional authorities moved for summary judgment on the grounds of qualified immunity. The district court denied the motion for summary judgment, finding that the correctional authorities responsible for designing and implementing the inmate programs were not entitled to qualified immunity against the claims that female inmates were not provided with medical treatment and that mentally balanced inmates were housed with inmates who suffered from chronic mental illness. The Commissioner of the New York State Department of Correctional Services could be held liable in the Section 1983 suit to the extent he failed to develop and implement programs and policies regarding the treatment of mentally ill inmates or delegated that responsibility to others whom he then failed to supervise adequately. The plaintiffs in this class action are inmates at Bedford Hills Correctional Facility ("BHCF"), who were housed in Building 118 from 1981 through August 1987. In Building 118 (also known as "solitary" or "Special Housing Unit" ("SHU")), plaintiffs were locked in their cells up to 23 hours of each day, with one hour for recreation. Those plaintiffs suffering from chronic mental illness ("mentally disordered women") were allegedly kept in excessive isolation and denied adequate mental health care in violation of their rights under the eighth and fourteenth amendments of the U.S. Constitution. The mentally disordered women are identifiable by their assaultive behavior and the marked deterioration they exhibited while in confinement. Those plaintiffs not suffering from chronic mental illness ("non-mentally disordered women") maintain that the conditions of their confinement subjected them to cruel and unusual punishment, in violation of the eighth amendment. Throughout the relevant period, the plaintiffs were subjected to noxious odors, noise, and danger as the mentally disordered women engaged in acts of self-destruction, arson, and assaultive behavior. Several mentally disordered women routinely spread feces and urine throughout the unit, flooded the unit with sewerage, and yelled and screamed day and night. These occurrences were frequent, rather than merely an isolated incident. The plaintiffs allege that all of the defendants were deliberately indifferent to their mental health needs. (Bedford Hills Correctional Facility, New York)

U.S. Appeals Court
HANDICAP
CONTRACT
SERVICES
ADEQUACY OF
CARE

Leach v. Shelby County Sheriff, 891 F.2d 1241 (6th Cir. 1989), cert. denied, 110 S.Ct. 2173. A paraplegic inmate filed a suit against the mayor and county sheriff, claiming deliberate indifference to his serious medical needs. The U.S. District Court entered a judgment awarding \$10,000 to the inmate. The mayor and sheriff appealed. The appeals court found that the evidence demonstrated a policy or custom of deliberate indifference to serious medical needs of paraplegic inmates, for purposes of holding the mayor and sheriff liable in their official capacities. The sheriff had the responsibility of conforming to at least minimal constitutional standards in providing and maintaining adequate bedding, toiletries, and cleanliness. The county officials argued that they should not be liable because Leach's maltreatment was not the result of a policy or custom of the government. However, the court found that there had been enough similar incidences that the sheriff should have known that Leach would be subject to constitutional deprivations. Testimony during the trial indicated that the same type of treatment provided Leach was provided to at least 14 other paraplegics at the jail. According to the court, the evidence "clearly shows" that during the first ten days the plaintiff spent at the jail, he was given a "steel cot with an inadequate mattress. Despite his medical need for cleanliness, he was not bathed for several days and was "forced to remain for long periods of time in his own urine due to inadequate catheter supplies and was given inadequate aid for his bowel training needs despite his repeated requests for help." Upon leaving the jail, he had sores on his ankles and buttocks, and he complained of frequent headaches and a burning sensation on the lower part of his back. There was evidence of similar mistreatment of 14 other paraplegic or physically infirm inmates and that, at least in this instance, the sheriff took no action to correct the situation or to discipline the employees involved. The court held that this rose to the level of a policy of deliberate indifference to serious medical needs. And it rejected the argument that because the state law of Tennessee allowed the sheriff to subcontract away the medical care of inmates, this excused the county from liability. (Shelby County Jail, Tennessee)

U.S. District Court
ADEQUACY OF
CARE
DELAY OF CARE
EYE CARE

Lopez v. Ward, 719 F.Supp. 261 (S.D.N.Y. 1989). An inmate at the city detention center brought a civil rights action against physician's assistants and the city, alleging he was denied adequate medical treatment while incarcerated. On the defendants' motion for a summary judgment, the district court found that the physician's assistant could not be held liable based on her alleged failure to treat the inmate's detached

retina, absent evidence that the assistant was told by the inmate of his vision problems and that the assistant failed to take any steps to insure proper treatment. The city could not be held liable based on its failure to immediately treat the detached retina, absent evidence that the city had a policy or custom under which the detached retina was not an urgent condition or that the physician's assistants at the facility were inadequately trained. (House of Detention for Men, Rikers Island, New York)

U.S. District Court
ADEQUACY OF
CARE
TRANSFER

Lopez Morales v. Otero de Ramos, 725 F.Supp. 106 (D. Puerto Rico 1989). An inmate's mother brought an action against prison officials to recover for violations of the right to motherhood and the eighth amendment arising out of the death of the inmate due to status asthmaticus. The defendants moved for summary judgment. The district court found that the mother inadequately alleged the officials' personal involvement or causal nexus between the officials' actions and the death; no right to motherhood exists under the due process clause; and officials did not violate the eighth amendment. The prison officials who transferred the inmate to penal camp with alleged knowledge of his asthma condition did not deliberately deny necessary medical treatment and did not violate the eighth amendment. The inmate visited the medical area at the camp and visited the hospital; and plaintiff, the inmate's mother, did not allege that the inmate was turned away when he requested medical treatment or that he was given inadequate services. The plaintiff has also failed to allege a deprivation of a federally protected constitutional right required in a Section 1983 action. The plaintiff claims that as a result of Mr. Lopez' death she was deprived of the decedent's love, companionship and affection in violation of her "right to motherhood" under the fourteenth amendment. However, neither the Supreme Court nor the first circuit have recognized a constitutional right to motherhood. (La Pica Penal Camp, Jayuya, Puerto Rico)

U.S. Appeals Court
FAILURE TO
PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Mandel v. Doe, 888 F.2d 783 (11th Cir. 1989). A prisoner brought a civil rights action under Section 1983 against the county, alleging he was injured by a physician assistant's deliberate indifference to his serious medical needs while he was a prisoner at a county road prison. The U.S. District Court rendered a judgment for the prisoner on a jury verdict and awarded \$500,000 damages, and the county appealed. The appeals court affirmed the decision, finding that the evidence established that the physician's assistant's treatment of the prisoner after he injured his leg constituted deliberate indifference to the prisoner's serious medical needs, and evidence established the physician's assistant was acting as a final policymaker for the county with respect to medical affairs at the road prison. The prisoner had serious medical needs once he injured his leg while jumping off the truck bed, the physician's assistant's knowledge of the need for medical care was conclusively established, the physician's assistant never apprised his superior, a medical doctor, of the prisoner's situation, obtained an x-ray of the prisoner's leg, or had the prisoner examined by a doctor or taken to a hospital, despite repeated requests by the prisoner and his parents directed toward the physician's assistant and the prison superintendent. The county maintained that the mere denial of Mandel's request for an x-ray did not amount to deliberate indifference. However, the court found that the record was "replete with evidence of serious medical need, grossly deficient treatment and callous indifference." (Escambia County Prison, Cantonment, Florida)

U.S. District Court
INTAKE
SCREENING

Marricone v. U.S., 703 F.Supp. 384 (E.D. Pa. 1989). Action was brought against the United States on behalf of an inmate who died of a heart attack while incarcerated in a federal prison. The district court found that under Kentucky law, the physician's assistant who interviewed the inmate as part of the medical intake screening procedure, and the corrections officer who assigned the inmate to an upper bunk on the third floor of the housing unit were not negligent in failing to diagnose the inmate's cardiac condition or take steps to provide medical care before the inmate complained of chest pains and difficulty in breathing. At the time of the intake interview there was no physical manifestation nor any complaint voiced by the inmate of cardiac symptomatology, and the only reason for the recommended assignment of the inmate to the first floor with a lower bunk was the inmate's compromised ability to ambulate due to the amputation of toes. (Federal Correctional Institute, Lexington, Kentucky)

U.S. District Court
ADEQUACY OF
CARE
MEDICATION
42 U.S.C.A.
SECTION 1983
SPECIAL DIETS

Peterson v. Scully, 707 F.Supp. 759 (S.D.N.Y. 1989). An inmate filed a pro se civil rights action against guards, prison officials and a state correctional officer alleging a beating incident and denial of medical treatment. The district court found that the inmate's pro se claim that medical personnel at the correctional facility did not prescribe medicine he requested and did not place him on a soft diet as he requested, and that he suffered a three month delay for skin lotion were insufficient to support a Section 1983 action for cruel and unusual punishment, particularly where no injury was demonstrated and not only was the inmate abusive to medical personnel, but refused to allow the doctor to examine him or draw blood. (Green Haven Correctional Facility, New York)

U.S. District Court
DELIBERATE
INDIFFERENCE
INTAKE
SCREENING

Rellergert v. Cape Girardeau County, Mo., 724 F.Supp. 662 (E.D. Mo. 1989). A civil rights action was brought against a sheriff and jailor following the suicide of an inmate. Following a judgment in favor of the plaintiffs, the defendants moved for a judgment notwithstanding the verdict. The district court granted the motion, and found that the sheriff and jailor were entitled to qualified immunity with respect to the civil rights action arising out of the suicide of the inmate, even though he stated on his medical history sheet that he had attempted suicide. They placed him in a common area where he could be kept under observation, where his normal conduct was unchanged since his prior incarceration a month earlier, and where he was observed going to the bathroom shortly before he hung himself. He had no sheet or bedding with him and it was unclear where the sheet with which he hung himself had been acquired. The court found that the defendants had taken reasonable steps to protect this inmate against suicide--in fact "they did everything they could" to protect the inmate from himself. "There were no facts to suggest the defendants had an evil intent or motive to allow" the inmate to harm himself "nor were the defendants callously indifferent to his needs. Rather, they took affirmative action to monitor him almost constantly." The mere fact that monitoring equipment had not also been installed in the bathroom did not constitute deliberate indifference. (Cape Girardeau Jail, Missouri)

State Court
ADEQUACY OF
CARE
NEGLIGENCE
RECORDS
CONTRACT
SERVICES

Rivers v. State, 537 N.Y.S.2d 968 (Ct.Cl. 1989). An inmate sued the State to recover for damages resulting from the performance of a wrong operation by a private physician in an outside facility at the request of the State. The court of claims found that the State was not negligent for the failure to forward the inmate's medical records to the outside hospital, or to insist that the surgeon examine the inmate, prior to surgery. Evidence supported the finding that the doctor was negligent, despite the absence of expert testimony as to the standards of care in the community, the State was vicariously liable for the negligence of the doctor, by virtue of owing a nondelegable duty to the inmate to provide reasonable and adequate medical care, regardless of whether the doctor was characterized as an employee or an independent contractor, and the amount recovered by the doctor in an independent lawsuit would be deducted from recovery against the State. The State owed the inmate a nondelegable duty to provide reasonable and adequate medical care, and thus was liable when the outside surgeon it retained performed the wrong surgery on the inmate, following the inmate's transfer to an outside facility, regardless of whether the outside surgeon was characterized as an employee or independent contractor. (Greene Correctional Facility, New York)

U.S. District Court
DENIAL OF
CARE

Smallwood v. Renfro, 708 F.Supp. 182 (N.D.Ill. 1989). A prisoner brought a suit against correctional facility officers for allegedly denying him medical treatment and using excessive force. The correctional officers moved for summary judgment. The district court found that the claims asserted against the defendants in their official capacities were barred by the eleventh amendment. The disputed issues of material fact precluded summary judgment on the prisoner's eighth amendment claim for deprivation of medical care and use of excessive force against the supervising officer. The chairman of the prison institutional board and the warden had no personal involvement in the alleged eighth amendment violations such as to render them potentially liable. The inferior officer who obeyed the superior's order not to take the prisoner to the hospital and the duty warden who deferred to the supervising officer's decision were entitled to qualified immunity. A genuine issue of fact as to whether the officer employed wanton and unnecessary excessive force precluded summary judgment in the officer's favor for an alleged incident in which he allegedly choked the prisoner and hit him with a radio while transferring the prisoner to a segregation unit. Neither the prison warden nor the prison institutional board chairman could have any personal responsibility for alleged eighth amendment violations of the prisoner's rights in allegedly denying him medical care or using excessive force, where neither was present during the events nor had any involvement in the violations themselves. Section 1983 could not render the warden personally liable simply because he supervised the alleged wrongdoers. (Joliet Correctional Center, Illinois)

U.S. Appeals Court
ADEQUACY OF
CARE
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE
MENTAL HEALTH
MEDICATION

Waldrop v. Evans, 871 F.2d 1030 (11th Cir. 1989). The parents of an inmate formerly incarcerated in state correctional institutions sued medical and supervisory personnel at those institutions for their alleged deliberate indifference to the inmate's serious mental health care needs. The U.S. District Court denied the defendants' motions for summary judgment based on the qualified immunity doctrine, and the defendants appealed. The appeals court, affirming the decision, found that the fact issue as to whether the prison psychiatrist who took the inmate off the psychotropic medication and refused to give the inmate Lithium for depression was deliberately indifferent to the inmate's psychiatric condition precluded summary judgment on the grounds of qualified immunity, and the fact issue as to whether the staff physician was deliberately indifferent to the inmate's psychiatric condition when he failed to notify the

psychiatrist or take any other action in response to the inmate's self-inflicted injury precluded summary judgment on the grounds of qualified immunity. Grossly incompetent or inadequate care of an inmate can constitute a deliberate indifference to serious physical or psychiatric need in violation of the eighth amendment, as can a doctor's decision to take an easier and less efficacious course of treatment. The failure to respond to a known medical problem can also constitute deliberate indifference. (Diagnostic and Classification Center, Jackson, Georgia and Correctional and Medical Institution, Augusta, Georgia)

U.S. District Court
ADEQUACY OF
CARE
WORK
ASSIGNMENT

Ward v. Dowd, 707 F.Supp. 417 (E.D.Mo. 1989). An inmate brought a Section 1983 action against treating physicians and nurses, alleging cruel and unusual punishment. The district court found that physicians and nurses who treated the inmate for injuries sustained while riding on a correctional institution bus had not exhibited deliberate indifference to his medical needs. The inmate, who struck his head against the back of a bus seat causing headaches and a tightness of neck muscles, had been given medication and light work and no work duty had been ordered for him, which was the only treatment possible. (State Correctional Center, Farmington, Missouri)

1990

U.S. Appeals Court
MEDICATION

Battle v. Central State Hosp., 898 F.2d 126 (11th Cir. 1990). A federal appeals court held that an inmate's claims of excessive and unnecessary medication did not lack an arguable basis in law so as to warrant a dismissal for frivolity. Claims may lack an arguable basis in law, which warrants a dismissal for frivolity under the in forma pauperis statute, from either factual or legal inadequacies. Factual allegations are "frivolous" when they are "clearly baseless" and legal theories are "frivolous" when they are "indisputably meritless." Allegations by the inmate implicated eighth amendment concerns and evidence of the inmate's mental illness was not inconsistent with his claims. (Georgia State Prison)

U.S. Appeals Court
INVOLUNTARY
MEDICATION

Bee v. Greaves, 910 F.2d 686 (10th Cir. 1990). A former pretrial detainee brought an action against a physician, challenging his involuntary medication while confined. According to the court, law relative to forced medication clearly established the detainee's right to refuse the unwanted administration of antipsychotic drugs. The jail psychiatrist administered the medication to the pretrial detainee against his wishes. The appeals court found that a Utah law allowing involuntary medication of a mental patient did not give a jail psychiatrist qualified immunity from liability for involuntary medication of a pretrial detainee since Utah law applied only after a judicial involuntary commitment proceeding, which was not provided to the detainee. (Salt Lake County Jail, Utah)

U.S. District Court
DELAY IN
TREATMENT
ABORTION

Bryant v. Maffucci, 729 F.Supp. 319 (S.D.N.Y. 1990). An inmate brought a Section 1983 action against the commissioner of the county department of corrections, the warden, the assistant wardens, and director of the correctional health services to recover for the inability to obtain an abortion in her 24th week of pregnancy. The defendants moved for summary judgment. The district court found that the policy for dealing with an inmates' abortion requests was constitutional and the assistant wardens and the director were not deliberately indifferent to the inmate's right of privacy.

The assistant wardens were not deliberately indifferent to the privacy right of an inmate who was unable to obtain an abortion when gestation, determined for the second time, was increased and set at 24 weeks. Although the assistant wardens were responsible for maintaining access to medical care, they were not trained or authorized to make medical decisions and one warden testified that she was not privy to medical decisions or records.

The correctional facility's procedures for inmates' abortion requests were not deliberately indifferent to a privacy right of an inmate who was unable to obtain an abortion. The request for an abortion was relayed to correctional health services and acted upon in sufficient time to schedule an appointment within what appeared to be 24 weeks. (Westchester County Correctional Facility, New York)

U.S. Appeals Court
SMOKE-FREE
ENVIRONMENT

Clemmons v. Bohannon, 918 F.2d 858 (10th Cir. 1990). A state prisoner brought a civil rights action alleging violations of his constitutional rights arising out of involuntary subjection to environmental tobacco smoke. Summary judgment for the defendants was granted by the U.S. District Court, and the prisoner appealed. The court of appeals found that exposing the prisoner to an unreasonable risk of a debilitating or terminal disease offends "evolving standards of decency" protected by the Eighth Amendment. According to the court, a relevant inquiry is whether long-term exposure to environmental tobacco smoke poses an unreasonable risk of harm to an inmate's health and is a relevant question in determining whether a prison policy of permitting indefinite double-celling of smokers with non-smokers against the nonsmokers' expressed will is cruel and unusual punishment in violation of the Eighth Amendment. (Kansas State Penitentiary)

U.S. District Court
ADEQUACY OF CARE
42 U.S.C.A.
Section 1983

Davis v. Village of Calumet Park, 737 F.Supp. 1039 (N.D. Ill. 1990), reversed, 936 F.2d 971. A defendant brought a Section 1983 action alleging that village officials unconstitutionally denied the defendant, while a pretrial detainee, access to adequate medical care. After a trial by jury, the defendant was awarded \$1 in compensatory damages and \$1,500 in punitive damages. The federal appeals court reversed the decision, finding that an objectively reasonable officer would not have thought the injuries were serious. (Village of Calumet Park, Illinois Jail)

U.S. Appeals Court
CONTAGIOUS
DISEASES
ADEQUACY OF CARE
FAILURE TO
PROVIDE CARE

DeGidio v. Pung, 920 F.2d 525 (8th Cir. 1990). State prisoners sought relief from prison officials' allegedly inadequate response to tuberculosis outbreaks at the prison. The U.S. District Court concluded that the officials had violated the prisoners' Eighth Amendment rights, but denied injunctive relief based on the finding that the officials had remedied deficiencies since the initiation of the litigation. On the prisoners' application for award of attorney fees, the district court reduced the fee request to reflect the limited success and to account for incomplete and deficient time records. The prison officials appealed, and the prisoners cross-appealed. The court of appeals found that the prison officials' consistent pattern of reckless or negligent conduct in responding to the tuberculosis outbreak was sufficient to establish deliberate indifference in violation of the Eighth Amendment, so as to support a finding for purposes of fee award that prisoners were prevailing party. The reduction of the fee request by 65% to account for the limited success and to account for incomplete and deficient time records was within the court's discretion. The earlier consent decree could not be enforced through the Section 1983 action for damages, and the consent decree did not create liberty interest subject to protection of procedural due process or place substantive restrictions on exercise of discretion by the prison officials. (Minnesota Correctional Facility, Stillwater)

U.S. District Court
DELIBERATE
INDIFFERENCE
ADEQUACY OF CARE

Dockerty-Bostron v. Waukesha County, 744 F.Supp. 877 (E.D. Wis. 1990). A pretrial detainee brought a Section 1983 action against a county and county sheriff alleging inadequate medical treatment. On the defendants' motion to dismiss, the district court found that there was no respondeat superior liability under Section 1983 and the county was not liable under Section 1983 to the pretrial detainee who was allegedly denied medical treatment for a broken wrist, on the grounds of inadequate training, absent evidence of a conscious choice or policy of deliberate indifference on the part of the county, or of a pattern of constitutional violations putting the county on notice that its jail personnel were acting in a manner contrary to constitutional requirements. (Waukesha County Jail, Wisconsin)

U.S. District Court
DELIBERATE
INDIFFERENCE
MENTAL HEALTH

Elliott v. Cheshire County, N.H., 750 F.Supp. 1146 (D. N.H. 1990). The father of a pretrial detainee who committed suicide in his cell brought a civil rights action against the county and jail officials. On defendants' motions for summary judgment, the district court found that the jail officials did not act with deliberate indifference to the pretrial detainee's serious medical needs when they failed to diagnose his mental condition as potentially suicidal or prevent his suicide, entitling them to qualified immunity; there was no evidence that the officials were given actual notice of the detainee's need for special care or for protection or that their failure to act placed the detainee in any serious danger. The arresting officer who knew that the pretrial detainee had a history of mental illness did not act with deliberate indifference to the detainee's medical needs when he failed to recommend immediate treatment to prevent suicide, entitling him to qualified immunity; the officer did not know that the detainee had suicidal tendencies, and had never witnessed any violent behavior by him. It was also found that the county's alleged inadequate training of jail officials in dealing with suicide risk inmates did not amount to deliberate indifference to the rights of the inmates, precluding the county from being held liable. Although there had been other suicides and attempted suicides in the jail in the previous ten years, the county had implemented suicide prevention procedures and there was no evidence that better training in suicide prevention would have alerted the jail officials that the detainee was a suicide risk. (Cheshire County House of Corrections, New Hampshire)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE

Gaudreault v. Municipality of Salem, Mass., 923 F.2d 203 (1st Cir. 1990), cert.denied, 111 S.Ct. 2266. A pretrial detainee brought an action against arresting officers, the city, the mayor, the city solicitor, the police chief, and others to recover for alleged failure to provide medical care. The U.S. District Court entered summary judgment against the detainee, and he appealed. The court of appeals found that the pretrial detainee's multiple bruises to his forehead, orbits of eyes, nasal area, ribs, flank, and shoulder, abrasion on upper back, corneal abrasion, deviated septum, and transient nerve damage allegedly as a result of a beating by a police officer were not "serious" medical needs, and, thus, the ten-hour delay in providing treatment did not violate the due process clause. The detainee was treated by an arm sling, an eye patch, and disinfectant, and the physician saw no need for immediate treatment of nerve damages and deviated septum almost two months after the incident. (Salem Police Station, Salem, Massachusetts)

U.S. Appeals Court
MEDICATION

Givens v. Jones, 900 F.2d 1229 (8th Cir. 1990). A former inmate filed a civil rights action against various employees and officials of a prison asserting violations of his constitutional rights. The U.S. District Court granted the defendants' motions for summary judgment on all but three of the claims, and the defendants named in the remaining three claims appealed. The court of appeals, reversing the lower court decision, found that at the time a psychiatrist prescribed a medication to which the inmate claimed to be allergic, it was not clearly established that such conduct constituted a deliberate indifference to the inmate's serious medical needs. It was also found that prison officials could reasonably have believed that the noise and fumes caused by the remodeling of the prison, which the inmate claimed gave him migraine headaches, were not so excessive as to constitute an eighth amendment violation. According to the court, a constitutional guarantee of freedom from cruel and unusual punishment does not protect against mere acts of negligence on the part of prison officials and employees. To be cruel and unusual punishment, conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoner's interests or safety and it is obduracy and wantonness, not inadvertence or error in good faith, that characterize the prohibited conduct. (Missouri Training Center for Men)

U.S. Appeals Court
TRANSFER

Gomez v. Grossheim, 901 F.2d 686 (8th Cir. 1990). A state inmate brought a civil rights action against prison officials alleging that he was transferred from a medical classification center back to a minimum security institution and ultimately to the maximum security unit in retaliation for his refusal to keep a follow-up medical appointment. The U.S. District Court granted summary judgment for the prison officials and the inmate appealed. The appeals court found that evidence did not support the inmate's contention because each transfer was based on understandable prison policy rules and procedures and because further evaluation could not be pursued at the medical classification center. (Riverview Release Center, Newton, Iowa; Iowa Medical Classification Center, Oakdale, Iowa)

U.S. District Court
DELAY OF CARE
PRIVATE
PHYSICIAN

Gomm v. DeLand, 729 F.Supp. 767 (D. Utah 1990). A prisoner filed an action against prison officials alleging that the defendants subjected him to cruel and unusual punishment in violation of the eighth and fourteenth amendments. The district court found that there was no evidence that prison personnel acted with deliberate indifference toward the prisoner's medical problems. The prison warden did not act with deliberate indifference toward the prisoner so as to violate the eighth amendment, in connection with the warden's refusal to allow the prisoner's private physician to perform shoulder surgery. The warden did not have the authority to order surgery for the prisoner. After the prisoner's private physician recommended surgery, the prison's act of obtaining a second opinion, pursuant to prison policy, which resulted in a delay, did not violate the eighth amendment. (Utah State Prison)

U.S. District Court
SMOKE
DELAY OF CARE

Harris v. Murray, 761 F.Supp. 409 (E.D. Va. 1990). An inmate filed an action under a federal civil rights statute, asserting numerous allegations relating to conditions of confinement. On the defendants' motion for summary judgment, the district court found that the dismissal of the inmates various claims was warranted. For example, it noted that, officials at the Virginia prison did not violate the inmate's civil rights in connection with the alleged smoke-filled condition of the visiting room. Officials had taken adequate measures to alleviate the inconvenience of occasional incidents when there were several smokers, and the inmate had not alleged any serious medical problems resulting from the room's condition. The prison officials were not deliberately indifferent to the inmate's need for reading glasses during the ten days he was in administrative segregation, for purposes of a civil rights claim; although an inconvenience, that deprivation did not rise to a level of cruel and unusual punishment. The inmate failed to establish deliberate indifference to his serious medical needs in connection with an allegedly excessive waiting period to see a doctor; delays of seven days on the inmate's request for a routine eye examination and approximately two weeks for treatment concerning hair loss problems were reasonable under the circumstances. (Nottoway Correctional Center, Virginia)

U.S. District Court
ADEQUACY OF CARE
AIDS
COSTS
INTAKE SCREENING
HANDICAPPED
INMATES

Harris v. Thigpen, 727 F.Supp. 1564 (M.D. Ala. 1990), modified, 941 F.2d 1495. Inmates in the Alabama prison system, who were administratively segregated as Acquired Immune Deficiency Syndrome (AIDS) carriers, brought action against prison officials alleging that Alabama's testing of inmates for AIDS upon induction into, and before discharge from, the penal system violated the Constitution. The district court denied the relief requested and found that testing did not constitute an unreasonable search or seizure and did not violate the inmates' privacy rights. According to the court, Alabama's testing of inmates for Acquired Immune Deficiency Syndrome (AIDS) upon induction into, and before discharge from, the state penal system did not constitute either an unreasonable search and seizure or a violation of the inmates' right to privacy. The regulations were reasonably related to prime considerations of penal confinement, safety and security, and there was no alternative method to protect the safety of other inmates and custodian officers and the

security of the institution from the spread of disease. The preponderance of evidence showed no violation of any rights of inmates who were AIDS carriers to medical or psychological or psychiatric care and no deliberate indifference to any serious medical or psychological need in the Alabama prison system. The prison system was not required to make available every drug or treatment that was being hailed as a possible cure for a disease considering the expense of the cure and the fact that Alabama was in a poor financial position to provide treatment. Inmates, who were diagnosed as AIDS carriers, were not "otherwise qualified handicapped individuals" under the Rehabilitation Act and reasonable accommodations would not make inmates otherwise qualified since after reasonable accommodations, significant risk of transmission of the disease would still exist; therefore, conditions and practices to which seropositive prisoners were subjected did not constitute discrimination against them as handicapped individuals in violation of the Rehabilitation Act. On appeal the case was remanded for further consideration. (Alabama Prison)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE
MEDICATION

Johnson v. Hardin County, Ky., 908 F.2d 1280 (6th Cir. 1990). A prisoner brought a suit against an elected county jailer, his first assistant, and the county, as well as other defendants, alleging a deliberate indifference to his serious medical needs. The U.S. District Court entered a judgment on jury verdicts of \$15,000 against the county and \$1,000 each against the jailer and his first assistant and awarded the prisoner \$20,173 in attorney fees and expenses, and the defendants appealed. The Court of Appeals, reversing and remanding, found that a reasonable jury could determine that jail officials were deliberately indifferent to the prisoner's serious medical needs. The county could not be held liable for the jailers' actions, where there was no evidence indicating that the jailer was invested with the authority to make all of the county's medical policy decisions and there was no evidence demonstrating that mistreatment had become custom in the jail tantamount to rule of law. Remand was required on the award of attorneys fees in light of the reversal on the part of the judgment in favor of the prisoner and the district court's failure to explain a reason for applying a multiplier. The evidence was sufficient to support a jury determination that the jailer and the officer who was his chief assistant were deliberately indifferent to the prisoner's medical needs, given the credible testimony that the prisoner was denied a prescribed pain relief medication for leg problems and hairline fracture, denied access to the shower facilities, denied crutches and denied additional bedding to elevate his legs, in spite of his repeated requests and complaints made personally to jailers. The county could not be held liable for the jail officials' deliberate indifference to the prisoner's serious medical needs based on the fact that the doctor visited the prison only one day per week, where the prisoner showed no causal connection between the failure to have a doctor on site and his injuries. The county jail prisoner did not produce enough evidence to demonstrate that his mistreatment was emblematic of mistreatment which had become a custom in the prison tantamount to rule of law, so as to hold the county liable for the jailer's deliberate indifference to his serious medical needs, even though evidence did show that the prisoner was denied proper medical care during his more than three-month recovery from a prison fall. The mistreatment of the prisoner alone was insufficient to establish a custom of mistreatment. (Hardin County Detention Center, Kentucky)

U.S. Appeals Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE

Kelley v. McGinnis, 899 F.2d 612 (7th Cir. 1990). An inmate in a state prison alleged that he suffered from chronic foot problems and that state prison officials and administrators refused to provide him with adequate medical care, thereby inflicting cruel and unusual punishment. The trial court granted the defendants summary judgment on the complaint, and the inmate appealed. The U.S. Court of Appeals found that the complaint alleged facts sufficient to prevail, if they could be proven. His allegation that the medical personnel at the prison clinic refused to let him see a doctor about his foot problems, and that later when he did see a doctor, a cursory examination was done, might show intentional mistreatment. Further, the clinic's purported "repeated, long-term negligence" over a three-year period also might amount to deliberate indifference to his medical needs, despite the fact that negligence alone is not enough to show this, absent such repeated conduct. (Illinois Department of Corrections)

U.S. District Court
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE
PROSTHESES

Kopec v. Coughlin, 767 F.Supp. 463 (S.D.N.Y. 1990). A prisoner appealed from a judgment entered in the district court dismissing a civil rights complaint for failure to state a claim. The court of appeals vacated and remanded. On remand, the district court found that the inmate failed to allege facts sufficient to show that the conduct of physicians and prison officials showed deliberate indifference to his serious medical needs in failing to promptly provide him with a prosthesis, as required to support an actionable Section 1983 claims against physicians and prison officials in their individual capacities. (New York Department of Correctional Services)

U.S. District Court
DELIBERATE
INDIFFERENCE
NEGLIGENCE
TREATMENT
PRIVATE PROVIDER

Lynsky v. City of Boston, 761 F.Supp. 858 (D. Mass. 1990). The administratrix of an inmate's estate brought action against a physician, alleging the physician exhibited deliberate indifference to the inmate's serious medical needs and was grossly negligent in his treatment of the inmate. Adopting a report and recommendation of a U.S. Magistrate, the district court found that the physician's failure to order follow-up diagnostic work to determine whether the prison inmate was suffering from heart disease, while possibly amounting to a departure from good medical practice, was not deliberate indifference amounting to cruel and unusual punishment or violation of due process, despite the physician's knowledge of some of the inmate's medical history, the inmate's complaints of hyperventilation and chest pains, and indications contained in hospital reports and tests. However, genuine issues of material fact existed as to whether the physician's conduct in treating the inmate amounted to gross negligence, precluding summary judgment in favor of the physician on the claim of gross negligence asserted under Massachusetts law on behalf of the estate of the inmate, considering the inmate's obesity and hypertension, his complaints of chest pain and hyperventilation and complaints of other pain, and expert testimony that the physician's failure to order a further diagnostic test to determine whether the inmate was suffering from heart disease was a departure from good medical practice. In addition, genuine issues of material fact existed as to whether the physician who treated the inmate was a public employee or was an independent contractor, precluding summary judgment on the inmate's estate's claim of gross negligence on the basis of qualified immunity, considering the lack of supervision over the physician's decisions regarding the care and treatment of inmate patients, the physician's ability to set his own hours, and the fact that no taxes were withheld from the physician's pay check, that he did not receive health or pension benefits, that he supplied his own malpractice insurance, and that he had other patients. (Deer Island House of Correction, Massachusetts)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
ADEQUACY OF
CARE

Miltier v. Beorn, 896 F.2d 848 (4th Cir. 1990). The administratrix of the estate of a prison inmate brought action against doctors, nurses, wardens and prison administrators asserting an eighth amendment violation in deliberate indifference to serious medical needs. The U.S. District Court dismissed the civil rights claim. On appeal, the court of appeals, affirming in part, reversing in part, and remanding, found that there were issues of fact precluding summary judgment on claims of deliberate indifference on the part of the prison physicians and nurses with respect to the medical needs of the inmate who had complained of chest pains and other symptoms and who later died of a heart attack. The wardens, who had insured that the inmate received medical treatment, were not liable. Deliberate indifference by prison personnel to an inmate's serious illness or injury is actionable under the civil rights statute as constituting cruel and unusual punishment contravening the eighth amendment. Deliberate indifference may be demonstrated by either actual intent or reckless disregard, but the treatment must be so grossly incompetent, inadequate or excessive as to shock the conscience or be intolerable to fundamental fairness. (Virginia Correctional Center for Women)

U.S. District Court
ADEQUACY OF
CARE
DELIBERATE
INDIFFERENCE
WORK
ASSIGNMENT

Morin v. Department of Corrections, 727 F.Supp. 699 (D. Me. 1990). A prisoner brought a federal civil rights action against a correctional facility's nurse and assistant director, alleging deliberate indifference to his medical needs. The plaintiff alleged that he injured his back while incarcerated at a pre-release center, and that upon his return to the correctional facility he was not provided adequate medical attention and was forced to work at a job which exacerbated his injury. The defendants filed a motion for summary judgment, and the district court found that the nurse was not deliberately indifferent to the prisoner's medical needs in violation of the eighth amendment's proscription of cruel and unusual punishment where the nurse heard the prisoner's complaint of back injury, relayed the complaint to the physician, relayed the physician's physical restrictions to the prisoner, and referred the prisoner to the physician when the prisoner again complained a few weeks later. The court also found that the assistant director was not deliberately indifferent to the prisoner's medical needs, even though he assigned the prisoner to work in the woods after the prisoner sustained the back injury, where the prisoner had requested his assignment to the wood harvesting crew, and the assistant director had taken the prisoner's medical restrictions into account. (Charleston Correctional Facility, Maine)

U.S. District Court
ADEQUACY OF CARE
DELAY OF CARE
DELIBERATE
INDIFFERENCE

Mowrey v. Romero, 749 F.Supp. 1097 (M.D. Fla. 1990). A Florida inmate filed a civil rights complaint against emergency room doctors, alleging cruel and unusual punishment, and the doctors filed a motion to dismiss. The U.S. District Court found that the doctors had not been deliberately indifferent to the prisoner's serious medical need arising out of a fractured jaw, even though there was a four-day delay in admitting the prisoner to an outside hospital for surgery. According to the court, the plaintiff admitted that he was given immediate medical attention and conceded he was transferred to the Reception and Medical Center that same afternoon and was given additional x-rays and antibiotics. He

was examined a day later by a second doctor in the prison's Emergency Room. Two days after the second examination, a dentist examined the plaintiff and took more x-rays. The plaintiff was merely dissatisfied that the defendants administered medication, examined him, and took x-rays, but did not immobilize the jaw, set the jaw, and admit him to an outside hospital immediately for surgery. (Apalachee Correctional Institution, Florida)

U.S. Appeals Court
X-RAY

Nitcher v. Cline, 899 F.2d 1543 (8th Cir. 1990). An inmate brought in forma pauperis a civil rights complaint against prison officials arising out of the x-ray search of his abdomen. On remand from the court of appeals, the U.S. District Court adopted the magistrate's recommendation to dismiss the complaint as frivolous, and the inmate appealed. The appeals court found that the inmate stated a cognizable claim under the eighth and fourth amendments sufficient to preclude the dismissal of the complaint as frivolous prior to service of process. A reasonable suspicion that the inmate is secreting contraband must support an involuntary x-ray search, and prison officials must also prove that less invasive means cannot detect contraband. The inmate alleged that the x-ray search of his abdomen was ordered without any medical reason, that officials failed to take his medical history, to get a doctor's order for x-ray, to have medical personnel perform or at least be present during x-ray, and that exposure to radiation could cause damage. The intentional, involuntary exposure of an inmate to a known risk of a significant health hazard can violate the eighth amendment. (Missouri State Penitentiary)

U.S. Appeals Court
MEDICATION

O'Loughlin v. Doe, 920 F.2d 614 (9th Cir. 1990). An inmate attempted to file a pro se civil rights complaint in forma pauperis, alleging disregard by prison officials of a request for medication and prison overcrowding. The U.S. District Court denied the inmate leave to file his complaint in forma pauperis, and required the inmate to follow special procedures in any future attempts to proceed in that status, and the inmate appealed. The court of appeals found that the trial court did not abuse its discretion in denying the inmate in forma pauperis status in light of the inmate's prior filings seeking that status and a facially frivolous medical deprivation claim the inmate was attempting to assert. The inmate was alleging that the defendants had exhibited deliberate indifference by repeatedly failing to satisfy his request for aspirins and antacids. (Washington State Prison)

U.S. Appeals Court
ADEQUACY OF CARE
FAILURE TO
PROVIDE CARE

Pedraza v. Meyer, 919 F.2d 317 (5th Cir. 1990). An inmate at a county jail appealed an order of the U.S. District Court dismissing his pro se civil rights action. The court of appeals found that the allegation in the inmate's action, that jail officials failed to give him medical attention for his withdrawal symptoms while he was being held as a pretrial detainee, was sufficient to state an Eighth Amendment inadequate medical attention claim, where the allegation was not contradicted by a portion of the official prison medical records. (Victoria County Jail, Texas)

U.S. District Court
MEDICATION
MENTAL HEALTH
TRANSSEXUAL

Phillips v. Michigan Dept. of Corrections, 731 F.Supp. 792 (W.D. Mich. 1990). An alleged transsexual inmate brought an action against the Department of Corrections and prison officials under Section 1983, seeking an opportunity to continue estrogen treatment. On the inmate's motion for preliminary injunction, the district court found that the inmate suffered from a "serious medical need" within the meaning of the eighth amendment prohibition against cruel and unusual punishment, whether proper diagnosis of the inmate's condition was transsexualism or gender identity disorder of adolescence or adulthood, nontranssexual type, and the inmate was entitled to a preliminary injunction ordering the correctional officials to provide her with estrogen therapy. The institution had denied the inmate medical care through intentional conduct and deliberate indifference, the court ruled. The inmate had been the subject of ridicule and offensive remarks at the hands of the prison physician, and the conduct of the prison officials actually reversed the therapeutic effects of the previous treatment. Psychological disorders of prison inmates may constitute a "serious medical need" within the meaning of the eighth amendment prohibition against cruel and unusual punishment. Thus, the general principles and standards of the eighth amendment apply to the provision of mental health care. (Riverside Correctional Facility, Michigan)

U.S. District Court
AIDS

Portee v. Tollison, 753 F.Supp. 184 (D.S.C. 1990), affirmed, 929 F.2d 694. State prisoners filed a civil rights action against the South Carolina Department of Corrections and individual defendants, claiming that a prison policy did not adequately protect them from the risk of the Acquired Immune Deficiency Syndrome (AIDS) virus. The defendants moved for summary judgment. The U.S. District Court found that the Department of Corrections practices and policies governing the admission of prisoners and handling of prisoners with AIDS did not violate the Eighth Amendment prohibition against cruel and unusual punishment. The court found that prisoners who "follow the rules" are "not in significant danger" of contracting AIDS, and the decisions to not test all inmates and to integrate HIV-carriers into the general population were therefore not "deliberate indifference" to other inmates' serious medical needs. (Central Correctional Institution, Columbia, South Carolina)

U.S. Appeals Court
ASBESTOS
EXPOSURE
DELIBERATE
INDIFFERENCE

Powell v. Lennon, 914 F.2d 1459 (11th Cir. 1990). A federal inmate who was exposed to asbestos in a prison dormitory, and whose requests for a transfer to a dormitory without asbestos were refused, brought an action against correctional officials alleging intentional and negligent failure to warn of danger and provide adequate safety procedures, failure to comply with Clean Air Act, and violation of the inmate's constitutional rights under color of law. The U.S. District Court dismissed the inmate's complaint, and he appealed. The court of appeals found that the inmate's claim that he was forcibly exposed to asbestos sufficiently alleged a violation of the Eighth Amendment. According to the court, the inmate alleged that correctional officials forced him to remain in a dormitory when the atmosphere was filled with friable asbestos while knowing of the health danger and, even if the prison authorities merely acted negligently, their refusal to remove the inmate from the dormitory after being notified of the danger could constitute deliberate indifference to the inmate's serious medical needs. The federal corrections officials were not entitled to qualified immunity as the inmate informed the prison officials that exposure to friable asbestos threatened his life and health, and his demand to be placed in an asbestos-free environment constituted a serious medical need such that ignoring the inmate's request constituted deliberate indifference, even though the request to be placed in an asbestos-free environment was a request for preventive treatment. (Tallahassee Federal Correctional Institute, Florida)

U.S. District Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE
EMERGENCY CARE
FACILITIES

Redding v. Marsh, 750 F.Supp. 473 (E.D. Okl. 1990). A guardian brought a civil rights action on behalf of a former inmate against a prison physician, a hospital, and a hospital physician for alleged failure to provide the inmate with appropriate and timely medical treatment in violation of his Eighth Amendment rights, and asserted pendent state claims of negligence against physicians. The defendants filed motions to dismiss and for summary judgment. The district court found that the guardian for the former inmate failed to show that the treatment received by the inmate after being struck in the head by a softball was "deliberately indifferent" to the inmate's medical needs in violation of his Eighth Amendment rights. The inmate was taken to the prison medical center without undue delay where he was evaluated and cared for by both the nursing staff and a physician's assistant. The prison physician, who was consulted by telephone, took the cautionary and diagnostic step of referring the inmate to a local hospital for x-rays, and the inmate was cared for and treated by the hospital staff and a physician who made arrangements to transfer the inmate to a facility with neurosurgical capabilities after discovering by way of x-rays that the inmate had a skull fracture. In addition, the medical officials' decision to transfer the inmate to a certain hospital as opposed to a closer hospital with neurosurgical capabilities did not show that medical officials had been "deliberately indifferent" to the inmate's serious medical needs in violation of his Eighth Amendment rights, even though the inmate alleged that the decision was based upon his status as an inmate. (Jackie Brannon Correctional Center, McAlester, Oklahoma)

U.S. Appeals Court
DELAY OF CARE
DELIBERATE
INDIFFERENCE

Reed v. Dunham, 893 F.2d 285 (10th Cir. 1990). Inmates appealed from an order of the U.S. District Court dismissing their civil rights action against prison officials. Two inmates sued a number of correctional officials and officers for federal civil rights violations arising out of an assault on them by other inmates. One of them was evidently restrained at knifepoint while the other was stabbed four times. The appeals court, affirming in part, vacating and remanding in part, found that the inmates' allegation that a corrections officer failed to come to their aid during a prison altercation was not sufficient to state a civil rights claim, but the inmate's allegation that prison staff delayed for nearly two hours in providing him with medical attention after he was stabbed by another inmate was sufficient to state a claim against prison officials for a deliberate indifference to serious medical needs. The correctional center staff waited approximately one hour to transport him to a local medical facility, where he was not treated for forty-five minutes. The "credible allegation of an as yet inadequately explained delay of nearly two hours in the provision of full medical treatment for apparently serious stab wounds is clearly not frivolous," and was allowed to proceed. (Stringtown Correctional Center, Oklahoma)

U.S. District Court
ALCOHOL/DRUGS
DELIBERATE
INDIFFERENCE
42 U.S.C.A.
SECTION 1983

Simmons v. City of Philadelphia, 728 F.Supp. 352 (E.D. Pa. 1990). A civil rights and negligence action was brought against the city and attending officer by the estate of an intoxicated detainee who committed suicide. On the defendants' motions for posttrial relief, following the jury verdict in favor of the estate, the district court denied the relief, finding that the evidence was sufficient to support a finding that the city violated the detainee's civil rights; the jury verdict was not inconsistent. The city waived its governmental immunity. It was also found that a postsuicide photograph of the detainee was admissible. The finding that the city was deliberately indifferent to serious medical needs of an intoxicated detainee, and thus liable under Section 1983 when the detainee committed suicide, was sufficiently supported by evidence that the detainee was at a high risk to commit suicide, that his

suicide was foreseeable and preventable, that the attending officer had no training in suicide prevention, and that the police department had been informed of alternative arrangements it could have made which would have reduced the risk of the detainee's suicide. (City's Sixth Police District, Pennsylvania)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE
42 U.S.C.A.
SECTION 1983
INTAKE
SCREENING

Simpson v. Hines, 903 F.2d 400 (5th Cir. 1990). A prisoner's survivors brought a Section 1983 action against police officers to recover for the death of a prisoner from alleged use of excessive force and lack of medical care. The officers moved for summary judgment on the basis of qualified immunity. The U.S. District Court denied the motion, and the officers appealed. The court of appeals, affirming in part, reversing in part, and dismissing in part, found that the officers who had entered the cell were not entitled to qualified immunity. The police officers were not entitled to qualified immunity in the 1983 action to recover for the death of the prisoner from asphyxia after being searched and subdued, even though no evidence indicated that each officer's actions caused severe injuries. The captain admitted placing the prisoner in a neck hold and exerting sufficient pressure to subdue him, another officer sat on the prisoner, a tape recording allegedly indicated the prisoner's screams and repeated cries for mercy and contained statements from which the trier-of-fact could infer malice, and the officers discussed beforehand how to handle the situation and functioned as a unit once inside the cell. The officers knew that the prisoner heavily exerted himself and was "strung out" on drugs, and the tape recording indicated that the officers paid scant attention to the prisoner's physical condition during the approximately five minutes between the lapse into silence and the officers' exit from the cell. (Cleveland City Jail, Texas)

U.S. Appeals Court
MEDICATION

Smith v. Jenkins, 919 F.2d 90 (8th Cir. 1990). An inmate brought an action under Section 1983 against a psychiatrist for the Arkansas Department of Correction, claiming the psychiatrist denied him necessary medical treatment for his mental illness. The U.S. District Court entered summary judgment for the psychiatrist and the inmate appealed. The court of appeals, reversing and remanding, found that fact issues precluded summary judgment on the inmate's claim alleging that the psychiatrist had deprived him of legally necessary medication in violation of the Eighth Amendment. The court noted that neither the magistrate nor the district court reviewed any of the inmate's medical records, the record contained virtually no evidence of an appropriate standard of care, and the record failed to disclose whether the psychiatrist was qualified to diagnose and treat mental illness. (Cummins Unit, Arkansas Department of Corrections)

U.S. District Court
ADEQUACY OF
CARE
DELIBERATE
INDIFFERENCE
SPECIAL DIETS

Stroud v. Roth, 741 F.Supp. 559 (E.D. Pa. 1990). An inmate brought an action against prison officials alleging that he was denied his right to free exercise of his Islamic faith while being held in administrative segregation and that his medical treatment and diet for stomach problems were inadequate. It was also found by the court that the inmate received on-going medical attention and treatment for his stomach problems that did not amount to deliberate indifference to his serious medical needs. The inmate received doctor's care for his stomach problems nearly every month he spent at the prison. He was provided medication and a bland diet according to doctor's orders and was given vegetarian meals when his stomach problems did not sufficiently respond. There was no evidence that the inmate's digestive troubles and dietary needs were ignored, or his prescribed treatment thwarted, by prison officials. The inmate received ongoing medical attention and treatment and, at most, his claims of inadequate treatment sounded in tort. (Montgomery County Correctional Facility, Pennsylvania)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
PRIVATE PROVIDER

Toombs v. Bell, 915 F.2d 345 (8th Cir. 1990). An inmate at an Arkansas correctional facility filed a pro se complaint, asserting a claim under a federal civil rights statute for lack of medical treatment he received during his incarceration. The U.S. District Court dismissed the complaint, and the inmate appealed. The court of appeals appointed counsel and reversed and remanded with instructions to permit the inmate to amend the pleadings and develop a claim. On remand, the district court directed a verdict for the defendants on the civil rights claim, declined to instruct the jury on breach of contract claim or on punitive damages, and granted summary judgment for a medical technician notwithstanding the jury's damages award against him, and the inmate appealed. The court of appeals found that although the prison warden and state correctional officials could not relieve themselves of the duty to provide adequate medical treatment to those in custody by contracting the provision of inmate health care to a private organization, there was no evidence of any Board of Corrections policy of deliberate indifference to the inmate's medical needs, and, thus, the effective directed verdict on the civil rights claims in favor of those defendants was proper. In addition, the district court did not abuse its discretion in excluding a report prepared by the Institute for Law and Policy Planning as part of an audit conducted at the request of the Board of Corrections to evaluate the private health care provider's compliance with its contractual obligations regarding care of inmates. Although those findings reflected a failure of performance, they did not tend to show a policy of deliberate indifference to the serious medical needs of the plaintiff or

other inmates. However, a jury could award damages against the medical technician employed by the private health care provider at the prison for negligent care of the inmate, based on the inmate's testimony that the technician failed to examine him notwithstanding his complaints of pain, swelling and fever, and the jury could find the technician's contrary testimony incredible, in light of a supervisor's report characterizing the technician's performance as "apathetic, litesome, and lazy" and concluding that the technician should be dismissed immediately. (Cummins Unit, Arkansas Department of Corrections)

U.S. District Court
DELAY OF CARE
ADEQUACY OF CARE

Tucker v. Quinlan, 748 F.Supp. 32 (U.S.D.C. 1990). An inmate brought an action against prison officials claiming a violation of his Eighth Amendment right to adequate medical care. The U.S. District Court found that despite the inmate's personal opinion that his knee required surgery, the inmate's complaint and attached exhibits indicating that doctors had examined his knee precluded a finding of deliberate indifference towards his condition. The plaintiff's personal opinion was insufficient to support an Eighth Amendment claim; during the period he claims treatment was delayed, prison medical personnel, including at least three doctors, examined his knee. The plaintiff also received physical therapy which improved his condition "considerably." (Federal Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
MEDICATION

U.S. v. Watson, 893 F.2d 970 (8th Cir. 1990), cert. denied, 110 S.Ct. 3243. A prisoner brought an action challenging the right of prison officials to forcibly administer psychotropic drugs. The U.S. District Court denied relief, and the inmates appealed. The appeals court, affirming in part and reversing in part, found that the prisoners have a liberty interest in being free from psychotropic medication. Psychotropic medication may be administered only when prison officials believe that such medication is required to control the prisoner in the general prison population; and the fact that medication might improve the prisoner's condition to enable him to be released was an insufficient basis for forcibly administering psychotropic drugs. Psychotropic drugs may be constitutionally administered to a mentally ill federal prisoner whenever, in the exercise of professional judgment, the action is deemed necessary to remove the prisoner from seclusion and to prevent the prisoner from endangering himself or others; once that determination had been made, professional judgment must be exercised in the resulting decision to administer medication. (Missouri Federal Prison)

U.S. Appeals Court
ADEQUACY OF
CARE

Wesson v. Oglesby, 910 F.2d 278 (5th Cir. 1990). An inmate brought a civil rights action against state prison officers, alleging excessive use of force and denial of medical treatment. The U.S. District Court dismissed the action as frivolous, and the inmate appealed. The appeals court, affirming the decision, found that the district court's findings were based on improper credibility determinations, but the inmate's allegations were insufficient to state a claim. The inmate's allegations concerning medical treatment he received for wrist injuries he allegedly suffered as a result of a state prison officers' conduct was insufficient to state a claim against the officers for deliberate indifference to serious medical needs. The inmate was taken to the prison infirmary after he injured his wrists and was told by the nurse that his wrists would be "all right." The inmate's alleged injuries, swollen wrists with some bleeding, did not constitute a "serious medical need" such that any minor delay caused by the state prison officers in delivering the inmate to the care of medical personnel could be construed as "deliberate indifference." (Texas Department of Corrections)

U.S. Appeals Court
ADEQUACY OF
CARE
RIGHT TO REFUSE
INFORMED
CONSENT

White v. Napoleon, 897 F.2d 103 (3rd Cir. 1990). Prisoners brought an action against a prison physician alleging improper treatment. The complaint was dismissed by the U.S. District Court and the prisoners appealed. The appeals court, reversing in part and affirming in part, found that the complaint was sufficient to state a violation of the eighth amendment based on the allegations that the doctor intended to inflict pain on the prisoners without medical justification and in light of a large number of allegations of specific instances in which the doctor allegedly insisted on continuing courses of treatment that the doctor knew were painful, ineffective or entailed a substantial risk of harm to prisoners. These included the burning of a prisoner who complained he could not feel anything in his hands, refusing to prescribe medication to reduce the risk of a peptic ulcer caused by other medication, and refusing the hospitalization of a prisoner following a heart attack. The court also found that convicted prisoners retain a limited right to refuse treatment and a related right to be informed of the proposed treatment and viable alternatives. An allegation that the doctor refused to answer a question of a prisoner who was allergic to penicillin as to whether the proposed treatment contained penicillin, and filed disciplinary charges against the prisoner when the prisoner refused treatment, stated a cause of action under the fourteenth amendment. (New Jersey Prison System)

U.S. District Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE
RECORDS

Williams v. U.S., 747 F.Supp. 967 (S.D. N.Y. 1990). A former prisoner brought suit under the Federal Tort Claims Act seeking damages for a below-the-knee amputation of his right leg. The U.S. District Court found that the medical staff at the federal prison seriously departed from and breached basic standards of care owed to the diabetic prisoner in the diagnosis and treatment of a foot infection, which culminated in gangrene necessitating the amputation. The medical staff failed to provide appropriate testing, clinical examinations and diagnostic modalities consistent with a diabetic condition, failed to provide the prisoner with proper treatment for a possible foot infection, and failed to furnish a hospital with the prisoner's medical chart or a summary thereof when the prisoner had a spreading E. Coli infection and was transferred for intravenous antibiotic therapy. The court also found that the fifty-two-year-old former prisoner was entitled to an award of \$500,000 for his pain and suffering. (Federal Correctional Institution, Otisville, New York)

U.S. District Court
ADEQUACY OF
CARE
AIDS
DELAY IN
TREATMENT
42 U.S.C.A.
SECTION 1983

Wilson v. Franceschi, 735 F.Supp. 395 (M.D. Fla. 1990). An inmate brought a pro se action under Section 1983 against the physician at a correctional institution and the correctional institution's chief classification specialist, arising from the alleged denial of medical care. The district court found that the physician was qualifiedly immune from the suit in connection with the inmate's claim that the delay in receiving the drug zidovudine (AZT) for the treatment of the inmate's early acquired immune deficiency syndrome (AIDS) related complex (ARC) symptoms constituted cruel and unusual punishment. At the time, the efficacy of treating early ARC patients with AZT was not known. The chief classification specialist at the correctional institution was not responsible for medical transfers and, thus, was immune from action by the inmate alleging that the delay in transferring him to a facility for the treatment of his early acquired immune deficiency syndrome (AIDS)-related complex symptoms constituted cruel and unusual punishment under the eighth amendment. The inmate's itching does not constitute a "serious medical need" such that the failure to treat it constitutes cruel and unusual punishment within the meaning of the eighth amendment. (Florida Department of Corrections)

U.S. Appeals Court
ADEQUACY OF
CARE
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE

Wood v. Housewright, 900 F.2d 1332 (9th Cir. 1990). An inmate brought a civil rights action against prison officials alleging deliberate indifference to his medical needs and denial of meaningful access to the courts. The U.S. District Court ruled in favor of the prison officials, and the inmate appealed. The appeals court, affirming the lower court decision, found that the conduct of the officials did not constitute deliberate indifference to medical treatment, and the inmate was not denied access to the courts. The conduct of the prison officials in failing to provide the inmate's medical records when he arrived at the state prison, causing confiscation of the defendant's sling which had been prescribed to immobilize the defendant's injured arm and prevent pins from coming dislodged, did not amount to deliberate indifference to the inmate's medical needs, in violation of the eighth amendment. A several day delay in the treatment of the inmate did not violate the eighth amendment. The inmate's condition did not require emergency attention, and the delay did not substantially harm the inmate's treatment considering that the only remedy immediately available was a prescription for pain killers. (Nevada State Prison)

U.S. District Court
ADEQUACY OF
CARE
DENIAL OF CARE
HANDICAP

Yarbaugh v. Roach, 736 F.Supp. 318 (D.D.C. 1990). An inmate sought a preliminary injunction directing prison officials to immediately provide him with appropriate medical care. The district court found that the inmate, who suffered from multiple sclerosis, was entitled to a preliminary injunction because the inmate established a likelihood of prevailing on merits of claim. Accordingly, he was entitled to a preliminary injunction requiring prison officials to make immediate arrangements to provide him with suitable medical treatment, including all necessary physical therapy and assistance in bathing and transferring from his bed to his wheelchair and vice versa. The prison officials had not examined the inmate to establish an appropriate plan to provide adequate medical services, he had not received physical therapy on a regular basis and had had neither a bath nor shower in months, although he had requested assistance from the jail infirmary staff. (Detention Facility Infirmary, District of Columbia)

1991

U.S. District Court
DELIBERATE
INDIFFERENCE
DELAY IN
TREATMENT

Andrews v. Glenn, 768 F.Supp. 668 (C.D. Ill. 1991). An inmate brought an action under Section 1983, alleging that Department of Corrections employees had violated his Eighth Amendment rights. The district court found that the delay in treating the inmate's infected toes was not cruel and unusual punishment. The prisoner was denied treatment for the two infected toes on the first day he appeared at a prison's health care unit because he arrived late for sick call. The next day, after waiting to be seen, he created a disturbance and left on his own volition without being seen by a nurse. On the third day he was seen by a nurse. He also claimed that he did not receive proper care because the nurse refused to wash his feet for him. The inmate was seen by a doctor

seven days after he first appeared at sick call and received treatment. To state a claim for the deprivation of medical care, a prisoner must allege "deliberate indifference to serious medical needs." In applying the test, the court is to consider such factors as the severity of the medical problem, whether the potential for harm if medical care is denied or delayed is substantial, and whether such harm actually resulted from the lack of medical attention. The inmate's infected toes presented no substantial potential for harm if not promptly treated, and no serious harm was suffered. (Logan Correctional Center, Illinois)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE
DELIBERATE
INDIFFERENCE
42 U.S.C.A.
Section 1983

Bailey v. Gardebring, 940 F.2d 1150 (8th Cir. 1991), cert. denied, 112 S.Ct. 1516. An inmate, convicted for kidnapping, sexually abusing and murdering a 13-year-old girl, brought a federal habeas corpus petition as well as civil rights claims under Section 1983 challenging his civil commitment as a psychopathic personality and his transfer from a security hospital to a prison. Various treatment programs are available there, though none specifically geared to sexual offenders. The U.S. District Court granted summary judgment to the defendants on the civil rights claim, and the inmate appealed. There is no evidence of the existence of any cure or even of any generally accepted method of treatment for sexual psychopaths like the inmate. Hence, the appeals court found that the failure of the prison administrators to provide the inmate with the precisely tailored psychiatric treatment he sought could not fairly be described as "deliberate indifference." (Minnesota Correctional Facility, Minnesota)

U.S. District Court
RECORDS- ACCESS

Benavides v. Bureau of Prisons, 771 F.Supp. 426 (D. D.C. 1991). An inmate sought the release of medical records compiled by the Bureau of Prisons. The district court found that the Bureau regulations giving the inmate's treating physician the responsibility to determine which records the inmate may have access to, was inconsistent with requirements of the Privacy Act. The intention of the Act is to enable "any individual to gain access to his (government) record or to any [government-maintained] information pertaining to him." The Act specifically requires agencies to produce medical records. It permits agencies to devise "special procedures" for disclosure of medical records, but the purpose of such procedures must be to protect the individual's privacy from intrusion by others, not to withhold records from the person who is himself the subject of the records. (Federal Correctional Institute, Bastrop, Texas)

U.S. Appeals Court
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE

Boretti v. Wiscomb, 930 F.2d 1150 (6th Cir. 1991). An inmate brought an eighth amendment action against a prison nurse. The U.S. District Court granted summary judgment for the nurse, and appeal was taken. The appeals court found that issue of material fact as to whether the nurse wantonly interrupted a prescribed plan of treatment for the inmate who had recently had surgery for a gunshot wound precluded summary judgment for the nurse. The prison nurse was not entitled to qualified immunity in the action. Allegations that the prison nurse refused to treat the inmate's surgical wound for five days or provide dressings or pain medication were sufficient to state an Eighth Amendment cause of action for deliberate indifference to serious medical needs, even though the wound did not become infected and eventually healed. (Oakland County Jail, Pontiac, Michigan)

U.S. District Court
INVOLUNTARY
MEDICATION
MENTAL HEALTH

Breads v. Moehrle, 781 F.Supp. 953 (W.D.N.Y. 1991). A prison inmate filed an action against a prison official alleging that antipsychotic drugs were administered to him against his will in violation of his Eighth Amendment right to be free from cruel and unusual punishment and his due process rights. The inmate and the official filed motions for summary judgment. The U.S. District Court denied the motions, finding that the question of whether the inmate did indeed suffer from a serious mental illness, and if it existed was likely to cause harm if not treated precluded summary judgment. There was also a question of whether procedures existed to ensure that the administration of drugs against an inmate's will would not be erroneous, and whether the official had personal knowledge of the procedures used to administer drugs against an inmate will. (Erie County Correctional Facility, New York)

U.S. District Court
ADEQUACY OF CARE
DELAY OF CARE
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE

Brown v. Coughlin, 758 F.Supp. 876 (S.D.N.Y. 1991). An inmate brought a Section 1983 action against various state and local officials, alleging deliberate indifference to his serious medical needs. On defendants' motion to dismiss, the district court found that issue of material fact as to whether state and local officials were deliberately indifferent to the inmate's serious medical needs, in violation of his constitutional right to be free from cruel and unusual punishment, precluded summary judgment for the officials. It was alleged that amputation of the inmate's leg, after a broken bone had become infected, was necessitated by repeated instances of denied treatment, excessively delayed care, incorrect medications, and noncompliance with medical orders. Even one isolated failure to provide medical treatment to a prisoner, without more, while ordinarily not actionable, may in fact rise to the level of constitutional violation if the surrounding circumstances suggest a degree of deliberateness, rather than inadvertence, in the failure to render meaningful treatment. (Downstate Correctional Facility, New York)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE

Brownell v. Figel, 950 F.2d 1285 (7th Cir. 1991). A drunk driving arrestee who suffered a paralyzing spinal injury brought a Section 1983 action against the arresting officers, alleging denial of adequate medical care. The U.S. District Court granted summary judgment for the defendants, and appeal was taken. The appeals court, affirming the decision, found that the officers did not intentionally, recklessly, or with deliberate indifference withhold medical care from the arrestee, for purpose of imposing Section 1983 liability. Although the officers did not take the arrestee back to the hospital for another medical examination after the arrestee stopped moving his arms and legs, the officers could have interpreted his statement that his arms and legs would not move, his unresponsiveness to pain techniques and mace, and his general inactivity as a result of heavy intoxication rather than as a sign of injury requiring another medical examination. (Allen County, Indiana)

U.S. Appeals Court
ABORTION
ADEQUACY OF CARE
DELAY OF CARE
FEMALE PRISONER

Bryant v. Maffucci, 923 F.2d 979 (2nd Cir. 1991), cert. denied, 112 S.Ct. 152. An inmate brought a Section 1983 action against several officials to recover for the inability to obtain an abortion in the 24th week of her pregnancy. The U.S. District Court granted the defendants' motion for summary judgment, and the inmate appealed. The appeals court found that the prisoner failed to establish that the delay in scheduling the abortion was a result of anything more than mere negligence on the part of the prison authorities. She was given a sonogram within one day of her arrival at the Correctional Facility, and once the request for an abortion was received, it was scheduled immediately at a time believed to be the earliest available date. The court also found that the prison's policy for dealing with inmates' abortion requests was constitutional. The Correctional Facility's procedures for an inmate's abortion requests were not deliberately indifferent to the privacy right of this inmate, who was unable to obtain an abortion when gestation was determined for a second time, was increased, and was set at 24 weeks; there was no evidence of any similar incident at the facility, and it appeared from uncontested facts that normal procedure guaranteed female inmates at the facility their right to choose to terminate their pregnancies. (Westchester Correctional Facility, Womens' Division)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE

Colburn v. Upper Darby Tp., 946 F.2d 1017 (3rd Cir. 1991). The administratrix of the estate of a pretrial detainee who committed suicide in jail brought a civil rights action against the township and police officials. The U.S. District Court dismissed the complaint and the court of appeals affirmed in part, reversed and remanded in part. On remand, the district court granted summary judgment in favor of the defendants and the plaintiff appealed. The court of appeals found that the municipality was not liable for the suicide of the pretrial detainee. Two components of the concept of serious medical needs of prisoners, as to which deliberate indifference by prison officials violates the Eighth Amendment's proscription of cruel and unusual punishment, are that the detainee's condition must be such that failure to treat can be expected to lead to substantial and unnecessary suffering, injury or death, and that the condition be one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention. (Upper Darby Township Police Department, Pennsylvania)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE

Davis v. Jones, 936 F.2d 971 (7th Cir. 1991). A pretrial detainee who suffered a scraped elbow and a one-inch cut in his temple during the course of an arrest brought a civil rights action against police. The U.S. District Court found that by not immediately taking the detainee to a hospital or offering him the option of going to a hospital, the police violated the detainee's due process rights, and appeal was taken. The court of appeals found that police must offer medical care to a pretrial detainee if there is reason to suspect that an injury to the detainee is serious, but because an objectively reasonable officer would not have thought that the detainee's injuries were serious, failure to offer medical care was not improper. (Calumet Park Police, Illinois)

U.S. Appeals Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE

DesRosiers v. Moran, 949 F.2d 15 (1st Cir. 1991). An inmate brought a civil rights action against state prison officials, alleging an Eighth Amendment violation. The U.S. District Court entered judgment for the defendants, and the inmate appealed. The court of appeals found that the inmate failed to show that the defendants withheld essential health care. The failure to have a nurse change the inmate's bandages three times per day after the inmate's surgery did not violate a consent decree requiring prison officials to provide access to medical facilities, even if coupled with some curtailment of shower access; testimony showed that the inmate changed his own bandages on many occasions and there was no basis to infer that the defendants knew that an infection would occur as a result of lessened shower time. The defendant was not entitled to appointed counsel as the inmate was never found to be financially eligible, and the case involved readily mastered facts and straightforward law. (Adult Correctional Institutions, Cranston, Rhode Island)

State Court
ADEQUACY OF CARE

District of Columbia v. Anderson, 597 A.2d 1295 (D.C. App. 1991). A prisoner sued the District of Columbia and a prison podiatrist, alleging that the loss of both his legs was a result of their negligence, as the inmate, who was diagnosed as having diabetes, had experienced numbness and tingling in his left calf and great toe, and a referral to a

hospital for vascular testing was ordered, but the testing was never done. The prison podiatrist later cut the fifth toe of the prisoner's left foot when trimming his toenails. The prisoner was given an antiseptic ointment to apply to the wound, but before he was transferred to another correctional facility the next day, his diabetes medicine and the ointment was taken from him. The condition of his foot and leg worsened and his left leg was amputated at the knee. After his release, he experienced problems with his right leg, which was then also amputated below the knee. The trial judge ruled that the jury would be limited to considering whether the District was liable for the loss of the left leg. The jury found for the prisoner and awarded him \$950,000 in damages, after which both sides appealed. The appeals court found that the evidence was sufficient to show a causal connection between the denial of the prisoner's diabetes medication and the onset of gangrene in his injured foot, resulting in the need for its amputation. The court ordered a new trial on damages because an expert witness at trial, on the subject of what earnings the inmate lost, testified on the basis of an assumption that the defendants would be found liable for the loss of both of the prisoner's legs. The prison was not liable for the second leg because the inmate delayed seeking medical care for several months after his release, despite warnings from a physician that he risked losing his right leg if he did not do so. (District of Columbia)

U.S. District Court
MISDIAGNOSIS

Fenner v. Moran, 772 F.Supp. 59 (D. R.I. 1991). A prisoner brought a civil rights action seeking declaratory judgment that prison officials and medical staff members violated his Eighth and Fourteenth Amendment rights and monetary damages in both their official and individual capacities. The defendants moved to dismiss for failure to state a claim upon which relief could be granted. The district court found that the incorrect diagnosis that the prisoner had leukemia, was not cruel and unusual punishment and the prisoner's due process rights were not violated by the misdiagnosis. The allegations that three correctional officers hit the prisoner in his rib and groin area before transporting him to high security for further detention, if proven true, could demonstrate "reckless or callous" indifference to the prisoner's constitutional right to be free from cruel and unusual punishment; thus, the allegations stated a Section 1983 civil rights action. (Adult Correction Institute, Cranston, Rhode Island)

U.S. District Court
DELIBERATE
INDIFFERENCE

Friends v. Moore, 776 F.Supp. 1382 (E.D. Mo. 1991). An inmate brought a Section 1983 action against various prison officials. The district court found that the prison officials did not use excessive force against the inmate when a movement team entered his cell to strip him in light of the security risk present in the prison at the time and the fact that the defendant's only injury appeared to be a bloody nose which easily could have occurred during a scuffle with guards in attempting to place the inmate in restraints. The inmate also failed to show that prison officials were deliberately indifferent to his serious medical needs and thus failed to sustain a claim for denial of medical care; a nurse examined the inmate for injuries while the movement team which was subduing him was still in the cell, and she returned later that evening and examined the inmate again. She concluded that the bloody nose the inmate suffered resulted in no respiratory problems, and no other injuries were found. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
ABORTION
DELIBERATE
INDIFFERENCE

Gibson v. Matthews, 926 F.2d 532 (6th Cir. 1991). A prisoner brought a civil rights suit alleging that prison officials violated her constitutional rights in not enabling her to have an abortion. The U.S. District Court granted summary judgment for prison officials, and the prisoner appealed. The court of appeals found that the officials were entitled to qualified immunity from the prisoner's claim as it was not clearly established at the time of the alleged actions that the Constitution required federal prison employees to facilitate prisoners in their requests for abortions, and there was no indication that officials did anything other than exercise their honest medical judgment. (Harris County Jail, Texas)

U.S. District Court
DELIBERATE
INDIFFERENCE

Grace v. Wainwright, 761 F.Supp. 1520 (M.D. Fla. 1991). A state inmate brought a civil rights action against the former Secretary of the Department of Corrections, the former Superintendent of the state prison, the current Secretary of the Department of Corrections, the State of Florida, and the Florida Department of Corrections. The district court found that the inmate was not medically mistreated to such an extent that it constituted cruel and unusual punishment, where the inmate's medical records had indicated he had been treated on a regular basis for numerous medical complaints, including, but not limited to, his enumerated medical needs, notwithstanding the inmate's allegation that he had not received treatment programs outlined and recommended by the National Institute of Health. (Florida State Prison, Starke, Florida)

U.S. District Court
EYE CARE
DELIBERATE
INDIFFERENCE

Harris v. Murray, 758 F.Supp. 1114 (E.D. Va. 1991). A prisoner brought a Section 1983 claim. The U.S. District Court found that the prisoner failed to show that prison officials engaged in deliberate indifference to his medical needs, even if the prisoner was in fact deprived of his reading glasses for the ten days he was in administrative segregation; while the prisoner was inconvenienced, the alleged treatment did not rise to the level of cruel and unusual punishment. (Nottoway Correctional Center, Virginia)

U.S. Appeals Court
AIDS
DELIBERATE
INDIFFERENCE

Harris v. Thigpen, 941 F.2d 1495 (11th Cir. 1991). Inmates who had tested positive for the Human Immunodeficiency Virus (HIV) brought a civil rights action challenging various policies and procedures of the Alabama Department of Corrections (DOC). Non HIV general population inmates intervened as defendants and the case was consolidated with similar actions pending in various federal courts. The U.S. District Court denied relief and the inmates appealed. The court of appeals found that the DOC was not deliberately indifferent to the inmates' medical or psychiatric needs. Medical treatment of a prisoner violates the Eighth Amendment only when it is so grossly incompetent, inadequate or excessive as to shock the conscious or to be intolerable to fundamental fairness; mere incidents of negligence or malpractice, or indifference in a medical opinion between a prison's medical staff and an inmate as to a diagnosis or course of treatment do not rise to a level of constitutional violations. (Alabama Department of Corrections)

U.S. District Court
PRIVATE PROVIDER

Henry v. Ryan, 775 F.Supp. 247 (N.D. Ill. 1991). A detainee who was compelled by a grand jury subpoena to produce blood and saliva samples, even though he was not a suspect in a murder investigation, brought a Section 1983 action against the provider of medical services to inmates at the county jail, the provider's employees, sheriff's office employees, and the prosecutors in the State Attorney's Office. The defendants moved for dismissal. The district court found that a genuine issue of material fact, precluding summary judgment on qualified immunity to the private provider of medical services, and to the provider's employees, existed as to whether actions taken by the provider and its employees were pursuant to policy dictated by contractual terms and/or applicable state law. It was also found that a grand jury subpoena for physical evidence must be based on individualized suspicion. The sheriff's office employees and prosecutors in the State Attorney's Office were entitled to qualified immunity as to monetary claims asserted under Section 1983 by the detainee as the unlawfulness of their actions could not have been apparent at the time. (DuPage County, Illinois)

U.S. District Court
TRAINING
FAILURE TO
PROVIDE CARE

Hinkfuss v. Shawano County, 772 F.Supp. 1104 (E.D. Wis. 1991). The personal representatives and survivors of a pretrial detainee who committed suicide brought a Section 1983 action against the county and jail officials who moved for summary judgment. The U.S. District Court found that the county could not be held liable for the suicide based on the claim of deliberate indifference to the right of detainees to medical attention. There was no contention that the county's policy of giving jailers discretion in determining medical conditions and needs of detainees was one of deliberate indifference. The jailers' failure to provide the detainee with emergency medical attention did not show that the jailers were inadequately trained pursuant to policies or customs of the county, and the detainee's request for medical attention was not specific or urgent. The court also found that the jail officials were entitled to qualified immunity from liability; there was nothing which indicated that the conduct of the jailers was deliberately indifferent to the medical needs of the detainee nor was there anything on the record to indicate a strong likelihood that the detainee would commit suicide. (Shawano County Jail, Wisconsin)

U.S. Appeals Court
MEDICATION
DELAY IN
TREATMENT
FAILURE TO
PROVIDE CARE

Holmes v. Sheahan, 930 F.2d 1196 (7th Cir. 1991), cert. denied, 112 S.Ct. 423. A pretrial detainee brought a civil rights suit against county officials for denial of medical care for a painful skin condition. The U.S. District Court entered judgment on the jury verdict against the county officials, and the officials appealed. The court of appeals reversed, finding that the pretrial detainee, who was denied access to a physician and to his medication for sebaceous cysts on his scalp and who went for eight months without treatment of his skin condition, failed to establish that the county had inadequate procedures, failed to adequately train its personnel, or had other policy or custom causing the detainee to be denied medical care. The county presented evidence of procedures designed to prevent inmates with medical needs from falling through the cracks as the detainee did, including evidence that inmates had access to nurses and paramedics on a daily basis to whom they could report missed appointments. (Cook County Jail, Illinois)

U.S. Appeals Court
PRIVATE PROVIDER
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE

Howell v. Evans, 922 F.2d 712 (11th Cir. 1991). The widow of a prison inmate, who died from a severe asthma attack, brought a civil rights suit against the prison superintendent, a medical official, and the private corporation which contracted to provide medical services to the prison. The U.S. District Court denied defense motions for summary judgments, and the defendants appealed. The court of appeals found that the widow failed to sufficiently allege that the physician's actions in treating the inmate amounted to "deliberate indifference" under legal or medical standards at the time of the incident, and thus, the physician was protected by qualified immunity. Even though the physician allegedly left the hospital when the inmate was receiving treatment for a serious illness and was unavailable during the day when needed, a physician who was substituting for the inmate's usual physician did know that the inmate suffered from a serious asthma condition and prescribed oxygen treatment and later a drug to alleviate the increasingly serious condition of the inmate. The alleged conduct by the superintendent was sufficient to satisfy the deliberate indifference standard, and thus, the superintendent was not protected by qualified immunity. The superintendent should have known that the inmate could not have been treated under the current conditions at the prison, but decided not to procure personnel necessary for proper

treatment and allowed the "budgetary process" to determine whether the inmate would receive necessary treatment. In addition, the superintendent had received memoranda detailing the inadequacy of medical care and had supported the inmate's application for medical release, but, after the release was denied, did not seek treatment for the inmate at any other facility and did not attempt to obtain proper equipment. The court also found that the physician who had been hired by the private corporation, which contracted with the state to provide health care services at the prison, was not the "final authority on matters of equipment and staff procurement at the prison." Thus, the private corporation could not be held liable for the death of the prison inmate, even though the physician had policymaking authority for the corporation, as the prison superintendent had the final authority on whether to procure staff and equipment necessary to treat the inmate's severe asthma. (Augusta Correctional and Medical Institution, Georgia Department of Corrections)

U.S. Appeals Court
MALPRACTICE
DELIBERATE
INDIFFERENCE

Hughes v. Joliet Correctional Center, 931 F.2d 425 (7th Cir. 1991). A state prison inmate brought a civil suit against the prison and prison staff doctor and nurse, alleging medical malpractice constituting cruel and unusual punishment in treatment of the inmate. The U.S. District Court dismissed the defendants, and the inmate appealed. The court of appeals found that inmate's allegations of malpractice by the prison staff doctor and nurse were sufficient to withstand a motion to dismiss for failure to state a claim in the civil suit alleging cruel and unusual punishment. The alleged facts suggested that the doctor and nurse were careless of, and indifferent to, the inmate's welfare and were insufficiently interested in his health to take even minimum steps to guard against the possibility that the inmate's injury was severe, and the inmate had entered the prison on crutches just days before after two months in a hospital recovering from a spinal injury, but the prisoner was shifted to a psychiatric ward where he would not be allowed to have his crutches and leg brace, and his bed was ordered moved away from the toilet so that the inmate would have to get up and walk to it without the aid of crutches. (Joliet Correctional Center, Illinois)

U.S. Appeals Court
INTERFERENCE
MEDICATION

Johnson v. Hay, 931 F.2d 456 (8th Cir. 1991). A prison inmate sued a prison pharmacist claiming that the pharmacist violated the inmate's Eighth Amendment rights by intentionally refusing to fill prescriptions for antiseizure medicines. The pharmacist moved for summary judgment based on qualified immunity and on the merits of the claim. The U.S. District Court denied the motion, and the pharmacist appealed. The court of appeals found it had jurisdiction to consider the appeal on the qualified immunity issue. Once a notice of appeal had been filed in a case in which there has been denial of a summary judgment motion raising the issue of qualified immunity, the jurisdiction has been vested in the court of appeals and the district court should not act further; if the appeal is utterly lacking in merit and for purposes of delay only, the court of appeals may take appropriate action. At the time the pharmacist withheld the inmate's seizure medication, law clearly established that a prison pharmacist could not intentionally interfere with or fail to carry out treatment prescribed for a prisoner so as to preclude the application of qualified immunity doctrine to the pharmacist. The pharmacist's reliance on an article by an attorney published in a professional medical journal, which discussed a pharmacist's responsibility for dispensing controlled substance prescriptions, did not establish that the pharmacist acted reasonably in withholding the inmate's seizure medication on the grounds that they were not medically appropriate, where the pharmacist did not rely on legal advice obtained concerning legality of specific action taken, where the article relied on discussed propriety of withholding illegal and fraudulent prescription orders, rather than orders which the pharmacist believed were not medically appropriate. Seizure medications were not controlled substances, and the article suggested that when a pharmacist had doubts, the best remedy would be to call the physician concerned, which was action which the pharmacist admitted he did not take. In addition, genuine issues of material fact existed as to whether the pharmacist acted with deliberate indifference to the inmate's medical needs, precluding summary judgment in favor of the pharmacist. (Missouri Department of Corrections)

U.S. Appeals Court
DELAY OF CARE
DELIBERATE
INDIFFERENCE

Johnson v. Lockhart, 941 F.2d 705 (8th Cir. 1991). An inmate brought a civil rights action against prison officials alleging deliberate indifference to medical needs. Dismissal of the claim was reversed by the court of appeals. The U.S. District Court again dismissed the count and the inmate appealed. The court of appeals found that abdication of policy making and oversight responsibilities can reach the level of deliberate indifference to a prisoners' medical needs and result in unnecessary and wanton infliction of pain when tacit authorization of subordinates' misconduct constitutes constitutional injury. The inmate suffered from an inguinal hernia and a physician at the prison recommended that surgery to repair the hernia be provided immediately and should not be delayed more than several days. The physician warned that the condition was serious, even life-threatening. Surgery to repair the hernia was not performed until ten months after the physician's recommendation for immediate surgery. A persistent delay in "priority one" surgery for an inmate inflicts the sort of pain and suffering which would not serve any penological purpose, and would violate the inmates' rights. (Cummins Unit, Arkansas Department of Corrections)

U.S. District Court
DELIBERATE
INDIFFERENCE

Johnson v. Williams, 768 F.Supp. 1161 (E.D. Va. 1991). An inmate brought a civil rights action against prison officials, claiming his rights were violated during a prison lockdown. On the officials' motion for summary judgment, the district court found that the prison physician's decision not to prescribe orthopedic shoes for the inmate did not amount to deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment. The court noted that mere disagreements between an inmate and his or her physician do not state claims of deliberate indifference. (Powhatan Correctional Center, Virginia)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE
MENTAL HEALTH

Kocienski v. City of Bayonne, 757 F.Supp. 457 (D. N.J. 1991). An administratrix of a pretrial detainee's estate brought a civil rights action against a city and city police officers based on the detainee's suicide death. On the officer's motion for summary judgment, the U.S. District Court found that even if the police officer was aware of the detainee's suicidal tendencies, the officer's failure to communicate those tendencies to other officers did not constitute deliberate indifference to the detainee's needs in violation of due process; any failure by the officer to communicate suicidal tendencies to other officers constituted negligence only. The police officers' failure to assure that the detainee's pantyhose were removed after becoming aware that she was wearing pantyhose did not constitute deliberate indifference to the detainee's psychological needs because no evidence indicated that the officers had knowledge of the detainee's suicidal tendencies. After it was determined that police officers were not deliberately indifferent to the pretrial detainee's needs when they failed to prevent her suicide, the city could not be held separately liable for failing to train its police officers. (Bayonne Municipal Jail, New Jersey)

U.S. District Court
MEDICATION
TREATMENT

McAleese v. Owens, 770 F.Supp. 255 (M.D. Pa. 1991). An inmate brought a civil rights action against prison officials and others. On motions for summary judgment, the U.S. District Court found that physicians did not violate the Eighth Amendment rights of the inmate by prescribing a particular drug as a tuberculosis preventative without informing him of alleged adverse consequences to his eyesight. The drug which was prescribed was the only one shown to be effective and vision problems were not a side effect associated with the drug. (State Correctional Institution, Rockview, Pennsylvania)

U.S. District Court
AIDS
HOSPITAL
CONTRACT SERVICES

McIlwain v. Prince William Hosp., 774 F.Supp. 986 (E.D. Va. 1991). A former prison inmate filed a civil rights action against a prison, a private hospital where he was taken for emergency room treatment, and a prison physician, for failure to inform him of his HIV infection. On the defendants' motions for summary judgment, the U.S. District Court found that the private hospital which had no contract with the prison could not be held liable under 42 U.S.C.A. Section 1983 for failing to inform the prisoner of his HIV test results, absent evidence of a hospital custom or policy to test all patients for acquired immune deficiency syndrome (AIDS) or to withhold HIV test results from patients. Material issues of fact existed, precluding summary judgment, as to whether the physician under contract with the prison to provide medical services to prison inmates knew about the prisoner's HIV status and failed to inform the prisoner of that status. (Haymarket Correctional Facility, Virginia)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
MEDICATION

Maul v. Constan, 928 F.2d 784 (7th Cir. 1991). A former inmate brought a civil rights suit against a psychiatrist, a director of administrative services, and a supervisor of the psychiatric care unit at a correctional institution, alleging constitutional violations from forcible administration of psychotropic medications. The U.S. District Court awarded \$7,500 against each defendant. On appeal, the court of appeals found that the defendants waived a qualified immunity defense to the inmate's claim where they did not press the defense in any pretrial motions, at the pretrial conference, or at trial, and remand was warranted for clarification of the basis for the damage award of \$7,500 in damages against each defendant for the due process violation. (Westville Correctional Center, Indiana)

U.S. District Court
DELIBERATE
INDIFFERENCE

Meek v. Orton, 773 F.Supp. 172 (E.D. Mo. 1991). A prisoner incarcerated in a county jail brought a civil rights suit under Section 1983 against a jailer. After the jury returned a verdict against the jailer awarding the prisoner "zero" in actual damages and \$10,000 in punitive damages, the jailer moved for judgment notwithstanding the verdict. The district court found that the Eighth Amendment protection against cruel and unusual punishment cannot be found to have been violated absent a finding that the prisoner sustained actual, albeit nominal, damages from the violation. If a jury finds that the plaintiff has suffered no pain of any kind, then the question of damages, nominal or otherwise, does not arise; an action for cruel and unusual punishment has not been established without a showing of some measure of pain of some type. Judgment notwithstanding the verdict was entered against the prisoner. (Pemiscot County Jail, Missouri)

U.S. District Court
AIDS

Nolley v. County of Erie, 776 F.Supp. 715 (W.D.N.Y. 1991). A former inmate infected with human immuno-deficiency virus (HIV) brought an action against a correctional facility and various facility administrators, alleging constitutional and statutory violations in connection with her treatment. The district court found that evidence established that red stickers placed on the inmate's possessions disclosed her confidential HIV-related

information to staff and inmates of the correctional facility who were not authorized to receive such information, in violation of New York State Public Health Law. In addition, prison inmates are protected by a constitutional right to privacy from unwarranted disclosure of their HIV status. (Erie County Holding Center, New York)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE

Rellergert v. Cape Girardeau County, Mo., 924 F.2d 794 (8th Cir. 1991). A civil rights suit was brought against a sheriff and deputy, alleging that they violated the rights of an inmate who committed suicide. After a jury returned a verdict in favor of the plaintiff for \$75,000, the U.S. District Court granted judgment notwithstanding the verdict on the grounds that the defendants were entitled to qualified immunity; the plaintiff appealed. The court of appeals found that the defendants were entitled to qualified immunity because the measures taken by them to prevent the suicide of the inmate did not demonstrate deliberate indifference to his serious medical needs as a suicide risk. Pursuant to general policy, the inmate, who had indicated on a medical history form that he had attempted suicide in the past, was housed in a common area of the jail where he could be observed by a deputy from a centrally located booth; moreover, evidence that the deputy let the inmate out of his sight with a bed sheet when the deputy knew that the inmate was on a suicide watch supported a conclusion that the deputy acted imprudently, wrongly, or negligently, but not that the deputy acted with deliberate indifference. (Cape Girardeau County Jail, Missouri)

U.S. Appeals Court
AIDS
CONTAGIOUS
DISEASES

Robbins v. Clarke, 946 F.2d 1331 (8th Cir. 1991). A prisoner brought a Section 1983 action alleging conspiracy to conceal the identity of prisoners testing positive for human immunodeficiency virus (HIV), cause of AIDS (Acquired Immune Deficiency Syndrome), failure to take precautions to protect healthy prisoners from exposure to HIV, and failure to take precautions to protect uninfected prisoners from exposure to hepatitis and tuberculosis. The U.S. District Court dismissed the complaint, and the prisoner appealed. The court of appeals found that the district court decision that prison conditions, including the presence of HIV-positive prisoners in the general prison population, was not cruel and unusual punishment collaterally estopped litigation of the issue that the Eighth Amendment was violated by involuntary and unprotected exposure to prisoners testing positive for HIV, and cause of AIDS as the issues were the same. Furthermore, the district court decision that evidence failed to show higher levels of infectious and contagious diseases among inmates collaterally estopped litigation of the claim that the prisoners' rights were violated by the failure to make an effort to protect them from exposure to hepatitis and tuberculosis. (Medium Security Unit, Nebraska State Penitentiary)

U.S. District Court
DELIBERATE
INDIFFERENCE

Rodriguez v. Kincheloe, 763 F.Supp. 463 (E.D. Wash. 1991). An inmate brought a civil rights action against prison officials. On the officials' motion for summary judgment, the district court found that the prison officials were not deliberately indifferent to the inmate's medical needs in violation of the Eighth Amendment when they confiscated the inmate's "ace wrap" bandage he used to wrap an injured knee. The inmate's knee condition was not serious, the bandage was returned within a few days, and the bandage was confiscated because the inmate did not have up-to-date authorization pursuant to prison regulations concerning security and possible suicide attempts. (Washington State Penitentiary, Walla Walla, Washington)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
PRETRIAL DETAINEE

Salazar v. City of Chicago, 940 F.2d 233 (7th Cir. 1991). An administrator of the estate of a pretrial detainee who died following his arrest on DWI charges brought federal civil rights and state law claims. The U.S. District Court directed verdict on the civil rights claims against the arresting and lockup officers and against the city based on police department policy and entered judgment on jury verdict in favor of the paramedics on the federal civil rights claims. The district court then dismissed the remaining state law claims for want of prosecution after denying the administrator's motion to dismiss those claims without prejudice for lack of subject matter jurisdiction, and the administrator appealed. The court of appeals found that the deliberate indifference standard applied to determining whether the police officers and paramedics deprived the pretrial detainee of his life without due process of law. However, it was found that the police officers did not exhibit deliberate indifference to the pretrial detainee's medical needs such that they could be held liable for depriving him of his life without due process of law when he died several hours after being arrested for DWI following a traffic accident. There was no evidence that the detainee displayed any obvious external signs of injury or complained about pain or injury, the officers knew that he had refused further treatment at the accident scene and officers saw the detainee walk under his own power. Although the detainee staggered and vomited at one point, the behavior was consistent with the fact that he was drunk. In addition, the paramedics could not be held liable for violating the civil rights of the pretrial detainee, where there was no evidence that they exhibited deliberate indifference to his serious medical needs. Prior to refusing further treatment, the detainee allowed paramedics to conduct a preliminary examination which revealed that his vital signs were normal and that his skin color and skin moisture were normal and that his pupils were

responsive and equal, and the paramedics were not required to take the detainee to the hospital to check for internal injuries simply because he was intoxicated. It was also found that the district court had discretion to retain jurisdiction over pendent state law claims where both federal and state law claims had been tried, and the state law claims remained for retrial after the jury in the first trial failed to return verdicts on the state law issues. (19th District Police Station, Chicago, Illinois)

U.S. District Court
COSTS

Scott v. Angelone, 771 F.Supp. 1064 (D. Nev. 1991). An inmate brought an action alleging that he was denied due process when the Nevada Department of Prisons froze his inmate trust account and deducted money for medical charges. On the defendants' motion to dismiss and motion for summary judgment and the plaintiff's motion to strike, the district court found that, where an administrative regulation establishing policy and procedure of charging an inmate \$4 for each inmate-initiated, non-emergency medical visit was promulgated by the Nevada Department of Prisons, and that the Department was headed by the Board of State Prison Commissioners, the policy, practice and procedure was established with approval of the Board as required by Nevada law. It was also found that the \$4 charge per visit was a "reasonable deduction" to defray the cost of an inmate's medical care within the meaning of the Nevada statute. In addition, a predeprivation hearing was not constitutionally required for charging of medical visits or freezing of an inmate's trust account for failure to maintain a minimum balance required to cover those charges, where the inmate had to authorize a charge prior to treatment and the inmate was notified of the billing system used through posting of an Administrative Directive. Where the inmate authorized charging of his account for medical visits, had prior notice that his account would be frozen if less than a certain balance were maintained to cover those charges, and was immediately reimbursed for a wrongful charging of his account for medical visits after filing an accounting inquiry with the prison, the prison officials satisfied requirements of due process in their administration of the medical charging procedure. (Northern Nevada Correctional Center, Carson City, Nevada)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE
DELIBERATE
INDIFFERENCE

Simmons v. City of Philadelphia, 947 F.2d 1042 (3rd Cir. 1991). A mother and administratrix of the estate of a detainee who hung himself in a Philadelphia station house lockup after having been arrested for intoxication brought an action seeking damages under Section 1983 and under state law. On the defendants' motions for post trial relief, following a jury verdict in favor of the plaintiff, the United States District court denied relief and the city and turnkey appealed. The court of appeals found that evidence made a question for the jury whether the city violated the detainee's rights by means of custom or policy tainted by deliberate indifference to serious medical needs of intoxicated detainees and as to whether the city violated the detainee's rights through deliberately indifferent failure to train officers responsible for intoxicated detainees in suicide detection and prevention, and was sufficient to support a conclusion that indifference to the needs of detainees and failure to train was the cause of violation of the detainee's Fourteenth Amendment rights. In addition, it was found that the Pennsylvania political subdivision Tort Claims Act did not nullify a city ordinance waiving immunity from liability arising from the negligence of city police officers. (Sixth Police District, Philadelphia, Pennsylvania)

U.S. Appeals Court
SMOKE-FREE
ENVIRONMENT

Steading v. Thompson, 941 F.2d 498 (7th Cir. 1991), cert. denied, 112 S.Ct. 1206. An asthmatic inmate who could not escape tobacco smoke from guards and his fellow inmates cigarette smoking filed a Section 1983 action, in which he alleged that prison authorities failure to establish a smoke-free environment for inmates not wishing to be exposed to tobacco smoke violated a constitutional prohibition against cruel and unusual punishment. The U.S. District Court granted the defendants' motion to dismiss, and the inmate appealed. The court of appeals found that the private tobacco company that sold its products to officers and inmates in state prison did not thereby become a "state actor," that could be held liable under Section 1983 when tobacco smoke adversely affected the asthmatic prisoner. In addition, the prison authorities did not violate the constitutional prohibition against cruel and unusual punishment by failing to provide a smoke-free environment for inmates who did not wish to be exposed to tobacco smoke. The court did note that prisoners allergic to components of tobacco smoke, or who can attribute their serious medical conditions to tobacco smoke from guards' or fellow inmates' cigarettes, are entitled to appropriate medical treatment, which may include removal from places where smoke hovers. (Sheridan correctional Center, Illinois)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
HANDICAP

Varnado v. Collins, 920 F.2d 320 (5th Cir. 1991). An inmate brought a civil rights action against prison official, alleging deliberate indifference to his serious medical needs. The U.S. District Court dismissed the action, and the inmate appealed. The court of appeals, affirming the decision, found that the inmate's allegations, that after he underwent hip surgery prison officials determined that installation of ramps in the prison dining hall made it unnecessary for him to be served meals in the prison infirmary, resulting in an

exacerbation of his hip problem when he was forced to wait in line in the dining hall, were insufficient to state a claim against officials for deliberate indifference to serious medical needs. The allegations, at most, showed a mistake in judgment. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE

Warren v. Fanning, 950 F.2d 1370 (8th Cir. 1991). A state inmate sued a prison physician, alleging an Eighth Amendment violation by virtue of the physician's deliberate indifference to the inmate's medical needs. The U.S. District Court entered judgment on a jury verdict finding that the physician violated the inmate's Eighth Amendment rights, but awarded the inmate neither compensatory nor moninal damages. The inmate's motion for attorney fees was denied. Both parties appealed. The court of appeals found that in the inmate's Section 1983 action, reasonable persons could differ as to whether the prison physician's actions with respect to the infection of the inmate's toes constituted "deliberate indifference" to the inmate's medical needs, or whether there was simply disagreement with the course of the inmate's medical treatment, and thus, the physician's motion for judgment notwithstanding a verdict was properly denied. At least nine times the prison physician's treatment of the inmate consisted primarily of "patient reassurance," and immediate diagnosis of an outside specialist was vastly different from that of the prison physician, as was the prescribed treatment. (Missouri Eastern Correctional Center)

U.S. Appeals Court
RESTRAINTS
DELIBERATE
INDIFFERENCE

Williams v. Burton, 943 F.2d 1572 (11th Cir. 1991). An inmate brought a Section 1983 action alleging constitutional violations in connection with his being kept in four-point restraints and gagged for over 28 hours. The U.S. District Court entered judgment against the inmate, and he appealed. The court of appeals found that the inmate's initial placement into four-point restraints was both prudent and proper, and the placement of gauze padding and tape over his mouth to prevent him from encouraging further unrest among other inmates in the segregation unit also did not violate the Eighth Amendment, as officials were faced with a volatile situation in the unit, requiring them to act promptly and effectively to prevent further spreading of disturbance. In addition, the continued use of the four-point restraints and gag on the inmate in the segregation unit for more than 28 hours after he had caused a disturbance, with brief intervals for eating, exercise and toilet use, did not violate the Eighth or Fourteenth Amendments. The inmate's history of persistent disobedience and the potential for disturbance in the unit justified the continued use of the restraints and gag until officers were reasonably assured that the situation had abated. Furthermore, the restraints and gag as applied to the inmate did not constitute "punishment," for purposes of the Fourteenth Amendment due process analysis, as the inmate's placement into restraints was a result of a sudden disturbance and, thus, not reflective. It was also found that the inmate failed to establish a serious medical need other than to be constantly monitored to prevent possible choking, or to demonstrate deliberate indifference by the nurse who examined him, as required to establish an Eighth Amendment violation as to medical care, as the nurse suggested that the inmate be allowed to exercise and use the toilet, and recommended that some of his clothing be removed because of the heat in his cell. (St. Clair Correctional Facility, Springville, Alabama)

1992

U.S. District Court
DELIBERATE
INDIFFERENCE

Aaron v. Finkbinder, 793 F.Supp. 734 (E.D. Mich. 1992), affirmed, 4 F.3d 993. An insulin dependent diabetic prisoner filed a lawsuit against a sheriff's deputy and jail clinic nurses, alleging violation of a federal civil rights statute and the Eighth Amendment. The defendants moved for summary judgment. The district court, granting the motion, found that the deputy sheriff who booked the prisoner was not deliberately indifferent to his medical needs. According to the court, even if he failed to show on a medical screening chart that the prisoner needed to be furnished with insulin, he called and informed the clinic of that fact. Furthermore, the nurses' actions and inactions cited by the prisoner also did not indicate deliberate indifference to his medical needs. One nurse testified that she received a sick-call slip one day after it was filled out by the inmate, at which time she scheduled him for sick call. She also took the inmate's vital signs approximately three hours after receiving the sick-call slip. These actions were reasonably prompt and do not rise to the level of deliberate indifference, the court ruled. The inmate asserts that a second nurse displayed deliberate indifference by misreading or improperly administering the random blood sugar tests and by not taking appropriate precautionary steps when the inmate's nausea and headaches were noted. The fact that the nurse took action to relieve the plaintiff's condition shows she was not indifferent to his needs. Finally, the plaintiff sued a third nurse claiming deliberate indifference to his needs when she gave the inmate fifty units of insulin rather than fifty-eight units. A discrepancy of eight units is not grounds for an Eighth Amendment or Section 1983 claim of deliberate indifference. The fact the inmate was provided with insulin shows a lack of indifference. (Oakland County Jail, Michigan)

U.S. District Court
DELIBERATE
INDIFFERENCE
MENTAL HEALTH

Arnold on Behalf of H.B. v. Lewis, 803 F.Supp. 246 (D. Ariz. 1992). A prisoner's guardian ad litem filed a Section 1983 action for the prisoner and others similarly situated for an injunction and declaration that prison officials' deliberate indifference to mental health needs was unconstitutional. The district court found that the prison officials' actions constituted deliberate indifference to serious medical needs in violation of the Eighth Amendment. The officials placed the prisoner in lockdown as punishment for symptoms of her paranoid schizophrenia as an alternative to providing mental health care. The officials knew that the mental health program at the facility was deficient and were aware that the prisoner's mental condition deteriorated when she was locked down in a small cell without treatment, but failed to correct the grossly inadequate psychiatric care. Prison officials' deliberate indifference to the mentally ill prisoner's serious medical needs justified injunctive relief ensuring that she received appropriate treatment. (Santa Maria Unit at Perryville Prison, Arizona)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
INTERFERENCE
WITH TREATMENT

Aswegan v. Bruhl, 965 F.2d 676 (8th Cir. 1992). An inmate brought an action against a prison security director, a deputy warden, and three correctional officials to recover for deliberate indifference to serious medical needs. The U.S. District Court entered judgment on a jury verdict in favor of the correctional officials, but against the security director and the deputy warden, and appeal was taken. The court of appeals, affirming the decision, found that evidence supported the conclusion that the prison security director and the deputy warden were deliberately indifferent to the inmate's serious medical needs including coronary artery disease, chronic obstructive pulmonary disease, and arthritis. The security director once denied access to medical personnel; in addition, the security director and the deputy warden failed to eliminate repeated violations of orders to deliver the inmate's medications in a timely manner, not to cuff the inmate with hands behind the back, and not to place the inmate in shower stalls during "shakedowns" of cell, and the deputy warden refused to guarantee the inmate's receipt of antibiotics. (Iowa State Penitentiary)

U.S. Appeals Court
DELAY
DELIBERATE
INDIFFERENCE

Barnes v. Parker, 972 F.2d 978 (8th Cir. 1992). An inmate brought a civil rights action against prison physicians, a nurse, and an administrator, alleging deliberate indifference to his serious medical needs. The U.S. District Court dismissed the action, and the inmate appealed. The court of appeals affirmed the decision, finding that the evidence concerning the delays in treating the inmate's back injury were insufficient to establish that the defendants were deliberately indifferent to the inmate's serious medical needs, in violation of the Eighth Amendment. Evidence suggested that the inmate received thorough effective medical attention, and that the inmate's grievance about the delay in recommending surgery was a mere disagreement with the course of his medical treatment. (Missouri's Farmington Correctional Center)

U.S. Appeals Court
TRAINING
DELAY OF CARE

Benavides v. County of Wilson, 955 F.2d 968 (5th Cir. 1992). A former jail inmate and his spouse sued the county and the sheriff, seeking compensation for injuries sustained while the inmate was in the county jail. The U.S. District Court entered judgment for the sheriff and the county, and appeal was taken. The court of appeals, affirming the decision, found that the county jail inmate who was injured in a fall in his cell and was subsequently allowed to lie paralyzed for 18 hours without medical assistance being summoned, did not establish that the county and the sheriff had adopted a policy of improperly training jail personnel. The county and the sheriff had established compliance with state requirements for jailer personnel and the inmate had not shown, beyond conclusory statements of an alleged expert, that the standards were inadequate. It was also found that the inmate did not establish a triable case that the sheriff and county had established a deliberately indifferent policy of screening employees, even though two of his jailers had been treated for suicidal depression and alcoholism; the sheriff had been furnished with letters from their doctors indicating their fitness to return to work, and they had satisfactory work records. The spouse of the inmate did not have action under Texas law for intentional infliction of emotional harm; it was necessary to establish direct emotional shock from seeing the husband in a paralyzed state, without prior warning, and the wife had been told what happened by authorities prior to first seeing her husband. (Wilson County Jail, Texas)

U.S. Appeals Court
ADEQUACY OF CARE

Brown v. Wallace, 957 F.2d 564 (8th Cir. 1992). An inmate brought a Section 1983 action against a prison warden and a director of health services. The U.S. District Court dismissed the complaint and denied a motion to amend, and the inmate appealed. The magistrate judge could conclude that the warden and the director for the prison's health care provider were not indifferent to the inmate's medical needs; the warden investigated and responded to each complaint of the inmate, and the director responded to the inmate's correspondence and attempted to meet with her to discuss complaints. (Women's Unit, Arkansas Department of Corrections)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE

Brownlee v. Conine, 957 F.2d 353 (7th Cir. 1992). A prisoner brought a civil rights action against jail personnel, accompanied by a request to be permitted to proceed in forma pauperis, complaining about the treatment he received while confined in jail awaiting trial. The U.S. District Court dismissed the claims as frivolous, and the prisoner appealed. The court of appeals found that the claim that a jail official turned down requests to return documents needed for a suit that had been confiscated by a guard, and that the suit was dismissed because the documents were not returned, was not frivolous on its face. The detainee's claims that another jail official deliberately loosed mentally ill inmates on the detainee so that they would assault him, and that another official, in retaliation for the detainee's having complained about him to the jail doctor, refused to allow the prisoner to see a dentist though he was in severe pain, were, on their face, perfectly good claims of violations of the right that the due process clause grants persons held in jail awaiting trial to be spared punishment until they are convicted, and they should not have been dismissed as frivolous under the in forma pauperis statute. (Wisconsin, Jail)

U.S. District Court
DELIBERATE
INDIFFERENCE
EQUAL PROTECTION

Burgardt v. Davies, 804 F.Supp. 180 (D. Kan. 1992). An inmate at a state correctional facility proceeded pro se and in forma pauperis on a federal civil rights complaint against prison officials, who moved for summary judgment. The district court found that the inmate's bare allegation that he did not receive as good a wheelchair as other inmates did not support an equal protection claim. The court ruled that prison officials were not deliberately indifferent to the medical needs of the prisoner, who had multiple sclerosis, despite his complaints that he was denied a certain unidentified medication recommended by a university doctor. Although the pharmacy did not carry the recommended medication, it requested approval to obtain the drug, and the inmate received the new medication three days after it was recommended. (Lansing Correctional Facility, Lansing, Kansas)

U.S. District Court
HANDICAP

Cameron v. Tomes, 783 F.Supp. 1511 (D. Mass. 1992), modified, 990 F.2d 14. An involuntarily committed patient brought an action against the Commissioner of the Department of Mental Health and the administrator of a treatment center for the sexually dangerous, alleging that the defendants had violated his constitutional rights by failing to provide him with minimally adequate treatment. Applying a policy requiring patients to reach a destination within 10 minutes to an involuntarily committed patient with only one leg without any consideration for his disability failed to exercise professional judgment. (Massachusetts Treatment Center for the Sexually Dangerous)

U.S. District Court
HANDICAP
ADEQUACY OF CARE

Candelaria v. Coughlin, 787 F.Supp. 368 (S.D.N.Y. 1992), affirmed, 979 F.2d 845. An inmate brought an action under Section 1983 alleging inadequate medical treatment. The district court found that although the paraplegic inmate's claimed needs for an adequate wheelchair and orthopedic treatment, and claim that prison failed to provide him with liquid dietary supplement, stated a claim for failure to provide adequate medical treatment, the inmate's transfer to another facility rendered moot his claim for preliminary injunctive relief. (Clinton Correctional Facility, New York)

U.S. District Court
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE
MEDICATION

Cox v. District of Columbia, 834 F.Supp. 439 (D.D.C. 1992). An inmate who suffered from glaucoma brought a Section 1983 action alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The inmate claimed that corrections personal periodically failed to provide him with medication for his glaucoma condition, resulting in a deterioration of his eyesight. The defendant moved for summary judgment. The district court found that the delay in providing the inmate with medicine did not constitute deliberate indifference. (District of Columbia Department of Corrections)

U.S. Appeals Court
ADEQUACY OF CARE

Frohman v. Wayne, 958 F.2d 1024 (10th Cir. 1992). A former arrestee brought an action against the a sheriff's deputy alleging federal claims under the civil rights statute and state law claims. Summary judgment on the federal claims was granted by the U.S. District Court and the state claims were dismissed without prejudice, and the plaintiff appealed. The court of appeals found that there were issues of fact precluding summary judgment as to whether the defendant's behavior was objectively reasonable and whether the actions constituted excessive use of force under the former substantive due process standard, so as to preclude a claim of qualified immunity, but the plaintiff's assertions, unsupported by medical evidence, that his need for treatment for claustrophobia and agoraphobia following the arrest was acute, and thus there was a due process violation in failing to provide medical attention, were insufficient to raise a triable issue as to medical needs. (El Paso County Jail, Colorado)

U.S. District Court
DELIBERATE
INDIFFERENCE

Gabai v. Jacoby, 800 F.Supp. 1149 (S.D.N.Y. 1992). A prison inmate brought a Section 1983 action against prison officials, alleging that one official used excessive force and was otherwise deliberately indifferent to the inmate's medical needs, and that the inmate's due process rights were violated in a disciplinary proceeding. The defendants moved for summary judgment. The district court, adopting the report and recommendation of the U.S. Magistrate Judge, found that the inmate failed to show serious injury or that the

defendant intended to cause physical harm. The inmate failed to establish that a correction officer used excessive force or was otherwise deliberately indifferent to the inmate's medical needs as a bruise allegedly caused by the officer was not a "serious injury," nor was it shown that the officer intended to cause physical harm. The officer stated without rebuttal that he called a nurse when he realized that the inmate might be suffering chest pains and shortness of breath. (Green Haven Correctional Facility, New York)

U.S. District Court
DELIBERATE
INDIFFERENCE

Gross v. Buescher, 791 F.Supp. 796 (E.D. Mo. 1992). An inmate brought a civil rights action against corrections officials and state officials who moved for summary judgment. The district court found that the inmate's allegations that corrections officials and the governor failed to submit or appropriate an adequate medical budget for the correctional facility did not state a deliberate indifference claim under the Eighth Amendment. (Missouri Eastern Correctional Center)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE
MENTAL HEALTH

Hall v. Ryan, 957 F.2d 402 (7th Cir. 1992). The estate of a detainee who committed suicide while being held in jail brought a Section 1983 action against police officers. The U.S. District Court denied the officers' motion for summary judgment, and appeal was taken. The court of appeals found that a jury question existed as to whether the police officers had treated the detainee, who had committed suicide in his cell, with wilful neglect, so as to lose the benefit of qualified immunity, when they neglected to consult his file after observing him cursing, flinging his shoes, urinating in his cell, and repeatedly flushing the toilet. (City of Decatur Police Department, Illinois)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
TRANSFER

Hamilton v. Endell, 981 F.2d 1062 (9th Cir. 1992). A prisoner brought a Section 1983 action against various prison officials, claiming that his forced transfer by air from Alaska to Oklahoma had injured his ear. The U.S. District Court granted the motion of some officials to be dismissed based on untimely service, and denied the motion of other officials for dismissal based on qualified immunity, and an appeal was taken. The court of appeals found that the prisoner was required to make timely service of process on officials. However, material issues of fact, precluding summary judgment for prison officials, existed as to whether officials showed deliberate indifference to the medical needs of the prisoner, precluding a finding of qualified immunity in the Section 1983 action. A physician had submitted a letter indicating that the normal procedure following the most recent operation performed on the prisoner's ear would be to allow him to fly. However, officials knew that the doctor writing the letter had not examined the prisoner nor consulted with the treating physician. In addition, officials knew that ear damage had resulted from an earlier air trip, and the treating physician had told them his position that further air transportation could not be undertaken for at least six months. (Fairbanks Correctional Center, Fairbanks, Alaska)

U.S. District Court
ADEQUACY OF CARE
MEDICATION

Harris v. Campbell, 804 F.Supp. 153 (D.Kan. 1992). An inmate filed a Section 1983 complaint alleging that he was denied adequate and proper medical care while incarcerated at a county jail. The district court found that the inmate's allegations that he received inappropriate medication for his symptoms caused by withdrawal from alcohol and a variety of illegal drugs did not state a claim for cruel and unusual punishment. The simple difference of opinion between the inmate and medical staff regarding treatment or diagnosis did not state a claim of constitutional violation, and there was no evidence of deliberate or intentional disregard of the inmate's medical needs. (Leavenworth County Jail, Leavenworth, Kansas)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
EMERGENCY CARE
FAILURE TO
PROVIDE CARE

Heflin v. Stewart County, Tenn., 958 F.2d 709 (6th Cir. 1992). The relatives of a pretrial detainee who hung himself in a jail cell sued the county, the sheriff, and a deputy alleging that the defendants' failure to cut the detainee down when he was discovered hanging in his cell was the proximate cause of the inmate's death and constituted deliberate indifference to his medical needs in violation of the Eighth Amendment. The U.S. District Court ordered judgment on jury verdict in favor of the plaintiffs, and the defendants appealed. The court of appeals found that a jury question was presented in the Section 1983 action as to whether the pretrial detainee died as the proximate result of the failure of the sheriff and deputy to take any steps to save the detainee's life when he was found hanging in a cell. The sheriff and deputy did not cut the detainee down but waited for medical personnel to arrive and photographs to be taken, even though the body was warm and the detainee's feet were touching the floor. It was found that the sheriff and deputy exhibited deliberate indifference to the pretrial detainee's serious medical needs as a result of these actions. The testimony of an expert in the field of correctional institutions that in his opinion the conduct of the sheriff and deputy demonstrated deliberate indifference to the detainee's need for emergency care which would have saved his life was not an improper opinion on a key legal issue of the Section 1983 case, alleging a violation of the Eighth Amendment. The testimony merely emphasized the expert's view of the seriousness of the jailers' failures and was not a conclusion of law. A jury question was

presented as to whether the county had a policy or custom requiring officers on the scene of a suicide attempt to leave an inmate found hanging while pictures are taken and until a medical examiner arrives so as to render the county liable. The court also found that the sheriff and deputy were not entitled to qualified immunity in the suit as the unlawfulness of not doing anything to attempt to save the detainee's life would have been apparent to reasonable officers in the defendants' positions in light of preexisting law. (Stewart County Jail, Tennessee)

U.S. Appeals Court
MEDICATION
DELIBERATE
INDIFFERENCE

Hill v. Marshall, 962 F.2d 1209 (6th Cir. 1992), cert. denied, 113 S.Ct. 2992. An inmate brought a civil rights action against prison officials. A U.S. District Court judgment in favor of prison officials was reversed on appeal. On remand, the U.S. District Court entered judgment on jury verdict awarding actual damages, but ordered remittitur of the entire punitive damages award, and appeals were taken. The court of appeals found that evidence sustained a finding that a prison official had violated the inmate's rights with respect to prescription medication and the prison official could be liable for failure to respond to the inmate's medical needs on the basis of evidence that he personally ignored the inmate's complaint and referred the inmate's complaints of not getting medication to the head nurse whom he knew was wrongly altering and destroying some of the inmate's prescriptions. The award of \$95,000 in compensatory damages to the inmate was not excessive in view of evidence that the denial of medication resulted in increasing the risk that he would develop active tuberculosis and evidence that he suffered a great deal of anguish on that account. (Southern Ohio Correctional Facility)

U.S. Appeals Court
SMOKE-FREE
ENVIRONMENT

Hunt v. Reynolds, 974 F.2d 734 (6th Cir. 1992), cert. denied, 114 S.Ct. 709. State prison inmates brought a Section 1983 action against prison officials, claiming deprivation of their Eighth Amendment rights by virtue of their being compelled to share cells with smokers. The U.S. District Court entered judgment for the defendants, and the inmates appealed. The court of appeals, reversing and remanding, found that a genuine issue existed as to whether prisoners had serious medical needs for a smoke-free environment. The court noted that prisoners allergic to the components of tobacco smoke, or who can attribute their serious medical conditions to smoke, are entitled to appropriate medical treatment, which may include removal from places where smoke hovers. (Tennessee Department of Corrections)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE

Johnson v. Vondera, 790 F.Supp. 898 (E.D. Mo. 1992). An inmate brought a civil rights action against prison employees, alleging deliberate indifference to his serious medical needs. On the employees' motion for summary judgment, the U.S. District Court found that the correctional officer's refusal to allow the inmate, who suffered a back injury, access to his cell or to allow him to rest in a chair during the period his cell was being searched and the failure to provide whirlpool treatments to the inmate did not amount to deliberate indifference; there was no evidence that the medical lay-in ordered by the inmate's physician required the inmate to refrain from standing at all times, and the physician indicated that whirlpool treatments were prescribed as a palliative measure and were not "medically necessary" to effect healing. (Missouri Eastern Correctional Center)

U.S. District Court
DELIBERATE
INDIFFERENCE
DENIAL

Lile v. Tippecanoe County Jail, 844 F.Supp. 1301 (N.D. Ind. 1992). A pretrial detainee's allegation that the county sheriff refused to have the county pay for removal of nose polyps could not be characterized as a deliberate effort to punish the detainee in violation of the Fourteenth Amendment, because it was entirely possible that the surgery could not have been scheduled within the time the detainee had left at the county jail. Also, there was no indication that the proposed surgery was a matter of urgency or that the detainee's condition was serious. (Tippecanoe County Jail, Indiana)

U.S. Appeals Court
ADEQUACY OF CARE
MEDICATION
DELIBERATE
INDIFFERENCE

Mayweather v. Foti, 958 F.2d 91 (5th Cir. 1992). A state inmate sued prison officials alleging inadequate medical treatment while in prison. The U.S. District Court dismissed the complaint following trial to magistrate, and the inmate appealed. The court of appeals found that the inmate received continuous treatment for his back injury despite his incarceration. The treatment may not have been the best that money could buy, and occasionally, a dose of medication may have been forgotten, but these deficiencies were minimal, they do not show an unreasonable standard of care, and they fell far short of establishing deliberate indifference by the prison authorities. (Orleans Parish Prison, Louisiana)

U.S. Supreme Court
DENIAL

McCarthy v. Madigan, 112 S.Ct. 1081 (1992). A federal prisoner brought a *Bivens* action seeking only money damages for denial of medical care. The U.S. District Court dismissed for failure to exhaust administrative remedies. The court of appeals affirmed. The U.S. Supreme Court reversed, finding that a prisoner who sought only money damages was not required to exhaust administrative remedies provided by the Bureau of Prisons' grievance procedure. The grievance procedure presented significant procedural hurdles to the assertion of a claim and did not provide for award of money damages. (Federal Penitentiary, Leavenworth, Kansas)

- U.S. District Court
DELIBERATE
INDIFFERENCE
ADEQUACY OF CARE
- McCullough v. Scully, 784 F.Supp. 115 (S.D.N.Y. 1992). An inmate brought a Section 1983 action against correctional facility officials to recover for deliberate indifference to medical needs. The officials moved for summary judgment. The U.S. Magistrate recommended dismissal. The district court found that providing support stockings to treat the inmate's varicose veins and postponing surgery because of the inmate's heart condition were not deliberately indifferent to medical needs, even though the inmate did not agree that stockings were proper treatment; thus, cruel and unusual punishment was not established. (Greenhaven Correctional Facility, Stormville, New York)
- U.S. Appeals Court
SMOKE
- McKinney v. Anderson, 959 F.2d 853 (9th Cir. 1992), affirmed, 113 S.Ct. 2475. An inmate brought a civil rights action against prison officials alleging a violation of the Eighth Amendment due to his exposure to environmental tobacco smoke. The U.S. District Court directed verdict for prison officials, and the inmate appealed. The court of appeals affirmed in part, reversed in part, and remanded, and certiorari was granted. The U.S. Supreme Court vacated and remanded. Thereafter, the court of appeals found that housing a prisoner in an environment that exposed him to levels of environmental tobacco smoke that posed an unreasonable risk of harming his health satisfied the objective component of the Eighth Amendment claim of cruel and unusual punishment; however, the inmate would have to establish a subjective component of the claim on remand by showing that prison officials showed deliberate indifference to the inmate's long-term exposure to environmental tobacco smoke. (Nevada State Prison, Carson City)
- U.S. District Court
DELIBERATE
INDIFFERENCE
MENTAL HEALTH
- Merideth v. Grogan, 812 F.Supp. 1223 (N.D. Ga. 1992), affirmed, 985 F.2d 579. Following the suicide of a detainee while he was being held in a county jail, plaintiffs brought an action against the county sheriff, county's deputies, the county, and others, alleging civil rights violations. The defendants moved for summary judgment. The district court granted the motion in part and denied it in part. The court found that a police officers' seizure of the man was a "reasonable seizure" where he was under the influence of alcohol and brandishing a loaded pistol while proclaiming an intent to kill himself. However, the sheriff and deputies had a duty to protect the detainee's liberty interests, including attending to his psychiatric needs, once he was taken into custody. Material issues of fact precluded summary judgment on various issues, including whether policy or custom existed which amounted to deliberate indifference regarding required medical care to persons in custody of the county jail. (Paulding County Sheriff's Department, Georgia)
- U.S. District Court
DELIBERATE
INDIFFERENCE
MEDICATION
- Moyers v. Buescher, 806 F.Supp. 218 (E.D. Mo. 1992). An inmate brought a civil rights action against a prison official, alleging deliberate indifference to his serious medical needs. On the officials' motion for summary judgment, the district court found that evidence that prison staff denied seizure medication to the inmate who reported to the prison medical unit outside the 30-minute period set aside for dispensing medication was insufficient to establish deliberate indifference to the inmate's serious medical needs, absent evidence that dosages that the inmate was denied because of his late arrival caused the alleged seizures that occurred at least three weeks later. (Missouri Eastern Correctional Center)
- U.S. District Court
AIDS
- Muhammad v. U.S. Bureau of Prisons, 789 F.Supp. 449 (D.D.C. 1992). An inmate sued the Bureau of Prisons, seeking writ of mandamus compelling the immediate removal of all prisoners from the general inmate population who either have Acquired Immune Deficiency Syndrome (AIDS), or have tested positive for the HIV virus, and the Bureau moved to dismiss. The U.S. District Court found that the inmate was not entitled to a writ of mandamus as the weight of authority on the issue indicated that the inmate was not entitled to relief in the form of segregation of such prisoners, he failed to show he was entitled to the extraordinary remedy of mandamus. (United States Bureau of Prisons)
- U.S. District Court
DELAY OF CARE
ADEQUACY OF CARE
- Ross v. Kelly, 784 F.Supp. 35 (W.D.N.Y. 1992). An inmate brought a Section 1983 action against the prison and former employees of the Department of Corrections to recover for failure to attend to knee and wrist problems. The U.S. District Court found that evidence failed to establish deliberate indifference to the inmate's wrist and knee problems, even though there was delay, lack of communication, and other problems associated with making the final diagnosis, and even though the inmate was frequently transferred. According to the court, there was much conflict concerning the severity of the medical problem and treatment or therapy, the inmate was seen by prison medical personnel and numerous outside consultants, and the inmate often second-guessed and disagreed with the treating and examining physicians and was largely to blame for many delays. (New York State Department of Corrections)
- U.S. District Court
ADEQUACY OF CARE
- Sult v. Prison Health Services Polk County Jail, 806 F.Supp. 251 (M.D. Fla. 1992). An inmate sued a county jail health service under Section 1983 alleging inadequate medical care with respect to back pain. The defendant moved to dismiss. The district court granted the motion, finding that the inmate failed to state a cognizable claim under Section 1983 for violation of the Eighth Amendment. The inmate had been examined by

jail physicians and received prescribed medication for treatment of his condition and merely complained that he required an MRI examination or referral to a specialist for further evaluation of his condition. (Polk County Jail, Florida)

U.S. Appeals Court
ADEQUACY OF CARE
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE

Taylor v. Bowers, 966 F.2d 417 (8th Cir. 1992), cert. denied, 113 S.Ct. 394. An inmate brought an action against physicians and surgeons to recover for their alleged withholding of medical treatment for a ruptured appendix in order to coerce a confession for ingestion of drug-filled balloons. The U.S. District Court denied the motions for summary judgment based on qualified immunity, and the physicians and the surgeon appealed. The court of appeals, affirming in part, reversing in part and remanding, found that the inmate failed to establish that the examining physician deliberately withheld treatment in order to secure a confession and thus, the physician was entitled to qualified immunity. The physician was not told about the inmate having vomited blood, found no etiology for abdominal pain, admitted the inmate to a hospital for observation, and did not mention contraband or blood vomiting in clinical notes. In addition, the inmate failed to establish that a surgeon withheld surgery to coerce him, and, thus, the surgeon was entitled to qualified immunity. The surgeon stated that the inmate lacked a high white blood count and a rigid abdomen unlike most appendicitis patients, initially concluded that the inmate had a small bowel obstruction, and said that the inmate received the same care as patients in private practice and that there was no delay in surgery. However, whether another physician intentionally prolonged surgical intervention in order to prompt the inmate to confess was a question of fact precluding summary judgment on the issue of whether the physician was deliberately indifferent to the inmate's need for surgery. (Missouri State Penitentiary, Jefferson City, Missouri)

U.S. District Court
CONTRACT
SERVICES
DELIBERATE
INDIFFERENCE

Unterberg v. Correctional Medical Systems, Inc., 799 F.Supp. 490 (E.D. Pa. 1992). An inmate brought a federal civil rights action against a county, medical services company, and a correctional official. The defendants moved for summary judgment. The district court granted the motion, finding that the inmate failed to establish deliberate indifference concerning medical treatment she received at the correctional facility, for purposes of a civil rights cause of action. From the day the inmate complained that she was not feeling well, she received medical attention on a daily basis until she was transferred to a hospital, and the defendants were not shown to have had actual knowledge of easily preventable, impending harm. The inmate failed to establish that policymakers of the county or medical systems company exhibited requisite deliberate indifference on the theory that the inmate's injuries were caused by policy or custom of the county and the company in failing to adequately recruit, train, and supervise personnel who treated the medical needs of the inmates. (Lehigh County Women's Correctional Facility)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Walker v. Butler, 967 F.2d 176 (5th Cir. 1992). A prisoner brought a Section 1983 civil rights action against a former corrections officer at a state penitentiary. The U.S. District Court awarded the prisoner \$500 and the officer appealed. The appeals court, reversing the decision, found that making the prisoner, who had two closed ankle fractures, walk between 150 and 440 yards to a hospital rather than calling for medical personnel, did not involve reckless disregard of the prisoner's rights as needed to prevail in the Section 1983 civil rights action. (Louisiana Department of Corrections, Angola, Louisiana)

U.S. Appeals Court
INVOLUNTARY
MEDICATION

Williams v. Anderson, 959 F.2d 1411 (7th Cir. 1992). An inmate who was given an injection of an antipsychotic drug against his will brought a Section 1983 action against the prison's staff psychiatrist who prescribed the drug, and the staff nurse who administered it. The U.S. District Court granted the defendants' motions for summary judgment, and the inmate appealed. The court of appeals found that the prison physician and the nurse were qualifiedly immune from the Section 1983 liability; in 1985, when the incident took place, it was not clearly established that their action violated due process or the Eighth Amendment. (Menard Correctional Center, Illinois)

U.S. District Court
DELIBERATE
INDIFFERENCE

Williams v. ICC Committee, 812 F.Supp. 1029 (N.D.Cal. 1992). An inmate filed a pro se Section 1983 action against prison officials alleging that he had been deprived of his eyeglasses although he was legally blind, deprived of access to courts, denied an opportunity to make legal phone calls, and was discriminated against based upon his race. He also sought appointment of counsel pursuant to the in forma pauperis statute. The district court found that the allegation that the inmate had been deliberately deprived of his eyeglasses although he was legally blind stated a cognizable claim under Section 1983 for deliberate indifference to medical needs in violation of the Eighth Amendment. (San Quentin Prison, California)

U.S. District Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE

Williams v. O'Leary, 805 F.Supp. 634 (N.D.Ill. 1992). An inmate brought a Section 1983 action against prison physicians, correctional officers and wardens, alleging inadequate medical care. On the defendants' motion for summary judgment, the district court found that the alleged negligent medical treatment of the inmate's osteomyelitis over a 28-month period was of sufficient duration to support an inference of "criminal recklessness" or

"deliberate indifference" by prison physicians, for the purposes of the inmate's Section 1983 action. The inmate was examined by physicians on forty-two separate occasions and received twenty-nine written prescriptions for medication. However, because of the ineffectiveness of each medication, he lived in pain for over two years, with his left leg swollen and requiring draining. In addition, a genuine issue of material fact as to whether a prison security officer intentionally interfered with the physician's treatment of the inmate by the officer's decisions regarding housing of the inmate precluded summary judgment for the officer on the inmate's Section 1983 claim of deliberate indifference. Genuine issues of material fact as to whether the inmate required emergency medical care at the time of his request to be taken to an emergency room and whether such need was apparent to a correctional officer precluded summary judgment for the officer. The court also found that even if prison wardens were legally obligated to provide adequate medical care to the inmate, their failure to do so could not be considered more than simple negligence, precluding imposition of Section 1983 liability on the inmate's Eighth Amendment claims, as the inmate did not claim that either warden possessed personal knowledge of his medical condition. (Joliet Correctional Center and Stateville Correctional Center, Illinois)

1993

U.S. District Court
 COSTS
 DELIBERATE
 INDIFFERENCE
 EYE CARE

Benter v. Peck, 825 F.Supp. 1411 (S.D. Iowa 1993). An inmate sued prison officials and a prison physician under Section 1983 claiming cruel and unusual punishment in violation of the Eighth Amendment as a result of prison officials' withholding of prescription eyeglasses to compel him to pay for the glasses. The district court found that the inmate's vision of 20/400 without his glasses constituted a "serious medical need," where the eyesight fell within the parameters of the definition of "blindness." The inmate was unable to work at the prison or function in the general prison population without his glasses, and the prison physician's intentional refusal to provide the needed eyeglasses constituted deliberate indifference to the inmate's serious medical needs. Also, the prison officials' refusal to investigate the seriousness of the inmate's need for eyeglasses constituted deliberate indifference. The inmate was entitled to only \$1.00 in nominal damages due to his failure to mitigate his ongoing difficulties by paying for the glasses himself. (Iowa State Penitentiary)

U.S. District Court
 CONTAGIOUS
 DISEASES
 DELIBERATE
 INDIFFERENCE
 FAILURE TO
 PROVIDE CARE

Blumhagen v. Sabes, 834 F.Supp. 1347 (D.Wyo. 1993). Prisoners sued prison officials under Section 1983 for alleged failure to take adequate precautions against a tuberculosis outbreak. On the defendants' motion for summary judgment, the district court found that the prisoners failed to show that officials acted with such deliberate indifference as would establish a violation of the Eighth Amendment right to be free from cruel and unusual punishment. The entire prison population was tested when officials learned that one inmate had contracted the disease. A claim that the medical staff should have taken more comprehensive measures in screening and monitoring the inmates' health, amounted, at most, to an allegation of mere negligence. (Wyoming State Penitentiary)

U.S. District Court
 ADEQUACY OF CARE
 DELIBERATE
 INDIFFERENCE

Brewer v. Blackwell, 836 F.Supp. 631 (S.D. Iowa 1993). An inmate brought a civil rights action against prison officials, alleging that their failure to prescribe medications recommended by consulting physicians amounted to deliberate indifference to his serious medical needs. The district court found that the prisoner's coronary artery disease was a serious medical need, satisfying the objective component of the deliberate indifference claim. However, the prison officials' failure to precisely follow the recommendations of the consulting physicians did not rise to a level of deliberate indifference to the inmate's serious medical needs. (Iowa State Penitentiary)

U.S. Appeals Court
 ADEQUACY OF CARE
 DELIBERATE
 INDIFFERENCE

Brown v. Briscoe, 998 F.2d 201 (4th Cir. 1993). A prisoner brought a Section 1983 action to recover for his discomfort suffered when he broke out in a rash as a result of a tuberculosis vaccination. The U.S. District Court dismissed the claim, and the prisoner appealed. The court of appeals, affirming the decision, found that the nurse was not deliberately indifferent to the serious medical needs of the prisoner when she administered the vaccine. She therefore did not violate the Eighth Amendment, even though the prisoner had said that he had recently received a tuberculosis inoculation. (Maryland Correctional Training Center)

U.S. District Court
 DELIBERATE
 INDIFFERENCE
 EQUIPMENT
 MEDICATION

Bundrick v. Hammond, 817 F.Supp. 470 (D. Del. 1993). A state prisoner brought a pro se civil rights suit alleging that prison nurses violated his constitutional rights by failing to promptly provide medications and by refusing to provide him with an aluminum walker. The nurses' motion to dismiss the complaint was treated as a motion for summary judgment. The court found that the prison nurses were not deliberately indifferent to the prisoner's need for prescription medication, as needed to state a civil rights claim. The shortages in medications were due to the prisoner's failure to timely submit a request for an additional supply, the additional medication was obtained as soon as possible and,

meanwhile, the prisoner was provided with stock medication. The denial of the prisoner's request for a walker by the prison nurses was not deliberate indifference. Walkers were not provided to prisoners for security reasons, medical personnel did not have the power to grant or deny the prisoner's request for the walker, and the prisoner's wheelchair could be used effectively as a walker. (Multipurpose Criminal Justice Facility, Wilmington, Delaware)

U.S. Appeals Court
AIDS

Camarillo v. McCarthy, 998 F.2d 638 (9th Cir. 1993). A former state inmate who was human immunodeficiency virus (HIV)-positive brought a Section 1983 action alleging that his transfer to a housing unit for HIV-positive inmates violated his constitutional rights. The U.S. District Court denied the officials' motion for summary judgment, and the officials appealed. The appeals court, reversing and remanding, found that the officials were entitled to qualified immunity from liability on the claim that the transfer to the housing unit violated the inmate's constitutional rights of equal protection, privacy, due process, freedom from cruel and unusual punishment, and freedom of association, as any such rights that the inmate had were not clearly established at the relevant time. (California State Prison)

U.S. District Court
DELIBERATE
INDIFFERENCE

Childress v. Delo, 820 F.Supp. 458 (E.D. Mo. 1993). An inmate brought an action against prison officials, alleging violations of Section 1983 concerning restrictions imposed following an altercation that occurred when correctional officers instructed several inmates to remove gang colors displayed in a dining room. On the defendants' motion for summary judgment, the district court found that the prison officials were not deliberately indifferent to the inmate's serious medical needs concerning deprivation of the inmate's property, although the inmate may have developed a foot fungus, as the foot condition was promptly treated. (Potosi Correctional Center, Missouri)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE

Coades v. Jeffes, 822 F.Supp. 1189 (E.D. Pa. 1993). A prisoner filed a Section 1983 action against a prison doctor and the director of the prison hospital for alleged denial of constitutionally required medical treatment of the prisoner's ulcer. The doctor filed a motion to dismiss. The district court found that the prisoner's allegation that the doctor knew that the prisoner had a particular medical need for a special diet, but deliberately chose not to provide treatment, was sufficient to support the conclusion that the doctor acted with deliberate indifference and, thus, was sufficient to overcome a motion to dismiss. The prisoner's allegation that he was suffering from a stomach ulcer was a sufficient allegation of serious medical need to support a Section 1983 claim. The prisoner's complaint provided the prison doctor with sufficient notice of the prisoner's Section 1983 claim for allegedly inadequate medical treatment of the ulcer, despite the failure to provide specific dates upon which medical treatment had been requested and denied. (SCI-Graterford, Pennsylvania)

U.S. District Court
DELIBERATE
INDIFFERENCE
"REASONABLE CARE"

Cummings v. Caspari, 821 F.Supp. 1291 (E.D. Mo. 1993). An inmate sued prison officials under Section 1983 alleging violation of his constitutional rights by use of excessive force, refusing him medical care, and taking his property. On the defendants' motion for summary judgment the district court found that the force prison officials used to move the inmate from administrative segregation into an isolation cell was applied in a good-faith effort to restore discipline and not maliciously or sadistically for the purposes of causing harm, even assuming the full extent of injuries alleged by the inmate. Even assuming the full extent of injuries alleged by the inmate (a head injury, injuries to wrists and legs, and an injury resulting from being sprayed with mace) they did not present "serious" medical needs within the meaning of the Eighth Amendment. Actions of prison officials in attending to the inmate's medical needs after he was subdued were well within reasonable standards of medical care under the circumstances and did not constitute deliberate indifference in violation of the Eighth Amendment. (Missouri Eastern Correctional Center)

U.S. District Court
DELAY IN
TREATMENT

Cummings v. McCarter, 826 F.Supp. 299 (E.D. Mo. 1993). An inmate brought a suit against several prison employees and the employees moved for summary judgment. The district court found that a two-day delay in providing the inmate with a medical service request form, allegedly resulting in a delay in treatment or medicine for a headache occurring without indication of a serious medical problem, was not cruel and unusual punishment. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE

Czajka v. Caspari, 995 F.2d 870 (8th Cir. 1993). A former state prison inmate brought on action against state officials under Section 1983, alleging an Eighth Amendment violation arising from alleged deliberate indifference to serious medical needs. The U.S. District Court granted summary judgment in favor of the defendants, and the inmate appealed. The appeals court, affirming the decision, found that the inmate failed to establish an Eighth Amendment claim for deliberate indifference to serious medical needs arising from the delay in surgery scheduled by the inmate's orthopedic physician. The chief medical

officer had the final authority to decide whether surgery should be performed, there was no evidence that the chief's decision to delay the surgery so deviated from professional standards that it amounted to deliberate indifference, and uncontroverted evidence showed that the chief did not rely on any alleged false statements of the health care supervisor. (Missouri Eastern Correctional Center)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO PRO-
VIDE TREATMENT
PRETRIAL
DETAINEE

Davis v. Hall, 992 F.2d 151 (8th Cir. 1993). A pretrial detainee brought a Section 1983 action against jail officials for their alleged deliberate indifference to his medical condition. The U.S. District Court dismissed, and the detainee appealed. The appeals court, affirming the decision, found that the pretrial detainee's allegations that he was denied access to his crutches and to the jail's infirmary, despite a broken ankle, did not state a deliberate indifference claim under the due process clause. (St. Louis County Jail, Missouri)

U.S. Appeals Court
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE

Durmer v. O'Carroll, 991 F.2d 64 (3rd Cir. 1993). A prisoner brought a civil rights action alleging that a physician-in-charge at a state correctional facility, the warden, and the Commissioner for Corrections violated his civil rights through their deliberate indifference to his medical needs during his period of incarceration. The U.S. District Court granted summary judgment in favor of the defendants and the prisoner appealed. The court of appeals found that a genuine issue of material fact precluded summary judgment. The case was remanded to determine whether the physician in charge at the facility knew that the prisoner, who had suffered a stroke, should receive physical therapy and deliberately failed to provide it for nonmedical reasons. At the time the physician first saw the prisoner, the prisoner had already spent over seven months in the prison system without receiving physical therapy prescribed by his preincarceration physician despite the prisoner's notification to authorities of his deteriorating condition and need for immediate therapy. Time was of the essence since physical therapy must take place within approximately eighteen months of a stroke to be effective. The physician sent the prisoner to a neurologist for expert evaluation rather than beginning physical therapy, and the physician then sent the prisoner to other doctors for over four and one-half months before following the neurologist's recommendation for physical therapy. It was noted that physical therapy would have placed a considerable burden and expense on the prison. The warden and Commissioner, neither of whom were physicians, could not be considered deliberately indifferent simply because they failed to respond directly to medical complaints of the prisoner who was already being treated by the prison doctor. (Ocean County Jail, Yardsville Correctional Center, Mid-State Correctional Facility, New Jersey)

U.S. Appeals Court
MEDICATION
TRANSFER

Ervin v. Busby, 992 F.2d 147 (8th Cir. 1993), *cert. denied*, 114 S.Ct. 220. A pretrial detainee brought a pro se Section 1983 action alleging that his rights had been violated when he was transferred to a different jail without his antidepressant medication. The U.S. District Court dismissed and the detainee appealed. The court of appeals, affirming the decision, found that any negligence by county officials in misplacing the pretrial detainee's antidepressant medicine and delaying a month in getting the prescription refilled would not support a Section 1983 claim. While the detainee suggested that the sudden withdrawal of the medication caused his agitated behavior and resulted in another felony conviction for inciting a riot, a physician testified that he would not expect a patient with the detainee's history and symptoms to experience any undue agitation when the medication was suddenly stopped. (Crittenden County Jail, Arkansas)

U.S. Appeals Court
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE

Fletcher v. Butts, 994 F.2d 548 (8th Cir. 1993). An inmate brought a Section 1983 action against prison officials. The U.S. District Court granted summary judgment in favor of the officials, and the inmate appealed. The appeals court, affirming the decision, found that the inmate failed to establish that prison officials were deliberately indifferent to his serious achilles tendon injury in violation of the Eighth Amendment, despite a one-month delay between an orthopedist's recommendation of exploratory surgery and surgery. The officials treated the injury on the same day that it occurred, promptly responded to the inmate's continuing complaints of pain over seven months, and prescribed medication consistent with conservative treatment. In addition, the orthopedist did not say that emergency surgery was necessary. (Missouri)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE

Foulks v. Cole County, Mo., 991 F.2d 454 (8th Cir. 1993). An action was brought against jail officials for refusing to provide medical treatment to a detainee held pursuant to an outstanding felony warrant from another state. The U.S. District Court denied the officials' motion for summary judgment based on qualified immunity, and the officials appealed. The appeals court, affirming the decision, found that genuine issues of material fact existed regarding whether jail officials were deliberately indifferent by failing to provide or allow proper medical treatment of the detainee. It was alleged that the detainee had been treated for head injuries at a hospital, that upon transfer the jail was provided an instruction sheet for monitoring his condition, that the jailer notified the administrator that the detainee was throwing up blood, that the detainee's mother was

denied the right to visit the detainee or to have a doctor look at him in accordance with jail policy, and that once jail personnel noticed the detainee's deteriorated condition two days later, it was so serious that he required immediate hospitalization and surgery. (Cole County Jail, Jefferson City, Missouri)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Gray v. Farley, 13 F.3d 142 (4th Cir. 1993). An inmate convicted in state court of murder sued county law enforcement officials. The U.S. District Court granted summary judgment for the defendants and the inmate appealed. The appeals court, affirming the decision, found that the inmate failed to show that sheriffs showed deliberate indifference to serious medical needs while he was a pretrial detainee. From the time of his arrival at the county jail the detainee's physical condition was monitored, an emergency medical technician found him to be without serious injuries, and a physician's examinations were consistent with his view that the detainee suffered only minor injuries. (Putnam County Jail and Mason County Jail, West Virginia)

U.S. District Court
ADEQUACY OF CARE
FAILURE TO
PROVIDE CARE

Haitian Centers Council, Inc. v. Sale, 817 F.Supp. 336 (E.D.N.Y. 1993). In a class action alleging denial of due process concerning lack of adequate medical care for screened-in Haitian class members detained on a Naval base, the district court found that, to prevent any loss of life or diminution of the plaintiff class until the court entered the final order deciding the merits of the due process claim, the Immigration and Naturalization Service (INS) would be required to provide a level of adequate medical care recommended by its own doctors at trial or to medically evacuate specified class members to a place where such medical care was available. (Guantanamo)

U.S. District Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE

Harrington v. Grayson, 811 F.Supp. 1221 (E.D. Mich. 1993). An inmate brought a Section 1983 action against a warden, alleging inadequate medical treatment for a foot malady. On cross motions for summary judgment, the district court found that the warden's rule requiring inmates to wear state-issued shoes in order to be admitted to the hospital did not violate the due process rights of the inmate, in that adequate postdeprivation remedies existed. Prison grievance procedures and state tort-claim procedures were found to be adequate remedies. In addition, the warden was not deliberately indifferent to the inmate's medical condition, as the warden's order requiring the wearing of the state-issued shoes did not violate the Eighth Amendment rights of the inmate. Even if the inmate's foot problem was a serious medical need, the warden did not have specific knowledge of the inmate's particular problem when the order was promulgated, and the inmate was on at least constructive notice that the designated attire would be required for admission to the hospital. (Egeler Correctional Facility, Michigan)

U.S. Supreme Court
SMOKE
SMOKE-FREE
ENVIRONMENT

Helling v. McKinney, 113 S.Ct. 2475 (1993). A prisoner brought a civil rights action against prison officials alleging violation of his Eighth Amendment rights due to his exposure to environmental tobacco smoke (ETS). The district court entered a directed verdict for the prison officials and the inmate appealed. Appeals courts modified the lower court decision, and the case was presented to the U.S. Supreme Court. The Supreme Court ruled that the inmate's Eighth Amendment claim could be based upon possible future harm to his health, as well as present harm, arising out of exposure to ETS. The Court found that the prisoner had stated a cause of action for violation of his Eighth Amendment rights, alleging that prison officials had, with deliberate indifference, exposed him to levels of environmental tobacco smoke that posed an unreasonable risk of serious damage. The court ordered the lower court, on remand, to consider the circumstances of the inmate's new prison location (where he was not longer exposed to a cellmate who smoked five packs of cigarettes a day), including non-smoking policies of this new location. The Court also ordered the lower court to consider the subjective element, deliberate indifference, in light of the officials' current attitudes and conduct, which may have changed materially because of the transfer of the inmate to a facility that has a smoking policy. (Nevada Department of Prisons)

U.S. District Court
DELIBERATE
INDIFFERENCE
MEDICATION
NEGLIGENCE

Holloman v. Nelson, 817 F.Supp. 88 (D.Kan. 1993). An inmate sued prison officials alleging that their administration of penicillin to him as medical treatment violated the Eighth Amendment. The district court found that the prison officials' administration of penicillin to the inmate, who was allergic to it, was an isolated and inadvertent error and did not establish deliberate indifference to the inmate's medical needs in violation of the Eighth Amendment-particularly since the inmate did not swallow the medication. To the extent the plaintiff claimed he was denied adequate medical care because prison officials failed to maintain accurate records and failed to closely monitor medication allergies, he stated at most a claim of negligence for which the inmate had to seek relief in a tort action in state court. (El Dorado Correctional Facility, El Dorado, Kansas)

U.S. District Court
DELIBERATE
INDIFFERENCE

Johnson v. Stephan, 816 F.Supp. 677 (D. Kan. 1993), affirmed, 6 F.3d 691. A state prisoner brought a civil rights action against prison officials. The district court found that the prisoner did not establish deliberate indifference to serious medical needs based on a claim that he received inadequate support stockings after he complained of leg cramps. (Lansing Correctional Facility, Lansing, Kansas)

- U.S. District Court
AIDS
DELIBERATE
INDIFFERENCE
- Johnson v. U.S., 816 F.Supp. 1519 (N.D. Ala. 1993). An inmate brought an action against the Federal Bureau of Prisons and prison officials, alleging violation of his Eighth Amendment right against cruel and unusual punishment. On the defendants' motion for summary judgment, the district court, adopting a report and recommendation of a U.S. Magistrate Judge, found that the inmate failed to show an Eighth Amendment violation concerning his being housed in the same cell with an inmate who was dying from acquired immune deficiency syndrome (AIDS). All examples listed as means by which the inmate feared he may have contracted AIDS were based on unsubstantiated fears and ignorance. In addition, the inmate presented no facts or allegations supporting an inference of deliberate indifference to his serious medical needs or a culpable state of mind on the part of the prison officials. (Federal Correctional Institute, Talladega, Alabama)
- U.S. District Court
DELAY OF CARE
- Lucien v. Godinez, 814 F.Supp. 754 (N.D. Ill. 1993). An inmate brought an action challenging the denial of medical treatment during a lockdown. The district court found that the delay of a little over two weeks for treatment of a nonemergency ailment of pain in his knee and jaw during a prison lockdown did not violate the inmate's Eighth Amendment rights. (Stateville Correctional Center, Illinois)
- U.S. District Court
AIDS
- Marcussen v. Brandstat, 836 F.Supp. 624 (N.D. Iowa 1993). An inmate filed a Section 1983 civil rights action against a warden of a correctional facility and a lieutenant and nurse employed at the facility. He alleged that his constitutional rights were violated when prison officials assigned a HIV-positive (Human Immunodeficiency Virus) inmate to his cell and allowed that inmate to use his toiletries. The defendants filed a motion for summary judgment. The district court found that the defendants were entitled to summary judgment on the inmate's allegations that he was exposed to the risk of contracting AIDS from the use of his drinking cup and cigarette roller by the allegedly HIV-positive inmate because the possibility of transference of AIDS through these means was too remote. The defendants were granted summary judgment on the inmate's claim that simply housing him with an allegedly HIV-positive inmate violated his constitutional rights. The defendants were granted summary judgment on the inmate's claim of exposure to pervasive risk of harm from allowing other inmates to use sharp objects, such as a razor, that could cause blood-to-blood transmission of HIV, because rules were in place at the correctional facility prohibiting behavior by inmates that could result in exposure to AIDS or HIV and stating that inmates were responsible for their personal property. The defendants were granted summary judgment on the basis of qualified immunity since the officials' behavior was in line with standards stated in existing precedent, and so could not have violated the clear contours of any of the inmate's rights. (North Central Correctional Facility, Rockwell City, Iowa)
- U.S. District Court
DELIBERATE
INDIFFERENCE
- Mathieu v. Chun, 828 F.Supp. 495 (E.D. Mich. 1993). A prisoner brought a civil rights action claiming violation of his Eighth Amendment rights based on medical care and treatment of epileptic seizures. The defendant physician moved for summary judgment. The district court found that the plaintiff's own evidence demonstrated that he did not receive deliberately indifferent medical treatment. The record showed that he was repeatedly tested for the level of the drug in his blood. In addition, the level was not "dangerously high" as claimed by the prisoner on the occasion of hospitalization, and there was no evidence that the defendant physician played any role in the doctor/patient dispute over the use of the drug. (State Prison of Southern Michigan)
- U.S. Appeals Court
TRANSPORTATION
- Moody v. Proctor, 986 F.2d 239 (8th Cir. 1993). An inmate who claimed that he was injured when, after undergoing medical treatment, prison guards lifted him into a prisoner transportation van while he was restrained with handcuffs and a "black box," filed a civil rights action against security guards, correctional officers and others. The U.S. District Court entered judgment for the defendants and the inmate appealed. The appeals court, affirming the decision, found that the district court determination that correctional officers lacked discretion in using the "black box" restraining device while transporting the inmate was not clearly erroneous. Although the officers could request changes in transport procedures to ensure the prisoner's safety and well-being, all inmates traveling outside the institution were to be restrained using handcuffs and a black box. No changes to restraints could occur while a prisoner was en route. In addition, the use of the black box did not itself amount to cruel and unusual punishment. Although the black box caused discomfort, its use was penologically justified by security considerations. Although the inmate was injured as a result of the guards' handling of him while he was restrained by the black box, there was no evidence that the guards acted maliciously or sadistically or with deliberate indifference. (Nebraska State Penitentiary)
- U.S. Appeals Court
ADEQUACY OF CARE
DELAY OF CARE
- Olson v. Stotts, 9 F.3d 1475 (10th Cir. 1993). An inmate brought a Section 1983 action alleging denial of adequate medical care. The U.S. District Court dismissed the claim as frivolous, and the inmate appealed. The appeals court found that the inmate's claim that he was made to suffer for 18 months while the prison delayed providing a heart specialist and required surgery was properly dismissed as frivolous in light of evidence that, during the delay, the inmate received effective medication. (Kansas)

U.S. District Court
DELIBERATE
INDIFFERENCE
DENIAL

Rayes v. Eggars, 838 F.Supp. 1372 (D. Neb. 1993). An inmate filed a Section 1983 action claiming prison officials refused to treat his serious medical needs in violation of the Eighth Amendment. On the defendant's motion for summary judgment, the district court found that, assuming the inmate had a serious medical need resulting from his refusal to eat the nutri loaf meat compound served to him for successive meals as discipline, the physician's assistant was not deliberately indifferent to that need. Upon receipt of the inmate's interview request form complaining that he was sick after not eating anything but salt for three days, the assistant told the inmate to eat regular meals and avoid salt. (Nebraska State Penitentiary)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE

Reed v. Woodruff County, Ark., 7 F.3d 808 (8th Cir. 1993). Survivors of a prisoner who hung himself in his cell brought a Section 1983 suit alleging that the prisoner's constitutional rights were violated. The U.S. District Court denied summary judgment to the defendant jail officials and police officer, and they appealed. The appeals court, reversing and remanding with instructions, found that the plaintiffs failed to establish a claim of deliberate indifference directed at the police officer who discovered the body. Although they claimed that the officer, who was an emergency medical technician, should have attempted artificial resuscitation before finally determining that the prisoner was dead, there was no evidence that an attempt would have succeeded. (Woodruff County Jail, Arkansas)

U.S. District Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE

Rosen v. Chang, 811 F.Supp. 754 (D. R.I. 1993). A prisoner's estate brought a Section 1983 action against a prison director, physician, and nurse, alleging that they violated the prisoner's Eighth Amendment rights by failing to provide treatment for his acute appendicitis. The director, physician, and nurse moved for summary judgment. The district court found that issues of material fact precluded summary judgment for the prison physician on a qualified immunity defense. The prisoner's estate submitted affidavits of experts stating that the prisoner was suffering from appendicitis for at least two weeks before his death and that his symptoms had to be detectable at the time the physician examined him, six days before his death. In addition, issues of material fact precluded summary judgment on the question of whether the prison nurse was entitled to qualified immunity although the nurse promptly and correctly administered prescribed treatment. The nurse had a quasi-diagnostic role in that she had a responsibility for deciding whose complaints were serious enough to merit an appointment with the physician and the alleged facts allowed an inference that the nurse knew of the prisoner's chronic pain and failed to provide further assistance when the prescribed treatment was ineffectual. However, the court found that the prison director was entitled to qualified immunity. The prisoner's estate did not allege any facts showing that the director had personal knowledge of the prisoner's condition, or that there was a causal link between the procedure of having physicians available only one day per week and having nurses limit the prisoner's access to those physicians and the denial of care to the prisoner. In addition, the director was not deliberately indifferent in relying on licensed nurses and physicians to exercise informed medical judgment and to provide adequate health care. (Adult Correctional Institution, Rhode Island)

U.S. District Court
DELAY OF CARE
DELIBERATE
INDIFFERENCE

Scurry v. Fernandez, 841 F.Supp. 12 (D.D.C. 1993). An inmate brought a civil rights action against the District of Columbia, alleging violation of the Eighth Amendment prohibition of cruel and unusual punishment. The district court found that the District of Columbia was not deliberately indifferent to the inmate's serious medical needs. The inmate was not provided with medical attention between the time he was discharged from the jail infirmary and the time of his initial examination at prison, which was a period of about one week. However, it was found that the inmate, who claimed he had injured his head and back and could not move, was examined at the infirmary, was given prescription drugs for his pain, and was discharged after he was observed moving his legs. (District of Columbia Jail)

U.S. District Court
DELIBERATE
INDIFFERENCE
RESTRAINTS

Shanton v. Detrick, 826 F.Supp. 979 (N.D. W.Va. 1993). An inmate sued corrections officers and prison medical staff under Section 1983 alleging excessive force and inadequate medical attention. Prison officials' reliance on the professional judgment of an attending physician that the inmate was self-destructive and needed to be fully restrained was not deliberate indifference to serious medical needs. The officers checked the inmate every fifteen minutes and the medical unit checked the inmate every thirty minutes. In addition, the inmate was given an injection of thiorazine to help relieve his anxiety, and a nurse determined that the inmate was suffering from no injuries. (Eastern Regional Jail, Martinsburg, West Virginia)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
MENTAL HEALTH

Sullivan v. Flannigan, 8 F.3d 591 (7th Cir. 1993). On remand after appeal, the U.S. District Court entered judgment for prison officials on a prisoner's Section 1983 claims, and the prisoner appealed. The appeals court, affirming the decision, found that the prison officials had qualified immunity from a claim that prior procedures used to force

the prisoner to take psychotropic drugs deprived the prisoner of due process. The court found the current procedures were constitutional so long as the drug or dosage administered did not rob the prisoner of his ability to think cogently or render him unable to speak on his own defense. (Menard Psychiatric Center, Illinois)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE
PRETRIAL DETAINEE

Tucker v. Randall, 840 F.Supp. 1237 (N.D.Ill. 1993). A former pretrial detainee brought a Section 1983 action against officers of a sheriff's department, alleging inadequate medical care. The district court dismissed, and the detainee appealed. The appeals court found that jail officers did not act with "deliberate indifference" to the pretrial detainees' medical needs, even if they failed to treat him with ice and aspirin as instructed by a doctor, or delayed over two months in having the injuries viewed again. A reasonable person would not have viewed the detainee's injuries as being life threatening or serious. The detainee was transported to a hospital prior to booking and the hospital doctor did not treat the injuries as serious or life threatening. In addition, the inmate did not complain of injuries to the booking officer upon arrival. (Kendall County Jail, Illinois)

U.S. Appeals Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE

Warren v. State of Mo., 995 F.2d 130 (8th Cir. 1993). An inmate who was injured while operating a table saw in a prison furniture factory brought a Section 1983 action against prison officials. The U.S. District Court granted in part and denied in part the officials' motion to dismiss and, subsequently, entered summary judgment for the officials, and the inmate appealed. The appeals court, affirming the decision, found that prison officials were not deliberately indifferent to the need for medical treatment of the inmate's broken wrist, in violation of the Eighth Amendment, notwithstanding the inmate's contention that physical therapy was prescribed but not provided. The initial treatment was proper, and the inmate's own expert witness testified at the deposition that such therapy would not have improved the inmate's condition. (Mo. State Penitentiary, Jefferson City, Missouri)

U.S. Appeals Court
ADEQUACY OF
CARE
FAILURE TO
PROVIDE CARE

Watson v. Caton, 984 F.2d 537 (1st Cir. 1993). A prisoner brought an action under Section 1983 alleging that prison officials violated his federal constitutional rights with respect to medical treatment and with regard to property delivered to the prison. The U.S. District Court dismissed the complaint, and the prisoner appealed. The appeals court, affirmed in part, vacated in part and remanded the case. The court found that the prisoner's in forma pauperis complaint against prison officials under Section 1983 alleging that a prison nurse refused to treat him for a hand injury, which proved serious enough to require surgery, on the nonmedical ground that the state was not responsible for injuries caused by events occurring before he entered prison should not have been dismissed as frivolous. However, the court found that the prisoner's complaint with respect to treatment of a back injury was properly dismissed as frivolous; the allegations in the complaint reflected a disagreement about the proper course of treatment, suggesting no more than simple negligence, rather than a constitutional violation. (Downeast Correctional Facility and Charleston Correctional Facility, Maine)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
HANDICAP

Weeks v. Chaboudy, 984 F.2d 185 (6th Cir. 1993). A paralyzed prisoner brought a Section 1983 civil rights suit against a prison medical director alleging that refusal to prescribe a wheelchair was deliberately indifferent to the prisoner's serious medical needs. The U.S. District Court granted the prisoner's motion for summary judgment on liability, determined damages to be \$50,000, and ordered the prison medical director to pay \$5,000. The prisoner appealed. The appeals court, affirming in part, reversing in part and remanding, found that the prison doctor's deliberate indifference to the serious medical needs of the paralyzed prisoner was established where the doctor knew of the prisoner's paraplegia. He also knew that the prisoner was not allowed a wheelchair in the cellblock, and he refused to admit the prisoner to the infirmary where a wheelchair could be used. The prisoner was not bathed or given a hospital mattress for several days. The prison doctor was not entitled to qualified immunity as he violated clearly established law by denying the use of a wheelchair needed for the prisoner to care for himself and to clean his cell. (Southern Ohio Correctional Facility)

1994

U.S. Appeals Court
DELAY OF CARE

Berry v. Bunnell, 39 F.3d 1056 (9th Cir. 1994). In an inmate's civil rights action against prison officials, the officials' motion for a directed verdict was granted by the U.S. District Court and the inmate appealed. The appeals court, affirming the decision, found that absent evidence that minor delays in medical treatment caused him any harm, there was no violation of the Eighth Amendment. (California)

U.S. District Court
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE
MALPRACTICE
MEDICATION

Bowman v. Campbell, 850 F.Supp. 144 (N.D.N.Y. 1994). The administrator of the estate of a pretrial detainee filed a Section 1983 action alleging that physicians and a nurse were deliberately indifferent to the detainee's serious medical needs. The district court found that the plaintiff failed to present evidence that the nurse had interfered with or intentionally delayed treatment prescribed for the detainee. The record established that the nursing staff saw the detainee and administered medication 18 times over the period of his detention. The court also found that allegations that the physicians' treatment of

the detainee deviated significantly from the appropriate standard of care for serious asthma patients at most stated a medical malpractice claim which was not actionable as a Section 1983 claim absent an allegation of facts supporting a charge of deliberate indifference. Evidence showed that physicians attended to the detainee promptly after he complained of medical problems, and that during the course of their examinations they exercised medical judgment and prescribed treatment they deemed necessary. (Albany County Sheriff's Department, New York)

U.S. District Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE
DENIAL

Brown v. Thompson, 868 F.Supp. 326 (S.D. Ga. 1994). An inmate brought a Section 1983 action against a warden and prison medical staff for deliberate indifference to his medical needs. On the defendants' motions for summary judgment, the district court found that the inmate's medical treatment for months before being denied treatment on a single day did not show the deliberate indifference required to support the inmate's claim under the Eighth Amendment. (Coastal Correctional Institute, Georgia)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE

Brownlow v. Chavez, 871 F.Supp. 1061 (S.D.Ind. 1994). A prisoner brought a Section 1983 action against a prison physician alleging the physician failed to provide appropriate medical care over the past several years. On the physician's motion for summary judgment the district court found that the prison doctor was not deliberately indifferent to the prisoner's medical needs in violation of the Eighth Amendment, in view of evidence that the doctor played a principal role in providing a steady flow of medical services to the prisoner who had a knee injury. The prisoner was also seen by an orthopedic specialist on many occasions. The court noted that medical malpractice, inadvertent failure to provide adequate medical care, or simple negligence does not amount to a violation of the Eighth Amendment. (Indiana Reformatory)

U.S. District Court
CONTRACT SERVICES
FAILURE TO
PROVIDE CARE

Cherry v. Crow, 845 F.Supp. 1520 (M.D. Fla. 1994). The personal representative of the estate of a county jail inmate, who died while being treated in an infirmary for alcohol withdrawal, brought an action against the sheriff and the provider of health services for inmates and against a nurse alleging breach of contract and violation of Section 1983. The district court found that there was sufficient evidence that the inmate was an intended third-party beneficiary of a contract between the sheriff's department and the health care provider so as to permit the personal representative to bring a breach of contract claim against the provider and that the personal representative stated a Section 1983 cause of action against the provider and nurse. The allegations regarding the death of two inmates at the county jail while under medical supervision of the provider of health services were not scandalous and would not be stricken. The personal representative alleged the prior incidents not for the purpose of establishing that certain employees of the provider had a propensity to violate constitutional rights but to evidence a policy or custom of the police department and provider so as to render them liable under Section 1983. (Polk County Sheriff Department, Florida)

U.S. Appeals Court
CONTRACT
SERVICES
DELIBERATE
INDIFFERENCE

Conner v. Donnelly, 42 F.3d 220 (4th Cir. 1994). A prison inmate brought a Section 1983 action against a private physician who treated him on the referral of a prison physician, alleging that the private physician was deliberately indifferent to the inmate's serious medical needs in violation of the Eighth Amendment. The U.S. District Court granted summary judgment for the private physician, concluding that he did not act "under color of state law." The inmate appealed. The appeals court, reversing and remanding, found that a physician who treats a prisoner acts "under color of state law" for purpose of Section 1983, even in the absence of a contractual relationship between the prison and the physician, because the state has incarcerated the prisoner and denied him the possibility of obtaining adequate medical care on his own. The outside physician had no obligation to accept the prisoner as a patient, and provided treatment at a private facility using his own equipment. The physician acted "under color of state law" for purposes of Section 1983, because he assumed his state's constitutional obligation to provide medical care to the prisoner. (Bland Correctional Center, Virginia)

U.S. Appeals Court
DELAY OF CARE
DENIAL

Davidson v. Flynn, 32 F.3d 27 (2nd Cir. 1994). An inmate brought an action against corrections officials for alleged denial of medical care. The U.S. District Court adopted a recommendation by a U.S. Magistrate Judge for dismissal and the inmate appealed. The appeals court, reversing and remanding, found that the inmate's complaint sufficiently alleged potential denial of, or delay in, access to medical care necessitated by tightness of restraints and stated a claim for cruel and unusual punishment. The inmate alleged that, in spite of a complaint of severe pain, he was denied medical care and was thrown into an unheated van, and the complaint indicated relevant dates and places of the alleged misconduct and the individuals involved. (Specialized Housing Unit, Elmira, New York)

U.S. District Court
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE

Delker v. Maass, 843 F.Supp. 1390 (D. Or. 1994). A state inmate brought a Section 1983 civil rights action against the chief medical officer of a state penitentiary based on a delay of almost two years in providing an operation for a nonincarcerated, inguinal hernia. The district court found that the inmate suffered some pain, anxiety, and restricted activity during the delay, although he may not have suffered long-term physical harm from it.

The inmate alleged that the medical officer was fully aware of the inmate's injury and knew that the inmate was suffering pain and anxiety, that an operation would likely alleviate the inmate's symptoms, and that the inmate had repeatedly requested such an operation. The officer nonetheless refused to provide it because he adopted a de facto policy of not paying for such operations in order to reduce the cost of medical care for prisoners. The court found the officer was not entitled to qualified immunity, and ruled that the officer erred in establishing the de facto policy that surgery for simple hernias was never appropriate for an indigent inmate. Therefore, the officer was deliberately indifferent to the inmate's complaints of pain, restricted capacity, and anxiety. (Oregon State Penitentiary)

U.S. District Court
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE
NEGLIGENCE

Dias v. Vose, 865 F.Supp. 53 (D.Mass. 1994). An inmate brought an action under Section 1983 based on a claim that his improper medical treatment violated the Eighth Amendment. The U.S. District Court dismissed in part and granted summary judgment in part, and the inmate appealed. The court of appeals found that a disagreement as to the appropriate choice of medical treatment did not rise to a constitutional violation. The physician's failure to recommend dental surgery, which was based on a concern over the prisoner's elevated blood pressure, was not deliberate indifference to a serious medical need and the dental work was performed once the inmate's blood pressure was normal. The physician's failure to send the inmate to a hospital with an emergency ward, while possibly negligent, was not deliberate indifference to a serious medical need, even though the delay in appendicitis surgery caused complications. There was no showing that the physician acted with culpable state of mind and intention to inflict pain. (Massachusetts State Prison)

U.S. Appeals Court
AIDS
EQUAL PROTECTION

Doe v. Wigginton, 21 F.3d 733 (6th Cir. 1994). An inmate brought a Section 1983 action against prison officials in their official capacity for their failure to test him for Human Immunodeficiency Virus (HIV) infection upon request in accordance with state policy, and for subsequent disclosure to a corrections officer of his HIV infection. The U.S. District Court granted summary judgment in favor of the defendants and the inmate appealed. The court of appeals, affirming the decision, found that the HIV testing policy rationally furthered a legitimate state purpose of ensuring that scarce medical resources were used in an efficient manner, and thus did not violate the inmate's equal protection rights. (Kentucky State Reformatory)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
INTAKE SCREENING

Estate of Hocker By Hocker v. Walsh, 22 F.3d 995 (10th Cir. 1994). In a prison suicide case the U.S. District Court granted summary judgment for a county and sheriff. The administrator of the estate of the deceased detainee appealed. The appeals court, affirming the decision, found that the county and sheriff were not deliberately indifferent to the detainee's serious medical needs by establishing a policy of admitting unconscious, intoxicated arrestees; rather, the record showed that the prisoner was neither admitted to the jail in an unconscious state nor observed to be unconscious after being admitted. The jail staff had no reason to suspect that the detainee, who was intoxicated or under the influence of drugs, posed a risk of suicide, as required to support a claim that the county and sheriff were deliberately indifferent to the detainee's serious medical needs. (Cleveland County Detention Center, Norman, Oklahoma)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Hare v. City of Corinth, MS, 22 F.3d 612 (5th Cir. 1994). The estate of a pretrial detainee who committed suicide brought a civil rights action against jail officials. The U.S. District Court denied the officials' motion for summary judgment on qualified immunity grounds, and the officials appealed. The appeals court noted that, at the time the pretrial detainee committed suicide in 1989, jail officials were under a clearly established constitutional duty to respond to the detainee's serious medical needs, including suicidal tendencies and attempts to commit suicide, with at least more than deliberate indifference. The pretrial detainee committed suicide in her cell by hanging herself with a blanket she had torn into strips. The court found genuine issues of material fact as to whether jail officials knew or should have known of the detainee's vulnerability to suicide. She was placed in an isolated cell which was not visually monitored and which could not be reached by a trustee or the dispatcher on duty. The court precluded summary judgment in favor of the officials on qualified immunity grounds. (Corinth City Jail, Mississippi)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE
PRETRIAL
DETAINEE

Hare v. City of Corinth, MS, 36 F.3d 412 (5th Cir. 1994). The estate of a pretrial detainee who committed suicide brought a Section 1983 action against jail officials. The U.S. District Court denied the officials' motion for summary judgment on qualified immunity grounds and the officials appealed. The appeals court found that when the pretrial detainee committed suicide in 1989, jail officials were under a clearly established constitutional duty to provide reasonable care for serious medical needs, unless the deficiency reasonably served a legitimate governmental objective. The court ruled that whether the officials denied reasonable medical care for the pretrial detainee and whether a legitimate governmental objective justified the denial were questions of fact precluding summary judgment on the issue of qualified immunity. (Corinth City Jail, Mississippi)

- U.S. Appeals Court
 DELIBERATE
 INDIFFERENCE
- Kayser v. Caspari, 16 F.3d 280 (8th Cir. 1994). A prisoner brought a civil rights action alleging that prison officials displayed deliberate indifference to his serious medical needs. The U.S. District Court granted summary judgment for the officials, and the prisoner appealed. The appeals court, affirming the decision, found that the prison officials were not deliberately indifferent to the prisoner's serious medical needs in violation of the Eighth Amendment, even though the prisoner alleged that prison officials ignored his kidney stone ailment. The only evidence that the prisoner suffered from kidney stones was his bare assertion. The hospital which provided the medical examination of the prisoner concluded that his kidneys were normal. (Missouri Eastern Correctional Center)
- U.S. Appeals Court
 DENTAL CARE
 FAILURE TO
 PROVIDE CARE
 MALPRACTICE
- Kinney v. Kalfus, 25 F.3d 633 (8th Cir. 1994). A prison inmate brought a Section 1983 action against a prison dentist. The U.S. District Court denied the dentist's motion for summary judgment and the dentist appealed. The appeals court, affirming the decision, found that prison inmates do not have the right to choose their own dentists. However, a genuine issue of material fact regarding whether the dentist refused to treat the inmate and failed to refer him to another dentist in retaliation for the inmate's filing of a malpractice action against him precluded summary judgment. (Missouri Prison)
- U.S. District Court
 EQUIPMENT
- Leslie v. Doyle, 868 F.Supp. 1039 (N.D. Ill. 1994). A state prisoner brought a civil rights action against various prison officials. On a motion of the defendants to dismiss for failure to state a cause of action, the district court found that depriving him of his own cane and providing him with a prison-issued cane instead does not constitute cruel and unusual punishment. (Joliet Correctional Center, Illinois)
- U.S. District Court
 DELAY IN
 TREATMENT
 RELIGION
- Lowrance v. Coughlin, 862 F.Supp. 1090 (S.D.N.Y. 1994). A Muslim prisoner brought a Section 1983 action against various prison officials alleging violation of the First, Eighth, and Fourteenth Amendments. The district court found that prison officials violated the Eighth Amendment with respect to delaying surgery on the inmate's left knee, entitling the inmate to damages as compensation for pain that could have been reduced between the initial diagnosis and an operation, which did not take place for nearly two years. The prison medical staff had actual notice of the injured knee as reflected in prison medical records, yet failed to provide adequate care. The inmate was transferred from one prison to another on the eve of surgery in retaliation for exercising his protected religious and free speech right, despite the prison officials' having knowledge of the inmate's medical need, and the inmate was deprived of adequate postoperative treatment. (Green Haven Correctional Facility, and other facilities, New York)
- U.S. District Court
 CONTRACT
 SERVICES
- Manis v. Corrections Corp. of America, 859 F.Supp. 302 (M.D. Tenn. 1994). An inmate brought a civil rights action against a private corporation and one of its employees who operated a prison under contract with the state, alleging deliberate indifference to serious medical needs in violation of the Eighth Amendment. The defendants moved to dismiss the action. The district court found that the private corporation and its employees were not protected from the suit by the qualified immunity of public officials. (South Central Correctional Center, Tennessee)
- U.S. District Court
 MEDICATION
- Messina v. Mazzeo, 854 F.Supp. 116 (E.D.N.Y. 1994). An arrestee brought a federal civil rights action against a correctional facility physician. The district court found that the pretrial detainee stated a claim for deliberate indifference to his medical needs by alleging that the intake physician at the correctional facility denied him methadone which was allegedly warranted upon the detainee's arrival. If, based on the detainee's condition, it was medically necessary that he receive the methadone immediately, the physician's action was more than negligent. (Rikers Island, New York)
- U.S. Appeals Court
 DELIBERATE
 INDIFFERENCE
 DENTAL CARE
- Patterson v. Pearson, 19 F.3d 439 (8th Cir. 1994). A prisoner brought a civil rights action against a prison dentist, alleging deliberate indifference to the prisoner's serious dental needs. The U.S. District Court entered summary judgment in favor of the dentist, and the prisoner appealed. The appeals court, reversing and remanding, found that a material issue of fact as to whether an approximately one-month delay in providing the prisoner with follow-up dental care despite the knowledge that the inmate was suffering severe pain precluded summary judgment for the dentist. (Missouri State Prison)
- U.S. Appeals Court
 DELIBERATE
 INDIFFERENCE
- Reeves v. Collins, 27 F.3d 174 (5th Cir. 1994). An inmate brought a civil rights action against detention officers claiming that they were deliberately indifferent to his serious medical needs. The U.S. District Court dismissed the action and the inmate appealed. The appeals court, affirming the decision, found that the detention officers were not deliberately indifferent to the inmate's serious medical needs when they ordered him to perform cleaning duties notwithstanding his continued complaints of severe abdominal pain, which was diagnosed as a double hernia. The inmate's records stated no medical restrictions, and there was no indication at the time, besides the inmate's assertions of pain, that he had a hernia. (T.L. Roach Unit, Texas Department of Criminal Justice)

- U.S. Appeals Court
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE
EMERGENCY CARE
- Ruark v. Drury, 21 F.3d 213 (8th Cir. 1994) U.S. cert. denied 115 S.Ct. 66. Parents of a county jail inmate, who apparently died from a drug overdose on the way to the hospital from prison, brought a Section 1983 action against the county, jail warden, jail security officer, and sheriff alleging violation of the Eighth Amendment due to their alleged deliberate indifference to the inmate's serious illness or injury. The defendants moved for summary judgment. The U.S. District Court granted the motion and the parents appealed. The appeals court, affirming the decision, found that the parents failed to establish a genuine issue of material fact with respect to any obduracy or wantonness on the part of jail personnel in failing to recognize a medical emergency. The jail warden's telling jail security officers to just lock up and forget the inmate did not demonstrate the jail warden's personal participation, and tacit approval of events prior to the inmate death that would have subjected him to liability. A 20-minute delay between the time the inmate's condition was recognized as an emergency and the time when an ambulance was called was not deliberate indifference. (Jasper County Jail, Missouri)
- U.S. Appeals Court
DELIBERATE
INDIFFERENCE
TREATMENT
- Sherrer v. Stephens, 50 F.3d 496 (8th Cir. 1994). An inmate brought a Section 1983 action against prison medical staff members for being deliberately indifferent to his medical needs under the Eighth Amendment in treating his broken index finger. The U.S. District Court granted summary judgment for the prison medical staff members and the inmate appealed. The appeals court, affirming the decision, found that the treatment of the inmate's broken finger did not rise to the level of deliberate indifference based on evidence that he received painkillers, instructions to apply ice and perform motion therapy, x-rays, and examination by orthopedists. (Delta Regional Unit, Arkansas Department of Correction)
- U.S. District Court
DELIBERATE
INDIFFERENCE
SPECIAL DIETS
- Taylor v. Anderson, 868 F.Supp. 1024 (N.D. Ill. 1994). An inmate brought a Section 1983 action against a prison dietician for failing to provide him with diabetic meals required for his condition. The district court found that the inmate stated a claim under Section 1983. The inmate had informed prison officials of his condition, complained about the nutritionally inadequate meals provided, met with the dietician, and still did not receive adequate diabetic meals. In addition, the inmate sufficiently alleged that the prison's failure to satisfy his dietary requirements threatened his serious medical needs to state a claim under the Eighth Amendment, where he alleged that the dietician threatened his health and endangered his life by failing to provide him with the required diet. (Joliet Correctional Center, Illinois)
- U.S. District Court
DENIAL
- Walker v. Peters, 863 F.Supp. 671 (N.D. Ill. 1994). An inmate brought a civil rights action against prison officials alleging denial of medical treatment during the filming of a movie at the prison. On a motion of the defendants for summary judgment, the district court found that the inmate failed to raise a genuine issue of material fact since his unsupported claims were refuted by medical records that showed otherwise. (Stateville Corr. Center, Illinois)
- U.S. District Court
DELIBERATE
INDIFFERENCE
MEDICATION
TREATMENT
- Whitley v. Lewis, 844 F.Supp. 276 (E.D. Va. 1994) affirmed 48 F.3d 1218. The estate of an inmate who suffered a fatal brain seizure while incarcerated brought a Section 1983 action against prison medical personnel alleging that the defendants acted with deliberate indifference to the inmate's medical condition in failing to take steps to assure that the inmate took his seizure medication. On the defendants' motion for summary judgment, the district court found that the defendants did not act with deliberate indifference to the inmate's medical condition. The court noted that mere negligence or malpractice does not violate the Eighth Amendment. The physician at the prison did not act with deliberate indifference to the inmate's medical condition by not taking other actions to insure that the inmate took his medication. The physician took active measures to monitor the inmate's condition. In addition, the physician counseled the inmate about the importance of taking his medication, altered the inmate's regimen to make it easier for him to follow, and believed the inmate was capable of following the regimen. The nurses at the prison did not act with deliberate indifference to the inmate's medical condition. The nurses' primary contact with the inmate occurred in assisting the physician in treating the inmate, and administering medication at the pill window. Furthermore, the nurses agreed with the physician that the inmate was capable of following the seizure-preventing regimen. (St. Brides Correctional Center, Chesapeake, Virginia)
- U.S. District Court
DELIBERATE
INDIFFERENCE
NEGLIGENCE
- Willis v. Clemente, 882 F.Supp. 133 (S.D. Ind. 1994). An inmate brought civil rights actions against physicians and medical and prison officials for alleged substandard medical treatment. On the defendants' motions for summary judgment, the district court found that the physicians and medical and prison officials were not liable to the inmate for alleged inadequate medical treatment, even though the defendants initially failed to diagnose a broken bone in the inmate's hand. The inmate asserted only negligent malpractice, not any deliberate indifference of the defendants. (Indiana State Reformatory)
- U.S. District Court
FEMALE
PRISONERS
- Women Prisoners v. District of Columbia, 877 F.Supp. 634 (D.D.C. 1994). A class action was brought on behalf of female prisoners in the District of Columbia. The district court found that the Eighth Amendment was violated by lack of proper medical care. The female prisoners demonstrated that prison officials had deviated from the standard of acceptable medical care for women prisoners through deficient gynecological examinations and testing, inadequate testing for sexually transmitted diseases, inadequate follow-up care, inadequate health education, inadequate prenatal care, inadequate prenatal protocol, and

ineffective prenatal education. (District of Columbia Correctional System- the Lorton Minimum Security Annex, the Correctional Treatment Facility, the Central Detention Facility)

U.S. District Court
CONTAGIOUS
DISEASES
DELIBERATE
INDIFFERENCE

Wright v. Baker, 849 F.Supp. 569 (N.D. Ohio 1994). An inmate brought a Section 1983 action against a prison warden and the Director of the Ohio Department of Rehabilitation and Corrections under Section 1983, asserting that he was exposed to tuberculosis by his contact with another inmate in violation of his Eighth Amendment rights. The district court found that the inmate failed to make a claim of deliberate indifference to his serious medical needs, despite his allegation that he was exposed to another inmate, an active tuberculosis converter, who worked in food service. The inmate admitted that prison officials did not know prior to diagnosis of tuberculosis that the other inmate had developed tuberculosis, but the plaintiff inmate admitted that he tested negative after the discovery that the other inmate had tuberculosis, and all inmates were regularly tested for tuberculosis by the prison. (Mansfield Correctional Institution, Ohio)

1995

U.S. District Court
PRIVACY
AIDS

Adams v. Drew, 906 F.Supp. 1050 (E.D.Va. 1995). A pretrial detainee who was HIV positive brought a civil rights suit against prison officials, alleging the officials violated his right of privacy and failed to protect him from other inmates. The district court granted summary judgment for the officials, in part, ruling that the detainee did not have a right to privacy of medical information where it was alleged that prison medical staff inadvertently allowed other inmates to discover that the prisoner was receiving AZT. The court also found that prison officials who did not know that the detainee was in danger of being attacked by other inmates could not be held liable under the due process clause. However, the court found that summary judgment was precluded for the detainee's claim that officials displayed deliberate indifference to his safety. The inmate was attacked by other inmates after he had asked officials that he be moved from the cell block in which he was incarcerated because he believed he would be assaulted. (Virginia Beach Correctional Center, Virginia)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Aswegan v. Henry, 49 F.3d 461 (8th Cir. 1995). A prisoner sued prison officials for alleged violation of the Eighth Amendment based on aggravation of his asthma which allegedly resulted from his being placed in a small shower stall during cell shakedown. The U.S. District Court granted an injunction for the prisoner, and the prison officials appealed. The appeals court, reversing the decision, found that the prisoner's bare assertion that being placed in the stall during cell shakedowns aggravated his asthma was insufficient to support a claim that being placed in the stall was a violation of his rights under the Eighth Amendment. The appeals court found that even if prison officials were aware of the inmate's various medical complaints, evidence presented no objective reason for them to believe that confinement in the shower stall during a cell shakedown would aggravate his breathing problems. On consultation with prison medical personnel, officials were told that the inmate had no medical need to avoid that type of confinement. (Iowa State Penitentiary, Fort Madison, Iowa)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Banuelos v. McFarland, 41 F.3d 232 (5th Cir. 1995). An inmate brought a civil rights action against prison officials, alleging that officials were deliberately indifferent to his medical needs. The U.S. District Court dismissed the claim as frivolous and the inmate appealed. The appeals court, affirming the decision, found that evidence was insufficient to establish that prison officials were deliberately indifferent to the inmate's serious medical needs when the inmate was forced to work in hard soled boots, allegedly exacerbating an ankle injury. Medical records indicated that the inmate's ankle condition was not serious. (Wynne Correction Facility, Huntsville, Texas)

U.S. Appeals Court
DELAY OF CARE

Beyerbach v. Sears, 49 F.3d 1324 (8th Cir. 1995). A prison inmate brought a Section 1983 action against prison officials, alleging that the defendants violated the inmate's Eighth Amendment right to be free of cruel and unusual punishment by temporarily delaying medical care for his injured hand. The U.S. District Court denied the defendants' motions for summary judgment based on merits and on qualified immunity and the defendants appealed. The court of appeals, reversing the decision, found that the prison officials did not violate the inmate's Eighth Amendment right to be free from cruel and unusual punishment. Medical evidence indicated that the initial delay of two to three hours before seeing a nurse was normal and consistent with delays occurring outside the prison for treatment of the same injury, that the treatment he received was sufficient for any pain he would have, that his injury was not a critical or escalating situation that needed an immediate x-ray and casting, and that delays were medically acceptable and would not have jeopardized his prognosis. (Jefferson City Correctional Center, Missouri)

U.S. Appeals Court
DELAY OF CARE
DELIBERATE
INDIFFERENCE
DENTAL CARE

Boyd v. Knox, 47 F.3d 966 (8th Cir. 1995). A prisoner sued various prison officials for Eighth Amendment violations as a result of the delay of dental care for an infected and impacted tooth. The U.S. District Court denied summary judgment and the parties appealed. The appeals court found that waiting three weeks to complete a referral form for dental care of the impacted and infected wisdom tooth created a genuine issue of material fact, precluding summary judgment for one prison official, as to whether the official violated the Eighth Amendment prohibition against deliberate indifference to a serious medical need. The medical need was obvious from the extent of the swelling. (Missouri Department of Corrections)

U.S. District Court
FAILURE TO PROVIDE
CARE
AIDS
MEDICATION
CONTRACT SERVICES

Burton v. Cameron County, Tex., 884 F.Supp. 234 (S.D.Tex. 1995). A detainee who suffered from AIDS filed § 1983 and Texas tort claims actions against a sheriff, jail physician and county. The district court granted summary judgment for the county and physician on the issue of medical care, finding that the detainee had been provided with reasonable care. The detainee had alleged that he was not properly provided with his AZT treatment by infirmary staff but the court noted that the detainee's private physician had testified that confinement had not affected the detainee's medical condition or his mental health. The court also found that any alleged shortcomings of treatment or failure by infirmary staff could not be imputed on the private physician who was under contract to provide medical services to the jail. The court refused to dismiss allegations that the detainee was never appointed an attorney nor allowed access to the law library during his two months of confinement. (Cameron County Jail, Texas)

U.S. District Court
DELAY OF CARE
DELIBERATE
INDIFFERENCE

Caldwell v. District of Columbia, 901 F.Supp. 7 (D.D.C. 1995). A prisoner who was attacked by fellow inmates filed a § 1983 action against the District of Columbia and corrections officials. The district court dismissed the case, finding that the prisoner failed to state a § 1983 claim that officers violated his rights by failing to protect him for other inmates. The court also held that the prisoner failed to state a § 1983 claim against the District of Columbia absent evidence that an emergency policy was inadequate or that officers were inadequately trained. The court found that a fifty minute delay between the time the prisoner was attacked and the time medical attention was delivered did not amount to deliberate indifference because correctional officers' conduct, although possibly negligent, was not wanton. The officers took steps to ensure that the prisoner received proper medical attention. The court held that the alleged negligence of corrections officers in the opening and closing of cell doors did not rise to the level of deliberate indifference required to merit constitutional relief. (District of Columbia Jail)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
INTERPRETER

Camberos v. Branstad, 73 F.3d 174 (8th Cir. 1995). The district court granted judgment for a Spanish-speaking prisoner who had filed a § 1983 action against prison officials alleging deliberate indifference to his serious medical needs. The appeals court reversed and remanded the case with directions, finding that the prison's treatment director and warden could not be held liable for the medical staff's decision not to refer the prisoner to a doctor for treatment of a shoulder injury. The court also held that the treatment director and warden could not be held liable for failing to investigate the prisoner's communication problems and provide him with an interpreter to assist in his medical visits, as evidence did not support a finding that the prisoner required assistance to communicate effectively with medical staff. The court held that prison nurses who failed to refer the prisoner to a doctor despite his repeated complaints of shoulder and arm pain over an 11-month period were not deliberately indifferent to the prisoner's serious medical needs. The nurses had taken both of the options available to them by referring the prisoner to a physician's assistant on several occasions and by suggesting that the medical director review the prisoner's file. The nurses also listened to and painstakingly chronicled the prisoner's numerous medical complaints and the prisoner was sent seven times to a local hospital for further treatment. (North Central Correctional Facility, Iowa)

U.S. District Court
HANDICAP
INFORMED CONSENT
PRIVACY

Clarkson v. Coughlin, 898 F.Supp. 1019 (S.D.N.Y. 1995). Male and female deaf and hearing-impaired inmates sued correctional officials alleging failure to accommodate their hearing impairments in violation of the Rehabilitation Act, the Americans with Disabilities Act (ADA), due process, and the Eighth Amendment. The inmates also alleged violation of equal protection because male inmates were granted access to a sensorially disabled unit, but not females. The district court found that the defendants violated all statutes and constitutional provisions under which the inmates had sought relief, warranting declaratory and injunctive relief. According to the court, medical treatment provided to deaf and hearing-impaired inmates without the assistance of a qualified interpreter or other assistive devices was a failure to provide sufficient information for informed consent, thereby violating inmates' due process rights to be free from unwanted medical treatment. At least two inmates experienced improper and possibly harmful treatment as a result. The use of sign language interpreters who were not bound to maintain confidentiality in the administration of medical treatment violated the inmates' constitutional right to privacy. (New York Department of Correctional Services)

U.S. District Court
DELIBERATE
INDIFFERENCE
MENTAL HEALTH

Coleman v. Wilson, 912 F.Supp. 1282 (E.D.Cal. 1995). Inmates challenged the adequacy of mental health care provided at institutions operated by the California Department of Corrections, alleging that the inadequacies were cruel and unusual punishment in violation of the Eighth Amendment. The district court reviewed the findings and recommendations of the chief magistrate judge after objections were filed by the defendants. The court found that evidence supported the magistrate's findings and recommendations regarding many aspects of the Department's mental health services, and ordered that a special master be appointed to monitor the Department's compliance with court-ordered injunctive relief.

The court found that there were six components of a minimally-adequate prison mental health care delivery system under the Eighth Amendment: (1) a systematic program for screening and evaluating inmates to identify those in need of mental health care; (2) a treatment program that involves more than segregation and close supervision of mentally ill inmates; (3) employment of a sufficient number of trained mental health professionals; (4) maintenance of accurate, complete and confidential mental health treatment records; (5) the administration of psychotropic medication only with appropriate supervision and periodic evaluation; and (6) a basic program to identify, treat and supervise inmates at risk for suicide. The court found that evidence supported findings of deficiencies in all of these areas.

The Department's mental illness screening procedures were based on self-reporting, use of records of prior hospitalization and/or past or current use of psychotropic medications, exhibition of bizarre behavior, and requests for care. The court found these procedures were used haphazardly and depended for efficacy on incomplete or nonexistent medical records, or observations of custodial staff who were inadequately trained to recognize the signs and symptoms of mental illness.

The court found that medication management for mentally ill inmates was constitutionally deficient because: computers were not networked preventing inmate medication to be tracked when an inmate was transferred; some inmates were receiving timely medication and appropriate monitoring while others were not; and some medications that were effective in the treatment of serious mental disorders were not available.

The court found deficiencies with the medical records maintained by the Department, including: disorganized, untimely and incomplete filing of medical records; incomplete or nonexistent treatment plans; and failure to send medical records with inmates when they were transferred. The court noted that it was the Department's responsibility to take reasonable steps to implement policies that would aid in obtaining medical information from counties from which inmates were transferred.

The court found that evidence established that the Department was significantly and chronically understaffed in the area of mental health employees. The court found that custody staff played inappropriate roles in decisions concerning involuntary medication at some institutions. Evidence supported the finding that custodial staff were inadequately trained in signs and symptoms of mental illness, supporting allegations that disciplinary and behavior control measures were inappropriately used against mentally ill inmates. The three-hour course received by all new correctional officers, and additional in-service training at the institution level, were not sufficient to prevent some officers from using punitive measures to control inmates' behavior without regard to the cause of the behavior.

The court supported the decision of the magistrate to refrain from specifying the exact mechanism for screening of inmates, the number of staff to be hired, the specific level of competence to be possessed by staff, the precise methods of medication management, and the manner of maintaining medical records. The magistrate appropriately proposed leaving matters of creation of protocols, standards, procedures and forms to be developed to the defendant, in consultation with court-appointed medical experts. (California Department of Corrections)

U.S. District Court
DELIBERATE
INDIFFERENCE
MISDIAGNOSIS
PRIVATE PHYSICIAN
RESTRAINTS
MALPRACTICE

Coppage v. Mann, 906 F.Supp. 1025 (E.D.Va. 1995). A former Virginia prison inmate brought a § 1983 action alleging Eighth Amendment violations against a prison superintendent, physician, nurse and private consulting physician. The plaintiff also asserted state-law claims for medical malpractice, intentional infliction of emotional distress and assault and battery. The plaintiff claimed that his cancerous condition was misdiagnosed and that he was subjected to inhumane living conditions during his course of treatment. The district court granted summary judgment, in part, for the defendants, dismissing all federal claims. The district court retained jurisdiction over state-law claims. The court ruled that the inmate did not have claims for intentional infliction of emotional distress or assault and battery, that the inmate failed to establish deliberate indifference to his serious medical needs, and that the defendants were entitled to qualified immunity. The court also found that the acknowledged fact that the inmate sometimes had to lie in his own waste, was not immediately provided with a wheelchair, and was handcuffed to his bed as a last resort to treat his bedsores, did not make out an Eighth Amendment claim. However, the court found that a fact issue existed as to whether the prison physician's conduct amounted to gross negligence so as to deprive him of sovereign immunity. Although the prison was short-staffed with nurses, this did not establish an Eighth Amendment violation absent any evidence that nurses were not hired with the knowledge that, as a result, the inmate would be placed at substantial risk of living in inhumane conditions. (Rappahannock Security Center, Virginia)

U.S. District Court
COSTS

Delverne v. Klevenhagen, 888 F.Supp. 64 (S.D.Tex. 1995). A state inmate housed in a county jail challenged the jail policy of charging him for medical services. The district court held that the policy did not violate the inmate's equal protection rights, but that the implementation of the policy may have violated the inmate's due process rights. Nonindigent county inmates were statutorily required to pay for certain medical services, and the court found that the jail policy of not exempting state inmates was rationally related to the goals of reducing the administrative burden, curtailing frivolous requests for medical services, and avoiding an unfair tax burden on county residents. In spite of the fact that the state paid a daily fee (\$20), the fee was less than the actual cost of housing an inmate (\$41.74); therefore the state had not already paid for medical services as the inmate had argued. The court questioned the county's method of determining indigence and the administrative procedure employed for charging inmates, precluding summary judgment for the officials. The county policy requires inmates to pay between ten and sixteen dollars per visit to see a medical professional and inmates are charged three dollars for each prescription filled. The policy states that no inmate will be denied medical care based on his indigent status. The county stated that the fees are not charged until after a service is rendered, and only when the inmate has signed a document authorizing the charge to his inmate trust account. If the inmate is indigent he is not charged; if the inmate was not found to be indigent or did not apply for indigent status his trust fund is debited, even if the charge creates a negative balance. The court expressed concerns about the method and criteria used to determine indigency, based on the fact that an inmate may be declared non-indigent even though he has no funds in his trust account. (Harris County Jail, Texas)

- U.S. District Court
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE
- Ferguson v. Cape Girardeau County, 883 F.Supp. 431 (E.D. Mo. 1995). A prison inmate brought civil rights claims and state law claims against counties, their sheriff departments' personnel, and others, alleging violations of the inmate's constitutional rights while a pretrial detainee. The district court found that an eight-hour delay between the time that an inmate requested to see a doctor and the time that the doctor saw the inmate did not violate the inmate's constitutional rights so as to constitute a civil rights law violation, where the doctor found that the inmate did not require immediate medical attention. (Doniphan City Jail and Ripley County Sheriff's Department)
- U.S. District Court
DELAY OF CARE
DELIBERATE
INDIFFERENCE
- Geddes v. Cox, 880 F.Supp. 767 (D.Kan. 1995). A prisoner who had been housed in a county jail brought a federal civil rights action against jail employees alleging that he was subjected to cruel and unusual punishment through the failure to provide medical care in a timely manner. The employees moved for summary judgment. The district court found that allegations by the prisoner that the jail employees failed to properly treat him for pancreatitis did not establish deliberate indifference to the prisoner's serious medical needs and failed to state a claim for cruel and unusual punishment. Information supplied by the prisoner's physician did not indicate that there was a serious medical need regarding the prisoner's condition. In addition, the employees were responsive to a hunger strike by the prisoner and there was no evidence which suggested that the prisoner suffered substantial harm as a result of any delay in providing him with treatment. (Meade County Jail, Meade, Kansas)
- U.S. Appeals Court
MEDICAL CARE
SMOKE
- Goffman v. Gross, 59 F.3d 668 (7th Cir. 1995). A state prison inmate filed a § 1983 action against correctional officers alleging deliberate indifference to his immediate medical needs. The district court entered judgment for the officers and the appeals court affirmed. The appeals court found that the inmate failed to establish that his exposure to his cellmate's cigarette smoke and the officers' refusal to assign him a nonsmoking cellmate constituted deliberate indifference. The court noted that the sole testifying physician offered the opinion that because the inmate was cured of lung cancer after the prior surgical removal of a lung, cigarette smoke affected him no more than any other prisoner. (Menard Correctional Center, Illinois)
- U.S. District Court
DENTAL CARE
COSTS
- Hogan v. Russ, 890 F.Supp. 146 (N.D.N.Y. 1995). A prisoner filed a federal civil rights action alleging that his constitutional rights were violated by the failure of prison officials to provide for the examination of his teeth by a periodontist; the inmate sought an injunction to force the examination to be provided at state expense. The court denied the prisoner's motion for injunctive relief and dismissed the case, finding that the prisoner did not establish deliberate indifference to his medical needs. The court held that the state's refusal to pay for a dental examination advanced the state's legitimate interest in distributing its limited resources and did not violate the prisoner's equal protection. The prison policy allowed the prisoner to see a periodontist to examine and treat his teeth only at his own expense. The prison physician had recommended that the prisoner's four bad teeth be extracted without first taking X-rays. (Shawagunk Correctional Facility, New York)
- U.S. District Court
RELEASE
- Johnson v. Nelson, 877 F.Supp. 569 (D.Kan. 1995). An inmate filed a petition for writ of habeas corpus and moved for release on bond to seek medical treatment. The district court denied the motion. The court found that the inmate was not entitled to release on bond to his parents home for the sole purpose of receiving medical care for his progressive cancer. The inmate had been convicted of serious offenses and he was being provided medical treatment in a manner consistent with his incarceration. (El Dorado Correctional Facility, El Dorado, Kansas)
- U.S. District Court
TRANSSEXUAL
- Long v. Nix, 877 F.Supp. 1358 (S.D. Iowa 1995). A prisoner claiming to be a transsexual brought a Section 1983 action against prison officials seeking to have appropriate living conditions and medical treatment provided for him. The district court found that the denial of desired accommodations and medical treatment did not constitute cruel and unusual punishment. The prisoner's transsexualism tendencies did not constitute a sufficient gender identity disorder to create a serious medical need for which treatment was mandated under the Eighth Amendment. An experienced physician who examined the prisoner concluded that his desires to cross-dress and anxieties regarding his sexual identity could be controlled by drugs. In addition, the prisoner had not requested a sex change operation and the staff had not shown deliberate indifference to the condition. The court also found that placing the prisoner claiming to be a transsexual in an "inappropriate" facility and denying him desired medical treatment without giving him an opportunity to be heard did not violate his Fourteenth Amendment due process rights. (Iowa State Penitentiary)
- U.S. District Court
ADEQUACY OF CARE
TRAINING
RECORDS
STAFF
DELAY OF CARE
EMERGENCY CARE
- Madrid v. Gomez, 889 F.Supp. 1146 (N.D.Cal. 1995). Inmates brought a class action suit challenging conditions of confinement at a new high-security prison complex in California. The district court found for the plaintiffs in the majority of issues presented, ordered injunctive relief and appointed a special master to direct a remedial plan tailored to correct specific constitutional violations. In the beginning of its lengthy opinion, the court noted that this "...is not a case about inadequate or deteriorating physical conditions...rather, plaintiffs contend that behind the newly-minted walls and shiny equipment lies a prison that is coldly indifferent to the limited, but basic and elemental, rights that incarcerated persons--including the 'worst of the worst'--retain under...our Constitution." The court held that the fact that a prison may be

new does not excuse its obligation to operate it in a constitutionally acceptable manner.

The court held that prison inmates established prison officials' deliberate indifference to the use of excessive force by showing that they knew that unnecessary and grossly excessive force was being employed against inmates on a frequent basis and that these practices posed a substantial risk of harm to inmates. According to the court, officials consciously disregarded the risk of harm, choosing instead to tolerate and even encourage abuses of force by deliberately ignoring them when they occurred, tacitly accepting a code of silence, and failing to implement adequate systems to control and regulate the use of force. The court found that officials had an affirmative management strategy to permit the use of excessive force for the purpose of punishment and deterrence.

The court found the delivery of physical and mental health services to be constitutionally inadequate and that evidence demonstrated that officials knew that they were subjecting the inmate population to a substantial risk of serious harm, thus violating the Eighth Amendment. The court held that staffing levels were insufficient, training and supervision of medical staff was almost nonexistent and screening for communicable diseases was poorly implemented. Inmates often experienced significant delays in receiving treatment, there were no protocols or training programs for dealing with emergencies or trauma, there was no effective procedure for managing chronic illness, medical recordkeeping was deficient, and there were no programs of substance to ensure that quality care was provided.

According to the court, although conditions of confinement in the security housing unit did not violate the Eighth Amendment for all inmates, they did violate constitutional standards when imposed on certain inmates, including those who were at a particularly high risk for suffering very serious or severe injury to their mental health. The court found that conditions involved extreme social isolation and reduced environmental stimulation. The court held that prison officials had an actual subjective knowledge that conditions of isolation presented a substantial excessive risk of harm for mentally ill and other vulnerable inmates, and that the officials acted wantonly in violation of the Eighth Amendment.

The court ruled that the psychological pain that results from idleness in segregation is not sufficient to implicate the Eighth Amendment, particularly where exclusion from prison programs is not without some penological justification. (Pelican Bay State Prison, California)

U.S. District Court
DENTAL CARE
DELAY OF CARE
INTERFERENCE

Malsh v. Austin, 901 F.Supp. 757 (S.D.N.Y. 1995). An inmate brought a civil rights action against prison officials claiming that his Eighth and Fourteenth Amendment rights were violated by the rescheduling of a dental appointment. The court dismissed the case, finding that the inmate did not have a protected liberty interest in having his dental appointment on the day scheduled and that postponement of the appointment did not constitute cruel and unusual punishment. The court noted that the postponed appointment was for routine work, was not an emergency, and that the inmate's refusal to attend the rescheduled appointment belied any urgency of the scheduled appointment. The court found that the inmate's claim that he was threatened with disciplinary action, physical violence, an extension of time in keeplock, and possible segregation if he continued to seek dental care, could not support a § 1983 action without any allegation of injury or damage. (Woodburne Correctional Facility, New York)

U.S. District Court
COSTS
FAILURE TO
PROVIDE CARE
MEDICATION
PAYMENT

Martin v. Debruyne, 880 F.Supp. 610 (N.D. Ind. 1995). An inmate filed a civil rights action against various correction officials alleging a violation of the Eighth Amendment in failing to provide over the counter (OTC) medication required for treatment of an ulcer. The district court found that a prison official who withholds necessary medical care from an inmate who cannot pay for want of payment violates the inmate's constitutional rights if the inmate's medical needs are serious, but the Eighth Amendment does not guaranty free medical care and does not forbid the state from requiring that an inmate pay for medical treatment to the extent that he is able to do so. A prison official violates the Eighth Amendment by refusing to provide an inmate with prescribed OTC medicine for a serious medical need only if the inmate lacks sufficient resources to pay for the medicine. If officials refuse to provide an inmate with prescribed medicine, OTC or otherwise, for serious medical needs at a time when the inmate cannot pay for the medicine, the officials would still be liable for a constitutional violation even if the inmate later acquires a means to pay and thus acquires the medicine. There were issues of fact precluding summary judgment for the inmate concerning the inmate's ability to pay for the medication and the personal involvement of the defendants. (Indiana State Prison)

U.S. District Court
CONTAGIOUS
DISEASES

McCorkle v. Walker, 871 F.Supp. 555 (N.D.N.Y. 1995). An inmate brought a civil rights action against various prison officials alleging violation of the Eighth Amendment. The district court found that there was no violation of the Eighth Amendment prohibition against cruel and unusual punishment in the exposure of the inmate to tuberculosis (TB), allegedly while working in the prison infirmary. Prison officials demonstrated that they responded reasonably to the exposure, and it was undisputed that the inmate had not suffered, and was unlikely to ever suffer, an active case of TB. (Auburn Correctional Facility, New York)

U.S. District Court
DELIBERATE
INDIFFERENCE

McKinney v. Compton, 888 F.Supp. 75 (W.D.Tenn. 1995). An inmate filed a civil rights suit against prison officials alleging deliberate indifference to his serious medical needs and use of excessive force. The district court found that prison officials did not inflict cruel and unusual punishment in connection with the inmate's eye injury, and that a corrections officer could not be held liable for attempting to handcuff the inmate. However, the court found that the

inmate's allegations that a prison official poked him in the eye and injured him after he was already restrained were sufficient to state an Eighth Amendment claim. (West Tennessee High Security Facility)

U.S. Appeals Court
DELAY OF CARE
DENIAL

Murphy v. Walker, 51 F.3d 714 (7th Cir. 1995). A pretrial detainee brought a civil rights action against jail officials alleging inadequate medical treatment. The U.S. District Court dismissed the complaint for failure to state a claim and the detainee appealed. The appeals court found that an allegation that the pretrial detainee was denied medical attention for head injuries suffered in a fall while taking a shower was sufficient to state a claim for denial of due process. The detainee's complaints of severe, long-term pain would have lead a reasonable officer to have found that the detainee's condition was serious enough to merit a physician referral, an evaluation and treatment if indicated. In addition, allegations that the pretrial detainee was denied adequate medical care by officers' improper removal of a cast from his hand, their failure to take him to a doctor for a follow-up examination, and their refusal to provide him with prescribed medication, were sufficient to state a claim for a violation of the detainee's due process rights. (Mason County Jail and Tazwell County Jail, Illinois)

U.S. District Court
DELIBERATE
INDIFFERENCE

Neville v. True, 900 F.Supp. 972 (N.D.Ill. 1995). A pretrial detainee brought a pro se § 1983 action against officials alleging denial of adequate medical care. The district court granted summary judgment for the officials, finding that although the inmate's heart condition, pacemaker and poor circulation provided evidence of a serious medical need, the officials were not deliberately indifferent. The court noted that the inmate was given medical attention, had several appointments with outside doctors at three different hospitals, the inmate repeatedly refused the doctor's advice to undergo pacemaker surgery, and the inmate caused certain injuries to himself and hindered treatment by re-opening healing wounds. (Metropolitan Correctional Center, Chicago, Federal Bureau of Prisons)

U.S. District Court
DELIBERATE
INDIFFERENCE

Oldham v. Chandler-Halford, 877 F.Supp. 1340 (N.D. Iowa 1995). An inmate brought a Section 1983 action based on a variety of complaints including a lack of medical treatment and poor living conditions. The district court found that even if a medical restriction on the inmate's activity could establish a property interest, medical restrictions on the inmate as a result of an injured wrist did not establish a property interest in a top bunk assignment. "Lower bunk only" assignment was not marked on the inmate's medical restrictions. Even if there were such a property interest, the assignment to a different bunk did not show deliberate indifference to a serious medical need. (Iowa Mens Reformatory, Anamosa, Iowa)

U.S. District Court
DELIBERATE
INDIFFERENCE

Ruble v. King, 911 F.Supp. 1544 (N.D.Ga. 1995). Inmates at a federal penitentiary filed a Bivens action against correctional officers, alleging claims of excessive force, cruel and unusual punishment, failure to provide medical care and state law claims of assault and battery. The district court granted summary judgment, in part, finding that the inmates failed to provide evidence of serious medical need that was required for a claim of deliberate indifference, and that the inmates failed to present evidence to sustain their claim for intentional infliction of emotional distress. The court allowed claims of assault and battery and excessive force to proceed. (United States Penitentiary, Atlanta)

U.S. Appeals Court
HANDICAP
EQUIPMENT

Shakka v. Smith, 71 F.3d 162 (4th Cir. 1995). A prisoner who had been placed in a restricted cell brought a civil rights action against prison officials alleging violation of his Eighth Amendment rights. The prisoner was placed in a cell in which all stimuli and material that could be used in a violent manner had been removed, including his wheelchair. He was not allowed to take a shower for three days after fellow inmates had thrown human excrement and urine on him, but he was immediately provided with materials to clean himself and his cell. The district court granted summary judgment for the officials and on appeal the decision was affirmed. The appeals court found that depriving the prisoner of his wheelchair for a one-day period at the direction of the prison psychologist did not constitute deliberate indifference to the prisoner's serious medical needs. The psychologist sought to prevent the prisoner from disassembling his wheelchair, as he previously had disassembled plumbing fixtures in an effort to harm himself or others. The court also found that confinement in the special cell and refusal to allow a shower for three days did not constitute cruel and unusual punishment. (Maryland Penitentiary)

U.S. Appeals Court
DELAY OF CARE
FAILURE TO
PROVIDE CARE

Sheldon v. C/O Pezley, 49 F.3d 1312 (8th Cir. 1995). A state prisoner sued corrections officers alleging that he had been subjected to cruel and unusual punishment in violation of the Eighth Amendment. The complaint was dismissed by the U.S. District Court and the prisoner appealed. The appeals court, affirming the decision, found that the inmate failed to show that he was subjected to cruel and unusual punishment by the failure to provide medical care after his wrist was allegedly injured during the forced return to his cell from the shower area. The inmate was immediately asked whether he wanted medical assistance and the only reason he did not receive it was that he refused to be handcuffed for transfer to an area where a nurse would have better light to examine him. The nerve inflammation allegedly suffered was not so obvious that a layperson would easily recognize the necessity for a doctor's care, and the inmate could have gone on sick call at any time. He waited 12 days before doing so and then was seen four times in the infirmary. (Iowa State Penitentiary)

- U.S. District Court
ADEQUACY OF CARE
Smith v. Harvey County Jail, 889 F.Supp. 426 (D.Kan. 1995). A pretrial detainee filed a § 1983 suit against jail officials alleging violation of his rights by the provision of inadequate medical care, improper diet, denial of access to a law library, and denial of outdoor exercise. The district court dismissed the case. (Harvey County Jail, Kansas)
- U.S. District Court
HANDICAP
CONTRACT SERVICES
ADA-AMERICANS WITH
DISABILITIES ACT
Staples v. Virginia Dept. of Corrections, 904 F.Supp. 487 (E.D.Va. 1995). A paraplegic inmate brought an action against state corrections officials and a private correctional management corporation alleging violation of his civil rights and rights under the Rehabilitation Act and the Americans with Disabilities Act (ADA). The district court found that ADA is not applicable in a state prison context. The court ruled that the corporation was amenable to a § 1983 suit, but that the alleged actions did not constitute cruel and unusual punishment. The inmate alleged that he was placed in an infirmary where he was not monitored during the night and that it took up to 30 minutes to help him empty his bowels at night. The court noted that the inmate had failed to cooperate with his daytime bowel regimen. (Greensville Correctional Center, Virginia)
- U.S. District Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE
MEDICATION
Summers v. Sheahan, 883 F.Supp. 1163 (N.D. Ill. 1995). An inmate brought a pro se action against prison officials seeking compensatory and punitive damages for alleged violations of his constitutional rights. On the defendant officials' motion to dismiss, the district court found that the inmate's allegation that he contracted bronchitis because he did not receive his heart medicine failed to state a claim under the Eighth Amendment, absent an allegation that officials were aware of his condition or that they intentionally withheld his medication. In addition, the failure of the Department of Corrections to authorize the inmate's overnight stay at a county hospital did not amount to a constitutional violation, as the inmate was placed in the Department's hospital facility where he was observed overnight as recommended by the county physician. Finally, the inmate's claim that he filed a grievance requesting to speak to a paramedic concerning his heart medication and diet and he did not obtain a response, would not support an inference that officials knew of and disregarded an excessive risk to the health and safety of the inmate. (Cook County Department of Corrections, Illinois)
- U.S. District Court
INTAKE
SCREENING
Treadwell v. Murray, 878 F.Supp. 49 (E.D. Va. 1995). A state inmate brought a Section 1983 action against supervisory prison personnel and an unknown physician. On a motion to dismiss, the district court found that the state inmate's broad allegations that supervisory prison personnel deprived him of a safe and rehabilitative environment by failing to oversee employees failed to state a Section 1983 claim based on supervisory liability where the inmate's claim focused on the single event of an unknown physician's alleged inappropriate initial medical classification of the inmate. In addition, neither the due process clause nor state statutes or regulations conferred upon the inmate a protected liberty interest in a particular classification. (Field Unit #30, Virginia)
- U.S. Appeals Court
DELIBERATE
INDIFFERENCE
MEDICATION
MENTAL HEALTH
Vaughan v. Lacey, 49 F.3d 1344 (8th Cir. 1995). An inmate filed a Section 1983 action claiming deliberate indifference to his serious medical needs. The U.S. District Court granted the defendants summary judgment and the inmate appealed. The appeals court, affirming the decision, found that disagreement as to the proper course of treatment was not actionable under the Eighth Amendment. Prison staff were not deliberately indifferent to the inmate's mental health care needs. The jailer had no duty to give the inmate medications prescribed by a psychiatrist who was no longer treating the inmate, without consulting the physicians responsible for the care of the inmate. The doctors who had earlier treated the inmate at a federal prison camp also disagreed with the psychiatrist concerning the types and doses of psychiatric medications the inmate should receive. (Garland County Detention Center, Arkansas)
- U.S. District Court
DELAY IN TREATMENT
DELIBERATE
INDIFFERENCE
Vaughn v. Kerley, 897 F.Supp. 1413 (M.D.Fla. 1995). A prisoner who had been denied immediate relief from his gastrointestinal pain when he went to a prison clinic sued prison staff and officials alleging deliberate indifference to his serious medical needs. The district court found that the prison's refusal to treat the prisoner's late-night visit to the clinic as a medical emergency did not deny the prisoner adequate medical care. The court also found that the prisoner's condition, which could be cured by an over-the-counter antacid, did not constitute a serious medical problem or medical emergency. The court ruled that a prison policy that required evaluation of a prisoner's complaints but did not require immediate treatment of a prisoner's non-life-threatening pain did not rise to the level of deliberate indifference to serious medical needs. The prisoner's condition was evaluated by a nurse at the clinic who determined that his condition was not an emergency. (Hardee Correctional Institution, Florida)
- U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE
Vine v. County of Ingham, 884 F.Supp. 1153 (W.D.Mich. 1995). The personal representative for the estate of a detainee who died while in police custody sued a county, a city and various city and county staff and officials. The decedant was arrested for two outstanding city arrest warrants after a deputy was called to a home on a disorderly person complaint. The decedant told the deputy he had ingested methyl alcohol, refused to cooperate with the deputy's attempts to determine his physical condition and apparently refused to accept ambulance transportation to the hospital. The deputy transported the decedant to the city where a police officer assumed custody and transported the decedant to the city lock-up without a medical examination. At booking the decedant appeared to be intoxicated but no special precautions were taken; he was

placed in handcuffs in a maximum security plexiglass-lined observation cell because he was belligerent and was believed to have previously attempted suicide. The decedant fell asleep (or passed out) on the floor and remained motionless for several hours; he was visually checked periodically by officers who observed no change in his condition. Nearly six hours after being placed in the cell officers observed mucous or vomit coming from the decedant's nose or mouth and when they rolled him over to remove the handcuffs his head jerked and struck the wall or floor causing a laceration above his eyebrow; he did not awaken. No medical attention was obtained for another two hours when he was transported to the hospital in a comatose condition, where he died shortly after arrival. The district court held that the sheriff and county were not liable under § 1983 for inadequate training nor were they liable for gross negligence based on allegedly inadequate training. The court also held that the sheriff and county were immune from liability for gross negligence, and that the city, police department and police chief were not deliberately indifferent to the need for better training. The court noted that such claims would apply only if the conduct represents usual or recurring situations with which the officers must deal. Deputies had completed training approved by the state law enforcement training council and had received substantial in-service training. According to the court, the fact that they were arguably negligent when they took the decedant into custody without first ascertaining his medical condition was not enough, in itself, to create a question of fact regarding the adequacy of their training. The lack of a county policy regarding treatment of persons who had ingested methyl alcohol was not significant absent evidence that methyl alcohol ingestion was a recurring problem of which staff were aware. The court ruled that the action of one detention officer indicated only negligence, which was not sufficient to sustain liability under § 1983. The court ruled, however, that genuine issues of material fact precluded summary judgment for some, but not all, of the city police officers who failed to take any action in response to their observation that a blow to the head failed to rouse the intoxicated detainee. (Lansing Police Lock-Up, Michigan)

U.S. Appeals Court
INVOLUNTARY
MEDICATION

Walton v. Norris, 59 F.3d 67 (8th Cir. 1995). An inmate filed a § 1983 suit alleging that forced psychotropic medications violated his due process rights. The district court dismissed the case and the appeals court affirmed, finding that evidence was sufficient to justify the involuntary medication of the inmate. The court noted that the inmate's psychotic or delusional condition worsened every time his medication was discontinued. (Maximum Security Unit, Arkansas Department of Correction)

U.S. District Court
MEDICATION
DENIAL OF CARE
DELIBERATE
INDIFFERENCE

Ware v. Fairman, 884 F.Supp. 1201 (N.D.Ill. 1995). An inmate brought a pro se § 1983 action against county officials seeking compensatory and punitive damages for alleged violations of his constitutional rights. The district court granted the defendants' motion to dismiss. The court held that the inmate's allegation that his asthmatic condition was part of his medical record, and that he had a prescription for an inhaler which was not provided, failed to allege deliberate indifference to his serious medical needs absent an allegation that he had informed the defendants of his need and requested the inhaler from them and was refused. The inmate's allegations that he was denied requested treatment and medication for a rash, acne and the flu did not allege conditions sufficiently serious to support an Eighth Amendment claim. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
SMOKE
DELIBERATE
INDIFFERENCE

Weaver v. Clarke, 45 F.3d 1253 (8th Cir. 1995). An inmate brought a Section 1983 civil rights claim alleging that prison officials unconstitutionally exposed the inmate to environmental tobacco smoke. The U.S. District Court denied a motion to dismiss by prison officials on the grounds that the inmate stated a claim despite an asserted qualified immunity defense. Appeal was taken. The appeals court, affirming the decision, found that the alleged unwillingness to enforce a smoking ban in the inmate's room was deliberate indifference to the inmate's medical problems. The inmate had a clearly established right to be free of the existing serious medical condition caused by tobacco smoke exposure. (Lincoln Correctional Center, Lincoln, Nebraska)

U.S. District Court
QUARANTINE
CONTAGIOUS
DISEASES

Westbrook III v. Wilson, 896 F.Supp. 504 (D.Md. 1995). An inmate sought monetary, injunctive and declaratory relief, alleging that placing him in medical segregation was unconstitutional. The district court found that placing the inmate in medical segregation for refusing to take a test for tuberculosis was reasonable as the test was minimally intrusive and it was related to a legitimate prison management goal. (Maryland Department of Public Safety and Correctional Services)

U.S. Appeals Court
INTERFERENCE WITH
TREATMENT

Williams v. Ramos, 71 F.3d 1246 (7th Cir. 1995). An inmate sued prison officials alleging due process and Eighth Amendment violations. The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed the lower court decision. The court found that the inmate's 19-day segregation in a closed-front cell for 24 hours per day was not an atypical, significant deprivation that violated the inmate's rights. While in segregation the inmate was not allowed to participate in activities available to the general population, lacked much contact with other inmates or staff, and was handcuffed whenever he left his cell. The inmate had a medical certificate stating he should be assigned a lower bunk; prison officials had offered him an upper bunk in a protective custody unit or a lower bunk in a segregation unit. The inmate chose the lower bunk. The court found that prison officials did not cause the inmate needless pain and suffering nor did they place him in an impossible situation in which he could not avoid pain or permanent injury. (Stateville Correctional Center, Illinois)

U.S. District Court
FAILURE TO
PROVIDE CARE

Wilson v. Cook County Bd. of Commissioners, 878 F.Supp. 1163 (N.D. Ill. 1995). A pretrial detainee brought a Section 1983 action against detention facility officials and a county board of commissioners alleging due process violations. On the defendants' motions to dismiss, the district court found that the detainee's allegation that the detention facility failed to treat his back injury and that the facility's officials were aware that his sleeping conditions could adversely affect the injury stated a claim for violation of due process. (Cook County Jail, Illinois)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
MEDICATION
MENTAL HEALTH
TRAINING

Young v. City of Augusta, Ga. Through DeVaney, 59 F.3d 1160 (11th Cir. 1995). A former prisoner brought an action against a city and others, alleging violation of his civil rights in connection with his mental health needs. The district court granted summary judgment for the defendants; the appeals court affirmed in part and reversed in part. The appeals court held that fact issues existed as to whether the prisoner suffered constitutional deprivations caused by the custom of inadequate selection or training of jail employees, of which the city should have been aware. The court found that a factual dispute existed as to whether city jail employees had engaged in an undue delay in furnishing medication, and whether the medication was dispensed by jail employees as prescribed. The court noted that jail medication charts were rife with gaps and contained indecipherable information. The prisoner claimed that city jail employees were inadequately selected or trained to recognize the need to remove a mentally ill inmate to a hospital or to dispense medication as prescribed, and that this deficiency reflected deliberate indifference by city policymakers. The court noted that other inmates had complained of lack of adequate treatment for serious medical problems stemming from mental illness, and that the alleged mistreatment and omissions suffered by the inmate occurred over a period of several months while three different jailers were charged with the inmate's care. Evidence of the details of the city's training program was absent from the record and the city did not submit any evidence concerning its selection of jail employees. (Augusta City Jail, Georgia)

1996

U.S. District Court
DELAY OF CARE
DELIBERATE
INDIFFERENCE
RECORDS
SPECIAL DIETS

Abdusch-Shahid v. Coughlin, 933 F.Supp. 168 (N.D.N.Y. 1996). An inmate sued prison officials, employees and medical personnel alleging he was denied proper medical treatment and that his Fourth Amendment rights were violated because his medical records were released without his consent. The district court granted the defendants' motion for summary judgment in part and denied it in part. The court found that the food service manager's removal of him from a special diet was not deliberate indifference to serious medical needs, noting that the manager recommended the physician remove the inmate from his diet program because the inmate was not eating his special meals. The court also found that an x-ray technician did not violate the inmate's Eighth Amendment rights by failing to warn him of the foreseeable risks of x-ray radiation. The court found that a nurse did not violate the inmate's Eighth Amendment rights by failing to record all of his visits in an infirmary log book, and that even if the inmate's medical records were improperly disclosed the action did not violate the Fourth Amendment. The court denied summary judgment for claims that the inmate's medical condition, a salivary stone, was serious and whether physicians and a nurse treated the inmate's medical condition with deliberate indifference because he had to wait almost three years for surgery. (Shawangunk Correctional Facility, New York)

U.S. District Court
EQUAL PROTECTION
DELIBERATE
INDIFFERENCE
ADEQUACY OF CARE

Alston v. Howard, 925 F.Supp. 1034 (S.D.N.Y. 1996). An inmate brought a § 1983 action against a prison doctor and nurse alleging violation of his constitutional rights to equal protection and the Eighth Amendment. The district court granted summary judgment to the defendants, finding that they were not deliberately indifferent to the inmate's serious medical needs by refusing to provide "high performance" footwear to remedy an ankle injury. The court also found that the doctor and nurse were protected by qualified immunity. The court noted that the inmate was afforded consistent, attentive surgical and therapeutic medical care on a weekly basis, including arthroscopic exploratory and corrective surgery, physical therapy, regular dosages of analgesics, arch supports, crutches, and bed rest, in a comprehensive attempt to remedy the source of the inmate's ankle pain. The inmate walked without pain after ankle surgery and returned to work as an institutional painter three or four months afterward. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
MENTAL HEALTH

Antonelli v. Sheahan, 81 F.3d 1422 (7th Cir. 1996). A county jail resident filed a pro se § 1983 action against jail officials, alleging constitutional deprivations. The district court dismissed the suit and the inmate appealed. The appeals court affirmed the lower court decisions regarding some conditions of confinement and issues, including floor-sleeping, theft of his property, lockdowns, denial of access to courts, and denial of opportunity to participate in rehabilitative programs to earn good-time credits. But the appeals court reversed the lower court by finding that several allegations were sufficient to state claims. The inmate alleged that his pleas for psychological treatment were ignored and that he was deprived of necessary medication were also sufficient to overcome a motion to dismiss. (Cook County Jail, Illinois)

U.S. District Court
INTERFERENCE WITH
TREATMENT
INFORMED CONSENT

Arce v. Banks, 913 F.Supp. 307 (S.D.N.Y. 1996). An inmate brought a § 1983 action against a prison nurse, alleging that she violated his First and Eighth Amendment rights by yelling at him and threatening to punish him when he was discussing upcoming surgery. The defendant moved for dismissal and the court granted the motion. The incident occurred when the inmate

was discussing the method to be used to remove a cyst-like growth from his forehead with the surgeon. The inmate claimed that the defendant became angry at him when he questioned the surgeon about the procedure, that she yelled at him and told him "you have no business coming here to ask questions on how the surgery will be perform [sic] by the surgeon." The inmate asked for \$500,000 in monetary damages and reasonable attorney fees. The court found that the allegations did not rise to the level of a First Amendment violation, that the inmate's health condition was not sufficiently serious to form the basis of an Eighth Amendment claim, and that the nurse was entitled to qualified immunity. (Fishkill Correctional Facility, New York)

U.S. District Court
COSTS

Bihms v. Klevenhagen, 928 F.Supp. 717 (S.D.Tex. 1996). An inmate brought an action objecting to a requirement that he pay for his medical care. The district court held that a county could require the inmate to pay. The court found that a state is not required to provide notice to an inmate before deducting costs for medical care from an inmate's commissary account, and that a state is not required to make an advance declaration of an inmate's indigency if the state furnishes medical services without requiring payment in advance. The court also stated that inmates should be able to have small amounts of money deposited to their commissary accounts without that money being applied to their debts to the government. (Harris County Jail, Texas)

U.S. District Court
COSTS
SMOKE-FREE
ENVIRONMENT

Boblett v. Angelone, 942 F.Supp. 251 (W.D.Va. 1996). An inmate brought a pro se § 1983 action alleging that he was involuntarily exposed to environmental tobacco smoke (ETS) and that he was being charged for each medical consultation regardless of his ability to pay. The district court granted summary judgment to the defendants, finding that deficiencies in the operation of a nonsmoking dormitory fell short of establishing deliberate indifference to any serious risk posed by exposure to ETS. The court noted that prison officials had demonstrated their concerns about ETS by establishing a nonsmoking dormitory and by disciplining inmates who violated the rules of the dormitory. The court also held that the fact that the state inmate was often forced to choose between necessary toiletries and adequate medical care as a result of the policy did not violate the Eighth Amendment. The court noted that prisoners merely have a constitutional right to receive needed medical treatment, but that allocation of expenses is a matter of state law. (Dillwyn Correctional Center, Virginia)

U.S. Appeals Court
MEDICATION
HANDICAP

Bryant v. Madigan, 84 F.3d 246 (7th Cir. 1996). A paraplegic inmate sued prison employees under the Eighth Amendment and the Americans with Disabilities Act (ADA) for allegedly refusing his request for guardrails for his bed, and for denying him pain medication. The district court dismissed the case and the appeals court affirmed in part and reversed in part, finding that the inmate failed to state a claim under ADA. The appeals court discussed the question of whether the ADA is applicable to correctional facilities, noting that the question has divided the circuit courts. The court stated that it was very far from clear that prisoners should be considered "qualified individual[s]" within the meaning of the Act. According to the court, incarceration, which requires the provision of a place to sleep, is not a "program" or "activity" of a public entity within the meaning of the Act, nor is sleeping in one's cell. Even if there were some applicability of the Act to inmates, the court found that ADA would not be violated by a prison's simply failing to attend to the medical needs of its disabled prisoners, or by medical malpractice. The court found that the inmate did not allege discrimination based on his disability, but rather incompetence in the treatment of his condition. (Illinois Department of Corrections)

U.S. Appeals Court
ADA-AMERICANS WITH
DISABILITIES ACT
EQUIPMENT
ADEQUACY OF CARE

Crowder v. True, 74 F.3d 812 (7th Cir. 1996). A federal inmate brought a Bivens action based on violations of his Fifth Amendment rights in connection with his administrative detention and his Eighth Amendment rights in connection with accommodation and treatment of his paraplegia. The district court dismissed the case and the inmate appealed. The appeals court affirmed, finding that the inmate's allegations regarding treatment and accommodation of his medical condition did not support an Eighth Amendment claim nor did it allege violations of the Americans with Disabilities Act (ADA) or the Rehabilitation Act. The inmate had alleged that he was denied his wheelchair because it did not fit through cell doors, that he was denied physical therapy sessions, that he was deprived of exercise, recreation and hygienic care, and that he was denied reasonable and necessary medical care. (Metropolitan Correctional Center, Chicago, Federal Bureau of Prisons)

U.S. District Court
SMOKE
SMOKE-FREE
ENVIRONMENT

Davidson v. Coughlin, 920 F.Supp. 305 (N.D.N.Y. 1996). A state prison inmate filed a § 1983 action against prison officials alleging conditions that violated the Eighth Amendment. The district court found that the inmate failed to demonstrate that his exposure to smoke in the prison was sufficiently serious, nor that prison officials acted with deliberate indifference in allegedly failing to provide him with a smoke-free environment. The inmate had alleged that exposure to smoke aggravated his existing allergies, but the inmate was housed in his own individual cell and did not submit any evidence in support of his medical condition. (Auburn Correctional Facility, New York)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Dorsey v. St. Joseph Co. Jail Officials, 910 F.Supp. 1343 (N.D.Ind. 1996). A former pretrial detainee brought a civil rights action under § 1983 against county jail officials, alleging they failed to protect him, used excessive force, and failed to meet his medical needs. The court found that the inmate failed to show that jail officials failed to provide adequate medical treatment for his diabetes and his broken arm; medical records indicated that he was treated by

a physician but that he was belligerent and uncooperative and that he refused treatment on several occasions. (St. Joseph County Jail, Indiana)

U.S. Appeals Court
PRETRIAL DETAINEE

Estate of Cole by Pardue v. Fromm, 94 F.3d 254 (7th Cir. 1996). The estate and mother of a pretrial detainee who committed suicide in a psychiatric ward brought a civil rights action in state court against nurses and a psychiatrist who assisted in the detainee's treatment. After removal by the defendants to federal court the district court granted them summary judgment. The appeals court affirmed, finding that allegations of medical malpractice were not sufficient to sustain a § 1983 action. The court also held that the plaintiffs failed to demonstrate that the defendants were subjectively aware that the detainee would try to commit suicide. The court found that the plaintiffs failed to demonstrate deliberate indifference by the psychiatrist's classification of the detainee as a potential suicide risk rather than a high suicide risk. Although the defendants conceded that plastic bags such as the one the detainee used to asphyxiate himself posed a substantial risk to a patient intent on suicide, the court found that the fact that the detainee was placed on the lower of two levels of suicide precautions showed a subjective conclusion that the detainee did not intend to kill himself. The court noted that determining the point at which a detainee's right under the due process clause to be free from bodily restraint during psychiatric hospitalization intersects with the right to be restrained so he will not harm himself is a matter of medical judgment. (Marion County Jail and Wishard Memorial Psychiatric Ward, Indiana)

U.S. District Court
DELIBERATE
INDIFFERENCE
NEGLIGENCE

Freeman v. Fairman, 916 F.Supp. 786 (N.D.Ill. 1996). A deceased inmate's children and the special administrator of his estate filed a § 1983 civil rights action against a county and county officials, alleging an Eighth Amendment violation in connection with the death of the inmate. The district court dismissed the federal court claims but retained jurisdiction for related state court claims. The court found that a single instance of improper medical care, such as the one at issue, was insufficient to show a governmental policy or custom to support § 1983 liability. The court also found that the plaintiffs failed to sufficiently allege the requisite deliberate indifference to state an Eighth Amendment claim. The plaintiffs had alleged that the county failed to identify any abnormality in the size of the inmate's liver and administered tuberculosis medication to him at several times the normal dosage, leading to his death while in custody. (Cook County Department of Corrections, Illinois)

U.S. District Court
MEDICATION
PRETRIAL DETAINEE

Gerakaris v. Champagne, 913 F.Supp. 646 (D.Mass. 1996). A plaintiff who was detained at a local police station and transferred to a county jail sued officials and law enforcement officers alleging he was threatened and intimidated in an attempt to prevent him from testifying against a public official, his father-in-law, in a grand jury investigation of professional misconduct. The district court held that the plaintiff stated a § 1983 claim based on alleged denial of free speech, deprivation of medical care, delayed booking, and conspiracy. Following an alleged concerted period of intimidation seeking to dissuade him from cooperating with the investigation of his father-in-law, the plaintiff was arrested at his mother's home for allegedly violating a restraining order. The plaintiff informed the arresting officers that he suffered from several illnesses, for which he was taking prescriptions. The officers refused to permit the plaintiff to retrieve his medications before transporting him to the police station. During his booking at the police station, the plaintiff complained again about his medical and dietary needs. Unable to make bail, the plaintiff was transported to the county jail later that evening, remaining there for two nights. The plaintiff alleged that jail staff and officials abused him during his confinement by refusing to allow him to wear warm clothing, placing him in solitary confinement, misleading visitors about his location and thereby denying his visitation rights, denying him prescription medication, and providing him with inadequate food during his 40-hour confinement. The court noted that although the plaintiff's period of confinement was short, it must be measured against the intolerability of the conditions endured and the egregiousness of the defendants' conduct. (Peabody Police Station/Middleton House of Correction, Massachusetts)

U.S. Appeals Court
SUICIDE

Hare v. City of Corinth, MS, 74 F.3d 633 (5th Cir. 1996). The estate of a detainee who committed suicide while in custody brought a § 1983 action against a city and its officials. The district court denied the officials' motion for summary judgment on qualified immunity grounds and the officials appealed. The appeals court dismissed the appeal, but after rehearing the case en banc the appeals court vacated and remanded, finding that an episodic act or omission of a jail official does not violate a pretrial detainee's due process right to medical care or protection from suicide unless the official acted or failed to act with subjective deliberate indifference. (City Jail, Corinth, Mississippi)

U.S. District Court
INVOLUNTARY
MEDICATION

Holley v. Deal, 948 F.Supp. 711 (M.D.Tenn. 1996). An inmate who was forcibly administered medication brought a § 1983 action against his limited guardian and against prison officials alleging violation of his Eighth Amendment rights. The district court dismissed the case, finding that the limited guardian was not acting under the color of state law and that the officials did not violate the inmate's due process rights nor, were they deliberately indifferent to the inmate's serious medical needs. The inmate had been adjudicated incompetent and incapable of giving informed consent to medical treatment and the limited guardian was appointed for the purpose of giving consent. (Lois M. DeBerry Special Needs Facility, Tennessee Department of Correction)

U.S. District Court
MEDICATION
COSTS

Hudgins v. DeBruyn, 922 F.Supp. 144 (S.D.Ind. 1996). Inmates brought a § 1983 action against prison officials challenging a policy modifying the manner in which inmates could obtain over-the-counter (OTC) medication. The district court held that the policy did not constitute cruel and unusual punishment. The court found that requiring inmates to purchase OTC from their own funds did not violate the Eighth Amendment, noting that if an inmate can afford medicine but chooses to apply his resources elsewhere, it is the inmate, not the official, who is indifferent to a serious medical need. The court noted that inmates' serious medical needs were met, whether they were indigent or not. (Indiana Reformatory)

U.S. District Court
COSTS

Hutchinson v. Belt, 957 F.Supp. 97 (W.D.La. 1996). A prison inmate brought a § 1983 action against a sheriff and prison warden challenging the constitutionality of a prison's medical copayment policy. The district court held that the inmate lacked standing to bring the suit because he did not claim that he requested, was denied, or was charged for medical services under the policy. The court held that the copayment policy did not violate the Eighth Amendment nor the inmate's rights to due process or equal protection, where the policy provided that no inmate was to be denied access to medical services due to a lack of funds. (Avoyelles Bunkie Detention Center, Louisiana)

U.S. Appeals Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE

Jackson v. McIntosh, 81 F.3d 112 (9th Cir. 1996). An inmate brought a § 1983 suit against two doctors alleging that their refusal to provide a kidney transplant violated his Eighth Amendment rights. The district court denied the doctors' motion for summary judgment and they appealed. The appeals court dismissed the appeal, refusing to review the district court's determination that there was a triable issue of fact. The doctors had contended that they were entitled to qualified immunity because there was no clearly established law requiring them to provide a kidney transplant to a prisoner on dialysis, but the appeals court found that "the doctors state the issue too narrowly." The inmate alleged that the doctors' refusal arose from personal animosity rather than honest medical judgment, which if proven at trial, would show that the doctors were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. (California)

U.S. District Court
CONTAGIOUS
DISEASES
DELIBERATE
INDIFFERENCE

Jeffries v. Block, 940 F.Supp. 1509 (C.D.Cal. 1996). A prisoner who alleged that he had contracted tuberculosis while held in a county jail brought a federal civil rights action against the county and an employee. The district court found that the prisoner's allegations were insufficient to state a claim based on violation of his Eighth Amendment rights regardless of whether the claim was brought against the employee individually or in his official capacity. The court found that the prisoner failed to establish that the employee acted with deliberate indifference to his serious medical needs. The prisoner alleged that he had repeatedly asked to be tested for tuberculosis after he believed he was exposed to it during his initial admission to the jail. Several months later the prisoner was transferred back to a state prison, where he tested positive for the disease. (Los Angeles County Jail, California)

U.S. District Court
CONTAGIOUS
DISEASES
QUARANTINE

Jihad v. Wright, 929 F.Supp. 325 (N.D.Ind. 1996). An inmate brought a § 1983 action against the superintendent of a maximum control complex after the inmate was placed on restrictive medical separation status for refusal to take a tuberculosis (TB) screening test by injection. The district court held that placement of the inmate in medical isolation was not the least restrictive means of furthering the state interest in preventing the spread of TB; prison officials could have treated the inmate as an inmate at risk of developing active TB by requiring him to submit to periodic chest x-rays or sputum samples. (Maximum Control Complex, Indiana)

U.S. District Court
FAILURE TO PROVIDE
CARE

Johnson v. Hill, 910 F.Supp. 218 (E.D.Pa. 1996). A county prisoner sued officials alleging violation of his rights with respect to housing and medical treatment. The district court dismissed the case, ruling that prisoner placement in housing is a matter of prison administration; the prisoner had claimed he was wrongfully placed in a cell block that housed people accused of murder and rape and people with high bail. The court also found that the inmate did not state a claim for an Eighth Amendment violation with respect to the officials' responses to his thoughts of suicide or to his injuries when he slit his wrists. The court found that the prisoner had not communicated a strong likelihood that he would inflict harm on himself, but rather that there as a mere possibility that harm would occur. Medical care received for self-inflicted injuries to his wrist was adequate where a nurse examined his wrist daily for two weeks following the injury. (Delaware County Prison, Pennsylvania)

U.S. Appeals Court
RELIGION
CONTAGIOUS
DISEASES

Jolly v. Coughlin, 76 F.3d 468 (2nd Cir. 1996). A Rastafarian inmate brought a suit claiming that his confinement for refusing to submit to a screening test for latent tuberculosis violated his right to free exercise of religion under the Religious Freedom Restoration Act (RFRA) and his right to be free from cruel and unusual punishment under the Eighth Amendment. The district court granted preliminary injunctive relief, requiring prison officials to release him from "medical keeplock" during the pendency of the suit, and the officials appealed. The appeals court affirmed, finding that the inmate demonstrated a substantial likelihood of success on his claims and that the inmate would suffer irreparable harm in the absence of the injunction. The court found that the inmate's right to free exercise of religion was substantially burdened by a tuberculosis test which involved injection of a small amount of purified protein into the skin. he court noted the inmate's steadfast adherence to the claim that submitting to the test would violate the tenets of his religion, despite his continued confinement in medical keeplock for

three and one-half years. The court also noted that even if the inmate had taken the test and was found to have tested positive and refused to take medication, he would have been placed with the general population rather than in medical keeplock. The court found that prison officials could have required the inmate to submit to chest x-rays periodically or to provide sputum samples as an alternative to the disputed test. (Attica Correctional Facility, New York)

U.S. Appeals Court
NEGLIGENCE
MEDICATION

Jones v. U.S., 91 F.3d 623 (3rd Cir. 1996). A prisoner brought a negligence action against the United States claiming that a delay caused by prison officials in providing him with blood pressure medication caused his cerebral hemorrhage. The district court granted summary judgment for the official but the appeals court reversed and remanded. The appeals court held that material issues of fact precluded summary judgment on the inmate's claim that officials failed to provide his medication within 12 hours of its prescribed time, and noted that the officials owed a duty of care to the prisoner. It was undisputed that the prisoner had been prescribed the medication, that medicine had been withheld, and that the prisoner suffered a severe stroke which the medicine was designed to prevent. (Federal Correctional Institution, McKean, Pennsylvania)

U.S. District Court
CONTAGIOUS
DISEASES
RESTRAINTS

Jones-Bey v. Wright, 944 F.Supp. 723 (N.D.Ind. 1996). A prisoner who had been placed in a medical isolation unit after he refused to submit to a tuberculosis screening test brought a federal civil rights action against corrections officials. After he was isolated, corrections officials obtained a court order allowing the test to be performed, which they did against the wishes of the prisoner. The district court granted summary judgment to the defendants. The court found that isolation of the prisoner, and the force used to immobilize the prisoner and administer the test, did not violate the Eighth Amendment. The court held that requiring the prisoner to lay down and have his arm immobilized during the test did not violate his rights and that the force used by officials was de minimis because the entire incident took only three or four minutes. A videotape of the incident indicated that the prisoner refused to cooperate and that the officers acted with professionalism and restraint. The court also found that the placement of the prisoner in isolation did not increase his chances of contracting tuberculosis and therefore did not violate the Eighth Amendment. The court found that denying the prisoner permission to participate in congregate religious ceremonies during the time he was medically isolated did not violate the prisoner's free exercise rights. (Maximum Control Complex, Indiana)

U.S. District Court
CONTAGIOUS
DISEASES
RELIGION

Karolis v. New Jersey Dept. of Corrections, 935 F.Supp. 523 (D.N.J. 1996). An inmate who was a Christian Scientist sued corrections officials alleging violation of his rights under the First Amendment and the Religious Freedom Restoration Act (RFRA). The prisoner had refused to take a tuberculosis screening test and was punished for his refusal. The court held that the test substantially burdened the inmate's right to free exercise of religion under RFRA, where the tenets of Christian Science prohibit intrusive medical procedures. But the court upheld the state's involuntary administration of the test, finding it was justified under RFRA since it was the least restrictive means to further the state's compelling interest in preventing the spread of tuberculosis. (North State Prison, New Jersey)

U.S. District Court
DELIBERATE
INDIFFERENCE
ADA-Amer. with
Disabilities Act
HANDICAP

Kaufman v. Carter, 952 F.Supp. 520 (W.D.Mich. 1996). A parole violator who was a bilateral amputee had been confined in a county jail while awaiting trial on new charges. The detainee brought a § 1983 action against county officials and staff alleging deliberate indifference to his serious medical needs in violation of the Fourteenth Amendment, violation of the Rehabilitation Act and violation of the Americans with Disabilities Act (ADA). The district court held that the sheriff and county were entitled to summary judgment on the deliberate indifference claim, but that issues remained as to whether nurses failed to provide the inmate with materials needed to maintain the stumps of his amputated legs in a condition that would accept prostheses. The detainee had requested rubbing alcohol so that he could clean his prosthetic limbs and "ace wraps" so that he could maintain the size of his leg stumps while not wearing his prosthesis. As a result of being denied these materials, the detainee was not able to walk until he was able to obtain new prostheses to fit his enlarged stumps. The court found that the Rehabilitation Act and ADA applied to state correctional facilities, and that summary judgment on qualified immunity grounds was precluded with respect to Rehabilitation Act and ADA claims. (Kalamazoo County Jail, Michigan)

U.S. District Court
DELAY IN TREATMENT
ADEQUACY OF CARE

Lewis v. Angelone, 926 F.Supp. 69 (W.D.Va. 1996). An inmate brought a § 1983 action against prison officials alleging that a delay in treating his ear infection constituted cruel and unusual punishment in violation of the Eighth Amendment. The district court held that the officials were not liable since the inmate failed to demonstrate that his medical treatment was inadequate, and that a sergeant who escorted the inmate to a medical appointment but refused to wait longer than 30 minutes was not liable under § 1983. The court noted that the propriety of a delay in providing medical care to an inmate must be measured against the severity and immediacy of the medical condition involved. The court found that the inmate's claim that medical personnel misdiagnosed or mistreated his condition arises under state medical malpractice law and is not cognizable under § 1983. The inmate failed to refute the sergeant's statement that security duties elsewhere in the prison required him to leave, nor did the inmate dispute that he saw a physician the next day and did not offer evidence that such a slight delay aggravated his ear infection to any significant extent. (Virginia Department of Corrections)

- U.S. District Court
FAILURE TO PROVIDE
CARE
SMOKE
ADA-AMERICANS WITH
DISABILITIES ACT
- Little v. Lycoming County, 912 F.Supp. 809 (M.D.Pa. 1996). A female inmate brought a § 1983 action against county officials and staff asserting claims under the Eighth Amendment and the Americans with Disabilities Act (ADA). The district court granted the defendants' motion for summary judgment. The court dismissed the inmate's claim of cruel and unusual punishment due to exposure of the inmate to excessive levels of environmental tobacco smoke (ETS), noting that the inmate's single reported instance of congestion and coughing allegedly due to ETS was insufficient to trigger constitutional liability. The court ruled that the Americans with Disabilities Act is not applicable to facilities provided for prisoners in state prisons, granting county prison officials and medical staff qualified immunity from the inmate's claims because the right of inmates to protection was not clearly established at the time of the alleged injury. The court also found that the inmate's alleged knee and arthritic impairment was not "substantial" within the meaning of the Act, and that there was no record of complaints from the inmate about difficulty in using stairs. The court found that the prison complied with the requirements of the Eighth Amendment through its considerable and diligent efforts to address the inmate's multiple, almost daily medical problems and concerns. (Lycoming County Prison, Pennsylvania)
- U.S. District Court
SPECIAL DIETS
DELIBERATE
INDIFFERENCE
- Mandala v. Coughlin, 920 F.Supp. 342 (E.D.N.Y. 1996). A prisoner brought a § 1983 action against prison officials asserting that they ignored his requests for medical treatment and a medically necessary diet. The district court found that the prisoner did not establish a due process violation by alleging that he received inadequate medical care because he was denied a high fiber diet after his surgery, and proper treatment for his shoulder injury. But the district court found that a genuine issue of material fact precluded summary judgment on whether prison officials were deliberately indifferent to the prisoner's medical needs under § 1983. (Green Haven Correctional Facility, New York)
- U.S. District Court
CONTAGIOUS
DISEASES
- Metheney v. Anderson, 953 F.Supp. 854 (N.D. Ohio 1996). A state inmate brought a pro se action against prison officials alleging cruel and unusual punishment and violation of his free exercise rights under the Religious Freedom Restoration Act (RFRA). The district court granted summary judgment for the officials, finding that the inmate's alleged exposure to tuberculosis while incarcerated was not sufficiently serious to support an Eighth Amendment claim for cruel and unusual punishment. (Grafton Correctional Institution, Ohio)
- U.S. Appeals Court
COSTS
- Myers v. Klevenhagen, 97 F.3d 91 (5th Cir. 1996). A prisoner brought a § 1983 action against a sheriff alleging that the sheriff violated a state statute as well as the prisoner's constitutional rights by charging him for medical services despite his indigency. The district court granted summary judgment for the sheriff. Another prisoner brought a similar suit against the sheriff and the district court entered judgment for the prisoner. The appeals were consolidated and the appeals court held that the sheriff provided sufficient notice of the policy which charges nonindigent prisoners for medical services, and therefore did not violate prisoners' due process rights. (Harris County Jail, Texas)
- U.S. Appeals Court
RESTRAINTS
DELIBERATE
INDIFFERENCE
- Ochs v. Thalacker, 90 F.3d 293 (8th Cir. 1996). A state inmate filed a § 1983 action against prison officials, alleging violation of his due process rights. The inmate had requested that he be housed with persons of his own race, claiming a religious motivation, and officials refused his request. The inmate also alleged deliberate indifference to his allergic reaction to metal handcuffs. The district court dismissed the complaint and the appeals court affirmed. The court held that the inmate failed to prove that he had a serious medical need, as he experienced only a mild discomfort from two or three brief exposures to metal handcuffs, and he was issued new protective coverings as soon as he requested help from a medical professional. (Iowa Mens Reformatory)
- U.S. Appeals Court
SMOKE
- Oliver v. Deen, 77 F.3d 156 (7th Cir. 1996). A state prison inmate sued prison officials seeking damages for alleged violation of his Eighth Amendment rights by housing him with smoking cellmates. The district court entered summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the inmate failed to demonstrate that he had a sufficiently serious medical need to implicate the Eighth Amendment or to provide the basis for an award of damages. The court noted that while the inmate was asthmatic and showed signs of discomfort and the prison doctor issued a permit to the inmate to have a nonsmoking cellmate, the inmate's medical records showed that his asthma was mild, that he never required outside hospitalization, and the only evidence of a causal relationship between smoke and the inmate's discomfort was a few general news articles which indicated that smoke could aggravate an asthmatic condition. (Pontiac Correctional Center, Illinois)
- U.S. District Court
COSTS
DELIBERATE
INDIFFERENCE
LANGUAGE
- Reynolds v. Wagner, 936 F.Supp. 1216 (E.D.Pa. 1996). County prison inmates filed a class action civil rights suit challenging a policy that charges inmates for their medical care. The district court held that fee for medical services programs do not, per se, violate the Eighth and Fourteenth Amendments because such programs do not necessarily result in arbitrary and burdensome procedures and do not necessarily result in interminable delays and outright denials of medical care. The court held that the county's fee program did not violate the First, Eighth or Fourteenth Amendments, or due process. The county charged \$3.00 for a nurse's visit and \$5.00 for a doctor's visit, and provided that if an inmate could not afford the fees his account was charged with a negative balance; the county could also seek to recover unpaid debts after discharge under the policy. The court found that assessing negative

balances against accounts that did not have sufficient funds at the time of service did not violate Due Process where inmates could challenge individual fee assessments and where inmates were made aware of the right to challenge assessments by a description in the inmate handbook. The court found that this practice did not present a barrier to health care, especially where an inmate would never be denied health care solely because he could not afford it. The court noted that if an inmate sought medical attention less frequently as a result of the policy, it was by the inmate's own volition. The court found that the county was not deliberately indifferent to the needs of Spanish-speaking inmates even though Spanish-speaking inmates were not provided with a written Spanish-language version of the fee-for-service policy. Spanish-speaking correctional officers and counselors explained the prison handbook that contained a description of the medical fee to all Spanish speaking inmates during orientation, and a Spanish-speaking employee was on duty at all times and the medical department employed nurses who were fluent in Spanish. The court held that a prison policy of charging for photocopying--coupled with charges for medical visits--did not violate the First Amendment. Prisoners were not forced to choose between taking their cases to court and adequate health care because a prison policy guaranteed that legal mail would be sent, and allowed an inmate with insufficient funds a small supply of personal hygiene items, mail supplies and a pencil, and three first class letters per week. (Berks County Prison, Pennsylvania)

U.S. Appeals Court
MENTAL HEALTH
EQUAL PROTECTION

Riddle v. Mondragon, 83 F.3d 1197 (10th Cir. 1996). Twenty-one inmates who had been convicted of sex offenses filed separate civil rights claims against state prison officials, judges, legislators and other state officials. The district court consolidated the actions and granted the defendants' motion to dismiss. The inmates appealed the dismissal of certain claims relating to denial of medical treatment, failure to protect, and equal protection. The appeals court affirmed the lower court decision. The court found that the inmate's allegations that they were denied necessary specialized treatment did not show the requisite unnecessary and wanton infliction of pain by prison officials. The inmates had alleged that they suffered from a sex addiction mental disorder and that they were driven by deviant, sexually compulsive drives; these drives allegedly eroded their self-esteem to the point of apathy, reinforcing their fear and feelings of differentness. The inmates alleged that the weekly group counseling sessions they received were inadequate and that they should have been provided with specific treatment such as that provided to substance abusers. The court noted that the mere fact that the plaintiffs were convicted of sexual offenses did not mean that they have psychological disorders or that they are in need of psychiatric treatment.(Southern New Mexico Correctional Facility)

U.S. District Court
DELIBERATE
INDIFFERENCE
HANDICAP
ADA-Americans with
Disabilities Act

Saunders v. Horn, 959 F.Supp. 689 (E.D.Pa. 1996). An inmate brought a § 1983 action against corrections officials. The court found that a Commissioner's and superintendent's actions of ignoring the fact that the inmate's orthopedic shoes were taken from him and that failure to provide proper footwear caused him constant pain constituted deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment. The fact that a physician had prescribed orthopedic shoes for the inmate meant that he had a "serious medical need" for Eighth Amendment purposes. The court found that it was reasonable to infer that the Commissioner and superintendent acquiesced in the acts of their subordinates. The inmate's shoes and his brace had been taken from him the day he arrived at the facility, although he had been wearing them since 1984. The court also found that the inmate, who had a degenerative disk disorder in his spine, was disabled within the meaning of the Americans with Disabilities Act (ADA). The court held that the inmate's claim that the prison did not provide him with readily accessible bathroom and shower facilities was an appropriate claim under the ADA. (SCI-Graterford and SCI-Camphill, Pennsylvania)

U.S. District Court
DELIBERATE
INDIFFERENCE
DELAY OF CARE

Senisais v. Fitzgerald, 940 F.Supp. 196 (N.D.Ill. 1996). A prison inmate brought a pro se civil rights action based on the treatment by prison physicians of his broken hand. The district court denied the physicians' motion to dismiss, finding that allegations that the inmate's broken hand was not set in a cast until nine days after he was injured were sufficient to state a claim of deliberate indifference to the inmate's serious medical needs. The inmate alleged that he was diagnosed as having a broken hand two times on the day of the injury. (Lincoln Correctional Center, Illinois)

U.S. District Court
FAILURE TO PROVIDE
CARE
EMERGENCY CARE

Shiflet v. Cornell, 933 F.Supp. 1549 (M.D.Fla. 1996). A prisoner who suffered a stroke brought a civil rights action against prison officials alleging lack of treatment. The district court granted summary judgment for the defendants, finding that prison officials were not alleged to have been personally involved with the constitutional deprivations and therefore the prisoner could not recover from them. The court also found that the prisoner's dissatisfaction with the treatment he received amounted only to a difference in judgment about his medical needs. The court found that a prison guard could not be held liable for failing to seek additional medical attention for the prisoner who had just been released from an emergency room. As a lay person, the guard could not have been expected to recognize the necessity for a doctor's attention. (Desoto Correctional Institution, Florida)

U.S. Appeals Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE

Snipes v. Detella, 95 F.3d 586 (7th Cir. 1996). An inmate brought a § 1983 action against corrections officials alleging violation of his Eighth Amendment rights when his toenail was removed without local anesthetic, and complaining of unsanitary shower conditions. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court found that the physician did not withhold medical

treatment but made a deliberate decision to treat a medical need in a particular manner, and the decision not to provide an anesthetic was not sufficiently serious to violate the Eighth Amendment. The court noted that the Eighth Amendment does not require prison doctors to administer the least painful treatment nor to keep an inmate pain free in the aftermath of proper medical treatment. The court also found that shower conditions, which allegedly required the inmate to shower in an inch or two of standing water giving rise to a fear of contracting a communicable disease, did not pose a risk of serious harm. (Danville Correctional Center, Illinois)

U.S. Appeals Court
PSYCHOTROPIC
DRUGS
MENTAL HEALTH
MEDICATION

Steele v. Shah, 87 F.3d 1266 (11th Cir. 1996). A prisoner filed a civil rights action against a prison psychiatrist who discontinued his psychotropic medication. The district court granted summary judgment for the psychiatrist, but the appeals court reversed and remanded, finding that a jury could find deliberate indifference to the psychiatric needs of the prisoner if it accepted the prisoner's contentions. The court noted that a prisoner's psychiatric needs can constitute serious medical needs and the quality of psychiatric care a prisoner receives can be so substantially different than accepted standards that it can constitute deliberate indifference. The prisoner alleged that the psychiatrist discontinued his medication on the basis of one cursory interview without having reviewed any medical records beyond the treatment plan sent from another institution, and that the psychiatrist was aware that the inmate was considered by personnel at the other institution to be a potential suicide risk. According to the prisoner, the interview lasted less than one minute and included nothing that could be construed as an evaluation of his mental condition. After his psychotropic medication was discontinued the prisoner suffered from insomnia, anxiety and various bodily pains. He filed numerous grievances about his medication, wrote to his former caretakers, and in response the psychiatric nurse at his previous institution called the medical staff supervisor to make it clear that the prisoner was considered a suicide risk. (Orange County Jail, Florida)

U.S. District Court
DELIBERATE
INDIFFERENCE

Tajeddini v. Gluch, 942 F.Supp. 772 (D.Conn. 1996). A prisoner brought an in forma pauperis suit against prison officials. The district court held that fact issues barred summary judgment for the officials on the prisoner's claims that the officials used a disciplinary proceeding and transfer to another prison as retaliation for the prisoner's complaints. The court also found that fact issues precluded summary judgment on the prisoner's claim that he suffered cruel and unusual punishment in the form of deliberate indifference to his medical needs. The prisoner alleged that he experienced trembling, weakness and permanent pain while in administrative segregation, and that he repeatedly requested pain medication but was denied it. The court found that the prisoner failed to establish a claim for interference with access to courts. (FCI Danbury, Connecticut)

U.S. Appeals Court
AIDS
PRIVACY

Tokar v. Armontrout, 97 F.3d 1078 (8th Cir. 1996). A former inmate infected with the HIV virus brought a § 1983 action against former prison officials claiming that conditions in the segregation unit for HIV-positive inmates constituted cruel and unusual punishment and that his placement in the unit violated his right to privacy. The district court granted summary judgment in favor of the officials and the appeals court affirmed. The appeals court held that the former inmate failed to show that the combination of broken windows and leaking roof in his housing unit caused a deprivation of an essential human need such as food, warmth or exercise; the inmate's cubicle did not have a window and the roof above his cubicle did not leak, and the inmate was able to use a blanket to stay warm before broken windows in the unit were repaired. The court also found that the inmate failed to establish that the alleged filthiness of toilet facilities in the housing unit violated the Eighth Amendment, noting that the inmate admitted that he had never asked for cleaning supplies. The appeals court held that the officials were entitled to qualified immunity with regard to the inmate's claim for violation of his right to privacy. The court noted that the inmate did not have a clearly established right to nondisclosure of his HIV status at the time he was segregated. (Jefferson City Correctional Center, Missouri)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Vance v. Peters, 97 F.3d 987 (7th Cir. 1996). A female inmate filed a § 1983 action against corrections officials alleging deliberate indifference to her serious medical needs from a broken arm. The district court granted summary judgment in favor of the officials and the appeals court affirmed. The court found that while prison officials' knowledge of an inmate's needs learned from the inmate's communications could constitute sufficient knowledge to require action to investigate and if necessary to act, the inmate failed to demonstrate that she had communicated with the officials or that others had done so on her behalf. (Dwight Correctional Center, Illinois)

U.S. District Court
SMOKE-FREE
ENVIRONMENT

Warren v. Keane, 937 F.Supp. 301 (S.D.N.Y. 1996). Prisoners brought a § 1983 action against prison officials alleging that their exposure to environmental tobacco smoke (ETS) violated their Eighth Amendment rights. The district court denied the defendants' motion for summary judgment, finding a fact question as to whether the level of smoke permeating the prison was so severe as to be a danger to the health of prisoners. The court also found that a fact question as to whether a prison corrections officer and fire and safety officer were entitled to qualified immunity precluded summary judgment. The court ruled that supervisors did not have qualified immunity because they were chargeable with the knowledge

of the conditions of the prison and with the knowledge that second-hand smoke could cause serious health problems. The prisoners alleged that smoke permeated the facility due to underenforcement, inadequate smoking rules, overcrowding, and poor ventilation. (Ossining State Correctional Facility, New York)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELAY OF CARE

White v. State of Colorado, 82 F.3d 364 (10th Cir. 1996). A former inmate filed civil rights actions for declaratory and injunctive relief against the state and prison officials. The district court entered judgment for the officials and the former inmate appealed. The appeals court affirmed the lower court decision, ruling that neither the Rehabilitation Act nor the Americans with Disabilities Act (ADA) applies to prison employment. The former inmate alleged that prison officials refused to provide him with surgery for a leg injury he suffered in a car accident prior to his incarceration; he also alleged that diagnostic evaluation and treatment of his injury was denied or delayed. Medical evidence was uncontroverted that a one- or two-year delay in having the surgery, until the former inmate was released from prison, would not cause further damage to the inmate's leg. The former inmate had also claimed that he was denied prison employment opportunities because of his disability, seeking relief under the Rehabilitation Act and the Americans with Disabilities Act. (Colorado Department of Corrections)

U.S. District Court
DELAY IN
TREATMENT
DELIBERATE
INDIFFERENCE

Williams v. Keane, 940 F.Supp. 566 (S.D.N.Y. 1996). A prisoner brought a § 1983 suit against correctional facility officials and physicians alleging that their failure to provide a specific type of shoe insert to remedy his foot condition violated his rights under the Eighth Amendment. The district court granted summary judgment in favor of the defendants, finding that the failure to provide the insert was not deliberate indifference and that an administrative delay in supplying orthopedics was not cruel and unusual punishment. (Sing Sing Correctional Facility, New York)

U.S. District Court
ADA-Americans with
Disabilities Act
DELIBERATE
INDIFFERENCE

Williams v. One Female Corrections Officer Sgt. Kolaczyk, 940 F.Supp. 31 (D.Mass. 1996). An inmate sued a correctional officer and a jail infirmary alleging Eighth Amendment violations and violation of the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that the defendants did not show deliberate indifference to the inmate's medical needs. Although the inmate had a serious heart condition, the court found that he was provided with ample care at the infirmary, almost on a daily basis and frequently without his cooperation. The court dismissed the inmate's discrimination and ADA claims finding that the inmate failed to allege either that race or nationality was a motivating factor in the misconduct of the officer, or that he was discriminated against on the basis of any particular disability. (Worcester County Jail and House of Correction, Massachusetts)

U.S. District Court
DELIBERATE
INDIFFERENCE
DELAY IN TREATMENT
PSYCHOTROPIC
DRUGS
INVOLUNTARY
MEDICATION

Young v. Breeding, 929 F.Supp. 1103 (N.D.Ill. 1996). An inmate brought an action against correctional officers, a warden, a nurse and a physician, alleging violation of his constitutional rights. The district court found that the inmate stated a claim against the nurse and correctional officers who allegedly refused to provide him with medical attention during an asthma attack, and against a warden who allegedly ordered the transfer of the inmate to a psychiatric center. The court also found that the inmate stated an Eighth Amendment claim regarding his confinement in a hospital unit's strip cell for approximately 20 days, where he was stripped and forced to endure the cold temperature of his cell and had to wrap himself in toilet paper to stay warm. The court found that the inmate stated a claim against a physician who allegedly forcibly medicated the inmate against his will each time the inmate requested to be released from the strip cell. Officers allegedly sprayed the inmate with mace and refused to provide him with medical attention. (Joliet Correctional Center, Illinois)

1997

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE

Barry v. Ratelle, 985 F.Supp. 1235 (S.D.Cal. 1997). A prisoner brought a civil rights action against a prison warden, the prison's chief medical officer, and two prison physicians, claiming that they were deliberately indifferent to his serious medical needs. The district court granted the defendants' motion to dismiss the action but gave the prisoner leave to amend the complaint to correct deficiencies described in the order. The court found that the prisoner's allegations that the prison's chief medical officer knew of his subordinates' failure to treat the prisoner's medical needs through at least two letters the prisoner sent to the officer, yet failed to act, stated a valid claim that the officer could be held liable for the constitutional violation of his subordinates. The court also found a § 1983 violation was stated by allegations that the prison physicians were aware that the prisoner had a hernia condition which required surgery, yet allowed the prisoner to be in pain for two years without even giving him a truss once the need for surgery was established. (R.J. Donovan Correctional Facility, California)

U.S. District Court
DELIBERATE
INDIFFERENCE
DELAY IN CARE
TRANSFER
SMOKE

Boblett v. Angelone, 957 F.Supp. 808 (W.D.Va. 1997). An inmate filed a pro se § 1983 action against prison officials alleging constitutionally inadequate treatment for his knee problems and exposure to environmental tobacco smoke (ETS). The district court granted summary judgment in favor of the defendants. The court found that the Americans with Disabilities Act (ADA) did not apply to state prisons and that prison officials' alleged denial of proper rehabilitative therapy and knee braces did not amount to deliberate

indifference. The court also found that the officials' refusal to assign the inmate to a nonsmoking dormitory and to assign him to a bottom bunk did not violate his constitutional rights. According to the court, the inmate failed to establish that the level of environmental tobacco smoke (ETS) to which he was exposed for a four-day period had created an unreasonable risk of serious damage to his future health. Although a prison physician did not examine the inmate until approximately one month after the inmate requested to see a physician, the court found nothing in the record to suggest that the delay stemmed from any deliberate indifference on the part of the physician or any other prison official. The court also found that the failure of prison officials to arrange for the inmate's immediate consultation with a prison physician regarding the inmate's request for a medical transfer did not amount to deliberate indifference. (Bland Correctional Center, Virginia)

U.S. District Court
DELIBERATE INDIF-
FERENCE

Buckley v. Gomez, 36 F.Supp.2d 1216 (S.D.Cal. 1997). An inmate who was an African-American Hebrew brought a § 1983 action against corrections officials and staff. The district court held that prison staff were not deliberately indifferent to the inmate's medical needs for treatment of his injured thumb even though there may have been a delay in treatment, since the delay did not cause substantial harm and the inmate was able to see a medical technician the same date of the injury. The district court held that a prison guard's negligent or intentional failure to follow proper mail procedures was insufficient to constitute a violation of the Due Process Clause of the Fourteenth Amendment. The inmate had alleged that a guard had called him inappropriate names and dropped his mail to the floor and kicked it under the inmate's cell door. Although the court concluded that name-calling alone was not enough to raise a cognizable claim, the court denied summary judgment for the guards. The court found materials issues of fact to be resolved as to whether the treatment the prisoner received was invidiously dissimilar to that received by other non-African-American or non-Jewish inmates. (California Department of Corrections)

U.S. District Court
STAFFING
FAIL. TO PROV. CARE
INTAKE SCREENING
PRETRIAL DETAINEES

Carty v. Farrelly, 957 F.Supp. 727 (D.Virgin Islands 1997). Detainees and inmates housed in a criminal justice complex asked the court to find officials in civil contempt of a consent decree. The district court found that the consent decree comported with the principles of the Prison Litigation Reform Act (PLRA) because it was narrowly drawn, extended no further than necessary to correct the violation of federal rights, and was the least intrusive means necessary to correct the violations. The court found the officials in contempt for failing to comply with the terms of the consent decree, and continued noncompliance with a court order requiring officials to pay detainees' and inmates' attorney fees. According to the court, medical care was inadequate in violation of the Eighth Amendment, where an on-site nurse and physician and two part-time nurses serviced 168 to 190 prisoners, sick call was administered by prison security staff instead of medical staff, prisoners were not seen promptly as needed, the facility did not maintain adequate equipment for emergencies, personal hygiene items were not routinely distributed, intake health evaluations were inadequate, and the facility failed to offer outdoor access to all inmates.

The court cited "abominable" treatment of mentally ill inmates at the facility. Mentally ill inmates were housed together in clusters with often four or five inmates per cell, the majority of inmate assaults occurred in the clusters, and correctional staff taunted mentally ill inmates, rewarding them with cigarettes after instructing them to pull down their pants and hold their crotch, or crawl across the floor. According to the court, when overcrowding and commingling of mentally ill inmates with the general population contributes to inmate-to-inmate violence, the failure to remedy the situation constitutes deliberate indifference to the inmates' basic safety and security in violation of the Eighth Amendment. The court held that officials may not use restraints on mentally ill inmates as matter of course, but may restrain them only under special circumstances. The court also cited the failure of officials to house inmates according to an objectively based classification system and the failure to maintain separate housing for violent inmates. (Criminal Justice Complex, St. Thomas, Virgin Islands)

U.S. Appeals Court
ADA-Americans with
Disabilities Act

Crawford v. Indiana Dept. of Corrections, 115 F.3d 481 (7th Cir. 1997). A former state prisoner sued the Indiana Department of Corrections alleging violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court dismissed the suit on the ground that the Act is inapplicable to prison inmates and the prisoner appealed. The appeals court reversed and remanded, finding that the Americans with Disabilities Act applies to state prisoners. The court stated that although incarceration itself is hardly a "program" or "activity" to which a disabled person might wish access, there is no doubt that an educational program is a program and when it is provided by and in a state prison it is a "program" within the meaning of the ADA. The court also held that the use of a state prison library and dining hall are "activities" under ADA, conferring rights on qualified disabled individuals. The State had conceded that ADA applied to a prison's relations with its employees and visitors, as well as to public schools. According to the court, ADA was cast in terms of eliminating a form of discrimination that Congress considered unfair, not in terms of subsidizing an interest group. The court decision did not discuss the Rehabilitation Act separately because it found it to be "materially identical to and the model for the ADA." (Indiana Department of Corrections)

U.S. District Court
FAILURE TO
PROVIDE CARE

Dawes v. Coughlin, 964 F.Supp. 652 (N.D.N.Y. 1997). A prisoner brought a § 1983 action alleging that corrections officers had used excessive force against him, failed to provide medical treatment, and improperly issued deprivation and restraint orders. The district court held that the officers did not use excessive force against the prisoner during a struggle initiated by the prisoner which resulted in an officer closing a feeder box door on the prisoner's fingers. The court also upheld the use of force against the prisoner following his refusal to obey an order, although the prisoner sustained a cut over his left eye and a swollen lip and right eye as a result of the force used against him. The court found that a prison nurse's failure to X-ray the prisoner's ribs for nearly two months following an incident in which he was injured was not denial of medical care in violation of the Eighth Amendment because the prisoner's needs were not sufficiently serious to rise to the level of a constitutional violation. The court found that the prisoner's due process rights were not violated by deprivation orders or restraining orders because the deprivation order was reviewed daily and the restraining orders were not continued for more than seven days without review. The orders, which limited the prisoner's recreation to one hour at a time in full restraints, did not violate the Eighth Amendment because safety and security purposes required the restraints and the prisoner was still able to move around the recreation area. (Eastern Correctional Facility, New York)

U.S. District Court
DELIBERATE
INDIFFERENCE

De La Paz v. Peters, 959 F.Supp. 909 (N.D.Ill. 1997). An incontinent prisoner brought a § 1983 action against corrections officials alleging they were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment by refusing him daily showers. The prisoner also alleged that denial of his request to transfer to an honor dorm that had more showers was the product of racial discrimination in violation of equal protection. The court granted summary judgment in favor of the officials, finding that although the prisoner's incontinence was a serious medical condition, the officials did not display deliberate indifference to his condition because they had made special provisions for him, including permission to shower more frequently than other inmates. Because the law was not clearly established that an incontinent inmate was entitled to daily showers, the court found that the officials were entitled to qualified immunity. The court also held that the Indian-American/Mexican-American prisoner failed to establish that denial of his request to transfer to an honor farm was motivated by racial discrimination; the mere fact that there were very few Mexican-American inmates in the honor dorm was insufficient to establish racial discrimination. (Joliet Correctional Center, Illinois)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
PSYCHOTROPIC
DRUGS

Doby v. Hickerson, 120 F.3d 111 (8th Cir. 1997). A former prisoner brought a § 1983 action alleging that a psychiatrist and other corrections personnel violated his due process rights by administering antipsychotic medications to him without his consent. The district court awarded the prisoner \$9,500 in compensatory damages and the defendants appealed. The appeals court affirmed, finding that the psychiatrist was only qualifiedly immune for a portion of the treatments in question, and that the record supported the amount of damages awarded. According to the court, the psychiatrist should have known of the Supreme Court's Harper decision when she met with the prisoner three weeks after it was handed down, and she was therefore not entitled to qualified immunity for administrations that occurred thereafter. The court noted that the prisoner was afforded virtually no procedural protections, and experienced severe side effects that continued for weeks after the medications were discontinued. (ADC Special Programs Unit, Arkansas)

U.S. Appeals Court
ADA-Americans with
Disabilities Act

Dulany v. Carnahan, 132 F.3d 1234 (8th Cir. 1997). Twenty female inmates in two state prisons brought a § 1983 action against various state and prison officials alleging that the officials were deliberately indifferent to their serious medical needs in violation of their constitutional rights and rights secured under the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the plaintiffs had no specific complaints regarding their ADA claim that prison facilities were not accessible to disabled inmates and that such inmates were denied proper therapy, assistance and equipment. (Renz Correctional Center and Chillicothe Correctional Center, Missouri)

U.S. Appeals Court
CONTAGIOUS
DISEASES
DELIBERATE
INDIFFERENCE

Forbes v. Edgar, 112 F.3d 262 (7th Cir. 1997). A female inmate sued prison officials alleging deliberate indifference to her serious medical needs. The district court denied the inmate's request to proceed in forma pauperis and for appointment of counsel, and entered judgment for the officials. The appeals court affirmed, finding that denial of an appointed attorney was not an abuse of discretion, as the inmate was an "exceptionally able litigant" who had experience litigating other cases, and the issues were not too complex. The court found that despite her claims that officials allowed tuberculosis (TB) to spread in the prison and allegedly offered the wrong type of drug therapy for her TB, they were not deliberately indifferent. The court held that the Eighth Amendment did not provide for a specific treatment nor for foolproof protection from infection, as sought by the inmate. (Dwight Correctional Center, Illinois)

U.S. District Court
PRIVACY
MENTAL HEALTH
RECORDS

Franklin v. District of Columbia, 960 F.Supp. 394 (D.D.C. 1997). A class of Hispanic prisoners who were or would be incarcerated in correctional institutions operated by the District of Columbia sought injunctive and declaratory relief for alleged violations of the First, Fifth, and Eighth Amendments under § 1983. The district court held that the District's failure to provide qualified interpreters for Hispanic prisoners' medical and mental health needs rose to the level of deliberate indifference and violated the Eighth Amendment. The court found no valid penological justification for disclosing a prisoner's medical condition by using correctional officers or other inmates as interpreters in medical encounters. The court noted that to satisfy the Eighth Amendment, a medical facility must be adequately staffed and access to medical services cannot be delayed in a systematic manner due to inadequate staffing. The court found that the District's failure to provide Hispanic prisoners with qualified interpreters at disciplinary proceedings and parole hearings was an affront to due process. However, the court held that while the District did not offer the same programs in Spanish as they offered in English, these programming decisions did not constitute denial of equal protection under the Fifth Amendment, noting that Hispanic prisoners were not barred from participation in prison programs because of their race or national origin. (District of Columbia)

U.S. District Court
COSTS

Gardner v. Wilson, 959 F.Supp. 1224 (C.D.Cal. 1997). An inmate sued prison officials and others, challenging the constitutionality of five dollar copayments imposed on medical visits. The district court dismissed the case, finding that the copayment was not cruel and unusual punishment and did not violate equal protection. The court held that the inmate had received due process and that the law authorizing copayments was neither an ex post facto law nor a bill of attainder. The inmate was provided with due process because he was notified of the copayment policy before he initiated a medical visit, and he was provided with access to a grievance system that permitted him to challenge any erroneous charges. The court noted that assuring that inmates did not abuse their access to scarce medical services was a legitimate state purpose for requiring an inmate to pay a five dollar copayment for medical services. The inmate had requested the return of his fees because the taxpayers of California had not been provided with a rebate or the corrections department's budget had not been cut as a result of the taxpayer savings resulting from the copayment policy. The inmate also sought \$1 million in damages for "stress, anxiety, suffered mentally and emotionally and in some ways, physically as well." (California State Prison-Los Angeles County)

U.S. District Court
DENTAL CARE
NEGLIGENCE

Gindraw v. Dendler, 967 F.Supp. 833 (E.D.Pa. 1997). A prisoner filed an in forma pauperis action claiming that a dentist violated his civil rights in connection with treating his dental problems, and committed medical malpractice and assault and battery. The district court found that the prisoner did not establish that the dentist acted with deliberate indifference. Without an expert report to the contrary, the court found that the dentist's actions were not malpractice under Pennsylvania law, although the dentist may have committed assault and battery under state law by removing the wrong tooth. (State Correctional Institution at Mahanoy, Pennsylvania)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
DELAY OF CARE

Gutierrez v. Peters, 111 F.3d 1364 (7th Cir. 1997). An inmate brought a § 1983 action against corrections officials, alleging that he received inadequate medical treatment for an infected cyst, in violation of the Eighth Amendment. The district court granted judgment in favor of the defendants and the inmate appealed. The appeals court affirmed, finding that although the cyst was a serious medical condition, prison officials were not deliberately indifferent despite isolated instances of delays in treatment. The court found that a six-day wait to see the physician was not an unreasonably long delay for the condition in view of the fact that the physician had seen the inmate one week earlier and had concluded that the cyst was not infected, and that the physician promptly prescribed a course of treatment. (Danville Correctional Center, Illinois)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE

Hall v. Artuz, 954 F.Supp. 90 (S.D.N.Y. 1997). A state prisoner brought a § 1983 action against prison officials alleging violation of his Eighth Amendment rights. The district court found that summary judgment was precluded on the prisoner's claim of deliberate indifference to serious medical needs arising out of his knee condition. The prisoner alleged that officials refused to allow him to undergo a regimen of physical therapy, and took away his knee brace. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
ADA-Amer. with
Disabilities Act
HANDICAP

Hansen v. Rimel, 104 F.3d 189 (8th Cir. 1997). A hearing-impaired inmate brought a civil rights action against corrections officials asserting violations of his equal protection and Fourteenth Amendment rights and of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. The inmate appealed the district court's grant of summary judgment for the defendants for all claims except the equal protection claim. The appeals court reversed, finding that hearing-impaired inmates were not similarly situated to inmates without hearing impairments for the purposes of using the telephone, and therefore the warden did not violate the inmate's right to equal protection by failing to provide a special telephone for his disability. (Omaha Correctional Center, Nebraska)

U.S. Appeals Court
RESTRAINTS

Haslar v. Megerman, 104 F.3d 178 (8th Cir. 1997). A county detainee brought a § 1983 action after a guard refused to loosen or remove shackles from his swollen leg while he was being treated in an outside hospital. The district court dismissed the complaint and the detainee appealed. The appeals court affirmed, finding that keeping the detainee shackled while receiving treatment at an outside facility did not display indifference to the medical needs of the detainee, nor did it constitute punishment in violation of the detainee's Fourteenth Amendment rights. According to the court, the shackling was necessary to prevent the detainee from overpowering the single guard who was watching him, and there were safeguards against applying the shackles so as to cause pain and other medical problems. (Jackson County Detention Center, Missouri)

U.S. District Court
DELIBERATE
INDIFFERENCE
PRETRIAL DETAINEE

Hutto v. Davis, 972 F.Supp. 1372 (W.D.Okl. 1997). The administrator of the estate of an arrestee who suffered a fatal drug overdose after a plastic bag containing methamphetamine which he had ingested burst, brought an action against jail employees asserting § 1983 and state law claims. The district court found that jail employees whose contact ended when the arrestee was booked and jailed were not deliberately indifferent to the serious medical needs of the arrestee. But the court found that employees with later contact were not entitled to qualified immunity and that a fact issue existed as to whether the failure of these employees to obtain medical care violated the Eighth Amendment. The court held that the plaintiff failed to establish a failure to train or to supervise on the part of the county. The court found that it is necessary to establish that a particular training program is inadequate rather than alleging that a particular officer may be unsatisfactorily trained, because the shortcomings of an officer may have resulted from other factors than a faulty training program. The court held that the plaintiff failed to establish that the arrestee's death was the result of either exertion of improper control by supervisors or the failure of supervisors to control employees, as required to recover against a municipality based on a claim of inadequate supervision. (Garvin County Jail, Oklahoma)

U.S. District Court
WORK ASSIGNMENT

Johnstone v. U.S., 980 F.Supp. 148 (E.D.Pa. 1997). A former federal inmate filed a suit asserting a Bivens claim for denial of medical treatment and a claim for judicial review under the federal Inmate Accident Compensation Act. The district court dismissed the case in part, finding that the plaintiff's Bivens claims against the United States, Bureau of Prisons Industries, Inc., UNICOR, and the Department of Health Services of the Bureau of Prisons, were barred by sovereign immunity. The court also found that the complaint against corrections officers who gave the plaintiff a particular work assignment was time barred. The plaintiff alleged that he arrived at a federal facility with medical records that indicated he should be assigned to light duty work because of a heart condition, but he was assigned to a heavy-duty work assignment which led to groin injuries. (Federal Bureau of Prisons)

U.S. District Court
FAILURE TO
PROVIDE CARE
WORK ASSIGNMENT

Jones v. Hannigan, 959 F.Supp. 1400 (D.Kan. 1997). An inmate brought a civil rights action against prison physicians and a director of nursing, claiming they were deliberately indifferent to his serious medical needs and failed to provide adequate and necessary medical care. The district court found that although the inmate's medical needs were serious, there was no evidence that the defendants were deliberately indifferent by failing to include work restrictions and recreational restrictions. When the inmate arrived at the correctional facility he was medically classified as "Class I" which meant that he could undertake any work assignment and live in any standard cellhouse. After seeing a urologist, the inmate was diagnosed with a condition called "resolving epididymitis" and the specialist recommended that the prisoner restrict strenuous activity. Prison officials completed a "Temporary Medical Work Restriction" form for the inmate, but despite this information the inmate alleged that his work supervisor ordered him to perform his job duties, including lifting objects weighing more than 100 pounds. The inmate injured his back and pulled his groin while attempting to lift a table top at work and he was taken to the clinic for an emergency examination. (Hutchinson Correctional Facility, Kansas)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE

Lancaster v. Monroe County, Ala., 116 F.3d 1419 (11th Cir. 1997). The administrator of the estate of a pretrial detainee who died due to an injury sustained while in custody at a county jail brought an action against the county, county commission, sheriff and jailers alleging constitutional violations. The district court granted summary judgment for the defendants and the plaintiff appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the sheriff and jailers were not entitled to qualified immunity on the claim of deliberate indifference, but that the jailers were state officials and were thus immune under the Eleventh Amendment from suit in their official capacities. The appeals court held that the sheriff and jailers were immune under the doctrine of sovereign immunity from state law claims brought against them in their individual capacities.

The detainee was a chronic alcoholic who, according to the court, died in custody because the sheriff and jailers delayed treatment despite their knowledge of his urgent medical condition. The court found that the sheriff's and jailers' conduct amounted to deliberate indifference under clearly established law at that time. The detainee was tested upon his admission to the jail, where he registered blood alcohol contents of .324 and .323. He was

placed in the holding cell, or the "drunk tank" as it was called, which was the normal practice for DUI detainees. Relatives of the detainee informed jail officers and the sheriff that the detainee was a chronic alcoholic who had been in the hospital recently with grand mal seizures. The relatives repeatedly attempted to secure treatment for the detainee, or to have him released to them so that they could secure treatment. The detainees cellmates reported that no jail officers or officials made any cell checks for several hours during the night. The following morning the detainee was shaking, and he fell when he attempted to sit up. He fell backwards out of his upper bunk and landed on his back on the floor where his head struck the floor and he began bleeding from the mouth. According to the cellmates, it took at least ten minutes for anyone to arrive at the cell after they called for help. When an officer did arrive, she did not enter the cell to provide assistance because of a jail policy that prevented a jailer from entering a cell without a deputy being present. More than 30 minutes after he fell from his bunk, the detainee was transported to the hospital by ambulance, where he later died from an intracranial hemorrhage. (Monroe County Jail, Alabama)

U.S. Appeals Court
MEDICATION

Ledford v. Sullivan, 105 F.3d 354 (7th Cir. 1997). An inmate brought an action against state prison officials alleging violation of his due process rights when they confiscated his prescription medication, and that they were deliberately indifferent to his serious medical needs. The district court entered judgment in favor of the defendants and the inmate appealed. The appeals court affirmed, finding that the inmate did not have a protected property interest in his medication under Wisconsin law. Although a Wisconsin statute required prison health service standards to be based on the American Medical Association (AMA) standards, the court found that the AMA standards only outlined requisite procedures and did not give the inmate a protected property interest in his prescription medication. The court also held that the inmate was not entitled to the appointment of an expert witness on his deliberate indifference claim, and that the district court had discretion to apportion all expert witness costs to one side. (Dodge Correctional Institution, Wisconsin)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
DELAY IN CARE
FAILURE TO
PROVIDE CARE

Logan v. Clarke, 119 F.3d 647 (8th Cir. 1997). A state inmate brought an action against medical personnel for their alleged failure to treat his ailments in an appropriate and timely manner. The district court entered summary judgment against the inmate and the inmate appealed. The appeals court affirmed, finding that medical personnel were not deliberately indifferent to the inmate's substantial back pain and painful fungal skin infection. According to the court, neither a delay in referring the inmate to a specialist nor the quality of treatment provided fell to the level of deliberate indifference. The inmate was provided with pain medication, was offered additional treatment for his back which he refused, and failed to follow directions given for the treatment of his infection. (Nebraska State Penitentiary)

U.S. Appeals Court
TRANSSEXUAL
FAILURE TO
PROVIDE CARE

Maggert v. Hanks, 131 F.3d 670 (7th Cir. 1997). A prisoner brought an action alleging that a prison's failure to give him estrogen therapy for gender dysphoria was a form of cruel and unusual punishment. The district court dismissed the suit and the appeals court affirmed, finding that except in special circumstances, the Eighth Amendment does not entitle a prison inmate to curative treatment--such as a sex-change operation--for the psychiatric condition of gender dysphoria. The prison had offered the expert testimony of a psychiatrist who believed that the prisoner did not have gender dysphoria, which was not refuted by the prisoner. (Indiana)

U.S. Appeals Court
CONTAGIOUS
DISEASES
INVOLUNTARY
TREATMENT
ISOLATION

McCormick v. Stalder, 105 F.3d 1059 (5th Cir. 1997). A prisoner sued prison officials alleging constitutional violations related to medical treatment administered without his consent. The district court dismissed the case as frivolous and the prisoner appealed. The appeals court affirmed, finding that prison officials did not act with deliberate indifference toward the prisoner's medical needs by requiring him to undergo isonicotinic acid hydrazide (INH) therapy. The court also held that the prison policy requiring the prisoner to be medicated or isolated was reasonably related to legitimate penological interests, and that the prison's policy satisfied due process requirements. The prisoner had tested positive for tuberculosis. (Phelps Correction Center, Louisiana)

U.S. District Court
DELIBERATE
INDIFFERENCE
MENTAL HEALTH
PSYCHOTROPIC
DRUGS
PRIVATE PROVIDER

McDuffie v. Hopper, 982 F.Supp. 817 (M.D. Ala. 1997). The son of a prisoner who committed suicide while in the custody of a state department of corrections sued corrections officials, private party doctors, and health care providers under § 1983. The son alleged wrongful death caused by negligence, indifference, or recklessness and malpractice. The district court denied summary judgment for the private party doctors and mental health care providers. The court determined that although these parties were government contractors, they were performing at their own behest motivated by a desire to make a profit, rather than at the behest of the sovereign government. The court found that genuine issues of material fact regarding whether treatment received by the prisoner was deliberately indifferent precluded summary judgment. The prisoner had tried to commit suicide at least four times and was receiving large doses of a psychotropic drug. The prisoner requested that all personal items be removed from his cell because his hallucinations were intensifying and made statements to prison personnel about suicide or self harm. But despite these reports of

suicidal thoughts a decision was made to discontinue his psychotropic medication. He was placed in an isolation cell, which the court suggested might not have been the proper situation for his treatment. Although the prisoner complained about the discontinuation of his medication, he was not appropriately visited by the medical defendants and was not transferred from the isolation cell. He committed suicide by hanging himself with a bedsheet tied to the bars of his isolation cell. (Kilby Correctional Facility, Alabama, and Correctional Medical Services, Inc.)

**U.S. District Court
CONTAGIOUS
DISEASES**

McNeal v. U.S., 979 F.Supp. 431 (N.D.W.Va. 1997). A prisoner sued the United States under the Federal Tort Claims Act alleging that the negligence of the Bureau of Prisons (BOP) caused his exposure to the tuberculosis bacteria while he was confined. The district court granted summary judgment for the defendants, finding that under West Virginia law prison officials did not breach their duty of reasonable care owed to the prisoner. The court noted that the prison's TB regulations were designed to prevent the exposure of prisoners to TB under protocols which conformed to Center for Disease Control guidelines. The prisoner alleged that the BOP failed to identify and isolate prisoners with TB from the general population. (Federal Correctional Institution, Morgantown, West Virginia)

**U.S. District Court
DELIBERATE
INDIFFERENCE
DELAY OF CARE**

Miller v. Michigan Dept. of Corrections, 986 F.Supp. 1078 (W.D.Mich. 1997). An inmate filed a § 1983 action against two prison nurses and their supervisor alleging deliberate indifference to his serious medical needs. The district court dismissed the claim, finding that the inmate failed to prove that a nurse actually knew that he was inadequately supplied with adult undergarments for his incontinence and that the nurse consciously disregarded that need. The court also held that intermittent delays during a three-day period in supplying the inmate in administrative segregation with adult undergarments for incontinence were not sufficiently serious deprivations to establish an Eighth Amendment violation. According to the court, at worst the inmate showed that the delays caused him to suffer indignity and discomfort. (Kinross Correctional Facility, Michigan)

**U.S. Appeals Court
FAILURE TO
PROVIDE CARE
CONTRACT SERVICES
DENTAL CARE**

Moore v. Jackson, 123 F.3d 1082 (8th Cir. 1997). A state inmate filed a pro se § 1983 action alleging deliberate indifference to his serious dental needs. The district court dismissed some defendants and granted summary judgment to the remaining defendants. The inmate appealed and the appeals court affirmed in part and reversed in part. The appeals court found that genuine issues of material fact remained with respect to claims against a dentist, prison administrator and contract medical service provider. The court questioned whether the dentist was aware of the inmate's request for medical care but failed to ensure that he was treated, and whether the three-month delay in treatment exacerbated the inmate's condition. The court also questioned whether a prison administrator received the inmate's requests for dental care but failed to act, and whether a contract medical service provider had a custom or procedure of misplacing, ignoring or destroying medical service requests. (Jefferson City Correctional Center, Missouri)

**U.S. District Court
FAILURE TO
PROVIDE CARE**

Morris v. City of Alvin, Tex., 950 F. Supp. 804 (S.D.Tex. 1997). The representative of the estate of an arrestee who died in jail from a drug overdose brought a § 1983 action against the city. The district court dismissed the case, finding that allegations were insufficient to establish the existence of a municipal policy with regard to detainees who exhibited possible signs of a drug overdose. The court found that as a matter of law, the city's policies neither deprived the arrestee of adequate medical assistance nor violated the Fourteenth Amendment's required level of care. The court noted that the arrestee had already taken the overdose at the time of her arrest, and that the city was not constitutionally required to train jailers to recognize the ambiguous signs of a drug overdose. According to the court, the city had provided prompt medical care on two occasions during the arrestee's brief one-day stay at the jail, and the arrestee was immediately transferred to a hospital when she exhibited physical symptoms of a serious medical problem. (Alvin City Jail, Texas)

**U.S. District Court
DELIBERATE IN-
DIFFERENCE
FAILURE TO
PROVIDE CARE
MEDICATION
PRIVATE PROVIDER**

Nelson v. Prison Health Services, Inc., 991 F.Supp. 1452 (M.D.Fla. 1997). The personal representative of an inmate who died of an acute myocardial infarction while awaiting trial in a county jail brought a § 1983 action against a county, county sheriff, the private company that provided medical services to the jail, and individual nurses employed by the company. The district court held that the sheriff was protected from individual liability under the qualified immunity doctrine, but that the nurses were not entitled to raise a defense of qualified immunity even though they were considered state actors under § 1983. The court held that the evidence was sufficient to establish that the nurses were deliberately indifferent to the inmate's medical needs and failed to provide treatment. According to the court, the nurses delayed giving the inmate her prescription medication for her cardiac condition for 36 hours, failed to verify her medications after she disclosed them to the screening nurse, failed to examine the inmate when she complained of chest pains, and failed to call for an emergency response team until the inmate had stopped breathing. The court held that reports of a court appointed monitor regarding the pervasive failure of

the private medical service company to provide medical care to the inmates of the county jail, and the company's own internal memoranda characterizing the attitude of the nurses at the jail as one of deliberate indifference, were sufficient to establish a custom of violating inmates' constitutional rights to medical treatment. (Pinellas County Jail, Florida)

U.S. District Court
DELIBERATE
INDIFFERENCE
DELAY OF CARE

Reid v. Artus, 984 F.Supp. 191 (S.D.N.Y. 1997). An asthmatic inmate filed a § 1983 suit against a prison superintendent to recover for denial of running water and medication during his confinement in keeplock. The district court granted summary judgment for the superintendent, finding that denial of running water in his cell, and of a breathing treatment for one night, did not violate the Eighth Amendment. The court noted that the inmate received water when it was needed, was able to shower in accordance with keeplock rules, refused an offer to be admitted to the medical clinic on the first day the water was turned off, and had his pills and inhaler in his cell at all times. The inmate had alleged that he was denied running water and asthma medication for eight days. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
COSTS

Reynolds v. Wagner, 128 F.3d 166 (3rd Cir. 1997). Inmates brought a class action suit against a county prison and warden challenging the constitutionality of a program under which the prison charged inmates a small fee (\$5) when they sought certain types of medical care. The district court entered a judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the program was not per se unconstitutional under the Eighth Amendment and did not violate the Eighth Amendment as implemented. The court found that Spanish-speaking inmates did not receive deficient notice of the program due to the absence of a written Spanish translation of the program description. The program was explained in Spanish by officers and counselors to all Spanish-speaking inmates during orientation, the prison always had a Spanish-speaking employee on duty, and the medical department employed at least three nurses who were fluent in Spanish. The court held that the program did not violate procedural due process as the result of providing for fee deductions from an inmate's account even when the inmate did not sign an authorization form. The inmates had alleged that the program charged higher fees than the state Medicaid program, but the court found that the fees charged under Medicaid did not represent the maximum that could be constitutionally charged against a prisoner. According to the court, the failure of the prison to define the terms "chronic" and "emergency" which described in the inmate handbook conditions for which no fees would be assessed, did not make the program unconstitutionally vague. The court found no violation of the inmates' right of access to courts in response to the inmates' claim that the program reduced their funds available for legal mail and photocopying, where the inmates failed to establish actual or imminent interference with their access to court. (Berks County Prison, Pennsylvania)

U.S. District Court
DELAY IN
TREATMENT
TRANSPORTATION

Schreter v. Bednosky, 963 F.Supp. 216 (E.D.N.Y. 1997). A former pretrial detainee filed a pro se § 1983 action against the warden of a county facility and the county, alleging violation of his due process rights. The district court found that the pretrial detainee did not experience a sufficient delay in medical treatment for a kidney stone to support his claim of violation of due process based on a county policy requiring transportation to a hospital by sheriff's deputies rather than by on-site corrections officers. The court noted that the detainee was moved from his cell to the medical unit, examined, and transferred to a hospital, all within 35 to 45 minutes of informing county personnel about his condition. (Suffolk County Correctional Facility, New York)

U.S. District Court
DELIBERATE
INDIFFERENCE
DELAY IN CARE
AIDS
MEDICATION

Walker v. Peters, 989 F.Supp. 971 (N.D.Ill. 1997). An inmate filed a civil rights suit against 22 employees or former employees of the Illinois Department of Corrections alleging constitutional violations regarding the treatment of his medical needs. The district court granted summary judgment for the defendants, holding that requiring a human immunodeficiency virus (HIV) test prior to the administration of HIV medication does not constitute "deliberate indifference" to the inmate's health. The court also supported the practice of insisting on clinical observation prior to administration of a drug to treat the inmate's hemophilia, citing disagreement among physicians about the protocols associated with administration of the drug. (Dixon, Stateville, and Pontiac Correctional Centers, Illinois)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
SMOKE-FREE
ENVIRONMENT

Weaver v. Clarke, 120 F.3d 852 (8th Cir. 1997). An inmate brought a § 1983 action against employees of the department of correctional services alleging Eighth Amendment violations arising from his exposure to environmental tobacco smoke (ETS). The defendants imposed a smoking ban in all correctional facilities and then prevailed on summary judgment motions on claims for damages and injunctive relief. In announcing the ban, the Director of the Department stated that "pending inmate litigation, both locally and nationally on the issue of second hand smoke are concerns that must be addressed." The inmate sought fees and expenses which were granted by the district court. The employees appealed and the appeals court affirmed. The appeals court held that the inmate was the prevailing party, affirming the district court award of \$8,346 in attorney fees and \$2,952 expenses. The court also found that the employees were not deliberately indifferent to the inmate's serious medical needs, as required to establish a § 1983 claim. The court noted that the employees took action to house the inmate in a smoke-free cell and took reasonable steps to ensure that the inmate's cellmate observed the no-smoking rule. (Lincoln Correctional Center, Nebraska)

U.S. District Court
DELIBERATE
INDIFFERENCE

Webber v. Hammack, 973 F.Supp. 116 (N.D.N.Y. 1997). An inmate brought a § 1983 action against medical personnel employed by a department of corrections. The district court held that the inmate failed to establish that the defendants were deliberately indifferent to the inmate's serious medical needs. The court noted that a doctor was involved in the inmate's treatment, which included several examinations of the inmate, requesting an orthopedic consultation, recommending that the inmate be provided with a brace, and prescribing physical therapy four times a week. According to the court, doctors treated the inmate no fewer than 30 times. (Clinton Correctional Facility, New York)

U.S. District Court
FAILURE TO
PROVIDE CARE

West v. McCaughtry, 971 F.Supp. 1272 (E.D.Wis. 1997). An inmate filed a § 1983 action against prison officials and employees, alleging he had not been provided with medical assistance and that the employees had retaliated against him for his requests for medical attention and assistance in walking. The district court held that the inmate's claim for inadequate medical treatment was rendered moot by the inmate's receipt of the requested treatment. The court also denied the inmate's request for injunctive relief based on his claim that he was placed in segregation in retaliation for his repeated requests for medical attention and assistance. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
INVOLUNTARY
MEDICATION

Wilson v. Chang, 955 F.Supp. 18 (D.R.I. 1997). An inmate brought a § 1983 action against a prison doctor who injected him with a sedative after he became disruptive. A district court jury returned a verdict in favor of the doctor and the district court denied the inmate's motion for judgment as a matter of law. The district court found that the rule that a prison doctor could inject an inmate with a sedative to deal with an emergency situation was the law of the case, and that the overwhelming weight of evidence supported the jury's verdict. The inmate had flown into a rage when the doctor denied him an extra blanket for his cell, running about his cell, striking his head and other parts of his body against the wall and cell fixtures. After the inmate did not respond to the doctor's request to calm down, and aware of the inmate's prior history of medical instability, the doctor decided to sedate the inmate. (Adult Correctional Institution, Rhode Island)

U.S. District Court
FEMALE PRISONERS
RESTRAINTS
TRANSPORTATION

Women Prisoners of Corrections v. Dist. of Columbia, 968 F.Supp. 744 (D.D.C. 1997). In an ongoing class action suit brought on behalf of female inmates in the District of Columbia, the District appealed a corrective order and its subsequent modification. The appeals court vacated in part and remanded. On remand, the district court held that the District would be required to provide diagnostic evaluations for women prisoners, similar to those currently provided for men. The court required the District to develop and implement a protocol concerning restraints used on pregnant and postpartum women to ensure that pregnant prisoners would be transported in the least restrictive way possible, consistent with legitimate security reasons. (District of Columbia)

1998

U.S. District Court
ISOLATION
SPECIAL HOUSING
CONDITIONS

Africa v. Horn, 998 F.Supp. 557 (E.D.Pa. 1998). A prisoner challenged his confinement in administrative segregation which resulted from his refusal to submit to a skin test for tuberculosis. The district court entered judgment for the prison defendants, finding that the prison requirement that prisoners who refused to be tested be segregated in administrative custody for one year had a legitimate penological reason that overcame the prisoner's claim that his religion prohibited puncturing of the skin. The court also held that the prisoner did not allege sufficiently serious deprivations in administrative custody to support an Eighth Amendment claim. The inmate only claimed that he was deprived of television and telephone, but he was afforded telephone privileges during the latter part of his confinement. (Pennsylvania Department of Corrections)

U.S. District Court
STAFF
NEGLIGENCE
DELIBERATE
INDIFFERENCE
FAILURE TO PRO-
VIDE CARE

Bednar v. County of Schuylkill, 29 F.Supp.2d 250 (E.D.Pa. 1998). A county prison inmate brought a § 1983 suit against a prison physician and others alleging deliberate indifference to his serious medical needs, negligent hiring, negligent supervision and medical negligence. The district court granted summary judgment in favor of the defendants. The court held that the physician's failure to diagnose the inmate's hip fracture and failure to order an x-ray was not deliberate indifference to the inmate's serious medical needs, where there was no evidence that the doctor recognized the inmate's need for an x-ray and refused to order it, or that the doctor possessed the requisite mental intent to sustain a deliberate indifference claim. The court held that the county was not liable to the inmate for failing to adequately screen him before hiring him, even though the physician had five previous medical malpractice actions filed against him, and had his staff privileges suspended at one hospital based upon "chart delinquency." The court noted that the previous actions had been settled or dismissed, the physician was licensed to practice medicine in the state, and he had experience as an emergency room physician as well as a prison physician in two state correctional facilities. The court also held that the county prison warden was not liable to the inmate for failing to supervise the doctor, even though the warden failed to provide the doctor with a copy of the prison's written policies regarding medical treatment, and the warden had knowledge of four accident reports concerning the inmate. (Schuylkill County Prison, Pennsylvania)

U.S. District Court
DENTAL CARE
DELIBERATE
INDIFFERENCE

Bout v. Bolden, 22 F.Supp.2d 646 (E.D.Mich. 1998). A prisoner brought a civil rights action against prison officials. The district court granted summary judgment for the defendants, finding that a prison official was not deliberately indifferent in refusing to reassign the prisoner to a lower bunk, even though the prisoner had been given a "medical detail" for assignment to a lower bunk. According to the court, even assuming that the official had knowledge of the medical detail, refusal to comply would not have posed conscious disregard for excessive risk to the prisoner's health and safety, given evidence of malingering in the prisoner's medical records. The court also held that drilling the prisoner's teeth without anesthesia for a short period in order to treat a dental condition is not the sort of barbarous and wanton infliction of pain from which a prisoner is protected by the Eighth Amendment. (Michigan Department of Corrections)

U.S. District Court
FAILURE TO
PROVIDE CARE

Boyce v. Fairman, 24 F.Supp.2d 880 (N.D.Ill. 1998). An inmate who was attacked by other inmates sued county corrections officials alleging that they failed to protect him and failed to provide adequate medical care. The district court held that the inmate could pursue his claim against a corrections director in his official capacity and against lieutenants in their individual capacity and could seek punitive damages from them. The court held that the inmate adequately stated a § 1983 action against the director, alleging that it was the practice and policy of the department to refuse protective custody requested by prisoners who had been beaten by other inmates, and that it was the practice and policy of officials to deny specialized medical care to prisoners. The court found that the inmate stated a claim against corrections lieutenants, alleging that they were aware he was the target of, and vulnerable to assaults by other prisoners, but failed to take reasonable steps to abate the risk of attack and place him in protective custody. The inmate also alleged that the lieutenants breached their duty to provide adequate medical care, which resulted in the total loss of vision in one eye. The inmate had asked to be excused from "yard" because he was afraid of being attacked, but his request was denied and he was told that yard was mandatory for all inmates. He was subsequently attacked by several inmates upon returning from yard on a stairwell leading to the tiers, and was beaten for about twenty minutes. (Cook County Department of Corrections, Illinois)

U.S. District Court
FAILURE TO
PROVIDE CARE

Boyer v. City of Mansfield, 3 F.Supp.2d 843 (N.D.Ohio 1998). An arrestee brought § 1983 claims against a police officer, corrections officer and city who allegedly used excessive force and failed to provide medical care. The district court granted summary judgment in favor of the defendants, finding that the city was not liable for a custom or policy of using excessive force or for not properly investigating, supervising, training or disciplining its officials. The city's police officers had reviewed the policy on use of force regularly, the night watch commander placed a hold on the videotape of the incident and issued a personal complaint against the police officer who allegedly used excessive force. The city's safety service director eventually fired the officer for his actions, and the city saw to it that the officer was charged and convicted on a misdemeanor assault charge. (Mansfield Police Department and City Jail, Ohio)

U.S. Appeals Court
HANDICAP
DELIBERATE
INDIFFERENCE

Bradley v. Puckett, 157 F.3d 1022 (5th Cir. 1998). A prison inmate sued correctional officials under § 1983 alleging they failed to take steps to accommodate his physical disability, preventing him from showering during the time he was placed in close confinement. The district court dismissed the case, but the appeals court vacated the decision and remanded the case, finding that the inmate's complaints were sufficient to state a claim under the Cruel and Unusual Clause of the Eighth Amendment. The prisoner alleged that the officials knew that his disability prevented him from showering without assistance, and placed him in lock-down for two months without making any attempt to accommodate his disability, requiring him to go without bathing for two months, resulting in the development of a fungal infection. The inmate wore a leg brace which made it dangerous for him to shower without a shower chair. (Mississippi State Penitentiary)

U.S. Supreme Court
AIDS
ADA-Americans with
Disabilities Act

Bragdon v. Abbott, 118 S.Ct. 2196 (1998). A patient who was infected with the human immunodeficiency virus (HIV) brought an action under the Americans with Disabilities Act (ADA) against a dentist who refused to treat her at his office. The U.S. Supreme Court held that HIV infection is a "disability" under the ADA, even when the infection has not yet progressed to the so-called symptomatic phase, as a physical impairment which substantially limits the major life activity of reproduction. The court also held that when assessing the risk associated with treating or accommodating a disabled person under ADA the risk assessment must be based on medical or other objective evidence, and not simply on a person's good-faith belief that a significant risk existed. (Maine)

U.S. Appeals Court
DELIBERATE IN-
DIFFERENCE
NEGLIGENCE
MALPRACTICE

Bryan v. Endell, 141 F.3d 1290 (8th Cir. 1998). An inmate brought a civil rights action against prison officials alleging that they were deliberately indifferent to his serious medical needs. The district court entered judgment in favor of the officials and the appeals court affirmed. The appeals court held that even if the treatment of the inmate's broken hand was inadequate, and even if the inadequacy would have amounted to negligence in a state law tort case claiming medical malpractice, prison officials were not deliberately indifferent absent a showing that the officials had actual knowledge of the risk of harm followed by deliberate inaction amounting to callousness. (Arkansas Department of Correction)

U.S. Appeals Court
RESTRAINTS

Buckley v. Rogerson, 133 F.3d 1125 (8th Cir. 1998). A state prisoner brought a § 1983 action against a warden and state corrections department medical director challenging the use of restraints and segregation in a psychiatric hospital. The district court denied the medical director's motion for summary judgment and he appealed. The appeals court affirmed, finding that the director should have known that the prisoner had a right to medical approval of segregation and the use of restraints. The district court had found that correctional policies allowed facility staff to develop "treatment plans" to address the prisoner's mental illness but rather than assigning its staff doctors to the case the facility entrusted responsibility for implementing and administering many of the prisoner's treatment plans to correctional officers who had no medical training. Part of the prisoner's "treatment" involved stripping him of his clothes and placing him in a Spartan "quiet" or "segregation" cell. He was placed in these conditions without a blanket, bed or mattress on at least 17 occasions. The prisoner was also placed in restraints so that he could hardly move. (Iowa Medical and Classification Center)

U.S. District Court
MEDICATION
DELIBERATE
INDIFFERENCE

Burrell v. Datta, 17 F.Supp.2d 810 (C.D.Ill. 1998). An inmate brought a § 1983 action against a prison physician, alleging that the physician acted with deliberate indifference toward his medical needs. The district court granted summary judgment in favor of the physician. The court found that the physician was not deliberately indifferent when he prescribed medication to the inmate for flu-like symptoms, which allegedly cause the inmate to suffer an adverse reaction. According to the court, the medication was commonly prescribed for treatment of the flu, and nothing in the inmate's medical records indicated that he might be allergic to the medication. The court also found that errors allegedly made by prison medical staff did not implicate the Constitution. The staff allegedly wrote down the wrong prison in one entry, accused the inmate of faking his imbalance, and attempted to give the inmate medication after it had been discontinued. (Danville Correctional Center, Illinois)

U.S. District Court
MEDICATION
PRIVATE PROVIDER
DELIBERATE IN-
DIFFERENCE

Callaway v. Smith County, 991 F.Supp. 801 (E.D.Tex. 1998). An inmate at a county jail sued a county and a sheriff alleging mistreatment. The district court held that the inmate's Eighth and Fourteenth Amendment rights were not violated when he was not given the correct dosage of medication where there was no evidence that the conduct of jail personnel evinced deliberate indifference to his condition as opposed to a mistake or simple negligence. The court held that the inmate's rights were violated because he was not seen by doctors in a timely manner. According to the court, a state university hospital center, which provided medical care to inmates in the county jail, had sovereign immunity from a suit by the inmate claiming improper medical care because the center is an agency of the State of Texas. (Smith County Jail, Texas)

U.S. Appeals Court
PSYCHOTROPIC
DRUGS

Collignon v. Milwaukee County, 163 F.3d 982 (7th Cir. 1998). An arrestee's parents and estate sued county and village officials after the arrestee, who had a mental illness and some criminal history, committed suicide after he was released on bail. The district court granted judgment on pleadings for the village and granted summary judgment for the county defendants. The appeals court affirmed, finding that the treatment of the arrestee by a county psychiatrist while he was in pretrial detention did not violate substantive due process. The court also found that neither the police officers' failure to commence emergency detention proceedings, nor their return of the arrestee to his parents, amounted to a substantive due process violation. The court held that due process was not violated by the alleged refusal of a police officer to provide the arrestee with access to medical personnel capable of assessing the arrestee's condition. The appeals court held that the treatment of the arrestee by a county psychiatrist did not violate the arrestee's substantive due process rights because the psychiatrist exercised professional judgment in the face of the known serious medical needs of the arrestee. The psychiatrist, who was principally responsible for deciding the course of the arrestee's treatment at the jail, prescribed a nontherapeutic dosage of an antipsychotic drug with the intention of forming a "therapeutic alliance" with the arrestee, planning to slowly increase the dosage so that the arrestee could gradually overcome his aversion to side effects. The arrestee was able to lead a productive life while on his prescribed medication to treat his schizophrenia, but he stopped taking his medication and was arrested for damaging property and placed in a county jail for 17 days. He was released on bail to his parents, and shortly thereafter was temporarily detained by village police officers, who also released him to his parents. The next day he committed suicide. (Shorewood Police Department and Milwaukee County, Wisconsin)

U.S. District Court
DELAY OF CARE
WORK ASSIGNMENT
TRANSFER

Collins v. Hannigan, 14 F.Supp.2d 1239 (D.Kan. 1998). An inmate brought a pro se action against prison officials, a physician and a nurse, alleging that his constitutional rights were violated by their responses to his health-related complaints, which resulted in his transfer from minimum security to maximum security. The district court granted summary judgment in favor of the defendants. The court found that changes in the inmate's medical and security classifications which resulted in his transfer from minimum security to maximum security, his inability to participate in a work program, and short visitation periods, did not pose an atypical and significant hardship that violated the due process clause. According to the court, denial of the opportunity to participate in an in-house work program does not raise due process concerns. The court held that a corrections officer did not violate the Eighth Amendment when he ordered the inmate, who had a heart condition, to clean baseboards. The inmate did not suffer serious injury but at most was dizzy and

suffered some pain, and the officer checked with a physician before ordering the inmate to work. The court also found that the Eighth Amendment was not violated when a corrections officer allegedly waited 15 minutes before summoning medical assistance at the request of the inmate. The court held that the transfer of the inmate to a maximum security facility after his heart condition prevented him from working did not violate equal protection, and was justified by his need to be located close to a prison clinic. (Hutchinson Correctional Facility, Kansas)

U.S. District Court
DENTAL CARE
RELIGION

Darul-Islam v. Dubois, 997 F.Supp. 176 (D.Mass. 1998). An inmate sued corrections officials alleging violation of his constitutional rights by their denial of his request to have hospital-administered dental care. The district court granted summary judgment for the officials, finding that the inmate did not show that he would be irreparably harmed if he did not receive hospital-based instead of prison-based dental care, and that he was not entitled to injunctive relief. The inmate claimed to be in dire need of dental care but refused to consent to any treatment that involved the use of novocaine. The inmate alleged that he is allergic to novocaine and that his religious beliefs do not permit him to use the anesthetic. He asserted that his dental needs had to be treated in a hospital, where he could be given laughing gas or general anesthesia instead of novocaine. The court noted that the inmate refused to take a test which would establish his alleged allergies to the anesthetics used in the prison, and the inmate's medical records indicated he had regularly been treated by a dentist. (MCI Cedar Junction, Massachusetts)

U.S. District Court
FAILURE TO
PROVIDE CARE
DELIBERATE
INDIFFERENCE

Ely-El v Godinez, 8 F.Supp.2d 776 (N.D.Ill. 1998). An inmate brought an action alleging violations of his rights in connection with a skin rash which he suffered while in segregation. The district court granted summary judgment for the defendants, finding that the inmate failed to establish deliberate indifference to his serious medical needs regarding the rash. According to the court, medical records indicated that the inmate received treatment for the rash, and that his condition was inflammatory and not infectious and was thus not caused by the environmental sources asserted by the inmate. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
INTERPRETER
PRIVACY

Franklin v. District of Columbia, 163 F.3d 625 (D.C.Cir. 1998). Spanish-speaking prisoners incarcerated in eight District of Columbia correctional facilities brought a class action under § 1983 alleging that the District violated their First, Fifth and Eighth Amendment rights as well as federal and local statutes by failing to provide qualified interpreters when they appeared at parole and disciplinary hearings and when they sought medical care. The district court found that the District violated the Fifth and Eighth Amendments and entered an injunction. The appeals court vacated in part and reversed in part. The appeals court held that the prisoners lacked standing to assert due process challenges regarding parole hearings for misdemeanants because they did not name any members of the class who went before the parole board as misdemeanants and did not understand the proceedings because of lack of proficiency in English. Upon learning that the authority for parole of felons had been transferred to the United States Parole Commission since the district court had ruled, the appeals court stated that "why neither of the parties, and why especially the District of Columbia never alerted us to this statute is beyond comprehension." The appeals court found that failure to provide interpreters at all disciplinary hearings, adjustment board hearings, housing determinations, and classification decisions did not violate due process. The appeals court also found that the District's failure to provide interpreters for prisoners during medical consultations was not cruel and unusual punishment. (District of Columbia)

U.S. Appeals Court
PSYCHOTROPIC
DRUGS
NEGLIGENCE
ADEQUATE CARE

Frost v. Agnos, 152 F.3d 1124 (9th Cir. 1998). A pretrial detainee brought a § 1983 suit against a sheriff, corrections officers and others alleging that he was subjected to unconstitutional conditions because of his disability. The district court entered judgment for the officers and the detainee appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that, as a matter of first impression, denial of adequate handicapped-accessible shower facilities to the detainee who wore a leg cast and relied on crutches could support a § 1983 claim. The appeals court remanded the case to the district court to determine whether the detainee was administered a psychotropic drug without proper procedural safeguards. The detainee alleged that he was tricked into taking amitriptyline by a nurse who told him that it was a pain medication. He asserted that he would not have taken the medication if he had known that it had "antipsychotic" effects. The appeals court held that the detainee failed to establish a § 1983 due process claim based on alleged delays in the administration of his pain medication, treating his broken nose, and providing him with a replacement crutch. The court found that while the jail officials may have acted negligently, the detainee did not establish that they acted with deliberate indifference to his medical needs. (Madison Street Jail, Maricopa County, Arizona)

U.S. District Court
MENTAL HEALTH
NEGLIGENCE
DELIBERATE IN-
DIFFERENCE

Greffey v. State of Ala. Dept. of Corrections, 996 F.Supp. 1368 (N.D.Ala. 1998). The administrator of the estate of a prisoner who had committed suicide sued corrections officials in state court. The case was removed to the federal district court, which held that supervisors who were not aware of the prisoner's earlier unsuccessful suicide attempt were not deliberately indifferent to his serious medical needs. The court also found that a classification specialist who did know of the earlier attempt was not deliberately indifferent

because he had fulfilled his duties to the prisoner by referring him to a staff psychologist. The court did not hold the psychologist liable, finding that while his diagnosis eventually proved inaccurate, his conduct rose at most to the level of negligence. The court noted that prisons, even the best ones, breed despondency and it is not unusual for prisoners to display signs of depression. Only those prisoners who presented a strong likelihood, rather than a mere possibility, of suicide are entitled to protection from self-destruction. (Kilby Correctional Facility, Alabama)

U.S. District Court
RELIGION
CONTAGIOUS
DISEASES

Hasenmeier-McCarthy v. Rose, 986 F.Supp. 464 (S.D. Ohio 1998). An inmate who was forcibly compelled to submit to a tuberculosis (TB) test brought a § 1983 action against corrections officials seeking injunctive and monetary relief. The district court granted summary judgment for the officials, finding that mandatory TB testing accomplished the legitimate penological objective of protecting other inmates and staff from infectious diseases. The court supported the prison's policy of placing inmates in respiratory isolation pending their submission to TB tests, noting that inmates were monitored daily. The court also held that the inmate's showing as to the alleged severity of her wounds was insufficient to create a genuine issue of material fact as to whether the officials acted maliciously or sadistically in forcibly administering the TB test. The court found that the forcible testing did not violate the inmate's First Amendment right to freely exercise her religion. (Ohio Reformatory for Women)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE
DELIBERATE
INDIFFERENCE

Hemmings v. Gorczyk, 134 F.3d 104 (2nd Cir. 1998). A prisoner brought a § 1983 action alleging corrections officials had been deliberately indifferent to his serious medical needs. The district court dismissed the complaint as frivolous. The appeals court affirmed in part, and vacated and remanded in part. The appeals court held that further factual development of the prisoner's claim should be allowed. The prisoner alleged that his ankle injury was painful, that officials disregarded the condition which was easily observable, that he was not referred to a specialist despite symptoms warranting such referral, and that a nurse aggravated his condition by taking away one of his crutches. (Southwest Regional Correctional Facility, Vermont)

U.S. District Court
AIDS
MENTAL HEALTH
PRIVACY
DELIBERATE
INDIFFERENCE

Hetzel v. Swartz, 31 F.Supp.2d 444 (M.D. Pa. 1998). The administratrix of the estate of a county prison inmate who died from AIDS while confined brought a § 1983 action against a prison mental health counselor. The district court granted judgment for the counselor after a bench trial, finding that the counselor was not deliberately indifferent to the inmate's medical needs. The counselor had denied the inmate's requests for counseling to cope with his AIDS diagnosis. During the counselor's initial sessions with the inmate, the inmate was angry about missing medical records and was determined to recover compensation from the prison. The counselor decided that other inmates among his 100-inmate caseload were more in need of his time. The court also ruled that the counselor's release of information regarding the inmate's diagnosis of AIDS did not violate the inmate's privacy rights under a state law. The counselor released information about the inmate to a doctor and a nurse at the prison, who were entitled to the information under state law. (Luzerne County Prison, Pennsylvania)

U.S. District Court
PRIVATE PROVIDER
FAILURE TO
PROVIDE CARE
TRANSFER

Higgins v. Correctional Medical Services of Ill., 8 F.Supp.2d 821 (N.D. Ill. 1998). A pretrial detainee brought a § 1983 action against medical personnel and a correctional medical provider for allegedly denying him his constitutional right to medical care. The district court granted summary judgment in favor of the defendants. The court found that medical personnel's failure to order x-rays of the inmate's shoulder based on the inmate's claim that it was dislocated was an exercise of medical judgment and did not amount to deliberate indifference. The court found that evidence was insufficient to establish that medical personnel strongly suspected that the inmate's shoulder was dislocated. The court also found that the inmate failed to establish that the correctional medical service provider had conspired to deny medical treatment to inmates who were soon to be transferred. The court noted that the provider was contractually obligated to provide inmates with medical care mandated by the Eighth Amendment and therefore could be held liable for constitutional violations under § 1983. (Kane County Correctional Center, Illinois)

U.S. District Court
DELIBERATE
INDIFFERENCE
DELAY OF CARE

Hron v. Jenkins, 15 F.Supp.2d 1082 (D. Kan. 1998). An inmate brought a Bivens action against prison officials alleging violation of his Eighth Amendment rights. The district court granted summary judgment in favor of the defendants, finding that the officials did not show deliberate indifference to the inmate's medical needs when they assigned him to an upper bunk. The inmate was susceptible to seizures and he was assigned to an upper tier cell after he returned from reconstructive knee surgery that was required after he fell from his upper bunk. The court found that the cell and bunk assignments reflected, at most, negligence. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
MEDICATION
TRANSFERS

Hudson v. McHugh, 148 F.3d 859 (7th Cir. 1998). A county jail inmate brought a § 1983 action against a halfway house, a county sheriff and others, alleging violation of the Eighth Amendment when he was deprived of his epilepsy medicine following his transfer from a halfway house to a county jail. The district court entered summary judgment for the defendants and the appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the director and assistant director lacked knowledge

that the inmate was being deprived of his medication and thus did not violate the Eighth Amendment. But the alleged inaction of county jail officers and a nurse constituted deliberate indifference to a serious medical need in violation of the Eighth Amendment, according to the appeals court. The inmate, a federal prisoner serving the end of his sentence at a halfway house, tested positive for cocaine use and was transferred to a county jail. (Rock County Jail, Wisconsin)

U.S. District Court
INADEQUATE
TREATMENT

Jackson v. U.S., 24 F.Supp.2d 823 (W.D.Tenn. 1998). A former inmate brought an action under the Federal Tort Claims Act (FTCA) seeking damages for injuries he suffered in a prison riot. The district court found that the statute of limitations barred the inmate's Eighth Amendment claims. The court denied summary judgment for the defendants, finding it was precluded by genuine issues of material fact regarding the reasonableness of the actions of prison employees in treating the inmate and in locking down inmates during a fire. The inmate suffered a collapsed lung in a fire in housing units that were burning out of control during a prison riot. Prison officials locked down inmates in the housing units, and the court ordered further inquiry into whether delays were caused by negligence on the part of staff. The inmate alleged that a prison officer gave keys to another prisoner to release him during the fire, but he was never released and subsequently inhaled carbon monoxide and suffered a collapsed lung. The court also allowed further proceedings to determine if a federal prison physician exercised a reasonable degree of skill, possessed by others in the medical profession, in treatment the inmate, who was brought to the prison's front gate for evacuation to a local hospital. (Federal Correctional Institution, Memphis, Tennessee)

U.S. District Court
FAILURE TO
PROVIDE CARE

James v. Coughlin, 13 F.Supp.2d 403 (W.D.N.Y. 1998). A state inmate brought a § 1983 suit against corrections officials alleging constitutional violations in connection with a search. The district court granted summary judgment to the officials, finding that the curtailment of the inmate's First Amendment rights during a pat-frisk was justified. The inmate claimed he injured his back, and complained that he was denied medical treatment; the court concluded that corrections officials were not deliberately indifferent to his medical needs because the need for treatment was not apparent, and he was examined by a nurse, who found no injuries, within a half hour. The inmate was denied a single shower after the search because of his conduct, and the court found that this did not implicate any constitutionally protected liberty interest. The court held that placing the inmate on a restricted diet for three days did not violate the Eighth Amendment, absent an allegation that the inmate failed to receive a nutritional meal for the three days or that he suffered an imminent health risk because of the diet. (Attica Correctional Facility, New York)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE

Johnson v. Quinones, 145 F.3d 164 (4th Cir. 1998). A former state inmate who lost his sight after he was released from prison brought a § 1983 action against prison doctors, alleging that they were deliberately indifferent to his medical needs in violation of the Eighth Amendment. The district court granted summary judgment for the doctors and the appeals court affirmed. The appeals court held that the doctors did not act with deliberate indifference when they failed to diagnose a pituitary gland tumor which later caused the inmate to go blind. According to the court, a missed diagnosis by a prison doctor does not automatically translate into deliberate indifference. (Keen Mountain Correctional Facility, Virginia)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
MEDICATION

Jolly v. Badgett, 144 F.3d 573 (8th Cir. 1998). A state inmate brought a § 1983 action against prison officials, alleging deliberate indifference to his serious medical needs. The district court granted summary judgment for the officials and the appeals court affirmed. The appeals court held that preventing the inmate from leaving his cell to get water and take his prescribed antiseizure medicine until two hours after the prescribed time did not constitute deliberate indifference absent evidence that any of the officials knew that the delay would have any adverse effect. (Missouri)

U.S. District Court
FAILURE TO
PROVIDE CARE
HANDICAP
WHEELCHAIR

Jones v. St. Tammany Parish Jail, 4 F.Supp.2d 606 (E.D.La. 1998). A pretrial detainee brought a § 1983 action against a sheriff, warden, captain and parish based on alleged failure to provide adequate medical care. The district court found that the captain, sheriff and warden could not be held individually liable for the alleged unconstitutional conduct and that the parish could not be held liable for alleged constitutional deprivations related to the management of the jail. But the court found that genuine issues of fact precluded summary judgment for the sheriff in his official capacity, as to whether the sheriff had a policy or practice of maintaining an inadequate number of wheelchairs at the jail and whether any such practice was reasonably related to a legitimate governmental purpose. At the time of his arrest, the 57-year-old detainee was disabled due to a prior injury to his back. He was assigned to the top bunk in his dorm, which had no ladder. Fourteen days after his arrest the detainee fell from the top bunk and sustained several serious injuries, including a fractured leg in three places, a partially severed finger, broken ribs and a concussion. He was placed in a full leg cast up to his hip and an arm cast. A week after he returned to the jail from the hospital, he suffered another fall when his crutches slipped out from under him. The detainee claimed that officials ignored his repeated requests to be assigned a lower bunk, and his repeated requests for a wheelchair because he could not walk safely on crutches due to his arm and rib injuries. (St. Tammany Parish Jail, Louisiana)

<p>U.S. District Court CONTAGIOUS DISEASES DELIBERATE INDIFFERENCE</p>	<p><u>Maldonado v. Terhune</u>, 28 F.Supp.2d 284 (D.N.J. 1998). An inmate brought a pro se § 1983 action against a state prison and prison officials alleging that their lack of frequent testing for tuberculosis, and their deliberate indifference to potential adverse side effects from treatment, violated his Eighth Amendment rights. The district court dismissed the case, finding that although active tuberculosis is a "serious medical need" the officials were not deliberately indifferent. The court noted that the officials had tested the inmate once a year for tuberculosis, provided further medical examinations and treatment within the week of his positive test result, treatment conformed with generally accepted medical practice, and the inmate was provided with the drug of choice for treatment of tuberculosis and was monitored regularly for side effects. The court noted that most, if not all, prescription drugs have the potential of harmful side effects. (Bayside State Prison, New Jersey)</p>
<p>U.S. District Court AIDS MEDICATION DELIBERATE INDIFFERENCE</p>	<p><u>McNally v. Prison Health Services, Inc.</u>, 28 F.Supp.2d 671 (D.Me. 1998). A pretrial detainee sued a county jail and its private health care provider alleging that his constitutional rights and his rights under the Americans with Disabilities Act (ADA) were violated by the denial of his human immunodeficiency virus (HIV) medication. The district court denied the defendants' motion to dismiss, holding that the plaintiff had sufficiently plead a § 1983 claim that the defendants were deliberately indifferent to his serious medical needs. The court found that the detainee suffered significant harm from the jail's failure to provide care, noting that he suffered from fevers, night sweats, and infections from cuts received from his arresting officers. The detainee was arrested by a local police department and was injured by the arresting officers, suffering blackened eyes and cuts on his nose. The local police took him to a hospital for treatment before taking him to the county jail. Upon admission to the jail, the detainee told employees of the private health care provider that he had been diagnosed with HIV and was on a strict regime of medication. He identified the medication and the dosage, and told medical personnel that he had missed a dosage due to his arrest and needed one at that time. Although the detainee's private physician confirmed his medication and dosage, he was denied his medication throughout his three-day stay at the jail. He was hospitalized immediately after his release for several days as the result of being deprived of his medication. (Cumberland County Jail, Maine, and Prison Health Services, Inc.)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE DENIAL OF CARE</p>	<p><u>McNeil v. Redman</u>, 21 F.Supp.2d 884 (C.D.Ill. 1998). A prisoner brought a § 1983 action against a director of nursing, alleging that she denied him access to medical care based on his race. The district court granted summary judgment in favor of the defendant, finding that the director's refusal to refer the prisoner to a doctor without first performing tests was not deliberate indifference to the prisoner's serious medical needs. The prisoner had come to the prison clinic with high blood pressure and complaining of kidney problems, but he appeared to be in no acute distress, his breathing and pulse were normal, and the prisoner "stormed out" of the clinic without submitting to tests that the nursing director thought were in order. (Danville Correctional Facility, Illinois)</p>
<p>U.S. District Court SMOKE-FREE ENVIRONMENT</p>	<p><u>McPherson v. Coombe</u>, 29 F.Supp.2d 141 (W.D.N.Y. 1998). An inmate brought a § 1983 action alleging violations of his First, Eighth and Fourteenth Amendment rights arising from his exposure to environmental tobacco smoke (ETS). The district court denied the defendants' motion for summary judgment, finding that it was precluded by fact questions as to whether smoke conditions in the prison violated contemporary standards of decency, whether officials were aware of the potential risks to the inmate's future health, and whether the superintendent was personally involved in decisions leading to denial of the inmate's request to be housed in a smoke-free environment. The court found that prison smoking regulations, which permitted smoking in dormitory areas, did not violate the inmate's First Amendment rights to freedom of association because designated non-smoking areas gave the inmate opportunities to exercise his right to associate with other inmates. The inmate had alleged that the smoking policy restricted his movement within the dormitory in his attempt to evade contact with ETS. (Attica Correctional Facility and Orleans Correctional Facility, New York)</p>
<p>U.S. District Court HANDICAP EQUIPMENT ADA-Americans with Disabilities Act</p>	<p><u>Moore v. Prison Health Services, Inc.</u>, 24 F.Supp.2d 1164 (D.Kan. 1998). A state prisoner with an amputated left leg brought an action against a private correctional health service provider and others alleging violation of the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Eighth and Fourteenth Amendments. The district court granted summary judgment in favor of the defendants. The court held that the fact that the prisoner was issued older wheelchairs which later broke, causing him to fall or cut himself, did not violate the Eighth Amendment, ADA or the Rehabilitation Act. The prisoner had signed forms when the chairs were issued, reflecting that the chairs were in good working order, and the prisoner had a reputation for abusing wheelchairs. The court noted that the prisoner was offered prompt medical care each time he fell. (Hutchinson Correctional Facility, Kansas)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE DENTAL CARE ADEQUACY OF CARE EQUIPMENT</p>	<p><u>Morales Feliciano v. Rossello Gonzalez</u>, 13 F.Supp.2d 151 (D.Puerto Rico 1998). In an ongoing action against a corrections system seeking improvement of medical and mental health care provided to inmates, an expert witness prepared a report documenting the state of compliance with prior orders that had been entered. The district court held that the correctional system continued to violate inmates' Fifth, Eighth, and Fourteenth Amendment rights by failing to provide adequate medical</p>

<p>FACILITIES INTAKE SCREENING MEDICATION PERSONNEL RECORDS SICK CALL SPECIAL DIETS STAFF TRAINING TRANSFER FAILURE TO PROVIDE CARE</p>	<p>care. The court found that the officials' actions or lack thereof contributed to the deaths of inmates and to the infliction of pain and suffering. The court ruled that there were systematic deficiencies in staffing, facilities, procedures and administration, and that officials acted in a manner that was deliberately indifferent to the basic human and health needs of inmates. The court found many violations of inmates' constitutional rights, including: failing to fully screen incoming inmates for infectious diseases such as tuberculosis or to detect mental health problems; failing to provide for a sick call system that ensured access to care and that was capable of handling emergencies; failing to carry out medical orders by neglecting to provide prescribed medication or disregarding special recommendations for surgery or specialized care, when officials were subjectively aware of conditions that required intervention; failing to consistently administer "unit dose" medication; failing to provide transportation to scheduled specialty appointments and physical therapy; failing to provide prescribed medical diets; failing to adequately train, supervise or retain health care personnel, which resulted in rampant under-staffing and the consequent impossibility to adequately meet the needs of the inmate population; failing to hospitalize inmates whose mental health condition required the therapeutic environment of a mental health treatment facility; allowing several mentally ill patients to continue to cohabitate with the general population without being tendered any type of mental health treatment; failing to timely provide necessary medical care outside their facilities when not available internally, due in part to a lack of personnel or transportation means; and demonstrating "manifest ineptitude" in maintaining medical records. The court noted that budgetary limitations or inadequate resources can never be a valid justification for constitutional violations. The court concluded that the system had failed to provide adequate facilities and equipment necessary for the provision of adequate health care of inmates pursuant to acceptable professional standards. But the court noted that despite the findings of the expert, the National Commission on Correctional Health Care had accredited the medical care programs in four prisons and awarded provisional accreditation to four more in 1992. But an expert found noncompliance with at least one essential standard at every accredited facility, and the Department of Health provided the court monitor's staff with credible evidence that employees had falsified documents in support of accreditation. (Administration of Correction, Puerto Rico)</p>
<p>U.S. District Court TRANSFER NEGLIGENCE FAILURE TO PROVIDE CARE</p>	<p><u>Muhammed v. U.S.</u>, 6 F.Supp.2d 582 (N.D.Tex. 1998). A prison inmate sued the United States under the Federal Tort Claims Act (FTCA) for failing to transfer him to a medical facility. The district court awarded a total of \$45,000 to the inmate, finding that the statute that defines the government's duty to provide suitable quarters for inmates creates a private cause of action under the Tort Claims Act. According to the court, Bureau of Prisons employees were negligent in not assigning the inmate to a medical facility during the two and one-half years following the inmate's complaint that he was unable to walk and his request for a cane or a wheelchair, causing him physical pain and mental anguish. The court awarded the inmate \$30,000 for physical pain and \$15,000 for mental anguish. (Federal Correctional Institution at Texarkana, Texas)</p>
<p>U.S. Supreme Court HANDICAP ADA-Americans with Disabilities Act</p>	<p><u>Pennsylvania Dept. of Corrections v. Yeskey</u>, 118 S.Ct. 1952 (1998). A state prison inmate who was denied admission to a prison boot camp program due to his history of hypertension sued corrections officials under the Americans with Disabilities Act (ADA). The U.S. Supreme Court held that Title II of the ADA, prohibiting a "public entity" from discriminating against a "qualified individual with a disability" applied to inmates in state prisons. In a unanimous decision the Court stated that the text of ADA was not ambiguous and it unmistakably included state prisons and prisoners in its coverage. (Pennsylvania Department of Corrections)</p>
<p>U.S. District Court DENTAL CARE</p>	<p><u>Petrazzoulo v. U.S. Marshals Service</u>, 999 F.Supp. 401 (W.D.N.Y. 1998). A pretrial detainee alleged that the U.S. Marshals Service (USMS) and a county which housed the detainee under contract to the USMS failed to provide him with dentures, in violation of his Eighth Amendment rights. The district court held that the USMS was not deliberately indifferent to the detainee's dental needs and that the detainee failed to state a § 1983 claim against county officials. The inmate's teeth had been extracted to treat a broken jaw, and a dentist had "recommended" that the detainee obtain dentures. The USMS concluded that the dentist's recommendation was not a prescription and that the dentures were an elective treatment. The detainee received prompt treatment for his broken jaw, pain medication and a soft food diet. The court also held that the detainee could not bring an action under the Federal Tort Claim Act. (Chautauqua County Jail, New York)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE AIDS MEDICATION</p>	<p><u>Polanco v. Dworzack</u>, 25 F.Supp.2d 148 (W.D.N.Y. 1998). An inmate with acquired immune deficiency syndrome (AIDS) brought an action against prison medical personnel alleging deliberate indifference to his serious medical needs. The district court granted summary judgment to the defendants. The court held that the medical personnel's failure to provide the inmate with a specific, name-brand dietary supplement which he had requested was not deliberate indifference to his serious medical needs. The court noted that a prisoner does not have the right to the medical treatment of his choice, and therefore a mere disagreement with a prison doctor's professional judgment is not a constitutional violation. The</p>

inmate had been maintaining a steady weight, was given a daily supplementary snack, and medical personnel met with him whenever he requested sick call. The inmate had been receiving the requested supplement at another correctional facility but it was discontinued when he was transferred and placed in a segregated housing unit. (Attica Correctional Facility, New York)

U.S. District Court
DENTAL CARE
QUARANTINE
DELIBERATE
INDIFFERENCE
FAILURE TO PRO-
VIDE CARE

Ramos v. O'Connell, 28 F.Supp.2d 796 (W.D.N.Y. 1998). An inmate brought a § 1983 action against employees of a state correctional department claiming violation of his Eighth Amendment rights by alleged denial of routine and emergency medical treatment. The district court granted summary judgment to some defendants and denied it to others, and denied the plaintiff's cross-motion for summary judgment. The court dismissed claims against the prison dentist, nurses and superintendent, and found that the inmate's allegation that he was denied a routine blood test was insufficient to establish an Eighth Amendment violation. But the court found that the inmate's claim that he had an abscessed wisdom tooth was sufficiently serious to sustain an Eighth Amendment claim. The court found that summary judgment was precluded for the prison's health services director and sergeants on the security staff who allegedly directed officers not to release the inmate for medical appointments. The inmate had been placed in "medical keeplock" (also referred to as medical quarantine) under a prison policy that addressed inmates who refused to take a TB test upon admission. At the prison, inmates in medical quarantine were denied routine medical treatment. (Attica Correctional Facility, New York)

U.S. District Court
SPECIAL DIETS

Ramsey v. Coughlin, 1 F.Supp.2d 198 (W.D.N.Y. 1998). An inmate sued corrections officials alleging that their denial of a kosher diet violated his constitutional rights. The district court granted summary judgment in favor of the officials, but the appeals court reversed and remanded. On remand, the district court granted summary judgment to the defendants. The court held that the inmate, who had not converted to Judaism, was not Jewish and thus was not entitled to a kosher diet. The prison rabbi had denied the inmate's request for a kosher diet for lack of evidence that he was Jewish. The court also found that denial of a vegetarian diet did not interfere with medical treatment ordered by a doctor. According to the court, the vegetarian diet had been ordered earlier when the inmate was in a county jail, and only because the inmate had refused to eat and not for any medical reason. (Southport Correctional Facility, New York)

U.S. District Court
ADEQUACY OF CARE
ADA-Americans with
Disabilities Act

Rouse v. Plantier, 997 F.Supp. 575 (D.N.J. 1998). Diabetic inmates brought a § 1983 action against state corrections officials alleging violation of the Eighth Amendment and the Americans with Disabilities Act (ADA). The court denied summary judgment for the defendants on the issue of whether the inmates' diabetes was a disability under ADA. According to the court, the inmates might be substantially limited in the foods they could eat, in the exercise regime in which they could engage and by numerous special complications diabetes presented for them. If the inmates' condition was considered without mitigating measures such as medicines, or assistive or prosthetic devices, the court found it was clear that they could be considered disabled. (Adult Treatment and Diagnostic Center, New Jersey)

U.S. Appeals Court
SMOKE FREE
ENVIRONMENT

Scott v. District of Columbia, 139 F.3d 940 (D.C. Cir. 1998). Nonsmoking prisoners brought a civil rights suit against the District of Columbia alleging violation of their Eighth Amendment rights by exposing them to second-hand tobacco smoke. The district court entered an injunction requiring the District of Columbia to provide the prisoners with a smoke-free environment. The District appealed and the appeals court reversed, finding that evidence was insufficient to establish that the prisoners were exposed to an unreasonably high level of smoke, where measurements indicated that the amounts of second-hand smoke were within acceptable levels and the prisoners failed to demonstrate a relationship between the smoke and their alleged ailments. The appeals court also held that evidence was insufficient to establish that prison officials were deliberately indifferent to the risk of harm that second-hand smoke posed to prisoners, where evidence indicated that the officials made a good faith attempt to enforce a nonsmoking policy and improved ventilation in certain areas. (Lorton Correctional Complex, Virginia, District of Columbia)

U.S. District Court
FAILURE TO
PROVIDE CARE
NEGLIGENCE
DELIBERATE IN-
DIFFERENCE

Walker v. Kubicz, 996 F.Supp. 336 (S.D.N.Y. 1998). A federal prisoner sued prison officials alleging that he was provided with inadequate medical care. The district court granted summary judgment in favor of the defendants, finding that the inmate's Eighth Amendment rights were not violated. The court held that the prisoner failed to establish deliberate indifference with respect to shortened or delayed dialysis treatment, where a physician was told by a specialist that there was no risk to the prisoner, the prisoner complained on only one occasion that he was "not feeling well," and the physician personally observed no ill effects. The court also held that the alleged failure of the prison to promptly diagnose and treat his pneumonia was at most negligence. (Federal Correctional Institution, Otisville, New York)

U.S. District Court
EXPERIMENTATION

White v. Paulsen, 997 F.Supp. 1380 (E.D.Wash. 1998). Former prisoners sued a physician alleging that they were subjected to nonconsensual medical experimentation while in state custody in violation of international law's prohibition of crimes against humanity. The district court dismissed the international law cause of action, finding that neither the

International Covenant on Civil and Political Rights (ICCPR) nor the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, was a self-executing treaty giving rise to a private right of action for the plaintiffs. The court found that domestic remedies under the Eighth Amendment, Federal Tort Claims Act, and state tort law were adequate to address the alleged conduct. (State of Washington)

U.S. District Court
MEDICATION
FAILURE TO
PROVIDE CARE
DELIBERATE IN-
DIFFERENCE

Williams v. Cearlock, 993 F.Supp. 1192 (C.D.Ill. 1998). An inmate sued prison officials alleging defective medical care. The district court granted summary judgment for the defendants, finding that the inmate's claims did not show deliberate indifference to his medical condition. According to the court, occasional negligent failure to provide medications according to schedule were insufficient to support a claim of deliberate indifference, where the inmate received daily attention from staff, received medication generally on time, and failed to show he suffered any harm. (Graham Correctional Facility, Illinois)

U.S. Appeals Court
WORK ASSIGNMENT

Williams v. Norris, Arkansas Dept. Of Corrections, 148 F.3d 983 (8th Cir. 1998). A state inmate brought a § 1983 action against corrections officials and a nurse, alleging that he was required to perform labor that was dangerous because of his medical condition, resulting in a back injury. The district court entered judgment against two corrections officials and a nurse and the appeals court affirmed. The appeals court held that the officials and nurse violated the inmate's right to be free from cruel and unusual punishment by imposing a work assignment that exceeded his known medical restrictions. According to the court, neither official took action to "rescue" the inmate from work that was dangerous, even though they knew of his restrictions and his assignment. Judgements of \$500 were ordered against each of the three defendants. The inmate had previously incurred a back injury in a car accident and also suffered from hypertension. He was medically classified as M-2P, which meant that he was to do no prolonged stooping, walking, standing, or "strenuous physical activity for periods in excess of four hours." He was assigned to construction work, which included carrying 12 inch cement blocks, pushing wheelbarrows full of cement, and carrying steel rebars. On the same day he began work he saw the nurse, telling her that he was afraid the work would make his health problems worse. The nurse did nothing in response because she did not yet have his medical records. (Jefferson Regional Jail Facility, Arkansas)

U.S. District Court
WORK ASSIGNMENT

Wilson v. Johnson, 999 F.Supp. 394 (W.D.N.Y. 1998). A prison inmate brought a § 1983 action against a facility superintendent and corrections counselor alleging that his work assignment in the prison mess hall violated the Eighth Amendment. The district court ruled in favor of the defendants, finding that the work assignment did not pose a substantial risk of serious harm to the inmate. According to the court, there was nothing in the inmate's medical records that indicated that his claimed back problem was serious enough to prevent him from performing the tasks required of a mess hall worker. There was evidence that the inmate had not only been willing, but was anxious to start his assignment. The inmate had once been given a bed board for his back problem and there was nothing on the record that indicated any further history of back problems. (Orleans Correctional Facility, New York)

U.S. District Court
DENTAL CARE

Zimmerman v. Tippecanoe Sheriff's Dept., 25 F.Supp.2d 915 (N.D.Ind. 1998). A state prisoner brought a § 1983 action against county officials and employees alleging constitutional violations during his pretrial detention period in a county jail. The district court found in favor of the defendants for all but one of the allegations. The court found that the sheriff's decision to order the prisoner to be held in a disciplinary segregation unit of the jail without a disciplinary hearing did not violate the prisoner's due process rights because the decision was administrative and was made in response to the prisoner's previous escape attempt. The court held that a jail physician's failure to refer the prisoner to a dentist for emergency treatment of an abscess and bone fragmentation did not violate the Fourteenth Amendment because the prisoner did not state that he was in pain or had any discomfort when the physician examined him. According to the court, the fact that the prisoner failed to receive one of his commissary orders did not constitute a disciplinary action without due process, even if the prisoner was unable to purchase stamps and materials with which to correspond with his family and his attorney. The court noted that the prisoner had received regular commissary orders, including a large order with correspondence materials placed just before his missed order, and he received regular orders after the missed order. (Tippecanoe County Jail, Indiana)

1999

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Anton v. Sheriff of DuPage County, Ill., 47 F.Supp.2d 993 (N.D.Ill. 1999). A pretrial detainee brought a § 1983 action against a county and county officials alleging that he was subjected to unconstitutional conditions of confinement at a county jail. The district court refused to dismiss the case, finding that his alleged exposure to low temperature in a detention cell while naked and with no alternative means of protecting himself from the cold supported a claim of inadequate shelter against the county. The detainee allegedly repeatedly complained to jail officers for hours and they responded with jeers and laughter, and he was not provided with medical care until he threatened litigation. When a nurse finally attended to the detainee, his body temperature was three degrees below normal. The detainee had just attempted

suicide and had been placed in a rubberized cell without clothing and was observed every 15 minutes. The court also found that deputies' alleged thwarting of medical treatment given to the detainee supported a claim of violation of his right to medical attention. The officers allegedly removed a blanket that was given to the detainee by the nurse, which the court held supported a claim for deliberate indifference. The court denied qualified immunity for the officers, finding that it was clearly established at the time of this incident that pretrial detainees had a constitutional right to adequate heat and medical attention. (DuPage County Jail, Illinois)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Barron v. Keohane, 216 F.3d 692 (8th Cir. 2000). A federal prisoner who suffered from kidney disease petitioned for a writ of habeas corpus alleging that failure of prison officials to provide him with access to a kidney transplant violated his constitutional rights. The district court denied the petition and the appeals court affirmed. The appeals court held that medical studies cited by the prisoner which indicated that patients who receive transplants have better survival rates than those who do not receive transplants were insufficient to show that the course of treatment provided by the prison (dialysis) demonstrated deliberate indifference to his serious medical needs. (Medical Center for Federal Prisoners, Springfield, Missouri)

U.S. District Court
DELIBERATE INDIF-
FERENCE

Baumann v. Walsh, 36 F.Supp.2d 508 (N.D.N.Y. 1999). An inmate who was injured by falling off a top bunk and then reinjured by falling off a shelf at his prison job sued prison officials under § 1983. The district court dismissed all defendants from the case except the inmate's shop supervisor. The court held that the inmate had an objectively serious medical need and that a substantial risk of harm existed with respect to the inmate's working conditions because he was made to climb along shelves and stand on boxes to retrieve material from the top shelves of a storage room. The court denied summary judgment for the shop supervisor, citing material issues of fact to be resolved regarding the supervisor's notice of unsafe work conditions and whether a ladder was available for use by the inmate. (Franklin Correctional Facility, New York)

U.S. District Court
DELIBERATE
INDIFFERENCE
ADA-Americans with
Disabilities Act
HANDICAP

Beckford v. Irvin, 49 F.Supp.2d 170 (W.D.N.Y. 1999). Defendants moved to set aside a jury verdict and dismiss an inmate's case against them. The district court denied the motions, finding that the award of compensatory and punitive damages was not excessive. The inmate had been confined to a wheelchair since 1984. In 1994 he was transferred from a psychiatric center to another correctional facility where he was assigned to a Mental Health Observation Unit (MHU). The court noted that the inmate was "...not placed in MHU for mental health treatment. He was placed in MHU because the cell was bigger and because his wheelchair fit in the cell." But shortly after his transfer officials took away his wheelchair and denied him access to it for the majority of his time at the facility. The inmate repeatedly requested permission to use his wheelchair and his requests were denied. The jury concluded that the inmate's rights had been violated because he was unable to participate in outdoor exercise or to take a shower because he was not allowed to use his wheelchair. The jury awarded \$125,000 in compensatory damages for violations of the Americans with Disabilities Act (ADA) and punitive damages totaling \$25,000 against two supervisory officials for being deliberately indifferent to the inmate's serious medical needs. The court noted that the fact that the jury did not assess liability on the part of lower ranking prison officials did not preclude the jury from assessing liability on the supervisory officials. (Wende Correctional Facility, New York)

U.S. Appeals Court
EXPERIMENTATION

Bibeau v. Pacific Northwest Research Foundation, 188 F.3d 1105 (9th Cir. 1999). A former inmate who, while in custody, voluntarily participated in research experiments that tested the effects of radiation on human testicular function, sued the United States and the researchers. The inmate asserted claims for conspiracy to induce fraudulently his participation, fraud, battery, breach of fiduciary duty, strict liability for ultrahazardous activity, and intentional infliction of emotional distress. The district court granted summary judgment for the defendants but the appeals court reversed and remanded. The appeals court held that factual issues about whether the former inmate was, or should have been, aware that he was injured by the experiments precluded summary judgment. The appeals court also held that a private research foundation and a researcher's assistant were not shielded by qualified immunity. (Oregon State Penitentiary and Pacific Northwest Research Foundation)

U.S. District Court
MENTAL HEALTH

Brewer v. City of Daphne, 111 F.Supp.2d 1299 (S.D.Ala. 1999). The mother of a jail inmate who committed suicide brought a civil rights action against a city and city officials, alleging they failed to provide adequate psychological care to the inmate prior to his suicide and failed to protect him from self-inflicted harm. The district court granted summary judgment in favor of the defendants. The court held that there was no official policy, custom, or lack of training which gave rise to § 1983 liability against the city for failing to prevent the inmate's suicide. The inmate had been confined for more than a month of his 18-month sentence when he returned to the jail from a work release job and was found to be under the influence of alcohol. The inmate was found dead in his cell later having died from asphyxiation caused by hanging. The court found that evidence did not establish that the inmate had a serious psychological need prior to his death and that there was no proof that officials knew that the inmate faced a substantial risk of harm given his intoxicated state on the day of his death. (Daphne City Jail, Alabama)

U.S. District Court
DELIBERATE

Caldwell v. Hammonds, 53 F.Supp.2d 1 (D.D.C. 1999). A prisoner brought a § 1983 action for damages for injuries allegedly suffered. The district court held that the prisoner failed to

INDIFFERENCE
DELAY IN CARE
SMOKE

state a claim with his allegations of limited access to legal materials because he did not allege a specific injury as a result. But the court held that the prisoner stated a claim for deliberate indifference because his prescribed treatment for skin cancer was delayed. The court also found a claim for deliberate indifference in the prisoner's allegations that he was exposed to secondary tobacco smoke and to smoke from fires set in his cell block. The court noted that although prison policy prohibited smoking in the prison, tobacco products were sold in the prison canteen and correctional officers permitted smoking in cell blocks. The court found that pervasive unsanitary and unhealthy conditions in his cell block existed for a long time and were obvious to any observer. Because the Director of the Department of Corrections had notice of these conditions, the prisoner stated a § 1983 claim for violation of the Eighth Amendment. (Cell Block 3, Maximum Security Facility, District of Columbia Department of Corrections, Lorton, Virginia)

U.S. Appeals Court
MENTAL HEALTH
MEDICATION
RESTRAINTS
DELIBERATE
INDIFFERENCE

Campbell v. Sikes, 169 F.3d 1353 (11th Cir. 1999). A state prisoner brought a § 1983 action against a prison official and mental health personnel and the district court granted summary judgment for the defendants. The appeals court affirmed. The appeals court held that a psychiatrist who worked part time at the prison was not deliberately indifferent, absent a showing of subjective mental intent, and that expert testimony did not establish the psychiatrist's subjective mental intent. The psychiatrist allegedly misdiagnosed the prisoner with polysubstance abuse rather than bipolar disorder, and therefore failed to treat the prisoner's bipolar disorder. The court found that the remaining defendants were not deliberately indifferent. The appeals court also found that a prison official and mental health personnel did not use excessive force in using an "L" shaped method of restraint and straightjacket to restrain the prisoner, absent evidence that the force was applied maliciously and sadistically. The court noted that the prisoner posed a serious threat to herself and others, lesser restraints were ineffective, the restraints caused no physical injury, and the prisoner's physical condition was carefully monitored. (Georgia Women's Correctional Institution)

U.S. Appeals Court
DENTAL CARE
DELIBERATE INDIFF.

Cooper v. Schriro, 189 F.3d 781 (8th Cir. 1999). A prisoner brought a pro se § 1983 action against a prison and medical services employees. The district court dismissed the case and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the prisoner stated a cause of action against a health care administrator for an Eighth Amendment violation for allegedly denying treatment after the prisoner filed a request regarding painful decayed and cracked teeth. The appeals court also held that the prisoner's allegation that corrections officers shut off his water for five days or threatened his safety, because he used the prison grievance system, were sufficient to state a retaliation claim under § 1983. (Missouri Department of Corrections)

U.S. Appeals Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE
FAILURE TO PRO-
VIDE CARE

Davis v. Dorsey, 167 F.3d 411 (8th Cir. 1999). A former pretrial detainee who allegedly was injured when he fell in a jail shower brought a § 1983 action against jail officials and a hospital. The district court granted summary judgment for the defendants and the appeals court affirmed in part and reversed in part. The appeals court held that material fact issues precluded summary judgment for correctional officers and jail medical staff. The detainee fell in the shower, hitting the back of his head and his left arm. He was not seen by medical staff following the fall but he was given three Tylenol. For several days he requested medical attention but correctional officers refused to process his requests or complete an incident report that would enable him to receive emergency medical treatment. After five days the detainee was seen by a nurse, who made disparaging remarks and did not clean his wounds or give him any medication. The appeals court reversed the district court's grant of summary judgment for the officers and jail medical staff, finding that they "utterly failed to address many of the allegations in [the detainee's] verified complaint." (St. Louis City Jail, Missouri)

U.S. Appeals Court
DELIBERATE INDIFFER-
ERENCE
FAILURE TO PROVIDE
CARE

Dunigan ex rel. Nyman v. Winnebago County, 165 F.3d 587 (7th Cir. 1999). Survivors of an detainee who died in a county jail brought a § 1983 action against county officials alleging failure to provide proper medical care to the detainee. The district court granted summary judgment for the officials and the appeals court affirmed. The appeals court found that the officials were not deliberately indifferent to the detainee's serious medical needs, despite their alleged failure to consult medical personnel or actively administer medication when the inmate's condition deteriorated during the days preceding his death. The court noted the officials' three-month record of treating the detainee's medical condition and their lack of knowledge about the detainee's specific condition of myasthenia gravis (MG). Treatment of the detainee began immediately after he was admitted to the jail, when he complained of blurry vision as the result of a car accident several weeks earlier. The detainee received various services and tests in the following three months and was tentatively diagnosed by a specialist with MG, which had intermittent symptoms of fatigability and muscle weakness. Jail medical staff were not familiar with MG, nor were they aware of the specialist's diagnosis. Several weeks later jail staff found the detainee lying on his cell floor with his head resting on his bunk, claiming he had fallen and hurt his neck. Officers could find no signs of an injury and the detainee was able to move his limbs easily, so arrangements were made for close observation of the detainee. The detainee was seen several times by jail medical staff in the next few days, but his condition gradually worsened and he was found dead in his cell. (Winnebago County Jail, Wisconsin)

- U.S. District Court
TRANSEXUAL
EQUAL PROTECTION
- Farmer v. Hawk-Sawyer, 69 F.Supp.2d 120 (D.D.C. 1999). A transsexual prisoner brought an equal protection action against the federal Bureau of Prisons challenging medical treatment policies. The district court granted summary judgment for the defendants, upholding the Bureau's policy of requiring documentation of hormone therapy received prior to incarceration before administering hormone therapy to an inmate. The prisoner had alleged that she had been injured by the heightened documentation requirements that applied only to transsexuals but not to inmates with other mental illnesses. The prisoner was diagnosed with gender identity disorder (gender dysphoria) and is a pre-operative male-to-female transsexual. (Federal Correctional Institute-Butner, North Carolina)
- U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIFFERENCE
- Ferris v. County of Kennebec, 44 F.Supp.2d 62 (D.Me. 1999). A pretrial detainee sued county officials and staff in state court. The case was removed to federal court, where the court denied qualified immunity for a nurse and found that the detainee had adequately alleged the nurse's indifference to her serious medical needs. The detainee alleged that the nurse responded to her statement that she believed she was having a miscarriage by taking her pulse, telling her that she was menstruating, and ordering her to lie down. According to the detainee, the nurse did not speak to her again except to inform her that she was being transferred to a different cell because she would not lie down as ordered. The nurse made no attempt to confirm whether the detainee was pregnant, even though the detainee had told jail staff during her intake interview that she was pregnant. The nurse also refused to provide the detainee with sanitary supplies. (Kennebec County Jail, Maine)
- U.S. District Court
CONTAGIOUS
DISEASES
- Gilchrist v. Kane County Correctional Center, 48 F.Supp.2d 809 (N.D.Ill. 1999). A former inmate brought a § 1983 action against a sheriff, in his official and individual capacity, alleging that the sheriff's subordinate released an inmate with active tuberculosis (TB) into the general population in violation of the Eighth Amendment. The district court granted summary judgment in favor of the sheriff. The court noted that all incoming inmates were tested for TB and those who tested positive for TB exposure were offered appropriate medical care including a chest x-ray and therapy. Those who tested positive were also segregated from the general population and provided with medical care. (Kane County Correctional Center, Illinois)
- U.S. Appeals Court
DELIBERATE INDIFF.
ADA-Americans with
Disabilities Act
MEDICATION
- Hall v. Thomas, 190 F.3d 693 (5th Cir. 1999). An arrestee brought a § 1983 action alleging that a jail was deliberately indifferent to his kidney condition, his orthopedic pains, his diabetes and his epilepsy. The district court dismissed the action and the appeals court affirmed. The appeals court held that any discrimination that may have occurred against the arrestee was not "because of" his alleged disability, within the meaning of the Americans with Disabilities Act (ADA) and that jail physicians were not deliberately indifferent to his serious medical needs. The court noted that even if the defendants had failed to administer or provide the arrestee's medication on some occasions, the arrestee refused to take his seizure medication several times and refused to appear to receive his medication on some occasions. (Harris County Jail, Texas)
- U.S. Appeals Court
DELIBERATE INDIFF.
FAILURE TO PROVIDE
CARE
- Harris v. Hegmann, 198 F.3d 153 (5th Cir. 1999). A prisoner brought a § 1983 action against a physician and nurses alleging they were deliberately indifferent to his serious medical needs following surgery to repair a broken jaw. The district court dismissed the suit but the appeals court reversed and remanded. The appeals court found that the prisoner stated a claim of cruel and unusual punishment in his allegations that the physician and nurses ignored his urgent and repeated requests for immediate treatment for his broken jaw and his complaints of excruciating pain. The prisoner had told a corrections officer that his jaw had "slipped" and asked to be taken back to the oral surgery clinic to have his jaw reset. (Hunt Correctional Center, Louisiana).
- U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIFF.
- Harris v. Morales, 69 F.Supp.2d 1319 (D.Colo. 1999). An inmate brought a § 1983 action alleging excessive force and deliberate indifference to his serious medical needs while he was confined in a county jail. The district court denied summary judgment for the defendants, finding that the allegations that the inmate was unnecessarily subjected to pepper spray and was then denied medical attention stated Eighth Amendment claims. (Summit County Jail, Colorado)
- U.S. Appeals Court
SMOKE
- Henderson v. Sheahan, 196 F.3d 839 (7th Cir. 1999). U.S. Cert Den. at 120 S.Ct. 2691. A pretrial detainee who was held in a county jail for four-and-one-half years brought a § 1983 action against the sheriff and corrections officials claiming injuries allegedly sustained as the result of his exposure to second-hand smoke. The district court dismissed the action. The appeals court affirmed, finding that the inmate's alleged present injuries were not sufficiently serious to support a due process claim and that the detainee could not recover for future injuries absent a showing to a reasonable medical certainty that he faced an increased risk of developing a future injury attributable to the alleged exposure. The detainee alleged present injuries that included breathing problems, chest pains, dizziness, sinus problems, headaches, and loss of energy. Although the jail had a non-smoking policy the detainee claimed that inmates routinely violated it. (Cook County Jail, Illinois)
- U.S. Appeals Court
PRIVATE PROVIDER
DELIBERATE INDIFF.
DELAY IN CARE
- Hinson v. Edmond, 192 F.3d 1342 (11th Cir. 1999). An inmate brought a § 1983 action against a jail's medical director who was an employee of a private, for-profit company that had contracted with the county to provide medical services to the jail. The district court denied the medical director's motion for summary judgment and he appealed. The appeals court affirmed and remanded the case. The appeals court held that a privately employed jail physician was ineligible to advance the defense of

qualified immunity. The inmate had alleged he was subjected to an unreasonable delay in his medical treatment. (DeKalb County Jail, Georgia, and Wexford Health Services)

U.S. District Court
WORK ASSIGNMENT

Howard v. Headly, 72 F.Supp.2d 118 (E.D.N.Y. 1999). A state prisoner brought a § 1983 action against prison officials alleging that they required him to work beyond his physical capabilities. The district court denied qualified immunity for the officials, finding that the prisoner had stated a claim for a violation of the Eighth Amendment. The court noted that the officials required the prisoner, who had a back injury, to work sanitation duty despite the pain and agony that it caused the prisoner, and despite the knowledge that a physician's orders precluded such work. (Arthur Kill Correctional Facility, New York)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE
SPECIAL DIET
MEDICATION

Hunt v. Uphoff, 199 F.3d 1220 (10th Cir. 1999). A prisoner filed a § 1983 suit alleging denial of medical care. The district court dismissed the case for failure to state a claim. The appeals court reversed and remanded. The appeals court held that the complaint alleged a factual basis sufficient to establish that corrections officials were deliberately indifferent to the prisoner's health. The prisoner alleged that he was denied insulin by a doctor for over a year even though it had been earlier prescribed for him, and that certain medically recommended procedures were not performed. He also alleged that special diets prescribed for him were not provided and that prescribed medication was confiscated. According to the court, these allegations reflected more than a mere disagreement with his medical treatment, and the fact that the inmate had seen numerous doctors did not necessarily mean that he received treatment for his serious medical needs. (Wyoming State Penitentiary)

U.S. District Court
DELAY IN CARE
STAFF
DELIBERATE
INDIFFERENCE

Lewis v. Sheahan, 35 F.Supp.2d 633 (N.D.Ill. 1999). A prisoner who was proceeding pro se, filed a civil rights complaint against a sheriff and jail officials alleging failure to provide medical care. The district court dismissed the prisoner's amended complaint without prejudice, finding that the prisoner's allegation that he waited several months for physical therapy, a CAT scan, and thyroid tests did not state a claim for failure to provide adequate medical care. The court found that the alleged failure of the jail to follow its own policy of staffing five paramedics in a particular division did not state a § 1983 claim for failure to provide adequate medical care, because violations of state law or procedures, in and of themselves, are not cognizable under § 1983. (Cook Co. Jail, Ill.)

U.S. Appeals Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Lopez v. LeMaster, 172 F.3d 756 (10th Cir. 1999). A pretrial detainee who was beaten by other inmates while confined in a jail brought a § 1983 action against the county sheriff individually and in his official capacity. The district court granted summary judgment in favor of the sheriff and the detainee appealed. The appeals court affirmed in part, reversed in part and remanded. The detainee was arrested and placed in a general population cell in the county jail where he was threatened by another inmate. A jail officer took the detainee to an office where he prepared a written statement about the threat. But the officer returned the detainee to the general population cell where he was attacked and beaten by several inmates. The officer returned later and the detainee asked to be taken to the hospital. The officer took the detainee to an office, called an unknown person to ask for instructions, and then told the detainee "you are still conscious, we don't have to take you." The detainee was given aspirin, placed in a different cell and was released the next day. He went to the hospital after his release and was diagnosed with a severe contusion to the skull with post-concussion syndrome and a severe strain to the cervical, thoracic and lumbosacral spine. The appeals court held that the detainee failed to establish a claim for failure to provide adequate training and supervision of jail personnel because he failed to identify specific deficiencies that were closely related to his injuries. The court noted that evidence which showed that the jailers were generally poorly trained was insufficient to support the training and supervision claims. But the appeals court found that material issues of fact precluded summary judgment on the claim that the county maintained an unconstitutional policy of understaffing the jail and failing to monitor inmates, with deliberate indifference to inmate health or safety. The appeals court also held that summary judgment was precluded on the detainee's claim alleging that the sheriff was deliberately indifferent to his serious medical needs. (Jackson County Jail, Oklahoma)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
NEGLIGENCE

McElligott v. Foley, 182 F.3d 1248 (11th Cir. 1999). A jail inmate who had complained for several months of severe stomach pains was diagnosed with colon cancer at a hospital shortly after his release from jail. He brought a § 1983 action against a jail physician, head nurse at the jail and county. The district court granted summary judgment for the defendants and the appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the physician and head nurse were deliberately indifferent to the serious medical need for further diagnosis. The court found that the failure of the physician and nurse to diagnose the colon cancer, while perhaps rising to the level of extreme negligence, did not rise to the level of deliberate indifference. (Okaloosa County Jail, Florida)

U.S. District Court
MEDICATION

Murphy v. Bray, 51 F.Supp.2d 877 (S.D.Ohio 1999). An arrestee brought a § 1983 action against a county sheriff in his official capacity and against various medical personnel at a county justice center for failure to provide adequate medical care. The district court denied summary judgment for the defendants, finding it was precluded by a genuine issue of material

fact as to whether the sheriff knew of and disregarded an excessive risk of harm presented to the arrestee by the center's custom of allowing inmates to bring medications from home. The arrestee was diagnosed with AIDS at the time of his nine-day incarceration at the Justice Center. Upon admission, the arrestee explained that he was on various medications and medical personnel obtained the names of his treating physician and home health care nurse. A doctor wrote an order in the arrestee's medical chart stating "Okay to have all his medication brought from home and to start them as directed. Obtain listing of medications from the visiting nurse or [the treating physician]." When a friend of the arrestee brought the medications to the facility an officer refused to accept them, citing written facility and health care provider policies that prohibit inmates from having medication brought from home. The arrestee did not receive his medications during his entire nine-day incarceration. (Hamilton County Justice Center, Ohio)

U.S. District Court
PRIVATE PROVIDER
INADEQUATE CARE

Nunez v. Horn, 72 F.Supp.2d 24 (N.D.N.Y. 1999). A prisoner brought a § 1983 claim against a physician alleging that treatment of the prisoner's elbow violated the Eighth Amendment. The district court granted summary judgment for the physician, finding that he did not act under the color of state law in allegedly failing to remove a bony block from the prisoner's elbow and failing to provide pain medication. The court noted that the physician provided medical services in a nonprison hospital and was not a prison employee nor under contract to render medical services to prison inmates. The court also found that as a result of his treatment the prisoner's elbow did not have an increased range of motion, but the prisoner's pain did decrease. (Ray Brook Correctional Facility, New York)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Olabisimoto v. City of Hudson, 185 F.3d 521 (5th Cir. 1999). A pretrial detainee brought a § 1983 action alleging she suffered damages because of negligence, cruel and unusual punishment, and deliberate denial of medical treatment for her asthma. The district court granted summary judgment for all defendants. The appeals court affirmed, finding that the detainee failed to show that her medical needs were "serious" while she was in custody, and that officers were not deliberately indifferent to her medical needs. (City of Houston, Texas)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIFF.

Palmer v. Johnson, 193 F.3d 346 (5th Cir. 1999). A state inmate brought a § 1983 action for monetary and injunctive relief against correctional officials, alleging violation of his constitutional rights when he was forced to spend a night on a work field, along with other members of a work squad, without adequate bathroom facilities and shelter. The district court found a warden and assistant warden liable in their individual capacities, granted injunctive relief, and ordered claims for monetary damages to proceed to trial. The appeals court affirmed in part and remanded, finding that the inmate had demonstrated a violation of his clearly established Eighth Amendment rights and that the warden and assistant warden were not entitled to summary judgment on the basis of qualified immunity. The inmate alleged that he and other members of his work crew were confined outdoors overnight without any shelter, jackets, blankets, or a source of heat while the temperature dropped and the wind blew, and without bathroom facilities for 49 inmates sharing a small bounded area. The warden allegedly ordered this "sleep-out" in response to the inmates' response to a lecture they had received from a sergeant after lunch. They were ordered to stop and sit in the field, even though some of them wanted to go to work. They were confined to an area measuring approximately twenty feet by thirty feet, bounded by poles and a string of lights. Correctional officers were ordered to shoot any inmate who attempted to leave the designated area. When the inmate asked permission to leave the area to urinate and defecate he was informed that he would be shot if he attempted to do so outside of the boundaries that had been set. The inmates were dressed in short sleeve shirts for a day of work in the field, but the temperature fell below fifty-nine degrees overnight and the inmates were forced to stay warm by huddling together. Both the warden and assistant warden were present during the evening of the "sleep-out" and the warden allegedly threatened another such event if the inmates refused to work. (Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Petrichko v. Kurtz, 52 F.Supp.2d 503 (E.D.Pa. 1999). An inmate brought a § 1983 action alleging that permanent injury occurred as a result of the delay in treatment of his dislocated shoulder. The district court held that the inmate stated a claim of a serious injury and that an official's failure to procure adequate medical treatment after becoming aware of the injury would constitute deliberate indifference. The court also found that supervisors would not be liable for any claims arising from negligent supervision or training of a guard. The correctional official allegedly told the inmate that he could not be taken to a hospital and instructed another inmate to manually relocate the shoulder. The court found that the allegation that the warden ignored the inmate's written requests for medical treatment for more than two weeks for non-medical reasons, knew of the injuries and the prison staff's failure to provide standard emergency care and treatment, stated a claim of deliberate indifference. (Schuylkill County Prison, Pennsylvania)

U.S. Appeals Court
TRANSLATOR
INTAKE SCREENING
DELIBERATE
INDIFFERENCE
FAILURE TO PRO-
VIDE CARE

Qian v. Kautz, 168 F.3d 949 (7th Cir. 1999). An arrestee brought a civil rights action alleging arrest without probable cause, and wrongful denial of adequate medical treatment. The district court entered summary judgment for the defendants and the arrestee appealed. The appeals court affirmed in part, and reversed and remanded in part. According to the court, "when the events leading to this lawsuit began to unfold, ambiguous behavior combined with a severe language barrier led to the arrest" of the plaintiff. After his initial arrest, police determined that he could be released, but

"because he did not want to pay for a hotel room, they then re-arrested him, consigned him to the drunk tank, and failed to recognize that he was suffering from a serious medical condition." The sheriff's department translator spoke the wrong Chinese dialect, making communication very difficult. The appeals court affirmed summary judgment for the defendants on the medical care claim, noting that absent evidence that county sheriffs' officials actually knew of the arrestee's medical condition, they could not be held liable. (LaPorte County Jail, Indiana)

U.S. District Court
DELIBERATE INDIFF.
FAILURE TO PROVIDE
CARE

Randolph v. State, 74 F.Supp.2d 537 (D.Md. 1999). A state prisoner brought a § 1983 action alleging violation of his Eighth and Fourteenth Amendment rights. The district court granted summary judgment for the defendants, finding that the prisoner failed to establish that prison officials and medical staff were deliberately indifferent to his serious medical needs after he was attacked by another prisoner. The prisoner alleged that he had been placed on parole three months prior to the end of his sentence so that the state would avoid additional medical expenses. The court found that prison officials were not liable for an attack by a fellow prisoner with a baseball bat. The court noted that the attacked prisoner had no prior conflicts with the fellow prisoner, did not belong to a group of prisoners who were particularly vulnerable to assaults, and that there was no evidence that the risk of attack was pervasive. (Maryland Correctional Institution-Hagerstown)

U.S. Appeals Court
MEDICATION
DELIBERATE
INDIFFERENCE

Ralston v. McGovern, 167 F.3d 1160 (7th Cir. 1999). An inmate brought a civil rights action against a state prison officer, alleging that the officer denied him medical care in violation of the Eighth Amendment. The district court entered summary judgment for the officer. The appeals court reversed and remanded, finding that the inmate could maintain a claim based on allegations that the officer refused to give him medicine prescribed to alleviate pain caused by radiation treatment for Hodgkin's Disease. The appeals court ruled that the officer was not entitled to qualified immunity from suit. The appeals court stated that the officer's "refusal to treat, at trivial cost, the pain caused by cancer and cancer treatments bordered on barbarous, and the guard's deliberate refusal of request for pain medication was gratuitous cruelty, even if the context of cancer were ignored." (Green Bay Corr'l Institution, Wisconsin)

U.S. Appeals Court
MEDICATION
DELIBERATE
INDIFFERENCE

Reed v. McBride, 178 F.3d 849 (7th Cir. 1999). A state prisoner brought a § 1983 action alleging that prison officials violated his Eighth Amendment rights by withholding food and life-sustaining medication from him while he was incarcerated. The district court entered summary judgment in favor of the defendants but the appeals court reversed and remanded. The appeals court held that the prisoner's medical condition was sufficiently serious to support an Eighth Amendment claim and that material fact issues existed as to whether the officials acted with deliberate indifference to the prisoner's serious medical needs. According to the court, depriving a prisoner doctor-prescribed medication that allegedly led to agonizing and extreme pain, internal bleeding and periods of unconsciousness, was a serious medical condition for the purposes of § 1983. The court found that depriving a prisoner of food may be so objectively serious as to support a claim of cruel and unusual punishment under the Eighth Amendment, when the amount and duration of the deprivation is considered. The inmate suffered from a variety of ailments, including paralysis, heart disease, Hunt's syndrome, high blood pressure, rheumatoid arthritis, and other crippling diseases of the legs, ankles, feet, hands and spine. The inmate complained that every Friday for an unspecified period of time he was returned from treatment at a local hospital and was unable to retrieve his identification badge until the following Monday or Tuesday. Without the badge he was not permitted to receive food or medication from prison authorities. (Westville Correctional Facility, Indiana)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
MEDICATION
DELAY IN CARE

Roberson v. Bradshaw, 198 F.3d 645 (8th Cir. 1999). A county jail inmate brought a § 1983 action alleging that correctional officers, the jail's contract doctor, and the county were deliberately indifferent to his need for a special diet and medication to treat his diabetes mellitus. The district court granted summary judgment for the defendants; the appeals court affirmed in part, reversed in part and remanded. The appeals court held that fact issues existed as to the liability of the deputy sheriff and the contract doctor, precluding summary judgment. The inmate alleged that the deputy denied his diabetes medication and a special diet and then delayed the inmate's access to a doctor. The inmate alleged that the jail's contract doctor continued to prescribe diabetes medication to the inmate despite his knowledge that the inmate was suffering adverse effects. (Pemiscot County Jail, Missouri)

U.S. District Court
DELIBERATE
INDIFFERENCE
MEDICATION

Robeson v. Squadrito, 57 F.Supp.2d 642 (N.D.Ind. 1999). Inmates brought an action against a county and jail officials alleging violations of their Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants. The court held that the conditions of confinement in the overly-crowded jail did not rise to the level of deprivations of "the minimal civilized measures of life's necessities." The court found that the officials' failure to give an inmate his high blood pressure medication for 36 hours was not deliberate indifference to his serious medical needs given there was no evidence he was denied the medication out of anything approaching a total unconcern for his welfare, and the inmate did not suffer any injury or harm. The court also found that the failure of jail officials to give the inmate his hypoglycemic diet was not deliberate indifference where the inmate's blood sugar was tested daily in accordance with his physician's order, and no special diet was ordered because his sugar levels were normal. (Allen County Jail, Indiana)

U.S. Appeals Court
INTAKE SCREENING
DELIBERATE
INDIFFERENCE
FAILURE TO PRO-
VIDE CARE

Ruvalcaba v. City of Los Angeles, 167 F.3d 514 (9th Cir. 1999). An arrestee brought a § 1983 action against a city, police chief, police officer, and physician alleging excessive force during his arrest and deliberate indifference to his serious medical needs. The court entered judgment against the police officer upon jury verdict, granted a directed motion for the physician, and dismissed the remaining claims. The district court found that the physician's failure to take the arrestee's medical history while treating him at the jail, and his failure to diagnose the arrestee's broken ribs, did not establish a claim of deliberate indifference under § 1983. The arrestee was brought to a jail dispensary for treatment after he was arrested. He was moaning, almost incoherent, and complained of severe pain in his chest. The jail physician did not take a medical history. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that whether the officer's use of force was in furtherance of the city's allegedly unconstitutional dog-bite policy was an issue for the jury for the purposes of the arrestee's claims against the city and the chief. The court noted that although the arrestee could not recover further compensatory damages from the city or the chief, nominal damages were available. (City of Los Angeles, California)

U.S. District Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Samuel v. City of Chicago, 41 F.Supp.2d 801 (N.D.Ill. 1999). A detainee sued a city alleging excessive use of force and denial of medical care. The district court denied the defendants' motion to dismiss, in part, finding that the detainee stated a conspiracy claim against two police who removed him from his vehicle and allegedly beat him and took him to the station house. The court also held that the detainee stated a claim that the police showed deliberate indifference to his medical needs, where the detainee alleged that he was denied insulin over an 11 hour period of confinement at the police station house, even though he informed the police he was a diabetic. The detainee allegedly suffered an aggravation of his pre-existing heart condition and diabetic condition as a result of the City's actions. The detainee also allegedly suffered contusions, lacerations and other injuries about his legs, abdomen and chest. He remained at a local hospitals for six weeks. (Fourth District Police Station, City of Chicago, Illinois)

U.S. District Court
WHEELCHAIR
HANDICAP

Schmidt v. Odell, 64 F.Supp.2d 1014 (D.Kan. 1999). A former county jail inmate, a double amputee without legs from a point below his knees, brought a civil rights action against jail officials asserting claims under the Eighth Amendment. The district court denied summary judgment for the defendants, finding that it was precluded on all claims. The court held that refusal to provide the inmate with a wheelchair while confined in the county jail did not violate the Eighth Amendment since jail exits, entrances and hallways were too narrow to accommodate wheelchairs and there were legitimate safety concerns about placing a wheelchair among the jail's general population. The court noted that the ability of the inmate to move himself about in the jail, to use the toilet, to use the shower, to obtain his meals, and to obtain suitable recreation and exercise, were a basic need that jail officials were obligated to help provide under the Eighth Amendment. The court also noted that the fact that the inmate was able to use most of the jail services did not preclude his Americans with Disabilities Act (ADA) or Rehabilitation Act claims against jail officials. (Cowley County Jail, Kansas)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE

Sibley v. Lemaire, 184 F.3d 481 (5th Cir. 1999). A former pretrial detainee brought an action against correctional officers alleging they were liable under § 1983 for injuries that the detainee had inflicted on himself. The district court granted summary judgment for the officers. The appeals court affirmed, finding that the officers' failure to call a doctor when the detainee's mental condition appeared to worsen did not amount to deliberate indifference to his serious medical needs. The detainee had undergone a psychotic episode while being detained in an isolation cell and had physically blinded himself by plucking out his eyes. (Vermillion Parish Correctional Center, Louisiana)

U.S. District Court
SUICIDE

Smith v. Blue, 67 F.Supp.2d 686 (S.D.Tex. 1999). The parents of a juvenile who committed suicide while in custody at a juvenile detention center operated by a county sued the county and facility supervisors under § 1983. The district court declined to dismiss the case, finding that the parents stated a § 1983 claim against the county for violating the juvenile's Fourteenth Amendment right to medical protection against his own suicidal intentions, and that the parents stated a wrongful death claim. The court found that the facility supervisors' practice of pre-entering cell inspection records and then avoiding making actual visual checks on juveniles was so pervasive that it constituted a policy or custom and was the result of inadequate training. The court found that a wrongful death claim was stated by the allegation that the juvenile's death was caused by a bedsheet left unsupervised in his cell. At the time of his detention the juvenile had been diagnosed as suffering from attention deficit disorder and this was confirmed in evaluations done after his admission. During his four-month stay the juvenile allegedly threatened suicide and physically harmed himself on several occasions. When his behavior worsened to the point that he refused to come out of his cell and began hiding under his bed, he was placed in solitary confinement as punishment for refusing to follow directions. While in solitary confinement he was allowed to keep several personal items, including a towel, T-shirts, athletic shoes with laces, and a bed sheet. One evening he was found dead, hanged from a loose sprinkler head with a bedsheet. Written cell inspection reports indicated that staff had visually checked on the juvenile every 15 minutes until the discovery of his body, but a subsequent investigation revealed that the records had been altered after the body was discovered. The original records stated that the juvenile had been checked every fifteen minutes before his death and for *four hours* after his death. Staff admitted that it was routine practice to complete inspection reports beforehand and to fail to make the required visual checks. Investigators determined that the

juvenile had been dead for an hour before his body was discovered, confirming that the 15-minute checks had not been conducted. (Delta 3 Boot Camp, Harris County, Texas)

U.S. District Court
INADEQUATE CARE

Snell v. DeMello, 44 F.Supp.2d 386 (D.Mass. 1999). A jail inmate brought a § 1983 suit against a sheriff and various prison officials alleging failure to protect him from an attack by another inmate. The district court granted summary judgment for the defendants finding that the inmate failed to state a claim for supervisory liability and that the defendants provided adequate medical care. The court noted that the inmate was immediately treated after the attack by the another inmate, the next day he was again treated by a physician and three days later was taken to a hospital for X-rays which showed no injury. The inmate had allegedly reported being threatened by other inmates but the court held that the inmate failed to show that the sheriff, prison superintendent or state commissioner for corrections either knew of a substantial risk to the inmate or harbored a subjective belief that he faced potential injury from other inmates. The inmate testified that he had conversations with the sheriff and jail administrator in which he indicated that he had received threats of bodily harm from other inmates and that he sent a letter through the internal mail system addressed to the sheriff and others asking to be moved to an alternate housing unit "to prevent any further aggression or physical assault." (Barnstable County Jail and House of Correction, Massachusetts)

U.S. District Court
FAILURE TO PROVIDE
CARE

Tesoro v. Zavaras, 46 F.Supp.2d 1118 (D.Colo. 1999). A state prisoner brought a § 1983 action against prison guards, a nurse, a doctor and other prison employees alleging they violated his Eighth and Fourteenth Amendment rights based upon his race. The district court denied summary judgment for the guards, finding genuine issues of fact as to whether they had twisted his penis and testicles while he was handcuffed after he had requested medical attention. The prisoner alleged that the guards had said at the time they wanted to see "all Black and Spanish people dead." (Colorado State Penitentiary, Canon City)

U.S. District Court
ADEQUACY OF CARE
FAILURE TO PRO-
VIDE CARE
DELIBERATE
INDIFFERENCE

Veloz v. New York, 35 F.Supp.2d 305 (S.D.N.Y. 1999). A prisoner brought a § 1983 action against a state and a physician at a correctional facility claiming violation of his Eighth Amendment right in the performance of an operation on his foot. The district court dismissed the complaint, finding that the Eleventh Amendment barred the prisoner's claim against the state, and his complaint failed to state a § 1983 claim against the physician. The court found that the pain experienced by the prisoner in his foot did not constitute a serious medical need, and the prisoner's claim that he should have been prescribed a wheel chair or crutches was merely a difference of opinion as to the correct course of treatment. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
RELEASE
MEDICATION
PSYCHOTROPIC MED-
ICATION
DELIBERATE
INDIFFERENCE

Wakefield v. Thompson, 177 F.3d 1160 (9th Cir. 1999). An inmate brought a § 1983 action against a prison officer alleging violation of his rights when the officer refused to provide him with his prescription psychotropic medication upon his release. The federal district court dismissed the case and the inmate appealed. The appeals court reversed and remanded, finding that the officer's alleged refusal to provide the inmate with his prescribed medication supported a claim of deliberate indifference to the inmate's serious medical needs. The appeals court held that the state must provide an outgoing prisoner who is receiving--and who continues to require--medication with a supply sufficient to ensure that he has that medication available during a period of time reasonably necessary to permit him to consult a doctor and obtain a new supply. The court termed the state's failure to provide medication sufficient to cover this transitional period as an abdication of its responsibility to provide medical care to those, who by reason of their incarceration, are unable to provide for their own medical needs. (San Quentin Prison, California)

U.S. Appeals Court
SMOKE

Warren v. Keane, 196 F.3d 330 (2nd Cir. 1999). State inmates brought an § 1983 action alleging that they were subjected to cruel and unusual punishment through exposure to second-hand smoke. The district court denied summary judgment for the defendants and they appealed. The appeals court affirmed and remanded the case. The appeals court held that at the time the inmates brought the action it was clearly established that prison officials could violate the Eighth Amendment through deliberate indifference to inmates' exposure to levels of environmental tobacco smoke (ETS) that posed an unreasonable risk of future harm to the inmates' health. According to the court, fact issues existed as to whether the prison officials reasonably believed that they were not violating the inmates' Eighth Amendment rights in permitting their exposure to allegedly severe levels of ETS. (Cell Block A, Sing Sing Prison, New York)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
DIFFERENCE

Weaver v. Tipton County, Tenn., 41 F.Supp.2d 779 (W.D.Tenn. 1999). The administrix of the estate of a detainee who had died of alcohol withdrawal while in a county jail brought a § 1983 action against county officials alleging deliberate indifference to the deceased detainee's medical needs. The district court granted summary judgment, in part, in favor of the defendants. The district court held that the protections of the Eighth Amendment do not attach to pretrial detainees and that the Captain of the jail was not deliberately indifferent to the needs of the detainee by failing to act when he was left in a single-occupancy cell with no medical care. The court also held that jail supervisors were not liable for failure to supervise their subordinates. The court noted that the jail Captain had no contact with the detainee during his incarceration and knew nothing about the incarceration until after the detainee's death, and that the supervisors

did not implicitly authorize, approve or acquiesce in their subordinates' failure to provide medical treatment to the detainee. According to the court, the jailers' failure to provide medical care to the detainee over the course of six days was not a pattern of unconstitutional conduct. The court cited hundreds of other instances in which other inmates received medical attention. But the court denied summary judgment for the sheriff and the county, finding that it was precluded by issues of fact as to whether their failure to ensure that adequate staffing, medical training, and supervision policies were in place and were enforced. (Tipton County Jail, Tennessee)

U.S. Appeals Court
MEDICATION

Williams v. Mehra, 186 F.3d 685 (6th Cir. 1999). The personal representative of the estate of a deceased inmate who committed suicide while incarcerated at a state prison brought a § 1983 action against two prison psychiatrists. The district court denied summary judgment for the psychiatrists but the appeals court reversed and remanded, finding the psychiatrists were entitled to qualified immunity. The appeals court held that the failure of the psychiatrists to change the inmate's medication from tablets to liquid, despite some evidence of suicidal ideation, did not amount to deliberate indifference, absent evidence comparing the risks of liquid distribution to pill distribution. (State Prison of Southern Michigan)

U.S. District Court
DELIBERATE
INDIFFERENCE
RELEASE
FAILURE TO PROVIDE
CARE

Wilson v. City of Chanute, 43 F.Supp.2d 1202 (D.Kan. 1999). The parents of a detainee who died of a drug overdose shortly after being released from police custody brought a § 1983 action alleging conspiracy and violations of the Fourth and Fourteenth Amendments. The defendants moved for summary judgment, which was granted in part and denied in part by the district court. The court held that the police officers were not entitled to qualified immunity because there was sufficient evidence of deliberate indifference to the detainee's serious medical needs. The court also held that there was sufficient evidence that the police chief failed to properly direct or supervise officers. Summary judgment was also denied for the city because the court found fact questions as to whether municipal policy or custom was the moving force behind the officers' alleged violation of the detainee's due process rights. The court found sufficient evidence to create an inference that two police officers and a detective had agreed to deprive the detainee of his due process rights by releasing him rather than providing medical treatment, for the purposes of a § 1983 conspiracy claim. (City of Chanute, Kansas)

2000

U.S. District Court
DELAY OF CARE
DELIBERATE
INDIFFERENCE

Adams v. Franklin, 111 F.Supp.2d 1255 (M.D.Ala. 2000). A county jail detainee brought a § 1983 action against county officials alleging he was denied medical treatment for two hours after he complained about symptoms manifesting an imminent heart attack. The district court found that the officials were not entitled to qualified immunity because the detainee's right to medical care was clearly established at the time of the violation. But the district court found that the Eleventh Amendment provided absolute immunity to sheriff department personnel in this action because they were deemed to be executive officers of the state under state law. (Elmore Co. Jail, Alabama)

U.S. District Court
CONTRACT SERVICES
FAILURE TO PROVIDE
CARE
STAFF
POLICIES &
PROCEDURES

Andrews v. Camden County, 95 F.Supp.2d 217 (D.N.J. 2000). A former inmate brought an action alleging that jail officials were deliberately indifferent to his need for medical treatment for a life-threatening infection that caused him to suffer severe injuries and nearly caused his death. The district court declined the defendant's motion for summary judgment, finding that it was precluded by fact issues of whether the inmate's right to adequate medical treatment was violated during his eight days of confinement. The court noted that when contracting for correctional health care services, the county or municipality still remains liable for constitutional deprivations. The court found that jail officials may have knowingly failed to follow their own policy of having a jail medical director, which was essential to the safe functioning of the jail's health services, and may have abandoned a sick call system. (Camden County Correctional Center, New Jersey)

U.S. District Court
PRIVATE PROVIDER
DELIBERATE
INDIFFERENCE

Bowman v. Corrections Corp. of America, 188 F.Supp.2d 870 (M.D.Tenn. 2000). The mother of a deceased inmate brought a § 1983 action against a corporation that managed a correctional facility, the warden, a hospital and physicians, alleging violations of his Eighth Amendment right to adequate medical care for sickle cell anemia. After a jury trial judgment was entered in favor of the defendants the plaintiff moved for judgment as a matter of law. The district court held that the corporation's medical policy violated contemporary standards of decency. According to the court, it was proper to consider the constitutionality of the medical policy of the corporation that managed the correctional facility, even though the mother's claims for damages against the physicians were unsuccessful, because the corporation's liability for its medical policy was measured by a different legal standard. The court concluded that the corporation would be treated as a municipal corporation for § 1983 liability purposes and noted that the corporation could not "contract away" its obligation to provide adequate medical care to inmates in its custody. The court held that the corporation that managed the facility violated contemporary standards of decency by contracting with a physician who provided exclusive medical services with substantial financial incentives to reduce necessary medical services. The court noted that the contract exceeded proper levels of risk to the physician under the American Medical Association and federal regulatory standards, and that the state had set higher cost requirements for services than were expended under the contract. The contract with the physician had a capitation agreement that governed referral of inmates to medical specialists, decisions to do laboratory tests, and the issue of prescriptions. According to the court, the contract and "its extreme financial incentives" to the physician "poses a significant risk for the denial of necessary medical treatment for the inmates." The court found that these covered services involved the existence of perceived

or actual serious medical conditions that required treatment or analysis. The court entered an injunction, prohibiting the corporation from enforcing its contract with the physician. The court also awarded attorney fees to the plaintiff for the time expended on the motion. (Corrections Corporation of America's South Central Correctional Facility, Tennessee.)

U.S. District Court
DENTAL CARE

Burton v. City of Philadelphia, 121 F.Supp.2d 810 (E.D.Pa. 2000). A former inmate brought a state court action against a city and city officials under § 1983 and state law to recover for injuries he allegedly sustained as a result of the city's failure to timely and adequately treat his abscessed tooth while he was incarcerated. The district court held that the city was immune from common law claims under state law, but that the former inmate stated a § 1983 claim against the city. The former inmate alleged that he had developed a number of severe physical symptoms stemming from a toothache shortly after he was admitted to confinement, and that these symptoms worsened to the point where he developed an abscess in his cheek that eventually burst, leaving a disfiguring facial scar. Although the former inmate conceded that he did receive some medical treatment after the abscess burst, he maintained that such treatment was insufficient and untimely. (Youth Study Center, Philadelphia Department of Human Services)

U.S. District Court
FAILURE TO PROVIDE
CARE
ALCOHOL/DRUGS
INTAKE SCREENING

Butler v. Coitsville Tp. Police Dept., 93 F.Supp.2d 862 (N.D. Ohio 2000). The administrator of a deceased detainee's estate brought a § 1983 action alleging that the detainee's rights were violated by his arrest and detention. The district court granted summary judgment for the defendants and dismissed state law claims without prejudice. The district court found that the detainee's slurred speech and unsteadiness during his arrest did not make the potential for an alcohol seizure so obvious as to permit the inference that the arresting officer or other law enforcement officers acted with deliberate indifference to the detainee's medical needs. The court noted that although the detainee may have appeared intoxicated, he never complained of physical distress, he signed a medical form stating that he suffered no medical ailment other than "bad knees" and he explicitly stated that he typically suffered no ill effects when he ceased drinking alcohol. The detainee had refused to submit to any sobriety tests and was processed at a township police station. He was then transported to a jail and was placed in a detention cell after completing intake and booking procedures. Seventeen hours after his admission the detainee suffered an alcohol withdrawal seizure in his cell, falling and sustaining a serious head injury. He was immediately taken to a hospital where he died three days later. (Mahoning County Jail, Ohio)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Cameron v. Sarraf, 128 F.Supp.2d 906 (E.D.Va. 2000). An inmate, proceeding pro se, filed a § 1983 action against a correctional center's medical director and treating physician, alleging violation of his Eighth Amendment right to adequate medical treatment. The district court granted summary judgment in favor of the defendants, finding that the inmate, who allegedly suffered from a degenerative disc condition that caused intense pain, failed to establish deliberate indifference to his serious medical need. (Greensville Correctional Center, Virginia)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
INADEQUATE CARE

Chavez v. Cady, 207 F.3d 901 (7th Cir. 2000). A former pretrial detainee brought a § 1983 action against a sheriff, jail administrator, correctional officers and nurse practitioner who supervised the jail clinic, alleging deliberate indifference to his medical needs. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed in part and reversed and remanded in part. The appeals court held that issues of fact precluded summary judgment for the nurse practitioner and the correctional officers. According to the court, the actions of the nurse practitioner in the treatment of the detainee who had a ruptured appendix may have represented a substantial departure from accepted professional judgment. The appeals court also found that the correctional officers may have been deliberately indifferent by failing to follow the directives of the nurse practitioner. The court noted that the county jail did not have its own written manual of policies for operation of the jail but rather relied on the Illinois County Jail Standards which are issued by the Illinois Department of Corrections. (Henry County Jail, Illinois)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE

Cornelia v. Laib, 117 F.Supp.2d 754 (N.D.Ill. 2000). A detainee alleged that medical personnel were deliberately indifferent to his diabetic condition. The district court granted partial summary judgment to the defendants, finding that a nurse did not display deliberate indifference by declining to send the detainee to a hospital, and a physician was not deliberately indifferent by not authorizing the administration of insulin. The court noted that the nurse took the detainee's vital signs and monitored his blood sugar level while she attempted to confirm the details of his insulin regimen. The physician had refused to authorize the administration of insulin until the detainee's insulin regimen could be confirmed. (Corr'l Medical Services, Will Co. Adult Detention Facility, Illinois)

U.S. District Court
PRIVACY
INTERPRETER

Cortes v. Johnson, 114 F.Supp.2d 182 (W.D.N.Y. 2000). A Spanish-speaking inmate brought a civil rights action against a prison superintendent alleging violation of his right to privacy. The district court granted summary judgment to the superintendent, finding that she did not violate the inmate's right to privacy by failing to provide medically-qualified interpreters of Spanish rather than inmate interpreters or non-medically qualified interpreters. The court noted that the inmate failed to present any evidence that knowledge of his condition was disseminated to inappropriate persons. (Orleans Correctional Facility, New York)

U.S. Appeals Court
TRANSSEXUAL

Cuoco v. Moritsugu, 222 F.3d 99 (2nd Cir. 2000). A pretrial detainee filed a pro se complaint alleging she was denied estrogen tablets necessitated by her status as a preoperative male to female transsexual. The appeals court dismissed the action finding that the prison medical

director and chief medical officer were absolutely immune under the Public Health Service Act. (Federal Correctional Institution, Otisville, New York)

U.S. District Court
INVOLUNTARY
MEDICATION

Dancy v. Simms, 116 F.Supp.2d 652 (D.Md. 2000). A state prison inmate sued correctional officials and others, alleging they forcibly administered psychotropic medication without his consent. The court granted summary judgment for the defendants, finding that the alleged forcible administration without a hearing, on 22 occasions over a two-year period, did not violate the inmate's due process rights because the decisions were made in the exercise of professional medical judgment and arose in the context of emergency situations. The inmate did not contest evidence of particular incidents when his behavior was abusive, self-injurious, or violent. (EMSA Correctional Care, Inc., Patuxent Institution, Maryland)

U.S. Appeals Court
MEDICATION

DeGenova v. Sheriff of DuPage County, 209 F.3d 973 (7th Cir. 2000). An arrestee brought a § 1983 action against a sheriff in his official capacity alleging Fourth and Fourteenth Amendment violations. The district court denied the sheriff's motion to dismiss and the appeals court affirmed. The appeals court held that the sheriff was a county officer when he managed the jail, and was thus not entitled to Eleventh Amendment immunity. According to the court, under Illinois law the sheriff had final policymaking authority over jail operations, was designated as a county officer by the state constitution, and the sheriff was required as warden of the jail to notify the county board if he decided that the jail was insufficient to secure prisoners. The arrestee told arresting officers that he suffered from a serious cardiac condition that required medication but they did not provide him with medical treatment even though they saw him holding his chest. The arrestee did not receive his medication until his release the next day. (DuPage County Jail, Illinois)

U.S. District Court
MEDICATION

Douglas v. Stanwick, 93 F.Supp.2d 320 (W.D.N.Y. 2000). A pretrial detainee brought a § 1983 action against a jail physician and nurse alleging that he received inadequate medical care when he was denied narcotic pain medication. The district court granted summary judgment for the defendants, finding that the prisoner did not show sufficient culpability on either the physician or nurse's part to support his Fourteenth Amendment claim. The court noted that a mere disagreement over proper medical treatment does not create a constitutional claim. The jail physician had instructed the nurse to hold the detainee's narcotic prescription from an outside doctor until nurses could determine if non-narcotic pain control medications would adequately address the detainee's hand pain. (Monroe County Jail, New York)

U.S. District Court
MENTAL HEALTH
SUICIDE
DELIBERATE
INDIFFERENCE

Estate of Cills v. Kaftan, 105 F.Supp.2d 391 (D.N.J. 2000). The estate of a county jail inmate who committed suicide in his cell sued the county and officials under § 1983. The district court held that lower level jail personnel who removed the inmate from a suicide watch were not liable because they acted on statements of a nursing supervisor and social worker that the inmate was no longer suicidal. But the court denied summary judgment for the remaining defendants finding it was precluded by fact issues as to the adequacy of the policy governing suicide watches, that did not require qualified mental health professionals to clear an inmate from a suicide watch. The inmate, who had been sentenced to sixty days in the jail, had a history of depression and attempted suicide. The jail did not have a written suicide policy but the court found that a verbal policy was in effect at the time of the inmate's death. Under the verbal policy, an inmate on suicide watch was: (1) segregated from the general population; (2) checked by a guard every fifteen minutes; (3) given medical treatment and counseling; (4) dispossessed of clothing and other personal belongings; (5) required to wear a paper gown; and (6) restricted from accessing the commissary, telephone, and from having visitors. (Cumberland County Department of Corrections, New Jersey)

U.S. District Court
DELIBERATE
INDIFFERENCE
MEDICATION

Flowers v. Bennett, 135 F.Supp.2d 1150 (N.D.Ala. 2000). A diabetic inmate brought a § 1983 action against prison officials for deliberate indifference, alleging they failed to provide her with useable insulin in a timely manner while she was incarcerated. The district court denied summary judgment for the officials and the appeals court denied the officials' motion to alter, amend or vacate. The appeals court held that a reasonable jury could find that the officials denied insulin in order to punish the inmate. (Alabama)

U.S. District Court
FAILURE TO PROVIDE
CARE
MENTAL HEALTH
SUICIDE

Garcia v. City of Boston, 115 F.Supp.2d 74 (D.Mass. 2000). A pretrial detainee brought an action against a city, a hospital and the hospital's emergency psychiatric services program, alleging excessive force and denial of medical and psychological care. The district court granted summary judgment for the defendants. The detainee had been arrested by the city police following a domestic disturbance and was taken to a police station where he was booked and placed in a cell. That evening the detainee made an apparent attempt to commit suicide by cutting his left wrist with the aluminum top of a juice container that had been given to him with his dinner. An ambulance was summoned but the detainee refused treatment. He was placed on the suicide list at the station and handcuffed to a bar on the wall in the booking area, where he could be closely monitored. The following evening the detainee again attempted to commit suicide when he obtained a book of matches and set fire to his own clothing while still handcuffed to the bar. He sustained burns and was taken to a hospital. Hospital personnel explored various mental health alternatives for the detainee but he was eventually returned to the police station and handcuffed to the bar, where he lit his shirt on fire fifteen minutes after returning from the hospital. The detainee's clothes were taken away and he remained in the booking area. Later that day the detainee pulled an officer's gun out of its holster, shot the officer and another prisoner, and was then shot by another officer. The district court held that the officials and hospital staff were not negligent in their failure to place the detainee in a state mental facility since the detainee was not

eligible for placement while charges were pending. The court also held that firing of a gun at the detainee was not an excessive use of force because there was a clear need for the use of force, only one round was fired, and the detainee sustained only a limited injury. (Boston Police Dept., Area B, Dist. 2 Police Station, Massachusetts)

U.S. District Court
DELAY IN CARE

Gonzalez v. Monty, 89 F.Supp.2d 1347 (S.D.Fla. 2000). A prisoner brought a § 1983 action against corrections officials alleging refusal of medical treatment. The district court granted summary judgment for the defendants finding that a delay in care of one day in providing medical treatment to the prisoner did not violate his Eighth Amendment rights, where the prisoner did not have any serious medical need. (Everglades Correctional Institution, Florida)

U.S. Appeals Court
SUICIDE
DELIBERATE
INDIFFERENCE

Gregoire v. Class, 236 F.3d 413 (8th Cir. 2000). The estate of a state prisoner who committed suicide brought a § 1983 action against prison officials. The district court denied summary judgment for the prisoner's case manager and the case manager appealed. The appeals court reversed and remanded, finding that the case manager was not deliberately indifferent to the prisoner's suicide risk in violation of the Eighth Amendment, and was therefore entitled to qualified immunity. The prisoner's ex-wife had called the case manager and told him that the prisoner planned to commit suicide, but the case manager waited longer than a half hour to check on the prisoner following the telephone call. The ex-wife had asked the case manager to check on the prisoner and to reassure the prisoner that she would not prevent him from seeing his daughters. But the ex-wife failed to tell the case manager that the prisoner had made previous suicide threats and had been treated for depression, and that he had allegedly attempted suicide in the past. Following the ex-wife's phone call, the case manager checked the prisoner's file to ensure that he was not prevented from seeing his daughters due to a court order, and during that time several other prisoners came to see the case manager. Eventually the case manager had the prisoner paged and instructed to report to his office, at which time the prisoner's cell mate found that he had hung himself. The appeals court held that the case manager was not deliberately indifferent to the serious medical needs of the prisoner because the only indication of the prisoner's suicide risk was the ex-wife's telephone call. (South Dakota State Penitentiary)

U.S. District Court
FAILURE TO PROVIDE
CARE
WHEELCHAIR
ADA- Americans with
Disabilities Act

Hallett v. New York State Dept. of Correct. Serv., 109 F.Supp.2d 190 (S.D.N.Y. 2000). A former inmate brought an action against state correctional officials alleging he was denied access to special programs while incarcerated due to his status as an HIV-positive amputee, in violation of the Americans with Disabilities Act (ADA), the Rehabilitation Act and state laws. The district court dismissed the case in part. The court found that the Eleventh Amendment did not provide immunity for officials for alleged violations of ADA and the Rehabilitation Act. The court held that the former inmate stated a § 1983 claim by alleging that officials failed to provide him with an adequate wheelchair for five months, despite receiving notification that the inmate was in pain and the inmate's grievances concerning confiscation of his personal wheelchair, along with allegations that the inmate suffered severe back pain and a cut to his ear as the result of the officials actions. The inmate successfully alleged the personal involvement of a prison superintendent and director. (Elmira Corr'l Facility and Green Haven Corr'l Center, New York)

U.S. Appeals Court
DENTAL CARE
DELIBERATE
INDIFFERENCE

Harrison v. Barkley, 219 F.3d 132 (2nd Cir. 2000). An inmate brought a § 1983 action alleging that the refusal of prison officials to treat a cavity in one tooth unless he consented to extraction of another tooth violated his rights under the Eighth Amendment. The district court dismissed the action but the appeals court reversed and remanded. The appeals court held that the defendant's alleged refusal to treat the tooth cavity would constitute deliberate indifference to a serious medical need under the Eighth Amendment because the cavity would degenerate with increasingly serious implications if neglected over sufficient time, and according to the court, the inmate "had few teeth to spare." (Riverview Correctional Facility, New York)

U.S. Appeals Court
PRIVACY

Herring v. Keenan, 218 F.3d 1171 (10th Cir. 2000). A prisoner brought a *Bivens* action against a federal probation officer alleging that his rights had been violated when the officer told his sister and employer that he had tested positive for the Human Immunodeficiency Virus (HIV). The district court refused to dismiss the action. The appeals court reversed and remanded, finding that the prisoner alleged a violation of a constitutional right, but that his right to privacy in the nondisclosure of his HIV status was not clearly established at the time the disclosure was made. (United States District Court for the District of Colorado)

U.S. District Court
FAILURE TO PROVIDE
CARE

Jackson v. Johnson, 118 F.Supp.2d 278 (N.D.N.Y. 2000). Representatives of a juvenile who was incarcerated in a youth center sought damages for injuries sustained by the juvenile when he was subjected to a physical restraint technique (PRT). The district court dismissed the defendants' motions for summary judgment, finding that there were fact issues as to whether aides applied excessive force in violation of the juvenile's substantive due process rights. The court held that the Eighth Amendment did not apply to incarcerated juveniles, but rather that the appropriate constitutional standard for evaluating the treatment of an adjudicated juvenile delinquent is the substantive due process guarantee of the Fourteenth Amendment. The court denied qualified immunity for a nurse at the center, holding that it was not objectively reasonable for her to conclude that the juvenile was faking injury in view of his unresponsiveness and general physical condition. A 220-pound aide had initiated a PRT on the 145-pound juvenile and was assisted by a 250-pound coworker. The PRT was applied for approximately ten minutes before the officer of the day arrived at the scene, by which time the juvenile had become unresponsive, clammy, was gasping for breath and was salivating. The PRT continued to be applied for another twenty minutes, under the supervision of the officer of the day, until the juvenile was rendered

unconscious. The facility nurse was summoned and no attempts were made to revive the juvenile before the nurse arrived. After some treatment in the infirmary the juvenile was returned to his housing unit. Later, the juvenile had physical difficulty while in the cafeteria which prompted another round of PRT for more than twenty minutes. When the juvenile did not respond to attempts to resuscitate him, he was transported to a hospital where he remained in a comatose state for two months. The juvenile suffers from serious and permanent physical and mental injuries as the result of the use of force. (Louis Gossett Jr. Residential Center, New York)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE

Jones-Bey v. Conley, 144 F.Supp.2d 1035 (N.D.Ind. 2000). A state prisoner brought a civil rights suit against prison guards and a nurse, alleging use of excessive force and deliberate indifference to his medical needs. The district court granted summary judgment for the defendants on the deliberate indifference claim, finding that although the prisoner's injuries were serious, a nurse examined him within a few hours of the incident and made arrangements for further examination by another nurse that same afternoon. The district court denied summary judgment on the excessive force claims, finding genuine issues of fact regarding the degree of force used by guards in extracting the prisoner from his cell and restraining him after he was handcuffed and shackled. (Maximum Control Complex, Westville, Indiana)

U.S. District Court
MEDICATION

Kenney v. Hawaii, 109 F.Supp.2d 1271 (D.Hawaii 2000). A former inmate brought actions against corrections officials alleging constitutional violations arising from their denial of medication to control his seizures. The district court held that prison physicians were not entitled to qualified immunity as to the claims that they were deliberately indifferent to the inmate's medical needs. The court held that the inmate stated a claim by alleging that denial of certain medications caused him to suffer severe body tremors and shakes and that his daily activities were affected. (Halawa Correctional Facility, Hawaii)

U.S. District Court
HANDICAP
ADA- Americans with
Disabilities Act

Kruger v. Jenne, 164 F.Supp.2d 1330 (S.D.Fla. 2000). A blind county jail inmate brought a § 1983 and Americans with Disability Act (ADA) suit against a sheriff and a private medical care company that contracted to provide medical care to inmates, alleging deprivation of necessary accommodations and failure to treat his medical needs. The district court held that the inmate stated a § 1983 Eighth Amendment claim against the company and an ADA claim against the sheriff in his official capacity, and allowed the inmate to maintain simultaneous ADA and § 1983 claims against the sheriff. The private medical company allegedly failed to accommodate the inmate's blindness with a cane or otherwise, despite advance notice of the need for one, and allegedly deliberately delayed or withheld needed treatment for injuries sustained in several falls, based on cost-savings policies, leading to unnecessary suffering. The sheriff allegedly failed to have the inmate's cell fitted with hand rails or provide him with a cane, leading directly to the inmate's injuries when he suffered several falls. The inmate alleged that the sheriff carried out a policy of denying or delaying needed medical care for cost-savings reasons. (North Broward Detention Center, Florida, and EMSA Correctional Care)

U.S. District Court
AIDS
MEDICATION
PRIVACY
TRANSLATOR

Leon v. Johnson, 96 F.Supp.2d 244 (W.D.N.Y. 2000). A Spanish-speaking state prisoner who was diagnosed with acquired immune deficiency syndrome (AIDS) brought a § 1983 action. The district court granted summary judgment in favor of the defendants. The court found that a delay in receiving medication that resulted from prison officials' failure to apprise the prisoner in Spanish of the prison's medical policies did not violate the Eighth Amendment. The court held that failure to provide Spanish-speaking medical staff or interpreters did not violate the inmate's right to privacy. (Orleans Correctional Facility, New York)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE
SPECIAL DIETS

Lopez v. Smith, 203 F.3d 1122 (9th Cir. 2000). A state prisoner brought a § 1983 action against prison officials alleging numerous violations of his constitutional rights. The district court dismissed in part and entered summary judgment in favor of the officials on the remaining claims. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by questions of fact as to whether the officials intentionally interfered with previously prescribed medical treatment for the prisoner's broken jaw by failing to provide a liquid diet and failing to return the prisoner to the hospital for treatment. The appeals court also held that the alleged denial of all access to outdoor exercise during the six and one-half weeks following the jaw injury was sufficient to meet the objective requirement for an Eighth Amendment claim. (Corcoran State Prison, California)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE
RELEASE

Lugo v. Senkowski, 114 F.Supp.2d 111 (N.D.N.Y. 2000). A paroled state prisoner brought a § 1983 action against prison officials alleging deliberate indifference to his serious medical needs. The district court denied the defendants' motion to dismiss, finding that the state had a duty to provide medical services for the parolee, who was receiving continuing treatment at the time of his release, for a period of time reasonably necessary for him to obtain treatment on his own behalf. The court found that the parolee's claim that officials failed to follow a physician's instructions that follow-up surgery be performed, and in fact prevented him from traveling to his treating physician for surgery, was sufficient to state an Eighth Amendment claim. The court denied qualified immunity for the officials. (Clinton Correctional Facility, New York)

U.S. Appeals Court
RESTRAINTS
EQUAL PROTECTION
AIDS

May v. Sheahan, 226 F.3d 876 (7th Cir. 2000). A pretrial detainee who suffered from Acquired Immune Deficiency Syndrome (AIDS) and was hospitalized brought an action against a county and county officials. The district court denied summary judgment for the sheriff on qualified immunity grounds and the sheriff appealed. The appeals court affirmed, finding that the detainee stated an equal protection claim by alleging that the sheriff, for no legitimate reason, treated

hospitalized detainees differently from jail detainees by shackling them to their beds and not taking them to court on their assigned court dates. The appeals court found that the allegation that the sheriff's restrictive policies caused the detainee to miss scheduled court appearances and impeded access to his attorney stated a claim for violation of his right of access to court. The appeals court found that the allegation that the sheriff implemented a policy that required him to be shackled to his bed around the clock, despite his weakened state and despite being watched by armed guards, was sufficient to state a substantive due process claim. (Cook County Jail, Illinois)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE

Miller v. PrimeCare Medical AS, 89 F.Supp.2d 779 (N.D.W.Va. 2000). A private health care provider sought summary judgment on a prisoner's claims that they had been deliberately indifferent to his serious medical needs. The district court granted the motion, finding that there was no Eighth Amendment violation where the prisoner's health care needs were addressed on numerous occasions, the prisoner refused treatment by medical staff on at least three occasions, and X-rays showed no injury. (Eastern Regional Jail, Martinsburg, West Virginia)

U.S. District Court
DENTAL CARE

Oladipupo v. Austin, 104 F.Supp.2d 626 (W.D.La. 2000). A detainee of the Immigration and Naturalization Service (INS) who was awaiting removal from the United States brought a § 1983 action against parish jail officials challenging the constitutionality of his conditions of confinement. The district court held that the failure of jail officials to segregate pretrial detainees who were HIV positive did not violate the due process rights of non-infected detainees. The court denied summary judgment for the officials on the issue of whether the detainee was transferred before his request to see a dentist could be processed, finding issues of material fact and noting that even a convicted inmate has a right of ready access to dental care. (Avoyelles Parish Jail, Louisiana)

U.S. District Court
DELIBERATE
INDIFFERENCE
MENTAL HEALTH
MEDICATION

Page v. Norvell, 186 F.Supp.2d 1134 (D.Or. 2000). A state inmate brought a § 1983 action against the manager of a correctional institution's counseling treatment services, alleging violation of his Eighth Amendment rights arising from a diagnosis of bipolar disorder. The district court denied the manager's motion for summary judgment, finding that there were genuine issues of material fact as to whether the manager had caused the prisoner not to receive a medication review, and whether the manager purposefully misdiagnosed the prisoner's mental illness. (Eastern Oregon Corr'l Inst.)

U.S. District Court
HANDICAP
PROSTHESES
DELIBERATE
INDIFFERENCE

Parkinson v. Goord, 116 F.Supp.2d 390 (W.D.N.Y. 2000). A prison inmate who was missing a leg sued prison officials claiming violation of his Eighth Amendment rights and violation of the Americans with Disabilities Act (ADA) arising out of their alleged failure to accommodate his disability. The district court entered judgment for the officials. The court found that the officials were not deliberately indifferent to the inmate's needs where they had made prompt arrangements to obtain a prosthesis, offered him accommodations on the same floor as the mess hall, and promptly processed his request to be housed in a more handicapped accessible area. (Collins Correctional Facility, New York)

U.S. District Court
FAILURE TO PROVIDE
CARE
ISOLATION

Perez v. County of Westchester, 83 F.Supp.2d 435 (S.D.N.Y. 2000). A former prisoner brought a § 1983 action against a county and county jail physicians alleging that he was not properly treated for depression and other psychological problems while he was confined. The district court granted summary judgment for the defendants. The court held that the physicians were not liable for violating the former prisoner's rights by placing him in a medical isolation unit and taking away his clothing and personal items after he twice made suicidal overtures. (Westchester County Jail, N.Y.)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
INADEQUATE CARE

Petrichko v. Kurtz, 117 F.Supp.2d 467 (E.D.Pa. 2000). A county prisoner brought a § 1983 action against prison officials and a doctor, alleging violation of his Eighth Amendment rights. The district court denied summary judgment for the defendants, finding that the prisoner's dislocated shoulder was a "serious medical need" and that the officials were not entitled to qualified immunity. The prisoner dislocated his shoulder while playing basketball and asked an officer to have him taken to a hospital. The officer allegedly responded that there were not enough personnel to transport him. The officer allegedly instructed another inmate to reset the shoulder. Later the prisoner allegedly asked for ice to help control the swelling and a deputy warden refused, purportedly because the ice machine was too far away. (Schuylkill County Prison, Pennsylvania)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Ralk v. Lincoln County, GA., 81 F.Supp.2d 1372 (S.D.Ga. 2000). A pretrial detainee brought an action alleging deliberate indifference to his medical needs. The district court granted summary judgment for the defendants, finding that the county jail physician had not been deliberately indifferent to the detainee's serious medical needs. The detainee had alleged that the physician failed to see him to treat his back pain but the court noted that even if the physician had been told about the detainee's condition, he had previously prescribed medication for the pain. (Lincoln County Jail, Georgia)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
DELAY OF CARE

Sealock v. Colorado, 218 F.3d 1205 (10th Cir. 2000). An inmate who suffered a heart attack while incarcerated sued a state and prison officials asserting § 1983 claims for alleged indifference to his serious medical needs. The district court granted summary judgment for the defendant and the inmate appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that fact issues precluded summary judgment for a guard who delayed the inmate's receipt of medical treatment and for the prison's physician assistant. (Arrowhead Correctional Facility, Colorado)

U.S. Appeals Court
SEARCHES

Skurstenis v. Jones, 236 F.3d 678 (11th Cir. 2000). A female detainee brought an action against a county sheriff and sheriff's department staff, alleging that a strip search of her pelvic region violated her Fourth and Fourteenth Amendment rights. The district court granted the defendants' motion for summary judgment in part and denied it in part. The appeals court affirmed in part, reversed in part, and remanded in part. The appeals court held that the jail policy that required each inmate to be strip-searched by a same-sex jail staff member, before being placed in a cell or detention room, violated the Fourth Amendment. But the court found that the detainee's possession of a handgun at the time of her arrest provided the "reasonable suspicion" needed to permit her strip search. The detainee was taken to a bathroom and observed by a female officer, who instructed the detainee to disrobe but did not conduct a body cavity search. A second medically-related search took place in the infirmary, with no one other than the detainee and a male nurses assistant present. The search was conducted pursuant to a contract between the county and a hospital, and involved an examination of the detainee's cranial and pubic hair for lice. The court held that the search was reasonable in manner and scope and did not violate the Fourth Amendment. (Shelby County Jail, Alabama)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE

Smith v. Reynaud, 89 F.Supp.2d 784 (W.D.La. 2000). A prisoner brought a § 1983 action against a nurse alleging that he was denied medical care when she refused to treat him for chest pain. The district court declined to adopt a magistrate's recommendation that the case be dismissed, finding instead that the prisoner stated an Eighth Amendment claim for deliberate indifference against the nurse. The prisoner alleged that he notified the nurse that he was having chest pain and that he required emergency medical attention, that the nurse refused to take him to see a doctor or even to assess his medical condition by taking his blood pressure, and that he had to unnecessarily endure at least six hours of pain before he was taken to a doctor. (Avoyelles Correctional Center, Cottonport, Louisiana)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE

Souffront v. Alvarado, 115 F.Supp.2d 237 (D.Puerto Rico 2000). A prisoner brought a § 1983 action against prison officials alleging deliberate indifference to his serious medical needs. The district court found that the prisoner stated a valid claim for deliberate indifference and a claim for supervisory liability against the administrator of correctional services. The court also ruled that a Puerto Rico statute that shielded government physicians from civil liability for medical malpractice suits was preempted. The prisoner had suffered from abdominal pain and allegedly writhed in excruciating pain for three days before officials, who knew of his condition, followed up on his sonogram and sought care for his condition. (Guerrero Correctional Complex, Puerto Rico)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE

Taylor v. Adams, 221 F.3d 1254 (11th Cir. 2000). In an action arising from the death of a pretrial detainee, the district court denied summary judgment to three firemedics and a jail nurse and they appealed. The appeals court reversed and remanded. The appeals court held that the firemedics were not deliberately indifferent because they acted on whatever knowledge they had of the detainee's condition and tried to check him out and administer aid, questioned him repeatedly regarding his desire for treatment but the detainee declined treatment. (Mobile County Jail, Alabama)

U.S. District Court
AIDS
MEDICATION
COSTS

Taylor v. Barnett, 105 F.Supp.2d 483 (E.D.Va. 2000). An AIDS-infected inmate brought a pro se § 1983 action against a doctor at a correctional facility regarding his medical care. The district court found that the inmate stated a claim for violation of his Eighth Amendment rights by alleging that the prison doctor's switch of his medication had no medical purpose, caused serious side effects, shortened his life, and was motivated solely by cost considerations. The court noted that the Eighth Amendment does not forbid prison officials from considering costs in determining the appropriate course of medical treatment, as long as the treatment does not put the prisoner at risk of serious injury and the decision is not made with deliberate indifference. (Lawrenceville Correctional Facility, Virginia)

U.S. District Court
DELIBERATE
INDIFFERENCE
PROSTHESES

Taylor v. Plousis, 101 F.Supp.2d 255 (D.N.J. 2000). A former county jail detainee brought a § 1983 action against a county, county officials and a private health services provider alleging inadequate medical treatment. The district court found that the detainee's deteriorating prosthesis which caused pain and mobility problems was a serious medical need and that fact issues needed to be resolved concerning a doctor's efforts to seek a replacement and a nurse's alleged delayed delivery of the replacement. (Cape May County Jail, New Jersey, and Correctional Health Services, Inc.)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE
INTAKE SCREENING

Thornton v. U.S. Dept. of Justice, 93 F.Supp.2d 1057 (D.Minn. 2000). An inmate who was a federal prisoner incarcerated at a county jail sought damages arising from injuries he sustained while at the jail. The district court held that a nurse did not treat the inmate with deliberate indifference by failing to refer him to an emergency room for treatment of frostbite the night he was admitted. The court found that a deputy subjectively acted with deliberate indifference when she failed to notify a medical professional immediately about the prisoner's condition. The prisoner informed the deputy that he could not feel most of his toes even though he had been indoors in the custody of the U.S. Marshals for several hours, and that he had walked around outside in frigid January temperatures for many hours before turning himself in. The court also held that the inmate's complaint, which alleged a series of failures to attend to his medical needs by several different county officials over a period of several weeks, adequately pleaded that county officials had a widespread custom of failing to provide care for the prisoner's serious medical needs. (Anoka County Jail, Minnesota, and United States Marshals Service)

<p>U.S. District Court INVOLUNTARY MEDICATION PSYCHOTROPIC DRUGS</p>	<p><u>U.S. v. Keeven</u>, 115 F.Supp.2d 1132 (E.D.Mo. 2000). A detainee sought judicial review of a determination that psychotropic medication could be administered involuntarily because she was a danger to herself and others, and to render her competent to stand trial. The district court held that the detainee was not entitled to an evidentiary hearing prior to the forcible administration of medication and that her due process rights were adequately protected. The court also found that a psychiatrist who conducted an administrative hearing qualified as a neutral hearing officer because he was not currently involved with the diagnosis or treatment of the detainee at the time of the hearing. (Federal Medical Center, Carswell, Texas)</p>
<p>U.S. District Court DENTAL CARE</p>	<p><u>U.S. v. Richards</u>, 105 F.Supp.2d 256 (S.D.N.Y. 2000). A convicted defendant who was awaiting sentencing moved for the provision of dental work. The district court held that the defendant was entitled to have dental implant and bridge treatment, which had begun prior to his trial, completed by the federal Bureau of Prisons or by furlough from a private dentist at the defendant's own expense. (Metropolitan Correctional Center, New York)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE DENIAL OF CARE INADEQUATE CARE</p>	<p><u>Verser v. Elyea</u>, 113 F.Supp.2d 1211 (N.D.Ill. 2000). A prisoner brought a § 1983 action against a prison's current and former medical directors and other officials, alleging that he was denied proper medical attention for an injury. The district denied the defendants' motion to dismiss, finding that the medical director's alleged conduct in declining to follow the recommendations of an orthopedic specialist, without even examining the prisoner and despite the prisoner's repeatedly complaints of pain and injury, rose to the level of deliberate indifference. The inmate injured his knee while playing basketball and an orthopedic specialist ordered physical therapy three times a week and instructed the prisoner to wear a knee brace. The former medical director of the prison denied the knee brace, stating that it was "not indicated for this problem." The prisoner was unable to participate in most of his physical therapy sessions due to the refusal of correctional officers and others to give him passes. When he was again examined by the orthopedic specialist and ordered to have more physical therapy and to wear an ace bandage, the medical director again contravened the recommendations, even though he had never examined the prisoner himself. Several weeks later the prisoner fell down a flight of stairs and injured his back, attributing the fall to his weak knee. The court found that the prison's chief administrative officer and the director of the state corrections department were not entitled to qualified immunity because they concurred in the denial of the prisoner's medical grievance appeal. In its decision the court stated that "...a plaintiff need not use magic words like 'reckless' or 'intentional' to make out a case for deliberate indifference. He must merely plead that the defendant behaved in a way that can be construed to show reckless or intentional conduct." (Stateville Correctional Center, Illinois)</p>
<p>U.S. Appeals Court FAILURE TO PROVIDE CARE</p>	<p><u>Wagner v. Bay City, Tex.</u>, 227 F.3d 316 (5th Cir. 2000). Survivors of an arrestee who died in police custody brought a § 1983 action against police officers, alleging the use of excessive force and deliberate indifference to the need for medical attention. The district court denied summary judgment for the officers. The appeals court reversed, entered judgment for the officers, and remanded. The appeals court held that the officers did not act with deliberate indifference to a risk of harm. The arrestee had resisted arrest and struck an officer with his fists. The arrestee stopped breathing and died after officers sprayed him with pepper spray, placed him face down on the pavement to handcuff him, placed a shin across his back to hold him down, and placed him on his stomach in the back of a patrol car to transport him to the jail. The officers said that they heard the arrestee groaning on the way to the police station and therefore believed he was still breathing. Although the officers did not take the arrestee to the hospital, the court noted that pepper spray decontamination could effectively be done in jail and the officers believed the arrestee was still breathing. (Bay City, Texas)</p>
<p>U.S. Appeals Court AIDS FAILURE TO PROVIDE CARE DELAY IN CAR</p>	<p><u>Walker v. Peters</u>, 233 F.3d 494 (7th Cir. 2000). A prisoner who suffered from various serious illnesses brought a § 1983 action against prison officials and doctors, alleging deliberate indifference to his serious medical needs. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that prison doctors who refused to treat the prisoner for HIV unless he took a test confirming that he was HIV positive could not be held liable for failing to provide treatment. The court also found that isolated incidents in which prison doctors delayed in administering clotting protein upon request of the prisoner, until they could determine whether such treatment was necessary, or in which they refused treatment after making a clinical determination that no treatment was needed, did not support deliberate indifference under the Eighth Amendment. (Illinois Department of Corrections)</p>
<p>U.S. District Court PRIVACY RECORDS</p>	<p><u>Webb v. Goldstein</u>, 117 F.Supp.2d 289 (E.D.N.Y. 2000). A state parolee brought a pro se § 1983 action alleging civil rights violations in connection with his medical examination and the release of his prison medical records to law enforcement officials as part of a rape investigation. The district court dismissed the case, finding that the parolee did not have a Fourth Amendment expectation of privacy in his medical records and that the disclosure of his records did not violate his Eighth Amendment rights to be free from cruel and unusual punishment. (Sullivan Corr. Facility, N.Y.)</p>
<p>U.S. Appeals Court DELIBERATE INDIFFERENCE INTAKE SCREENING</p>	<p><u>Williams v. Kelso</u>, 201 F.3d 1060 (8th Cir. 2000). The executor of the estate of a jail inmate who committed suicide while in custody sued jail employees under § 1983. The district court dismissed state law claims against health care providers but denied summary judgment for the defendants on certain claims. The appeals court affirmed the grant of summary judgment and reversed the</p>

denial of summary judgment on the remaining claims. The appeals court found that even though a psychologist had instructed jailers to check the inmate's vital signs every four to six hours, their failure to follow this instruction over a period of about seven hours was a matter of negligence, at most, and did not show deliberate indifference. The appeals court also held that there was no requirement under the Eighth Amendment that the jailers provide immediate medical attention to a disoriented, confused, belligerent detainee who had been arrested on an alcohol related misdemeanor charge. The court held that jail supervisors were entitled to qualified immunity on the claim of deliberate indifference in failing to initially segregate the inmate from other inmates upon booking. According to the court, the jail officials gave the inmate his medication, placed him in the misdemeanor section of the jail, regularly observed him, had him examined by a psychologist and psychiatrist, and were in the process of transferring him to a treatment center when his suicide occurred, and the inmate had given no overt indication that he was a suicide risk. The court noted that the plaintiff's expert witness even offered the opinion that persons who exhibited the symptoms that the inmate presented do not generally harm themselves. (Faulkner County Detention Facility, Arkansas)

U.S. Appeals Court
MEDICATION
DELIBERATE
INDIFFERENCE

Zentmyer v. Kendall County, Ill., 220 F.3d 805 (7th Cir. 2000). A pretrial detainee brought a civil rights action to recover for his jailers' alleged indifference to his serious medical needs. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that guards' failure to dispense the detainee's medication for a middle ear infection consistently on schedule did not manifest any conscious disregard for the detainee's health of the kind needed to support a Fourteenth Amendment claim, where guards administered medication of various forms to the detainee 162 times over a 20-day period and were not shown to have any knowledge that serious medical consequences might result from occasionally missing the prescribed dosage. (Kendall County Jail, Illinois)

2001

U.S. Appeals Court
SMOKE-FREE
ENVIRONMENT

Alvarado v. Litscher, 267 F.3d 648 (7th Cir. 2001). A prisoner brought an action against a prison alleging deliberate indifference to his exposure to environmental tobacco smoke in violation of the Eighth Amendment. The district court denied the prison's motion to dismiss and the appeals court affirmed, finding that the prisoner stated a claim upon which relief could be granted. The court found that the prisoner's current and future health had been endangered because he had chronic asthma. The prisoner alleged that other prisoners in his non-smoking housing unit smoked in violation of prison policy because correctional officers were frequently not at their post to enforce the smoking ban. The prisoner also alleged that he is unable to participate in programs that would enhance his chances of parole because smoking is permitted in common areas of the prison. (Dodge Correctional Institution, Wisconsin)

U.S. District Court
DELAY IN CARE

Baker v. Blanchette, 186 F.Supp.2d 100 (D.Conn. 2001). A prisoner brought a § 1983 action against a prison physician alleging that a delay in surgery violated his Eighth Amendment rights. The district court denied summary judgment for the physician, finding that the four month delay in surgery that would have closed the prisoner's colostomy may constitute deliberate indifference for the purposes of an Eighth Amendment claim. (New Haven Correctional Center, Connecticut)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
HANDICAP
CELLS

Beck v. Skon, 253 F.3d 330 (8th Cir. 2001). An inmate brought a § 1983 action alleging that prison officials violated his constitutional rights by failing to relocate him to a different cell, failing to provide him with prescribed medication, and conditioning his having needed surgery on his execution of a release of liability. The district court entered summary judgment in favor of the officials and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that fact issues remained as to whether officials conditioned the inmate's surgery on release of all future liability, precluding summary judgment. The appeals court found that the officials were not deliberately indifferent to the inmate's neurological problems, which were exacerbated by walking and climbing stairs, by failing to transfer him to a cell closer to the cafeteria as suggested by a physician, because the inmate did not meet the criteria for the cell and officials offered to permit the inmate to use a wheelchair or to eat in his cell. (Minnesota Correctional Facility, Stillwater, Minnesota)

U.S. District Court
FAILURE TO PROVIDE
CARE
ADEQUACY OF CARE

Boyd v. Rhode Island Dept. of Corrections, 160 F.Supp.2d 213 (D.R.I. 2001). An inmate sued two physicians, alleging they failed to treat him in violation of the Eighth Amendment. The district court dismissed the case against one physician but found that the inmate stated a claim against the second physician. The inmate alleged that the prison physician diagnosed a hernia that required surgery, but did not perform the surgery, that he prematurely took the inmate off treatment for hepatitis C, and that the inmate suffered pain and suffering as a result. (Adult Correctional Institution, Cranston, Rhode Island)

U.S. District Court
COSTS

Breakiron v. Neal, 166 F.Supp.2d 1110 (N.D.Tex. 2001). A county prisoner brought a § 1983 action seeking damages for injuries he sustained when a jail door closed on him, and for alleged intentional or deliberate deprivation of medical care. The district dismissed the damage and deliberate deprivation claims. The court also held that the county's act of deducting payments from the prisoner's inmate trust account did not violate the prisoner's rights because it was rationally related to the county's legitimate interest in the efficient use of prison resources and the prisoner was not denied medical treatment as the result of any inability to pay for medical treatment. (Hunt County Jail, Texas)

U.S. Appeals Court
SUICIDE
NEGLIGENCE

Brown v. Harris, 240 F.3d 383 (4th Cir. 2001). The father of a detainee who committed suicide in a jail brought state tort claims and § 1983 claims against county officials. The district court granted judgment as a matter of law to the defendants and the father appealed. The appeals court affirmed. The appeals court held that the adult detainee committed common law suicide under Virginia law, precluding the estate of the detainee from recovering on wrongful death and gross negligence claims. The court found that even if the jail supervisor was informed that the detainee was suicidal, he did not act with deliberate indifference to the detainee's medical needs because he placed the detainee on "medical watch" which established constant video surveillance of the detainee's cell. The court noted that although the supervisor failed to place the detainee in a paper gown or have him examined by medical staff, his failure amounted to, at most, negligence, not deliberate indifference. (Virginia Beach General Jail, Virginia)

U.S. District Court
DELAY IN CARE

Caldwell v. District of Columbia, 201 F.Supp.2d 27 (D.D.C. 2001). An inmate filed a § 1983 action against the District of Columbia and several employees of its corrections department, alleging unconstitutional conditions of confinement and denial of medical care. A jury entered a verdict in favor of the inmate, on all claims, and awarded \$174,178. The appeals court granted judgment for the defendants as a matter of law, in part, denied judgment for the defendants in part, and did not reduce the damage award. The court found that statements by the inmate's attorney during his closing argument, suggesting specific dollar amounts to be considered by the jury, did not warrant a new trial. The appeals court held that findings that conditions were unconstitutional were supported by evidence, as were findings that officials were deliberately indifferent to the inmate's serious medical needs. The appeals court held that the Prison Litigation Reform Act (PLRA) does not require a prisoner to allege or prove serious, permanent physical injury in order to bring an action for violation of his constitutional rights. The appeals court upheld the inmate's deliberate indifference claim, noting that it was supported by evidence that treatment for the inmate's glaucoma and skin cancer was delayed for substantial periods. (Maximum Security Facility, Lorton Correctional Complex, District of Columbia)

U.S. District Court
COSTS
CONTAGIOUS
DISEASES
AIDS

Canell v. Multnomah County, 141 F.Supp.2d 1046 (D.Or. 2001). An inmate brought a § 1983 action alleging that his conditions of confinement in a county jail violated his constitutional rights. The district court granted summary judgment for the defendants. The district court held that the inmate did not suffer a constitutionally significant injury, sufficient to support a § 1983 action under the Prison Litigation Reform Act (PLRA), as the result of jail officials' failure to shower and "debug" inmates or test them for communicable diseases before double bunking them and mixing them with the general population. The inmate's alleged injuries consisted of toe fungus, occasional constipation, brief denials of food, sanitation, and water, nose sores, and cold winter temperatures. The court found that the inmate's exposure to a cellmate suffering from acquired immune deficiency syndrome (AIDS) did not violate his rights, even though he was splashed in the eye with vomit from the cellmate, where the inmate had not since been tested as HIV positive. The court held that the jail's policy of charging inmates with the ability to pay for medical services did not violate the Eighth Amendment, absent evidence that any serious medical need went untreated as a result of the policy. The court noted that it is constitutionally acceptable to charge inmates a small fee for health care when indigent inmates are guaranteed service regardless of their ability to pay. (Multnomah County Jails, Oregon)

U.S. District Court
FAILURE TO
PROVIDE CARE
DELIBERATE
INDIFFERENCE

Carlyle v. Aubrey, 189 F.Supp.2d 660 (W.D.Ky. 2001). A former prisoner brought a § 1983 action against a county jail alleging Eighth Amendment violations. The district court granted summary judgment in favor of the defendants. The court held that the prisoner's medical needs were not treated with deliberate indifference, noting that medication was administered twice during the prisoner's one-day stay at the jail, he was intoxicated when arrested, and he admitted that his seizures caused memory loss. The court held that the prisoner was not subjected to unconstitutional conditions of confinement, even though water service in his cell was broken, he was forced to sleep on the floor, and he was fed only a bologna sandwich. The prisoner had admitted that he was offered drinking water on at least two occasions and that officers brought in water to flush the toilet. The court noted that although forcing a prisoner to sleep on the floor for extended periods may amount to an Eighth Amendment violation, the temporary inconvenience of one night spent on the floor does not. (Jefferson County Jail, Kentucky)

U.S. Appeals Court
HEARING IMPAIRED
ADA- Americans with
Disabilities Act

Chisolm v. McManimon, 275 F.3d 315 (3rd Cir. 2001). A hearing-impaired detainee brought a suit against the warden of a pretrial detainment facility and county court system, alleging violations of the Americans with Disabilities Act (ADA), Rehabilitation Act, § 1983 and a state discrimination law, for failing to provide an interpreter and other services. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court reversed and remanded, finding that the county court system was not entitled to Eleventh Amendment immunity during an ongoing merger with the state court system. The appeals court held that summary judgment was precluded by genuine issues of material fact as to: (1) the effectiveness of alternate aids or services provided to the detainee when the jail failed to provide a sign language interpreter during the intake process, activate closed captioning capabilities on a prison television, (2) provide a text device for transcribing telephone calls; and whether pencil and paper were effective auxiliary aids in place of a sign language interpreter; and (3) whether exceptions to institutional rules on telephone calls were an effective alternative to providing special telephones. The court held that extradition was a "program" within the meaning of ADA and the Rehabilitation Act such that the court was required to ensure the ability of the detainee to participate in the hearing. When the detainee arrived at the detention facility on a Saturday, he was locked down in his cell to keep him apart from the general population until Monday when

facility classification staff arrived. This practice was applied to all detainees admitted when classification staff members were not working at the facility. Such unclassified detainees consumed meals in their cells and did not have television or telephone privileges. When the detainee was not provided with an interpreter at intake he became upset and was eventually interviewed by a nurse, who concluded that he was a suicide risk. He was kept in solitary lockup from Saturday until Tuesday. On Monday he was taken to meet with a classification staff member, where he was interviewed and was given a medium security classification. But the staff member had described the detainee as a "vagrant" in spite of the fact that he had worked for the U. S. Postal Service for 13 years and had lived at the same address for three years. This error added two points to his classification score, moving him from "minimum" security to "medium." (Mercer County Detention Center, New Jersey)

U.S. Appeals Court
SUICIDЕ
DELIBERATE
INDIFFERENCE

Comstock v. McCrary, 273 F.3d 693 (6th Cir. 2001). The personal representative of a prisoner's estate brought a civil rights action against prison medical personnel after the prisoner committed suicide while confined. The district court denied summary judgment for the defendants based on qualified immunity and the appeals court affirmed in part and reversed in part. The appeals court held that evidence was sufficient to establish that a prison psychologist subjectively perceived, and was deliberately indifferent to, the risk that the prisoner might commit suicide. The psychologist had released the prisoner from a suicide watch without making any reasoned assessment or evaluation of the prisoner's suicide risk at the time of release, despite concluding that the prisoner was sufficiently at risk to put him on suicide watch only one day before. The psychologist also admitted that he suspected that other inmates had targeted the prisoner as a snitch, a characterization that he knew was very perilous for the prisoner. (Reception and Guidance Center at the State Prison of Southern Michigan)

U.S. District Court
DELIBERATE
INDIFFERENCE

Dobbin v. Artuz, 143 F.Supp.2d 292 (S.D.N.Y. 2001). A state inmate brought a § 1983 action against prison officials and medical staff, arising from a fall down stairs at the prison. The district court granted summary judgment in favor of the defendants, finding they were not deliberately indifferent to the medical needs of the inmate. The inmate had requested to be moved to a cell on the ground floor on several occasions but he had failed to demonstrate any medical need for such a move. The court noted that the inmate regularly received sick calls and medication upon request, including consultations with outside specialists in connection with his back condition. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
SUICIDЕ
DELIBERATE
INDIFFERENCE
MENTAL HEALTH

Domino v. Texas Dept. of Criminal Justice, 239 F.3d 752 (5th Cir. 2001). A prison psychiatrist appealed the decision of a federal district court that denied his motion for summary judgment based on qualified immunity. The appeals court reversed and remanded, finding that the psychiatrist's incorrect diagnosis that a prisoner's suicide threat was not genuine, but was made to obtain secondary gain, did not amount to deliberate indifference. (Coffield Unit of the Texas Department of Criminal Justice)

U.S. District Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE

Ducally v. Rhode Island Dept. of Corrections, 160 F.Supp.2d 220 (D.R.I. 2001). A prisoner brought a § 1983 action against a corrections department and corrections officers alleging cruel and unusual punishment. The district court dismissed the claims against the department, but found that the prisoner stated a claim against an officer with his allegations that the officer intentionally slammed a cell door on his hand and delayed the provision of medical care. The prisoner alleged that he suffered two cuts, swollen fingers, and loss of power and feeling in his fingers and hand. (Adult Correctional Institution, Cranston, Rhode Island)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE

Fouk v. Charrier, 262 F.3d 687 (8th Cir. 2001). A prisoner brought a § 1983 action against a corrections officer alleging the use of excessive force in violation of his Eighth Amendment rights. The district court entered judgment on a jury verdict, awarded nominal damages of \$1 plus interest and costs, and awarded attorney fees. The appeals court affirmed in part, vacated in part, and reversed in part. The appeals court held that the award of nominal damages for an Eighth Amendment violation was permissible, and that the finding of use of excessive force was supported by evidence. The appeals court found that the award of attorney fees was subject to the cap established by the Prison Litigation Reform Act (PLRA), and that the PLRA cap on attorney fees did not violate the equal protection clause. The court noted that under the provisions of PLRA, if non-monetary relief of some kind had been ordered, whether or not there was also a monetary award, the attorney fees cap would not apply. (Moberly Correctional Center, Missouri)

U.S. Appeals Court
INVOLUNTARY
MEDICATION

Fuller v. Dillon, 236 F.3d 876 (7th Cir. 2001). A prison inmate who had been given psychotropic medication against his will brought a § 1983 action against prison officials and medical personnel alleging violation of his due process rights. The district court granted summary judgment to the defendants and the appeals court affirmed. The appeals court held that the initial decision to medicate the prisoner was made by a treating psychiatrist, as required under the state's scheme for involuntary administration of medication. (Menard Psychiatric Center, Illinois)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
TRANSFER
DELAY OF CARE

Garvin v. Armstrong, 236 F.3d 896 (7th Cir. 2001). A county jail inmate brought a civil rights suit alleging that the jail medical director was deliberately indifferent to his need for an asthma inhaler. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court held that the jail policy of securing all drugs, including inhalers, and making inhalers available to inmates within four minutes of their requesting them, in accordance with state county jail standards calling for all drugs to be secured, was not medically

unreasonable and thus did not rise to the level of deliberate indifference. The court noted that the medical director had moved the inmate to the medical unit so the inhaler could be retrieved more quickly when needed, had prescribed several medications for the treatment of the inmate's asthma, and had purchased a nebulizer especially for the inmate's use. (DuPage County Jail, Illinois)

U.S. District Court
FEMALE PRISONERS

Goode v. Correctional Medical Services, 168 F.Supp.2d 289 (D.Del. 2001). An inmate sued various prison officials, a third party medical contractor, and the contractor's nursing employees alleging excessive force, sexual assault and Eighth Amendment violations in connection with an obstetric examination. The district court held that the inmate had sufficiently exhausted administrative remedies, the third-party medical contractor had no civil rights liability on the basis of respondeat superior, and the inmate stated an Eighth Amendment claim against the employees. The employees allegedly hugged and kissed the inmate during the examination, and conducted an unauthorized internal examination. The incident allegedly caused the inmate light bleeding, caused her blood pressure to rise, and caused her to go into labor four weeks early. (Baylor Women's Correctional Facility, Delaware)

U.S. Appeals Court
WORK ASSIGNMENT

Lewis v. Lynn, 236 F.3d 766 (5th Cir. 2001). A state prison inmate brought a § 1983 action against current and former prison officials, alleging he had been forced to do field work for which he was medically unfit due to asthma, in violation of the Eighth Amendment. The district court entered summary judgment for the current prison officials and the appeals court affirmed. The appeals court held that the officials did not show deliberate indifference to the inmate's health, because the officials told the inmate to continue working only after consulting with prison hospital staff, who informed the officials that the inmate was capable of doing the work in question despite his condition. (Louisiana State Penitentiary)

U.S. District Court
FAILURE TO PROVIDE
CARE

Lewis v. Sullivan, 134 F.Supp.2d 954 (W.D.Wis. 2001). A prisoner sued the State of Wisconsin challenging the constitutionality of the in forma pauperis provision of the Prison Litigation Reform Act (PLRA). The district court held that the prisoner asserted a fundamental constitutional right in alleging that a prison violated the Eighth Amendment by denying him any medical care for his alleged post traumatic syndrome condition. (Waupun Corr'l Inst., Wisconsin)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE
NEGLIGENCE

Lindsay v. Dunleavy, 177 F.Supp.2d 398 (E.D.Pa. 2001). An inmate whose broken jaw was not diagnosed or treated until he was transferred from a county prison to a state prison brought a § 1983 action against the county and others. The district court dismissed the action, finding that the failure of a physician's assistant to x-ray the prisoner's broken jaw was not deliberate indifference and that the prisoner could not state a failure to supervise claim against a warden. The court noted that a claim of negligent diagnosis or treatment does not rise to the level of deliberate indifference under the Eighth Amendment. (Philadelphia County Prison CFCF, Pennsylvania)

U.S. District Court
DELIBERATE
INDIFFERENCE

Lutz v. Smith, 180 F.Supp.2d 941 (N.D. Ohio 2001). A man who was arrested for domestic violence brought a § 1983 action against a sheriff and others alleging deliberate indifference to his medical needs while he was in custody. The district court granted summary judgment in favor of the defendants. The court found no violation in the actions of the sheriff's staff when they declined to accompany the arrestee in an ambulance that transported him from the jail to a hospital to treat him for an overdose of medication he ingested before he was arrested. The arrestee was returned to the jail after receiving treatment. The court held that the county acted properly by ensuring that the arrestee received treatment when he became ill in custody and the county was not required to do so in a manner that made it responsible for the expense of the treatment. (Hardin County Jail, Ohio)

U.S. Appeals Court
DENTAL CARE

Marvin v. Goord, 255 F.3d 40 (2nd Cir. 2001). A prisoner brought a civil rights suit alleging prison officials were deliberately indifferent to his serious medical needs because they refused to permit, even at his own expense, a dentist to perform a root canal to treat an oral infection. The district court dismissed the claims and the prisoner appealed. The appeals court vacated and remanded in part, and affirmed in part. The appeals court held that the prisoner was not required to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA) since the challenged conduct was conduct which was either clearly mandated by a prison policy or undertaken pursuant to a systemic practice. (Collins Correctional Facility, New York)

U.S. Appeals Court
WORK ASSIGNMENT
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE

Mays v. Rhodes, 255 F.3d 644 (8th Cir. 2001). The mother of an inmate who died due to heat exhaustion brought a § 1983 action against prison officials, alleging violation of the inmate's Eighth Amendment rights. The inmate had started his first day of work on a "hoe squad." After a lunch break he returned to work and by mid-afternoon the temperature was only seventy-two degrees. The inmate collapsed while working and never regained consciousness after being transported from the prison infirmary to a local hospital. The district court denied summary judgment for the defendants and they appealed. The appeals court reversed and remanded the case for dismissal. The appeals court held that the plaintiff failed to show that officials were deliberately indifferent to the inmate's limitations or knowingly compelled the inmate to perform physical labor that was beyond his strength or that was unduly painful. The court noted that there was no evidence showing that the inmate displayed any signs prior to his collapse that would have alerted officials to his medical needs. The court also found that the plaintiff failed to show that officials failed to treat the inmate after his collapse, where they responded by calling other officials who promptly transported the inmate to the prison infirmary. (East Arkansas Regional Unit, Arkansas Department of Corrections)

- U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIFF.
- Napier v. Madison County, KY., 238 F.3d 739 (6th Cir. 2001). An arrestee who suffered from complete kidney failure and who was kept from scheduled dialysis treatment during his period of detention, brought a § 1983 action against a county and jail officials. The district court granted summary judgment to the defendants and the appeals court affirmed. The appeals court held that the detainee failed to show any detrimental effects from the delay in treatment. The court noted that the detainee, prior to his confinement, had missed over 40 treatments during the same year, and did not go directly to the hospital after his release from confinement. (Madison County Detention Center, Kentucky)
- U.S. District Court
ADA- Americans with
Disabilities Act
WHEELCHAIR
TRANSFER
DELIBERATE
INDIFFERENCE
- Navedo v. Maloney, 172 F.Supp.2d 276 (D.Mass. 2001). A state inmate brought § 1983 and Americans with Disabilities (ADA) actions against a state, a private medical care provider, and medical employees, alleging that their refusal to allow him access to a wheelchair and to disabled-accessible facilities violated his civil rights and caused severe and irreparable damage to his leg. The district court denied summary judgment for the defendants, in part, finding that fact issues remained as to the extent of the inmate's injuries, and denied qualified immunity to the state corrections commissioner. The commissioner had rejected the medical staff's recommendation that the inmate be transferred to another facility with appropriate accommodations and allegedly failed to maintain prisons in compliance with federal standards of accessibility. (Massachusetts Correctional Institution at Norfolk and Massachusetts Correctional Institution at Shirley)
- U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELAY IN CARE
- Oxendine v. Kaplan, 241 F.3d 1272 (10th Cir. 2001). An inmate at a state correctional facility brought an action against prison medical professionals who performed emergency reattachment of his finger, alleging they provided him with inadequate and delayed medical care. The district court dismissed the action but the appeals court reversed and remanded. The appeals court held that the inmate's complaint stated an Eighth Amendment claim for deliberate indifference to his serious medical needs. The court noted that the medical personnel did not obtain a specialist for the inmate until after a substantial portion of the inmate's finger had already been lost to decay, and that a physician was aware of, and acknowledged, the inmate's pain and the decay of skin tissue. (Federal Correctional Institute, Florence, Colorado)
- U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
DELAY IN CARE
PRIVATE PROVIDER
- Palmermo v. Correctional Medical Services Inc., 133 F.Supp.2d 1348 (S.D.Fla. 2001). Prisoners sued a for-profit corporation that provided medical care to a prison, and individual physicians, under § 1983, claiming deliberate indifference to their medical conditions in violation of the Eighth Amendment. The district court granted partial summary judgment in favor of the defendants. The court denied summary judgment on the issue of whether the physicians showed deliberate indifference by refusing leg surgery that was deemed "urgent" by specialists, and on the issue of whether the corporation was liable to the prisoner for the delayed surgery based on the possible existence of a policy to delay or deny surgical benefits. The court found that the inmate's claims could lead a reasonable juror to find that there was a custom of deliberate indifference at the corporation, and a report by a state agency that expressed concern about follow-up procedures at the facility also presented an issue of fact for the jury. (Everglades Correctional Institute, Florida)
- U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
- Phillips v. Monroe County, Mississippi, 143 F.Supp.2d 663 (N.D.Miss. 2001). The mother of an inmate who died of cancer while incarcerated brought wrongful death and § 1983 actions against a county, state prison physician and state penitentiary. The district court ruled, as a matter of law, that the county, physician and medical director did not act with deliberate indifference, and that the county was immune under state law from claims for wrongful death and negligence. The court noted that the inmate had received transportation to four medical appointments, received all prescribed medication, and the county's chief deputy advised the receiving state prison of the inmate's condition and hand-delivered the inmate's records to the prison. The inmate had been transferred to the only state prison that was located near a medical center that could provide chemotherapy, as instructed by the jail's medical director. (Monroe County Jail, and Central Mississippi Correctional Facility)
- U.S. District Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE
MEDICATION
RELEASE
- Ramsey v. Schauble, 141 F.Supp.2d 584 (W.D.N.C. 2001). A former detainee whose finger tip was severed after a sheriff's deputy allegedly shut a cell window on it, brought a pro se complaint against the deputy and the sheriff. The district court held that the detainee stated a cognizable civil rights complaint against the sheriff, and the detainee pled a cause of action under a state law that provided that a keeper of a jail must pay treble damages if he/she does any wrong or injury to a detainee, and is guilty of a Class 1 misdemeanor. The court found that jail officials ignored the detainee's cries for help after he was injured by the deputy and displayed deliberate indifference to his need for quick medical attention to preserve the possibility of reattaching the finger. The detainee was released from custody several hours after he was returned from the hospital, but officials refused to give the detainee pain medication prescribed by the hospital, requiring him to return to the jail periodically over the next several days to receive each pill individually. (Watauga County Law Enforcement Center, North Carolina)
- U.S. District Court
DELIBERATE
INDIFFERENCE
SMOKE-FREE
ENVIRONMENT
- Reilly v. Grayson, 157 F.Supp.2d 762 (E.D.Mich. 2001). A prisoner brought a § 1983 action against a warden, deputy warden, and Michigan Department of Corrections physicians, alleging violation of his Eighth Amendment rights. After a bench trial, the district court ruled that the warden and deputy wardens were deliberately indifferent to the prisoner's serious medical need to be placed in a smoke-free environment, supporting the prisoner's cruel and unusual punishment claims. The court found that the wardens were reckless in their disregard of the prisoner's rights, and awarded the prisoner \$18,250 in punitive damages and \$36,500 in compensatory damages for the

five years of inaction by the wardens. The prisoner had two Individual Management Plans (IMP) which required that he be placed in a smoke-free environment, but the non-smoking regulations in the prisoner's cell block were consistently violated and the wardens were aware of the violations. After receiving notice that the IMPs were not being followed, the wardens continued to do nothing to remedy the situation. The court concluded that the three wardens "...each clearly ignored his supervisory obligations and, as a consequence, should suffer the opprobrium of punitive damages, not so much to deter each of them in the future, but to deter other officials in like positions of ignoring their responsibility." (Trustee Division, State Prison of Southern Michigan)

U.S. District Court
MALPRACTICE
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE

Seals v. Shah, 145 F.Supp.2d 1378 (N.D.Ga. 2001). A state inmate brought a state-court action against a physician who treated him while he was incarcerated in a county jail, asserting claims for medical malpractice and alleged Eighth Amendment violations. The case was removed to federal court, where the district court denied partial summary judgment for the defendants. The court held that material factual issues as to whether the physician was deliberately indifferent, precluded summary judgment on the § 1983 claim. The inmate, who had previously received an arterial graft, alleged he was injured as a result of neglect of a serious medical condition. (Douglas County Jail, Georgia)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Spencer v. Sheahan, 158 F.Supp.2d 837 (N.D.Ill. 2001). A former pretrial detainee brought a § 1983 action alleging deliberate indifference to serious medical needs. The district court denied summary judgment for the defendants. The detainee was a known diabetic who suffered from a cut between two toes on his right foot and subsequently developed an infection that resulted in two amputations and stump revision surgery. The court noted that there was a seven-day delay between the time that a physician observed "positive skin changes" on the detainee's foot and the time of diagnosis and treatment. (Cook County Jail, Illinois)

U.S. Appeals Court
DELAY IN CARE
TRANSFER
DELIBERATE
INDIFFERENCE

Thompson v. Upshur County, TX, 245 F.3d 447 (5th Cir. 2001). Parents whose son had died of medical conditions associated with his delirium tremens while he was a pretrial detainee in a county jail, sued under § 1983. The district court denied the defendants' motion for summary judgment on qualified immunity grounds and the defendants appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the sheriff of the jail to which the detainee was first admitted was entitled to qualified immunity in connection with the death of the detainee, which occurred following his transfer to another county jail that had the detoxification facilities that his jail lacked. The sheriff of the jail in the receiving county did not violate any clearly established right in failing to instruct his staff on the potentially life-threatening nature of medical conditions associated with delirium tremens and was entitled to qualified immunity, according to the appeals court. But the appeals court found that a sergeant at the jail in which the detainee died was not entitled to qualified immunity because of fact questions as to whether she had instructed her subordinates not to disturb her at home unless a detainee was on the verge of death, or whether she had otherwise interfered with the detainee's receipt of medical care. (Upshur County Jail and Marion County Jail, Texas)

U.S. Appeals Court
EMERGENCY CARE
DELIBERATE
INDIFFERENCE
DELAY IN CARE

Tlamka v. Serrell, 244 F.3d 628 (8th Cir. 2001). The son of an inmate who died after he suffered a heart attack in state prison brought a § 1983 action against corrections officers. The district court granted summary judgment for the defendants and the son appealed. The appeals court affirmed in part, and reversed and remanded in part. The appeals court held that summary judgment was precluded for the officers. The court remanded to case to settle fact issues as to whether the officers' ten-minute delay in providing emergency treatment to the inmate, who was having a heart attack, was an intentional delay. The court found that the warden and corrections director were not liable under § 1983 for failing to adequately train officers, noting that all new corrections officers were trained in cardiopulmonary resuscitation (CPR) and their training was updated as necessary. (Nebraska State Penitentiary)

U.S. District Court
MEDICATION
TRANSFER

U.S. v. Wallen, 177 F.Supp.2d 455 (D.Md. 2001). A defendant who was charged with importation of cocaine moved to be held at an alternative detention facility because he was allegedly being provided with poor medical care. The district court granted the motion, noting that the defendant's medications were dispensed irregularly and incompletely, leading to his collapse in his cell. The court ordered the defendant to be detained in an infirmary or hospital and that he be provided with medical care that complied with the relevant standard of care that applied to that facility. (Maryland Correctional Adjustment Center)

U.S. District Court
INVOLUNTARY
MEDICATION
PSYCHOTROPIC
DRUGS

U.S. v. Weston, 134 F.Supp.2d 115 (D.D.C. 2001). An appeals court affirmed the decision of the federal Bureau of Prisons to administer antipsychotic medication to a detainee who allegedly killed Capitol police officers. On remand to the district court, the court held that the government would be permitted to treat the defendant involuntarily with such medication because it was appropriate and essential in order to render the defendant non-dangerous based on medical/safety concerns, and to restore the defendant's competency to stand trial. (Federal Correctional Institute, Butner, North Carolina)

U.S. District Court
MEDICATION
DELIBERATE
INDIFFERENCE

Williams v. Elyea, 163 F.Supp.2d 992 (N.D.Ill. 2001). A state prison inmate brought a § 1983 suit against infirmary physicians and a nurse, alleging deliberate indifference to his medical needs. The district court granted summary judgment in favor of the defendants. The court held that the inmate's pain and discomfort in his mouth from an earlier laceration did not rise to the level of an objectively serious medical need. The court found that the infirmary physicians' refusal to

dispense over-the-counter medication, and a nurse's refusal to refer the inmate to a physician, did not evidence the culpable state of mind required for a deliberate indifference claim. (Stateville Correctional Center, Joliet, Illinois)

U.S. District Court
DENTAL CARE

Williamson v. Brewington-Carr, 173 F.Supp.2d 235 (D.Del. 2001). An inmate brought an action against corrections officials alleging denial of proper dental care. The district court held that the inmate's abscessed tooth, recurring gum infections, and loss of two teeth constituted a serious health need that was entitled to Eighth Amendment protection. (Multi-Purpose Criminal Justice Facility, Delaware)

U.S. District Court
TRANSEXUAL

Wolfe v. Horn, 130 F.Supp.2d 648 (E.D.Pa. 2001). A pre-operative transsexual inmate brought a § 1983 action against prison officials and medical professionals, alleging that their failure to permit him to continue hormone treatment therapy violated his constitutional rights. The district court ruled that the prison officials reasonably relied on the medical professionals' opinions as to the propriety of withdrawing the inmate's hormonal therapy and were entitled to qualified immunity on the inmate's § 1983 claim. The court held that the officials did not violate the equal protection rights of the inmate who was suffering from a gender identity disorder by refusing to permit the inmate to grow long hair, even if other inmates were allowed to grow long hair for religious reasons, in light of the potential for institutional disruption and violence if the inmate were allowed to express a feminine gender identity. But the court found that fact issues as to whether medical professionals were deliberately indifferent to treating the inmate, and when the prison officials made the final decision to discontinue hormonal treatment, precluding summary judgment for the defendants. (SCI-Camp Hill, Pennsylvania)

U.S. District Court
SPECIAL DIETS
DENTAL CARE
DELIBERATE
INDIFFERENCE

Word v. Croce, 169 F.Supp.2d 219 (S.D.N.Y. 2001). A prisoner brought a § 1983 action against prison officials alleging violations of her civil rights. The district court dismissed the case. The court held that the denial of her request for a special vegan-vegetarian diet did not constitute deliberate indifference to her medical needs. The court noted that the prisoner's diet request was not for religious or medically indicated reasons and that the prison already provided the prisoner with the high fiber diet that was ordered by physicians. The court also found no constitutional violations in the officials' refusal to refer her to a gastroenterologist, replace her fillings, or apply orthodontic braces. The court noted that the prisoner refused to allow prison dentists, who were willing and able to fill the prisoner's cavities, to take necessary diagnostic x-rays, and that braces were not indicated for a woman who was nearly 50 years old. (Bedford Hills Corr'l Facility, N.Y.)

U.S. Appeals Court
DELIBERATE INDIF-
FERENCE
DENTAL CARE
MEDICATION
FAILURE TO PROVIDE
CARE

Wynn v. Southward, 251 F.3d 588 (7th Cir. 2001). A state inmate brought a § 1983 action against corrections officials alleging Eighth and Fourteenth Amendment violations. The district court dismissed the case and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the officials did not violate the inmate's due process rights but allegations supported an Eighth Amendment claim based on the alleged deprivation of the inmate's dentures and his heart medication. The inmate alleged he was unable to chew his food without his dentures, significantly impeding his ability to eat, and that he had suffered bleeding, headaches, and disfigurement as the result of not having his dentures. The court found that allegations that officials misplaced his dentures, falsified prison documents to conceal that act, and disregarded the inmate's requests for redress stated a § 1983 claim for deliberate indifference to the inmate's serious medical needs. The court also found a claim for deliberate indifference on the part of corrections officers who allegedly ignored the inmate's repeated requests for his heart medication, and did not respond to his requests, even though the inmate made two written requests for his medication and informed officials that his heart had been fluttering due to the lapse in medication. (Indiana State Prison)

2002

U.S. District Court
DELAY IN CARE
MEDICATION

Baskerville v. Blot, 224 F.Supp.2d 723 (S.D.N.Y. 2002). A state prisoner filed a § 1983 action alleging that corrections officers filed a frivolous misbehavior report against him in retaliation for his filing grievances and a lawsuit against the state. The prisoner also alleged that medical personnel failed to provide him with adequate care. The district court granted summary judgment for the defendants in part, and denied it in part. The district court held that fact issues as to whether an officer's assault on the prisoner was in retaliation precluded summary judgment. The court found that an officer's issuance of a false misbehavior report against the prisoner, a restraint order that resulted in his confinement in keeplock, denial of showers and telephone privileges, and use of restraints, established adverse acts necessary to support the prisoner's First Amendment claim of retaliation. The court held that a prison nurse's failure to refill the prisoner's blood pressure medication for several days did not show deliberate indifference, absent a showing that the nurse acted intentionally to withhold medication or was in any way responsible for the delay in obtaining a refill of his medication from an outside pharmacy. (Elmira Correctional Facility, New York)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIF-
FERENCE
MENTAL HEALTH

Bozeman v. Orum, 199 F.Supp.2d 1216 (M.D.Ala. 2002). The representative of the estate of a pretrial detainee brought a § 1983 action against a sheriff and officials at a county detention facility, alleging that the detainee's death was the result of constitutional violations. The district court held that detention officers' use of force to restrain the detainee did not violate his Fourteenth Amendment right against the use of excessive force, even though the officers threatened to "kick" the detainee's "ass." The officers apparently punched or slapped the detainee, and the detainee died as the result of the officers' actions, but the court found that some level of

force was necessary to restore order where the detainee was apparently undergoing a mental breakdown in his cell. The court held that nurses at the detention facility were not deliberately indifferent to the serious medical needs of the detainee when they failed to obtain treatment and medication upon learning that the detainee had been evaluated for mental health problems and prescribed medication in the past. The court noted that the nurses had no knowledge during intake beyond a "slight flag" of past evaluations for mental illness and that the detainee had medication to help him "rest." The court also found that the failure of the detention facility to implement a policy requiring staff to follow up on inmates who had acknowledged past mental health problems or evaluations for mental health problems, did not violate the detainee's Fourteenth Amendment right to adequate medical care. The court held that municipal jails are not required to provide on-site psychiatric care for their inmates, and that the detention facility was not required to train its officers in diagnosing or treating mental illness. According to the court, the facility provided adequate training in the proper use of deadly force, including warnings on the dangers of positional asphyxia, and was therefore not liable under § 1983 for failing to supervise staff. The court found that summary judgment in favor of the county was precluded by a genuine issue of material fact on the allegation that officers were deliberately indifferent to the medical needs of the detainee by failing to resuscitate him after they realized that he was not breathing. (Montgomery County Detention Facility, Alabama)

U.S. Appeals Court
DELAY IN CARE

Bridges v. Rhodes, 41 Fed.Appx. 902 (8th Cir. 2002). The personal representative of a prisoner who died of heat stroke while in prison brought a § 1983 action against a prison officer, alleging deliberate indifference to the prisoner's serious medical needs. The district court granted summary judgment for the officer on qualified immunity grounds and the appeals court affirmed. The appeals court held that the 20-minute delay in getting the prisoner to the infirmary after his heat-related collapse was not unreasonable. The appeals court found that the affidavit of a doctor who reviewed the medical records of the prisoner, in which the doctor listed the heat-related symptoms that the prison officer should have recognized while supervising the prisoner working on the hoe squad, was insufficient to establish that an officer in that position would have known that his actions violated the prisoner's Eighth Amendment rights. (Eastern Arkansas Reg'l Unit)

U.S. Appeals Court
FAILURE TO PROVIDE CARE
POLICY/PROCEDURE

Brock v. Wright, 315 F.3d 158 (2nd Cir. 2002). A state prisoner who developed a keloid at the site of a knife wound on his cheek, brought a § 1983 action against prison officials alleging their failure to adequately treat the keloid constituted deliberate indifference to his serious medical needs. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a corrections department policy, promulgated by the department's chief medical officer, was deliberately indifferent to the chronic pain suffered by the prisoner. The policy prohibited outside treatment for keloids without the existence of collateral symptoms, and prohibited preventative treatment for the keloid formation. (Collins Correctional Facility, New York)

U.S. Appeals Court
FAILURE TO PROVIDE CARE
PRIVATE PROVIDER
ADA- Americans with Disabilities Act

Burke v. North Dakota Corrections and Rehabil., 294 F.3d 1043 (8th Cir. 2002). An inmate brought a § 1983 action alleging that a corrections department and its medical services contractor denied him treatment for his hepatitis C. The district court dismissed the case. The appeals court affirmed in part, and reversed and remanded in part. The appeals court held that the inmate's allegation that the correctional facility's medical director prevented him from being seen by doctors because of the inmate's prior lawsuit against the director, alleged more than a disagreement over the proper course of treatment, and the case should not have been dismissed. (North Dakota Department of Corrections and Rehabilitation, Medcenter One)

U.S. Appeals Court
WORK ASSIGNMENT

Calhoun v. Hargrove, 312 F.3d 730 (5th Cir. 2002). A state prisoner filed a pro se civil rights action seeking compensatory and punitive damages and injunctive relief. The district court dismissed the action. The appeals court reversed in part and remanded. The appeals court held that the prisoner's claims of verbal harassment were not actionable under § 1983, nor were his claims that he was once forced to get on his knees and beg for his lunch. The court concluded that such verbal abuse or humiliation qualified as "physical injury" as required to support a claim. The appeals court found that allegations that a prison official, knowing of a maximum 4-hour limitation established by a physician, forced the prisoner to work long hours far in excess of his medically-ordered maximum, were sufficient to state claim and to recover for physical injury. The prisoner alleged that his prolonged work hours resulted in elevated blood pressure levels that were dangerously high. The prisoner was assigned to the prison's administration building as a support services inmate porter. His duties included mopping, sweeping and waxing floors, emptying trash, cleaning windows, dusting offices, cleaning restrooms, moving furniture and other janitorial duties. The prisoner claimed that a prison Captain called him names such as "crack smoker," "thief," and "whore," and made him work 10, 12 and even 14-hour days. (Texas)

U.S. District Court
FAILURE TO PROVIDE CARE
DELIBERATE INDIFFERENCE

Christy v. Robinson, 216 F.Supp.2d 398 (D.N.J. 2002). An inmate brought a pro se § 1983 action against a prison medical care provider, alleging deliberate indifference to his serious medical needs. The district court granted summary judgment in favor of the defendants. The inmate alleged Eighth Amendment violations resulting from the misdiagnosis of the cause of his arthritis, failure of officials to give him interferon/ribavirin treatment, and temporary suspension of his pain medication. The court held that the inmate received adequate medical care in the form of visits to the doctor on site, consultation requests, referrals to specialists, prescriptions for pain relievers and other medications, x-rays and monitoring of his liver enzymes. (South Woods State Prison, New Jersey)

U.S. District Court
DELAY IN CARE
SPECIAL DIETS

Clement v. California Dept. of Corrections, 220 F.Supp.2d 1098 (N.D.Cal. 2002). A prisoner brought a civil right action regarding his medical treatment for colon cancer, and a First Amendment claim challenging a prison mail policy that banned the inclusion of Internet-generated materials in regular mail received by prisoners. The district court held that a three-month delay in providing a colonoscopy to a prisoner who was subsequently diagnosed with colon cancer, and a delay in providing a special diet, did not violate the Eighth Amendment. (Pelican Bay State Prison, California)

U.S. Appeals Court
DELIBERATE IN-
DIFFERENCE
FAILURE TO PROVIDE
CARE

Clement v. Gomez, 298 F.3d 898 (9th Cir. 2002). Inmates sued prison officials under § 1983 alleging violation of their Eighth Amendment rights. The district court denied summary judgment in favor of the defendants and the defendants appealed. The appeals court affirmed in part and reversed in part. The appeals court held that correctional officers did not use excessive force when they used two bursts of pepper spray to quell fighting in a cell. But the appeals court found that summary judgment was precluded by fact questions on the issue of officials' potential deliberate indifference to the serious medical needs of inmates in nearby cells who were affected by pepper spray that drifted into their cells. The court noted that excessive force directed at one prisoner can also establish a cause of action for harm that befalls other prisoners. (Pelican Bay State Prison, Calif.)

U.S. Appeals Court
SMOKE

Davis v. New York, 316 F.3d 93 (2nd Cir. 2002). A pro se state prisoner brought a § 1983 action alleging he was exposed to unreasonably high levels of second-hand smoke, in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court held that summary judgment was precluded on the issue of whether the prisoner was exposed to unreasonable levels of second-hand smoke. The court held that the prisoner's claim was not moot, even though he had been transferred to a different housing block and the prison implemented a restrictive smoking policy, because the prisoner was housed in a block without individual cell windows and in conditions similar to those he experienced prior to the transfer. The prisoner also asserted that the prison's new smoking policy was not being enforced. (Attica Corr'l Facility, New York)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Dellairo v. Garland, 222 F.Supp.2d 86 (D.Me. 2002). An inmate who was serving a nine month jail sentence filed a pro se and in forma pauperis § 1983 suit against the jail's physician's assistant. The district court denied the assistant's motion to dismiss. The court held that the inmate sufficiently alleged a serious deprivation and alleged that the assistant had been deliberately indifferent. The court found that the assistant was not immune to the inmate's § 1983 claim. Prior to the inmate's admission to the jail, he was diagnosed with an ankle growth and was scheduled for surgery because an emergency room physician was concerned that the growth was growing into the bone. The inmate was in constant pain and the level of pain increased as he went untreated in jail for over seven months, even though the inmate made regular complaints to the physician's assistant. No treatment was provided, even though a second set of x-rays reconfirmed the presence of the growth. (Penobscot County Jail, Maine)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE
NEGLIGENCE

Estate of Hampton v. Androscoggin County, 245 F.Supp.2d 150 (D.Me. 2002). The estate of a county jail inmate filed a state court action against a county and county officials. The case was removed to federal court, where the defendants moved for summary judgment. The federal district court granted summary judgment for the defendants, finding that the county was not liable under § 1983 and that the sheriff was immune from liability under a state court claims act. According to the court, even if the inmate's death was attributable to a jail officer's refusal to summon emergency medical personnel upon the inmate's request, and there was evidence of another incident in which officers denied another inmate his medication, there was no evidence that either incident involved so many jail staff as to reflect a widespread practice. The inmate had been brought to the jail in the afternoon, and he told an admitting officer that he did not suffer from any disability, did not require any form of assistance, and was not taking any medication at the time. He was assigned to a maximum security cell block where he was checked by staff every fifteen minutes. The following day he did not indicate to jail staff that he was in need of medical attention when they checked on him every fifteen minutes. During a cell check an officer found him lying on his back and he was unresponsive. A physician's assistant who was working in the jail at the time responded to a "code blue" and found jail staff administering mouth-to-mouth ventilation to the inmate. Paramedics arrived at the jail and continued efforts at resuscitation and he was transferred to a local hospital, where he was pronounced dead approximately an hour after he had initially been found unconscious in his cell. (Androscoggin County Jail, Maine)

U.S. District Court
SUICIDE
DELIBERATE
INDIFFERENCE

Estate of Sisk v. Manzanares, 262 F.Supp.2d 1162 (D.Kan. 2002). The estate and survivors of a deceased prisoner brought a civil rights action against a county corrections department, alleging deliberate indifference to the prisoner's medical needs. The district court held that summary judgment was precluded by a fact issue as to whether corrections officers were deliberately indifferent to the substantial risk that the inmate would commit suicide. The court held that the corrections officers were not entitled to qualified immunity because they had a clearly established affirmative duty under the Eighth Amendment at the time of the prisoner's suicide, to take reasonable measures to abate a known risk that the prisoner was suicidal. The court held that a supervisor was not deliberately indifferent, noting that the mere fact that a supervisor was not integrally involved with the day to day activities of his subordinates did not mean that he was deliberately indifferent to the need to provide adequate medical care to a suicidal inmate, even though the supervisor was subjectively aware of the prisoner's suicidal state. The supervisor was not aware that a corrections officer had ordered the prisoner to be given a regular blanket and

placed in a hard lockdown cell, rather than a "rubber room," and the supervisor was not aware that the officer was not conducting required periodic checks. The court found that the comments of a captain did not indicate that he was deliberately indifferent to the risk that the prisoner would attempt to commit suicide. The captain allegedly said that suicide blankets "were too expensive" to order, that it would have been "just one less inmate we'd have to worry about," and that he would have to spend money to order those blankets "because one stupid mother fucker had been successful in suicide." The prisoner had asphyxiated himself with a wool blanket. (Shawnee County Department of Corrections, Kansas)

U.S. District Court
MEDICATION
HIV

Evans v. Bonner, 196 F.Supp.2d 252 (E.D.N.Y. 2002). A county correctional center inmate brought a § 1983 action against center nurses, alleging they failed to dispense medication for his HIV condition in a timely manner. The district court granted summary judgment as a matter of law for the nurses. The court held that even if the aches, pains and joint problems suffered by the inmate were caused by untimely medication, the symptoms did not constitute a condition of urgency or one that might produce death, degeneration or extreme pain. (Nassau County Corr'l Center, New York)

U.S. District Court
DENIAL OF CARE

Evicci v. Baker, 190 F.Supp.2d 233 (D.Mass. 2002). A prisoner brought federal civil rights and state tort actions against corrections officials alleging that he was subjected to excessive force in violation of the Eighth Amendment, and that he was denied medical care. The district court denied summary judgment for the defendants on the excessive force claims because the prisoner alleged that three officers and others engaged in a joint venture to beat him and that other officers refused to document his injuries. The court granted summary judgment in favor of the defendants on the medical care claims, noting that the prisoner received 16 sick call examinations during the three months following his alleged assault. The court also found that the prisoner's allegations that officials interfered with his right to petition the government through his legal mail could not be supported in light of the nine suits the prisoner had filed in the previous three years. (Southeastern Correctional Center, Bridgewater, Massachusetts)

U.S. District Court
DELIBERATE IN-
DIFFERENCE
CONTAGIOUS
DISEASES

Fenner v. Suthers, 194 F.Supp.2d 1146 (D.Colo. 2002). A state inmate brought a pro se § 1983 action against corrections officials, alleging deliberate indifference to his serious medical needs. The district court denied summary judgment for the defendants, finding that an issue of fact existed as to whether the officials were entitled to qualified immunity. The inmate alleged that the corrections department's policies, procedures and protocols for treating hepatitis C exhibited deliberate indifference to his serious medical needs. The court decided not to take judicial notice of information, largely based on Internet websites, cited by the officials in support of their policies and procedures, finding the information suffered from evidentiary defects. (Colorado Dept. of Corrections)

U.S. District Court
AIDS
MEDICATION

Foster v. Fulton County, Georgia, 223 F.Supp.2d 1292 (N.D.Ga. 2002). Inmates at a county jail, who had tested positive for human immunodeficiency virus (HIV), brought an action complaining of their conditions of confinement and inadequate medical care. The parties entered into a settlement agreement. Two years later the district court responded to a report that described ten areas in which the county had failed to comply with the terms of the settlement. The court held that continued overcrowding at the jail deprived the HIV-positive inmates of their constitutional right to minimal civilized measures of life's necessities. The court ordered the county to institute additional measures to reduce crowding, including: providing counsel within 72 hours of arrest to all persons accused of minor offenses who could not make bail; expanding the authority of Pretrial Services to include supervision of persons arrested for misdemeanor offenses; eliminating any unreasonable factors used to exclude persons charged with felonies from pretrial release; ensuring persons charged with misdemeanors were offered a reasonable bond; and imposing additional restrictions on the length of time a person could remain in jail without accusation or indictment, or accused or indicted but untried. The court found the county had violated the settlement agreement by failing to refer HIV-positive inmates to outside specialists in a timely manner when the jail's own staff lacked the resources to provide timely care. The court noted that even though the county had eliminated its financial review procedures, other bureaucratic problems remained and resulted in delays of three weeks to six months. The court held that the county failed to employ sufficient numbers of trained correctional staff to meet the health needs of HIV-positive inmates. The court ordered the county to immediately develop and implement a plan to increase security staffing at the jail to the level necessary to provide timely access to medical care for the current population of inmates. The court also ordered the county to avoid unreasonable disruption in the continuity of new inmates' medication, noting that only half of the inmates with a credible history of HIV medications were receiving their first doses of medication within 24 hours after admission. (Fulton County Jail, Georgia)

U.S. District Court
FAILURE TO PROVIDE
CARE
AIDS
PRIVATE PROVIDER

Gabriel v. Corrections Corp. of America, 211 F.Supp.2d 132 (D.D.C. 2002). An HIV-positive inmate housed in a facility operated under a contract with the District of Columbia brought a § 1983 action alleging inadequate medical treatment against a private prison operator, the District, and the federal Bureau of Prisons. The district court granted the defendants' motions for summary judgment and dismissal. The district court held that the contractor could not be liable, absent a showing that the allegedly inadequate treatment resulted from the contractor's or the District's custom or policy. The prisoner had been held at a federal prison in Kansas and was transferred to the privately-operated facility near the District of Columbia. Prior to his transfer he was diagnosed as being HIV positive. When the inmate was transferred, the Bureau did not transfer his actual medical jacket and the medical history that was sent did not explicitly state that the

inmate was HIV positive, although instructions to provide the inmate with AZT were included. The inmate alleged that he was not provided with any further treatment for eight years, when his condition was rediscovered. He alleged that as a result of his failure to receive treatment, he suffered a decline in his T-cell count and experienced the onset of premature dementia and depression. (Lorton Correctional Complex, Virginia, operated by Corrections Corporation of America under contract to the District of Columbia)

U.S. Appeals Court
DELIBERATE IN-
DIFFERENCE
INTAKE SCREENING
PRETRIAL DETAINEE

Gibson v. County of Washoe, Nev., 290 F.3d 1175 (9th Cir. 2002). The widow of a manic depressive detainee who suffered a heart attack and died while in a county jail, sued the county, sheriff and various officials under § 1983. The district court entered summary judgment for the defendants and the widow appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that several fact issues precluded summary judgment: whether the county's policy of delaying medical screening of combative inmates posed a substantial risk of serious harm to the detainee; whether the county was aware of that risk; whether the nurse who received the detainee's medication at the jail was deliberately indifferent; and whether the county was liable based upon its policy regarding handling of prescription medication. The appeals court found that deputies who had contact with the detainee after he was admitted to the jail, and who took part in the forcible restraint that preceded his death, were not deliberately indifferent to his medical needs because they knew nothing of his mental condition beyond what they could observe. (Washoe County Jail, Nevada)

U.S. District Court
FAILURE TO PROVIDE
CARE
MEDICATIONS

Gonzalez v. Cecil County, Maryland, 221 F.Supp.2d 611 (D.Md. 2002). The widow of a pretrial detainee who died while in custody filed a § 1983 action against a county, sheriff, and detention center medical personnel. The district court denied the defendants' motion to dismiss, in part, finding that fact issues remained as to whether the care provided to the detainee amounted to deliberate indifference. The detainee was admitted to a county detention center at approximately 5:00 p.m. Shortly after his admission he identified himself as a heroin user during a standard intake medical screening. He told three nurses employed by the detention center, upon his arrival, that he was likely to undergo acute heroin withdrawal symptoms. The only treatment provided to him at this time was to be placed on twice-daily doses of Clonidine, a blood pressure medication. The detainee allegedly became violently ill and progressed to acute pulmonary distress, disease and pneumonia during the night and during the next day. He complained to the nurses but was only given an over-the-counter stomach remedy, Kaopectate. Two days later he was found in his cell, unresponsive, and was pronounced dead twenty minutes later. His body was taken to a nearby hospital where an autopsy revealed he died from "pneumonia, complicating narcotics abuse." The district court held that the fact that the nurses were acting in conformity with the county's established protocol in treating the inmate did not entitle them to qualified immunity from liability under § 1983. (Cecil County Detention Center, Maryland)

U.S. District Court
TERMINAL ILLNESS
TRANSFER
NOTIFICATION

Gonzalez-Jimenez De Ruiz v. U.S., 231 F.Supp.2d 1187 (M.D.Fla. 2002). Survivors of a federal prison inmate who died while in custody brought claims under the Federal Tort Claims Act (FTCA). The district court granted summary judgment in favor of the defendants. The court held that the family failed to state a claim under Florida law. The family alleged that prison officials deceived the inmate's family regarding the inmate's terminal condition, failed to provide the family with reasonable access to the inmate during his illness, failed to inform the family of the inmate's death, offered the inmate substandard care, and delayed transporting the inmate's remains for nine days after his death. The inmate had been transferred from a correctional facility in Florida to a nearby hospital, and then to a correctional medical facility in Texas where he died after nine days. The family claimed that the officials' conduct exacerbated one of the family member's pre-existing medical conditions, caused one child to experience difficulty in school, and triggered another child's asthma. (Coleman Federal Correctional Institution, Florida, and Federal Bureau of Prisons Medical Facility, Fort Worth, Texas)

U.S. District Court
FAILURE TO PROVIDE
CARE

Gonzalez-Mercado v. Municipality of Guaynabo, 206 F.Supp.2d 257 (D.Puerto Rico 2002). A plaintiff brought a § 1983 action following her arrest and indictment, alleging violations of her right to medical assistance and malicious prosecution. The district court dismissed the action, in part. The court held that the plaintiff's allegations were insufficient to establish a violation of her Eighth Amendment right to medical assistance, even though her initial request for assistance was denied. The court noted that the plaintiff was eventually examined by two paramedics while she was detained in a police lockup. She was detained for seven hours and the indictment against her was later dismissed. (Guaynabo Mun. Police Station, Puerto Rico)

U.S. District Court
EMERGENCY CARE

Gulett v. Haines, 229 F.Supp.2d 806 (S.D.Ohio 2002). A pretrial detainee brought an action against a sheriff, corrections officer, and a jail inmate asserting claims under §1981 and §1983. The detainee had been assaulted by other prisoners and alleged that he was not protected from harm and was denied adequate emergency medical care. The district court held that the jail's emergency medical care policy was not unconstitutional on its face because the policy accounted for any emergency and left medical decisions, subject to an obvious security concern, to a health care staff member. (Montgomery County Jail, Ohio)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE

Halpin v. Simmons, 33 Fed.Appx. 961 (10th Cir. 2002). A prisoner brought a § 1983 action and the district court dismissed the claim. The appeals court affirmed in part, reversed and remanded in part. The appeals court held that a violation of the Interstate Corrections Compact (ICC) was not a violation of federal law and therefore could not be subject to a § 1983 action. The appeals court found that the prisoner stated an Eighth Amendment claim of deliberate indifference to his

medical condition when he alleged that authorities ignored his repeated requests for treatment of a severe heart condition and for gastric pain. According to the prisoner, officials also refused to provide heart medication and to honor a prohibition on stair climbing that had been ordered by cardiologists. (Florida Department of Corrections, Kansas Department of Corrections)

U.S. Appeals Court
DENTAL CARE
FEMALE PRISONERS
MENTAL HEALTH

Hallett v. Morgan, 296 F.3d 732 (9th Cir. 2002). A class of prisoners at a women's state prison who brought a § 1983 action against prison officials moved to extend jurisdiction over a consent decree for an additional period of time, to have prison officials held in contempt, and to compel discovery. The district court denied the motions and granted the prison officials' motion to terminate the consent decree. The appeals court affirmed in part, reversed in part, and remanded. The appeals court found that dental care and mental health conditions at the prison did not violate the Eighth Amendment. The appeals court found that officials' substantial compliance with the consent decree judgment was an acceptable defense to the prisoners' motion to hold the officials in civil contempt for past violations of the decree. The court remanded the case for reconsideration of allegations that the officials failed to comply with consent decree requirements regarding medical care. (Washington Corrections Center for Women)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
TRANSPORT

Jackson v. Illinois Medi-Car, Inc., 300 F.3d 760 (7th Cir. 2002). A pretrial detainee who was transported to a police station by a private transportation service at the request of a police department, brought a § 1983 action against the service and one of its drivers, alleging denial of adequate medical care. The district court granted summary judgment against the detainee and the appeals court affirmed. The appeals held that the decision of the driver to transport the detainee to a police station, rather than taking him to a hospital, did not amount to deliberate indifference to the detainee's objectively serious medical needs. The detainee collapsed from an overdose of medication shortly after reaching the police station. The court noted that primary authority for the detainee rested with the police officers, who had last determined that he should be taken to the police station, and the driver lacked medical training or any realistic control over the detainee. According to the court, "deliberate indifference" is simply a synonym for intentional or reckless conduct, and "reckless" describes conduct so dangerous that the deliberate nature of the defendant's actions can be inferred. (City of Chicago, Illinois)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Johnson v. Medford, 208 F.Supp.2d 590 (W.D.N.C. 2002). A state prisoner brought a § 1983 action against correctional officials and medical personnel, alleging denial of medical care and denial of opportunities for educational programs. The district court dismissed the case, finding that the prisoner's alleged "flat feet" were not a serious medical condition, as required to establish a deliberate indifference claim. The court held that the alleged denial of the prisoner's request to take a correspondence course for paralegal training did not violate any of the prisoner's constitutional rights. The court noted that an inmate of a state prison does not have a constitutional right to an education. (Marion Correctional Institution, North Carolina)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE

Jones v. Norris, 310 F.3d 610 (8th Cir. 2002). A state inmate sued corrections officials alleging he was incorrectly medically classified and assigned to a job that was inappropriate for his medical needs. The district court dismissed the action and the appeals court affirmed. The appeals court held that the inmate had not exhausted his prison grievances with regard to his medical classification and work assignment. The court found that officials did not demonstrate deliberate indifference to the inmate's needs, where the inmate received 13 medical examinations in previous years, was evaluated to determine his need for reclassification, and received recommended non-prescription medication to treat his back pain. The prisoner claimed his back, neck, right hand injuries and hemorrhoids caused him pain at work, and had asked for reassignment from field duty. (Cummins Unit, Arkansas Department of Corrections)

U.S. District Court
FAILURE TO PROVIDE
CARE
TRANSEXUAL
DELIBERATE
INDIFFERENCE

Kosilek v. Maloney, 221 F.Supp.2d 156 (D.Mass. 2002). An inmate brought an action against a director of corrections, seeking an injunction that would require medical treatment for gender identity disorder. The district court held that the corrections department's medical treatment plans for the inmate were not adequate, but that the director was not deliberately indifferent to the serious medical needs of the inmate. The inmate suffered from a severe form of a rare, medically recognized, major mental illness-- gender identity disorder-- and was a transsexual. The court found that the treatment plans were not developed pursuant to any clinical decision by a doctor or social worker concerning the inmate's condition or particular needs, but were derived from an administrative decision that created a blanket policy that prohibited initiation of hormones for inmates who were not prescribed hormones prior to their incarceration. Although the inmate's treatment was found inadequate, the court declined to provide injunctive relief, reasoning that the director was no longer likely to be indifferent to the inmate's needs in the future as a result of the litigation. The court noted that "ordinarily, the Commissioner of the DOC would not be the appropriate defendant in a case involving the inmate's claim alleging denial of medical care. As Commissioner, Maloney does not usually make decisions concerning medical care...Because of Kosilek's lawsuit, Maloney, as a practical matter, has made the major decisions relating to Kosilek's medical care." After the lawsuit was filed, the Commissioner consulted with attorneys and doctors employed by the department and adopted a blanket policy that was aimed at "freezing" a transsexual in the condition he was in when incarcerated. The policy prohibited the provision of hormones to inmates such as the plaintiff who had only taken "black market" hormones previously, and categorically excluded the possibility that an inmate would receive sex reassignment surgery. The court concluded that "Because Maloney removed from the professionals employed by the DOC their usual discretion concerning Kosilek's medical needs and care, Maloney's conduct is properly the focus of this case." (Massachusetts Department of Corrections)

U.S. District Court
DELIBERATE
INDIFFERENCE

Lavender v. Lampert, 242 F.Supp.2d 821 (D.Or. 2002). An inmate brought a § 1983 civil rights action asserting deliberate indifference to his serious medical needs. The district court held that the inmate's allegations supported his deliberate indifference claims against a prison superintendent and a health services manager. The inmate's medical needs arose from spastic partial paralysis causing his foot to flex and curl his toes into a claw, and related chronic pain management issues. (Snake River Correctional Institution, Oregon)

U.S. Appeals Court
DENTAL CARE
DELAY OF CARE

McAlphin v. Toney, 281 F.3d 709 (8th Cir. 2002). A pro se inmate who was subject to the "three strikes" provisions of the Prison Litigation Reform Act (PLRA) filed an action alleging inadequate dental care. The district court dismissed the complaint and the inmate appealed. The appeals court reversed, finding that the inmate's complaint sufficiently alleged an imminent danger of serious physical injury that allowed the inmate to proceed in forma pauperis. The inmate alleged that he was denied dental extractions, even though his medical file indicated that they were needed immediately, until his gums became so infected that three additional teeth required extraction. (Varner Super Max, Arkansas Department of Correction)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE

Meloy v. Bachmeier, 302 F.3d 845 (8th Cir. 2002). A former state inmate filed a § 1983 action alleging that prison medical personnel violated his civil rights by failing to provide him with a continuous positive air pressure machine (CPAP) to treat his obstructive sleep apnea. The district court denied summary judgment for the director of the prison's medical services and the director appealed. The appeals court reversed and remanded, finding that the director was entitled to qualified immunity. The appeals court held that the decision of the director to adhere to a prison doctor's order that the prison need not provide the inmate with a CPAP machine was objectively reasonable in light of legal rules in place at the time, entitling the director to qualified immunity. The court noted that the director was functioning in an administrative role, even though she had some medical training as a nurse, and she was not responsible for examining and treating the inmate herself. (North Dakota State Penitentiary)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
MEDICATION

Montgomery v. Pinchak, 294 F.3d 492 (3rd Cir. 2002). A prison inmate brought a § 1983 action against prison officials, a physician and a corporate medical care provider, alleging that they were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants and the inmate appealed. The appeals court vacated and remanded, finding that the district court had abused its discretion in refusing to appoint counsel for the inmate. The court noted that numerous technical rulings against the inmate clearly indicated that the inmate was experiencing difficulty in proving the elements of his legal claim, and that his case was compromised because he lacked legal representation. According to the court, the inmate would have especially benefited from expert testimony because the inmate lacked the medical records that might otherwise have been used to demonstrate his alleged injury to a jury. The court held that the mere loss of the inmate's medical records by the officials, physician and medical provider did not rise to the requisite level of deliberate indifference. The inmate alleged that officials and providers refused to provide him with antiviral medications, x-rays, laboratory and blood work, and prescription medication refills--all of which they had determined were necessary for his treatment before his medical records were lost. (Riverfront State Prison, New Jersey)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE

Morales v. Mackalm, 278 F.3d 126 (2nd Cir. 2002). An inmate brought a civil rights action against corrections personnel alleging they were deliberately indifferent to his serious medical needs, sexually assaulted him, discriminated against him on the basis of his race, and retaliated against him because he filed a grievance. The district court dismissed the case with prejudice and the inmate appealed. The appeals court affirmed in part, and vacated and remanded in part. The appeals court held that the inmate stated an actionable claim for retaliation based on officials' actions in transferring him to a psychiatric center shortly after he filed a grievance. The appeals court found that the allegation that a prison employee called the inmate a "stoolie" in front of other inmates did not satisfy the adverse action requirement of the inmate's claim of retaliation. (Woodburne Correctional Facility, Marcy Correctional Facility, Sullivan Correctional Facility, New York)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE
SUICIDE

Pelletier v. Magnuson, 201 F.Supp.2d 148 (D.Me. 2002). A personal representative for the estate of an inmate who committed suicide in a state prison filed a § 1983 complaint in state courts, alleging Eighth Amendment violations. The district court granted summary judgment for all of the medical defendants, finding that the alleged missing or tampered documents relating to the deceased inmate's medical treatment did not establish that employees of the prison's contracted health care provider were deliberately indifferent to his serious medical needs. The court held that a social worker, medical doctor, and regional supervisor of medical services were not deliberately indifferent. The court found that a licensed psychiatrist was not administratively negligent for allegedly not knowing that the inmate was psychotic and suicidal at all times. The court noted that the decision to scale down the inmate's care was made by a treatment team and was not the result of financial considerations. (Maine State Prison)

U.S. Appeals Court
RELEASE
NEGLIGENCE
DELIBERATE
INDIFFERENCE

Perkins v. Lawson, 312 F.3d 872 (7th Cir. 2002). An inmate brought a state court action against a sheriff in his official capacity under § 1983, and under state negligence laws, seeking damages for injuries sustained in an attack by another inmate. The case was removed to federal court, where the district court entered summary judgment for the sheriff. The inmate appealed and the appeals court affirmed in part, vacated and remanded in part. The appeals court remanded the inmate's

negligence claim to the state courts because the appeals court was not convinced that there could be no finding of negligence under state law. The inmate had been beaten by another inmate and was provided with some treatment by jail medical staff. He did not eat or drink anything for several days after the attack, claiming he was unable to swallow. The inmate was released on his own recognizance, "probably because of his condition--though the record does not make this clear." His wife immediately took him to a hospital where he was placed on life support in an intensive care unit, in critical condition with a neurological problem. (Grant County Jail, Indiana)

U.S. Appeals Court
DELAY IN CARE

Phillips Ex Rel. Phillips v. Monroe County, Miss., 311 F.3d 369 (5th Cir. 2002). The mother of a deceased inmate sued a county and two physicians under § 1983, alleging that they caused the inmate's death by refusing to provide the inmate with necessary medical care for widespread testicular cancer. The mother also sued the county for negligence under state law. After the mother presented her case at trial, the district court granted judgment for the county and physicians as a matter of law. The mother appealed and the appeals court affirmed. The appeals court held that the physician's failure to begin chemotherapy immediately upon recommendation of the inmate's oncologist did not cause the inmate's death. The inmate died of "brain herniation" caused by a brain tumor which resulted from metastasis of the testicular cancer in the inmate's brain, but the court held that the cancer did not spread to the inmate's brain because of a short delay in initiating chemotherapy. (Monroe County Jail, Mississippi)

U.S. Appeals Court
SMOKE-FREE
ENVIRONMENT
DELIBERATE
INDIFFERENCE

Reilly v. Grayson, 310 F.3d 519 (6th Cir. 2002). A prisoner brought a § 1983 action against prison officials alleging violation of his Eighth Amendment right to be free from cruel and unusual punishment. The district court entered judgment for the prisoner and awarded damages. The defendants appealed and the appeals court affirmed. The appeals court held that the prisoner had a right not to be exposed to environmental tobacco smoke that presented a serious risk to his health, and to removed from places where smoke hovered. The court affirmed the lower court findings that the prisoner's asthma was a serious medical condition and that it was exacerbated by exposure to second-hand smoke, and that the defendants repeatedly failed to respond to repeated recommendations by medical personnel that the prisoner be moved to a smoke-free setting. The appeals court affirmed the award of actual damages rather than nominal damages in the amount of \$36,500, and the award of punitive damages in the amount of \$18,250. The court found no abuse of discretion in the district court's award of \$51,786 in attorney's fees. (Michigan Department of Corrections)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
MEDICATION

Robinson v. Hager, 292 F.3d 560 (8th Cir. 2002). An inmate sued drug treatment center employees claiming deliberate indifference to his medical needs. The employees appealed the district court verdict for the inmate; the appeals court reversed. The appeals court held that the inmate, who had suffered a stroke after being deprived of medication for hypertension for a month, could not recover absent expert medical testimony on causation. According to the court, a reasonable juror could not infer from the evidence whether the inmate's hypertension caused his stroke, or consequently, whether his lapse in hypertension medication had anything to do with his stroke. (Mineral Area Treatment Center, Missouri)

U.S. Appeals Court
SMOKE

Sanders v. Kingston, 53 Fed.Appx. 781 (7th Cir. 2002). [unpublished] A state prison inmate brought a § 1983 action alleging that he suffered cruel and unusual punishment due to overcrowding and exposure to second-hand smoke. The district court dismissed the case for failure to state a claim, and the inmate appealed. The appeals court affirmed in part, and vacated and remanded in part. The appeals court held that the inmate's allegations that doubling him in a single cell without giving him a bunk for his mattress, a privacy curtain for bathroom use and a television stand, fell far short of the "extreme deprivation" required to state an Eighth Amendment conditions of confinement claim. The court held that the prisoner stated a § 1983 claim with his allegation that he was exposed to environmental tobacco smoke (ETS) for approximately six weeks and that prison officials exhibited deliberate indifference toward the risk that this exposure constituted a threat to his future health. (Columbia Correctional Institution, Wisconsin)

U.S. District Court
DELAY IN CARE

Scicluna v. Wells, 219 F.Supp.2d 846 (E.D.Mich. 2002). A state inmate brought a § 1983 action asserting claims for alleged violations of his Eighth Amendment rights and gross negligence. The district court denied summary judgment for the defendants, in part. The court found that summary judgment was precluded by material issues of fact as to whether a prison doctor was deliberately indifferent to the inmate's medical needs by providing grossly inadequate medical care. The doctor allegedly failed to evaluate the inmate for three weeks after receiving a referral for an immediate neurological consultation. The court also ordered further proceedings to determine whether the delay in treatment caused the inmate to suffer from prescription drug toxicity. (Muskegon Correctional Facility, Michigan)

U.S. District Court
DELAY IN CARE
MEDICATION
DELIBERATE
INDIFFERENCE

Smith v. Franklin County, 227 F.Supp.2d 667 (E.D.Ky. 2002). A former county jail inmate brought a § 1983 action against a county, alleging Eighth Amendment and Americans with Disabilities Act (ADA) violations. The district court held that the former inmate was not required to exhaust administrative remedies under the provisions of the Prison Litigation Reform Act (PLRA) because he was no longer confined. But the court dismissed the action, finding that the inmate did not assert an Eighth Amendment claim or ADA violation. The former inmate alleged that he was deprived of medical care while confined but the court found that his seizure was not seriously injurious, and although he was deprived of his medication for two and a half days, the court found no Eighth Amendment violation. (Franklin County Correctional Complex, Kentucky)

U.S. District Court ALCOHOL/DRUGS FAILURE TO PROVIDE CARE	<p><u>Smith v. Lejeune</u>, 203 F.Supp.2d 1260 (D.Wyo. 2002). Following the death of her husband who had been detained at a county detention facility, a wife brought an action against a physician, nurses and others, alleging deliberate indifference in violation of § 1983. The district court granted summary judgment in favor of the defendants, finding that the physician had trained nurses regarding alcohol withdrawal, and the nurses did not have the requisite state of mind, knowledge and disregard of possible risks to sustain a deliberate indifference claim. According to the court, the physician did not fail to train the nurses, where he provided the nurses with protocols and policies to deal with alcohol and alcohol withdrawal, and conducted monthly meetings during which the policies were discussed. The nurses had not identified any signs that the detainee was suffering for alcohol withdrawal, and the detainee had denied any history of suffering from alcohol withdrawal. The detainee had been arrested for driving under the influence of alcohol, and a breath alcohol test identified a level of .317. (Laramie County Detention Facility, Wyoming)</p>
U.S. District Court CONTAGIOUS DISEASE FAILURE TO PROVIDE CARE	<p><u>Stewart v. Taft</u>, 235 F.Supp.2d 763 (N.D. Ohio 2002). A prison inmate brought a § 1983 action against a Governor and other state officials, claiming that delays in testing the prison population for tuberculosis and deficiencies in preventive treatment after he tested positive for the disease, violated his Eighth Amendment rights. The district court granted judgment in favor of the officials. The court held that the Governor and other high-ranking officials lacked the necessary direct involvement in the inmate's case to be held liable. The court found that prison medical personnel were not deliberately indifferent to the inmate's medical needs when they did not respond to inmate grievances reporting rumors of tuberculosis cases. The court held that the inmate failed to show that overcrowding caused him to test positive, or that he was provided with inadequate treatment, even though he was given only six months of a prevention drug instead of the preferred nine months. (Allen Correctional Institution, Ohio)</p>
U.S. Appeals Court MEDICATION	<p><u>Thompson v. Carter</u>, 284 F.3d 411 (2nd Cir. 2002). A state prisoner brought a pro se civil rights action against a state correctional facility and the district court granted the defendants' motion to dismiss. The inmate appealed and the appeals court affirmed in part, and vacated and remanded in part. The appeals court held that the prisoner's request for return of medications that were seized by prison officials was still active after he was transferred to another facility. The appeals court found that the prisoner was not barred by statute from receiving nominal damages even though he was seeking to recover for mental or emotional injury without a prior showing of physical injury. The court also held that the inmate could seek compensatory damages for the loss of property. (Clinton Correctional Facility, New York)</p>
U.S. District Court INTAKE SCREENING MEDICATION	<p><u>Turner v. Kight</u>, 192 F.Supp.2d 391 (D.Md. 2002). A female detainee who was arrested on an outstanding warrant associated with a civil matter and detained at a jail brought an action against county and state officials. The district court granted summary judgment for the defendants. The court held that arresting and booking officers were deliberately indifferent to the detainee's serious medical needs when they allegedly removed a neck brace and seized medication, ignoring her complaints of pain and muscle spasm. The detainee sometimes limped and walked with a cane, but the court found that the detainee's alleged pain did not rise to the level of a serious medical need. The court granted qualified immunity to the officers, finding that there was no indication that the officers actually knew of, and ignored, a serious need for medical care. The court also found that the officers were not deliberately indifferent by failing to dispense medication in response to the detainee's complaints of pain, where the officers were not permitted to dispense medication and they notified the detention facility's medical staff of a nonemergency situation, who did not respond during the six hours the detainee was confined. (Montgomery County Detention Center, Maryland)</p>
U.S. Appeals Court DELAY IN CARE DELIBERATE INDIFFERENCE	<p><u>Walker v. Benjamin</u>, 293 F.3d 1030 (7th Cir. 2002). A state prisoner brought a § 1983 action against prison nurses and physicians, alleging deliberate indifference to his medical needs. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that issues of material fact precluded summary judgment on the prisoner's claim for deliberate indifference to untreated pain, and that a nurse and physician were not entitled to qualified immunity for their alleged intentional refusal to treat the prisoner's pain. (Western Illinois Correctional Center)</p>
U.S. District Court DELIBERATE INDIFFERENCE	<p><u>Warren v. Shelby County, Tenn.</u>, 191 F.Supp.2d 980 (W.D.Tenn. 2001). A former detainee filed a § 1983 action against a county, sheriff, and county jail physician, alleging deliberate indifference to his serious medical needs. The district court dismissed the case, finding that the sheriff was not liable under § 1983 and the county was not subject to municipal liability under § 1983. The court noted that the "mere fact" that the county had a rather elastic and later-criticized policy regarding the scheduling of sick call at the county jail during the detainee's confinement was not, alone, sufficient to establish liability. The detainee alleged that jail officials ignored his repeated requests for medical attention and pain medication. (Shelby County Jail, Tennessee)</p>
U.S. District Court RESTRAINTS TRANSPORTATION DELIBERATE INDIFFERENCE ADA- Americans with Disabilities Act	<p><u>Williams-El v. McLemore</u>, 213 F.Supp.2d 783 (E.D.Mich. 2002). A prisoner brought a civil rights action seeking monetary and equitable relief. The district court denied the defendants' summary judgment motion, in part. The court held that summary judgment was barred by genuine issues of material fact as to: whether officials were deliberately indifferent to the prisoner's protection from harm and the sufficiency of their actions to protect the prisoner from fellow inmates; and whether the inmate was disabled in the context of the Americans with Disabilities Act (ADA). The prisoner had a congenital deformity known as Kasabach Merritt Syndrome which caused his right hand to be severely curled inward at the wrist and caused pain when his extremities were improperly</p>

positioned. The prisoner alleged that prison officials failed to provide him with large handcuffs, rather than standard handcuffs, for transportation. The prisoner had also asked prison authorities for protection from other inmates, but was stabbed in the back five times while in a prison yard. (Standish Maximum Security Facility, and Josephine McCallum Facility, Michigan)

U.S. District Court
CONTAGIOUS
DISEASE

Word v. Croce, 230 F.Supp.2d 504 (S.D.N.Y. 2002). An inmate sued state corrections officials alleging violation of her constitutional rights when she was left in segregated housing after she refused to submit to a tuberculosis test for religious reasons. The district court granted summary judgment to the officials. The court held that the prison regulation that requires segregated housing of inmates who refuse to submit to a test for latent tuberculosis did not violate the First Amendment rights of the inmate, because the regulation was rationally related to a legitimate penological interest in retarding the spread of a deadly disease. (Bedford Hills Corr'l Facil., N.Y.)

2003

U.S. Appeals Court
SMOKE

Atkinson v. Taylor, 316 F.3d 257 (3rd Cir. 2003). An inmate brought a suit under § 1983 claiming that prison officials violated his Eighth Amendment rights by exposing him to environmental tobacco smoke (ETS) that created a serious medical need and posed an unreasonable risk of harm. The district court denied summary judgment for the defendants and they appealed. The appeals court held that the defendant officials were not entitled to qualified immunity on the ETS claim because the right of a prisoner not to be subject to the risk posed by ETS was clearly established, and there was evidence that the inmate was housed for over seven months with "constant" smokers and that officials knew that tobacco smoke was dangerous. The inmate alleged that he suffered numerous symptoms as a result of his exposure to ETS and that no change was made in his housing conditions after he told prison officials about his sensitivity to ETS. (Delaware Multi-Purpose Crim. Justice Facility)

U.S. Appeals Court
DELAY IN CARE

Austin v. Johnson, 328 F.3d 204 (5th Cir. 2003). The parents of a convicted youth offender who was sentenced to attend a one-day "boot camp," brought a § 1983 action to recover damages after the minor suffered severe symptoms from a heat stroke. The district court rejected the camp directors' immunity defenses and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that requiring the minor to perform military-style exercises was neither cruel nor unusual punishment. The court held that the parents' allegation that officials waited nearly two hours before calling an ambulance for the unconscious minor was sufficient to state a claim for deliberate indifference to serious medical needs, and that the defendants were not entitled to official immunity for gross negligence claims. (STAR Boot Camp, Harrison County, Texas)

U.S. District Court
TRANSEXUAL
FAILURE TO PROVIDE
CARE

Barrett v. Coplan, 292 F.Supp.2d 281 (D.N.H. 2003). A state inmate filed a pro se § 1983 action alleging that prison officials failed to adequately treat her Gender Identity Disorder (GID). The district court held that the inmate stated an Eighth Amendment claim for inadequate medical care, and a claim against the state Commissioner of Corrections in his individual capacity. The court held that GID was a serious condition that was recognized by the medical community, and the refusal of prison officials to evaluate and treat her violated the Eighth Amendment. The court found that the Commissioner was subject to liability in his individual capacity because of a policy that prohibited any hormone or surgical treatment for inmates suffering from GID, regardless of their medical condition. (New Hampshire State Prison)

U.S. District Court
FAILURE TO PROVIDE
CARE

Bond v. Aguinaldo, 256 F.Supp.2d 810 (N.D.Ill. 2003). A state prison inmate brought § 1983 action against various physicians and prison officials, alleging deliberate indifference to his medical needs in violation of his Eighth and Fourteenth Amendment rights. The district court held that the inmate's allegation against physicians was sufficient to support § 1983 claim. The inmate complained of back and throat pain that went untreated. He saw an ear, nose and throat (E.N.T.) specialist who found two cysts on his vocal chords and indicated that he was regurgitating acid from his stomach that was eating away the lining in his throat. (Statesville Correctional Center, Illinois)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
PRIVATE PROVIDER

Bowman v. Corrections Corp. of America, 350 F.3d 537 (6th Cir. 2003). The mother of a deceased prisoner sued a private company that managed a prison, a warden and a physician, under § 1983 alleging failure to provide adequate medical care to the prisoner. The district court entered judgment on a jury verdict finding that the defendants were not indifferent to the prisoner's serious medical condition. The district court granted judgment as a matter of law that the company's medical policy, as reflected in its contract with the physician, was unconstitutional. The parties appealed. The appeals court affirmed in part and reversed in part. The appeals court reversed the district court's holding with respect to the constitutionality of the medical policy, along with the injunction awarded on that basis, finding that the issue is moot for the plaintiff and she had no standing to bring such a claim for prospective relief. The appeals court also reversed the district court's award of attorney fees to the mother, as she was no longer the prevailing party. (South Central Correctional Center, Tennessee)

- U.S. District Court
TRANSSEXUAL
FAILURE TO PROVIDE
CARE
- Brooks v. Berg*, 289 F.Supp.2d 286 (N.D.N.Y. 2003). An inmate brought an action against prison officials alleging that they denied him medical treatment for Gender Identity Disorder (GID) in violation of his rights. The district court denied summary judgment for the defendants. The court allowed the defendants to submit a new motion for summary judgment, in light of their concession that the inmate was entitled to treatment. The court noted that the defendants now admitted that the inmate was entitled to "the very medical treatment that was held to be required by this Court in its prior opinion." The court had held that Gender Identity Disorder was a serious medical need and that inmates with GID must receive *some* form of treatment. (Clinton Correctional Facility, New York)
- U.S. District Court
DELIBERATE INDIF-
FERENCE
WORK ASSIGNMENT
- Burleson v. Glass*, 268 F.Supp.2d 699 (W.D.Tex. 2003). A prisoner brought a civil rights action alleging that prison officials were deliberately indifferent to his health when they allowed him to weld with thoriated tungsten electrodes during the two years he worked as a welder at the prison's stainless steel plant. The district court held that a physician's opinion that exposure to thoriated tungsten welding rods causes lung and/or throat cancer was not reliable or relevant because it had never been tested nor submitted for peer review. The court concluded that a reasonable jury could only conclude that the prisoner's cancers were caused from cigarette smoking, given the prisoner's history of heavy smoking, and the abundance of scientific evidence linking smoking to lung and throat cancer. (Texas Department of Criminal Justice, Boyd Unit, and Texas Correctional Industries)
- U.S. Appeals Court
FEMALE PRISONERS
GID-Gender Identity
Disorder
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE
- De'Lonta v. Angelone*, 330 F.3d 630 (4th Cir. 2003). A female inmate brought a civil rights action alleging that prison officials and doctors had denied her adequate medical treatment for her gender identity disorder (GID), in violation of the Eighth Amendment. The district court dismissed the suit for failure to state a claim and the inmate appealed. The appeals court reversed and remanded, finding that the inmate stated a claim by alleging inadequate medical treatment to prevent self-mutilation upon withdrawal of GID hormone therapy. The court noted that the inmate's need for continued protection from self-mutilation was a serious medical need to which prison officials could not be deliberately indifferent. (Mecklenburg Correctional Center, Virginia)
- U.S. District Court
DUE PROCESS
PRETRIAL
DETENTION
ADA- Americans with
Disabilities Act
- Disability Advocates, Inc. v. McMahon*, 279 F.Supp.2d 158 (N.D.N.Y. 2003). An advocacy group for disabled persons, and an individual subjected to a mental hygiene pickup, brought an action under the Americans with Disabilities Act (ADA) and the Rehabilitation Act, alleging that the state criminalized mental hygiene pickups by treating or labeling them as arrests, thereby discriminating against persons with mental disabilities. The district court granted summary judgment for the defendants. The court held that the custodial detention of a mentally ill person constituted an "arrest" but that the detention did not violate due process. The court found that an individual taken into custody in connection with a mental hygiene pickup was not stigmatized by reason of her disability in violation of ADA or the Rehabilitation Act, where police acted because the individual appeared to be mentally ill and was acting in a manner that was likely to result in serious harm to herself or to others. (New York State Police)
- U.S. District Court
MEDICATION
DELIBERATE
INDIFFERENCE
- Engelleiter v. Brevard County Sheriff's Dept.*, 290 F.Supp.2d 1300 (M.D.Fla. 2003). A pretrial detainee who as an insulin-dependent diabetic brought a civil rights action against a county sheriff's department, claiming deliberate indifference to his serious medical condition. The district court granted summary judgment in favor of the department. The court held that even if jail officials were deliberately indifferent to the detainee's serious medical condition by giving him only one shot of insulin during a period of approximately 48 hours, the detainee did not establish the existence of a "policy or custom" based on treatment decisions by the department or the jail nurses. (Brevard County Detention Center, Florida)
- U.S. Appeals Court
DENTAL CARE
DELIBERATE
INDIFFERENCE
- Farrow v. West*, 320 F.3d 1235 (11th Cir. 2003). A state prisoner brought a pro se § 1983 action against a dentist, nurse and the dentist's supervisor, alleging that the defendants' 15-month delay in providing him with dentures constituted deliberate indifference to his serious medical need. The district court granted judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed in part, vacated and reversed in part. The appeals court held that the prisoner's evidence established a serious medical need and that an issue of fact existed as to whether the dentist's conduct displayed deliberate indifference. (Easterling Correctional Facility, Alabama)
- U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE
STAFF
- Gaines v. Choctaw County Com'n.*, 242 F.Supp.2d 1153 (S.D.Ala. 2003). Administrators of a deceased inmate's estate asserted state and federal law claims against a sheriff and county, alleging that the inmate's death resulted from the denial of medical treatment while the inmate was a pretrial detainee in a county jail. The district court held that the county could not be held liable for any alleged lack of training or supervision of the sheriff, or sheriff's employees. The court found that allegations failed to support a claim against the county based on its statutory duty to maintain a jail, but that the allegations supported a claim against the county for an alleged breach of duty to fund medical care, where the alleged failure to provide adequate

funding to meet the medical needs of inmates supported a claim for deliberate indifference under § 1983. The court noted that although the county did not have a duty to appoint a physician, but merely had the authority to do so, the county had the authority to act and its failure to do so could be construed as a county policy. The court held that the allegations stated a § 1983 claim under the Fourteenth Amendment against the sheriff in his individual capacity, based on his direct participation. The sheriff allegedly removed the inmate from the hospital against medical advice, failed to provide adequate treatment during his subsequent incarceration, and refused to readmit the inmate to the hospital. At the time of his arrest, the inmate was a patient at an infirmary where he was being treated for acute renal failure and pneumonia. The sheriff personally removed the inmate from the hospital, over the strenuous objections of the inmate's physician. He was placed in jail, where his condition deteriorated to the point that he was unable to walk or to feed himself. His family found him in worsening condition during their visits and eventually paid other inmates to help bathe and feed the inmate. Jail staff allegedly refused to administer prescription medication because, according to the family, the Sheriff's policies did not require them to do so. The sheriff finally took the inmate to a nearby medical clinic where the treating physician recommended that the inmate be hospitalized, but the sheriff refused. The family contacted the state human resources agency, which intervened and caused the inmate to be admitted to the hospital. Upon admission, he was found to be dehydrated and malnourished and his illness had become irreversible; he died a few days later. (Choctaw County Jail, Alabama)

U.S. District Court
DENTAL CARE
PRIVATE PROVIDER
FAILURE TO PROVIDE
CARE

Goodnow v. Palm, 264 F.Supp.2d 125 (D.Vt. 2003). A prisoner brought a civil rights suit against a private medical contractor and its prison dentist, alleging violation of his Eighth Amendment rights by failing to treat his broken tooth during a seven-month period of incarceration at a state prison. The district court denied summary judgment in favor of the defendants. The court ordered further proceedings to determine if the defendants relied, in good faith, on a policy that called for treatment within 24 hours when a prisoner presents significant pain, and placement on an appointment list for other problems. (Northwest Corr'l Facility, EMSA Corr'l Care, Inc., Vermont)

U.S. District Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE

Joseph Ex Rel. Estate of Harbin v. City of Detroit, 289 F.Supp.2d 863 (E.D.Mich. 2003). The personal representative of the estate of an arrestee brought a § 1983 action in state court, alleging deliberate indifference to his serious medical needs. The representative alleged that jailers delayed attending to the arrestee when he repeatedly complained of chest pain. The arrestee was eventually taken to a hospital where he died 12 hours later. The district court granted summary judgment for the defendants, finding that the police department's alleged five-hour delay in taking the arrestee to the hospital did not rise to the level of an objective, serious harm. The court noted that there was no evidence that any officer actually perceived, or knew of, a substantial risk of serious harm, nor that his death could have been avoided if he had received more prompt medical treatment. (Sixth Precinct Station House, Detroit Police Department, Michigan)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Lolli v. County of Orange, 351 F.3d 410 (9th Cir. 2003). A pretrial detainee filed a § 1983 action alleging the use of excessive force, and deliberate indifference to his serious medical needs. The district court entered judgment in favor of the defendants. The appeals court affirmed in part, and reversed in part and remanded. The appeals court held that there were genuine issues of material fact, precluding summary judgment, as to whether sheriff's department officers were aware that the detainee was diabetic and was showing signs of a ketoacidic condition, but failed to provide him with food. The court also held that summary judgment was precluded on the issue of whether sheriff's department officers employed excessive force against the detainee. The detainee claimed that a deputy grabbed him and pulled him to the ground and that several deputies then kicked him, punched him, hit him with batons or similar objects, twisted his arms and legs, poked his face, knuckled his ear, and pepper sprayed him. The detainee had been arrested for an outstanding warrant on an unpaid parking ticket. The detainee told the arresting officer that he was diabetic and needed to eat as soon as possible. Upon admission to the jail the detainee's blood was tested and a nurse told him that he would receive food promptly. The nurse's records indicated that the detainee was not combative, verbally abusive, or agitated at intake. (Orange County Men's Jail, California)

U.S. Appeals Court
PRETRIAL DETAINEE
RESTRAINTS

Lumley v. City of Dade City, Fla., 327 F.3d 1186 (11th Cir. 2003). An arrestee who was wounded in a shoot-out brought a suit against police officials. The district court granted summary judgment in favor of the defendants on the arrestee's Sixth Amendment claim, but rejected their qualified immunity defense, and both sides appealed. The appeals court affirmed in part and reversed in part. The court held that a law enforcement officer's decision while he was present in the hospital watching the arrestee as he awaited surgery for a bullet wound, that the arrestee should be strapped to the hospital bed in order to minimize the risk of flight, did not rise to the level of a substantive due process violation. The court found that the officers who took no part in a doctor's decision to remove a bullet from the arrestee's jaw but not to treat a fracture of his right cheek bone, could not be held vicariously liable for the doctor's conduct. (Dade City Police Dept., Florida)

<p>U.S. Appeals Court DELAY IN CARE</p>	<p><i>Mace v. City of Palestine</i>, 333 F.3d 621 (5th Cir. 2003). The estate of a suspect who was fatally injured during a standoff with police officers brought a § 1983 action. The district court granted summary judgment for the defendants and the estate appealed. The appeals court affirmed. The court held that a police chief's decision to require an officer to drive an ambulance, so that both medical personnel could attend to the wounded suspect during the drive to the hospital, did not violate the suspect's due process right to medical care. The court noted that the suspect subsequently died at the hospital and the driving arrangement had caused a delay at the arrest scene, but found that there was no evidence that the chief was deliberately indifferent to the suspect's medical needs. (City of Palestine, Texas)</p>
<p>U.S. District Court DENTAL CARE DELIBERATE INDIF- FERENCE</p>	<p><i>Majors v. Ridley-Turner</i>, 277 F.Supp.2d 916 (N.D.Ind. 2003). A pro se prisoner brought a § 1983 action against prison officials, alleging Eighth Amendment violations in connection with dental treatment he received in prison. The district court dismissed the action, finding that the prisoner's allegations were insufficient to state a claim of deliberate indifference. The inmate alleged that his tooth extraction did not go well, led to the cutting of his jawbone, damage to other teeth, nerve damage and the loss of feeling on the right side of his face. The court noted that the allegations implied negligence, incompetence or malpractice. (Mid-American Health Care, Indiana)</p>
<p>U.S. Appeals Court RECORDS</p>	<p><i>Matos Ex Rel. Matos v. O'Sullivan</i>, 335 F.3d 553 (7th Cir. 2003). The administrator of the estate of a state prisoner, who committed suicide by hanging himself while incarcerated, brought a § 1983 action alleging deliberate indifference to the prisoner's risk of suicide. The district court granted summary judgment in favor of all defendants, and the administrator appealed. The appeals court affirmed, finding that the administrator failed to show that prison officials were deliberately indifferent. The court noted that although a medical form existed indicating that the prisoner had once attempted suicide, the form was not included in the prisoner's medical records, and officials asserted that they never knew about that form. The prisoner never told any official that he felt suicidal or depressed beyond his control, despite having been asked that question numerous times during intake interviews, psychological evaluations, crisis counseling, and physical exams. (Western Illinois Correctional Facility)</p>
<p>U.S. District Court FAILURE TO PROVIDE CARE DELIBERATE INDIF- FERENCE</p>	<p><i>McCoy v. Goord</i>, 255 F.Supp.2d 233 (S.D.N.Y. 2003). A former inmate brought a pro se § 1983 action against 26 officials and employees of a state corrections department, alleging that his constitutional rights were violated while he was incarcerated. The district court dismissed the case. The court held that the complaint alleging that a prison psychologist displayed immediate prejudice against the inmate, accused him of being highly litigious, and noted in records from counseling sessions that the inmate appeared to be manipulating the prison's mental health services for possible future litigation or immediate gratification, did not support claims for deliberate indifference. The court found that the mental health employee did not act with deliberate indifference, notwithstanding allegations that the employee, upon interviewing the inmate after he had passed out and complained of amnesia, sent him back to his cell. (Sing Sing Correctional Facility, New York)</p>
<p>U.S. District Court FAILURE TO PROVIDE CARE</p>	<p><i>Mladek v. Day</i>, 293 F.Supp.2d 1297 (M.D.Ga. 2003). An arrestee brought a suit against county officials alleging they violated his Fourth, Eighth and Fourteenth Amendment rights when they used excessive force during and after his arrest, and when they denied him medical attention as a pretrial detainee. The district court dismissed the suit in part, and denied dismissal in part. The court held that allegations that a deputy violently handcuffed the arrestee with no justification, and that the handcuffing caused physical injury to the arrestee, were sufficient to state an excessive force claim under the Fourth Amendment. The court held that the alleged denial of medical attention for the detainee's injuries during the one day he was detained was insufficient to assert a constitutional violation. (Walton County, Georgia)</p>
<p>U.S. Appeals Court FAILURE TO PROVIDE CARE DELAY IN CARE</p>	<p><i>Natale v. Camden County Correctional Facility</i>, 318 F.3d 575 (3rd Cir. 2003). A detainee who was an insulin-dependent diabetic, brought claims under § 1981 and § 1983 in state court, alleging that he suffered a stroke due to a delay in the administration of insulin during his first twenty-one hours of incarceration. The case was removed to federal court, where summary judgment was granted to the defendants. The detainee appealed. The appeals court reversed and remanded, finding that fact questions precluded summary judgment on the detainee's claim that his right to adequate medical care was violated, and to whether the actions of private prison health service employees could be attributed to their employer. The court noted that the employees failed to call the detainee's treating physician to determine how often he needed insulin, and that they did not even ask the detainee. (Camden County Corr'l Facility, Prison Health Services, Inc., New Jersey)</p>
<p>U.S. District Court DELIBERATE INDIF- FERENCE</p>	<p><i>Pate v. Peel</i>, 256 F.Supp.2d 1326 (N.D.Fla. 2003). A state inmate brought an action against a prison nurse practitioner, alleging retaliation in violation of the First Amendment and deliberate indifference to his known serious medical conditions in violation of the Eighth Amendment. The district court granted summary judgment in favor of the nurse. The inmate had filed a grievance challenging denial of a medical pass for his bashful bladder syndrome (BBS). He had been cleared</p>

for arduous field force duty after having been assigned to a less demanding welding job, which the inmate alleged was an adverse action. The court held that the inmate failed to establish that his filing of a grievance was a substantial or motivating factor in the decision to transfer him to field force duty status. The court noted that denial of a BBS pass was required by prison policy and had already been approved by the nurse practitioner's superiors at the time of the decision to clear the inmate for unrestricted duty. (Apalachee Correctional Institution, Florida)

U.S. District Court
FAILURE TO PROVIDE
CARE

Perkins v. Brown, 285 F.Supp.2d 279 (E.D.N.Y. 2003). An inmate brought a pro se § 1983 action alleging use of excessive force by corrections officers and failure to provide medical care. The district court held that the inmate would be treated as a pretrial detainee. The court granted summary judgment in favor of the officers. The court held that the officers did not use excessive force against the detainee when they forcibly undressed and searched him in a courthouse holding cell. The court found that the detainee's injuries were minor and noted that he was taken to the courthouse infirmary immediately after he was injured. (New York City Department of Correction, Brooklyn Criminal Courthouse)

U.S. District Court
DELAY IN CARE
DELIBERATE INDIF-
FERENCE

Richardson v. Nassau County, 277 F.Supp.2d 196 (E.D.N.Y. 2003). A jail inmate sued a county and sheriff, alleging deliberate indifference to his glaucoma condition. The district court granted summary judgment in favor of a jail nurse, sheriff, and county. The court denied summary judgment for medical officials, finding that it was precluded by fact issues as to whether the worsening of the glaucoma condition could be the result of the withdrawal of medication. The inmate alleged that there was a 51-day delay in the provision of an eye exam and the resumption of his medication. (Nassau County Correctional Center, New York)

U.S. District Court
INADEQUATE
TREATMENT
AIDS
DELIBERATE
INDIFFERENCE

Rivera v. Alvarado, 240 F.Supp.2d 136 (D.Puerto Rico 2003). The mother of a deceased prisoner brought a § 1983 action alleging that corrections officials and doctors at a hospital failed to adequately treat and provide medical care for the prisoner, in violation of the Eighth Amendment. The district court dismissed the action, finding that the complaint did not support a conclusion that there was deliberate indifference by the doctors. The court found that although the prisoner's AIDS diagnosis and his condition constituted a serious medical need, the mother failed to establish that the doctors knew that the prisoner was at risk and decided not to do anything to prevent harm. The court noted that prisoner was admitted to a hospital where the medical staff took x-rays and administered antibiotics, and that the defendant doctors-- a first year resident and the attending physician in charge of several residents-- did not play a significant role in the decisions regarding the inmate's treatment. (Correctional Complex of Bayamon, and Bayamon Regional Hospital, Puerto Rico)

U.S. District Court
PRIVACY

Rodriguez v. Ames, 287 F.Supp.2d 213 (W.D.N.Y. 2003). A state prisoner brought a civil rights action against a physician, alleging violation of his constitutional right to privacy. The district court granted summary judgment for the physician. The court held that the prisoner's right to privacy was not violated by the physician's visual rectal exam, even though the exam occurred in his cell in the presence of his cellmate. The court noted that the examination was cursory and it was necessary to plan an appropriate course of treatment, and that the cellmate, doctor and nurse were all men. According to the court, prisoners have a limited right to bodily privacy under the Eighth Amendment. The prisoner had sought \$750,000 for what he described as his "degradation and extreme humiliation." (Collins Correctional Facility, New York)

U.S. District Court
CONTAGIOUS
DISEASES
RELIGION

Selah v. Goord, 255 F.Supp.2d 42 (N.D.N.Y. 2003). An inmate brought an action against a state corrections department, challenging its policy of placing inmates who refuse annual, mandatory tuberculosis skin tests on religious grounds, into tuberculin hold for one year. The district court granted the inmate's motion for a preliminary injunction. The court held that the tests were a violation of the inmate's right to free exercise of religion, but the inmate was required to prove that he "sincerely held" the religious beliefs professed by him, and that he was denied reasonable accommodation for the exercise of his beliefs. The court found that there was no legitimate connection between the tuberculin hold and the ease of monitoring, as experts testified that there would be no greater cost or effort to monitor prisoners if they were in the general population. (New York State Department of Corrections)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
PSYCHOTROPIC DRUG

Singleton v. Norris, 319 F.3d 1018 (8th Cir. 2003). A death row prisoner who was being forcibly administered psychotropic medication sought an order ordering a halt to the treatment. The state court denied his motions and he petitioned for a writ of habeas corpus seeking a stay of execution of his death sentence. The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that, on a matter of first impression, a state does not violate the Eighth Amendment or due process by executing an inmate who has regained competency through forced medication that is part of appropriate medical care. (State of Arkansas)

- U.S. Appeals Court
FAILURE TO PROVIDE
CARE
AIDS
MEDICATION
- Smith v. Carpenter*, 316 F.3d 178 (2nd Cir. 2003). A prison inmate brought a § 1983 action against prison officials, alleging deliberate indifference to his serious medical needs. The district court denied the inmate's motion for a new trial after the court entered a verdict for the officials, and the inmate appealed. The appeals court affirmed, finding that the proper focus should have been on the inmate's missed HIV medication rather than on his HIV-positive status alone. The appeals court held that the jury was free to consider the absence of concrete medical injury to the inmate as a relevant factor in determining whether the alleged deprivation of his HIV medication for several days, on two occasions, was sufficiently serious. The two incidents of medication deprivation were the result of a delay in refilling his prescription and confiscation of his medication in a random search of his living quarters. (Camp Pharsalia Corr'l Facility, New York)
- U.S. District Court
DELIBERATE INDIF-
FERENCE
MEDICATION
FALURE TO PROVIDE
CARE
- Smith v. Michigan*, 256 F.Supp.2d 704 (E.D. Mich. 2003). The estate of a prison inmate sued the state and individuals, alleging that their failure to respond to the inmate's requests for medication and medical attention, following his return from the hospital, precipitated his death. The district court dismissed the case, in part. The court held that the estate stated a claim for violation of the inmate's Eighth Amendment rights. The estate alleged that the officials ignored inmate's request for follow up medication and monitoring after his return from the hospital, causing him to develop fatal pneumonia. The court found that deliberate indifference was shown through the officials' lack of response when the inmate asked for the continuation of medications and follow up of medical care. (Mound Correctional Facility, Michigan)
- U.S. District Court
DELAY IN CARE
TRANSFER
DELIBERATE INDIF-
FERENCE
- Sulton v. Wright*, 265 F.Supp.2d 292 (S.D.N.Y. 2003). A prison inmate sued physicians and a state corrections department's medical director, alleging that his Eighth Amendment rights were violated when surgery to repair his torn knee ligaments was delayed for four years. The district court denied qualified immunity for the defendants. The court held that the inmate stated a claim of deliberate indifference against the physicians, and against the medical director based on a policy that contributed to the delay. The policy required transferee inmates to be evaluated as new cases, causing a delay in the inmate's surgery. (Wende Correctional Facility, Green Haven Correctional Facility, New York)
- U.S. District Court
NEGLIGENCE
FAILURE TO PROVIDE
CARE
- Thomas v. Nassau County Correctional Center*, 288 F.Supp.2d 333 (E.D.N.Y. 2003). An inmate brought a pro se action alleging that he was denied adequate treatment for his injured hand. The district court dismissed the case. The court held that negligence with respect to an inmate's medical care, even if it amounts to medical malpractice, does not constitute a violation of the due process clause or the Eighth Amendment. The inmate had injured his hand during a jail recreational activity and was taken to the jail's medical treatment center where his hand was x-rayed. Although his pain continued, he never received medical treatment from a hand specialist, although a jail physician told him this was necessary. (Nassau County Corr'l Center, New York)
- U.S. District Court
DENTAL CARE
RELEASE
- U.S. v. Carneglia*, 238 F.Supp.2d 502 (E.D.N.Y. 2003). An inmate asked the district court to order prison officials to allow him to receive dental implant treatment from his personal dentist, outside the correctional facility in which he was confined. The district court denied the inmate's application, finding that it lacked jurisdiction to direct such medical treatment. The court noted that, in any event, it would not direct such treatment because the inmate was not a good candidate for "furlough" based on his conviction and previous record. According to the court, dentures that would be provided by the facility, constituted sufficient dental treatment. The requested treatment would have required the inmate to visit his dentist 4 to 6 times over a period of 6 weeks. (Federal Correctional Institution, Fort Dix, New York)
- U.S. District Court
DENTAL CARE
INADEQUATE CARE
- Wall v. Dion*, 257 F.Supp.2d 316 (D.Me. 2003). A county jail inmate suffering from hepatitis C brought a pro se state court § 1983 action against private contractors that provided medical services to inmates, alleging inadequate dental care. The district court denied the contractors' motion to dismiss, finding that the inmate's failure to allege a blanket custom or policy of not treating inmates with hepatitis C, did not preclude his § 1983 claim. The court noted that even absent a blanket policy, if the inmate could demonstrate that the contractor's employee was a final policymaker with respect to treatment, and decided not to treat the inmate pursuant to an unconstitutional policy, the contractors could be liable. (Cumberland County Jail, Maine)
- U.S. Appeals Court
INADEQUATE CARE
DELIBERATE
INDIFFERENCE
- Wallin v. Norman*, 317 F.3d 558 (6th Cir. 2003). A former state prisoner filed a § 1983 action against various prison officials alleging that he was denied proper medical treatment while in prison, and that the officials were deliberately indifferent to his serious medical needs. The district court denied the defendants' motion to dismiss and they appealed. The appeals court affirmed in part, and reversed in part and remanded. The appeals court held that the prisoner's allegations stated a claim against the officials for deliberate indifference. The former prisoner alleged that he suffered from medical conditions including a urinary tract infection and leg infection while he was incarcerated, and that those conditions worsened and developed into more serious conditions as a result of inadequate medical treatment provided to him. (Southern Michigan Prison)

U.S. District Court
COSTS
FAILURE TO PROVIDE
CARE

Wilson v. Vannatta, 291 F.Supp.2d 811 (N.D.Ind. 2003). A state prison inmate brought a § 1983 action against corrections officials, seeking damages and injunctive relief. The district court held that the inmate stated claims for excessive use of force, deliberate indifference to his serious medical needs, and Eighth Amendment violations resulting from deprivation of food and exercise. The inmate alleged that a doctor had prescribed a pain reliever, muscle relaxer, and physical therapy for his medical problems, but that a prison official canceled his treatment because the prison could not afford the cost. The inmate alleged that prison lockup unit staff deprived him of food and recreation, gave him rotten food, reduced his ration every day, and gave him trays with food missing. The inmate allegedly lost twenty-five pounds and suffered from stomach pain and headaches. (Miami Correctional Facility, Indiana)

2004

U.S. Appeals Court
DELIBERATE IN-
DIFFERENCE
MEDICATION

Bender v. Regier, 385 F.3d 1133 (8th Cir. 2004). A state prisoner who tested positive for Hepatitis C brought a § 1983 action against a prison physician, alleging violation of his Eighth Amendment rights in connection with the physician's failure to treat the prisoner with interferon before his release. The district court denied the physician's motion for summary judgment on qualified immunity grounds and the physician appealed. The appeals court reversed and remanded, finding that the physician did not act with deliberate indifference. The court noted that the physician monitored and charted the prisoner's liver enzyme levels, ordered testing, counseled the prisoner about the use of pain medications that could adversely affect the liver, and later referred the prisoner to a Hepatitis C specialist. The court found it was reasonable for the physician to believe that he lacked authority to order interferon treatment without confirmation from the specialist concerning further treatment. (South Dakota State Penitentiary)

U.S. Appeals Court
DELIBERATE IN-
DIFFERENCE
FAILURE TO PROVIDE
CARE

Blackmore v. Kalamazoo County, 390 F.3d 890 (6th Cir. 2004). A former detainee brought an action under § 1983 asserting claims under the Eighth and Fourteenth Amendments for failure to provide prompt medical treatment during his detention. The district court granted summary judgment in favor of the defendants, and the detainee appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the officials' delay in treatment posed a substantial risk of serious harm, where the seriousness of the detainee's appendicitis could be discerned without competent medical proof, and the detainee's manifestations of pain and injury during his detention were so obvious that even a layperson could have easily recognized the necessity for a doctor's attention. The court also found unresolved fact issues as to the officials' culpable state of mind, where the detainee had complained of stomach pain within an hour of his arrest, and officials were aware that the detainee was subsequently experiencing sharp abdominal pain and vomiting. The detainee received no medical attention until more than 50 hours after his arrest. (Kalamazoo County Jail, Michigan)

U.S. District Court
TRANSPORTATION

Boles v. Neet, 333 F.Supp.2d 1005 (D.Colo. 2004). A prison inmate brought a civil rights action against a warden, alleging that prison officials had refused to allow him to wear religious garments required by Jewish law while being transported from prison to receive medical care. Because he was not allowed to wear the garments the prisoner refused to be transported and his surgery was postponed. The district court denied summary judgment for the warden, ordering further proceedings to determine whether the restrictions were reasonable. The court noted that in March 2001, when this incident occurred, it was clearly established that unreasonable limitations placed on prisoners who were exercising their religious rights were a violation of the First Amendment. The inmate has insisted on wearing his "yarmulke" (a skull cap or head covering) and "tallit katan" (undergarment bearing fringes, or "tzitzit") (Fremont Correctional Facility, Colorado)

U.S. District Court
DENTAL CARE

Borges v. Piatkowski, 337 F.Supp.2d 424 (W.D.N.Y. 2004). A state prison inmate brought a § 1983 action against a prison dentist, alleging deliberate indifference to his serious medical needs. The district court denied the dentist's motion for summary judgment, finding that special circumstances justified any failure by the inmate to exhaust his administrative remedies. The court noted that the inmate did not know until after his transfer to a different facility, that the dentist might have known of the true nature of the inmate's medical condition and intentionally refused to treat that condition. By the time the inmate learned that he had a foreign object in his tooth socket and that the dentist might have known about it and done nothing to address it, the 14-day period for filing a grievance had passed. (Southport Correctional Facility, New York)

U.S. Appeals Court
AIDS
DELIBERATE INDIF-
ERENCE

Brown v. Johnson, 387 F.3d 1344 (11th Cir. 2004). A state prisoner with HIV and hepatitis brought a § 1983 action alleging deliberate indifference to his serious medical needs. The district court dismissed the complaint and the prisoner appealed. The appeals court reversed and remanded. The court held that a state prison medical administrator and doctor were deliberately indifferent to the serious medical needs of the prisoner, where they had completely withdrawn the prescribed treatment for his illnesses, despite his deteriorating condition. (Georgia State Prison)

- U.S. Appeals Court
 DELIBERATE INDIF-
 FERENCE
 FAILURE TO PROVIDE
 CARE
- Brown v. Missouri Dept. of Corrections*, 353 F.3d 1038 (8th Cir. 2004). A state inmate brought a § 1983 action, alleging that officials were liable for injuries he received in an accident while en route to a correctional facility, for denying post-accident care, and for providing inadequate care. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the inmate had sufficiently alleged § 1983 claims for deliberate indifference to his safety and deliberate indifference to his medical needs. The inmate alleged that he asked officials to fasten his seatbelt and they refused, and that he was unable to do it himself because he was shackled. The inmate also alleged that he asked correctional officers of three occasions to let him see medical staff, claiming he was having severe complications from the accident, including difficulty seeing and standing and shaky legs, but his requests were ignored. (Jefferson City Correctional Center, Missouri)
- U.S. District Court
 CONTAGIOUS
 DISEASE
 FAILURE TO PROVIDE
 CARE
- Brown v. Mitchell*, 327 F.Supp.2d 615 (E.D.Va. 2004). The administratrix of the estate of a jail inmate who contracted and died from bacterial meningitis while in jail brought a civil rights action. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that summary judgment was precluded by fact issues as to whether the city had a policy or custom of jail mismanagement, and whether any policy or custom caused the inmate's death. The court also found that there were fact issues as to whether the sheriff violated the Eighth Amendment regarding jail overcrowding. The court ordered further proceedings to determine if the city council was aware of the long history of overcrowding, poor ventilation and structural defects in the jail. The court found that the sheriff did not violate the Eighth Amendment by failing to maintain sanitation in the jail, because sanitation deficiencies were caused by overcrowding, not by her failure to perform. The sheriff was also not found liable for failure to train her staff, where she had an illness-recognition and response program in place which consisted of initial and follow-up training, combined with surprise inspections. The court noted that the guards' failure to respond to the obvious illness of the inmate could be attributed to their failure to apply their training, for which the sheriff was not responsible. The court held that summary judgment was precluded by material issues of fact as to whether the jail physician showed deliberate indifference when he ordered the inmate returned to overcrowded and ill-ventilated quarters, essentially without treatment. (Richmond City Jail, Virginia)
- U.S. Appeals Court
 WORK ASSIGNMENT
 DELIBERATE INDIF-
 FERENCE
- Burleson v. Texas Dept. of Criminal Justice*, 393 F.3d 577 (5th Cir. 2004). A prison inmate brought a civil rights action alleging that prison officials were deliberately indifferent to his health when they allowed him to weld with thoriated tungsten electrodes during the two years he worked as a welder at a prison stainless steel plant. The district court granted summary judgment in favor of the inmate and the inmate appealed. The appeals court affirmed, finding that the inmate's expert did not present any reliable evidence regarding the extent of the inmate's level of harmful exposure and was unable to link the inmate's type of cancer to the type of electrodes the inmate used while welding. The inmate alleged that thorium dioxide is a compound that is distributed in the air during the welding process and that the U.S. Department of Health and Human Services had determined that thorium dioxide is a carcinogen. (Boyd Unit, Texas Department of Criminal Justice- Institutional Division)
- U.S. District Court
 DELIBERATE INDIF-
 FERENCE
 DIET
- Carrion v. Wilkinson*, 309 F.Supp.2d 1007 (N.D.Ohio 2004). A state inmate filed an action under § 1983 and the Americans with Disabilities Act (ADA), alleging that prison officials failed to provide him with proper insulin-dependent diabetic meals. The district court dismissed the action. The court held that the officials were not deliberately indifferent, because the officials told the inmate that his diet was a "self monitored diet," informed the inmate of available diabetic exchanges, provided him with insulin and other medications, and promptly responded to the inmate's requests. (Richland Correctional Institution, Ohio)
- U.S. District Court
 DELIBERATE INDIF-
 FERENCE
 DENTAL CARE
- Carter v. Fagin*, 348 F.Supp.2d 159 (S.D.N.Y. 2004). A state inmate filed an action seeking an injunction to compel prison medical staff to treat his jaw condition by permitting him to have warm water compresses. The district court denied the inmate's motion for a preliminary injunction and also denied the defendants' motion to dismiss. The inmate alleged that he was suffering from great pain, that the compress treatment had been recommended and had proven effective in alleviating the pain, and that no other treatment had proven effective. According to the inmate, a physician knew the compresses were effective and yet discontinued them despite the recommendations of all physicians and dentists who had examined the inmate. The court held that the inmate stated a deliberate indifference claim. (Sing Sing Corr'l Facility, New York)
- U.S. District Court
 DELIBERATE INDIF-
 FERANCE
 MEDICATION
 FAILURE TO PROVIDE
 CARE
- Cooper v. Office of Sheriff of Will County*, 333 F.Supp.2d 728 (N.D.Ill. 2004). A pretrial detainee's surviving father brought an action against a county, sheriff, and deputies after his son died as the result of an asthma attack while he was incarcerated. The district court held that state law did not preclude the possibility of respondeat superior liability on the sheriff for a deputy's intentional or willful conduct. According to the court, the father's allegations were sufficient to state a § 1983 claim against the deputies based on deliberate indifference to the detainee's serious medical condition. The court noted that the central allegation in the complaint was that the deputies failed to provide timely medical care and treatment to the detainee. The detainee had

been placed in the general population of the jail, and had previously had an asthma attack that required inhaler medication. When the detainee had a subsequent attack, he and other inmates informed deputies on duty that immediate medical care was necessary, but the deputies failed to act in a timely manner and the detainee died. (Will County Jail, Illinois)

U.S. District Court
FAILURE TO PROVIDE
CARE

Davis v. Reilly, 324 F.Supp.2d 361 (E.D.N.Y. 2004). A prisoner who was injured when he slipped and fell on a wet floor outside of a shower area brought a pro se § 1983 action, alleging failure to remedy the wet shower area and inadequate medical care. The district court dismissed the action. The court held that the inmate failed to exhaust administrative remedies, and that the injuries the inmate sustained did not constitute a serious medical condition. The inmate had sprained his back and neck, and experienced pain in his left testicle. The court found that failure to provide mats for the wet shower area did not rise to the level of a constitutional violation. (Nassau County Correctional Center, New York)

U.S. District Court
SUICIDE
EMERGENCY CARE

Dipace v. Goord, 308 F.Supp.2d 274 (S.D.N.Y. 2004). The estate and survivors of a state inmate brought a § 1983 action alleging that corrections and mental health officials were deliberately indifferent to the inmate's serious mental illness, which resulted in his suicide. The district court held that corrections employees who failed to attempt to resuscitate the inmate did not violate any clearly established right of the inmate, and ruled that the employees were entitled to qualified immunity. The officer who first discovered the inmate hanging in his cell did not attempt to resuscitate the inmate because he believed that the inmate was already dead, and that emergency help was on its way. The court noted that there was no evidence that the inmate had a pulse or was breathing at the time the corrections officer arrived. (Sullivan Correctional Facil., New York)

U.S. District Court
DELAY OF CARE
DELIBERATE INDIF-
ERENCE

Evans v. Manos, 336 F.Supp.2d 255 (W.D.N.Y. 2004). A state inmate brought a pro se § 1983 action against a corrections officer, doctor and dentist. The district court held that the prison doctor's alleged conduct of delaying the inmate's examination and treatment for an alleged back injury did not amount to deliberate indifference, in violation of the Eighth Amendment. According to the court, the inmate was given pain relievers both before and after he was evaluated by the physician, x-rays were negative, and there was no evidence that the doctor intended to cause the inmate to suffer unnecessary pain. (Southport Correctional Facility, New York)

U.S. District Court
RECORDS
DELAY IN CARE
FAILURE TO PROVIDE
CARE

Ginest v. Board of County Com'rs. of Carbon County, 333 F.Supp.2d 1190 (D.Wyo. 2004). County jail inmates brought a class action against a county and sheriff, alleging deliberate indifference to the inmates' medical needs, and seeking declaratory and injunctive relief. Following the entry of a consent decree governing medical care, the inmates sought a contempt order, alleging specific violations of the decree's terms. The defendants moved to terminate the consent decree. The district court held that the county was potentially liable, and the sheriff was potentially liable for failure to train. The court found that the constitutional rights of the inmates were violated by inadequate medical care and inadequate medical records at the jail, including lack of training in suicide prevention. According to the court, jail medical records that are inadequate, inaccurate and unprofessionally maintained are actionable under the Eighth Amendment. The court found that many physician progress notes and other medical records were missing, there was no written definition of a medical emergency requiring immediate care, there were numerous delays in responding to inmate requests for medical care, there was no suicide prevention training nor written policies, and potentially suicidal inmates were often isolated physically and provided with little or no counseling. (Carbon County Jail, Wyoming)

U.S. District Court
DENTAL CARE

Green v. Khrisnaswamy, 328 F.Supp.2d 417 (W.D.N.Y. 2004). A state prison inmate brought a § 1983 action against a dentist employed by a state corrections department, alleging cruel and unusual punishment relating to the filling of the inmate's cavities. The inmate alleged that the dentist should have given him the option of using plastic tooth-colored fillings instead of metal amalgam. The district court held that the inmate did not establish deliberate indifference to a serious medical need. (Attica Correctional Facility, New York)

U.S. Appeals Court
DENTAL CARE
DELIBERATE INDIF-
ERENCE

Hartsfield v. Colburn, 371 F.3d 454 (8th Cir. 2004). A pretrial detainee brought a § 1983 action asserting that jail personnel were deliberately indifferent to his medical needs. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed in part and reversed in part, finding that fact issues precluded summary judgment on the deliberate indifference claim and whether a jail custom or policy contributed to the alleged deliberate indifference. The jail personnel allegedly failed to arrange for dental treatment until about six weeks after the detainee's written request for it, causing him to suffer further pain and infection. (Scott County Jail, Iowa)

- U.S. District Court
MALPRACTICE
PRIVATE PROVIDER
FAILURE TO PROVIDE
CARE
DELIBERATE INDIF-
FERENCE
- Jackson v. Fauver*, 334 F.Supp.2d 697 (D.N.J. 2004). Fifteen former and current prisoners brought separate actions against corrections officials and employees and a contractor hired to operate a prison, alleging deliberate indifference to their serious medical needs and medical malpractice. The district court held that there were genuine issues of material fact as to whether the prison defendants were deliberately indifferent to one inmate's prostate cancer and to another inmate's another inmate's HIV/AIDS condition and Hodgkins disease. The court found genuine issues of material fact as to whether the contractor hired to operate the prison was aware of grave deficiencies in the medical care provided to inmates, as well as the acute risks created by those deficiencies. The court denied summary judgment for the prison defendants on some of the medical malpractice claims, and held that the corrections department and contractor could be held vicariously liable for independent contractors' medical negligence. (East Jersey State Prison, New Jersey)
- U.S. District Court
SMOKE
- Johnson v. Pearson*, 316 F.Supp.2d 307 (E.D.Va. 2004). A prisoner brought a civil rights action under § 1983 against state prison officials, alleging that they acted with deliberate indifference to his risk of medical harm when they refused to assign him to a nonsmoking cell. The district court granted summary judgment in favor of the defendants in part, and denied in part. The court held that the defendants acted with deliberate indifference to the risk of serious damage to the prisoner's future health as the result of his exposure to environmental tobacco smoke, and that the defendants were not entitled to qualified immunity from the prisoner's future injury claims. The court also held that the prisoner's allegations regarding present injuries from environmental tobacco smoke stated a cognizable claim under the Eighth Amendment, and that the defendants were not entitled to qualified immunity from that claim. The inmate alleged that he experienced mild headaches, difficulty breathing, eye irritation, runny nose, dizziness, and occasional stomach cramping when he was housed with a smoking inmate. The court noted that officials never considered the consequences of future health problems when they refused to transfer the inmate to a nonsmoking cell, but were only concerned with administrative convenience. (Sussex II State Prison, Virginia)
- U.S. District Court
DELIBERATE INDIF-
FERENCE
- Jones v. Edgardo A. Consuegra's Estate*, 338 F.Supp.2d 1282 (M.D.Fla. 2004). A prison inmate brought a § 1983 action against a prison health service and physicians, alleging denial of proper medical care. The district court granted summary judgment in favor of the defendants. The court held that the physicians who treated the inmate did not act with deliberate indifference to the inmate's medical needs because they were responsive and timely when addressing the inmate's medical concerns, kept the inmate apprised of the status of his medical treatments, and informed him that courses of treatment would be made by attending physicians. (Baker Corr'l Inst., Fla.)
- U.S. District Court
CONTAGIOUS
DISEASES
- Kane v. Winn*, 319 F.Supp.2d 162 (D.Mass. 2004). A federal prisoner filed a petition for habeas corpus relief, alleging that prison staff improperly denied him proper medical care in violation of the federal Bureau of Prisons (BOP) regulations and the constitution. The district court denied the defendants' motions for summary judgment, and granted the inmate's motion for appointment of counsel. The court held that although habeas corpus was not the proper form of action for the prisoner's claims, it would treat the habeas petition as if it were a properly filed § 1983 or Bivens claim. The court noted that international law creates an independent source of obligation to provide to prisoners at least those protections that the Eighth Amendment provides. (Federal Medical Center-Devens, Massachusetts)
- U.S. District Court
INADEQUATE CARE
DELIBERATE INDIF-
FERENCE
- Kramer v. Gwinnett County, Georgia*, 306 F.Supp.2d 1219 (N.D.Ga. 2004). A pretrial detainee filed a § 1983 action alleging that jail officials were deliberately indifferent to his serious medical needs. The district court granted summary judgment in favor of the defendants. The court held that the officials did not act with deliberate indifference to the detainee's psoriasis and related conditions, even if the detainee's condition greatly deteriorated from the time of his arrival at the facility until his release. The court noted that the detainee missed some of his appointments, and that he was seen by jail physicians seven times, and by jail nurses at least fifteen times. (Gwinnett County Detention Center, Georgia)
- U.S. District Court
DELIBERATE INDIF-
FERENCE
- Lawrence v. Virginia Dept. of Corrections*, 308 F.Supp.2d 709 (E.D.Va. 2004). A state inmate filed a § 1983 action, alleging that prison medical officials violated his Eighth Amendment rights. The district court granted summary judgment in favor of the defendants. The court held that prison officials' refusal to inform the inmate of his condition (a bilateral inguinal hernia), did not constitute deliberate indifference, even if there was a possibility that the inmate could have contracted gangrene, where the inmate did not suffer any serious injury from the hernia. (Indian Creek Correctional Center, Virginia)
- U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIF-
FERENCE
- Layman Ex Rel. Layman v. Alexander*, 343 F.Supp.2d 483 (W.D.N.C. 2004). A detainee who had suffered a serious head or brain injury following a blow from another prisoner, brought § 1983 claims against a sheriff and sheriff's department officers. The district court denied summary judgment in favor of the sheriff with respect to the detainee's failure to train claim, finding genuine issues of material fact as to whether the department's training of new detention officers

properly and thoroughly trained them to respond to and appreciate the dangers associated with injuries and other medical conditions of inmates. The court held that summary judgment for a detention officer was precluded by a genuine issue of material fact as to whether the officer acted with deliberate indifference when she did not ensure that the detainee was taken to an emergency room following a display of abnormal behavior after he suffered a serious head or brain injury following a blow. (Haywood County Detention Center, North Carolina)

U.S. Appeals Court
SMOKE

Lehn v. Holmes, 364 F.3d 862 (7th Cir. 2004). A pro se state prisoner sued a state, alleging denial of access to the courts and living conditions that violated the Eighth Amendment. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded. The appeals court held that the State of Illinois, the state in which the prisoner was confined, was the proper defendant on the prisoner's claim that denial of access to Maryland legal materials hampered his ability to respond to pending Maryland criminal charges. The court also found that the prisoner had standing to challenge the corrections department's system-wide practice of housing nonsmoking inmates with smokers, by alleging concrete, particularized and actual injuries traceable to the practice. The court noted that the plaintiff held a Ph.D. in biochemistry and was a former Resident Research Assistant at the National Cancer Institute, and that he "knows a lot about the ill effects of exposure to second-hand tobacco smoke." (Pontiac Correctional Center, Big Muddy Correctional Center, and Graham Correctional Center, Illinois)

U.S. District Court
NEGLIGENCE

Martino v. Miller, 318 F.Supp.2d 63 (W.D.N.Y. 2004). A pro se state prisoner brought a § 1983 action against physicians and non-physician supervisory personnel at a county medical center. The district court dismissed the action, finding that allegations that the prisoner's right kidney and part of his bladder were removed without a definitive diagnosis of cancer only raised a claim of medical malpractice, which is not cognizable under § 1983. (Collins Correctional Facility, and Erie County Medical Center, New York)

U.S. Appeals Court
DELAY IN CARE
EMERGENCY CARE
STAFF
PRETRIAL DETAINEE

McDowell v. Brown, 392 F.3d 1283 (11th Cir. 2004). A former inmate of a county jail brought a § 1983 Eighth Amendment action against a county, alleging improper failure to treat his emergency medical condition. The inmate also asserted negligence claims against the jail's health services subcontractor and against a nurse employed by the subcontractor. The district court dismissed the claims against the subcontractor and nurse and the inmate appealed. The appeals court affirmed. The court held that the county jail's staffing problems, allegedly resulting from the county board's custom of inadequate budgeting for the sheriff's office and jail, did not satisfy the "custom or policy" requirement of the inmate's § 1983 action. The inmate alleged that the county failed to transport him to a hospital during a medical emergency. The court noted that the jail had a policy to call an ambulance to transport inmates with emergency medical needs if jail personnel were unable to do so. The inmate's transport to the hospital emergency room was delayed by nearly twelve hours as jail staff accomplished other transports. By the time the inmate arrived at the hospital he was experiencing paralysis in his legs. (DeKalb County Jail, Georgia, and Wexford Health Sources, Inc.)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE

McKenna v. Wright, 386 F.3d 432 (2nd Cir. 2004). A state prisoner infected with the Hepatitis C virus (HVC) brought a § 1983 action against prison officials, alleging they failed to provide him with medical treatment for his condition. The district court denied the officials' motion to dismiss and they appealed. The appeals court affirmed. The court held that the officials had sufficient personal involvement in the denial of medical treatment to justify liability under § 1983 because they had responsibility for enforcing or allowing the continuation of policies that resulted in the denial of treatment, and because they had rejected the prisoner's administrative grievance. A doctor refused treatment for HCV because of a state corrections department guideline that prohibited treatment for those who would not remain incarcerated for at least twelve months after treatment began. Although the prisoner had four more years to serve, he had a parole board appearance scheduled for less than one year, which might have resulted in his release from custody. After he was denied parole he again requested treatment, but was denied because he was not enrolled in an alcohol and substance abuse treatment program. He was previously deemed ineligible for the program because of his medical condition. (Woodbourne Correctional Facility, New York)

U.S. Appeals Court
HANDICAP
WHEELCHAIR
ADA- Americans with
Disabilities Act

Miller v. King, 384 F.3d 1248 (11th Cir. 2004). A paraplegic state prisoner brought a § 1983 action alleging Eighth Amendment and Americans with Disabilities Act (ADA) violations. The district court granted summary judgment for the defendants on most of the claims, and following a jury trial entered judgment for a disciplinary hearing officer on the remaining claims. The prisoner appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that fact issues, as to whether the prisoner was afforded basic levels of humane care and hygiene, precluded summary judgment on the prisoner's § 1983 claims for monetary damages and injunctive relief under the Eighth Amendment. According to the court, the prisoner was "disabled" within the meaning of ADA and had standing to seek injunctive relief against a prison warden. The prisoner was due to remain in isolation for over eight years as the result of more than 180 disciplinary reports. Able-bodied inmates in disciplinary isolation are housed in less

stringent units than the building in which the prisoner was housed. Because of the small cell size in his unit, prison policy calls for beds to be removed daily so that wheelchair-bound inmates have some minimal area within which to move around in their cells. The prisoner alleged that there was no room in his cell, making him immobile and restrained for long periods of time, and that prison staff failed to remove the bed from his cell daily. The prisoner also alleged that the showers in the housing unit are not wheelchair-accessible. (Georgia State Prison)

U.S. Appeals Court
PRIVATE PROVIDER
MENTAL HEALTH
FAILURE TO PROVIDE
CARE

Morales Feliciano v. Rullan, 378 F.3d 42 (1st Cir. 2004). The government moved to terminate an injunction issued pursuant to a consent decree that addressed unconstitutional conditions of an inmate health care system. The district court denied the motion and the government appealed. The appeals court affirmed. The court held that there was an adequate record of continuing constitutional violations and that the district court's order to privatize the system met the Prison Litigation Reform Act's (PLRA) requirements for narrowness, need, and lack of intrusiveness. The district court had found substandard conditions that included the following findings: one-fourth of all inmates who requested sick call did not get it; only 55% of all ambulatory care appointments actually took place; only 49% of specialist consultations deemed necessary for serious conditions were arranged; medically prescribed diets were routinely ignored; mortality rates were rising; and only 31.3% of inmates who had been diagnosed HIV-positive were receiving treatment. The appeals court voiced frustration with this case: "Like the legendary Phoenix, this class action litigation involving prison conditions in Puerto Rico is seemingly incapable of eternal rest...given the long and tortuous history of this litigation--two years ago, we acknowledged that 'the lore of this case is Byzantine.'" (Puerto Rico)

U.S. District Court
PRIVATE PROVIDER

Page v. Kirby, 314 F.Supp.2d 619 (N.D.W.Va. 2004). A state inmate filed a § 1983 action challenging his conditions of confinement. The district court dismissed the complaint, finding that private corporations that provided food and medical services at a state prison were not subject to liability under § 1983, absent an allegation that the inmate's constitutional rights were denied because of a corporation's policy or custom. (Huttonsville Correctional Center, West Virginia)

U.S. District Court
MEDICATION
DELIBERATE INDIFFERENCE
STAFF
TRAINING

Quint v. Cox, 348 F.Supp.2d 1243 (D.Kan. 2004). A former jail detainee brought a § 1983 suit against a county sheriff, alleging that the sheriff showed deliberate indifference to the detainee's lithium poisoning. The district court entered judgment in favor of the sheriff. The court held that although the detainee may have been visibly suffering from lithium toxicity during his first few days of incarceration, there was no evidence that the sheriff was aware that the detainee was facing a substantial risk of serious harm, or that he personally saw the detainee at any time. The court noted that under the sheriff's leadership, there was a policy of dispensing all inmate medicines at set times, and of prompt response to inmate medical problems. The court found that the sheriff's failure to provide a medical nurse or specially trained person to dispense medications to the detainee did not amount to deliberate indifference, where the jail was required to regularly provide medication, and there was a procedure in place for responding to medical emergencies that was followed in the detainee's case. (Meade County Jail, Kansas)

U.S. District Court
TRANSPLANT
FAILURE TO PROVIDE
CARE

Rosado v. Alameida, 349 F.Supp.2d 1340 (S.D.Cal. 2004). A state prisoner brought a civil rights action under § 1983 alleging that prison officials violated his Eighth and Fourteenth Amendment rights by failing to place his name on a liver transplant list and provide other care for his life-threatening liver condition. The district court converted a temporary restraining order into preliminary injunction that required the officials to provide the prisoner with immediate medical attention. The prisoner moved for another preliminary injunction to order the officials to ensure that he received evaluations at all liver transplant centers in the state. The district court granted the motion in part, finding that the prisoner established that he would suffer irreparable harm without a preliminary injunction. The court noted that the prisoner showed that the liver transplant was medically necessary, that he was eligible for a transplant, that security concerns would not bar him from being considered for a transplant, and that the transplant was not too costly. (Centinela State Prison, California)

U.S. Appeals Court
RIGHT TO REFUSE

Russell v. Richards, 384 F.3d 444 (7th Cir. 2004). Two inmates brought an action against a sheriff, challenging a jail's policy of instructing new inmates to use delousing shampoo. The district court entered summary judgment for the sheriff and the inmates appealed. The appeals court affirmed, finding that the jail's policy did not violate the inmates' due process right to be free from unwanted medical treatment. The court noted that the jail's policy had a legitimate penological interest in preventing inmates and staff from being exposed to lice, and avoiding the costs associated with eradicating a lice infestation. According to the court, allowing individual inmates to reject delousing shampoo would have placed the sanitation of other prisoners at risk and exposed the jail to potential lawsuits. (Johnson County Jail, Indiana)

U.S. District Court
MEDICATION
FAILURE TO PROVIDE
CARE

Shaw v. Coosa County Com'n., 330 F.Supp.2d 1285 (M.D.Ala. 2004). The daughter and the administratrix of an estate brought a civil rights action against a county, sheriff and other persons after her father died while in jail. The district court denied the defendants' motion to dismiss, in part. The court held that the plaintiff stated a claim against the county for an alleged

breach of duty to provide adequate funding for medical treatment of, and medicines for, the inmate. The father had died while he was serving a 90 day sentenced for domestic violence, and allegedly was not screened for a determination of proper medical care. (Coosa Co. Jail, Alabama)

U.S. District Court
ALCOHOL/DRUG
SUICIDE

Stewart ex rel. Estate of Stewart v. Waldo County, 350 F.Supp.2d 215 (D.Me. 2004). The estate of a deceased inmate filed a § 1983 action alleging that a county violated the inmate's constitutional right to medical care and supervision, and asserting a wrongful death claim. The district court granted summary judgment in favor of the defendants. The court held that the officials' knowledge that the inmate was intoxicated did not demonstrate deliberate indifference to suicide risk. State and county policies and procedures required constant monitoring of intoxicated individuals, but the court found that the officials had no subjective knowledge that the inmate was suicidal or at risk for any reason. The court noted "despite the inmate's high blood alcohol content, he was functioning and coherent enough to understand directions and walk unassisted." The inmate hanged himself shortly after admission to the jail. Jail staff checked on the inmate at least every fifteen minutes before his death. (Waldo County Jail, Maine)

U.S. Appeals Court
RESTRAINTS
RIGHT TO REFUSE

Sullivan v. Bornemann, 384 F.3d 372 (7th Cir. 2004). An arrestee brought an action against police officers and hospital staff. He had been arrested for disorderly conduct but jail staff refused to admit him to confinement without medical clearance because of his high breathalyzer test result. The arresting officers took him to the emergency room of a local hospital where he failed to voluntarily produce a urine sample. The emergency room doctor ordered a catheterization, and the officers restrained the arrestee during the brief procedure. The district court entered judgment for the defendants and the arrestee appealed. The appeals court affirmed. The appeals court held that the officers' acquiescence in the hospital nurse's request to help her restrain the arrestee during the catheterization process did not violate the arrestee's Fourth Amendment rights. The court found that the State's substantial interest in assuring the medical stability of the pretrial detainee outweighed the arrestee's due process right to refuse unwanted medical treatment. (Shawano County Jail, Wisconsin)

U.S. District Court
INVOLUNTARY
TREATMENT
INFORMED CONSENT

Tinius v. Carroll County Sheriff Dept., 321 F.Supp.2d 1064 (N.D.Iowa 2004). A detainee filed a § 1983 action alleging that deputy sheriffs unlawfully detained him, and that medical procedures were performed on him without his consent. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that the deputy sheriffs were justified in detaining the apparently intoxicated detainee under their community caretaking function, where a deputy came across the detainee walking along a rural roadway in winter without proper attire. According to the court, the law was not clearly established at the time of the incident that the Fourth Amendment barred law enforcement officials from seizing apparently intoxicated persons, or from restraining a detainee during medical procedures that were being conducted for non-investigatory purposes. The court found that the detention did not constitute false imprisonment. The court held that the hospital was not immune from liability for failing to obtain informed consent before performing an involuntary catheterization on the detainee, where the detainee never requested treatment at the hospital, and the officers who brought him to the hospital had no authority to act on his behalf. (Carroll County Sheriff Department, Iowa)

U.S. Appeals Court
MEDICATION
DELIBERATE INDIF-
FERENCE

Toguchi v. Chung, 391 F.3d 1051 (9th Cir. 2004). The estate of a prisoner who died in custody brought a civil rights action under the Eighth Amendment, alleging that a physician was deliberately indifferent to his medical needs. The district court granted summary judgment for the physician and the estate appealed. The appeals court affirmed, finding that the physician was not deliberately indifferent by treating the prisoner with a particular drug when she knew that he had been hospitalized years earlier for a negative reaction to the same drug. According to the court, the physician did not consider the use of the drug to pose a serious risk, since the prisoner had been administered the drug twice daily under the physician's care with no ill effects. The court held that missing notations in the record for respiratory checks did not mean that the physician was deliberately indifferent, since the critical assertion was that the physician failed to monitor the prisoner, not that she failed to record the monitoring. The court noted that nurses, rather than doctors, signed the monitoring sheet, and the physician's unchallenged testimony was that she went back every 15 minutes to check on the prisoner. (Halawa Correctional Facility, Hawaii)

U.S. District Court
MEDICATION
ADA- Americans with
Disabilities Act
DELIBERATE INDIF-
FERENCE

Veloz v. New York, 339 F.Supp.2d 505 (S.D.N.Y. 2004). A prisoner brought a pro se § 1983 action alleging denial of his right to be free of cruel and unusual punishment, equal protection violations, and violations of the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that the alleged failure to give the prisoner his prescription medication for back pain relief, even if proven, did not violate the Eighth Amendment. According to the court, there was no evidence that the alleged failure was anything other than a medical decision that was situated within an overall treatment plan that included X-rays, MRIs, CT scan and numerous consultations with specialists. The court found that the prisoner was not a "qualified individual with a disability" within the meaning of ADA, since he

was not medically qualified for a unit for physically disabled prisoners and his condition did not prevent him from engaging in the activities of daily living. (Green Haven Corr'l Facility, N.Y)

U.S. Appeals Court
ABORTION

Victoria W. v. Larpenster, 369 F.3d 475 (5th Cir. 2004). A female prisoner brought a civil rights action challenging a prison's policy of requiring her to obtain a court order if she wanted to receive an elective abortion. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed, finding that the policy was reasonably related to legitimate penological interests in helping to maintain inmate security, avoiding prison liability, and conserving prison resources. (Terrebonne Parish Criminal Justice Complex, La.)

U.S. Appeals Court
PRIVATE PROVIDER
DELIBERATE INDIF-
FERENCE

Warren v. District of Columbia, 353 F.3d 36 (D.C.Cir. 2004). A prisoner brought a pro se § 1983 action against the District of Columbia, alleging that he suffered constitutional violations while incarcerated in a private prison operated under contract with the District. The district court dismissed the claim and the prisoner appealed. The appeals court reversed and remanded, finding that the prisoner's allegations that the District had, or should have had, knowledge of alleged constitutional violations were sufficient to state a claim against the District under § 1983. The prisoner alleged that private prison officials used common needles to draw blood from prisoners. (Corrections Corporation of America, Youngstown, Ohio)

U.S. Appeals Court
SUICIDE
TRAINING
DELIBERATE INDIF-
FERENCE

Woodward v. Correctional Medical Services, 368 F.3d 917 (7th Cir. 2004). The administratrix of the estate of a pretrial detainee who had committed suicide in a county jail brought a § 1983 action against a private contractor hired by the county to provide medical and mental health services at the jail, and against the contractor's agents. The district court entered judgment on a jury verdict against the contractor and the contractor's social worker, awarding \$250,000 in compensatory damages and \$1.5 million in punitive damages, and denied motions for summary judgment as a matter of law. The contractor appealed. The appeals court affirmed, finding that the contractor's employee's lack of training and carelessness were relevant toward establishing deliberate indifference, even though the employee herself was not found liable. The court held that the fact that no previous suicides had occurred in the jail did not preclude the contractor's liability. According to the appeals court, the district court did not abuse its discretion by letting the punitive damages award stand. The estate proffered evidence that the contractor failed to adequately train its employees and condoned employees' failure to complete mental health intake forms and the social worker's practice of challenging suicide watch referrals. According to the court, employees knew that the detainee was suicidal but failed several times to place him on suicide watch, in violation of its own written procedures. The court found that evidence of an alcohol-impaired nurse, intake backlogs, and claims of delayed or denied medical care to other inmates was relevant to the contractor's state of mind and was therefore admissible. (Lake County Jail, Illinois)

2005

U.S. District Court
ADA- Americans with
Disabilities Act
DELIBERATE INDIF-
FERENCE
TRANSPORTATION
WHEELCHAIR

Allah v. Goord, 405 F.Supp.2d 265 (S.D.N.Y. 2005). A state inmate who used a wheelchair brought a pro se action alleging failure of corrections officials to safely transport him to and from outside medical providers. The district court granted the defendant's motions for dismissal in part, and denied in part. The court held that the inmate's allegations with respect to the state corrections department were sufficient to establish a violation of the Americans with Disabilities Act (ADA). According to the court, corrections officials were not entitled to qualified immunity from liability under § 1983 for injuries sustained while being transported in an unsafe van, where their conduct amounted to more than an ordinary lack of due care for the prisoner's safety. The court held that their decision to place the inmate back in a wheelchair after he fell once demonstrated complete disregard for his safety. The inmate alleged that he suffered a "serious injury (to) his head, neck and back" when he fell to the floor of the van in question and suffered "unnecessary pain and discomfort, permanent disability, and mental distress." The van driver allegedly speeded and then stopped short on more than one occasion, and other wheelchair-using inmates had been injured in the same manner during transport. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Alsina-Ortiz v. Laboy, 400 F.3d 77 (1st Cir. 2005). The parent of a deceased inmate brought a § 1983 action against correctional administrators and staff, alleging Eighth Amendment violations in connection with a prison riot. The district court granted the defendants' motions for summary judgment and the parent appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that administrators who had no knowledge of a continuing pattern by guards of failing to report inmates' medical needs could not be held liable under § 1983 on the theory that their deliberate indifference to the threat that the guards neglect of inmates' medical needs violated the Eighth Amendment. The court found that summary judgment was precluded on the claim against a guard for deliberate indifference. The inmate suffered a head injury in a prison riot and later died of a brain inflammation. (Bayamon Prison, Puerto Rico)

U.S. District Court
MEDICATION
MENTAL HEALTH
DELAY IN CARE

Atkins v. County of Orange, 372 F.Supp.2d 377 (S.D.N.Y. 2005). Jail inmates brought a § 1983 action against a county and corrections officers, alleging indifference to their mental health needs and mistreatment. The defendants moved to preclude expert witness testimony and for partial summary judgment. The district court granted summary judgment in part and denied it in part. The court held that the county was not deliberately indifferent to the serious medical needs of a jail inmate, despite the inmate's claim that he was given a "woefully inadequate dosage" of medication and was not treated in a timely manner. The court noted that the medical record revealed that the inmate was seen by the mental health unit and a psychiatrist within one day of her admission to the jail and was on a "close watch" until he was seen by mental health personnel. The court found that the county was not deliberately indifferent to the serious medical needs of another inmate who alleged that she was prescribed the wrong medication and was given inadequate care while she was acutely manic. The court stated that the record demonstrated that the inmate was provided with mental health care upon each admission to the jail and that she was kept on "close watch" to ensure her safety until she was able to be seen by mental health staff. The court ruled that the county was not deliberately indifferent by allegedly delaying psychiatric assessment of an inmate and delaying the administration of psychotropic drugs. The court noted that the inmate was on "close watch" during the period of delay to ensure the inmate did not harm himself or others, and the inmate was seen immediately by various professionals after his two suicide attempts. The court found no deliberate indifference based on a three-day delay between the time an inmate was booked and the time she was seen by a psychiatrist, or based on the fact that on several occasions she missed doses of her medication because she was out of her cell at the time of the scheduled administration of her medications. The court noted that there was no showing that the inmate was harmed as the result of the conduct, and that her medication schedule was switched to evenings to accommodate her as soon as the forensic clinic was notified that she had missed some of her medications. (Orange County Correctional Facility and County Commissioner of Mental Health, New York)

U.S. District Court
DELIBERATE INDIF-
FERENCE
SPECIAL DIETS

Baird v. Alameida, 407 F.Supp.2d 1134 (C.D.Cal. 2005). A insulin-dependent diabetic inmate brought a civil rights action against state prison officials claiming they acted with deliberate indifference to his serious medical needs by requiring the prison to serve a "Heart Healthy" diet to all inmates and failing to make provisions for therapeutic outpatient diets. The district court granted summary judgment in favor of the officials. The court held that the inmate was provided with a diet that was medically appropriate for diabetics and that the diet had not been shown to be the cause of the inmate's diabetic complications. (Wasco State Prison, California Men's Colony, and Avenal State Prison, California)

U.S. District Court
DELIBERATE INDIF-
FERENCE
SMOKE

Bartlett v. Pearson, 406 F.Supp.2d 626 (E.D.Va. 2005). A state prison inmate who was a non-smoker suffering from asthma, brought a § 1983 Eighth Amendment action against corrections officials alleging that being housed in a cell and housing unit with inmates who smoked endangered his health. The district court granted summary judgment in favor of the defendants. The court held the officials were not deliberately indifferent to the inmate's request for non-smoking housing and they were not indifferent to the inmate's asthma. The court noted that an allegation that exposure to environmental tobacco smoke (ETS) posed an unreasonable risk of serious damage to future health is cognizable under the Eighth Amendment. The prison had a policy aimed at limiting, when practicable, inmates' exposure to ETS, and they twice offered the inmate the option of residing in special or segregated housing. The inmate was moved to a non-smoking area after being housed with smokers for a total of 17 weeks, which the court found to be "not unreasonable" given the level of crowding at the prison and the fact that safety concerns took precedence over smoking preferences. (Sussex II State Prison, Virginia)

U.S. District Court
DELIBERATE INDIF-
FERENCE

Billops v. Sandoval, 401 F.Supp.2d 766 (S.D.Tex. 2005). A representative of a prisoner's estate brought a § 1983 action against prison doctors, alleging that by failing to adequately supervise their medical staff, they were deliberately indifferent to the prisoner's serious medical condition, resulting in the prisoner's death. The doctors moved to dismiss the action and the district court denied the motion. The court held that the representative stated a cause of action by alleging that the doctors were the persons who were ultimately responsible for the prisoner's treatment and that they had the legal authority and duty to supervise their nursing and physician's assistant staff. The representative alleged that the doctors, despite their duty, entirely failed to supervise staff's treatment of the prisoner, and were therefore deliberately indifferent to his care. According to the representative, the doctors' indifference for a period of two months caused the prisoner's death. (Clemons Unit, Texas Department of Criminal Justice)

U.S. Appeals Court
DENTAL CARE
MEDICATION

Board v. Farnham, 394 F.3d 469 (7th Cir. 2005). Arrestees who were detained in a county jail following their arrest on murder charges brought a civil rights action against a county sheriff and jail staff following their acquittal and release from jail. The district court denied summary judgment for the defendants and they appealed. The appeals court affirmed. The appeals court held that the sheriff was not entitled to qualified immunity on the claim that he violated a detainee's right to receive adequate attention for a serious medical condition, when he allegedly deprived one detainee of toothpaste for over three weeks and another detainee for over 113 days.

One detainee suffered dental pain throughout his incarceration and had to have several teeth extracted because of tooth decay. The court denied qualified immunity for jail staff who allegedly deprived a detainee of his asthma inhaler on multiple occasions. The court also denied qualified immunity on the claim that they failed to provide humane health conditions as the result of the allegedly unhealthy condition of the jail's ventilation system. The detainees alleged that the flow of black fiberglass from the ventilation system caused nosebleeds and respiratory problems, and allegedly exacerbated the serious asthma condition of one detainee. (Edgar County Jail, Illinois)

U.S. District Court
DELIBERATE INDIF-
FERENCE

Boomer v. Deperio, 405 F.Supp.2d 259 (W.D.N.Y. 2005). A state prison inmate brought a § 1983 Eighth Amendment action against physicians employed by a state corrections department, alleging deliberate indifference to the prisoner's diabetes. The district court granted summary judgment in favor of the defendants. The court held that the physicians were not deliberately indifferent, given evidence of prescribing insulin, adjustment of insulin levels, and supplying of self-monitoring instruments. The court noted that the inmate's failure to name all of the physicians involved in the alleged mistreatment in his administrative grievance did not automatically preclude naming previously unnamed physicians in his § 1983 suit. (Attica Correctional Facility, New York)

U.S. District Court
DIET
DELIBERATE INDIF-
FERENCE

Booth v. Pence, 354 F.Supp.2d 553 (E.D.Pa. 2005). A diabetic state inmate brought a pro se § 1983 action against correctional officers, alleging violations of the First and Eighth Amendments. The district court granted summary judgment for the officers. The court held that an officer's withholding of sugar packets from the inmate was not deliberate indifference to the inmate's serious medical needs, where the inmate was not exposed to undue suffering, there was minimal evidence that the officer had knowledge that the inmate needed medical treatment, and there was no evidence that the officer intentionally refused to provide medical care. (Penn. Dept. of Corrections)

U.S. Appeals Court
DELAY IN CARE
DELIBERATE INDIF-
FERENCE

Bozeman v. Orum, 422 F.3d 1265 (11th Cir. 2005). The representative of the estate of a pretrial detainee who had died during a struggle with county correctional officers brought a § 1983 suit alleging use of excessive force and deliberate indifference to medical needs. The district court granted summary judgment for several defendants but denied summary judgment for corrections officers. The officers appealed. The appeals court affirmed. The court held that the officers' alleged conduct in subduing the detainee was actionable as excessive force and that the officers were not entitled to qualified immunity. The court also held that the officers' alleged conduct following the struggle-- waiting 14 minutes before summoning medical assistance even though the detainee appeared lifeless-- was actionable as deliberate indifference and the officers were not entitled to qualified immunity. The court noted that the law defining excessive force was clearly established at the time of the incident, and the officers should have known that continuing to apply force to the unruly detainee after he had given up his struggle was not acceptable. (Montgomery County Detention Facility, Alabama)

U.S. District Court
MEDICATION

Brookins v. Williams, 402 F.Supp.2d 508 (D.Del. 2005). A former pretrial detainee brought a § 1983 action against a prison warden, alleging violation of his Eighth Amendment rights. The district court granted summary judgment in favor of the warden. The court held that forcing the detainee to sleep on the floor, without a mattress, next to a toilet was not punishment and therefore did not violate his due process rights, where the conditions served a legitimate governmental purpose of housing inmates in an overcrowded facility and only lasted for a period of five days. The court found that the warden was not deliberately indifferent to the serious medical needs of the detainee, where the inmate was given all of his medication within a day of being booked, except for medication which the inmate was unable to name for prison medical staff. The detainee was given tests to determine what he would need to treat his detected conditions. (Howard R. Young Correctional Institution, Delaware)

U.S. Appeals Court
ADA- Americans with
Disabilities Act
RA-Rehabilitation Act

Burger v. Bloomberg, 418 F.3d 882 (8th Cir. 2005). Following the death of an inmate, an action was brought under the Rehabilitation Act alleging inadequate medical care of the inmate's diabetes. The district court granted summary judgment in favor of the defendants. The personal representative of the inmate's estate appealed. The appeals court affirmed. The court held that "we agree with two other circuits that have recently concluded [that] a lawsuit under the Rehab[ilitation] Act or the Americans with Disabilities Act (ADA) cannot be based on medical treatment decisions." (South Dakota Department of Corrections)

U.S. Appeals Court
MEDICATION

Calhoun v. Ramsey, 408 F.3d 375 (7th Cir. 2005). A former county jail inmate brought a § 1983 action against a sheriff and the county's medical care contractor, alleging deliberate indifference to his medical needs. The district court entered judgment on a jury verdict in favor of the defendants and the former inmate appealed. The appeals court affirmed, finding that the inmate had to show the existence of widespread policies or practices to establish municipal liability, and that the inmate could not establish municipal liability based on a single incident. The inmate alleged that he was injured by the delay of his medication, due to the lack of a provision in the county's medical policy for advance verification of inmate prescription medications. The inmate

had been sentenced to serve evenings and weekends at the county jail to satisfy a 120-day motor vehicle violation. In the days leading up to the start of his sentence he called the jail twice in an effort to obtain approval of his medication. Instead, the jail followed state jail standards that required "...medication in the possession of the detainee at admission shall be withheld until verification of its proper use is obtained and documented. This verification shall be made as soon as possible, but within the time interval specified for administration of the medication on the prescription container." (Kane County Jail, and Correctional Medical Services, Inc., Illinois)

U.S. District Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE
DENTAL CARE

Carter v. Fagin, 363 F.Supp.2d 661 (S.D.N.Y. 2005). A state inmate filed an action seeking an injunction to compel prison medical staff to treat his jaw condition by permitting him to have warm water compresses. The inmate moved for a preliminary injunction and the officials moved to dismiss. The district court denied both motions. The court held that the inmate stated a deliberate indifference to medical needs claim, and that fact issues remained as to whether a reasonable physician would have understood that he was violating the inmate's constitutional rights. The court noted that the inmate alleged he was suffering great pain, treatment with compresses had been recommended and had proven effective in alleviating the pain, and no other treatment had proven effective. The physician knew the compresses were effective yet discontinued them despite the recommendations of all of the physicians and dentists who had examined the inmate. (Sing Sing Correctional Facility, New York)

U.S. Appeals Court
SUICIDE

Cook Ex Rel. Tessier v. Sheriff of Monroe County, 402 F.3d 1092 (11th Cir. 2005). The personal representative of the estate of a pretrial detainee who committed suicide while incarcerated brought an action against a sheriff, in his official capacity, asserting claims for deliberate indifference to the detainee's medical needs in violation of § 1983, negligent training and supervision of jail employees, and vicarious liability for the employees' negligence. The district court excluded the representative's expert witness testimony, precluded reference to other suicides at the facility, and granted judgment as a matter of law for the sheriff. The representative appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court acted within its discretion in excluding evidence of other suicides at the jail. The court found that the plaintiff failed to establish that the detainee's suicide was foreseeable to the sheriff and therefore any deficiencies in the sheriff's training or supervision did not rise to the level of deliberate indifference. But the court held that evidence was sufficient to support a jury verdict on the plaintiff's claim that the sheriff was vicariously liable under state law for employees' alleged negligence. The court noted that the detainee made two written requests to see a psychiatrist, one on each of the two days immediately preceding his suicide, and that the detainee stated in one request that he was "mentally sick" and asked to see the psychiatrist "as soon as possible." Three deputies observed the detainee as nervous and anxious, and one specifically observed the detainee apparently having an anxiety attack and complaining of chest pains. (Monroe County Detention Center, Florida)

U.S. District Court
SUICIDE

Cruise v. Marino, 404 F.Supp.2d 656 (M.D.Pa. 2005). The mother of a pretrial detainee who had committed suicide in a holding cell brought an action against a city and officers, alleging deliberate indifference to the detainee's serious medical needs. The district court granted summary judgment for the defendants. The court held the officers were not deliberately indifferent, where the detainee did not have a particular vulnerability to suicide and had not threatened or attempted suicide. The court noted that the detainee's intoxication was not, by itself, an indication of a suicidal tendency. The court found the city was not deliberately indifferent, where it had no history of numerous suicides by detainees, the city had policies for removing harmful items from detainees, and the city placed a video monitor in a cell following a previous suicide. (Scranton Police Department, Pennsylvania)

U.S. District Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE
MEDICATION

Daniels v. Correctional Medical Services, Inc., 380 F.Supp.2d 379 (D.Del. 2005). An inmate brought a pro se § 1983 action against a prison's health care provider, physician and nurse alleging deliberate indifference to his medication needs. The district court held that the provider was not deliberately indifferent to the inmate's serious medical needs. The inmate suffered from a ruptured appendix and hernia, but the court found no evidence that it was obvious to the provider that the inmate was suffering from something more than his usual stomach problems. According to the court, the inmate was not denied medical care where he was examined after he complained of problems with an incision, he was given a hernia belt, and he was approved for corrective surgery when his hernia did not improve. (Delaware Correctional Center)

U.S. District Court
DELAY IN CARE
DELIBERATE INDIF-
FERENCE

Davis v. Carroll, 390 F.Supp.2d (D.Del. 2005). An inmate brought a § 1983 action against prison personnel alleging violations of his Eighth Amendment rights. The district court denied the defendants' motion to dismiss. The court held that the inmate stated a claim of excessive force with his allegations that correctional officers harmed him on two different occasions while he was handcuffed. The court also found that the inmate stated a claim for deliberate indifference to his serious medical needs. The inmate alleged that a deputy warden wanted to "just stitch him up" when he was hit in the head by correctional officers and that is was only at the insistence of a nurse that an ambulance was called. The inmate also alleged that after he received treatment for

head injuries he was moved from an infirmary, despite needing more medical treatment, and that no one came to check on him for several days after he underwent brain surgery. The court also found that the inmate stated a claim for supervisory liability with his allegations that correctional officers planned his beating and encouraged him to act out, and that a deputy warden witnessed the attack and took no action to stop it or punish the officers who were involved. The inmate also alleged that a sergeant stood by as correctional officers harmed him while he was handcuffed. (Delaware Correctional Center)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIF-
FERENCE

Davis v. County of Nassau, 355 F.Supp.2d 668 (E.D.N.Y. 2005). A former inmate brought a § 1983 action alleging that county officials and employees failed to provide him with timely and sufficient medical treatment. The district court dismissed the case. The court held that the inmate's allegations of inadequate medical care for his asthma, migraine headaches and sleep apnea failed to state a cause of action for municipal liability under § 1983. The court found that the inmate failed to allege that officials and employees directly participated in treating or refusing to treat him, or created or tolerated a policy or custom of inadequately treating sick or diseased prisoners. (Nassau County Correctional Center, New York)

U.S. District Court
DELAY IN CARE
DELIBERATE INDIF-
FERENCE

Dowty v. Tarrell, 368 F.Supp.2d 1024 (D.S.D. 2005). A county jail inmate who was allegedly injured when he fell in the jail's shower brought an action against a county and county officials, alleging negligence and violation of his Eighth Amendment rights. The district court granted summary judgment in favor of the defendants. The court held that a four-day delay in obtaining treatment for the inmate after he fell in the shower did not amount to deliberate indifference to his serious medical needs, where there was no evidence that the inmate suffered bruises or cuts during the alleged fall, nor any other symptoms of trauma. (Fall River County Jail, South Dakota)

U.S. District Court
PRETRIAL DETAINEE
SUICIDE

Drake ex rel. Cotton v. Koss, 393 F.Supp.2d 756 (D.Minn. 2005). The legal guardian for an incapacitated person, who attempted to commit suicide while he was a pretrial detainee in a county jail, and the state human services department sued a county and various officials under § 1983 alleging Eighth and Fourteenth Amendment violations and a state law claim for negligence. The district court granted summary judgment in favor of the defendants. The court held that the officials did not act with deliberate indifference in failing to recognize and respond to the risk that the detainee was suicidal, even assuming there was a 72-minute gap between the last time the detainee was checked and when he was found. According to the court, the officials did not know that the detainee presented a substantial risk of suicide, based on a physician's reports describing the detainee's depression as only "mild" or "situational." There was nothing in the reports to suggest that anti-anxiety medication would have helped prevent the detainee's depression and attempted suicide. The court held that the county was not shown to have any official policy or custom of overcrowding or understaffing that played a role in the detainee's attempted suicide. The court held that the officials acted with discretion with respect to their placement and treatment of the detainee, and in accordance with a physician's orders, and they promptly took the detainee to the hospital when they discovered he had harmed himself, and were therefore entitled to official immunity as to the negligence claims. (McLeod County Jail, Minnesota)

U.S. District Court
DELIBERATE INDIF-
FERENCE
SUICIDE

Estate of Adbollahi v. County of Sacramento, 405 F.Supp.2d 1194 (E.D.Cal. 2005). Representatives of the estates of two county jail detainees, and one inmate, who committed suicide while in their cells brought a § 1983 action. The district court granted summary judgment in favor of the defendants in part, and denied in part. The court held that the county was not liable for failing to train jail personnel in suicide prevention where the county had a policy of periodic observation of cell occupants. The court noted that an officer, lacking knowledge that a detainee was suicidal, made no observations, and falsely entered on duty logs that he had done so. The court found that summary judgment was precluded by material issues of fact as to whether a jail commander ratified or encouraged the practice of "pencil-whipping," which involved making false entries on records showing observations of cell occupants that were not actually made.

The court held that summary judgment was precluded by material issues of fact as to whether the county knowingly established a policy of providing an inadequate number of cell inspections and of falsifying logs showing completion of cell inspections, creating a substantial risk of harm to suicide-prone cell occupants. The court held that summary judgment was precluded by material issues of fact as to whether a county jail nurse ratified, condoned, and encouraged the deliberately indifferent behavior of a social worker who conducted an allegedly perfunctory interview of an inmate who later committed suicide. The court found that summary judgment was precluded by material issues of fact as to whether a psychiatric services clinician satisfied applicable standards of care, under state law. (Sacramento County Jail, California)

U.S. Appeals Court
DELAY IN CARE
DELIBERATE INDIF-
FERENCE

Estate of Bradich v. City of Chicago, 413 F.3d 688 (7th Cir. 2005). The estate of an arrestee who hung himself while in a county jail brought an action alleging failure to protect the arrestee from the risk of suicide, and failing to react properly when the arrestee was discovered hanging. The district court granted summary judgment in favor of the defendants and the plaintiff appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that jail staff did not display deliberate indifference to a substantial risk of suicide by putting the intoxicated

arrestee in a regular cell and allowing him to keep his civilian clothes, rather than placing him on a suicide watch or sending him to a hospital until he sobered up. The arrestee had been arrested numerous times had never attempted to injure himself, and he did not have a mental health history that implied any disposition toward suicide. The court found that the city could not be liable for jail staffs' failure to comply with a rule requiring close monitoring of intoxicated prisoners, where the city's policy requiring staff to check intoxicated prisoners every 15 minutes was adequate and there was no allegation that the city systematically failed to enforce its policies. The court noted that the record did not imply that the suicide rate in the city's jail was abnormally high. The court held that summary judgment was precluded by a genuine issue of material fact as to whether three members of the jail staff acted with deliberate indifference by failing to seek outside assistance for ten minutes after finding the arrestee hanging in his jail cell. The court asked "Why did it take *all three* officers to provide unhelpful assistance? Two might have done what they could, while the third phoned for help (which would take only a minute) and then rejoined the others. Why did the two officers who lacked CPR training think that they should shout at a hanging prisoner rather than call for help? Why did the officer with CPR training not use his skills?" The arrestee had been booked and put in a cell at the city police stationhouse. (City of Chicago, Illinois)

U.S. Appeals Court
DELIBERATE INDIFFERENCE
PRE-TRIAL DETAINEE
EMERGENCY CARE

Estate of Carter v. City of Detroit, 408 F.3d 305 (6th Cir. 2005). The estate of a detainee who died while in custody brought a state court § 1983 action that was removed to federal court. The district court denied a police officer's motion for summary judgment and the officer appealed. The appeals court affirmed, finding that summary judgment was precluded by genuine issues of material fact as to whether the officer was deliberately indifferent to the detainee's serious medical needs. The detainee suffered a heart attack while in custody and was pronounced dead on arrival at the hospital. Shortly after the detainee was booked she told the officer that she was having chest pains and needed to go to the hospital, and that she had not taken her heart medicine for three days. Other detainees testified that the detainee cried loudly for help and continued to complain that her chest hurt for several hours before another officer called for a car to take her to the hospital. (Detroit Police Department, Michigan)

U.S. Appeals Court
DENTAL CARE
DELIBERATE INDIFFERENCE

Finnegan v. Maire, 405 F.3d 694 (8th Cir. 2005). A pro se inmate brought a § 1983 action against dentists and a nurse alleging Eighth Amendment violations based on complications related to a tooth extraction. The district court dismissed the action as frivolous and the inmate appealed. The appeals court affirmed, finding that the inmate's allegations that the dentist was not qualified as an oral surgeon did not rise to the level of deliberate indifference. The dentist punctured an artery during the extraction, placed the inmate in a chair for observation and then took the inmate to the prison's emergency room and eventually to a hospital. (Missouri)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
REHABILITATION ACT
ADA- Americans with
Disabilities Act

Fitzgerald v. Corrections Corp. of America, 403 F.3d 1134 (10th Cir. 2005). A state prisoner brought a civil rights action against a county, the private operator of the county's jail, and others, alleging violation of the Americans with Disabilities Act (ADA), the Rehabilitation Act (RA), and violation of his Eighth Amendment rights. The district court granted judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed in part, vacated in part, reversed in part, and remanded. The court held that the treating physician did not violate ADA, RA, or the Eighth Amendment by suggesting that surgery was an option for treating the prisoner's broken hip or that the prison could "do nothing" as an acceptable course of treatment. The prisoner was an insulin-dependent diabetic with a history of low blood sugar and seizures. He had requested a wheelchair when he was admitted to the jail to prevent him from falling and sustaining injuries, but the prisoner alleged that his requests for accommodations were denied. (David Moss Criminal Justice Center, Oklahoma)

U.S. Appeals Court
METHADONE
FAILURE TO PROVIDE
CARE

Foelker v. Outagamie County, 394 F.3d 510 (7th Cir. 2005). An inmate brought a § 1983 action against a county jail and employees, alleging lack of proper treatment for his methadone withdrawal. The district court granted summary judgment in favor of the defendants and the inmate appealed. The appeals court reversed and remanded, finding that fact issues existed as to whether the county nurse and social worker were deliberately indifferent to the inmate's medical needs. After two days in the jail, staff noticed the inmate was confused and disoriented. Although his condition, which resulted from his forced withdrawal from methadone, continued to deteriorate, he was not taken to a hospital for two more days. (Outagamie County Jail, Wisconsin)

U.S. District Court
DELAY IN CARE

Gabby v. Meyer, 390 F.Supp.2d 801 (E.D.Wis. 2005). A state prisoner brought a § 1983 action alleging that medical personnel violated his Eighth Amendment rights by providing him with inadequate medical care. The district court denied the defendants' motion for summary judgment based on the prisoner's failure to exhaust available administrative remedies. The court held that the prisoner had no available administrative remedies to exhaust, within the meaning of the Prison Litigation Reform Act (PLRA). Soon after the prisoner filed an inmate grievance complaining that prison medical personnel had failed to remove stitches in his throat and neck, a doctor and nurse provided the prisoner with the relief he requested by removing the stitches and ultimately arranging for the prisoner's transportation to a hospital. This relief was provided after

the prisoner's artery burst. The court noted that complaining about medical personnel's failure to transfer him to a hospital would not have supplied relief to the prisoner, where he had already incurred the harm that he alleged resulted from the delay. The inmate alleged that doctors and a prison nurse failed to arrange for him to be treated by specialists, and that he was eventually found to be suffering from throat cancer. (Dodge County Correctional Institution, Wisconsin)

U.S. Appeals Court
MEDICATION
FAILURE TO PROVIDE
CARE
DELIBERATE INDIF-
FERENCE

Garretson v. City of Madison Heights, 407 F.3d 789 (6th Cir. 2005). A pretrial detainee brought an action against a city, police department and individual police officers alleging constitutional violations and asserting state law claims. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court affirmed in part, reversed in part, and remanded in part. The court held that the diabetic detainee who had allegedly been deprived of insulin while in custody suffered a serious deprivation of necessary medical treatment, for the purpose of a Fourteenth Amendment deliberate indifference claim. The detainee was later admitted to a hospital for emergency treatment and stayed in the hospital for several days. The court denied summary judgment for the booking officer and the officer who escorted the detainee to her cell, both of whom were allegedly informed by the detainee of her diabetic condition and need for insulin. (Madison Heights Police Department Lock-Up, Michigan)

U.S. Appeals Court
HOSPITAL
SUICIDE

Gray v. City of Detroit, 399 F.3d 612 (6th Cir. 2005). The personal representative of the estate of a pretrial detainee who had committed suicide while in a police cell at a hospital brought a § 1983 action alleging inadequate medical treatment and failure to adequately monitor the detainee. The district court granted summary judgment for the defendants and the personal representative appealed. The appeals court affirmed. The court held that the city could not be held liable for deliberate indifference given the absence of an obvious and clear suicide risk. The court concluded that an officer enjoyed qualified immunity because the detainee's pre-suicide behavior did not give rise to a duty to monitor for suicide. The detainee had registered only physical complaints and had engaged in no self-injurious behavior at the hospital. The officer was not aware of, and could not be charged with knowledge of the detainee's behavior prior to reaching the hospital, according to the court. The court found that the city could not be held liable for failure to adequately train its officers regarding suicides, where officers complied with city policies regarding medical care, including screening by an intake nurse at the hospital, and no previous inmate suicides had occurred in the hospital cells. Although the detainee had been destructive before he was transferred to the hospital--ripping a phone from his cell wall and breaking a sink and toilet-- the court noted that none of his destructive acts had been self-directed. (Detroit Receiving Hospital, Michigan)

U.S. Appeals Court
DELIBERATE INDIF-
FERENCE
SPECIAL DIETS
FAILURE TO PROVIDE
CARE
MEDICATIONS

Greeno v. Daley, 414 F.3d 645 (7th Cir. 2005). A state prisoner filed a § 1983 action against corrections officials. The district court dismissed the complaint for failure to state a claim and the prisoner appealed. The appeals court reversed in part, affirmed in part and remanded. On remand the district court granted summary judgment to a number of defendants and again dismissed the prisoner's claims against the remaining defendants. The district court also denied the prisoner's motion requesting the assistance of counsel. The prisoner appealed. The appeals court affirmed in part, reversed in part, vacated in part, and remanded. The appeals court held that the exhaustion of administrative remedies requirement was satisfied, even though the prisoner had not appealed every single complaint that he filed. The court held that the appointment of counsel for the indigent prisoner on appeal was warranted, since oral argument would have materially advanced the issues presented. The court ruled that summary judgment for a nurse was precluded by fact issues as to whether she was deliberately indifferent to the prisoner's serious medical needs. The nurse allegedly withheld one particular medication from the prisoner and gave him a medication that was known to aggravate his esophageal condition, and threatened to have him "locked up" if he continued to complain. The court also denied summary judgment for the director of the state corrections department's bureau of health, finding fact issues as to whether the director was deliberately indifferent to the prisoner's deteriorating medical condition. The director had received copies of complaints that the prisoner was filing on a regular basis and these copies detailed the prisoner's severe pain and his repeated requests to be seen by a specialist. The court held that a physician's "dogged persistence" in a course of treatment that was known to be ineffective created a fact issue as to whether he was deliberately indifferent to the prisoner's serious medical needs. According to the court, the prisoner's severe heartburn and frequent vomiting were a serious medical condition, since even a lay person would have recognized the need for a doctor's care to treat that condition. The court found that summary judgment was precluded by fact issues as to whether medical personnel, who were well aware of the prisoner's severe heartburn and frequent vomiting, repeatedly refused to prescribe a bland diet for the prisoner or explore other options. (Racine and Fox Lake Corr'l Institutions, Wisconsin)

U.S. District Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Griswold v. Morgan, 378 F.Supp.2d 328 (W.D.N.Y. 2005). An inmate brought a § 1983 action against prison physicians alleging cruel and unusual punishment. The district court granted summary judgment for the defendants. The court held that the physicians were not deliberately indifferent to the inmate's medical needs. The court found that an assertion of pain sensation alone, unaccompanied by any large medical complications, does not amount to a serious medical

need for the purposes of the inmate's Eighth Amendment claim. According to the court, an inmate's mere disagreement over the proper course of treatment does not create a constitutional claim of deliberate indifference. The court found that the physicians were attentive and that they responded appropriately to the inmate's medical needs, where they initially treated the inmate's chest pains with medication, tests, and monitoring. When the pain and numbness increased, the physicians referred the inmate to two outside cardiologists and followed their recommendations for treatment with medication. When a third cardiologist recommended surgery, a physician arranged for immediate heart bypass surgery. (Groveland Correctional Facility, New York)

U.S. District Court
DELAY IN CARE
FAILURE TO PROVIDE
CARE

Hollenbaugh v. Maurer, 397 F.Supp.2d 894 (N.D. Ohio 2005). The estate of a pretrial detainee sued a city, county, and jail officials under § 1983 alleging the defendants violated the detainee's constitutional rights by failing to provide necessary medical care during his arrest and detention. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that summary judgment was precluded by material issues of genuine fact as to whether jail officials who dealt directly with the detainee and who had the opportunity to closely observe him, knew that the detainee was seriously ill. The court noted that although the detainee was allegedly intoxicated when he was arrested and brought to the county jail, he was adamant about his need for medical attention and his belief that he was suffering from a serious medical condition. The detainee died from a heart attack within a few hours of his arrest. (Wayne County Jail, Ohio)

U.S. District Court
PRIVACY
RECORDS

Hubbs v. Alamao, 360 F.Supp.2d 1073 (C.D. Cal. 2005). A person who had been civilly confined at a state hospital as a sexually violent predator (SVP) brought a pro se § 1983 action alleging violation of his constitutional rights. The district court held that the plaintiff's right to privacy was not violated when the defendants reviewed his medical records when assessing whether he was a sexually violent predator. According to the court, the state had a compelling government interest in identifying, confining and treating SVPs that outweighed the plaintiff's right to privacy in his medical records. The court found that the plaintiff's civil conspiracy and equal protection claims were barred because they implied the invalidity of his commitment. (Atascadero State Hospital, California)

U.S. District Court
DELAY IN CARE
DELIBERATE INDIF-
FERENCE

Jackson v. First Correctional Medical Services, 380 F.Supp.2d 387 (D. Del. 2005). A prisoner sued a prison's medical provider under § 1983 alleging failure to provide adequate medical care for his chronic ear problems. The district court held that the prisoner stated a cause of action for deliberate indifference. The inmate alleged that there was a continuous pattern of his medical treatment being delayed for non-medical reasons, and that policy failed to address the immediate needs of inmates with serious medical conditions. According to the court, the inmate's allegations suggested the absence of basic policies to insure that medical orders of treating physicians were reasonably followed and that medical orders of physicians were reasonably transmitted. (Delaware Correctional Center)

U.S. Appeals Court
RESTRAINTS
DELIBERATE INDIF-
FERENCE

Jarriett v. Wilson, 414 F.3d 634 (6th Cir. 2005). A prisoner brought a civil rights action against prison officials under the Eighth Amendment, alleging deliberate indifference to his serious medical needs. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed, finding that the prisoner only had an unrecoverable "de minimis injury" for the purposes of his civil rights claim, which was subject to the provisions of the Prison Litigation Reform Act (PLRA). The court found that the officials' refusal to give the prisoner medical treatment was not objectively unreasonable. The prisoner had been put in a small strip cage and held there for 12 hours. He experienced swelling, pain and cramps in his legs as a result, but these injuries were not serious enough to mention to medical staff on the day of his release from the strip cage, or two days later. When he mentioned them two weeks later there were no medical findings. Prison staff had checked on the prisoner's assertions when he told them that he had a leg injury, before they placed him in the strip cage. The prisoner had been placed in the prison's segregation unit for fighting with another inmate. While in segregation, he went on a hunger strike to protest various prison conditions. His cellmate was required to eat his meal in a strip cage in the segregation unit so he would not pass any food to the prisoner during the hunger strike. The strip cage is a mesh steel cage with a small hole through which clothes or other items can be passed. When they later suspected that the prisoner was hiding food in his cell, they placed him in another strip cage next to his cellmate and ordered him to strip. (Trumbull Correctional Institution, Ohio)

U.S. Appeals Court
DELIBERATE INDIF-
FERENCE
DELAY IN CARE
PRIVATE PROVIDER

Johnson v. Karnes, 398 F.3d 868 (6th Cir. 2005). A detainee who had severely cut his hand immediately prior to his arrest brought a civil rights action alleging violation of his right to adequate medical care during his incarceration. The district court entered summary judgment in favor of all defendants, and the detainee appealed. A divided appeals court affirmed in part, reversed in part and remanded. The court held that summary judgment was precluded due to genuine issues of fact as to whether a jail doctor had knowledge of the detainee's fully severed tendons, whether the doctor disregarded the risks inherent in delayed tendon surgery, and whether the doctor acted under the color of state law as an employee of a private contractor. In

his deposition, the detainee testified that he remembered an emergency room doctor telling him that his tendons had been completely severed and that he was to return for surgery within three to seven days. (Franklin County Jail, Ohio)

U.S. Appeals Court
SMOKE-FREE
ENVIRONMENT

Kelley v. Hicks, 400 F.3d 1282 (11th Cir. 2005). A prisoner brought an action under § 1983 alleging that prison officials were deliberately indifferent to his future health by allowing him to be exposed to harmful levels of environmental tobacco smoke while he was incarcerated. The district court granted summary judgment for the officials and the prisoner appealed. The appeals court held that the prisoner failed to establish that the warden and assistant warden were deliberately indifferent to the prisoner's future health. The court noted that the facility had a no-smoking policy in place, and any prisoner caught smoking within the facility would be disciplined. According to the court, the prisoner failed to show that the ventilation system was not sufficient. The court found that the prisoner showed at most, that the warden and assistant warden were negligent in enforcing the non-smoking policy. (Coffee County Correctional Facility, Georgia)

U.S. District Court
MENTAL HEALTH
MEDICATIONS

King v. Frank, 371 F.Supp.2d 977 (W.D.Wis. 2005). A state prison inmate brought a § 1983 action against corrections officials, alleging undue restrictions on telephone usage and access to written publications, improper cell illumination, and failure to provide adequate mental health care. The district court granted summary judgment in favor of the officials. The court held that the inmate was not deprived of a basic human need by the presence of a constantly illuminated nine-watt fluorescent light in his cell, even though he alleged that the light caused him sleeplessness and other problems. The court noted that a registered nurse and a psychologist both examined the inmate and concluded that he suffered no ill effects. The court found that the mental health care that the inmate received was adequate, noting that the inmate received treatment not only from the prison's psychological services unit, but also from his unit's supervisor as well. The court held that the inmate did not suffer inadequate medical treatment when a corrections officer responsible for distributing his prescription insomnia medication was unable to dispense it on one occasion because the prison had run out of the drug. The court found that the panic attack and similar symptoms claimed by the inmate could not have resulted from a single missed dose, and there was no showing of deliberate indifference. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
SMOKE

Larson v. Kempker, 405 F.3d 645 (8th Cir. 2005). A state inmate brought an action under § 1983 and the Prison Litigation Reform Act (PLRA), alleging that he was not adequately protected from exposure to second-hand cigarette smoke while he was imprisoned. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed, finding that the inmate was not entitled to a preliminary injunction. The court held that there was no objective evidence that the inmate was subjected to unreasonably high levels of environmental tobacco smoke (ETS) and no scientific tests were conducted to establish the levels of ETS in his cell. (Crossroads Correctional Center, Missouri)

U.S. Appeals Court
SMOKE

Larson v. Kempker, 414 F.3d 936 (8th Cir. 2005). An inmate brought a civil rights action against prison officials alleging that he was exposed to excessive cigarette smoke while he was confined. The district court awarded summary judgment in favor of the officials and the inmate appealed. The appeals court affirmed, finding that evidence was insufficient to establish that the inmate was exposed to unreasonable levels of environmental tobacco smoke (ETS). The court noted that the inmate's expert performed no scientific tests to establish the level of ETS in the inmate's cell, and the inmate did not present any other reliable basis to estimate levels of ETS to which he was exposed, or evidence concerning how those levels of ETS would affect his future health. (Crossroads Correctional Center, Missouri)

U.S. District Court
DELAY IN CARE
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Marcotte v. Monroe Corrections Complex, 394 F.Supp.2d 1289 (W.D.Wash. 2005). An inmate who suffered a stroke while incarcerated in a correctional facility brought a § 1983 action alleging that his rights were violated when he was denied adequate medical treatment. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that summary judgment was precluded by a material issue of fact as to the state of mind of the correctional facility's nurse when she denied medical treatment to the inmate and threatened the inmate with placement in "the hole." The court found that a mere disagreement over the reasonableness of a physician-assistant's diagnosis, treatment and follow-up did not support the inmate's § 1983 claim for deliberate indifference. (Monroe Corrections Complex, Washington)

U.S. District Court
SUICIDE
EMERGENCY CARE

Martin v. Somerset County, 387 F.Supp.2d 65 (D.Me. 2005). The representative of the estate of a county jail inmate who hanged himself in his cell, sued the county, sheriff and jail officials alleging violation of the inmate's federal and state rights. The district court granted summary judgment in part for the defendants, and denied it in part. The court held that summary judgment was precluded by fact issues as to whether jail officials displayed deliberate indifference to the inmate in violation of the Eighth Amendment, prior to the hanging. The court noted that it was necessary to determine if a jail shift supervisor and a control room officer subjectively knew that the inmate was suicidal and whether they unreasonably disregarded the risk. The court found that an officer who merely assisted in cutting down the inmate was not liable for deliberate

indifference, where he brought a seat belt cutter to the cell on orders of the shift supervisor, and when it failed to release the sheet the inmate had used to hang himself, he brought scissors. The court found officials did not show deliberate indifference after the hanging when they did not apply cardio-pulmonary resuscitation, noting that the inmate was warm and appeared to be breathing, and it was only a few minutes before an emergency medical team arrived. The court held that the county did not show deliberate indifference to the suicide-prone inmate when it established a suicide prevention protocol, noting that the thrust of this claim was that the officials failed to *follow* the protocol in supervising the inmate. (Somerset County Jail, Maine)

U.S. Appeals Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE
TRANSPORTATION

Martinez v. Garden, 430 F.3d 1302 (10th Cir. 2005). A state prisoner brought a civil rights action against prison officials, alleging they were deliberately indifferent to his serious medical needs. The district court dismissed the action and the prisoner appeals. The appeals court reversed and remanded. The court held that the prisoner's allegations that the officials knew of his serious medical condition, but failed to inform him of medical appointments or to arrange transportation, were sufficient to state a claim for deliberate indifference. (Utah State Prison)

U.S. Appeals Court
DELAY IN CARE
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Mata v. Saiz, 427 F.3d 745 (10th Cir. 2005). A state inmate sued a prison's licensed practical nurses (LPN), registered nurse (RN), and nurse practitioner (NP) under § 1983 alleging Eighth and Fourteenth Amendment violations. The district court entered summary judgment for the LPNs and RN, and partial summary judgment for the NP. The inmate appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the inmate's alleged severe chest pain and subsequent heart attack, if proven, were sufficiently serious to satisfy the objective element of the test for deliberate indifference. The court found that fact issues existed as to whether the evening LPN was deliberately indifferent when she allegedly told the inmate that there was nothing she could do about her chest pains and that the prisoner would have to wait until the morning. (Pueblo Minimum Center, Colorado Department of Corrections)

U.S. District Court
TRANSFER
TRANSPORTATION

McCray v. First State Medical System, 379 F.Supp.2d 635 (D.Del. 2005). A prisoner brought a § 1983 action against the state prison system's health care provider, alleging deliberate indifference to his medical needs. The district court granted the provider's motion to dismiss. The court held that the claim was subject to the exhaustion requirement of the Prison Litigation Reform Act (PLRA) and that the prisoner failed to exhaust remedies. The prisoner attributed his failure to file a grievance to his blood sugar level being out of control at the time of the incident. The court also held that the prisoner failed to state a cause of action with his claim that his rights were violated by a 2-hour commute to another prison facility. Officials had transferred the prisoner to another prison for a medical procedure, rather than using a local hospital. (Gander Hill Correctional Institution, and Delaware Correctional Center, Delaware)

U.S. District Court
TRANSFER
DELIBERATE INDIF-
FERENCE

McCray v. Williams, 357 F.Supp.2d 774 (D.Del. 2005). A state inmate brought a pro se § 1983 action alleging deliberate indifference leading to an excessive risk to his health. The district court dismissed the action. The court held that the inmate did not allege an actual injury that was a prerequisite to a claim under § 1983. According to the court, the inmate did not allege that he suffered any actual injury from an attempt by prison medical staff to perform an intravenous medical procedure, or from his subsequent transfer to a different correctional facility so that the procedure could be correctly performed there. (Delaware Correctional Center)

U.S. District Court
CONTAGIOUS
DISEASE
FAILURE TO PROVIDE
CARE

McRoy v. Sheahan, 383 F.Supp.2d 1010 (N.D.Ill. 2005). A pretrial detainee brought a civil rights suit against jail authorities and a municipality, alleging deliberate indifference to his serious medical needs. The district court granted summary judgment in favor of the defendants. The court held that jail authorities were not deliberately indifferent to the presence of tuberculosis bacteria in the jail in violation of the Fourteenth Amendment rights of the detainee who contracted a latent form of tuberculosis. The court noted that the jail followed the screening, isolation and treatment policies of the Center for Disease Control and the American Thoracic Society. The court also found no deliberate indifference in the treatment of the detainee because the detainee suffered no detrimental effects as the result of an alleged delay in treatment, or the missing of four doses of medication during the treatment process. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
TRAINING
DELIBERATE INDIF-
FERENCE

Miller v. Calhoun County, 408 F.3d 803 (6th Cir. 2005). The sister of a detainee, who died of a brain tumor while in pretrial custody in a county facility, brought a wrongful death action under § 1983 alleging deliberate indifference to the detainee's medical needs and gross negligence. The district court granted summary judgment for the defendants and the sister appealed. The appeals court affirmed. The court held that county did not have a custom or policy of deliberate indifference so as to support a § 1983 claim, given that there was no evidence of a clear and consistent pattern of mistreatment of detainees, and that the shift commander followed the county's policy and contacted the on-call doctor. The court found that the shift commander did not act with deliberate indifference, noting that he questioned the detainee about his fall in the cell, promptly consulted the on-call physician, and placed the detainee under observation. The court noted that the sheriff had appointed a training coordinator for the facility, sought accreditation

for the facility, requested bids for medical services, changed medical providers, formulated a policy for medical care at the facility, and initiated an investigation into the detainee's death. The 44-year-old detainee had told facility staff at the time of admission that he had sustained a head injury a month earlier. (Calhoun County Correctional Facility, Michigan)

U.S. District Court
DELAY IN CARE
CONTRACT SERVICES
PRIVATE PROVIDER
FAILURE TO PROVIDE
CARE

Miller v. Corrections Corp. of America, 375 F.Supp.2d 889 (D.Alaska 2005). An Alaskan inmate who was housed in a privately-operated correctional facility in Arizona brought a state court action against the contractor, alleging that the contractor failed to provide him with necessary medical and therapeutic care in a timely manner after he suffered a broken jaw during a tooth extraction. The action was removed to federal court and the contractor was denied summary judgment. The contractor again moved for summary judgment and sought to strike exhibits submitted by the inmate in his opposition to summary judgment. The district court held that the striking of an expert's evaluation was not warranted because the contents of the evaluation could be presented in an admissible form at trial. The court ruled that the inmate was competent to testify, in the form of a summary judgment affidavit, about the effects of his injury that included a speech impediment, pain, and paresthesia. (CADC, operated by Corrections Corporation of America, Arizona)

U.S. District Court
PRIVATE PROVIDER
DELIBERATE INDIF-
FERENCE

Moody v. Kearney, 380 F.Supp.2d 393 (D.Del. 2005). A state inmate filed a § 1983 action alleging that prison officials locked him in an unventilated room, causing him to suffer a severely debilitating heat stroke. The district court dismissed the case and the inmate appealed. The appeals court reversed and remanded. On remand, the district court granted summary judgment for the defendants in part, and denied it in part. The court held that the inmate stated a claim for deliberate indifference to his serious medical needs and that fact issues remained as to whether a private contractor that provided medical services for the prison had a policy of not protecting vulnerable inmates from high temperatures. The inmate alleged that he was receiving anticholinergic medication and was therefore particularly vulnerable to heat stroke, and that prison officials knew about this vulnerability but acted with deliberate indifference by keeping him in a room with no windows, no ventilation, or access to running water when the temperature inside the facility was 120 degrees. (State Correctional Institution, Georgetown, Delaware)

U.S. Appeals Court
PRETRIAL DETAINEE
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Owensby v. City of Cincinnati, 414 F.3d 596 (6th Cir. 2005). The estate of a detainee who died in the course of a police encounter sued officers and others, asserting § 1983 and state law claims. The district court resolved certain claims on summary judgment and denied the officers qualified immunity. On appeal, the court held that the officers were not entitled to immunity on the claim that the officers denied the detainee adequate medical care. The court found that the officers had time to fully consider the potential consequences of their conduct during the six minutes that the detainee was denied medical care after being taken into custody, given that the officers had time to do such things as greet each other, prepare for their superiors' arrival, pick up dropped items, and comment on the apparent severity of the detainee's injuries. The court applied the traditional deliberate standard of culpability rather than the heightened standard requiring malice and intent to harm. According to the court, each officer viewed the detainee in significant physical distress, but made no attempt to summon or provide medical care until several minutes later when a sergeant checked on the detainee and discovered that he was not breathing. The detainee's death had been ruled a homicide resulting from the police officers' restraint attempts. The estate alleged that one officer pulled the arrestee's head up when he was on the ground and drove his knees into the arrestee's back. The estate also alleged that an officer twice sprayed mace directly into the arrestee's eyes and nose from a distance of six inches, although police policy directed a distance of five to ten feet. (City of Cincinnati, Village of Golf Manor, Ohio)

U.S. District Court
DELAY IN CARE
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Patrick v. Lewis, 397 F.Supp.2d 1134 (D.Minn. 2005). The heirs and next of kin of an arrestee who died while in detention brought an action alleging that officers violated the arrestee's Fourth and Fourteenth Amendment rights by failing to seek medical attention for the arrestee after he was involved in a motorcycle accident. The district court granted summary judgment on the basis of qualified immunity for the officers in part, and denied it in part. The court held that officers did not violate the Fourth Amendment in failing to summon medical aid during the booking process, noting that the arrestee refused medical attention after being treated by paramedics at the scene of the accident. The court found that an overnight jailer who made cell checks periodically throughout the night was not deliberately indifferent to the arrestee's serious medical needs, even though the arrestee died in his cell sometime in the early morning from complications of a blunt force chest injury. The court noted that there was no indication that the jailer heard the arrestee's alleged call for help during her overnight shift, or knew that the arrestee had serious injuries. The court denied summary judgment on the claim that the jailer was deliberately indifferent, finding it was precluded by a genuine issue of material fact as to whether the jailer delayed in summoning aid for the arrestee after she discovered that he appeared not to be breathing. (Brooklyn Park Police Department, Minnesota)

U.S. District Court
SUICIDE
PERSONNEL

Perez v. Oakland County, 380 F.Supp.2d 830 (E.D.Mich. 2005). The father and personal representative of the estate of an inmate brought a suit under § 1983, alleging that the defendants violated the inmate's Eighth Amendment rights by failing to provide appropriate mental health treatment or monitoring when the inmate was being held in the county jail, leading to the inmate's suicide. The district court held that the county did not act with deliberate indifference in allowing the inmate caseworker, who allegedly lacked sufficient medical background or expertise, to make decisions affecting the health care needs of the inmate. The court noted that the challenged practice was widespread, with the "vast majority" of county jails allowing employees who were not psychiatrists, but who had been trained in suicide detection and prevention, to make determinations whether inmates were suicidal or potentially suicidal. The court found that the father failed to establish that deputies actually perceived that the inmate faced a substantial risk of serious harm if they conducted their rounds 16 minutes further apart than mandated under jail policy. The court held that the father failed to establish that a deputy actually perceived a risk of placing the inmate in a single cell. The inmate had been placed in a single cell and no special watch status had been ordered by the inmate caseworker, who was responsible for cell assignments. The court held that the caseworker was entitled to qualified immunity because it was not established at the time of the inmate's suicide that the caseworker's actions of making determinations concerning the inmate's cell assignments, without first consulting the inmate's physician or psychiatrist, would violate the inmate's Eighth Amendment rights. According to the court, the jail psychiatrist did not disregard a known and serious medical need, where evidence demonstrated that even though the psychiatrist knew that the inmate was not taking his medication, he determined through his own direct evaluation that the inmate was suicidal. The court found that allegations that the sheriff failed to ensure that the county's deputies enforced and followed the law could not sustain a § 1983 claim absent evidence that the sheriff himself engaged in active unconstitutional behavior by directly participating, encouraging, authorizing, or acquiescing in the allegedly offending conduct of the sheriff's deputy. (Oakland County Jail, Michigan)

U.S. District Court
RESTRAINTS

Perez Olivo v. Gonzalez, 384 F.Supp.2d 536 (D.Puerto Rico 2005). An inmate brought a *Bivens* action against correctional officers, stemming from the alleged use of restraints on him during an escorted medical trip. The district court dismissed the case. The court held that the use of restraints did not violate the inmate's clearly established rights and that the leg irons, as placed, did not violate the inmate's rights. According to the court, the officers exercised their best correctional judgment in applying the leg iron restraints and did not deliberately inflict pain. The court found that the agency's alleged failure to respond in a timely manner to the inmate's complaints did not violate due process. The inmate alleged that he was submitted to unnecessary punishment and discomfort for three hours, resulting in bruised ankles and pain for a period of eight days. (Federal Bureau of Prisons, Metropolitan Detention Center, Guaynabo, Puerto Rico)

U.S. Appeals Court
FEMALE PRISONERS
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Pool v. Sebastian County, Ark., 418 F.3d 934 (8th Cir. 2005). A county inmate sued jail officials under § 1983 alleging that her miscarriage resulted from the officials' deliberate indifference to her serious medical needs, in violation of the Eighth Amendment. The district court denied summary judgment for the defendants and they appealed. The appeals court affirmed in part and dismissed in part. The court found that the facts alleged by the inmate, if proven, indicated that she had a need for medical attention that would have been obvious to a layperson, and therefore had a serious medical need. The inmate alleged that she had informed jail officials that she was pregnant, bleeding and passing blood clots, and in extreme pain from cramping to the point that it affected her ability to perform routine daily functions. (Sebastian Co. Det. Center, Arkansas)

U.S. Appeals Court
TRANSSEXUAL
FAILURE TO PROVIDE
CARE

Praylor v. Texas Dept. of Criminal Justice, 423 F.3d 524 (5th Cir. 2005). A transsexual state prisoner brought a civil rights action against state criminal justice department officials and against state university health care system officials, asserting that their denial of his request for hormone therapy constituted cruel and unusual punishment in violation of the Eighth Amendment. The district court denied relief and the inmate appealed and moved for an injunction. The appeals court affirmed and denied the motion for an injunction. The court held that the Eighth Amendment requires some method of treatment for transsexual inmates, based on the specific circumstances of each case, but that such inmates do not have a constitutional right to hormone therapy. The court found that denial of the prisoner's request was not deliberate indifference to a serious medical need in violation of the Eighth Amendment. The prisoner had not requested any form of treatment other than hormone therapy, but he did not qualify for hormone therapy under the system's policy for treating transsexuals because of the length of his term, the prison's inability to perform a sex change operation, the lack of medical necessity for the hormone, and the disruption to the all-male prison. (Texas Department of Criminal Justice, University of Texas and Texas Tech Universities)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
TRANSSEXUAL

Praylor v. Texas Dept. of Criminal Justice, 430 F.3d 1208 (5th Cir. 2005). A transsexual state prison inmate brought a suit, asserting that denial of his request for hormone therapy constituted cruel and unusual punishment. The district court denied relief and the inmate appealed. The appeals court affirmed. The court held that declining to provide hormone treatment did not

amount to deliberate indifference to the inmate's serious medical needs, in violation of the Eighth Amendment. The court noted that the prison had a policy for treating transsexuals, but that the inmate did not qualify for hormone therapy because of the length of his term and the prison's inability to perform a sex change operation, the lack of a medical necessity for the hormone, and disruption to the all-male prison. (Texas Department of Criminal Justice, University of Texas and Texas Tech University)

U.S. District Court
DELIBERATE INDIF-
FERENCE
RESTRAINTS

Reimann v. Frank, 397 F.Supp.2d 1059 (W.D.Wis. 2005). A state prison inmate sued various correctional officials under § 1983 alleging violations of his constitutional rights. The inmate petitioned for the right to proceed in forma pauperis and the district court granted the petition in part, and denied it in part. The court held that denial of weight training facilities was not an Eighth Amendment violation where there was no showing that a corrections official knew that weight training was necessary to treat the inmate's femoral neuropathy and other leg ailments. The court also held that a warden and nurse practitioner did not violate the inmate's Eighth Amendment rights by denying him access to indoor recreational facilities that were needed for the rehabilitation of his leg. They had been following a regulation that barred inmates who were on "low bunk restriction" due to medical conditions from indoor recreation. The court found that the inmate stated an Eighth Amendment claim with his allegations that a nurse practitioner countermanded an earlier order of a physician that only soft restraints were to be used. The court noted that there was a possibility that the nurse practitioner sought to deliberately inflict pain, rather than implement a differing medical assessment of the inmate's condition. (Stanley Correctional Institution, Wisconsin)

U.S. District Court
ABORTION

Roe v. Crawford, 396 F.Supp.2d 1041 (W.D.Mo. 2005). A female inmate sued prison officials, requesting a preliminary injunction requiring them to transport her to a local health care provider for the purpose of providing medical services to terminate her pregnancy. The district court held that the inmate was entitled to injunctive relief and ordered accordingly. The court found that denying the inmate the right to choose to terminate her pregnancy constituted irreparable injury and that substantial delay in the decision to abort increased the risks associated with the procedure. According to the court, the prison policy not to transport female prisoners out of the institution for abortions that were not medically necessary was claimed to be reasonably related to the penological interests of security and cost, but the court found those interests were not legitimate penological interests. (Women's Diagnostic and Correctional Center, Missouri)

U.S. District Court
TRANSFER
ADA- Americans with
Disabilities Act
FAILURE TO PROVIDE
CARE

Scott v. Garcia, 370 F.Supp.2d 1056 (S.D.Cal. 2005). An inmate brought a suit against a state corrections department alleging violation of the Americans with Disabilities Act (ADA), and against individual department employees for violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants in part and denied it in part. The court held that summary judgment was precluded on a claim that members of the prison's classification committee violated the inmate's Eighth Amendment rights by not recommending his transfer to a facility with acute hospital care, and on a claim that the prison system violated ADA by not allowing him a longer time to eat his meals or by allowing him to eat small frequent meals. (High Desert State Prison, Centinela State Prison, California)

U.S. District Court
RESTRAINTS
DELIBERATE INDIF-
FERENCE

Shell v. Brzezniak, 365 F.Supp.2d 362 (W.D.N.Y. 2005). A prisoner filed a § 1983 action alleging that correctional officers violated his First and Eighth Amendment rights. After partial summary judgment was granted in favor of some defendants, the prisoner filed a motion to amend his complaint for the third time. The district court granted the motion in part, and denied it in part. The court held that a corrections officer's refusal to allow medical staff to remove the prisoner's handcuffs during an examination did not constitute deliberate indifference to the prisoner's serious medical needs. According to the court, the officer's decision did not pose an excessive risk to the prisoner's health or safety. (Attica, Green Haven, and Great Meadows Correctional Facilities, New York)

U.S. Appeals Court
SUICIDE

Snow ex rel. Snow v. City of Citronelle, AL., 420 F.3d 1262 (11th Cir. 2005). The administrator of the estate of a pretrial detainee who had committed suicide while in jail brought an action against a city, its mayor and several police department employees, alleging violations of the detainee's rights under the Eighth and Fourteenth Amendment and asserting a state wrongful death claim. The detainee had been arrested for driving under the influence of alcohol or drugs. The district court granted summary judgment for the defendants on the federal claims and dismissed the state law claims. The administrator appealed. The appeals court affirmed in part, reversed in part, vacated in part, and remanded. The court held that police department employees who lacked a subjective knowledge of the detainee's potential for suicide were not liable, in their individual capacities, for any constitutional violations. The court noted that the employees had no knowledge of either the detainee's emergency room records showing that the detainee told emergency room staff she had attempted suicide four times before, or of doctor's notes showing that the detainee had suicidal ideation. The court denied summary judgment for one police officer, finding fact issues as to whether he believed that there was a strong risk that the detainee would attempt

suicide and did not take any action to prevent her suicide. According to the court, the city's alleged lack of a suicide policy did not cause any constitutional violation. (City of Citronelle Jail, Alabama)

U.S. Appeals Court
SMOKE
VENTILATION

Talal v. White, 403 F.3d 423 (6th Cir. 2005). An inmate brought an action against a state corrections department and individual officials alleging that his exposure to environmental tobacco smoke (ETS) violated his Eighth Amendment rights. The district court dismissed the claim and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner stated a claim that satisfied the objective component of the test for determining deliberate indifference based on exposure to ETS, by alleging that he had been subjected to excessive levels of ETS at the hands of both staff and other inmates and that the prison's ventilation system merely re-circulated smoke-filled air. The inmate provided medical documentation that he suffered from an ETS allergy and establishing that smoke caused him sinus problems and dizziness. The inmate's complaint and exhibits indicated that prison officials were aware of the inmate's ETS allergy and that they smoked and allowed prisoners to smoke in the prison's non-smoking units. (Turney Center Industrial Center, Tennessee)

U.S. District Court
ADA- Americans with
Disabilities Act
HEARING IMPAIRED
RA- Rehabilitation Act

Tanney v. Boles, 400 F.Supp.2d 1027 (E.D.Mich. 2005). A former inmate brought an action against his case manager at a state correctional facility, alleging violations of his due process and free speech rights under § 1983, and violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court held that the former inmate's § 1983 claim for declaratory relief was moot and that the inmate failed to state a due process claim. The court found that summary judgment was precluded by fact issues as to whether the deaf inmate was denied reasonable access to a device which allowed him to communicate via the telephone, and whether a state prison officials' policy of keeping such a device locked in her office served a legitimate penological interest. (Charles Egeler Reception and Guidance Center, Jackson, Michigan)

U.S. District Court
FAILURE TO PROVIDE
CARE
MEDICATION

Tatum v. Simpson, 399 F.Supp.2d 1159 (D.Colo. 2005). A detainee who was confined in a county jail after being found in contempt of court for failing to comply with a state water court case brought a § 1983 action and moved for summary judgment. The district court dismissed the action. The court held that a sheriff was not liable under § 1983 to the detainee for allegedly denying him medications and medical treatment while he was detained, absent evidence that the sheriff knew about the detainee's need for prescribed medication or medical treatment during his detention. (Pueblo County Jail, Colorado)

U.S. District Court
FAILURE TO PROVIDE
CARE

Thomas ex rel. Smith v. Cook County Sheriff, 401 F.Supp.2d 867 (N.D.Ill. 2005). The administrator of a detainee's estate brought an action arising from the death of the detainee at the jail, allegedly due to inadequate medical attention. The district court granted the defendants' motions to dismiss in part, and denied in part. The court held that the administrator had standing to sue on behalf of the surviving spouse and next of kin, and that the allegations were sufficient to state most of the § 1983 claims. The court found that allegations of conspiracy were insufficient to state a claim. The court held that the allegations were sufficient to remove the shield of immunity under a state tort immunity act by pleading "willing and wanton conduct." According to the court, allegations that an institutional policy, whether an express policy or a widespread practice, led to the death of the detainee due to deliberate indifference to the detainee's medical needs, were sufficient to state a § 1983 claim. The detainee was suffering flu-like conditions at the time of arrest and he complained of these symptoms to medical personnel during his initial screening at the jail. Three days later his condition worsened and he requested medical attention from several officers, who refused and told him he was just "dopesick." The next three days the detainee, and fellow detainees on his behalf, requested medical attention and their requests were denied by officers and medical technicians, and even made written requests. The detainee was found unconscious on the floor of his cell on the seventh day after his admission and he died of meningitis later that day. (Cook County Department of Corrections, Illinois)

U.S. District Court
DELAY IN CARE
DELIBERATE INDIF-
ERENCE

Thomsen v. Ross, 368 F.Supp.2d 961 (D.Minn. 2005). A detainee brought a § 1983 civil rights action against a county and county employees, alleging he was wrongfully strip searched and suffered a broken hand after he arrested on driving under the influence (DUI) charges. The district court granted summary judgment for the defendants in part, and denied it in part. The court found that the detainee's broken hand was not a serious medical need, such that a 48-hour delay by county employees in taking the detainee to a hospital could amount to deliberate indifference to his serious medical needs, absent evidence that a red and swollen hand was a critical or escalating situation requiring immediate attention, or that the delay jeopardized the detainee's prognosis. The court noted that employees took the detainee to the hospital on the evening he made the written request for treatment. (Crow Wing County Jail, Minnesota)

U.S. Appeals Court
INVOLUNTARY
MEDICATION

U.S. v. Rivera-Guerrero, 426 F.3d 1130 (9th Cir. 2005). The district court entered an order permitting a defendant, who was committed to a federal medical center, to be involuntarily medicated. The defendant appealed. The appeals court reversed and remanded with instructions.

The court held that the district court abused its discretion by denying the defendant's request for a continuance, which prevented him from presenting any evidence to rebut the government's medical assertions and precluded the development of the requisite medically-informed record. (Federal Medical Center, Springfield, Missouri)

U.S. District Court
DELAY IN CARE
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Valdes v. Crosby, 390 F.Supp.2d 1084 (M.D.Fla. 2005). The estate of an inmate who died in prison after an alleged beating by correctional officers brought a § 1983 action against prison officials and prison nurses. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court found that summary judgment was precluded by a genuine issue of material fact on a supervisory liability claim against a warden. The court also held that there were genuine issues of material fact as to whether inmate abuse at the hands of prison officers occurred with sufficient regularity to demonstrate a history of widespread abuse at the prison, and as to whether the prison warden established customs and practices that resulted in deliberate indifference to violations of inmates' constitutional rights. According to the court, it was clearly established at the time of the inmate's death that the warden could face liability under § 1983 predicated on his failure to take reasonable steps in the face of a history of widespread abuse that created a known substantial risk of serious harm to inmates. The court found that a prison inspector was not liable on a § 1983 supervisory liability claim, since the inspector was neither responsible for, nor had authority to prevent or correct problems relating to abusive officers. The court concluded that nurses were not liable under § 1983 where a nurse's physical examination of the inmate following alleged abuse by officers during the extraction of the inmate from his cell revealed that the inmate suffered only minor injuries consistent with those seen by medical personnel in prisons following cell extractions. The court held that any delay in the nurse's response to a call for immediate medical help for the inmate did not create or exacerbate injuries the inmate received from an alleged beating by prison officers, since the nurse arrived within minutes of receiving the call and officers were attending to the inmate's medical needs by administering cardiopulmonary resuscitation. (Florida State Prison)

U.S. District Court
CONTRACT SERVICES
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Williams v. First Correctional Medical, 377 F.Supp.2d 473 (D.Del. 2005). A state prison inmate brought a § 1983 Eighth Amendment action against a corrections department's medical services contractor and the contractor's physician, alleging improper medical care for the inmate's hernia. The district court granted summary judgment in favor of the defendants. The court held that the inmate's hernia was not a serious medical condition and that the physician's failure to treat the hernia in a manner that the inmate considered proper could not constitute deliberate indifference. The physician had testified without contradiction that the hernia in question was small, reducible, and had produced no complications. The inmate had asked to be placed on surgical call with an outside hospital, which the court found to be a mere disagreement with treatment. (Delaware Correctional Center)

U.S. Appeals Court
EMERGENCY CARE

Woloszyn v. County of Lawrence, 396 F.3d 314 (3rd Cir. 2005). The administratrix of a pretrial detainee who committed suicide in jail brought a § 1983 action and wrongful death claims against and county and corrections officers. The district court granted summary judgment in favor of the defendants and the administratrix appealed. The appeals court affirmed, finding that the administratrix failed to establish that the corrections officers were aware of the detainee's vulnerability to suicide. The court noted that even though a captain said he would put the detainee on five-minute checks, he also said that he would follow a nurse's advice. The nurse found the detainee to be polite, cooperative and alert, and cleared the detainee for one-hour checks for signs of alcohol withdrawal. The detainee told a booking officer he was not suicidal and appeared to be in good spirits. The court also held that the fact that a breathing mask was not in its designated location did not constitute deliberate indifference. Upon finding the detainee hanging by a sheet, officers immediately initiated CPR without waiting for the protective mask to arrive, they continued CPR until a protective breathing mask arrived, and the administratrix did not claim that immediate use of the protective mask would have prevented the detainee's death. The court found that the administratrix's expert failed to identify what specific type of training would have alerted officers to the fact that the detainee was suicidal. (Lawrence County Correctional Facility, Pennsylvania)

U.S. District Court
DELAY IN CARE
DELIBERATE INDIF-
FERENCE
EYE CARE

Wood v. Idaho Dept. of Corrections, 391 F.Supp.2d 852 (D.Idaho 2005). An inmate brought an action alleging deliberate indifference to his medical needs. The district court granted summary judgment for the defendants in part, and denied it in part. The court found that summary judgment was precluded by genuine issues of material fact as to patterns and policies of a prison health care administrator. The inmate claimed that the administrator was deliberately indifferent to his eye condition because the administrator's policies caused employees to improperly screen his eye condition, fail to schedule him for an eye appointment for four months, or refuse to schedule an appointment sooner. (Idaho Department of Corrections)

U.S. District Court
DELAY IN CARE

Wynn v. Mundo, 367 F.Supp.2d 832 (M.D.N.C. 2005). A state prisoner brought a § 1983 action against correctional officers and others, alleging that he was denied medical treatment for a life threatening illness and was placed in segregation rather than being given emergency treatment.

The district court granted summary judgment in favor of the defendants. The court held that a one and one-half day delay between the prisoner's first complaints of flu-like symptoms and his treatment and diagnosis of pneumonia by a physician did not constitute deliberate indifference by prison officials. (Albemarle Correctional Institution, North Carolina)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE

Ziemba v. Armstrong, 430 F.3d 623 (2nd Cir. 2005). A state prison inmate brought a civil rights action alleging that prison officials failed to provide constitutionally-adequate health care, failed to protect him from the use of excessive force, and used excessive force. The district court granted summary judgment for the officials, in part, and they appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that evidence was sufficient to establish that a state corrections commissioner exhibited deliberate indifference to the inmate's constitutional rights or was grossly negligent in training subordinates, and that evidence was sufficient to impose supervisory liability on a prison warden. The inmate was allegedly placed in four-point restraints for 22 hours, beaten, and denied medical care. The court found that summary judgment was precluded by a genuine issue of material fact as to whether a prison nurse and medic were deliberately indifference to the inmate's serious medical needs. (Connecticut State Prison)

2006

U.S. District Court
SMOKE-FREE
ENVIRONMENT

Abdullah v. Washington, 437 F.Supp.2d 137 (D.D.C. 2006). An inmate brought a pro se civil rights action under § 1983 against the District of Columbia and certain jail officials, in their individual and official capacities, seeking damages related to his alleged exposure to second-hand tobacco smoke while confined at a jail. The district court granted the officials' motion to dismiss in part, and denied in part. The court held that the inmate's allegations that he was subjected to an intolerable level of second-hand tobacco smoke while confined at the jail, and that jail officials were deliberately indifferent to his condition because they did not resolve the numerous grievances he filed on the issue, were sufficient to support an Eighth Amendment claim based on exposure to environmental tobacco smoke (ETS). The court found that the inmate's Eighth Amendment right to be free from levels of second-hand smoke that posed an unreasonable risk of serious damage to the inmate's future health was clearly established, and thus, the officials were not entitled to qualified immunity. (District of Columbia Department of Corrections, Central Detention Facility)

U.S. Appeals Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Alberson v. Norris, 458 F.3d 762 (8th Cir. 2006). A state prisoner's mother, on the prisoner's behalf and as the special administrator of his estate, brought a § 1983 action against prison officials, alleging deliberate indifference with respect to the medical treatment of the prisoner, who died from complications arising from Goodpasture Syndrome. The district court granted summary judgment to the defendants and the mother appealed. The appeals court affirmed, finding that Goodpasture Syndrome was a sophisticated medical condition, and thus, the estate, which was alleging inadequate medical treatment, was required to present expert testimony proving causation. The court noted that after the prisoner complained of earaches and other afflictions, he received extensive medical treatment, including treatment from a physician on six separate dates in a period of about two months, followed shortly thereafter by admission to the infirmary ward. (Wrightsville Unit, Arkansas Department of Corrections)

U.S. District Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Ammons v. Lemke, 426 F.Supp.2d 866 (W.D.Wis. 2006). A state inmate filed a § 1983 action alleging that a prison's medical officials were deliberately indifferent to his serious medical conditions. The district court held that the inmate's wrist injury constituted a "serious medical condition," for the purposes of his Eighth Amendment claim against prison medical officials for deliberate indifference, where the injury was diagnosed as a fracture of his ulnar styloid process, the injury caused his bone structure to split, the wrist sustained permanent injury and bone disfigurement, and the injury continued to cause him pain. The court found that a physician's failure to immediately prescribe pain medication for the inmate or to make an appointment for the inmate to see an orthopedic specialist after examining the inmate's fractured wrist did not demonstrate deliberate indifference to inmate's serious medical condition necessary to establish claim under Eighth Amendment, where the physician examined the inmate twice in one month's time, reviewed an x-ray of his wrist, determined initially that no treatment was possible because the injury was the result of old fracture, but later prescribed pain medication and arranged for the inmate to see an orthopedic specialist. (Stanley Correctional Institution, Wisconsin)

U.S. District Court
TRANSPORTATION
TRANSFER

Anderson-Bey v. District of Columbia, 466 F.Supp.2d 51 (D.D.C. 2006). Prisoners transported between out-of-state correctional facilities brought a civil rights action against the District of Columbia and corrections officers, alleging common law torts and violation of their constitutional rights under First and Eighth Amendments. The prisoners had been transported in two groups, with trips lasting between 10 and 15 hours. The defendants brought motions to dismiss or for summary judgment which the court denied with regard to the District of Columbia. The court held that: (1) a fact issue existed as to whether the restraints used on prisoners during the prolonged transport caused greater pain than was necessary to ensure they were securely restrained; (2) a fact issue existed as to whether the officers acted with deliberate indifference to

the prisoners' health or safety in the transport of the prisoners; (3) a causal nexus existed between the protected speech of the prisoners in bringing the civil lawsuit against the corrections officers and subsequent alleged retaliation by the officers during the transport of prisoners; (4) a fact issue existed as to whether the officers attempted to chill the prisoners' participation in the pending civil lawsuit against the officers; and (5) a fact issue existed as to whether conditions imposed on the prisoners during the transport were justified by valid penological needs. The court found that the denial of food during a bus ride that lasted between 10 and 15 hours was insufficiently serious to state a stand-alone cruel and unusual punishment civil rights claim under the Eighth Amendment. The court also found that the denial of bathroom breaks during the 10 to 15 hour bus trip, did not, without more, constitute cruel and unusual punishment under the Eighth Amendment. The court stated that the extremely uncomfortable and painful shackles applied for the numerous hours during transports, exacerbated by taunting, threats, and denial of food, water, medicine, and toilets, was outrageous conduct under District of Columbia law, precluding summary judgment on the prisoners' intentional infliction of emotional distress claim against the corrections officers. (District of Columbia)

U.S. District Court
HEARING IMPAIRED
ADA- Americans with
Disabilities Act

Arce v. O'Connell, 427 F.Supp.2d 435 (S.D.N.Y. 2006). A purportedly hearing-impaired inmate brought a pro se suit against employees of a corrections department, alleging that they violated his rights under the Americans with Disabilities Act (ADA), as well as the Eighth and Fourteenth Amendments, by failing to provide reasonable accommodations for his hearing impairment and retaliating against him after he filed grievances regarding the lack of such accommodations. The defendants moved for summary judgment and the court dismissed the case. The district court held that the inmate was not a member of the class protected by a consent decree addressing the treatment of deaf or hard-of-hearing inmates and thus, he lacked standing to move for contempt alleging violations of the decree. The court found that to the extent the inmate suffered from a hearing loss, it was not such as would prevent him from participating fully in "activities, privileges, or programs" as required for him to come within the protections of the consent decree. (New York State Department of Correctional Services)

U.S. District Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Burgos v. Alves, 418 F.Supp.2d 263 (W.D.N.Y. 2006). A prisoner brought an action against physicians employed by the New York State Department of Correctional Services (DOCS), alleging that they violated his constitutional rights in connection with their treatment of a knee injury. The physicians moved for summary judgment and the district court granted the motion. The court held that the prisoner's dissatisfaction with the care that he received for his knee injury did not give rise to an Eighth Amendment claim, where there was no evidence of any kind that the physicians were deliberately indifferent to the prisoner's medical condition, nor any proof that they acted with a culpable state of mind or intended in some way to inflict pain on the prisoner. The court concluded that "there is no evidence that defendants simply ignored his complaints, or that they deliberately allowed plaintiff to suffer...with the benefit of hindsight, plaintiff simply contends that they should have done more sooner." (New York State Department of Correctional Services)

U.S. District Court
FAILURE TO PROVIDE
CARE
MEDICATION
RECORDS
DELAY IN CARE

Burkett v. Wicker, 435 F.Supp.2d 875 (N.D.Ind. 2006). A prisoner, proceeding pro se, brought a civil rights action under § 1983 against a jail nurse and others, alleging that he was denied medical treatment while he was a pretrial detainee. The inmate alleged that a jail nurse made a false entry into the prisoner's medical record, denied him doses of his prescribed medication, prevented him from seeing a doctor, and delayed filling his prescription, that the nurse knew that his hand was injured and that it would get worse without treatment, and that because of her deliberate indifference to his serious medical need, he developed an infection, his hand did not heal properly, he had permanent disfigurement, and he was in prolonged, unnecessary pain. The district court held that the allegations supported a claim for violation of Eighth Amendment's prescription against cruel and unusual punishment. But the court found that no liability existed against the nurse in her official capacity, for allegedly denying the prisoner medical treatment while he was a pretrial detainee, in violation of the Eighth Amendment, absent any allegation that the nurse was acting pursuant to a policy or custom. (Cass County Jail, Indiana)

U.S. Appeals Court
CONTAGIOUS
DISEASES

Butler v. Fletcher, 465 F.3d 340 (8th Cir. 2006). A prisoner who was transferred from a county jail to a prison after his conviction, where he tested positive for tuberculosis (TB), filed a § 1983 action against a county sheriff, alleging the sheriff violated his substantive due process rights by failing to adopt and implement adequate safeguards protecting county jail inmates from TB infection. The district court entered summary judgment in favor of the sheriff and the prisoner appealed. The appeals court affirmed. The court held that the sheriff did not act with deliberate indifference to a serious health risk that TB posed to detainees in the county jail. The prisoner alleged that he spent most of his time at the jail in two-person cells and in larger holding cells, where as many as twenty-six short-term detainees were held under deplorable sanitary conditions. He asserted that the sheriff's policy of placing short-term detainees in multi-person cells without an initial TB screening inadequately protects detainees from the serious health risk of TB. (Ramsey County Adult Detention Center, Minnesota)

U.S. Appeals Court
WHEELCHAIR
DELIBERATE
INDIFFERENCE

Callahan v. Poppell, 471 F.3d 1155 (10th Cir. 2006). A state prisoner filed an action under § 1983, alleging that corrections' officials' failure to provide him with a wheelchair following an injury violated his rights under the Eighth Amendment. The district court granted the defendants' motion for summary judgment, and the prisoner appealed. The appeals court affirmed. The court held that medical personnel's alleged conduct of denying the prisoner a wheelchair following an injury did not amount to deliberate indifference, as required for the prisoner's Eighth Amendment deliberate indifference claim. The court noted that medical staff denied his use of a wheelchair because they feared his leg muscles would atrophy, and, although an orthopedist initially recommended a wheelchair for the prisoner, the orthopedist altered that assessment upon learning that the prisoner would not need to walk far while he was housed in the medical department. (Lawton Correctional Facility, Oklahoma)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIF-
FERENCE

Carter v. Newland, 441 F.Supp.2d 208 (D.Mass. 2006). A federal inmate brought a pro se civil rights claim against various prison medical personnel alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The district court held that allegations that the government thwarted the inmate's attempt to exhaust administrative remedies that were required by the Prison Litigation Reform Act (PLRA), precluded dismissal for lack of subject matter jurisdiction. The court found that the inmate's allegations were sufficient to state a claim for deliberate indifference to inmate's medical needs when they failed to operate on his diseased toe, failed to address his complaints of pain, and transferred him to a non-medical facility. (Federal Medical Center, Devens, Massachusetts)

U.S. District Court
DELIBERATE INDIF-
FERENCE

Cirilla v. Kankakee County Jail, 438 F.Supp.2d 937 (C.D.Ill. 2006). A pretrial detainee brought a § 1983 action against a county jail and jail personnel, alleging violations of his due process rights. The district court granted the defendants' motion for summary judgment. The court held that the county jail and jail personnel were not aware of, and deliberately indifferent to, a specific, impending, and substantial threat to the pretrial detainee's safety, as required for liability under § 1983 for failure to protect detainee from other inmates in violation of detainee's right to due process. According to the court, even if the detainee was involved in several altercations with other inmates, he never filed grievances or complaints about those incidents, he claimed only some bruising and a bloody nose as result of the altercations, and although the detainee requested medical attention for a sore finger after the altercations, he did not complain at that time about injuries from fights. The court found that the county jail and jail personnel did not act with deliberate indifference after he was injured in a fight with another inmate in a holding cell, and that he received appropriate medical care after the fight. Jail personnel drove the detainee to a hospital where he received three stitches in his head, a splint for his wrist, and x-rays, which found no fractures. Upon his return from the hospital, the detainee was placed in the jail's medical dormitory, where he remained until his transfer out of the jail. While in the medical dormitory, the detainee received medical attention and was never beaten by anyone. The detainee subsequently saw medical or nursing personnel on six occasions without complaining of any serious medical condition or medical crisis. (Kankakee County Jail, Illinois)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
PLRA- Prison Litigation
Reform Act

Clark-Murphy v. Foreback, 439 F.3d 280 (6th Cir. 2006). The estate of a state inmate who died of dehydration while in an observation cell brought two civil rights suits against prison employees, alleging deliberate indifference to the prisoner's medical needs in violation of the Eighth Amendment. The district court denied qualified immunity to 15 corrections officers and they appealed. The appeals court held that a captain and sergeant who assisted the inmate after he collapsed outside the mess hall were not subjectively indifferent to his serious medical needs in violation of his Eighth Amendment rights, and thus were entitled to qualified immunity. The court noted that each perceived that the inmate faced risks to his psychological health and took reasonable steps to ensure that officers in charge of the inmate's care secured psychological services for him, and that neither officer had any further contact with the inmate or any reason to believe that the inmate's medical needs were not being met. The court found that prison officers and a psychologist who were in the position to perceive that the inmate, who was acting strangely and had been locked in an observation cell and had not received the psychological assistance he needed, were not entitled to qualified immunity on the Eighth Amendment claim alleging deliberate indifference given their interactions with the inmate and their apparent failure to go up the chain of command when a referral did not secure assistance for the inmate. The court also found that the officers and psychologist were not entitled to qualified immunity on the claim that they were deliberately indifferent to the hydration needs of the inmate who died of dehydration after six days in an observation cell, as they could have perceived a serious risk to the inmate based on a heat wave, the fact that water was repeatedly cut off to inmate's cell during their shifts, and the reports of other inmates that the inmate had called out for water. The court found that a correctional nurse who worked just one shift shortly after the inmate's placement in an observation cell was entitled to qualified immunity from liability given her limited exposure to the inmate and the resulting absence of evidence that there was reason to believe that the nurse perceived that psychological help had not been obtained for the inmate or that his condition was deteriorating. (Bellamy Creek Correctional Facility, Ionia, Michigan)

U.S. District Court
FEMALE PRISONERS
PLRA- Prison Litigation
Reform Act

Clifton v. Eubank, 418 F.Supp.2d 1243 (D.Colo. 2006). An inmate brought a § 1983 action alleging violations of the Eighth and Fourteenth Amendment against a prison nurse and corrections officers, arising out of the stillbirth of her fetus. The court denied the defendants' motion for summary judgment. The court held that the inmate's delayed labor, resulting in the stillbirth of an otherwise viable fetus, constituted a physical injury to the mother sufficient to satisfy the Prison Litigation Reform Act's (PLRA) physical injury requirement, and that PLRA did not bar her constitutional claims under the Eighth and Fourteenth Amendments. The inmate had told an officer that she was in labor and needed medical assistance but the officer sent her back to her housing unit. Later she told another officer that she was in labor and needed help but the officer declined to provide her with medical assistance and told her to return to her unit. Upon her third request for medical assistance, another officer sent her to the facility's medical unit where the nurse examined the inmate and found no evidence that her water had broken. During the examination the nurse did not use a fetal heart monitor to evaluate the status of the fetus, apparently because she did not know how to use the monitor. The inmate was sent back to her housing unit without treatment, even though she told the nurse that she had difficulties with prior deliveries. The next day, another officer noticed Clifton's distress and sent her to the medical unit. She was sent from the prison to a hospital, where it was determined that her fetus was dead. (Women's Correctional Facility, Canon City, Colorado)

U.S. District Court
MEDICATION
DELIBERATE INDIFFERENCE

Cook v. Pueppke, 421 F.Supp.2d 1201 (E.D.Mo. 2006). A prisoner brought a § 1983 action against a prison nurse supervisor, alleging she prevented him from receiving needed medication following a tooth extraction, in violation of his federal constitutional rights. The nurse supervisor filed motion for summary judgment which was granted by the district court in part, and denied in part. The court held that a genuine issue of material fact as to whether the nurse supervisor directed other nurses not to provide the inmate with his prescribed pain medication because of his attempted escape, precluded summary judgment in favor of the supervisor. The court granted summary judgment for the defendant on the alleged deprivation of antibiotic medication. The court found that the deprivation of an antibiotic prescribed for eight days could not support an Eighth Amendment violation in a § 1983 action where there was no medical evidence that the inmate developed an infection or that failure to administer the antibiotic resulted in any infection or other negative medical condition, and the inmate's only complaint was of the pain resulting from the alleged failure to administer pain medication. (Southeast Correctional Center, Missouri)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE
DELAY IN CARE
MEDICATION

Davis v. Carter, 452 F.3d 686 (7th Cir. 2006). A plaintiff filed an action on behalf of an inmate's estate, alleging that county jail officials failed to provide adequate medical assistance to the inmate. The inmate's death in the county jail was due to sudden withdrawal from his prescribed methadone medication. The district court entered summary judgment in favor of the officials and the plaintiff appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that fact issues remained as to whether the county had a widespread practice or custom of inordinate delay in providing methadone treatment to inmates. The court found that a county jail officer was not deliberately indifferent to the inmate's methadone withdrawal symptoms, and thus was not subject to liability under § 1983 for an Eighth Amendment violation following the inmate's death, even though the officer received a call from the inmate's wife informing her that the inmate had not yet received methadone treatment and was in excruciating pain. The officer responded that the county "don't work that fast," but appropriately transferred the call to a person responsible for the inmate's medical care. There was no evidence that the officer's job duties included anything more than answering the telephones. (Cook County Jail, Illinois)

U.S. District Court
PRETRIAL DETAINEE
PLRA- Prison Litigation
Reform Act

Davis v. Township of Paulsboro, 421 F.Supp.2d 835 (D.N.J. 2006). The parents of an arrestee brought a federal civil rights claim against a county, a township, and various law enforcement officers, arising from arrestee's death which occurred after he had been struck in the head by a bottle during a fight and then taken into police custody. The defendants moved for summary judgment and the district court granted the motion. The court held that the officers did not use excessive force in spraying the suspect with pepper spray, where he was visibly agitated, was acting aggressively, was yelling profanities, banged walls in his house, and shoved an officer three times, and no lasting injury occurred. According to the court, the officers did not use excessive force in waiting to wash the pepper spray from the suspect's eyes until after he had been transported from the site of the spraying to a police station because the suspect continued to physically resist officers and persisted in yelling and cursing after being sprayed. The court found that an officer did not use excessive force in removing the arrestee from his cell, where the officer nudged the arrestee several times on his lower leg in an attempt to rouse him, stepped into the cell and grabbed the arrestee by the arm, smoothly pulled the suspect by the arm off the bench and onto his hands and knees, pulled him a few feet across the floor, and placed handcuffs on him. The court held that Township officers were not deliberately indifferent to the serious medical needs of the arrestee who had been hit on the head with a bottle in a fight prior to arrest, and thus due process principles were not violated, where an ambulance arrived to transport the arrestee to a hospital within minutes of the arrestee's arrival at police headquarters, a doctor examined the arrestee and determined he was fit for incarceration, and the arrestee was

periodically checked once back at the police station. According to the court, the fact that the arrestee vomited and was still bleeding upon his return to the police station did not establish deliberate indifference. (Gloucester Co. Sheriff's Dept., Township of Paulsboro, New Jersey)

U.S. District Court
HEARING IMPAIRED
REHABILITATION ACT
ADA- Americans with
Disabilities Act

Degrafinreid v. Ricks, 417 F.Supp.2d 403 (S.D.N.Y. 2006). A deaf inmate sued the superintendent of a state correctional facility and other officials, claiming violation of his constitutional and statutory rights when his hearing aid was confiscated during a search of his cell and then destroyed. The district court held that the inmate stated a claim for monetary damages against the state under the Americans with Disabilities Act (ADA), through allegations that constituted a showing of deliberate indifference to the inmate's medical condition in violation of the Eighth Amendment. The inmate claimed that officials destroyed his hearing aid during a search of his cell, knowing he was deaf, and delayed replacement for many weeks. According to the court, because the Rehabilitation Act (RA) was enacted pursuant to the Spending Clause of Article I, Congress can require states to waive their sovereign immunity as a condition of accepting federal funds. New York State's continued acceptance of funding, under the Rehabilitation Act, resulted in a waiver of sovereign immunity as to claims of the deaf prison inmate. (Upstate Correctional Facility, New York)

U.S. District Court
REHABILITATION ACT
ADA- Americans with
Disabilities Act
AIDS- Acquired Immune
Deficiency Syndrome
TRANSPORTATION

Dukes v. Georgia, 428 F.Supp.2d 1298 (N.D.Ga. 2006). A pretrial detainee brought an action against state and county defendants as well as jail personnel, alleging deliberate indifference to a serious medical need, violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and medical malpractice. The defendants filed motions for summary judgment. The court held that jail personnel did not violate the Americans with Disabilities Act (ADA) or the Rehabilitation Act when an officer and others allegedly told other inmates of the detainee's status as an HIV infected person, where the detainee did not show that such disclosure denied him the benefits of any program or service or that it discriminated against him. The court also found no ADA or Rehabilitation Act violation when an officer did not place a mask on the detainee when he was being transported to the hospital, where the failure to place a mask on the detainee did not deny him the benefits of any program or service or discriminate against him. The court noted that transportation can be construed as a "program or service provided by the public entity" for the purposes of Title II of the Americans with Disabilities Act (ADA). According to the court, even if a physician's failure to diagnose the pretrial detainee's cryptococcus was negligent or even severely negligent, her actions and treatment of the detainee did not constitute deliberate indifference to the detainee's serious medical needs in violation of due process where the detainee was receiving treatment for his symptoms and his underlying illness, HIV, and while in hindsight it appeared that a lesion shown by the x-rays was in fact cryptococcus, there was no showing that indicated that the physician was ever aware of that severe risk. The court held that a jail nurse was not deliberately indifferent to the detainee's serious medical needs in violation of the due process clause, where she responded to all requests for medical service and conveyed the requests and relevant information to a physician, and did not have substantial knowledge of a serious medical risk when she observed that the detainee was not moving about, was urinating on his mat, and was cursing at the staff. (Coweta County Jail, Georgia)

U.S. District Court
HEARING IMPAIRED
ADA- Americans with
Disabilities Act

Duquin v. Dean, 423 F.Supp.2d 411 (S.D.N.Y. 2006). A deaf inmate filed an action alleging that prison officials violated his rights under the Americans with Disabilities Act (ADA), Rehabilitation Act, and a consent decree by failing to provide qualified sign language interpreters, effective visual fire alarms, use of closed-captioned television sets, and access to text telephones (TTY). Officials moved for summary judgment, which the district court granted in their favor. The court held that the officials at the high-security facility complied with the provision of a consent decree requiring them to provide visual fire alarms for hearing-impaired inmates, even if the facility was not always equipped with visual alarms, where corrections officers were responsible for unlocking each cell door and ensuring that inmates evacuate in emergency situations. The court held that the deputy supervisor for programs at the facility was not subject to civil contempt for her failure to fully comply with the provision of consent decree requiring the facility to provide access to text telephones (TTY) for hearing-impaired inmates in a manner equivalent to hearing inmates' access to telephone service, even though certain areas within the facility provided only limited access to TTY, and other areas lacked TTY altogether. The court noted that the deputy warden made diligent efforts to comply with the decree, prison staff responded to the inmate's complaints with temporary accommodations and permanent improvements, and repairs to broken equipment were made promptly. The court found that the denial of the inmate's request to purchase a thirteen-inch color television for his cell did not subject the deputy supervisor for programs to civil contempt for failing to fully comply with the provision of a consent decree requiring the facility to provide closed-captioned television for hearing-impaired inmates, despite the inmate's contention that a closed-caption decoder would not work on commissary televisions. The court noted that the facility policy barred color televisions in cells and that suppliers confirmed that there was no technological barrier to installing decoders in televisions that were available from the commissary. (Wende Correctional Facility, New York)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
DELAY IN CARE

Feeney v. Correctional Medical Services, Inc., 464 F.3d 158 (1st Cir. 2006). A former inmate brought a § 1983 action against state correctional health care professionals, alleging they acted with deliberate indifference to his serious medical needs. The district court granted summary judgment in favor of the professionals and the former inmate appealed. The appeals court affirmed, finding that the health care professionals were not deliberately indifferent to the former inmate's serious medical needs. The former inmate suffered from plantar faciitis, and alleged that there was a lengthy delay in providing him with orthopedic footwear after it was first prescribed. The court noted that the inmate was examined many times after he first reported his symptoms, numerous diagnostic tests were performed on the inmate, outside specialists-- including a podiatrist, neurologist, neurosurgeon, and physical therapist-- were consulted, the inmate was given other treatments for his symptoms, and that uncertainty existed about the source of his pain prompting causes other than plantar faciitis to be investigated. (Correctional Medical Services, Inc., Old County Correctional Center, Massachusetts)

U.S. District Court
HEARING IMPAIRED
ADA- Americans with
Disabilities Act

Figueroa v. Dean, 425 F.Supp.2d 448 (S.D.N.Y. 2006). A state prisoner who was born deaf brought an action against a superintendent of programs at a prison, alleging failure to provide interpreters, visual fire alarms, access to text telephone, and a television with closed-captioned device in contempt of a consent order in class action in which the court entered a decree awarding declaratory relief to prohibit disability discrimination against hearing impaired prisoners by state prison officials. The superintendent moved for summary judgment and the district court granted the motion. The court held that the exhaustion requirement of Prison Litigation Reform Act (PLRA) did not apply to an action seeking exclusively to enforce a consent order. The court found that the superintendent was not in contempt of the consent order, noting that sign language interpreters were provided at educational and vocational programs and at medical and counseling appointments for hearing-impaired inmates as required by consent decree, the prison was equipped with visual fire alarms that met the requirements of the decree, and diligent efforts were being made to comply with the consent decree regarding access to text telephones. (Wende Correctional Facility, New York)

U.S. District Court
DELIBERATE INDIF-
FERENCE

Flanyak v. Hopta, 410 F.Supp.2d 394 (M.D.Penn. 2006). A state prison inmate filed a § 1983 Eighth Amendment action against the supervisor of the unit overseeing prison jobs and against the prison's health care administrator, alleging that he had been subjected to unsafe conditions while working as a welder. The inmate also alleged that the administrator had been deliberately indifferent to his medical needs arising from those conditions. The defendants moved for summary judgment and the district court granted the motion. According to the court, the supervisor of the state prison unit overseeing prison jobs was not shown to have known of and disregarded a risk to the inmate who had chronic obstructive pulmonary disease, from dust and smoke accompanying his work as a welder, precluding recovery in the inmate's § 1983 Eighth Amendment action against the supervisor alleging unsafe working conditions. The inmate did not complain directly to the supervisor about his working conditions or file a grievance relating to those conditions and declined to wear a dust mask he was given. The court noted that the prison's accreditation required compliance with safe-working-area standards. The court held that the prison's health care administrator could not be liable in the inmate's § 1983 Eighth Amendment action alleging deliberate indifference to serious medical needs because the administrator was neither a prison doctor nor on the medical staff. The inmate was diagnosed and treated by others without ever seeing the administrator, and the inmate never filed any grievances that would have alerted the administrator to any alleged mistreatment. (State Correctional Institution at Mahanoy, Pennsylvania)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIF-
FERENCE

Fleming v. LeFevere, 423 F.Supp.2d 1064 (C.D.Cal. 2006). An inmate who was denied treatment for Hepatitis C sued a prison's staff psychiatrist who reported that the prisoner was a fairly poor candidate for treatment of Hepatitis C with Interferon, alleging state and federal constitutional violations. The psychiatrist filed a motion for summary judgment which the court granted. The district court held that the inmate failed to establish that the psychiatrist was deliberately indifferent to the inmate's serious medical need in violation of his rights under the Eighth Amendment, because the prisoner's claim was based solely on his disagreement with the psychiatrist's medical evaluation, and he failed to provide any competent evidence to satisfy his burden of showing that the psychiatrist chose a medically unacceptable course of treatment in conscious disregard of any risk to the inmate's health. The court held that the inmate failed to state a claim under the Fourteenth Amendment, and that even assuming the psychiatrist violated the inmate's constitutional rights, the psychiatrist was entitled to qualified immunity. According to the court, the inmate could not state a claim for personal injury damages against the psychiatrist based on the equal protection clause of the California Constitution, and the inmate could not state a claim against the psychiatrist based on a clause of California Constitution providing that state constitutional rights were not dependent on those guaranteed by the United States Constitution. (California Men's Colony)

U.S. District Court
DELIBERATE INDIF-
FERENCE

Forton v. County of Ogemaw, 435 F.Supp.2d 640 (E.D.Mich. 2006). The estate of a deceased jail inmate brought suit against a county and various employees, claiming deprivation of the inmate's Eighth Amendment right to medical care. The female inmate had been serving a sentence in the jail and died from a cancerous tumor that encircled her esophagus. The district court granted summary judgment in favor of the defendants. The court held that the inmate had an objectively serious medical condition, as required for an Eighth Amendment claim. The court found that the jail nurse supervising medical care of the inmate did not display deliberate indifference to the inmate's medical condition, in violation of Eighth Amendment, where the nurse twice had the inmate sent to a clinic for a physician's evaluation, provided the inmate with an inhaler and instructed the inmate in its use, had the inmate moved to an observation cell, and left orders that the inmate be transported to a medical facility if her condition worsened. The court found that a jail officer who was observing the inmate was not deliberately indifferent to the inmate's medical condition, where the officer had no knowledge of the inmate's condition, administered the inhalator dose, checked on the inmate frequently, and declined the inmate's request that she be taken to hospital, supported by another inmate, only because of the non-hospitalization order left by nurse. According to the court, the alleged failure of the jail administrator, who was not on duty on the day in question, to relay a friend's concern regarding the physical condition of inmate, left as telephone message, did not establish that the administrator was deliberately indifferent to the medical situation of inmate. The court also found that correctional officers did not show deliberate indifference to the inmate, although the inmate was screaming while in an observation cell, wanting to return to her own cell, and not eating, because the officers observed her frequently and took her back to her cell at her request, where she instantly fell to the floor unconscious. (Ogemaw County Jail, Michigan)

U.S. District Court
SMOKE-FREE
ENVIRONMENT

George v. Smith, 467 F.Supp.2d 906 (W.D.Wis. 2006). A state prisoner sued prison officials under § 1983, alleging deprivation of his free speech rights and deliberate indifference to his serious medical needs. The officials moved for summary judgment and the district court granted the motion in part and stayed in part. The court held that: (1) the officials' ban on the prisoner's receipt of a newsletter on the ground that the newsletter solicited gifts did not violate the prisoner's free speech rights; (2) a prohibition against the prisoner possessing an atlas did not violate his free speech rights; (3) the officials did not violate the prisoner's speech rights in concluding that a magazine advocated behavior consistent with a gang and thus was prohibited by regulation; and (4) the prisoner was not exposed to unreasonably high levels of environmental tobacco smoke. The court found that the prisoner was not exposed to unreasonable levels of environmental tobacco smoke, where the only smoking allowed in the prison was outdoors, and he was not required to stand or sit next to staff or inmates while they were smoking outdoors. The court noted that medical records revealed that the prisoner was seen for complaints relating to asthma only four times in three years, and that he did not claim second-hand smoke was a potential cause of the first three flare-ups. (Oshkosh Correctional Institution, Wisconsin)

U.S. District Court
INADEQUATE CARE
PLRA- Prison Litigation
Reform Act

Glass v. Rodriguez, 417 F.Supp.2d 943 (N.D.Ill. 2006). A state inmate brought an action against a doctor at a county jail, alleging deliberate indifference to his back problems while he was a pretrial detainee. The doctor moved for summary judgment and the district court granted the motion. The court held that the doctor was not deliberately indifferent to the serious medical condition of the detainee with back pain, as would violate the Due Process Clause, even though the detainee never underwent an MRI and he was not able to see a physician every week as he would have wished. The court found that doctors, orthopedic specialists, and physical therapists used x-rays and CAT scans to diagnose the detainee's condition and to develop a treatment plan, and the detainee was provided with pain medication, physical therapy, and visits to an outside clinic. The court noted that neither simple medical malpractice nor mere dissatisfaction with a doctor's prescribed course of treatment is actionable as Eighth Amendment deliberate indifference under § 1983. (Cook County Correctional Center, Illinois)

U.S. Appeals Court
INADEQUATE CARE
NEGLIGENCE
WORK ASSIGNMENT

Gobert v. Caldwell, 463 F.3d 339 (5th Cir. 2006). A former inmate whose leg was injured while he was on work release brought a § 1983 action against a state prison physician, alleging constitutionally inadequate medical care. The physician moved for summary judgment. The district court denied qualified immunity, and the physician appealed. The appeals court reversed, finding that the physician was aware of a substantial risk of serious harm to the inmate from the nature of the wound itself, but the inmate failed to demonstrate that the physician disregarded the substantial health risk about which he knew, as required to establish deliberate indifference to a serious medical need. The inmate's leg was crushed while he was on work release when the garbage collection truck on which he worked as a "hopper" collided with another vehicle. The inmate's injury consisted of an open wound. According to medical records, the inmate was given extensive medical treatment for the injury throughout his imprisonment term, and the court held that, at most, there might have been negligence in the one-week lapse in antibiotic treatment. (Elayn Hunt Correctional Center, Gabriel, Louisiana).

U.S. Appeals Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE

Gordon ex rel. Gordon v. Frank, 454 F.3d 858 (8th Cir. 2006). The widowed spouse of an inmate who died in a county jail brought an action against the county and jail personnel under § 1983 and Minnesota tort law. The district court denied the defendants' summary judgment motion, and the defendants appealed. The appeals court affirmed. The court held that: (1) the corrections officer was not entitled to qualified immunity on a § 1983 claim; (2) the supervisor was not entitled to qualified immunity; (3) the officers were not entitled to official immunity on the tort claim under Minnesota law; and (4) the supervisor was not entitled to official immunity on the tort claim under Minnesota law. The court held that a corrections officers acted with deliberate indifference to the inmate's serious medical need in her response to his intercom call for medical help, and thus, the officer was not entitled to qualified immunity on the spouse's § 1983 claim. According to the court, at roll call before her shift, the officer learned the inmate had medical issues that placed him on high observation, she knew the inmate had been released from the jail a year before due to heart problems, and she was present when the inmate asked for help climbing the stairs to his cell and saw him struggling up the stairs. When the inmate called and told her he could not breathe and was in pain, she delayed medical treatment and threatened to discipline him. The court held that a corrections officer acted with deliberate indifference to the inmate's serious medical needs by failing to initiate medical treatment, and thus, the officer was not entitled to qualified immunity on the spouse's § 1983 claim. The officer knew the inmate had medical issues that placed him on high observation, he was present when the inmate asked for help climbing the stairs to his cell and saw him struggling up the stairs, he received the intercom call from the inmate requesting a blood pressure test and overheard a call in which the inmate told another officer he could not breathe and was in pain, and the inmate told him he had trouble breathing during the officer's subsequent wellness check.

According to the court, a supervisor was not entitled to qualified immunity on the spouse's § 1983 claim. An officer told the supervisor that the inmate had complained over the intercom of breathing trouble and chest in, and the supervisor noted the incident but waited for officers to ask him to initiate medical treatment. The court found that under the Minnesota law, officers violated a ministerial duty when they failed to immediately notify their supervisor of the medical situation of the inmate, and thus, the officers were not entitled to official immunity on the tort claim brought by the inmate's widowed spouse. The county sheriff's medical emergency policies narrowed the standard of the officers' conduct in response to a medical situation to a simple and definite task of notifying the supervisor.

The inmate had been sentenced to 10 days in jail for driving without a license. He was released to a hospital to treat his heart problems. After treatment, he did not return to the jail. The county issued a warrant for him to serve his five remaining days. A year later, he returned to a hospital complaining of pain. After waiting in the emergency room, he left without receiving treatment but called the police for a ride home. Finding a warrant for his arrest, the police turned him over to a county deputy. He told the deputy he had congestive heart failure and pneumonia. At 5:23 p.m. he arrived at the jail. He immediately complained of pain and informed the jail staff that he had pneumonia, congestive heart failure, high blood pressure and diabetes. After 11:00 p.m., he was taken to his cell. He requested help climbing the stairs from two officers on duty. He did not receive help and climbed the stairs on his own. Between 11:55 p.m. and 12:00 a.m., he rang the officers' intercom three times. The officers conducted wellness checks on inmates every 30 minutes throughout the night. During two checks early in the morning, an officer spoke with the inmate, who said something about medication and trouble breathing. Officers observed him resting on his bunk throughout the night. He changed positions restlessly. At 5:15 a.m., an officer noticed that he lay partially propped against the wall, blood flowing from his mouth, eyes open, and no sign of breathing. He died of hypertensive and arteriosclerotic heart disease. (Washington County Jail, Minnesota)

U.S. Appeals Court
INTAKE SCREENING
SUICIDE

Grayson v. Ross, 454 F.3d 802 (8th Cir. 2006). The personal representative of the estate of a pretrial detainee who died following self-mutilation while incarcerated in a jail, brought a civil rights action against the county sheriff, the arresting police officer, and jailers in their individual and official capacities alleging violation of the pretrial detainee's right to medical treatment and to due process. The district court granted judgment for the defendants and the estate appealed. The appeals court affirmed in part. The court held that: (1) the detainee did not have an objectively serious medical need on intake from the perspective of the arresting police officer, as a layperson; (2) the arresting police officer did not subjectively know that the detainee required medical attention; (3) a reasonable police officer would not have known on intake that the pretrial detainee had an objectively serious medical need; (4) the detainee did not have an objectively serious medical need on intake from the perspective of the jailer, as a layperson; (5) the jailer did not subjectively know that the detainee required medical attention; (6) a reasonable jailer would not have known on intake that the pretrial detainee had an objectively serious medical need; (7) the county did not have an official practice of booking inmates who were hallucinating without providing medical care; and (8) the district court did not abuse its discretion by excluding the Arkansas State Jail Standards from evidence in the trial, as the jail standards did not represent minimum constitutional standards. (Crawford County Detention Center, Arkansas)

U.S. District Court
MENTAL HEALTH

Hadix v. Caruso, 461 F.Supp.2d 574 (W.D.Mich. 2006). State prisoners filed a class action under § 1983 in 1980, alleging that conditions of their confinement violated their constitutional rights. Following settlement of claims by consent decree, and termination of the enforcement of mental health provisions of the consent decree, a prisoner moved to reopen the judgment regarding mental health care and for the issuance of preliminary injunction. The district court granted the motion. The court held that reopening the mental health provisions of the consent decree was warranted where many recurrent problems noted by physicians concerned “cracks” between medical and mental health care. The court noted that forcing separate enforcement actions on related topics would do a disservice to prisoners and administrators by forcing them to function under multiple enforcement regimes. According to the court, the prison’s failure to provide daily psychologist rounds to mentally ill prisoners in a segregation unit violated their Eighth Amendment rights, inasmuch as such prisoners often had psychiatric needs which could not be accommodated without rounds due to their lack of movement and the prisoners’ inability to request care, and that segregation often placed prisoners with mental illness at a heightened risk of mental decompensation and in conflict with correctional officers. The court held that the pattern and practice of non-treatment of prisoners with mental illness, and the uncoordinated treatment of prisoners presenting complicated cases with interdisciplinary problems, violated the Eighth Amendment, in that it deprived prisoners of necessary services for serious medical and mental health needs. The court found that the prison’s use of mechanical in-cell restraints, including “top of the bed” restraints consisting of chaining a prisoner’s hands and feet to a concrete slab, as disciplinary method and/or control mechanism constituted torture and violated the Eighth Amendment, notwithstanding a six-hour limit on bed restraints but which did not prohibit the use of other dangerous restraint devices at end of the six-hour period. (Southern Michigan State Prison, Jackson)

U.S. District Court
RELEASE
FAILURE TO PROVIDE
CARE

Hubbard v. Taylor, 452 F.Supp.2d 533 (D.Del. 2006). Pretrial detainees filed suit under § 1983, challenging conditions of their confinement on Fourteenth Amendment due process grounds, and a prisoner imprisoned at the same facility asserted a claim under the Americans with Disabilities Act (ADA). The district court granted the defendants' motion for summary judgment and plaintiffs appealed. The appeals court vacated and remanded. On remand, the district court granted summary judgment for the defendants. The court held that requiring the pretrial detainees to sleep on a mattress on the floor of their cells for a period of three to seven months did not violate the detainees' Fourteenth Amendment due process rights, because providing sleeping accommodations on the floor was in response to overcrowding at the facility and was not intended to punish. The court noted that even if the pretrial detainees' constitutional rights were violated by requiring them to sleep on mattresses on the floor, the law was not sufficiently clear so that a reasonable official would understand that what he was doing violated a constitutional right, entitling the officials to qualified immunity. The court held that a former inmate's allegations that he was released from prison due to his end stage renal disease, rather than be provided with medical care, failed to establish a prima facie case of discrimination under the Americans with Disabilities Act (ADA), where the inmate was not denied adequate medical services because of his end stage renal disease and he received regular dialysis treatment while he was incarcerated. (Multi-Purpose Criminal Justice Facility, Delaware)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
PLRA- Prison Litigation
Reform Act

Jett v. Penner, 439 F.3d 1091 (9th Cir. 2006). A state prisoner who had fractured his thumb brought a pro se civil rights action against prison doctors, a warden, and others, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The court of appeals held that genuine issues of material fact precluded summary judgment in favor of two doctors and a warden, reversing and remanding. The court found that there were issues of material fact as to when a prison doctor became aware of the prisoner's fractured thumb, whether a prison doctor was deliberately indifferent to the prisoner's serious medical need to have his thumb set and cast, and whether the delay in treatment was harmful to the prisoner. The prisoner claimed that he had sent letters and grievances about his failure to receive treatment. (California State Prison-Sacramento)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIF-
FERENCE

Johnson v. Doughty, 433 F.3d 1001 (7th Cir. 2006). A former inmate brought an action under § 1983 against prison doctors and officials, alleging deliberate indifference to his medical needs. The court granted summary judgment to some of the officials, and final judgment for the remaining defendants after a bench trial. The court held that the inmate failed to establish that the officials acted with a sufficiently culpable state of mind in allegedly exhibiting deliberate indifference to his medical needs. According to the court, the necessity for surgery for the inmate’s hernia was not obvious to the non-medical grievance counselor and warden, and to the reviewing administrators who determined that the inmate’s situation had been addressed appropriately. The court found that the examining doctor formed a professional opinion that surgery was not necessary and did not subsequently observe any worsening of the inmate’s condition. The court noted that other doctors concurred with the initial diagnosis and the health care administrator reasonably relied upon the doctors’ opinions. (Graham Correctional Center, Illinois)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
DELAY IN CARE

Johnson v. Hamilton, 452 F.3d 967 (8th Cir. 2006). A state prisoner who was involved in a physical altercation with corrections officers brought a § 1983 action, alleging violation of his Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed. The court found that the officers' use of force against the prisoner was reasonable. The prisoner pushed and punched one officer in response to an attempt to restrain him and examine his earring to determine whether the earring violated the prison rules. The prisoner continued to assault the officers even after he was restrained. The court noted that the injuries suffered by the officers were much more serious than any suffered by the prisoner, and the prisoner was criminally prosecuted and convicted as a result of his conduct during the altercation. The court held that the prisoner failed to demonstrate that prison medical personnel deliberately disregarded his serious medical needs, as would violate his Eighth Amendment rights. According to the court, although there was a delay of one month between the date that a prison nurse tentatively diagnosed the prisoner with a fractured finger and the x-ray and treatment of the fracture, there was no showing that the delay was the result of anything other than negligence. (Jefferson City Correctional Center, Missouri)

U.S. Appeals Court
HANDICAP
DELIBERATE INDIF-
FERENCE

Johnson v. Snyder, 444 F.3d 579 (7th Cir. 2006). A state prisoner, who was an amputee, brought a civil rights action against various prison officials, alleging violation of the Eighth and Fourteenth Amendments. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court affirmed. The court held that the director of the state Department of Corrections was not liable absent evidence that the director was actually aware of the prisoner's situation or his complaints. The court concluded that the health care administrator was not deliberately indifferent to the medical needs of the prisoner where the administrator responded in a timely manner to the prisoner's grievance, noted that the prisoner did not need a crutch because of his prosthesis, and recommended that a concrete bench be placed in the shower. The court also found that the disability coordinator was not deliberately indifferent because the coordinator investigated the prisoner's complaint, acknowledged a problem with the shower and then understood that a stronger chair would be provided, and there was no evidence that the coordinator was aware that a stronger chair was not provided or that he had an affirmative duty to investigate further. The court held that the warden was not deliberately indifferent where the warden was aware of the prisoner's request, he concurred with other officials' recommendation for a different chair, and evidence showed that he believed that his subordinates were attending to the issue. According to the court, the superintendent was not deliberately indifferent, where the superintendent contacted a subordinate prison official who supervised the shower personnel and discussed the problem, he suggested reinforcing the chair, and since he did not hear further about the problem he assumed it had been resolved. (Menard Correctional Center, Illinois)

U.S. District Court
INADEQUATE CARE

Jones v. Marshall, 459 F.Supp.2d 1002 (E.D.Cal. 2006). An inmate who was attacked by other prisoners brought suit against prison employees alleging failure to protect his safety and deliberate indifference to his medical needs. The defendants moved for summary judgment and the district court granted the motion. The court held that the prison officers were not deliberately indifferent to any risk that the inmate might be attacked by other prisoners by releasing him into an exercise yard, absent any evidence that the officers either knew or could have inferred that the new inmate, who had no known enemies, faced a substantial risk of attack from other inmates if released into the exercise yard. According to the court, the officers were not deliberately indifferent to a specific risk, as required to violate the inmate's Eighth Amendment rights by failing to protect him from attack, notwithstanding the inmate's generalized, subjective fear for his safety at the time. The court found that a medical technician was not deliberately indifferent to the serious medical needs of the inmate, who had been attacked by other prisoners in an exercise yard, when she visually examined him through holding cell bars immediately after the incident, but failed to touch him or treat him. The inmate suffered no further injury as a result of the technician's conduct, and the technician did not know of any serious medical condition and fail to treat it. (Solano State Prison, California State Prison at Corcoran)

U.S. Appeals Court
CONTAGIOUS
DISEASES

Kaucher v. County of Bucks, 455 F.3d 418 (3rd Cir. 2006). A corrections officer filed suit under § 1983 against a county and several county employees responsible for the operation of a correctional facility, alleging violation of his substantive due process rights, contending he contracted a Methicilin Resistant Staphylococcus Aureus (MRSA) infection as a result of the defendants' conscience-shocking behavior in creating unsanitary and dangerous conditions at the facility. The district court granted the defendants' motion for summary judgment, and the officer appealed. The appeals court affirmed. The court held that: (1) the alleged inadequate remedial and preventative measures to stop the spread of MRSA within the correctional facility did not rise to a level of deliberate indifference that could be characterized as conscience shocking, and (2) the facility's alleged failure to act affirmatively to improve conditions at the jail and alleged failure to act affirmatively to educate and warn inmates and corrections officers about MRSA infections and to train them in infection prevention were not the cause of the corrections officer's infection. The court noted that the state corrections department found the jail to be substantially in compliance with state standards, giving the defendants reason to believe their measures were adequate, only

two of 170 corrections officers tested positive for colonization of the infection, and the facility had in place policies and procedures to ensure sanitary conditions in the jail, including requirements that cells be regularly cleaned with an all-purpose detergent and that showers be disinfected with a bleach and water solution. The court also noted that the officer chose to remain employed at the jail, in a position that obliged him to work amidst MRSA infections and from the outset of his employment, he was aware of the safety risks associated with working in a prison, and he was on notice of the jail's standard operating procedures, which described proper methods of handling inmates with communicable diseases. (Bucks County Correctional Facility, Pennsylvania)

U.S. Appeals Court
ADA- Americans with
Disabilities Act
FAILURE TO PROVIDE
CARE
DELAY IN CARE
DELIBERATE
INDIFFERENCE

Kimman v. New Hampshire Dept. of Corrections, 451 F.3d 274 (1st Cir. 2006). A former state inmate filed an action alleging that prison officials violated Title II of the Americans with Disabilities Act (ADA) and state law by failing to properly treat his amyotrophic lateral sclerosis (ALS). The district court entered summary judgment in favor of the officials and the inmate appealed. The appeals court vacated and remanded. The court held that the officials' actions regarding the inmate's diagnosis, medical consultations, physical therapy, and medical dosages were not unreasonable. The prison medical staff sought the inmate's medical records, arranged for consultation with an outside specialist, and made reasoned medical judgments about the types of treatment and the physical therapy that they thought were appropriate in his case. According to the court, the delay in permitting the inmate to use his cane while they verified his need for it did not violate Title II of ADA, where the inmate had not used a cane when he was previously in the prison, the inmate was still able to walk without it, the inmate was confined to his cell at all times except for short daily walks to and from his shower, correction officers were available to help the inmate walk to a shower, and the inmate's doctor issued a day pass to permit the inmate to use a dayroom for recreation. The court found that summary judgment on ADA claims was precluded by a genuine issue of material fact as to: (1) whether the officials failed to deliver medications to the inmate in a timely and regular basis; (2) the using of a shower chair or accessible shower facilities despite his repeated requests; (3) the refusal to honor the inmate's front cuff pass and requests for front cuffing; and (4) the refusal to accommodate the inmate's request to be placed on the bottom tier of the facility and in a bottom bunk. The court noted that in the Eighth Amendment context, the lack of an inmate's formal compliance with a grievance procedure is not a defense to liability for those prison officials who were aware of the prisoner's serious medical needs and refused to help. (New Hampshire State Prison)

U.S. Appeals Court
DELAY IN CARE
TRAINING
DELIBERATE INDIF-
FERENCE

Long v. County of Los Angeles, 442 F.3d 1178 (9th Cir. 2006). The widow of an inmate in a county jail brought a § 1983 action in state court against the county and others, alleging failure to adequately train jail medical staff, leading to the denial of adequate medical care which resulted in the inmate's death. Following removal to federal court, the district court granted the county's motion for summary judgment and the widow appealed. The court of appeals reversed and remanded, finding that a genuine issue of material fact existed regarding whether the county's policy of relying on medical professionals, without offering training on how to implement procedures for documenting, monitoring, and assessing inmates in the medical unit of the jail, amounted to deliberate indifference to the inmates' serious medical needs. The court also found that summary judgment was precluded by a genuine issue of material fact regarding whether the county's failure to implement specific policies regarding the treatment of inmates in the medical unit of the jail amounted to a failure to train the jail's medical staff on how to treat inmates, and whether the policies were the moving force behind the inmate's death. The 71-year-old inmate was serving a 120-day jail sentence, and he suffered from congestive heart failure and other ailments. Over a period of eighteen days his medical condition deteriorated, and although nurses saw him several times during that period, there is no record of a doctor's examination until the morning of the 18th day, hours before he died of cardiac arrest. (Los Angeles Co. Jail, California)

U.S. District Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

MacLeod v. Kern, 424 F.Supp.2d 260 (D.Mass. 2006). A prisoner brought an action against correctional and health care defendants, alleging that they violated his civil rights by displaying deliberate indifference to his medical needs relating to his Hepatitis C, a stomach mass and a testicular cyst. The defendants moved for summary judgment, and the district court granted the motion. The court held that the course of treatment provided for the prisoner's serious medical needs, even if inadequate, was not so inadequate as to shock the conscience, and thereby constitute deliberate indifference in violation of the Eighth Amendment. According to the court, although the defendants denied medication for the prisoner's Hepatitis C, denial of the medication was due to the reason that the prisoner's treatment would have been adversely affected by the prisoner's prior drug use. (University of Massachusetts Correctional Health, Old Colony Correctional Center in Bridgewater, Massachusetts)

U.S. District Court
MEDICATION
DELIBERATE INDIF-
FERENCE

Martin v. Donaghue, 407 F.Supp.2d 984 (N.D.Ind. 2006). A state prison inmate brought § 1983 action against medical personnel and corrections officials, alleging deliberate indifference to his medical needs. The district court dismissed the case holding that: the "minimal" skin irritation from the inmate's elastic allergy did not constitute a serious medical need, and even assuming that the allergy constituted a serious medical need, there was no deliberate indifference since the inmate had been seen and treated. According to the court, because the allergy was not a serious

medical need, corrections officials' failure to supply him with medication and non-elastic underwear did not constitute deliberate indifference to the inmate's medical needs. The court noted that the inmate, who tucked his undershirt inside his underwear to avoid irritation in the absence of medication and elastic-free underwear, had been seen and treated, even though the inmate disagreed with that treatment. (Indiana)

U.S. Appeals Court
MEDICATION

Moots v. Lombardi, 453 F.3d 1020 (8th Cir. 2006). A state prisoner sued various prison officials, alleging that they were deliberately indifferent to his serious mental health needs and that they retaliated against him for filing a grievance. The district court entered summary judgment for the officials and the prisoner appealed. The appeals court affirmed and held that: (1) the failure to house the prisoner with cellmates of his choosing did not constitute deliberate indifference to his serious medical needs, where the officials had ample reasons for their action, including safety concerns, and the officials had no reason to know that their housing choices would have a serious negative impact on the prisoner's mental health; (2) any failure to ensure that the prisoner's medications were promptly transferred to solitary confinement did not constitute deliberate indifference to his serious medical needs, absent a showing by the prisoner that he suffered harm as a result; (3) a conduct violation for fighting did not constitute retaliatory discipline, where the prisoner was bruised around his eye, and the fact that a conduct violation was later expunged did not mean that there was not some evidence for its imposition; and (4) transfer to another prison did not constitute disciplinary retaliation, where he disputed neither the computation of his classification score nor the conclusion that his score made him ineligible to remain at the prison from which he was transferred. (Missouri Eastern Correctional Center)

U.S. District Court
PRIVACY
INFORMED CONSENT

Niemic v. Maloney, 448 F.Supp.2d 270 (D.Mass. 2006). An inmate in state correctional facility brought action against corrections officials and health care providers alleging that the health care providers improperly shared his medical records. The district court held that health care providers who provided medical services at the correctional facility did not violate inmate's Fourth Amendment rights when they exchanged medical information with corrections officers without the inmate's informed consent. The court found that the corrections officers had a reasonable need to know that the inmate's drug test showed use of heroin and cocaine. (MCI-Cedar Junction, Massachusetts)

U.S. Appeals Court
MEDICATION
DELIBERATE INDIF-
FERENCE

Norfleet v. Webster, 439 F.3d 392 (7th Cir. 2006). A federal prisoner with arthritis brought an action against prison officials, alleging they were deliberately indifferent to his serious medical needs. The district court granted summary judgment for the officials, in part, and the prison's clinical director and physician assistant appealed. The court of appeals held that neither the clinical director nor the physician assistant were deliberately indifferent to the prisoner's serious medical needs. The clinical director had determined that the prisoner no longer needed soft-soled shoes or certain medications for his arthritis, after receiving two differing medical opinions made within four months of each other. The physician assistant had required the prisoner to wait at least ten days before getting a refill of his pain reliever, in adherence to prison's policy regarding pain relievers. (United States Penitentiary, Terre Haute, Indiana)

U.S. District Court
DENTAL CARE
FAILURE TO PROVIDE
CARE
PRIVATE PROVIDER
DELIBERATE INDIF-
FERENCE

Olivas v. Corrections Corp. of America, 408 F.Supp.2d 251 (N.D.Tex. 2006). An inmate brought a § 1983 action against a private company that managed a prison, alleging violations of his constitutional rights and a claim of negligence under state law. The corporation moved for summary judgment and the district court granted the motion. The court held that: the company was not liable for alleged deliberate indifference to the inmate's serious medical needs; even if the corporation failed to properly prioritize the inmate's dental injury, the failure did not amount to deliberate indifference to the inmate's serious medical needs; and the inmate did not suffer a "physical injury" under the Prison Litigation Reform Act (PLRA). The court noted that a private corporation that manages a prison can be sued by an inmate under § 1983 for an alleged constitutional injury, since the operation of a prison is a fundamental government function and the standards applicable to determining liability under § 1983 against a municipal corporation are applicable to determining the liability of a private corporation performing a government function. The court held that the inmate's injury, in which he broke two front teeth, was not a dental injury that required emergency care, and therefore the private prison-management company was not liable to the inmate under § 1983 for alleged deliberate indifference to inmate's serious medical needs. The inmate did not initially seek emergency care, and in the days immediately following the injury he did not suffer pain requiring more than over-the-counter medicine. According to the court, even if the private prison-management corporation failed to properly prioritize the inmate's dental injury, such failure did not amount to deliberate indifference to the inmate's serious medical needs under the Eighth Amendment, for the purposes of the inmate's § 1983 claim against the company. The inmate's allegation in the § 1983 action that he suffered some pain, and later suffered depression and emotional injury resulting from the loss of his teeth, was insufficient to establish a "physical injury" under the Prison Litigation Reform Act (PLRA). (Corr. Corp. of America, Mineral Wells Pre-Parole Transfer Facility, Texas)

U.S. Appeals Court
RIGHT TO REFUSE
INFORMED CONSENT
INVOLUNTARY
TREATMENT

Pabon v. Wright, 459 F.3d 241 (2nd Cir. 2006). A pro se state prisoner sued prison physicians and private consulting physicians under § 1983, alleging that they violated Eighth Amendment by providing inadequate treatment for his Hepatitis C. The district court entered summary judgment in favor of the physicians and the prisoner appealed. The appeals court affirmed. The court held that the prisoner's due process right to refuse medical treatment carries with it a concomitant right to such information as a reasonable patient would deem necessary to make an informed decision, and that the prison officials' action of requiring the prisoner to undergo a liver biopsy before considering him eligible for Hepatitis C treatment was not a violation of his due process rights. The court also found that the prisoner's right to receive medical information was not clearly established when he had a liver biopsy. The court noted that prison officials may administer treatment to a prisoner despite that prisoner's desire to refuse treatment, without violating the prisoner's due process rights, if, in the exercise of their professional judgment, the officials reasonably determine that providing such treatment furthers a legitimate penological interest. (Green Haven Correctional Facility, New York)

U.S. District Court
REHABILITATION ACT
ADA- Americans with
Disabilities Act

Partelow v. Massachusetts, 442 F.Supp.2d 41 (D.Mass. 2006). A state prisoner whose leg had been amputated brought an action against numerous defendants, including a county correctional center and sheriff, alleging that failure to provide him with handicapped-accessible shower facilities during the renovation of his housing unit violated his federal and state civil rights. The district court granted summary judgment in favor of the defendants. The court held that the officials provided alternative accessible facilities, precluding claims under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The court noted that officials provided the prisoner with a chair for use in the standard shower, assigned him to a housing unit with handicapped-accessible showers, promptly transferred him back to his original unit at his request, and ultimately made arrangements for him to shower in the medical unit. The court held that the prisoner could not establish an Eighth Amendment claim, where officials allowed the prisoner to shower in medical unit and made other such accommodations imposing only minor impediments and delays. The court found that the transfer of the prisoner to a maximum security housing unit in order to place him near a handicapped accessible shower was not in retaliation for the prisoner's exercise of constitutional rights, as would violate § 1983. (Hampden County Correctional Center, Massachusetts)

U.S. Appeals Court
MEDICATION

Phillips v. Jasper County Jail, 437 F.3d 791 (8th Cir. 2006). An inmate at a county jail brought a § 1983 action against various jail employees and the jail's doctor, alleging violation of his constitutional rights. The district court granted the defendants' motions for summary judgment and the inmate appealed. The court of appeals held that the inmate was not entitled to appointed counsel where discovery had just begun at the time the inmate requested counsel and there was no conflicting testimony, there was no indication that the inmate was unable to investigate or present his case, the inmate correctly identified the applicable legal standard governing his claims and successfully amended his complaint to include essential information, his claims involved information readily available to him, the inmate was able to avoid procedural default, the complaint was sufficient to survive the first motion for summary judgment, and the inmate had been able to file more than thirty documents with the court. The court held that the jail's doctor who prescribed anti-seizure medicine to the inmate was not deliberately indifferent to the inmate's serious medical needs, even though the medication prescribed was different from the medication the inmate had taken in the past. According to the court, the doctor did not know that the medication prescribed would present a danger to the inmate or that he was prescribing less medication than was required. The court found that summary judgment was precluded by a genuine issue of material fact regarding whether jail employees assigned the inmate to a top bunk, despite the fact that he suffered from a seizure disorder. (Jasper County Jail, Missouri)

U.S. Appeals Court
MEDICATION
DELIBERATE
INDIFFERENCE

Pietrafeso v. Lawrence County, S. D., 452 F.3d 978 (8th Cir. 2006). A widow, as personal representative of a pretrial detainee who died of an acute asthma attack while detained in a county jail, brought a civil rights action against the county and jailers alleging deliberate indifference to the detainee's serious medical needs. The detainee had arrived at the jail at 7:10 p.m. with an envelope marked with the detainee's name, inmate number, and the following notation in bold red letters: "URGENT Colo. Inter-Correctional Medical Summary Transfer Report DELIVER TO MEDICAL DEPARTMENT AT ONCE." In an intake interview, the detainee told the jailer that he suffered from a severe asthma condition. The detainee said he was taking a "bunch" of medications, though he brought with him to the jail only an Albuterol inhaler. After a jury trial, the district court entered judgment in favor of the defendants as a matter of law. The appeals court affirmed. The court held that the head jailer was not deliberately indifferent to the detainee's medical needs in failing to take the detainee to a physician shortly after the detainee's arrival, absent any evidence that the jailer actually knew of and recklessly disregarded the risk of serious harm to the detainee posed by the lack of access to his prescribed medications over the weekend. According to the court, the head jailer's failure to take the detainee and his medical records to the physician was at most negligence. The court held that the jail administrator and the chief deputy were not deliberately indifferent, notwithstanding the chief deputy's instructions to another jailer to attempt to get the inmate's

prescriptions filled without taking the detainee to an emergency room. Although the jail administrator failed to ensure that the detainee visited a physician to secure a refill of his prescriptions, the day before the detainee died the administrator had been advised by a physicians assistant that an emergency room visit was not necessary unless the detainee made frequent use of the inhaler. The administrator was following that advice. The court noted that a jailer repeatedly asked others to obtain the detainee's medications and, on his day off, took medical notes transferred with the detainee to the physicians assistant and then visited the detainee in the jail to tell him of the physicians assistant's advice. (Lawrence Co. Jail, S.D.)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIF-
FERENCE

Pinkston v. Madry, 440 F.3d 879 (7th Cir. 2006). A state inmate brought § 1983 action against two correctional officers, alleging that they violated his Eighth Amendment rights in allowing another prisoner to assault him and thereafter refusing to assist him in receiving adequate medical care. The district court granted the officers' motion for judgment on partial findings and the inmate appealed. The court of appeals held that the inmate did not show that the two correctional officers failed to protect him by allowing a fight between the inmate and another prisoner, given the testimony of three witnesses that a correctional officer, acting alone, could not have operated a locking mechanism so as to open the inmate's cell door, thereby allowing the fight to occur. The court noted an absence of evidence that bolstered the inmate's contention that an officer could have opened the cell door by himself, and an absence of evidence that another officer was present who could have assisted the first officer in opening the cell door. The court found that the officers were not deliberately indifferent to any serious medical needs of the inmate following the alleged altercation with another prisoner, and thus were not liable under the Eighth Amendment and § 1983. The inmate testified that one officer obtained medical supplies, bandaged the inmate's split lip, and subsequently changed the dressing. The court noted that the inmate waited four days to formally request medical attention, and that the inmate refused to cooperate with medical staff and accept medical assistance when it was offered to him. (Indiana Department of Corrections Maximum Control Complex, Westville, Indiana)

U.S. Appeals Court
DELAY IN CARE
DELIBERATE INDIF-
FERENCE

Plemmons v. Roberts, 439 F.3d 818 (8th Cir. 2006). A county jail inmate who had been arrested for failing to pay child support brought a § 1983 action against a county, county sheriff, and corrections officers, alleging deliberate indifference to his serious medical needs. The district court denied the defendants' motion for summary judgment and they appealed. The court of appeals held that genuine issues of material fact as to whether the county jail inmate suffered from a serious heart condition, whether jail officials were notified of the inmate's history of heart problems, whether officials failed to recognize that the inmate was suffering from the symptoms of a heart attack that would be obvious to a lay person, whether the officials acted promptly to obtain necessary medical help, and whether the officials were properly trained to deal with such a medical emergency, precluded summary judgment in favor of the defendants. According to the court, the corrections officers' alleged delay in providing medical care to the inmate who was having a heart attack constituted conduct that violated clearly established law, and therefore the officers were not entitled to qualified immunity in the inmate's § 1983 Eighth Amendment deliberate indifference claim. The inmate alleged that two officers inexcusably delayed in summoning an ambulance even though he had told them that he had a history of heart trouble. The court noted that the medical intake form completed by one of the officers did not contain any mention of heart problems. (Pulaski County Jail, Missouri)

U.S. District Court
INADEQUATE CARE

Poole v. Taylor, 466 F.Supp.2d 578 (D.Del. 2006). A former pretrial detainee filed a § 1983 action alleging unconstitutional conditions of confinement, and that he was denied adequate medical care. The district court granted the defendants' motion for summary judgment. The court held that the detainee's due process rights were not violated when he was required to sleep on a mattress on the floor for over six months in an overcrowded facility that experienced sporadic hot and cold temperatures and insect and rodent infestations. The court noted that the officials had issued numerous work orders for temperature repairs and pest control, the detainee was not denied access to toilet facilities, the officials determined that triple-celling pretrial detainees was a method to deal with their overcrowded facilities, and there was no evidence of intention on the officials' part to punish the detainee. The court found that officials were not deliberately indifferent to the detainee's serious medical needs, in violation of the Due Process Clause, even though he was not hospitalized or sent to a plastic surgeon after he sustained a large cut over his right eye. The court noted that the detainee's treatment included sutures, bandaging of his wound, and administration of medication, as well as a follow-up visit. The detainee was given instructions to contact the medical department for any perceived problems with the wound, and the detainee did not seek additional treatment. (Multi-Purpose Crim. Justice Facility, Delaware)

U.S. District Court
FAILURE TO PROVIDE
CARE
PRETRIAL DETAINEE
DELIBERATE INDIF-
FERENCE

Pryor v. Dearborn Police Dept., 452 F.Supp.2d 714 (E.D.Mich. 2006). The estate of an arrestee brought a § 1983 action against police officers and a police department, alleging failure to provide the arrestee with adequate medical care. The district court held that summary judgment was precluded by a genuine issue of material fact as to whether the arrestee's condition-- a crack cocaine overdose-- constituted a serious medical need, and whether the police officers acted with deliberate indifference to the arrestee's serious medical need. The detainee was arrested, and

while he was in custody in a police vehicle he consumed an unknown quantity of cocaine. He again ingested cocaine when he was detained at the police station and subsequently collapsed on the floor of his cell and began convulsing. Paramedics were eventually called, and they transported the arrestee to a hospital, where he died three days later. (Dearborn Police Station, Michigan)

U.S. District Court
DELAY IN CARE
DELIBERATE INDIFFERENCE

Rand v. Simonds, 422 F.Supp.2d 318 (D.N.H. 2006). A pretrial detainee brought a pro se action against a superintendent, assistant superintendent, and physician's assistant for a county correctional facility, alleging that they were deliberately indifferent to his serious medical needs. The defendants moved for summary judgment and the district court granted the motion. The court held that the detainee administratively exhausted his claim that the superintendent and assistant superintendent were deliberately indifferent to his serious medical needs, even though he did not file a formal grievance, given that "rules" on grievance procedures in the inmate handbook did not require that the grievance take a particular form. The court noted that the detainee submitted a request form asking for referral to a specialist, as specified in the medical procedures section of handbook, and that inquiries made by an investigator for the detainee's criminal defense attorney into the facility's refusal to refer the detainee to an outside medical care provider for his shoulder pain gave the superintendent and assistant superintendent the requisite opportunity to address the detainee's complaints, which they took advantage of by explaining the decision made. The court held that the detainee failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA), on his claim that a physician's assistant at the county correctional facility was deliberately indifferent to his serious medical needs by failing to refer him to specialist outside the facility for his shoulder injury. According to the court, the complaints made on the detainee's behalf by an investigator for the detainee's criminal defense attorney did not allege any misfeasance on the part of the physician's assistant or even mention him, and therefore did not give the facility's officials sufficient notice of the detainee's concerns about treatment received from the physician's assistant to allow those concerns to be dealt with administratively. The court found that material issues of fact existed as to whether the superintendent and assistant superintendent denied outside care to the detainee on prohibited bases, such as the detainee's ability or willingness to pay for such medical services, precluding summary judgment for the officials on the detainee's claims alleging deliberate indifference to his serious medical needs. But the court concluded that a delay in having the detainee examined by an orthopedic surgeon did not cause him any additional pain or permanent injury, given that the specialists who eventually saw the detainee did not believe that surgery was an appropriate treatment for his shoulder pain and the measures recommended did not appreciably reduce the detainee's pain and discomfort, such that implementing them earlier would not have measurably improved his condition. The court found that the detainee's injury did not amount to a "serious medical need" for alleged deliberate indifference to his serious medical needs. (Merrimack Co. House of Corrections, New Hampshire)

U.S. Appeals Court
INADEQUATE CARE

Renkel v. U.S., 456 F.3d 640 (6th Cir. 2006). A detainee in a United States disciplinary barracks brought an action against the United States alleging her receipt of sub-standard medical care while incarcerated violated her rights under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The district court granted the government's motion to dismiss. The detainee appealed and the appeals court affirmed. The court of appeals held that there was no implied private right of action for violations of the Convention Against Torture. According to the court, the treaty was not self-executing and statutes criminalizing torture outside the United States did not provide civil regress for torture within the United States. (United States Disciplinary Barracks in Ft. Leavenworth, Kansas)

U.S. District Court
ABORTION
TRANSPORTATION

Roe v. Crawford, 439 F.Supp.2d 942 (W.D. Mo. 2006). An inmate brought a class action against corrections officials, challenging a policy prohibiting transportation of pregnant inmates off-site to provide abortion care for non-therapeutic abortions. The district court held that the policy violated inmates' Due Process rights and the policy violated the Eighth Amendment. The court noted that inmates who chose to terminate a pregnancy and had to be transported outside of the prison for that purpose posed no greater security risk than any other inmate requiring outside medical attention. The court held that a Missouri law prohibiting the use of State funds to assist with an abortion did not encompass transport to the location where the procedure was to take place, there was no alternative way for an inmate to obtain a non-therapeutic abortion, and abortion out counts had no measurable impact on the ongoing prison need to schedule and reschedule medical appointments. (Women's Eastern Reception, Diagnostic and Correctional Center, Missouri)

U.S. District Court
DENTAL CARE
DELAY IN CARE
DELIBERATE
INDIFFERENCE
RESTRAINTS

Samuel v. First Correctional Medical, 463 F.Supp.2d 488 (D.Del. 2006). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The district court granted the prison officials' motion to dismiss. The court held that prison officials did not violate the inmate's Eighth Amendment rights by forcing him to remain handcuffed while receiving dental treatment, where the use of shackles and handcuffs during dental treatment was a routine security measure in the prison. The court took notice of the close proximity of the medical care

provider and his or her dental instruments to the inmate during dental examinations and treatments. The court found that prison officials were not deliberately indifferent to the inmate's serious medical needs, in violation of Eighth Amendment, as a result of the contract medical provider's failure to provide the inmate with dental treatment for over nine months, where the state agreed that the delay was unacceptable and awarded a contract to another provider, which provided treatment in a timely manner. (Delaware Correctional Center)

U.S. Appeals Court
INADEQUATE CARE
MEDICATION

Self v. Crum, 439 F.3d 1227 (10th Cir. 2006). A detainee brought an action against a jail's physician alleging deliberate indifference to his medical needs in violation of the Eighth Amendment. The district court granted summary judgment in favor of the physician and the detainee appealed. The appeals court affirmed, finding that the physician who provided medication for a respiratory infection and to reduce fever and coughing did not consciously disregard the substantial risk of serious harm arising from the detainee's symptoms. According to the court, the detainee's allegation that the physician diagnosed his heart problem but ignored it, was based on speculation and conjecture. The court noted that, at most, the physician's actions amounted to a misdiagnosis or failure to conduct further testing. (Denver County Jail, Colorado)

U.S. Appeals Court
INADEQUATE CARE

Senty-Haugen v. Goodno, 462 F.3d 876 (8th Cir. 2006). A civilly-committed sex offender brought an action against the Commissioner of the Minnesota Department of Human Services, other Department officials, and sex offender program employees, alleging violations of federal and state law for being placed in isolation, receiving inadequate medical attention, and being retaliated against. The district court entered summary judgment in favor of the defendants and the offender appealed. The appeals court affirmed. The court held that the offender did not receive inadequate medical treatment in violation of his due process rights, in that the alleged delays in treatment did not worsen his conditions, he provided no expert evidence that the treatment he received was inadequate, and staff was not unreasonable in requiring him to move away from the door of his room before he could be treated for an injured leg, since they were unable to ascertain the extent of his injury until they could see that it was safe for them to enter. (Minnesota Sex Offender Program, Minnesota Department of Human Services)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIF-
FERENCE
TRAINING

Shaw v. Coosa County Com'n., 434 F.Supp.2d 1179 (M.D.Ala. 2006). A daughter, individually and as administrator of the estate of her deceased father, brought state and federal law claims against a sheriff and county commission arising from her father's death while he was an inmate in a county jail. The county commission and sheriff filed separate motions for summary judgment, which the district court granted. The court held that the county sheriff did not have the requisite knowledge to be found deliberately indifferent to the serious medical needs of the inmate who failed to disclose his medical condition or to request treatment. According to the court, the sheriff did not violate the Eighth Amendment rights of the jail inmate who died of cardiovascular disease on his second day of incarceration, absent a showing that the inmate disclosed his condition upon admission, that the sheriff otherwise knew that the inmate had a serious condition that required immediate medical treatment, or that the sheriff failed to provide the inmate with treatment with knowledge that failure to do so posed a substantial risk of serious harm. The inmate apparently was not taking his medications and did not request medical treatment. The court found that facially constitutional policies governing booking, supervision, staffing, and training of jail personnel did not, as applied, result in deliberate indifference to the serious medical needs of the inmate, where the policies provided for health screening of inmates upon their admission and medical treatment when requested by inmates, and there was no evidence that the policies were ignored nor any history of widespread problems to place the sheriff on notice of the need to correct the policies, as required to hold the sheriff individually liable. (Coosa County Jail, Alabama)

U.S. Appeals Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE
NEGLIGENCE

Smith v. Clarke, 458 F.3d 720 (8th Cir. 2006). An inmate brought § 1983 and negligence actions against a physician and the Director of Nebraska Department of Correctional Services alleging failure to treat in a timely manner a pituitary gland tumor pinching his optic nerve. The district court entered summary judgment in favor of the defendants. The inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that: (1) the physician did not violate the Eighth Amendment; and (2) the physician was not a state employee within the meaning of the Nebraska State Tort Claims Act provision requiring plaintiffs with tort claims against state employees to file a claim with the State Tort Claims Board before filing an action in court. The court noted that the physician examined the inmate three times and noticed a problem with his pupils during the third examination, and nothing had indicated the tumor prior to the third examination. (Nebraska Department of Correctional Services)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
INVOLUNTARY
MEDICATION

Spann v. Roper, 453 F.3d 1007 (8th Cir. 2006). A state prisoner brought a § 1983 action against a prison nurse alleging deliberate indifference and violation of the due process clause. The district court granted summary judgment in favor of the nurse. The prisoner appealed. The appeals court affirmed in part and remanded in part. The court held that the nurse did not act with deliberate indifference in forcing the prisoner to take another inmate's medication. According to the court, summary judgment was precluded by fact questions as to: (1) whether the state prison nurse's mistaken conduct in forcing the prisoner to take psychiatric medication created a serious medical

condition that the nurse knew of but ignored; and (2) whether immediate medical attention, such as pumping the prisoner's stomach, could have removed the medication before it was totally absorbed in the prisoner's system. The court found that the prisoner's due process rights were not implicated by the nurse's inadvertent administration of another inmate's psychiatric medication because the nurse's decision did not involve the treatment of an unwilling patient with psychiatric medication. A few minutes after taking the medication, the prisoner felt his legs collapse and the room spin. He awoke in pain in another room with a sore throat and dried blood. (Transitional Care Unit, Missouri)

U.S. District Court
EMERGENCY CARE
HOSPITAL
PRIVATE PROVIDER
DELIBERATE INDIF-
FERENCE

Sykes v. McPhillips, 412 F.Supp.2d 197 (N.D.N.Y. 2006). The personal representatives for a mother and son's estates brought a civil rights action under § 1983 against various employees of a substance abuse correctional facility where the son had been confined, a private hospital which provided emergency medical services to the son, and a physician. The representatives alleged constitutional violations arising from the delivery of emergency medical services during the son's incarceration, as well as a state law malpractice/negligence claim. The hospital and physician moved for summary judgment on the issue of their "state actor" status. The district court granted the motion, holding that neither the hospital nor the physician were a "state actor" for the purposes of § 1983. According to the court, hospitals and physicians that provide care outside of the prison facility may be held to be state actors for purposes of § 1983 when they work pursuant to a contract, but the private hospital did not voluntarily assume the function of the state by accepting the correctional facility's delegation of its duty to provide emergency medical care to the prisoner. The court noted that the hospital did not have an implied contract with the correctional facility to provide emergency medical services when it treated the prisoner, given that it was federally mandated to do so by the Emergency Medical Treatment and Active Labor Act (EMTALA). The prisoner suffered from diabetes while confined at the facility and the plaintiffs alleged that the defendants were deliberately indifferent to his medical needs. The defendants maintained that the prisoner received the same medical care as any other patient, regardless of his prisoner status. The plaintiff disputed this by pointing out that corrections officers exercised continual custody over the prisoner in a manner that interfered with the confidentiality normally accorded the health information of free patients, the hospital accommodated the officers' constant attendance upon the prisoner, and the state paid for his medical care. (Hale Creek Alcohol and Substance Abuse Correctional Treatment Center, New York)

U.S. District Court
SUICIDE

Taylor v. Wausau Underwriters Ins. Co., 423 F.Supp.2d 882 (E.D.Wis. 2006). The estate of a pretrial detainee who had committed suicide in jail brought § 1983 claims against a county corrections officer, alleging deliberate indifference to serious medical needs, a claim against the county alleging that the county maintained an unconstitutional informal policy of allowing inmates on suicide watch to turn out their lights, and a state law wrongful death claim against the officer and county. The district court granted summary judgment in favor of the officer and county. The court held that the county was not liable for a due process violation under § 1983 for deliberate indifference to the detainee's serious medical needs absent evidence that the officer's delay in turning on the detainee's light after the detainee had turned it off, during which time the detainee hanged himself, was a standard practice or an aberration. According to the court, even if the jail's unofficial policy of allowing inmates on suicide watch access to light switches was the cause of the detainee's suicide, in that it compromised corrections officers' ability to supervise the detainee, the county was not deliberately indifferent to the detainee's serious medical needs in violation of his due process rights. The court found that the jail's classification of the detainee as a suicide risk did not indicate he was actually a suicide risk, the fact that the detainee was a former corrections officer charged with heinous crimes did not indicate a substantial suicide risk, and, even if suicide risk was indicated by facts that the detainee stole a razor, that there were scratches on his wrists, and that he removed elastic from his underwear, the county placed him on suicide watch and thus was not indifferent. The court noted that the absence of mental illness in an inmate who commits suicide is not fatal to a claim for deliberate indifference to serious medical needs. The detainee was a former correctional officer charged with attempted murder, kidnapping, and sexual assault of a minor. He was admitted to jail where he was placed on a suicide watch in a cell with constant camera surveillance. (Fond du Lac County Jail, Wisconsin)

U.S. District Court
SMOKE-FREE
ENVIRONMENT

Thiel v. Nelson, 422 F.Supp.2d 1024 (W.D.Wis. 2006). Patients who were involuntarily committed to a mental health facility pursuant to a state's sexually violent persons statute filed state court actions challenging a smoking ban enacted at the facility. After removal to federal court, the patients moved to remand, and the officials moved to dismiss the complaint. The district court dismissed the complaint. The court held that the decision to completely ban smoking at the facility was rationally related to legitimate state interests of improving patients' health and safety, reducing fire hazards, maintaining clean and sanitary conditions, and reducing complaints and the threat of litigation from patients who did not smoke. The court found that the smoking ban did not violate the patients' equal protection rights, even if another state detention facility continued to permit its patients to smoke. The court noted that, unlike criminally confined offenders who may be subject to punishment as long as it is not cruel and unusual under the Eighth Amendment, persons who are civilly confined may not be punished. According to the

court, involuntarily committed patients may be subjected to conditions that advance goals such as preventing escape and assuring the safety of others. The court also found that the patients were not deprived of their due process right to adequate treatment as result of state's decision to completely ban smoking at facility. (Sand Ridge Secure Treatment Center, Wisconsin)

U.S. Appeals Court
MEDICATION
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Thomas v. Ashcroft, 470 F.3d 491 (2nd Cir. 2006). A detainee brought a *Bivens* action against named and unnamed federal Drug Enforcement Administration (DEA) agents and prison officials, alleging that his blindness was caused by the defendants' deliberate indifference to his serious medical needs while in federal custody. The district court dismissed the case and the detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that allegations by the detainee, that federal prison officials were on notice of his glaucoma and resulting medical needs, that they were aware of the improper administration of his medications and that they still failed to address the situation, that he was transferred to one correctional facility where he received no medication despite the requests of his family, his lawyer, and outside physicians, and that the officials were personally ordered by a magistrate judge to see to the detainee's medical needs, stated a *Bivens* claim against prison officials, for deliberate indifference to the detainee's serious medical needs. (New York Metropolitan Correctional Center, Federal Bureau of Prisons)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIF-
FERENCE

Thomas v. Bruce, 428 F.Supp.2d 1161(D.Kan. 2006). A state prisoner brought a civil rights action under § 1983 against prison officials, asserting an Eighth Amendment claim for deliberate indifference to his serious medical needs. The district court granted the officials' motion for summary judgment, but the court of appeals reversed and remanded. On remand, the district court held that the officials did not violate the prisoner's Eighth Amendment right to be free from cruel and unusual punishment by allegedly failing to treat his Hepatitis C, where the officials recognized the prisoner's condition and provided ongoing monitoring. The court noted that, when the prisoner's high enzyme levels warranted further testing and a liver biopsy, officials undertook steps to ensure treatment through the established administrative process. (Hutchinson Correctional Facility, Kansas)

U.S. District Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE

Thomas v. Walton, 461 F.Supp.2d 786 (S.D.Ill. 2006). A state prisoner brought civil rights claims against correctional officials, alleging use of excessive force, deliberate indifference to medical needs, and retaliation in violation of his First Amendment rights. The defendants' motion for partial summary judgment was granted in part and denied in part. The district court held that a one-day delay in providing access to a mental health professional following the prisoner's suicide attempt did not involve deliberate indifference and that a 10-day delay in providing medical attention was not deliberate indifference. The court found that the prisoner's repeated refusal to comply with an order to submit to a strip search during a cell inspection justified spraying him with the chemical agent. The court found that the spraying did not involve the use of excessive force, where the chemical was not used in a quantity greater than necessary to subdue the prisoner, secure his compliance with the order, and assure the safety of the officers. The court noted that the prisoner was being held in segregation in a maximum security prison and had a history of assaults on correctional officers. (Tamms Correctional Center, Illinois)

U.S. District Court
INTAKE SCREENING

Thompson v. County of Cook, 428 F.Supp.2d 807 (N.D.Ill. 2006). A detainee held for civil contempt brought an action against a county and a sheriff, alleging civil rights violations due to invasive search procedures. Following a jury verdict for the defendants, the detainee moved for a new trial. The district court held that a jury's verdict as to an unreasonable body cavity search was against the manifest weight of evidence. The court noted that, notwithstanding the detainee's purported intermingling with others who were incarcerated, he was not charged with any crime, and there was no evidence that deputies noticed anything suspicious about detainee which would have otherwise justified a search. The detainee was subjected to an invasive urethral swabbing procedure without his consent. The detainee had been held in civil contempt and ordered held in custody after he refused to sign certain documents related to his pending divorce proceedings. Upon arrival at the jail, the detainee was processed along with approximately 250 other new inmates. After spending some time in a holding pen, the detainee and others were photographed and given identification cards. An employee from Cermak Health Services, the agency responsible for administering medical treatment to detainees at the jail, then asked Thompson a number of medical screening questions. During the interview, the detainee responded to the questions on a standard form concerning his medical history and signed the following "consent for treatment" portion of the form: *I consent to a medical and mental health history and physical including screening for tuberculosis and sexually transmitted diseases as part of the intake process of the Cook County Jail. I also consent to ongoing medical treatment by Cermak Health Services staff for problems identified during this process. I understand I may be asked to sign forms allowing other medical treatments. I understand that every effort will be made by CHS staff to keep my medical problems confidential. I understand the policy of CHS regarding access to health care at Cook County Jail.* The defendants presented evidence at trial that during the interview, an employee informed the detainee of his right to refuse the medical screening, but the detainee denied that anyone informed him of his right to refuse to consent. Following the medical

screening interview, his personal property was inventoried and then he and other inmates then underwent a urethral swabbing procedure. He claimed that he felt pain both during and after the procedure. (Cook County Jail, Illinois)

U.S. District Court
MEDICATION
DELIBERATE INDIF-
FERENCE

Torres v. Trombly, 421 F.Supp.2d 527 (D.Conn. 2006). A prisoner brought a § 1983 action against a correction officer, prison nurse, and other prison officials, alleging that the nurse and the officer were deliberately indifferent to his medical needs in violation of the Eighth Amendment. The district court granted the defendants' motion to dismiss in part, and denied in part. The nurse and officer subsequently filed a motion for summary judgment. The district court held that the nurse's failure to administer the prisoner's hypertension medication on one day did not cause the prisoner to suffer a serious medical condition, and thus the nurse and the correction officer who escorted the nurse on the day in question, were not deliberately indifferent to the prisoner's serious medical needs. The court noted that the prisoner was taking a relatively low dose of medication for mild hypertension, the prisoner took his medication on every other day that month, his blood pressure was normal when checked three weeks later, and there was no indication that the missed dose of medication interfered with the prisoner's activities or caused him medical complications. The court noted that § 1983 was not meant to redress medical malpractice claims that can be adequately resolved under state tort law, and therefore a prisoner's claim of misdiagnosis, faulty judgment, or malpractice, without more to indicate prison officials' deliberate indifference to the prisoner's medical needs, is not a cognizable Eighth Amendment claim under § 1983. (Northern Correctional Institution, Connecticut)

U.S. District Court
ADA- Americans with
Disabilities Act
HEARING IMPAIRED

Tucker v. Hardin County, 448 F.Supp.2d 901 (W.D.Tenn. 2006). Deaf detainees and their deaf mother sued a county and a city, alleging violations of the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that a county court did not violate the ADA's Title II, which prohibits discrimination in public services, by asking the deaf mother to serve as interpreter for her deaf sons at their plea hearing, despite her contention that the request deprived her of her right to participate as a spectator. The court noted that the mother expressed no reservations to the court about serving as an interpreter, that she could have refused the request, and, even if the court were somehow responsible for her service as an interpreter, its request was based on her skill in lip-reading and sign language, not on her disability. According to the court, assuming that overnight incarceration was covered by the ADA's Title II which prohibits discrimination in public services, and assuming that placing a phone call was an "aid, benefit, or service" within the meaning of an ADA regulation prohibiting public entities from providing a disabled person aid, benefit, or service that was not as effective as that provided to others, the county did not violate ADA in using relay operators and notes to allow the deaf detainees to communicate with their mother, rather than providing them with a teletypewriter (TTY) telephone. The court noted that information was transmitted and received, which was the same benefit non-disabled person would have received. While in custody, the two brothers communicated with officers through written notes. The jail was not equipped with a teletypewriter (TTY) telephone. Instead, the officers acted as relay operators, using paper and pencil, as they spoke with an operator acting on their behalf to complete the call, which lasted 45 minutes. (Hardin County Jail, and the City of Savannah Police Department, Tennessee)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIF-
FERENCE

U.S. v. Gonzales, 436 F.3d 560 (5th Cir. 2006). Following a jury trial, deportation officers were convicted of deprivation of civil rights and one defendant appealed. The appeals court held that evidence was sufficient to support a finding that the defendant willfully sprayed a detainee, who had a broken neck, with pepper spray and that the use of pepper spray resulted in bodily injury. The court noted that a detention officer testified that while the defendant was carrying the detainee to the bus, he said "Let's Mace the fucker and see if he budges" and two other detention officers remembered a similar statement, and when the defendant exited the bus, he was coughing, smirking sarcastically, and claiming that there had been an "accidental discharge." After the pepper spray was used, the detainee's mouth was foaming, he complained of stinging pain, and his eyes were swollen shut for at least three hours. The court found that the force that caused this pain and that the pepper spray was applied when the detainee was paralyzed, handcuffed, and lying on the floor of the bus. The detainee made his injury known to the defendant, screaming "they broke me..." and in response to his pleas the officers taunted him and invited people to wipe their feet on him. Two of the defendants dragged his limp body from a house to the van, dragged him off the van onto a bus, and witnessed his reaction to being pepper sprayed. According to the court, by moving the detainee without stabilizing him, the officers exposed him to a risk of harm. The detainee was left alone on the bus floor, handcuffed, eyes swollen shut, and foaming at the mouth, despite the officers' training that, due to the risk of potentially fatal asphyxiation, those who had been pepper sprayed should be continually monitored and placed upright, never in a prone position. (San Antonio Division of the Immigration and Naturalization Service [INS] and Brazos County Jail, Texas)

U.S. District Court
PRETRIAL DETAINEE
CRIPA- Civil Rights of
Institutionalized
Persons Act

U.S. v. Terrell County, Ga., 457 F.Supp.2d 1359 (M.D.Ga. 2006). The federal government brought a Civil Rights of Institutionalized Persons Act (CRIPA) action against a county, county sheriff, and various other county officials, seeking a determination that county jail conditions were grossly deficient in violation of the Fourteenth Amendment. The district court granted the government's motion for summary judgment. The court held that the sheriff and other officials were deliberately indifferent to the jail's gross deficiencies in the areas of medical and mental health care for inmates, protection of inmates from harm, environmental health and safety of inmates, and fire safety, in violation of the due process clause. The court noted that the lack of funds is not a defense to, nor legal justification for, unconstitutional conditions of a jail, for the purpose of analyzing a deliberate indifference claim under the due process clause of the Fourteenth Amendment. Even if a defendant argues that it is planning or working towards construction of a new jail to remedy the unconstitutional conditions at the current facility, the failure to implement interim measures to alleviate those conditions demonstrates deliberate indifference, according to the court. (Terrell County, Georgia)

U.S. District Court
MEDICATION

Upthegrove v. Kuka, 408 F.Supp.2d 708 (W.D.Wisc. 2006). An inmate brought a § 1983 action arising from an alleged failure to provide him with pain medication. The defendant officers moved for summary judgment. The district court granted the motion, finding that the inmate failed to file an inmate complaint so as to exhaust administrative remedies with respect to one correctional officer. The court found that a correctional sergeant who, prior to dispensing the inmate's pain medication, was called away to a prison emergency, did not act with deliberate indifference to the inmate's serious medical need because another officer replaced the sergeant and continued to dispense medications. The court noted that the inmate inexplicably did not remain in line to receive his medication and therefore any pain he suffered as the result of missing his medication was the result of his own choice, not of any Eighth Amendment violation. (Jackson Correctional Institution, Wisconsin)

U.S. Appeals Court
MEDICATION
DELIBERATE INDIFFERENCE

Vaughn v. Greene County, Arkansas, 438 F.3d 845 (8th Cir. 2006). The sister of a pretrial detainee brought a civil rights action against a sheriff and others to recover damages related to the in-custody death of her brother. The district court denied the sheriff's motion for summary judgment and the sheriff appealed. The court of appeals dismissed in part, reversed and remanded in part. The court held that the county sheriff had no knowledge of the pretrial detainee's serious medical needs, and thus was entitled to qualified immunity. The court noted that the sheriff had no personal interaction with the pretrial detainee during his incarceration, and there was no indication that the sheriff knew the pretrial detainee had been vomiting for several hours, was not provided with his anti-depressant medication for two to three days preceding his death, or had heart problems that put him at risk for a heart attack. According to the court, the sheriff's practice of delegating to others such duties as reading mail and responding to communications regarding jail inmates did not amount to deliberate indifference to the pretrial detainee's serious medical needs, as required to be held individually liable for the detainee's death in a § 1983 action. The 46-year-old detainee had completed a medical intake form indicating he had a history of mental illness, headaches, epilepsy/seizures, ulcers, and kidney/bladder problems, but indicating that he did not have a history of heart problems or high or low blood pressure. Although he had no medications with him upon his arrival at the jail, his mother later brought his medications, including an anti-depressant. The jail ran out of his anti-depressant medication for two days and the detainee began to act odd. He was moved to an isolation cell to be monitored. He was later found dead in the cell. An autopsy led to the determination that the detainee died of natural causes--arteriosclerotic cardiovascular disease--causing a heart attack that resulted in his death. Detectable amounts of his anti-depressant medication were found in the detainee's system during the autopsy. (Greene County Jail, Arkansas)

U.S. District Court
DELIBERATE INDIFFERENCE
MEDICATION

White v. Crow Ghost, 456 F.Supp.2d 1096 (D.N.D. 2006). An arrestee brought a *Bivens* action against personnel of a jail operated by the Bureau of Indian Affairs (BIA), alleging failure to provide adequate medical care, unsanitary conditions, and delayed or prevented bond hearings. The district court granted summary judgment for the defendants. The court held that jail officials were not deliberately indifferent to the arrestee's medical needs, in violation of his Eighth Amendment rights, where officials provided the arrestee with medical care promptly after learning of his suicide gestures or attempts, and again upon learning he might have an infection. The court noted that when the arrestee's need for medication was established, officials ensured that the medications were administered. The court found that the officials were not deliberately indifferent to any risk of harm to arrestee from his placement in two different, allegedly cold and unsanitary jail cells for a total of four days, and thus such placement did not rise to the level of an Eighth Amendment violation. The court noted that the arrestee was placed in those cells after his suicide gestures or attempts so that he could be monitored, his clothing and bedding was removed for his protection after he tried to hang himself, and cleaning supplies were withheld to protect him. (Standing Rock Agency, Fort Yates Detention Center, North Dakota)

<p>U.S. Appeals Court FAILURE TO PROVIDE CARE EMERGENCY CARE INTAKE SCREENING</p>	<p><i>Williams v. Bradshaw</i>, 459 F.3d 846 (8th Cir. 2006). The mother of a detainee who died while in jail brought a § 1983 action, claiming that police officers violated the detainee’s rights under the Eighth and Fourteenth Amendments. The district court granted judgment on the pleadings in favor of the officers. The mother appealed. The court of appeals affirmed, holding that the mother lacked standing. The detainee, the daughter of the plaintiff, had been brought to a jail and was being interrogated when she began talking unintelligibly and experiencing seizures. An officer said that she was “faking a seizure” to avoid jail time. She lost consciousness but officers did not request an ambulance for nearly an hour. She had ingested cocaine at the time of her arrest and died from cocaine intoxication. (Howard County Jail and City of Nashville, Arkansas)</p>
<p>U.S. District Court SMOKE</p>	<p><i>Williams v. District of Columbia</i>, 439 F.Supp.2d 34 (D.D.C. 2006). A former inmate filed a pro se § 1983 action seeking damages for alleged exposure to second-hand tobacco smoke while he was confined in jail. The district court denied the defendants’ motion for summary judgment. The court held that the former inmate’s allegations that while he was in jail he was subjected to an intolerable level of environmental tobacco smoke (ETS), that such exposure caused health problems at the time he was confined and posed a risk to his future health, and that the individual defendants were deliberately indifferent to his condition, if true, were sufficient to establish an Eighth Amendment violation. The court found that genuine issues of fact existed, precluding summary judgment. The inmate alleged that inmates and staff in his housing unit smoked tobacco, the unit did not have adequate ventilation or windows or doors that could be opened to remove the tobacco smoke, and his cellmate smoked five packs of cigarettes a day and kept a homemade toilet paper wick burning at all times for the purpose of lighting cigarettes. The inmate said that he experienced nausea and nosebleeds, and he filed a number of grievances. (District of Columbia Department of Corrections, Central Detention Facility)</p>
<p>U.S. District Court REHABILITATION ACT ADA- Americans with Disabilities Act</p>	<p><i>Winters ex rel. Estate of Winters v. Arkansas Department of Health and Human Services</i>, 437 F.Supp.2d 851 (E.D.Ark. 2006). The administrator of the estate of mentally ill pre-trial detainee/civil committee who had died of peritonitis while in custody of a sheriff sued the sheriff and the Arkansas Department of Human Services (DHS) under § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. Following bench trial, the district court held that neither DHS nor the sheriff caused or contributed to the death of the detainee/committee, and they were not liable under the Due Process Clause, Eighth Amendment, Rehabilitation Act, or ADA. The court found that the sheriff had no policy or custom to apprehend and incarcerate acutely mentally ill persons, as indicated by the fact that the detainee may have been only person under civil commitment ever housed in the sheriff’s detention facility. (Benton Co. Jail, Arkansas)</p>
2007	
<p>U.S. District Court DELIBERATE INDIFFERENCE DELAY IN CARE</p>	<p><i>Adams v. Cook County Dept. of Corrections</i>, 485 F.Supp.2d 940 (N.D.Ill. 2007). An inmate brought a § 1983 claim against physicians, alleging they acted with deliberate indifference to his serious medical needs. The district court dismissed the claim in part, and denied the defendants’ motion for dismissal in part. The court held that the prisoner alleged sufficiently serious medical needs to support his claim that jail officials acted with deliberate indifference to such needs, in violation of due process, by alleging that he had “shortness of breath,” “severe pain in [his] right side” and a high fever. The court found that the inmate stated a § 1983 claim for deliberate indifference to his serious medical needs under the Fourteenth Amendment by alleging that he had a serious medical need and that he was inadequately treated by two physicians. (Cook County Jail, Illinois)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE FAILURE TO PROVIDE CARE PSYCHOTROPIC DRUGS</p>	<p><i>Anderson ex rel. Cain v. Perkins</i>, 532 F.Supp.2d 837 (S.D.Miss. 2007). A daughter, as next friend of a jail detainee who suffered second-degree burns on her ankles, thighs, and buttocks while awaiting mental health commitment, brought a civil rights suit against a sheriff and a county. The sheriff moved for summary judgment on claims brought against him in his individual capacity. The district court granted the motion. The court held that the sheriff did not violate the detainee’s right to be protected from harm, absent evidence showing that restraints were likely used to subdue her. The court found that the sheriff was not deliberately indifferent to the detainee’s medical needs in failing to administer her anti-psychotic medications, where the detainee’s refusal to take her medications prior to being taken into custody, coupled with her violent and psychotic behavior as the result of the refusal, was the basis for her commitment. The court found that the sheriff was not deliberately indifferent in failing to discover second-degree burns of an unknown origin on the detainee’s ankles, thighs, and buttocks because jailers regularly observed the detainee through a viewing window in her cell door, but did not actually enter the cell to visually inspect the detainee for signs of injury. (Amite County Jail, Mississippi)</p>
<p>U.S. Appeals Court CONTAGIOUS DISEASES</p>	<p><i>Andrews v. Cervantes</i>, 493 F.3d 1047 (9th Cir. 2007). A prisoner filed a pro se action against prison officials, alleging that the threat he faced from contagious diseases violated the Eighth Amendment prohibition against cruel and unusual punishment. The prisoner sought leave to proceed in forma pauperis (IFP) but the district court denied the motion. The prisoner appealed. The appeals court reversed and remanded. The appeals court held that the prisoner’s qualification for an imminent danger exception to the Prison Litigation Reform Act’s (PLRA) three-strikes rule was determined at the time of filing of the complaint and that under the imminent danger exception the prisoner could file an entire complaint IFP. The prisoner alleged that he was at risk of contracting HIV and that he had already contracted hepatitis C, because of his exposure to other prisoners who had those contagious diseases due to prison officials’ policy of not screening prisoners for such diseases. (California State Prison, Solano)</p>

- U.S. District Court
CONTRACT SERVICES
DENTAL CARE
SPECIAL DIET
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE
- Banks v. York*, 515 F.Supp.2d 89 (D.D.C. 2007). A detainee in a jail operated by the District of Columbia Department of Corrections (DOC), and in a correctional treatment facility operated by the District's private contractor, brought a § 1983 action against District employees and contractor's employees alleging negligent supervision under District of Columbia law, over-detention, deliberate indifference to serious medical needs, harsh living conditions in jail, and extradition to Virginia without a hearing. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that the detainee's allegations that his teeth became chipped and his gums became infected, leading to damage to his gums, disfigurement of his face, infection, pain, anxiety, and extraction of four teeth, were sufficient allegations of a serious medical need. Officials had confiscated his dental crown. The court found that the detainee stated a claim under § 1983 for cruel and unusual punishment through deliberate indifference to a serious medical need. The court held that the detainee stated a claim with his allegation that the prison's dental unit should have replaced his dental crown or permitted him to have his private dentist do so. The prison's dental unit had treated him with antibiotics and offered to extract the seven affected teeth. The court held that this involved a mere disagreement over proper treatment and did not support a § 1983 claim of violation of the Eighth Amendment prohibition of cruel and unusual punishment through deliberate indifference to the prisoner's serious medical needs. (Central Detention Facility, D.C. and Correctional Treatment Facility operated by the Corrections Corporation of America)
- U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
- Barbaro v. U.S. ex rel. Federal Bureau of Prisons FCI Otisville*, 521 F.Supp.2d 276, (S.D.N.Y. 2007). A federal prison inmate brought a pro se Federal Tort Claims Act (FTCA) suit against the Bureau of Prisons (BOP), alleging failure to treat his preexisting injuries, and asserted Eighth Amendment *Bivens* claims against individual prison officials, alleging deliberate indifference to his medical needs. The district court granted the defendants' motion to dismiss in part, on statutes of limitations grounds. Following the appointment of counsel for the inmate, the inmate renewed his opposition to the motion to dismiss. The district court rejected the inmate's opposition. The prisoner alleged that officials failed to treat his preexisting back and neck injuries, allegedly leading to the deterioration of his condition. (Federal Correctional Institution in Otisville, New York)
- U.S. District Court
DELIBERATE
INDIFFERENCE
DENTAL CARE
MEDICATION
- Baylis v. Taylor*, 475 F.Supp.2d 484 (D.Del. 2007). An inmate brought a § 1983 action against various defendants, alleging deliberate indifference to his serious medical needs. The defendants moved for dismissal. The district court granted the motion in part and denied in part. The court held that the inmate's administrative remedies with respect to his claim that prison personnel were deliberately indifferent to his serious medical needs were presumed to have been exhausted, for the purposes of the Prison Litigation Reform Act's requirement that administrative remedies be exhausted before a § 1983 action could be brought, since no further remedies were available to the inmate. The court held that the inmate failed to state a § 1983 claim for deliberate indifference to his serious medical needs against a prison doctor. The inmate alleged in his complaint that the doctor stopped prescribing a particular medication that the inmate deemed appropriate for treatment of his attention deficit disorder, but the court held that this indicated merely a difference of opinion as to treatment that did not rise to the level of an Eighth Amendment violation. According to the court, the inmate stated a § 1983 claim for deliberate indifference to serious medical needs against a prison psychologist by alleging that, despite his promises, the psychologist failed to provide the inmate with therapy for his attention deficit disorder, and failed to have the inmate revisit a psychiatrist. The court also found that the inmate stated a § 1983 claim for deliberate indifference to serious medical needs against a prison employee, with his complaint that alleged that the inmate had no teeth, that he presented himself for dental care, and that the employee refused to let the dental work go forward. (Delaware Correctional Center)
- U.S. District Court
DENTAL CARE
DELIBERATE INDIF-
FERENCE
- Blackston v. Correctional Medical Services, Inc.*, 499 F.Supp.2d 601 (D.Del. 2007). An inmate brought an action against a correctional medical services company, alleging Eighth Amendment violations due to inadequate dental care. The company moved for summary judgment. The district court granted the motion. The court held that the inmate failed to establish that the company exhibited deliberate indifference to his serious medical needs following tooth extractions. The inmate's medical records established that he had received dental examinations and treatments to resolve routine problems as well as emergency concerns. (Howard Young Correctional Institution, Delaware)
- U.S. District Court
SUICIDE
- Branton v. City of Moss Point*, 503 F.Supp.2d 809 (S.D.Miss. 2007). The son of a pre-trial detainee who had committed suicide while in custody, filed suit against the city and jail officers asserting claims pursuant to the Eighth and Fourteenth Amendments for failure to train, failure to adopt a policy for safe custodial care of suicidal detainees, and failure to adopt a policy of furnishing medical care to suicidal detainees. The detainee was detained on suspicion of drunk driving and was resistant during the booking process. During the booking process the detainee answered a series of questions. When he was asked, "Have you ever attempted suicide or are you thinking about it now?" he responded, "No." He was taken to a cell that was designated for intoxicated or combative prisoners, given a sheet and a blanket, and was locked in the cell at 3:30 a.m. While conducting a jail check at approximately 5:30 a.m., an officer discovered the detainee kneeling in a corner of the cell with the sheet around his neck. He was unable to be revived. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether jail officers had actual knowledge of a substantial risk of suicide by the detainee, and that fact issues precluded summary judgment in the claim against the city and officers in their official capacities. On appeal (261 Fed.Appx. 659), the appeals court reversed and remanded. (City of Moss Point, Mississippi)
- U.S. District Court
INADEQUATE CARE
- Brown v. Beard*, 492 F.Supp.2d 474 (E.D.Pa. 2007). A prisoner brought a civil rights suit alleging that medical personnel were intentionally not providing adequate medical care to combat his risk factors for heart disease. Prison officials moved to vacate an order allowing the prisoner to proceed in forma pauperis (IFP). The district court granted the motion. The court held that the prisoner was not in imminent danger of serious physical injury, as required to proceed IFP under the Prison Litigation Reform Act after having three or more prior IFP actions

dismissed as frivolous. The court noted that the prisoner did not dispute that he was receiving medical attention for high blood pressure, low blood sugar, and high cholesterol, but merely disputed the findings and quality of treatment he was receiving. (SCI Graterford, Pennsylvania)

U.S. District Court
DELAY OF CARE
MEDICATION
DELIBERATE INDIF-
FERENCE

Bumpus v. Canfield, 495 F.Supp.2d 316 (W.D.N.Y. 2007). A state inmate filed a § 1983 action alleging that state prison officials and employees violated his Eighth Amendment rights in connection with his medical care and treatment. The defendants moved for summary judgment and the district court granted the motion. The court held that the prison physician's delay of several days in dispensing the inmate's hypertension medication did not demonstrate deliberate indifference to the inmate's serious medical needs, where there was no evidence that the inmate experienced any complications during the time that he was waiting for his prescription to be refilled. The court found that the prison's nurse administrator was not deliberately indifferent to the inmate's serious medical needs, in violation of the Eighth Amendment, even if she did not respond to the inmate's letters complaining about his perceived lack of medical attention, where the administrator was not personally involved in the inmate's medical treatment, and the inmate did not believe that the administrator was deliberately trying to hurt him. (Elmira Correctional Facility, New York)

U.S. District Court
CONTRACT SERVICES
DELIBERATE INDIF-
FERENCE

Calhoun v. Volusia County, 499 F.Supp.2d 1299 (M.D.Fla. 2007). An inmate at a county detention center brought a § 1983 action against the government entity serving as the center's medical care contractor and the physician who was the supervisor for the center's infirmary, alleging deliberate indifference to his serious medical needs. The district court granted summary judgment for the defendants. The court held that the detention center's medical care contractor and supervising physician did not act with deliberate indifference to the serious medical needs of the inmate with gall bladder disease in the context of the inmate's pre-operative care. The court noted that the inmate was provided with medical attention as soon as he began complaining of symptoms, the inmate was examined by a registered nurse who then sought the advice of a physician's assistant, the inmate was kept under observation in an infirmary and offered a liquid diet that he initially refused, and the physician was contacted and had the inmate taken to an emergency room upon the worsening of his symptoms. (Volusia County Detention Center, Florida)

U.S. District Court
CONTRACT SERVICE
DELIBERATE
INDIFFERENCE
INADEQUATE CARE

Cameron v. Allen, 525 F.Supp.2d 1302 (M.D.Ala. 2007). A state inmate filed a § 1983 action against the commissioner of a state department of corrections, a contract medical care provider, and a prison physician challenging the constitutionality of medical treatment provided to him. The defendants moved for summary judgment. The district court granted the motion. The court held that the commissioner was not subject to liability under § 1983 for the prison medical staff's alleged deliberate indifference to the inmate's serious medical needs, where the commissioner did not personally participate in, or have any direct involvement with, the inmate's medical treatment, that medical personnel made all decisions relative to the course of treatment provided to the inmate, and such treatment did not result from a policy instituted by the commissioner. The court found that the inmate's failure to properly exhaust the prison's grievance procedure barred his § 1983 action. According to the court, even though the inmate filed grievance forms addressing his medical treatment, the treatment that was the subject of the forms was wholly unrelated to the medical treatment about which he complained in his § 1983 action. (Bullock County Correctional Facility, Alabama)

U.S. District Court
DELAY IN TREATMENT
DELIBERATE
INDIFFERENCE
DENTAL CARE
STAFF

Chambers v. NH Prison, 562 F.Supp.2d 197 (D.N.H. 2007). A state prisoner brought a civil rights suit alleging that prison officials had denied him necessary dental care in violation of his Eighth Amendment rights. The district court granted the prisoner's motion for a preliminary injunction. The court found that the prisoner demonstrated the likelihood of success on merits where his allegations were sufficient to state a claim for supervisory liability against some defendants. The prisoner alleged that officials were deliberately indifferent to his serious medical needs in refusing to provide care for a cavity for approximately one year due to a staffing shortage. According to the court, the prisoner's allegations that prison supervisors and a prison dentist knew of the prisoner's pain as the result of an unfilled cavity, but nevertheless failed to take steps to ensure that care was provided to him within a reasonable time period, provided the minimal facts necessary to state a claim for supervisory liability under § 1983 for deliberate indifference to serious medical needs under the Eighth Amendment. (New Hampshire State Prison)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
MEDICATION

Clarke v. Blais, 473 F.Supp.2d 124 (D.Me. 2007). A pretrial detainee brought a § 1983 action against jail officers, alleging they subjected him to excessive force, and against a physician's assistant for allegedly failing to give him proper treatment for his physical and mental health issues. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that questions as to whether jail officers used excessive force in restraining the detainee and whether qualified immunity was available as a defense precluded summary judgment in the detainee's § 1983 action. The court found that the physician's assistant was not deliberately indifferent to the detainee's serious medical needs, by not embarking upon anti-viral therapy for the detainee's hepatitis C because, as a pretrial detainee, he was subject to further movement among facilities, and in not prescribing Seroquel, an anti-psychotic drug, as recommended by a counselor/social worker at an outside clinic. The court noted that the physician's assistant consulted an outside gastroenterologist, the detainee's liver function was monitored, and the counselor did not renew the Seroquel recommendation at a subsequent clinic evaluation. (Knox County Jail, Maine)

U.S. District Court
MEDICATION
TREATMENT
DELIBERATE
INDIFFERENCE

Coleman-Bey v. U.S., 512 F.Supp.2d 44 (D.D.C. 2007). A prisoner who suffered from Chronic Hepatitis C brought a petition for a writ of mandamus in Superior Court of the District of Columbia, seeking to order the United States to provide him with necessary Hepatitis C medication. The action was removed to federal court and the defendants moved for summary judgment. The district court granted summary judgment, finding that failure to prescribe antiviral medication for the prisoner or to arrange for a liver biopsy did not amount to deliberate indifference to the prisoner's serious medical needs. The court noted that the prisoner was not a candidate for a liver biopsy due to his history of mental illness, and that he was not a candidate for antiviral

therapy because he did not have abnormal alanine aminotransferase (ALT) levels. The court noted that the prisoner had visited an infectious disease clinic at least twice within the past year and the BOP had taken other steps to monitor the prisoner's condition. (United States Penitentiary in Terre Haute, Indiana)

U.S. District Court
DELAY IN CARE
DELIBERATE INDIF-
FERENCE

Collins v. Kearney, 495 F.Supp.2d 466 (D.Del. 2007). A state prisoner brought a civil rights action under § 1983 against a prison warden, sergeant, corrections officers, nurse, and a physician, alleging claims for excessive force, assault and battery, and deliberate indifference to serious medical needs. The district court granted summary judgment for the defendants in part, and denied in part. The court held that prison officials were not deliberately indifferent to the prisoner's serious medical needs, in violation of the Eighth Amendment, where the prisoner was examined by a nurse while in a holding cell immediately following an incident in which he was allegedly attacked by a corrections officer, and, two days later, he was seen by a physician. The court noted that x-rays were ordered, and the prisoner continued to receive medical treatment for his fractured ribs and complaints of pain. (Sussex Correctional Institute, Delaware)

U.S. District Court
DELAY OF CARE
DELIBERATE INDIF-
FERENCE

Cox v. Hartshorn, 503 F.Supp.2d 1078 (C.D.Ill. 2007). A former pretrial detainee in a county jail brought a § 1983 action against a county sheriff and county jail nurse, alleging that he was denied proper medical care within the county jail in violation of his constitutional rights. The district court granted the defendants' motion for summary judgment. According to the court, the detainee's medical complaint of a foot rash did not rise to the level of an objectively serious medical need, so as to afford the detainee due process protections against the county sheriff and county jail nurse's alleged deliberate indifference to his request for medical attention. The court noted that the detainee's fungal foot rash was not so serious that it was life threatening or posed a risk of needless pain or lingering disability, and after being treated by a nurse, the detainee did not submit any further medical requests for treatment of the rash, nor did he receive any treatment of the rash after leaving the county jail. (Vermilion County Jail, Illinois)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Danley v. Allyn, 485 F.Supp.2d 1260 (N.D.Ala. 2007). A pretrial detainee brought a § 1983 action against jail officers, alleging that he was subjected to excessive force and then denied medical treatment when they sprayed him with pepper spray. The district court denied the defendants' motions to dismiss and they appealed. The court of appeals vacated and remanded. On the remand, the district court again denied the defendants' motion to dismiss. The court held that the officers were not entitled to qualified immunity from the detainee's claim that the officers subjected him to excessive force, in violation of Fourteenth Amendment, by pepper spraying him in response to a dispute over toilet paper. The court noted that the officers had fair warning that to employ pepper spray as punishment, or for the sadistic pleasure of the sprayers, as distinguished from what was reasonably necessary to maintain prisoner control, was constitutionally prohibited. The court found that the detainee's allegations that a jail administrator and sheriff created an atmosphere or practice under which the defendant officers operated in allegedly subjecting the detainee to excessive force and then denying him medical treatment when they sprayed him with pepper spray, were sufficient, if proven, to create supervisory liability under § 1983. The court held that the detainee's claim of deliberate indifference on behalf of defendant officers, wherein they failed to provide medical attention to the detainee after using pepper spray against him, was no more than a continuation of the detainee's excessive force claim, and thus was not a separate cause of action under § 1983. (Lauderdale Detention Center, Alabama)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE INDIF-
FERENCE

Desroche v. Strain, 507 F.Supp.2d 571 (E.D.La. 2007). A pre-trial detainee brought a pro se, in forma pauperis action against prison officials, alleging improper conditions of confinement, negligent medical treatment, invasion of privacy, and excessive force. The district court dismissed the action. The court held that the alleged conditions of the detainee's confinement, including being required to sleep on the floor of an overcrowded holding tank, being deprived of a mattress, and being provided with water only in a dirty sink, if proven, did not violate his Eighth Amendment or due process rights, given that he experienced such conditions for only ten days, and that use of sink did not cause him to suffer disease or other serious harm.

The court found that the detainee's attention deficit hyperactivity disorder (ADHD) was not a serious condition, and therefore any denial of medical care for the condition did not violate his Eighth Amendment rights. The court noted that even if ADHD was a serious condition, prison officials were not deliberately indifferent in treating it, and any denial of medical care did not violate the detainee's Eighth Amendment rights, in that the detainee merely disagreed with the treatment offered by two doctors at the jail. (River Parish Correction Center, Louisiana)

U.S. District Court
DELIBERATE
INDIFFERENCE
MENTAL HEALTH
SUICIDE

Estate of Hill v. Richards, 525 F.Supp.2d 1076 (W.D.Wis. 2007). The estate of a county jail inmate who committed suicide sued the social worker who interviewed the inmate shortly before her suicide, claiming deliberate indifference to the inmate's suicidal mental condition, in violation of the Eighth Amendment. The social worker moved for summary judgment. The court held that summary judgment was precluded by fact issues as to whether the worker was aware of a suicide risk, as the result of a statement by the inmate that she had poked herself with a thumbtack, and as to the adequacy of the worker's response to the inmate's statement. The court noted that expert testimony was not required to establish that the social worker violated the Eighth Amendment by being deliberately indifferent to the health and safety of the jail inmate; under those circumstances a jury of laypersons could conclude that there was a duty to protect the inmate. The social worker knew, from her experiences with the inmate, that the inmate had a history of depression, that she had been prescribed multiple medications for depression and that she previously had expressed a desire to die. The social worker also knew that the inmate had not been taking her medication for several weeks and that she was being housed in segregation at the jail, where neither other prisoners nor staff could easily monitor her. (Dane County Jail, Wisconsin)

<p>U.S. District Court INTAKE SCREENING SUICIDE</p>	<p><i>Estate of Puza v. Carbon County</i>, 586 F.Supp.2d 271 (M.D.Pa. 2007). The estate of a pretrial detainee who committed suicide brought an action alleging civil rights violations against a county and its corrections officers, and negligence claims against the architect of a county prison. The defendants moved for summary judgment and the district court granted the motion. The court held that correctional and intake officers were not deliberately indifferent to the pretrial detainee's vulnerability to suicide, as was required for the officers' liability under the due process clause for the detainee's suicide. The court noted that the suicide was a "complete surprise" to the police chief who spent one and a half hours with the detainee, the detainee told an officer "he had much to look forward to, and [did] not believe in suicide," the detainee was placed in a cell next to an inmate who was on suicide watch and could be regularly observed, and the officer intervened when he noticed the detainee was still kneeling during a second observation of the detainee. The court found that county employees, through the jail's suicide policy, were not deliberately indifferent as to whether the pretrial detainee successfully committed suicide, as required to support a due process claim. According to the court, the policy was annually reviewed by the Pennsylvania Department of Corrections and was never found deficient, the detainee's screening form did not trigger a suicide watch, and the employees acted without deliberate indifference in allowing the detainee to retain his shoelaces while in his jail cell. (Crabtree, Rohrbaugh & Associates, Carbon County Prison, Pennsylvania)</p>
<p>U.S. District Court INADEQUATE CARE DELIBERATE INDIF- FERENCE</p>	<p><i>Estrada v. Reed</i>, 508 F.Supp.2d 699 (W.D.Wis. 2007). An allegedly indigent federal prisoner brought a proposed <i>Bivens</i> action against a warden, prison doctor, two prison health services administrators, and a captain on the prison's medical staff, alleging deliberate indifference to his serious medical needs. The district court granted the prisoner's motion to proceed in forma pauperis, in part, finding that the prisoner alleged potentially serious medical needs and allowed an inference of deliberate indifference on the part of several of the defendants. The prisoner alleged that prison medical staff failed to monitor his blood pressure consistently after doctors recommended such monitoring, and that a serious stroke left him with limited ability to use much of his left side and with difficulty speaking, so that he required consistent therapy to regain his motor skills. (Federal Correctional Institution, Oxford, Wisconsin)</p>
<p>U.S. District Court DELAY IN TREATMENT TRANSFER DELIBERATE INDIF- FERENCE</p>	<p><i>Farmer v. Kavanagh</i>, 494 F.Supp.2d 345 (D.Md. 2007). A state prison inmate sued officials, claiming her Fourteenth Amendment due process rights and her Eighth Amendment right to be free from cruel and unusual punishment were violated when she was transferred from a medium to a maximum security facility. The defendants moved for summary judgment. The district court entered judgment for the officials on the federal claims and dismissed the state law claim. The court held that the inmate had a liberty interest in not being sent to a maximum security prison, as required in order to bring a claim that transfer to maximum security facility without prior notice and an opportunity to be heard, was a violation of her Fourteenth Amendment rights. The court noted that the maximum security prison's strict control over every aspect of an inmate's life, and almost virtual isolation from any human contact, imposed conditions of confinement far worse than her previous situation in the general population of a medium security prison. But the court found that the officials had qualified immunity from the inmate's due process claim because, at the time of the transfer, it was not clearly established that an inmate could have a liberty interest in not being transferred to a maximum security prison.</p> <p>The court held that the officials' alleged difference in access to health care providers, between the medium security prison and the maximum security prison to which the inmate was transferred, was insufficient to support a determination that prison officials showed deliberate indifference to her medical needs by transferring her. The court noted that the inmate's delivery of drugs required for AIDS treatment was delayed and intermittently interrupted, but the patient's file did not reflect the seriousness of her condition, and when one maximum security prison employee was found derelict in making deliveries of medications, the employee was fired. (Maryland Correctional Adjustment Center ["Supermax"])</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE</p>	<p><i>Felix-Torres v. Graham</i>, 521 F.Supp.2d 157, (N.D.N.Y. 2007). A prisoner filed a pro se § 1983 suit against the New York Department of Correctional Services (DOCS), alleging that named DOCS employees and four "John Doe" defendants violated his constitutional rights under the Eighth and Fourteenth Amendments, related to injuries suffered from a fall from his assigned upper bunk during a diabetic low blood sugar reaction and seizure. The named employees moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the prisoner sufficiently alleged that prison officials were personally involved in the deprivation of his Eighth Amendment rights and that they were not protected by qualified immunity. The court found that the prisoner sufficiently alleged that a nurse administrator was deliberately indifferent to a risk for the prisoner and that the prisoner's allegations were sufficient for a § 1983 claim of deprivation of rights. According to the court, the prisoner sufficiently alleged the "personal involvement" of a superintendent and deputy superintendents of the prison based on the officials' creation and administration of prison procedures for assignment of inmates to upper bunks, and by supervision of subordinates who assigned the prisoner to an upper bunk despite his known medical condition. (Auburn Correctional Facility, New York)</p>
<p>U.S. District Court FAILURE TO PROVIDE CARE DELIBERATE INDIF- FERENCE</p>	<p><i>Foster v. Elyea</i>, 496 F.Supp.2d 951 (N.D.Ill. 2007). A special administrator, on behalf of a deceased inmate, brought a § 1983 action against prison officials, alleging their failure to provide the inmate with prescribed medication, treatment, diet, or exercise opportunities hastened his death or caused him great emotional distress. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the allegations of the special administrator stated an Eighth Amendment claim that employees were deliberately indifferent to the inmate's serious medical needs. The administrator alleged that the employees knew that the inmate faced a risk of death if he did not receive his prescribed medication, treatment, diet, and exercise for his type two diabetes, high blood pressure, and congestive heart failure, but that department of corrections employees personally involved in delivering medical services to the inmate failed to provide those things to him. (Statesville Correctional Center, Illinois)</p>

<p>U.S. District Court DELAY IN CARE DELIBERATE INDIFFERENCE</p>	<p><i>Giddings v. Joseph Coleman Center</i>, 473 F.Supp.2d 617 (E.D.Pa. 2007). A parolee brought a civil rights action against a parole officer and warrant officers who transported him back to prison from a halfway house, alleging that they were deliberately indifferent to his serious physical and mental health needs in violation of the Eighth and Fourteenth Amendments. The defendants moved for summary judgment on the ground of qualified immunity. The district court granted the motion. The court held that the parole officer was entitled to qualified immunity from the Eighth Amendment claim that she was deliberately indifferent to the parolee's need for medical treatment for a self-inflicted cut on his arm, noting that the cut was not serious because the parolee did not experience significant blood loss or infection, and the officer was not indifferent to the cut as evidenced by her offer to take the parolee to the hospital the next day. The court ruled that the officer was entitled to qualified immunity from the claim that she was deliberately indifferent to parolee's mental health needs, where evidence did not show that the parolee's mental health needs were serious on the day he cut himself, as there was no indication of a genuine suicide attempt, and the officer was not indifferent to those needs as she sent the parolee to the mental health unit of the halfway house. (Joseph Coleman Center, Pennsylvania)</p>
<p>U.S. District Court FAILURE TO PROVIDE CARE DELIBERATE INDIFFERENCE</p>	<p><i>Giles v. Kearney</i>, 516 F.Supp.2d 362 (D.Del.2007). An inmate sued prison officials under § 1983, alleging constitutional violations arising from an alleged use of excessive force at a correctional institution. The district court entered judgment for the defendants. The court held that the incidents in which pepper spray was used against the inmate did not constitute excessive force. According to the court, a corrections officer's use of pepper spray against the inmate was justified in response to the inmate's defiant and argumentative behavior, as well as his repeated refusals to obey orders. Noting that the officer was alone in a shower facility as the inmate continued to yell and defy orders, the court concluded that the officer's use of pepper spray to calm the increasingly volatile situation and prevent injury was a measured and reasonable response. The court also found that there was no deliberate indifference to the inmate's medical needs following incidents in which he was sprayed with pepper spray. The court noted that the inmate received medical care and assessment following each of the events at issue and there was no evidence that defendants obstructed, neglected or prevented him from receiving care or ignored his requests for medication or medical treatment. (Sussex Correctional Inst., Delaware)</p>
<p>U.S. Appeals Court NEGLIGENCE FEMALE PRISONERS DELIBERATE INDIF- FERENCE</p>	<p><i>Goebert v. Lee County</i>, 510 F.3d 1312 (11th Cir. 2007). A pretrial detainee in a county jail, who had been pregnant during her detention and whose child had been stillborn, brought a § 1983 action against county and jail officials, a physician, and the jail's medical services provider, alleging deliberate indifference to her serious medical needs. The district court granted summary judgment for all defendants based on failure to satisfy the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA). The detainee appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that the jail's administrative appeal procedure for inmates was not "available" within the meaning of PLRA, where the detainee had no way of knowing about it. According to the court, the detainee adequately exhausted her available remedies under PLRA by filing a document titled "request form." The court noted that the handbook given to inmates did not mention a grievance form, but only spoke of a "written request," and the inmate checked the "complaint" box on the request form rather than the "request" box and cogently described her grievance. The court found that the detainee's amniotic fluid leak constituted a serious medical need and the facility commander exceeded gross negligence in answering the detainee's complaint about lack of treatment, supporting a deliberate indifference claim. The commander apparently held a general disbelief of inmates' medical complaints, and responded only with a statement that the detainee could visit an outside physician if she could pay for it. (Lee Co. Jail, Florida)</p>
<p>U.S. District Court INADEQUATE CARE</p>	<p><i>Green v. McGinnis</i>, 515 F.Supp.2d 379 (W.D.N.Y. 2007). A state prisoner brought an action against prison employees alleging that he was denied adequate medical treatment in violation of his Eighth Amendment rights. The prison employees moved for summary judgment, which was granted by the district court. The court held that the notice of motion and scheduling order provided adequate notice to the prisoner of an action and the consequences of failure to respond. The court found that the prisoner received adequate medical treatment. The court noted that the prisoner had x-rays and other tests on his back, including an MRI, and received physical therapy. (Southport Correctional Facility, New York)</p>
<p>U.S. District Court ALCOHOL/DRUGS DELIBERATE INDIF- FERENCE</p>	<p><i>Hall v. County of Nemaha, Neb.</i>, 509 F.Supp.2d 821 (D.Nev. 2007). A pretrial detainee's survivors sued a city, county, and various city and county officers and officials, asserting various claims under § 1983 in connection with the death of the detainee from an overdose after swallowing his methamphetamine during a roadside stop of a vehicle in which he was riding. The district court granted summary judgment for the defendants in part and denied in part. The district court held that summary judgment was precluded by genuine issues of material fact as to whether a deputy sheriff and a jailer knew that the detainee had swallowed the methamphetamine during a roadside stop and whether they ignored the detainee's panting and gasping, his claims that he could not see or breathe, and his crying and screaming that he needed to go to the hospital. The court found that law enforcement officers and other jail officers, who were unaware that the detainee had swallowed his methamphetamine during a roadside stop, were not deliberately indifferent to the detainee's serious medical needs, so as to violate his Eighth Amendment rights, even though he was complaining, uncooperative and acted like an intoxicated person. The court noted that from their perspective, the detainee was behaving like many other "besotted" pretrial detainees who were "plucked from the highway in the wee hours of the night and who suffered nothing more than a drug-induced stupor while cooling their heels in a cell awaiting their turn to see the local magistrate." (Nemaha County, Nebraska)</p>
<p>U.S. Appeals Court DENTAL CARE</p>	<p><i>Hartsfield v. Colburn</i>, 491 F.3d 394 (8th Cir. 2007). A pretrial detainee brought a § 1983 action against a nurse, physician, and captain, alleging that they were deliberately indifferent to his serious medical needs. The inmate alleged that the defendants were deliberately indifferent to his serious medical needs when they delayed referring him to an oral surgeon to have three teeth extracted. On remand the district court entered judgment for the defendants and the detainee appealed. The appeals court affirmed. The appeals court held that the district court</p>

did not clearly err in finding that the nurse and physician acted reasonably in requiring a second sick call request from the detainee before referring him to a dentist, and that most of the delay in the detainee seeing the dentist resulted when the detainee unreasonably failed or refused to submit a second request. The court found that the captain in charge of transporting inmates to medical appointments did not deny or delay the detainee's dental treatment by interfering with or overriding any medical staff decisions to schedule an earlier appointment. (Scott County Jail, Iowa)

U.S. District Court
DELIBERATE
INDIFFERENCE
INVOLUNTARY
TREATMENT
PSYCHOTROPIC DRUGS

Hendon v. Ramsey, 528 F.Supp.2d 1058 (S.D.Cal. 2007). A state inmate filed a § 1983 action alleging that prison medical officials involuntarily administered anti-psychotic medications without following proper procedures and in deliberate indifference to his medical needs. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the involuntary administration of anti-psychotic medications to the inmate did not demonstrate deliberate indifference to the inmate's serious medical needs, as required to establish an Eighth Amendment violation, where the officials administered the drugs in an attempt to treat the inmate's mental health crisis. But the court held that the post-deprivation remedies available to the California inmate after the officials forcibly administered anti-psychotic drugs were insufficient to protect the inmate's due process liberty interest in being free from involuntary medication. According to the court, although state law established procedural safeguards before inmates could be involuntarily medicated, the prison officials allegedly disregarded their duty to comply with those established pre-deprivation procedures. The court found that the inmate's right to be free from arbitrary administration of anti-psychotic medication was clearly established by existing case law in 2002, the time of this incident, and therefore state prison officials were not entitled to qualified immunity from liability. (California State Prison-Sacramento)

U.S. District Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE
NEGLIGENCE

Heredia v. Doe, 473 F.Supp.2d 462 (S.D.N.Y. 2007). An inmate filed a § 1983 action against county jail officials alleging that he slipped and fell at a jail, and was denied proper medical treatment. The officials moved to dismiss the complaint and the district court granted the motion. The court held that the inmate's claim that he injured his back when he slipped and fell at the county jail was nothing more than a claim for negligence, for which there was no cause of action under § 1983. The inmate alleged he slipped and fell while walking to his cell and in the process injured his back "to the point it swelled up and was in a lot of pain." The court also found that officials were not deliberately indifferent to the inmate's medical needs, despite a one-day delay in providing treatment, where the jail medical department took X-rays and provided pain medication. (Sullivan Correctional Facility, New York)

U.S. District Court
SUICIDE
ADA- Americans with
Disabilities Act

Herman v. County of York, 482 F.Supp.2d 554 (M.D.Pa. 2007). The estate of a prisoner who had committed suicide in a county prison sued the county, a warden, the prison health service, and nurses, asserting Eighth Amendment claims under § 1983, claims under the Americans with Disabilities Act (ADA), and state medical malpractice claims. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court found that, notwithstanding a Pennsylvania statute stating that the safekeeping, discipline, and employment of prisoners was exclusively vested in a prison board, the county could be held liable to the prisoner under § 1983 for the actions of the warden if he was acting as an agent of the county. The court held that summary judgment was precluded by genuine issues of material fact as to whether the warden was acting as an agent for the county in allegedly failing to prevent the prisoner's suicide, and as to the warden's role in ratifying county prison policies. The court found that the county, warden, nurses, and prison health service were not deliberately indifferent to the medical needs of prisoner who committed suicide, where alleged failures to check on the prisoner in his cell was by officers other than the defendants, nurses could not have been deliberately indifferent if they were unqualified as the prisoner's estate said, and the nurses' failure to place the prisoner on a suicide watch did not fall outside their professional judgment, given the prisoner's denials of suicidal ideation and his family's testimony. The court found that the prisoner was not denied access to county prison's programs or services because of disability, and any failure by the county and warden to prevent his suicide thus was not discrimination in services, programs, or activities of a public entity in violation of ADA. The prisoner denied thoughts of suicide, he told a nurse that he did not wish to take anti-depressant medications that had been prescribed for him, and a nurse told him to return to mental health services if necessary. (York County Prison, Pennsylvania)

U.S. Appeals Court
INVOLUNTARY
MEDICATION

Hydrick v. Hunter, 500 F.3d 978 (9th Cir. 2007). Sexual offenders who were civilly confined in a state psychiatric hospital under California's Sexually Violent Predators Act (SVP) filed a class action against various state officials under § 1983, challenging the conditions of their confinement. The district court denied the defendants' motion to dismiss, and the defendants appealed. The appeals court affirmed in part and reversed in part. The court held that the First Amendment claims brought against state hospital officials were based on clearly established law for qualified immunity purposes insofar as they challenged retaliation for filing lawsuits, however, officials had qualified immunity to the extent that the plaintiffs' claim relied on a First Amendment right not to participate in treatment sessions. The court found that the plaintiffs stated a § 1983 claim for violations of their Fourth Amendment rights to be free from unreasonable searches and seizures. The court concluded that hospital officials were entitled to qualified immunity with regard to procedural due process claims, but not substantive due process claims. The offenders alleged that they were subjected to public strip searches, to retaliatory searches of their possessions and to arbitrary seizure of their personal belongings, that they were placed in shackles during transport to the hospital and during visits from family and friends, that they were subjected to restraint even if they did not pose any physical risk, and that they were force-medicated. On appeal to the United States Supreme Court (129 S.Ct. 2431) the court vacated the decision. (Atascadero State Hospital, California)

U.S. District Court
FAILURE TO PROVIDE
CARE

Johnson v. Tedford, 616 F.Supp.2d 321 (N.D.N.Y. 2007). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights by verbally and physically assaulting him, and then denying him adequate medical care for the injuries he sustained in that assault. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the inmate filed a medical care grievance that was not responded to, recorded, or assigned a grievance number. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the sergeant who supervised the state corrections officers who allegedly assaulted the inmate also had supervisory authority over the nurse who treated the inmate. The inmate alleged that the sergeant was grossly negligent in supervising the nurse when she engaged in the examination of the inmate. (Clinton Correctional Facility, New York)

U.S. District Court
DELIBERATE
INDIFFERENCE
MENTAL HEALTH
SUICIDE

Justus v. County of Buchanan, 517 F.Supp.2d 810 (W.D.Va. 2007). The administrator of a pretrial detainee's estate filed a § 1983 action against a sheriff and county jail employees arising out of the detainee's jail suicide. The detainee had a history of schizophrenia, bipolar disorder, anxiety, paranoia, and delusions and had been hospitalized for these conditions several times in the three years prior to his suicide. His treatment records show that he was hospitalized because family members reported suicidal ideation and bizarre, violent, and sexually inappropriate behavior. The defendants moved for summary judgment. The district court granted the motion. The court held that the sheriff's deputies' failure to provide the pretrial detainee with prompt medical care after they discovered him hanging in his cell did not amount to deliberate indifference to the detainee's serious bodily injuries, in violation of the detainee's due process rights. The court noted that, even though the detainee was still alive when they took him down approximately 13 minutes after discovering him, there was no showing of an affirmative causal link between their inaction and the detainee's death from hypoxic brain injury.

The court found that the sheriff was not deliberately indifferent to the pretrial detainee's suicidal nature, and thus was not subject to liability under § 1983 for failing to take steps to prevent his suicide, even though a notation on an incident report two months before the detainee's suicide indicated that another prisoner reported that the detainee "was threatening suicide". The court found no proof that the report did not simply inadvertently escape the sheriff's knowledge.

The court held that a reasonable sheriff would not have understood from existing law that the absence of an operating video surveillance system in the county jail would violate a suicidal pretrial detainee's constitutional rights, and thus the sheriff was entitled to qualified immunity from liability under § 1983, even though the jail policy and procedure manual required immediate repair of any defective security equipment, and the sheriff was aware that the equipment had not been operating for some time.

According to the court, under Virginia law, the deputies' failure to provide the pretrial detainee with prompt medical care after they discovered him hanging in his cell did not amount to gross negligence as required to overcome their immunity from tort liability. (Buchanan County, Virginia)

U.S. District Court
DENTAL CARE

Kaufman v. Schneider, 474 F.Supp.2d 1014 (W.D.Wis. 2007). An inmate at a supermaximum security prison filed a § 1983 action alleging that prison officials violated his constitutional rights. The inmate filed a motion seeking leave to proceed in forma pauperis. The district court granted the motion in part and denied in part. The court held that the inmate's claim that he was transferred to a maximum security facility in retaliation for his decision to name a warden as a defendant in a civil rights action was not frivolous, and thus the inmate was entitled to proceed in forma pauperis in his § 1983 action, where fact issues remained as to whether the lawsuit motivated the warden's decision to transfer the inmate. The court found that the inmate's allegations that he was in pain from a tooth that was cutting into his tongue, and that the waiting list for dental care was approximately 12 months long, were sufficient to state a claim against prison officials under the Eighth Amendment for deliberate indifference to his serious medical needs. (Wisconsin Secure Program Facility)

U.S. District Court
CONTAGIOUS DISEASES
DELAY IN CARE
DELIBERATE
INDIFFERENCE
ISOLATION

Lee v. Frederick, 519 F.Supp.2d 320 (W.D.N.Y. 2007). A state prison inmate brought a § 1983 suit against corrections staff, claiming deliberate indifference to his serious medical needs, in violation of his Eighth Amendment rights. The defendants moved for summary judgment. The district court granted the motion. The court held that placing the inmate on "TB hold" status unless he consented to take TB medication did not constitute cruel and unusual punishment in violation of the Eighth Amendment. The court noted that the inmate's TB test was negative and that he shared a cell with an inmate who was not on TB hold, but other test results indicated that the inmate's immune system was not functioning properly, and conditions at the facility made it impracticable to completely isolate the inmate from the rest of the population.

The court found that a delay of six or seven hours in obtaining treatment for the inmate's eye condition after he reported the condition to a nurse did not constitute deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment's prohibition of cruel and unusual punishment. According to the court, the inmate received treatment at a hospital and made a full recovery, and even assuming that the inmate was in pain during the delay, there was no indication that a nurse or a physician assistant who responded to the report deliberately delayed taking action for the purpose of causing the inmate pain or to prolonging his suffering. (Five Points Correctional Facility, New York)

U.S. Appeals Court
DENTAL CARE
MEDICATION
RECORDS
POLICIES

Meuir v. Greene County Jail Employees, 487 F.3d 1115 (8th Cir. 2007). A prisoner who suffered from chronic dental problems brought a § 1983 action against a county and county jail medical staff, alleging deliberate indifference to his serious medical needs. The prisoner suffered from chronic dental problems. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed. The court held that the prisoner failed to establish that jail medical staff acted with deliberate indifference to his serious medical needs, where jail nurses provided the prisoner with over-the-counter pain medication and encouraged him to brush and gargle with salt water in response to his complaints of bleeding gums and toothaches. The court noted that staff referred him to a county dentist, but the prisoner refused to go. According to the court, in the face of medical records indicating that medical treatment was provided and physician

affidavits indicating that the care provided was adequate, an inmate cannot create a question of fact, to avoid summary judgment, in a claim for deliberate indifference to serious medical needs by merely stating that he did not feel he received adequate treatment. According to the court, the prisoner lacked standing to seek injunctive relief to end the county jail's unwritten "pull-teeth-only" policy for treatment of chronic dental problems, where the prisoner filed suit against the county four months after he was transferred to another correctional facility, his dental ailments were treated without complaint at the transferee facility, and there was no reason to believe that detainee would be returned to the county jail. (Greene County Jail, Missouri)

U.S. District Court
DELIBERATE
INDIFFERENCE
SUICIDE

Mombourquette ex rel. Mombourquette v. Amundson, 469 F.Supp.2d 624 (W.D.Wis. 2007). A pretrial detainee in a county jail who was left seriously brain damaged after she attempted suicide by hanging in her cell, brought a civil rights suit against a county sheriff, correctional officers, and jail nurses, alleging that they violated her constitutional rights by failing to protect her from harming herself. The defendants filed motions for summary judgment. The district court denied the motions. The court held that evidence that the pretrial detainee reported to county jail personnel that a jail lieutenant was taking another female inmate out of her cell at night to engage in sexual activity was admissible, because such evidence showed that the lieutenant had a strong motive to withhold protection from the detainee, and thus was relevant to show he intentionally disregarded a risk to the detainee's safety. The court also found that evidence that county sheriff refused to investigate allegations that the county jail lieutenant was engaging in sexual misconduct with another inmate was relevant and admissible, where the sheriff's dismissive attitude of the complaint exhibited deliberate indifference, both toward the detainee's health and safety in particular and generally toward the health and safety of all inmates. The court denied summary judgment because it found a genuine issue of material fact as to whether a nurse and correctional officers at the county jail were deliberately indifferent to pretrial detainee's health and safety. The court also found a genuine issue of material fact as to whether there was an affirmative link between the county sheriff's failure to properly train and supervise county jail personnel and the failure to prevent the detainee's suicide. (Monroe County Jail, Wisconsin)

U.S. Appeals Court
MENTAL HEALTH
SUICIDE
RESTRAINTS

Norris v. Engles, 494 F.3d 634 (8th Cir. 2007). A county jail detainee, who had been diagnosed with manic bipolar depression, sued a jail official under § 1983, alleging due process violations arising from his physical restraint. The district court denied the official's motion for summary judgment based upon qualified immunity. The official appealed. The appeals court reversed and remanded, finding that the official's alleged conduct of cuffing the detainee to a floor-grate toilet in an uncomfortable manner for approximately three hours, if proven, did not violate the detainee's substantive due process rights. According to the court, the official's alleged actions did not shock the conscience and thus did not violate the detainee's substantive due process rights, inasmuch as official took such action after the detainee, who had been diagnosed with manic bipolar depression, had threatened to pull out her own peripherally inserted central catheter (PICC) so that she would bleed to death, and after the detainee had shown that having her hands handcuffed behind her back was alone not an adequate form of restraint. (Independence County Jail, Arkansas)

U.S. Appeals Court
MENTAL HEALTH
REHABILITATION ACT
ADA- Americans With
Disabilities Act

O'Guinn v. Lovelock Correctional Center, 502 F.3d 1056 (9th Cir. 2007). A prisoner filed a pro se suit claiming prison officials denied him accommodation and treatment for mental illness, under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court dismissed the suit pursuant to the Prison Litigation Reform Act (PLRA) and the prisoner appealed. The appeals court affirmed. The court held that the prisoner's suit did not arise under § 1983 and that exhaustion is required under PLRA. The court found that the prisoner failed to exhaust administrative remedies. According to the court, the prisoner's filing of grievances requesting a lower bunk due to poor balance resulting from a brain injury were not equivalent to claims of denial of mental health treatment, and the prisoner's complaint to the United States Department of Justice (DOJ) did not exhaust the prison's internal grievance process. The court found that the DOJ's investigation of the prisoner's claims did not satisfy the exhaustion requirement as the investigation did not terminate the prisoner's rights to pursue ADA and Rehabilitation Act claims internally. (Lovelock Correctional Center, Nevada)

U.S. District Court
INADEQUATE CARE

Pettus v. Wright, 514 F.Supp.2d 436 (W.D.N.Y. 2007). A state prisoner brought a civil rights action under § 1983 against physicians who examined or treated him, alleging that he was denied adequate medical treatment for a number of conditions affecting his health, in violation of his Eighth Amendment rights. The physicians moved for summary judgment and the district court granted the motion. The court held that the treatment the prisoner received was adequate. The court noted that although the prisoner disagreed with the course of treatment that he received, he was examined by a number of physicians, including specialists, various tests were performed on him, and he was administered various medications for his complaints, consistent with the test results. (Elmira Correctional Facility, New York)

U.S. District Court
TRANSFER
DELAY IN CARE
DELIBERATE INDIF-
FERENCE

Price v. Correctional Medical Services, 493 F.Supp.2d 740 (D.Del. 2007). An inmate brought a § 1983 action against a prison's medical services provider and prison officials, alleging deliberate indifference to his serious medical needs. The provider moved to dismiss, and the inmate moved for appointment of counsel. The district court denied the motions. The court held that the prisoner stated a claim under § 1983 against the prison's medical services provider for deliberate indifference to a serious medical need, in violation of the Eighth Amendment. The prisoner alleged that the refusal of prompt medical care to his recently surgically repaired wrists, upon his transfer from another facility, by employees of the prison's medical services provider, was, or could have been, partially responsible for the permanent damage to his wrists that was independently verified by an outside doctor. The court noted that the seriousness of the prisoner's medical need was so obvious, from the condition he arrived in, his description of the events to nurses, and from the obvious pain he was under for a period of weeks, that any lay person would have recognized the need for a doctor.

The court held that the prisoner's allegations that the employees of the prison's medical services provider were following the provider's inmate housing code when they initially denied the prisoner care, causing deliberate

indifference to his serious medical needs in violation of the Eighth Amendment and two weeks of intense suffering, were sufficient, at the early stage of proceedings, to allege that there was a relevant provider policy or custom, and that the policy caused the constitutional violation, as required for provider to be held liable for its employees' acts under § 1983. The court declined to appoint counsel for inmate, noting that the prisoner had been capably representing himself, and there were no special circumstances requiring the appointment of counsel. (Delaware Correctional Center)

U.S. District Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE

Primus v. Lee, 517 F.Supp.2d 755 (D.S.C. 2007.) A prisoner brought a pro se medical malpractice action against a prison surgeon, prison physician, and the director of the state Department of Corrections. The defendants moved to dismiss, and the prisoner moved for leave to amend. The district court dismissed the action without prejudice and granted the plaintiff's motion to amend. The court held that the allegations did not state an Eighth Amendment claim for deliberate indifference, and that the prisoner's proposed amendment would not be futile. According to the court, the allegations that a prison surgeon negligently performed surgery, which resulted in the unwanted removal of the prisoner's testicle, did not state a § 1983 claim for deliberate indifference to the prisoner's serious medical needs under the Eighth Amendment. The prisoner's proposed amendment, alleging that the surgeon contracted with the state corrections department to provide surgical treatment, and that the surgeon unnecessarily and maliciously removed the prisoner's testicle in retaliation for the prisoner's lack of cooperation, could state a § 1983 claim for deliberate indifference under the Eighth Amendment. The court noted that when a physician cooperates with the state and assumes the state's constitutional obligation to provide medical care to its prisoners, he or she acts "under color of state law," for purpose of a § 1983 action. (Lee Correctional Institution, South Carolina)

U.S. Appeals Court
HEARING IMPAIRED
ADA- Americans With
Disabilities Act

Robertson v. Las Animas County Sheriff's Dept., 500 F.3d 1185 (10th Cir. 2007). A deaf pretrial detainee brought suit under § 1983 and the Americans with Disabilities Act (ADA) against deputies and a sheriff, claiming wrongful arrest and failure to accommodate his disability. The district court dismissed all claims against the defendants on their motion for summary judgment and the detainee appealed. The appeals court reversed and remanded. The court held that a fact issue as to whether the totally deaf detainee with a surgically implanted cochlear implant was substantially limited in his ability to hear, precluded summary judgment as to whether he was a qualified individual under ADA. The court also found that summary judgment was precluded by fact issues as to whether the jail knew, or should have been aware of, the deaf inmate's limitations. The court found that the detainee was qualified to receive benefits and services of the county jail, within the meaning of ADA, with respect to phone services and televised closed-circuit viewing of his probable cause hearing, as such services were available to all inmates. (Las Animas County Jail, Colorado)

U.S. District Court
EQUAL PROTECTION
EXPERIMENTATION
INADEQUATE CARE
MEDICATION

Roman v. Donelli, 616 F.Supp.2d 299 (N.D.N.Y. 2007). A state prisoner, who suffered from Hepatitis C, brought a § 1983 action against the New York State Department of Correctional Services' (DOCS) chief medical officer, among others, alleging that the officer violated his constitutional rights under the First, Eighth, and Fourteenth Amendments. The officer moved for summary judgment and the district court granted the motion. The court held that the officer was not deliberately indifferent to the prisoner's medical needs and that the prisoner was not similarly situated to another prisoner who was allegedly treated for the same condition. According to the court, the officer's allegedly differentiated treatment of prisoners was not motivated by discriminatory animus, as would support an equal protection claim. The chief medical officer refused to implement a course of treatment that was not approved by Food and Drug Administration (FDA) for 22 months after the prisoner was treated ineffectively with a different drug combination. The court noted that the officer made decisions regarding the prisoner's treatment based on information before him at the time, and when the officer became aware of the circumstances that would warrant an exception to the prison policy prohibiting treatment with drugs that were not FDA approved, the officer approved treatment.

The court found that the prisoner did not suffer any adverse action as a result of his filing of grievances, as would support a First Amendment retaliation claim. (New York State Department of Correctional Services)

U.S. District Court
FAILURE TO PROVIDE
CARE
TRANSPLANT
DELAY OF CARE

Rosado v. Alameida, 497 F.Supp.2d 1179 (S.D.Cal. 2007). The family of a state prisoner who died of liver disease brought a civil rights action under § 1983 against prison physicians and officials, alleging violation of his Eighth Amendment rights by failing to take necessary steps to qualify him for a liver transplant and to provide other necessary care for his liver condition. The physicians moved for summary judgment. The district court granted the motion in part, and denied in part. The court held that summary judgment was precluded by genuine issues of material fact regarding whether the deputy director of prison health care services chose to delay or refused an evaluation for a liver transplant for the prisoner, who later died of liver cirrhosis, whether the failure to take steps towards a liver transplant was medically unacceptable, and whether the deputy's decision was chosen in conscious disregard of an excessive risk to the prisoner's health. The court found that the deputy director of prison health care was not entitled to qualified immunity for his alleged intentional denial or delay in getting the prisoner with end-stage liver cirrhosis evaluated for a liver transplant, as it was clearly established that prison officials could not intentionally deny or delay prisoner's access to necessary medical care. (Centinela State Prison, California)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
INADEQUATE CARE
DELIBERATE
INDIFFERENCE

Ruiz-Rosa v. Rullán, 485 F.3d 150 (1st Cir. 2007). The mother of a pretrial detainee brought suit against officials of the Puerto Rico prison system and prison medical personnel after her 18-year-old son died of septicemia while incarcerated. The district court granted the defendants' motion for summary judgment and the mother appealed. The appeals court affirmed. The appeals court held that the district court's dismissal with prejudice of the mother's complaint for failure to comply with a court order requiring her to file a clearly stated amended complaint was an abuse of discretion, but that there was no evidence of deliberate indifference on the part of prison personnel to the serious medical needs of pretrial detainee, as required for the mother's claim under the Fourteenth Amendment. The court noted that the detainee received medical care in the form of draining of his abscess, blood cultures, and two different antibiotics. (Bayamón Correctional Complex, Puerto Rico)

- U.S. District Court
CONTRACT SERVICES
DENTAL CARE
DELIBERATE INDIF-
FERENCE
- Samuel v. Carroll*, 505 F.Supp.2d 256 (D.Del. 2007). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The officials moved to dismiss and the district court granted the motions. The inmate filed a motion for partial reconsideration. The prison's contract medical provider filed a motion for summary judgment, and a second provider filed a motion for an entry of judgment. The district court denied the motions for reconsideration, summary judgment and entry of final judgment. The district court held that summary judgment was precluded by a genuine issue of material fact as to whether the contract medical provider had a policy or custom, in the form of a standard eight to nine month delay for tooth repair, that amounted to deliberate indifference to the inmate's serious medical needs. The motions to compel discovery were granted in part and denied in part. (Delaware Correctional Center)
- U.S. District Court
HEARING IMPAIRED
ADA- Americans with
Disabilities Act
- Sanders v. Ryan*, 484 F.Supp.2d 1028 (D.Ariz. 2007). A hearing-impaired inmate brought a civil rights action against a prison official and the State of Arizona, claiming his rights were violated under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the First Amendment, Arizona civil rights laws, and the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that the state's failure to rebut the hearing-impaired inmate's evidence in opposition to a summary judgment motion that the prison denied him access to his bi-aural headphones, allowed the inference of discriminatory animus, as required to establish a claim under Title II of the Americans with Disabilities Act (ADA). The inmate had arranged to have four items, including the headphones, shipped to the prison before the effective date of the rule limiting prisoners' possessions, and the prison issued a television and a calculator but not headphones. The court held that the state's refusal to issue the hearing-impaired inmate bi-aural headphones so that he could watch television did not violate his First Amendment rights, where the inmate did not have a right to watch television, he was still able to receive information, ideas, and messages through books, magazines and newspapers, and the inmate acknowledged in his complaint that he was able to hear his television without his hearing aids. (Arizona Department of Corrections)
- U.S. District Court
DELAY IN CARE
INADEQUATE CARE
- Shuler v. Edwards*, 485 F.Supp.2d 294 (W.D.N.Y. 2007). A state prisoner who fell in his cell and sustained a broken ankle filed a pro se § 1983 claim against a nurse and a physician's assistant who treated him at a prison hospital, alleging inadequate medical treatment. The district court granted summary judgment for the defendants. The court held that the prisoner failed to establish that he received inadequate treatment from the physician's assistant and nurse, although x-rays were not taken until a day after injury, 17 days passed between the x-rays and surgery, and the prisoner alleged that such delay resulted in severe pain and caused him to walk with a limp. The court noted that the physician's assistant and nurse treated the prisoner by immobilizing his ankle, giving him crutches and pain relievers, and providing for further evaluation and treatment, and there was no proof that they acted with a culpable state of mind or intended to inflict pain on prisoner. (Attica Correctional Facility, New York)
- U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
- Streeter v. Goord*, 519 F.Supp.2d 289 (N.D.N.Y. 2007). A prisoner brought a § 1983 action, alleging prison officials and medical personnel acted with deliberate indifference in treating his sickle cell anemia in violation of the Eighth Amendment. The court granted the defendants' motion for summary judgment. The court held that the inmate's condition during the sickle cell crisis was a "serious medical condition," for the purposes of an Eighth Amendment § 1983 claim. The court found that there was no evidence that a prison doctor knowingly disregarded an excessive risk to the prisoner's health or safety, and that a delay in flushing the prisoner's catheter was not a serious medical need. According to the court, the prisoner's conclusory allegations about prison nurses were insufficient to establish that they knowingly disregarded a serious risk to his health. The court concluded that there was no evidence that the prison commissioner was aware of the alleged constitutional violations that occurred, nor was there any evidence that he implemented or sanctioned policies or customs amounting to a constitutional violation, as was required to impose supervisory liability in § 1983 action. The court also found that the prison superintendent had no personal involvement in alleged violations as was required to impose supervisory liability under § 1983. The court noted that the superintendent was not serving at the prison at the time of the events relevant to the prisoner's claims. (Coxsackie Correctional Facility, New York)
- U.S. District Court
PRETRIAL DETAINEE
CONTAGIOUS
DISEASES
DELIBERATE INDIF-
FERENCE
- Thomas v. Sheahan*, 499 F.Supp.2d 1062 (N.D.Ill. 2007). A special administrator filed a § 1983 suit against a county, sheriff, county board, correctional officers, supervisors, and a correctional medical technician, on behalf of a pretrial detainee who died at a county jail from meningitis and pneumonia. The administrator alleged violations of the detainee's constitutional rights and state law claims for wrongful death, survival action, and intentional infliction of emotional distress. The defendants moved for summary judgment and to strike documents. The district court granted the motions in part and denied in part. The court did not strike all of the plaintiff's summary judgment submissions, for allegedly failing to disclose witnesses or individuals with relevant information who submitted affidavits, given that the plaintiff had disclosed witnesses prior to discovery deadline. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the detainee's illness was an objectively serious medical need, and whether correctional officials and a correctional medical technician were aware of the detainee's serious medical symptoms. The court found that the supervisors of the correctional officers were not deliberately indifferent to the detainee's serious medical condition, where the officers did not contact their supervisors about the detainee until the morning that he died, the supervisors obtained medical care for the detainee, and the supervisors were not responsible for security checks or rounds of jail. The court also found that summary judgment was precluded on the issue of causation due to a genuine issue of material fact as to whether the county was deliberately indifferent to its widespread practice of failing to train its employees on how to handle inmate medical requests at the county jail. Summary judgment was also precluded by genuine issues of material fact as to whether the county was deliberately indifferent to: (1) its widespread practice of understaffing correctional officers at the county jail; (2) its widespread practice of failing to repair broken video monitoring systems for inmate surveillance at the jail; and, (3) its widespread policy or practice of falsifying daily logs to cover up missed security checks on inmates. (Cook County Jail, Illinois).

U.S. District Court INADEQUATE CARE	<i>Thomas v. Sheahan</i> , 514 F.Supp.2d 1083 (N.D.Ill. 2007). A special administrator filed a § 1983 suit against a county, sheriff, county board, correctional officers, supervisors and correctional medical technician on behalf of a pretrial detainee who died at a county jail from meningitis and pneumonia, alleging violations of constitutional rights and state law claims for wrongful death, survival action, and intentional infliction of emotional distress. The court held that the administrator's failure to produce documentary evidence of lost wages or child support payments did not preclude her from introducing evidence at trial. The court found that the physician was not qualified to testify as to the manifestations of meningitis absent evidence that the physician was an expert on meningitis or infectious diseases. According to the court, a jail operations expert's proposed testimony that the county did not meet minimum standards of the conduct for training of correctional staff was inadmissible. The court also found that evidence of jail conditions was relevant and thus admissible, where the administrator of the detainee's estate argued that county officials should have known the detainee was sick because he was throwing up in his cell and in a day room. (Cook County, Illinois)
U.S. District Court TRAINING INADEQUATE CARE	<i>Turner v. Correctional Medical Services</i> , 494 F.Supp.2d 281 (D.Del. 2007). A former prisoner brought a § 1983 action against a state, prison officials, and a medical service company, alleging inadequate medical care for hepatitis while he was incarcerated. After the district court entered partial summary judgment in the prisoner's favor, the company moved to alter or amend the judgment. The district court denied the motion. The court held that expert testimony regarding the need to train the inmate suffering from hepatitis C to rotate the injection site for his interferon shots was not required to establish the medical service company's deliberate indifference to the inmate's serious medical needs, where the medical record was replete with references to the inmate self-injecting at the same site and an infection occurring at the injection site. (Delaware Correctional Center)
U.S. District Court INVOLUNTARY MEDICATION	<i>U.S. v. Jaramillo-Ayala</i> , 526 F.Supp.2d 1094 (S.D.Cal. 2007). The U. S. government moved for an order allowing involuntary medication of a defendant in order to render him fit to stand trial on charges of reentry after deportation. The district court issued a medication order. The court held that while medication could not be sustained on grounds that the defendant was a danger to himself or others, medication was medically necessary and appropriate to render the defendant fit for trial on serious crimes. (Alvarado Parkway Institute, California)
U.S. Appeals Court RECORDS	<i>U.S. v. Miller</i> , 477 F.3d 644 (8th Cir. 2007). A supervisor at a county detention center was convicted in the district court of depriving two prisoners of their Eighth Amendment right to be free from cruel and unusual punishment. The supervisor appealed and the appeals court affirmed. The court held that there was sufficient evidence that the supervisor acted maliciously and sadistically toward the prisoner, in violation of the Eighth Amendment prohibition against cruel and unusual punishment, even though the supervisor could have inflicted even greater injuries upon the prisoner. Evidence indicated that the supervisor punched the prisoner when there was no legitimate reason to do so, kicked the prisoner, and stomped on the prisoner while he was lying on the ground. The court noted that the assailing officer's ability to inflict greater injuries upon a prisoner does not make an attack any less malicious or sadistic, for the purposes of the Eighth Amendment prohibition against cruel and unusual punishment. The court held that the prisoner's medical records, which did not identify the supervisor as the individual responsible for the prisoner's injuries, were admissible under the medical treatment or diagnosis exception to the hearsay records. (Craighead County Detention Facility, Arkansas)
U.S. District Court DELIBERATE INDIFFERENCE MEDICATION	<i>Wakat v. Montgomery County</i> , 471 F.Supp.2d 759 (S.D.Tex 2007). The estate of inmate who died in a county jail brought a § 1983 action against the county, jail physician, and other county personnel. The defendants moved for summary judgment. The district court held that the county was not liable based on a county policy, the county was not liable for failure to train or supervise county jail personnel, and a physician did not act with deliberate indifference to the inmate's serious medical needs. The court held that the county sheriff was not liable in his individual capacity under § 1983 to the estate of the inmate absent a showing that he participated in any of the alleged activities in any individual capacity. According to the court, the county was not liable to the estate under § 1983 for deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment, since the county policy did not directly cause county personnel to fail to seek physician approval to reinstate the inmate's prescription medication. The court noted that although the jail had a written policy of abruptly discontinuing any narcotic medications when inmates were initially processed for booking, regardless of whether the inmate had a valid prescription for the narcotic, the jail also had a policy allowing the narcotic medications to be reinstated with the permission of a doctor. The court held that the county jail physician did not act with deliberate indifference to the serious medical needs of the inmate, where the physician did not refuse to treat the inmate nor ignore his complaints, prescribed medication when he was first called about the inmate's disorientation and hallucinations, and saw the inmate and diagnosed him with undifferentiated schizophrenia. According to the court, although the physician failed to see signs of withdrawals from benzodiazepine, there was no indication that he intentionally treated the inmate for schizophrenia while knowing that, in fact, he was suffering dangerous withdrawals from a prescription drug to which he was addicted. (Montgomery Co. Jail, Texas)
U.S. Appeals Court EMERGENCY CARE INADEQUATE CARE	<i>Watson v. U.S.</i> , 485 F.3d 1100 (10th Cir. 2007). A guardian brought an action on behalf of an incapacitated former federal prisoner under the Federal Tort Claims Act (FTCA), alleging that the government responded negligently to the prisoner's medical condition, resulting in a brain hemorrhage that left him severely and permanently disabled. The district court entered a jury verdict in favor of the defendants and the guardian appealed. The appeals court affirmed. The court held that there was sufficient evidence that the government lacked notice of the need to closely observe the prisoner for post-surgical complications upon his return to the correctional facility after brain surgery. Evidence indicated that the prisoner did not require observation upon his return to the facility, that he was neurologically normal except for mild speech problems, and that he was discharged with the instruction only that he continue speech and occupational therapy, with no need for further observation. The court upheld the district court's finding that the government did not breach any applicable

standard of care by failing to summon an air ambulance after the prisoner was found unconscious in his cell, where expert physicians testified that the use of an air ambulance was dependent upon distance, necessity, and the patient's best interest, but did not suggest that such factors applied to the prisoner's case. (Federal Correctional Institute in El Reno, Oklahoma)

U.S. Appeals Court
DENTAL CARE

Whittington v. Ortiz, 472 F.3d 804 (10th Cir. 2007). A state prisoner brought a § 1983 action alleging his rights were violated by the denial of access to free hygiene items. The district court dismissed the action and the prisoner appealed. The appeals court held that the prison's failure to timely respond to the prisoner's Step Three grievance regarding access to hygiene products established that the prisoner exhausted his available administrative remedies, as required by PLRA. A Step 3 grievance requires the prison to respond within 45 days. 196 days after he filed his Step 3 grievance he still had not received a response and then filed suit. The court held that the prisoner's elaboration on the way the prison's policies caused him to suffer dental problems satisfied his obligation to state an injury to support his Eighth Amendment claim but did not equate to a delay in dental treatment claim. The prisoner contended that he was unable to pay for hygiene items out of his prison income after the prison debits his prison account to pay for restitution, medical care, legal photocopies, and legal postage. (Colorado Department of Corrections)

U.S. Appeals Court
DELAY IN TREATMENT
MEDICATION
DELIBERATE INDIF-
FERENCE

Williams v. Liefer, 491 F.3d 710 (7th Cir. 2007). A prisoner brought a § 1983 action against prison officers, alleging deliberate indifference to his medical needs. Following the entry of a jury verdict in favor of the prisoner, the district court denied the officers' motion for judgment as a matter of law. The officers appealed. The appeals court affirmed. The court held that the issue of whether a delay in medical care unnecessarily prolonged and exacerbated the prisoner's pain and unnecessarily prolonged his high blood pressure was for a jury, and the officers were not qualifiedly immune. The court noted that medical records indicated that the nitroglycerin the prisoner eventually received almost immediately relieved his pain and lowered his blood pressure, such that a jury could find that the delay caused the prisoner six extra hours of pain and dangerously elevated blood pressure for no good reason. (Menard Correctional Center, Illinois)

U.S. District Court
DELAY IN CARE
MEDICATION

Williamson v. Correctional Medical Services, 494 F.Supp.2d 285 (D.Del. 2007). An inmate brought a § 1983 action against prison's health care providers, alleging violations of his rights under the First, Fifth, Eighth, and Fourteenth Amendments. The inmate alleged that he experienced a pervasive and continuous pattern of unnecessary and harmful medication interruptions during a four year period. He alleged he required thyroid medication. The inmate also alleged that he suffered an acute knee injury involving muscle, tendon and ligament damage as a result of an injury, and that the defendants were deliberately indifferent by disregarding his symptoms and denying or obstructing medical treatment for the condition. The district court dismissed the action. The court found that the action was brought against a wrongly named provider, requiring dismissal as to that entity. The court noted that the provider named in the suit did not contract with the Department of Corrections (DOC) to provide medical services, as alleged in the complaint. (Delaware Correctional Center)

U.S. Appeals Court
REHABILITATION ACT
MENTAL HEALTH
ADA- Americans With
Disabilities Act

Winters v. Arkansas Dept. of Health and Human Services, 491 F.3d 933 (8th Cir. 2007). The administrator of the estate of a mentally ill pretrial detainee/civil committee who had died of peritonitis in a county jail sued a sheriff and the Arkansas Department of Human Services (DHS) under § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The district court entered judgment for the defendants. The administrator appealed and the appeals court affirmed. The appeals court held that the pretrial detainee was not discriminated against on the basis of his mental illness, as required to establish violation of the Americans with Disabilities Act (ADA) or the Rehabilitation Act. The court noted that the detainee was arrested for criminal trespass, and although he was not treated for his peritonitis due to his inability to communicate because of his mental illness, the sheriff and other jail officials sought immediate treatment for the detainee's mental illness, and attempted to transport him to a state hospital, but he was denied admittance due to lack of available space. The court found that neither the Arkansas Department of Human Services (DHS) nor the county sheriff were deliberately indifferent to the serious medical needs of the detainee, nor was there a policy or custom to deprive mentally ill detainees of treatment. According to the court, the detainee died from a condition that neither defendant knew of or suspected, the sheriff and other jail officers attempted to get the detainee into a mental health treatment facility, but no facility would accept custody of him. (Benton County Jail, Arkansas)

U.S. Appeals Court
INTAKE SCREENING
DELIBERATE INDIF-
FERENCE

Williams v. Rodriguez, 509 F.3d 392 (7th Cir. 2008). An arrestee sued a city and others under § 1983, asserting claims for false arrest and deliberate indifference to his medical needs. The district court entered summary judgment for the defendants and the arrestee appealed. The appeals court affirmed. The court held that the arrestee's asthma was not objectively serious during the time he was being processed, and therefore an officer was not deliberately indifferent to his medical needs. According to the court, the arrestee's statements to the officer that he had asthma, needed his medication, and could not breathe, made in the context of a request that the arrestee take a breathalyzer test, were insufficient by themselves to show that he was suffering from a serious attack. (City of Chicago Police Department, Illinois)

2008

U.S. District Court
DELIBERATE
INDIFFERENCE
SMOKE-FREE
ENVIRONMENT

Abdullah v. Washington, 530 F.Supp.2d 112 (D.D.C. 2008.) An inmate filed a § 1983 action seeking damages for violation of his Eighth Amendment rights stemming from his alleged exposure to second-hand tobacco smoke while confined at a District of Columbia detention facility. The district court granted summary judgment in favor of the defendants. The court held that the plaintiff's expert's testimony failed to demonstrate a causal relationship between environmental tobacco smoke (ETS) and the increased risk of harm to the inmate. The court noted that the expert was a biophysicist, not a medical doctor, never went to the jail, and never examined the inmate or his medical records. The court held that the officials were not deliberately indifferent to the health

risks caused by environmental tobacco smoke (ETS), even if the officials inadequately enforced no-smoking rules, where a non-smoking policy was in existence during the inmate's incarceration, and the jail was undergoing extensive renovation to improve air quality, including the ventilation system. (District of Columbia Department of Corrections, Central Detention Facility)

U.S. District Court
DELIBERATE
INDIFFERENCE
EMERGENCY CARE
RELIGION

Abdur-Raqiyb v. Erie County Medical Center, 536 F.Supp.2d 299 (W.D.N.Y. 2008). A jail prisoner brought a federal civil rights suit against public hospitals and a physician, alleging violation of his First and Eighth Amendment rights during emergency treatment for a suspected heart attack. The district court granted the defendants' motions for summary judgment. The court held that the hospitals' failure to communicate, that allegedly resulted in an overdose of morphine upon the prisoner's arrival at a second hospital, did not involve the requisite deliberate indifference for an Eighth Amendment claim. The court noted that the failure to communicate did not establish the intent to cause the prisoner pain or physical harm or a conscious disregard of a substantial risk of harm. The court held that the Muslim prisoner's First Amendment right to free exercise of religion was not violated when hospital personnel administered drugs that were pork-derived and gave him a CT scan in which shellfish-derived dye was used to rule out a possible heart attack, in response to his complaints of chest pain, without informing him in advance of the nature of the substances involved. The court noted that the prisoner acknowledged that his religion permitted the administration of otherwise forbidden substances in emergencies, and hospital staff would have exposed themselves to liability had they not administered the medications and CT test. (Groveland Correctional Facility, New York)

U.S. District Court
INVOLUNTARY
MEDICATION

Anglin v. City of Aspen, Colo., 552 F.Supp.2d 1205 (D.Colo. 2008). A pretrial detainee brought a civil rights action, alleging that a county sheriff, county jailers, and others violated her rights to due process and free speech, as well as her right to be free from unreasonable seizure, by forcibly injecting her with antipsychotic medication while in custody at a county jail. The district court granted summary judgment for the defendants in part. The court held that a county sheriff's deputy personally participated in the decision to sedate the detainee and therefore the deputy could be liable in his individual capacity under § 1983. The deputy had called paramedics and admittedly lobbied the medics to sedate the detainee, he allegedly falsely reported to the paramedics that the detainee had been banging her head and throwing herself against her steel cell door, and he participated in physically restraining the detainee during the injection, at the request of the paramedics. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the deputy falsely reported to the paramedics. The court found that the deputy was not entitled to qualified immunity from liability. The court found that the training of county jail personnel by the county sheriff and other officials with respect to forcible sedation of pretrial detainees in the county jail, was not deliberately indifferent to the due process rights of the detainees, and therefore the sheriff and county officials were not liable under § 1983 for failure to properly train. The training required personnel to call the paramedics and let the paramedics, with the advice of a physician, make the decision as to whether or not to sedate. (Pitkin County Jail, Colorado)

U.S. District Court
INVOLUNTARY
MEDICATION
PRIVATE PHYSICIAN
PSYCHOTROPIC DRUGS

Anglin v. City of Aspen, Colo., 552 F.Supp.2d 1229 (D.Colo. 2008). A jail inmate brought a civil rights action, alleging that an emergency room physician violated her constitutional rights by forcibly injecting her with antipsychotic medication while she was in custody. The physician filed a motion for summary judgment, which was granted by the district court. The court held that the physician "acted under color of state law" within the meaning of § 1983 when he ordered the inmate to be involuntarily sedated, and that the physician exercised reasonable medical judgment in deciding to forcibly sedate the inmate. The court noted that although the private physician did not contract directly with the state to treat the inmate, the physician however undertook a public function because the provision of medical services to inmates was traditionally the exclusive prerogative of the state. The inmate appeared highly intoxicated and out of control, was pounding and throwing her body against her cell door, was violently pulling against her restraints and thrashing about, and was unable to gain control in the presence of the paramedics or to allow her vital signs to be taken. (Pitkin County Jail, Colorado)

U.S. District Court
INVOLUNTARY
MEDICATION

Anglin v. City of Aspen, 562 F.Supp.2d 1304 (D.Colo. 2008). A jail inmate brought a civil rights action under § 1983 against a city, former and current police officers, and a police chief, alleging that the defendants violated her rights to due process and free speech, as well as her right to be free from unreasonable seizure, by forcibly injecting her with antipsychotic medication while she was in custody at a county jail. The district court granted summary judgment for the defendants. The court held that officers did not deprive the inmate of due process by restraining her while paramedics forcibly sedated her and that the officers' act of restraining the inmate while she was sedated did not amount to excessive use of force. The court found that the police chief was not liable for failure to train and/or supervise officers, where the training reflected the sound conclusion that medical professionals, rather than law enforcement personnel, were the individuals most qualified to determine whether sedation was appropriate. According to the court, absent a policy of sedating detainees, the city was not municipally liable under § 1983. The court held that the officers' act of restraining the inmate while paramedics forcibly administered antipsychotic medication to her was not substantially motivated as a response to her exercise of allegedly constitutionally protected conduct, as would support the inmate's First Amendment free speech retaliation claim against the officers, where the physician, not the officers, had legal authorization to decide whether an emergency existed that justified the inmate's forced sedation, and the officers did not participate in making the decision to forcibly sedate the inmate. (City of Aspen, Colorado)

U.S. Appeals Court
CONTRACT SERVICES
DELAY IN TREATMENT
DELIBERATE
INDIFFERENCE

Brown v. District of Columbia, 514 F.3d 1279 (D.C. Cir. 2008). A District of Columbia prisoner brought Eighth Amendment civil rights claims against the District, mayor, operator of a private prison and various correctional officials and employees, among others. The district court dismissed certain claims for failure to effect service and others for failure to state a claim. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner stated a claim for violation of his Eighth Amendment rights through deliberate indifference to his serious medical needs. The court also found that the allegations were

sufficient to state a claim for *Monell* liability against the District for Eighth Amendment violations by alleging that prison officers failed to transfer him for treatment for 60 days following a physician's notification that the prisoner was in need of immediate hospitalization for gallstones. The court found that the allegations were insufficient to state a supervisory liability claim against a correctional official who supervised the care of prisoners "housed in contract facilities" for alleged wrongdoing at a correctional facility that did not qualify as a "contract facility". (District of Columbia, Corrections Corporation of America, Occoquan Correctional Facility in Lorton, Virginia)

U.S. Appeals Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE
NEGLIGENCE
SUICIDE

Brumfield v. Hollins, 551 F.3d 322 (5th Cir. 2008). The daughter of a detainee who hung himself while confined in a "drunk tank" of a county jail brought a § 1983 action against the county, and a sheriff and deputies in their individual and official capacities. The district court awarded summary judgment to each defendant sued in his individual capacity on the basis of qualified immunity, but denied summary judgment to individual defendants in their official capacities and to the county. After a trial, the district court directed a verdict in favor of all officers and the county. The daughter appealed. The appeals court affirmed. The court held that the sheriff was protected by qualified immunity and that the district court did not abuse its discretion by excluding expert testimony indicating that the detainee was alive when paramedics arrived at the jail. The court found that the county was not liable under § 1983. According to the court, the sheriff was entitled to qualified immunity from the claim that he failed to adopt any written policy pertaining to inmate supervision or medical care, where verbal policies existed concerning inmate supervision and medical care. The court found that the sheriff's efforts in training and supervising deputies were not deliberately indifferent, as required for the sheriff to be liable under § 1983 for the suicide of a drunk driving detainee. The court noted that the deputies did receive training, and that there was no evidence of a pattern of similar violations or evidence that it should have been apparent that a constitutional violation was the highly predictable consequence of an alleged failure to train. The court found that while the deputies' conclusion that the detainee who had hung himself was already dead, and their resulting failure to make any attempt to save his life, were arguably negligent, this conduct alone did not amount to deliberate indifference, nor was any county custom or policy the moving force behind the deputies' conduct, as required for the county to be liable under § 1983 for denial of reasonable medical care. (Marion County Jail, Mississippi)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
INTAKE SCREENING
PRETRIAL DETAINEE

Burnette v. Taylor, 533 F.3d 1325 (11th Cir. 2008). The father of a detainee who died while in custody in a county jail brought a § 1983 claim against county sheriff's deputies and jailers, alleging deliberate indifference to the detainee's serious medical needs. The district court denied the defendants' motion for summary judgment on qualified immunity grounds. The defendants appealed. The appeals court reversed and remanded. The court held that the arresting officers were not deliberately indifferent to the serious medical needs of the detainee who died after ingesting a lethal combination of drugs while in custody in the county jail. Although the officers had been warned by the detainee's stepfather that the detainee was strung out on drugs, and one officer observed that the detainee had glassy eyes and appeared to be under the influence of something, the officers saw only that the detainee possessed a bottle of prescription pills. The court noted that neither the detainee nor any family member requested that the detainee be given medical treatment, and the symptoms exhibited by the detainee were not necessarily indicative that medical attention was required.

The court found that a jailer was not deliberately indifferent to the serious medical needs of the detainee. The jailer was in charge of dressing out the detainee before he was placed in his cell, and although the jailer found a bottle of prescription pills and observed that the detainee was wasted, the detainee advised that he had just woken up, and no one told the jailer that the detainee needed medical help or needed to be looked after.

The court also held that a jailer was not deliberately indifferent to the serious medical needs of the detainee even though the jailer was aware that the detainee was in possession of a bottle of pills when he was arrested, that his speech was slurred, that he needed assistance when he was moved from one cell to another and that his eyes were rolling back in his head at that time, and that the detainee was making a snoring sound at the time of one bed check. According to the court, the jailer was never aware that the detainee could have ingested a lethal amount of drugs, no one ever recommended to the jailer that the detainee be placed in a holding cell or otherwise be observed, and the jailer observed the detainee laughing and talking with his cellmates at one point. (Bacon County Jail, Georgia)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE

Burns v. Trombly, 624 F.Supp.2d 185 (N.D.N.Y. 2008). A state prisoner brought a § 1983 action against prison employees, alleging that his constitutional rights under the Eighth and Fourteenth Amendments were violated when the employees used excessive force during an attempt to move him to a different prison cell, and when they were deliberately indifferent to his serious medical needs arising from that use of excessive force. The employees moved for partial summary judgment and the district court granted the motion. The court held that the assertion in the prisoner's complaint was insufficient to create a genuine issue of material fact with regard to an employee's personal involvement in the alleged use of excessive force. According to the court, the prison employee who videotaped the alleged use of excessive force was not deliberately indifferent to the prisoner's serious medical needs arising from that incident, where the prisoner did not explain to the employee why he needed to go to the medical clinic, the employee did not hear the prisoner's request, and the employee did not witness any alleged loss of consciousness or facial swelling while standing outside the prisoner's cell door. The court held that the state prisoner's letter complaining to a superintendent was too brief to place prison employees on notice that any constitutional violation had actually occurred, and thus was insufficient to create a genuine issue of material fact with regard to the employees' personal involvement in the alleged use of excessive force and deliberate indifference to his serious medical needs arising from that use of excessive force. (Upstate Correctional Facility, New York)

<p>U.S. District Court DELIBERATE INDIFFERENCE FAILURE TO PROVIDE CARE</p>	<p><i>Cameron v. Myers</i>, 569 F.Supp.2d 762 (N.D.Ind. 2008). A prisoner moved for a default judgment on a § 1983 claim against a prison doctor for deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The district court granted the motion. The court held that the prison doctor was deliberately indifferent to the prisoner's serious medical needs, and an award of \$250,350 in compensatory damages, and denial of punitive damages was warranted. According to the court, the doctor was deliberately indifferent to the prisoner's serious medical needs in failing to provide the prisoner with the necessary and urgent medical care and treatment required for his Crohn's disease, which also led to the prisoner's development of a flesh eating disease. The court found that the doctor was plainly subjectively aware of the prisoner's objectively serious medical condition because of the diagnosis established in his previous doctor's medical records as well as by what the prisoner told him, and the doctor's inaction forced the prisoner to endure tremendous pain and suffering stemming from his untreated Crohn's disease as well as the newly formed flesh eating disease, which ceased only when the prisoner moved to a new facility and began treatment under another physician. (Indiana State Prison)</p>
<p>U.S. District Court CONTRACT SERVICES INADEQUATE CARE MISDIAGNOSIS WORK ASSIGNMENT</p>	<p><i>Cason v. District of Columbia</i>, 580 F.Supp.2d 76 (D.D.C. 2008). A prisoner brought a § 1983 action against a correctional services company, alleging violations of the Eighth Amendment related to an injury to the prisoner's eye, alleged misdiagnosis, and alleged inadequate treatment. The district court granted summary judgment for the company. The court found that the company was not responsible for dishwashing at the prison or for the prisoner's medical care, and thus the company was not liable under § 1983 for the prisoner's alleged eye injury while working in the kitchen as a dishwasher, alleged misdiagnosis by prison medical staff, or alleged inadequate treatment. (ARAMARK Correctional Service, District of Columbia Central Detention Facility, Operated by Corrections Corporation of America)</p>
<p>U.S. District Court DELAY IN TREATMENT INADEQUATE CARE MEDICATION</p>	<p><i>Collins v. Williams</i>, 575 F.Supp.2d 610 (D.Del. 2008). An inmate brought a § 1983 action against a warden, a prison's medical provider, medical director, and corrections officers, alleging lack or delay of medical treatment and/or improper medical treatment. Following dismissal of the claims against the medical director and corrections officers, and dismissal of the claims against the warden and provider, the inmate filed an amended complaint against the warden and provider and moved for the appointment of counsel, which was denied. The defendants moved for summary judgment, and the inmate moved for reconsideration of the order denying his motion for appointment of counsel. The district held that the warden and provider were entitled to summary judgment. The court held that dismissal was warranted for the inmate's refusal to cooperate in the discovery process. The court noted that the warden had no personal involvement in the alleged denial of the inmate's access to medical treatment or the alleged interference with the inmate's medical care, and the warden responded to the inmate's grievances and letters by directing him to the individuals who could be of assistance. The court found that the provider was not deliberately indifferent to the inmate's serious medical needs in violation of the Eighth Amendment. According to the court, rather than ignoring the inmate's medical complaints, he provided care and treatment. The court noted that although not to inmate's liking and perhaps not as quickly as the inmate wished, all delays in his receiving medication, save one, were for pain medication and were for a relatively short period. The court declined to second guess the medical decision to discontinue the inmate's use of trazodone, a drug primarily used for the treatment of depression. (Howard R. Young Correctional Institution, Delaware)</p>
<p>U.S. District Court CONTAGIOUS DISEASE MALPRACTICE</p>	<p><i>Costa v. County of Burlington</i>, 566 F.Supp.2d 360 (D.N.J. 2008). A plaintiff brought a wrongful death action against a doctor, arising from alleged malpractice in the treatment of an inmate who was at a corrections center. The district court denied the doctor's motion to dismiss the action based on the plaintiff's alleged failure to comply with filing deadlines. The plaintiff claimed that the inmate contracted a MRSA infection while she was confined and died because the doctor failed to both "respond to her obvious need for medical care" and hospitalize her at the appropriate time. The plaintiff also alleged that the doctor failed to report the MRSA outbreak to the appropriate authorities. (Burlington County Corrections and Work Release Center, N.J.)</p>
<p>U.S. District Court CONTAGIOUS DISEASES RECORDS-ACCESS</p>	<p><i>Costa v. County of Burlington</i>, 584 F.Supp.2d 681 (D.N.J. 2008). An administrator, individually and as the representative of a deceased pretrial detainee's estate, brought civil rights and state law claims against a county and the warden of a county jail, alleging that the inmate contracted Methicillin-resistant Staphylococcus aureus (MRSA) during her incarceration and ultimately died as result of MRSA-related pneumonia. The administrator appealed the pretrial rulings of a United States Magistrate. The district court denied the appeal in part and dismissed in part. The court held that broadening the scope of discovery of documents concerning other inmates' medical treatment beyond grievances related to Methicillin-resistant Staphylococcus aureus (MRSA) would have been too intrusive and minimally probative. (Burlington County Corrections and Work Release Center, New Jersey)</p>
<p>U.S. Appeals Court DELAY IN CARE</p>	<p><i>Danley v. Allen</i>, 540 F.3d 1298 (11th Cir. 2008). A pretrial detainee brought a § 1983 action against jailers, alleging that he was subjected to excessive force and then denied medical treatment when they sprayed him with pepper spray. The district court entered orders denying the defendants' motions to dismiss on qualified immunity grounds, and the defendants appealed. The appeals court vacated and remanded. On remand, the district court again denied the motion to dismiss, and defendants again appealed. The appeals court affirmed. The court found that allegations in the detainee's complaint, regarding his subsequent confinement without being allowed to properly clean himself and remove pepper spray from his clothing, in a small, poorly-ventilated cell, were sufficient to state an excessive force claim. According to the court, the entire incident, consisting of both the initial pepper-spraying and the detainee's subsequent confinement in a small, poorly-ventilated cell, could be treated as a single alleged incident of use of excessive force. The court noted that the detainee's eyes nearly swelled shut, he had difficulty breathing, and he nearly passed out, while jail officials allegedly failed to take any, and then only inadequate, steps to alleviate his suffering but instead mocked and ridiculed him. The court found that the alleged mocking of the detainee while he suffered, by jailers who parodied his choking, was circumstantial evidence of their malicious intent. The court found that the allegations were sufficient to state a</p>

claim for officials' deliberate indifference to the detainee's serious medical needs. The court determined that the jailers were not entitled to qualified immunity on the detainee's deliberate indifference claim and that the detainee stated a claim against the sheriff and the jail administrator to hold them personally liable under § 1983 for alleged excessive force and deliberate indifference by the jailers. The detainee was allegedly diagnosed with chemical conjunctivitis and bronchospasms as the result of the delay in treatment. The court noted that this, along with the fact that another prisoner allegedly recognized the detainee's distress and was ultimately successful in obtaining a brief shower for him, was sufficient to show the seriousness of his medical need. (Lauderdale County Detention Center, Alabama)

U.S. District Court
DELAY IN TREATMENT
DELIBERATE
INDIFFERENCE
NEGLIGENCE

Dantone v. Bhaddi, 570 F.Supp.2d 167 (D.Mass. 2008). A prisoner brought an action against the United States under the Federal Tort Claims Act (FTCA) and against a prison doctor under Bivens, seeking to recover for injuries allegedly sustained when the seat of a van in which he was being transported collapsed. The district court denied the defendant's motion to dismiss. The court held that the prisoner's allegations that prison staff breached its duty of care in their transportation of him by failing to properly install, maintain, and inspect the seating in a transport van, and that this breach resulted in the collapse of the seat, which resulted in the injuries to his head and neck, and ongoing pain, were sufficient facts to state a negligence claim against the United States under the Federal Tort Claims Act. The court found that the prisoner's allegations that he received no meaningful medical care following the accident, that the magnetic resonance imaging (MRI) which he eventually received six months after the accident was untimely, and that, to date, he had been unable to obtain any medical information about the results of his tests, all despite repeated complaints to the prison doctor, were sufficient to state a claim against the doctor of deliberate indifference to his medical needs in violation of the Eighth Amendment. (Federal Medical Center, Devens, Massachusetts)

U.S. District Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE

Davis v. First Correctional Medical, 530 F.Supp.2d 657 (D.Del. 2008). A state prisoner filed a § 1983 action alleging that a contractor that operated a prison medical center and its employees were deliberately indifferent to his ventral hernia. The contractor renewed its motion to dismiss and the prisoner moved for appointment of counsel. The district court dismissed the action. The prisoner had complained of pain following his diagnosis, and had alleged that the contractor was not responsive to his need. (Delaware Correctional Center)

U.S. District Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE

Davis v. First Correctional Medical, 589 F.Supp.2d 464 (D.Del. 2008). An inmate brought a § 1983 action against a prison medical center and others, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The parties cross-moved for summary judgment. The district court granted summary judgment for the defendants. The court held that a delay in surgery to treat and relieve a hernia and to resect the inmate's small bowel due to an obstruction did not constitute deliberate indifference to the inmate's serious medical need. The court noted that the inmate had been treated repeatedly for his medical conditions, that any delay in surgery was caused by diagnostic testing and scheduling, and that there was no evidence that the delay was intentional. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE

Davis v. Williams, 572 F.Supp.2d 498 (D.Del. 2008). A state prisoner brought a § 1983 action against a prison warden, several correctional officers, and prison medical staff, alleging that the defendants failed to protect him from a fellow prisoner even though he complained of the prisoner's conduct. The prisoner moved for summary judgment, to amend, and to appoint counsel. The court held that the prison warden's participation in an after-the-fact review of the prisoner's grievance was not enough to establish the warden's personal involvement in the prisoner's alleged constitutional deprivations, as would subject the warden to personal liability in the prisoner's § 1983 action. According to the court, prison medical employees were not deliberately indifferent to the serious medical needs of the prisoner, whose jaw was broken in an altercation with a fellow inmate, in violation of the Eighth Amendment. The court noted that the prisoner's condition was monitored almost immediately after he was injured, his jaw was x-rayed one day following the injury, and two days after the injury, the prisoner was placed in an infirmary and placed on a liquid diet. The court also found no Eighth Amendment violation on the delay of approximately one week from the time the prisoner was examined by a physician for his jaw injury until the time he was surgically treated. (Delaware Correctional Center)

U.S. District Court
FAILURE TO PROVIDE
CARE
PRETRIAL DETAINEE

Dean v. City of Fresno, 546 F.Supp.2d 798 (E.D.Cal. 2008). The widow and children of a detainee who died from complications of cocaine ingestion while incarcerated in a county jail, brought an action in state court against a city and two police officers. After removal to federal court, the defendants moved for summary judgment on all claims. The district court granted the motion in part and remanded. The court found that the officers violated the detainee's Fourteenth Amendment right to medical care when they did not obtain medical aid for the detainee after he vomited in the patrol car and rock cocaine was found in the vomit. According to the court, a rational jury could conclude that the officers knew that the detainee had swallowed rock cocaine and had a serious medical condition, and that the officers did not render care themselves, did not call for paramedics, did not take the detainee to the hospital, and did not report the discovery of rock cocaine in the vomit to the jail nurse. The court found that the officers were entitled to qualified immunity where the detainee, who did not exhibit signs of being high as his detention progressed and who was previously communicative of his symptoms, gave an inaccurate reason to explain his condition and never requested medical treatment.

The court held that the plaintiffs failed to show that the city failed to adequately train the officers. According to the court, the undisputed evidence showed that Fresno police officers receive police academy training, field training programs, on the job training, advanced officer courses, and various classes and seminars. The court noted that Fresno police officers are particularly trained: (1) to conduct evaluations to determine if a person is under the influence of a controlled substance, including rock cocaine (for those officers involved in narcotics investigations); (2) to request aid for persons in need of medical care; (3) to recognize an arrestee's need for medical care and provide such care; (4) to be aware of efforts that suspects may make to hide controlled substances, including putting such substances in their mouths; (5) to render medical aid, contact emergency

medical services or transport the suspect to the hospital if they have a reasonable belief that a suspect has swallowed a controlled substance, such as rock cocaine; (6) to know that ingestion of cocaine can cause death; (7) to know that arrested persons may have evidence in their mouth; (8) to know that persons arrested on drug charges may attempt to conceal the illegal drugs on their person; and (9) to be suspicious of those arrested and what the arrestees say. (City of Fresno and Fresno County Jail, California)

U.S. District Court
DELIBERATE
INDIFFERENCE

Decker v. Dunbar, 633 F.Supp.2d 317 (E.D.Tex. 2008). *Affirmed* 358 Fed.Appx. 509. An inmate filed a pro se § 1983 action against prison officials, asserting Eighth and Fourteenth Amendment violations, among other constitutional claims. The officials moved for summary judgment and the district court granted the motion. The court held that the officials' conduct in delaying the inmate's use of a restroom for 30 minutes did not amount to deliberate indifference to his medical needs in violation of the Fourteenth Amendment. According to the court, the delay in taking the inmate to a restroom was caused by the need to conduct a prisoner count, and the inmate failed to demonstrate that he suffered any injury as a direct result of the delay. The court found that placement of the inmate in a holding cell for 90 minutes on a day that the outside temperature reached 95 degrees did not amount to cruel and unusual punishment in violation of the Eighth Amendment. The court noted that even assuming the holding cell was extremely hot, 90 minutes was not an excessive period of time rising to the level of a constitutional violation. The court held that the inmate failed to demonstrate that his alleged lack of access to the prison's law library resulted in dismissal of his multiple previously filed criminal appeals and civil cases, and thus the inmate failed to establish an actual injury, as required to prevail on the claim that he was denied access to court. (Texas Department of Criminal Justice, Correctional Institutions Division)

U.S. District Court
ADA-Americans with
Disabilities Act
EQUAL PROTECTION
HEARING IMPAIRED

Douglas v. Gusman, 567 F.Supp.2d 877 (E.D.La. 2008). A deaf prisoner brought a civil rights suit alleging violation of his equal protection rights, the Americans with Disabilities Act (ADA), and the Eighth Amendment as the result of his limited access to a telephone typewriter (TTY) device for phone calls, lack of access to closed captioning for television, and verbal abuse from officers. The district court dismissed the action. The court held that the prisoner's civil rights claims arising from denial of full access to a telephone typewriter (TTY) and denial of closed captioning on a television in a parish prison accrued each time he was denied access to a TTY or captioning or was threatened or assaulted for requesting access. The court found that the differential treatment permitting other inmates unlimited telephone access, while permitting the deaf inmate only limited access, did not violate the deaf inmate's equal protection rights where the deaf inmate, who required the use of telephone typewriter (TTY) device for the deaf in a separate office, failed to show that limited access burdened a fundamental right. Legitimate security interests of the prison, where a deputy was required to escort the prisoner outside his housing area each time the prisoner used the phone, precluding the claim that he was denied equal protection based on the greater phone privileges afforded to hearing inmates who had access to phones in the housing tier. The court held that failure to provide a telephone typewriter (TTY) device on the deaf prisoner's housing tier, while providing unlimited access to phones to other prisoners, did not discriminate against the disabled inmate in violation of Title II of the ADA. According to the court, allowing the prisoner twice daily use of a TTY device on a prison facility phone outside the housing tier was meaningful access, and lack of a TTY in the housing tier affected disabled persons in general, precluding a finding of specific discrimination against the inmate in particular. The court held that alleged verbal abuse from correctional officers when the deaf prisoner complained about the lack of a telephone typewriter (TTY) was too trivial to rise to the level of a violation of the Eighth Amendment's Cruel and Unusual Punishment Clause. (Orleans Parish Prison, Louisiana)

U.S. Appeals Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE
PRIVATE PHYSICIAN

Duckworth v. Ahmad, 532 F.3d 675 (7th Cir. 2008). A state prisoner diagnosed with bladder cancer brought a § 1983 action against prison doctors, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The district court granted summary judgment in favor of the doctors and the prisoner appealed. The appeals court affirmed. The court held that a prison doctor's failure to order a cystoscopy when the prisoner reported, and testing showed, that he was passing blood in his urine, which delayed the proper diagnosis of bladder cancer, did not constitute deliberate indifference to the prisoner's serious medical needs in violation of the Eighth Amendment. The court noted that although it would have been a better route to conduct the cystoscopy, the doctor referred the prisoner to an outside urology clinic and believed incorrectly that the prisoner was seeing an urologist. According to the court, there was no showing that the doctor suspected cancer or knew that blood in the urine involved an excessive risk of cancer, and after the doctor learned that the prisoner was, in fact, not seeing the urologist, he conducted additional testing, which did not reveal blood in the urine. (Centralia Correctional Facility, Illinois)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Duffield v. Jackson, 545 F.3d 1234 (10th Cir. 2008). An inmate in a state correctional facility brought a § 1983 action against several members of the medical staff claiming they violated his Eighth Amendment right to be free from cruel and unusual punishment by showing deliberate indifference to his medical condition. The district court dismissed the claims against some defendants and granted summary judgment in favor of others. The inmate appealed. The appeals court held that the district court did not commit a plain error in determining that the prisoner's medical treatment did not violate his Eighth Amendment rights. The court noted that the prisoner received repeated examinations and underwent lab-work and x-rays, was prescribed several different medicines, and saw an outside specialist for an ear infection. The court held that the nurse who facilitated the prisoner's various requests for medical services lacked an affirmative link with the prisoner's diagnosis and treatment, as required for liability under § 1983 on the prisoner's Eighth Amendment medical mistreatment claim. (James Crabtree Correctional Center, Helena, Oklahoma)

U.S. District Court
FAILURE TO PROVIDE
CARE

Ellis v. Vacllamudi, 568 F.Supp.2d 778 (E.D.Mich. 2008). A state prisoner brought a civil rights suit against prison medical personnel alleging due process and Eighth Amendment violations as the result of failure to treat his chronic pain from several diagnosed medical conditions. The defendants moved to dismiss for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA). A magistrate filed a report and recommendation that the motion be denied and the defendants filed objections. The district court held

that the continuing violations doctrine should be applied to repeated failure to treat chronic pain, such that instances predating and postdating a prison grievance were exhausted, even if discrete grievances were not filed for each denial of treatment within the time limits of the state prison's grievance system. (Mound Correctional Facility, Michigan Department of Corrections)

U.S. District Court
AIDS-Acquired Immune
Deficiency Syndrome
DELIBERATE
INDIFFERENCE

Estate of Chance v. First Correctional Medical Inc., 579 F.Supp.2d 583 (D.Del. 2008). The administrators of an inmate's estate brought a § 1983 action against Delaware Department of Corrections (DOC) officials for claims arising out of the inmate's death. The district court granted summary judgment for the officials. The court held that there was no evidence that the DOC Commissioner and the DOC Bureau Chief for the Bureau of Management Services were involved in the medical care provided to the HIV-positive inmate who died by cryptococcal meningitis, and therefore, those DOC officials were not deliberately indifferent to the inmate's medical needs in violation of the Eighth Amendment. (Howard R. Young Correctional Institution, Webb Correctional Facility, Delaware)

U.S. District Court
DELIBERATE
INDIFFERENCE

Estate of Harvey ex rel. Dent v. Roanoke City Sheriff's Office, 585 F.Supp.2d 844 (W.D.Va. 2008). The administrator of a pretrial detainee's estate brought a civil rights action under §§ 1983, 1985, and 1986 and Virginia law, against a city sheriff's department, sheriff, deputies, and prison health providers, alleging excessive use of force, failure to train, assault, battery, conspiracy, breach of a non-delegable fiduciary duty, intentional infliction of emotional distress and wrongful death. The defendants moved for summary judgment. The district court granted the motions. The court held that the estate of the pretrial detainee who died following cardiac arrest after transfer from a jail to a hospital could not sustain a deliberate indifference claim under the Fourteenth Amendment against the employees of a prison health provider, absent evidence that they actually knew of and disregarded a serious risk of harm to the detainee, or that they actually knew of and ignored a serious need for medical care. The court noted that the city sheriff and sheriff's deputies did not knowingly disregard a substantial risk of harm to the pretrial detainee in violation of Fourteenth Amendment when they relied on medical personnel's decisions as to the appropriate course of treatment for the detainee's medical needs. The court found that the city sheriff's deputies did not act with deliberate indifference when, in an attempt to transfer the detainee to a hospital for treatment, they forcibly removed the detainee from his cell, placed him face down on a stretcher, and covered him with a blanket to stop him from spitting and throwing feces at the deputies. According to the court, there was no evidence that the deputies knew that the detainee suffered from an excited delirium or serious heart condition. The court noted that the detainee was naked, slick with feces and urine, spitting, yelling, being combative, threatening to throw more bodily fluids, trying to bite, and was HIV and Hepatitis C positive. (Roanoke City Jail, Virginia)

U.S. District Court
DELIBERATE
INDIFFERENCE
INADEQUATE CARE

Fear v. Diboll Correctional Center, 582 F.Supp.2d 841 (E.D.Tex. 2008). A prisoner brought a § 1983 action against a prison system, medical center, and prison physician, alleging deliberate indifference to a serious medical need. The district court dismissed the action. The court found that the prisoner's allegations that a prison physician was deliberately indifferent to his nail fungus condition failed to state a claim under § 1983, where the nail fungus condition did not amount to a serious medical need, the physician was responsive to the prisoner's health problem, and the physician followed protocol in treating the prisoner. (Diboll Correctional Center, Texas)

U.S. Appeals Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE

Ford v. County of Grand Traverse, 535 F.3d 483 (6th Cir. 2008). A state inmate brought a § 1983 action against jail officials and the county claiming, among other things, that the county's policy or custom regarding the provision of medical care at the jail on weekends reflected deliberate indifference to her medical needs and caused injuries resulting from a fall from the top bunk in her cell when she had a seizure. After a jury found against the county, the district court denied the county's motions for judgment as a matter of law. The county appealed. The appeals court affirmed, finding that sufficient evidence existed for reasonable minds to find a direct causal link between county's policy of permitting jail officials to "contact" medical staff simply by leaving a medical form in the nurse's inbox, even though a nurse might not see the notice for 48 hours, and the alleged denial of the inmate's right to adequate medical care, allegedly leading to the inmate suffering a seizure and falling from a top bunk. According to the court, the deposition testimony of a doctor provided a basis for finding that the inmate would not have suffered a seizure had she been given medication within a few hours of her arrival at the jail. The inmate, a self-described recovering alcoholic who also suffers from epilepsy, was arrested on a probation violation and taken to the jail. That afternoon, she had a seizure, fell from the top bunk of a bed in her cell, and sustained significant injuries to her right hip and right clavicle. Her case proceeded to trial and the jury found that none of the jail officials were deliberately indifferent to her serious medical needs, but determined that the county's policy regarding weekend medical care exhibited deliberate indifference to, and was the proximate cause of, her injuries. The jury awarded her \$214,000 in damages. (Grand Traverse County Jail, Michigan)

U.S. District Court
DELIBERATE
INDIFFERENCE
INADEQUATE CARE
NEGLIGENCE

Francisco v. Correctional Medical System, 548 F.Supp.2d 128 (D.Del. 2008). A state prisoner brought an action against a correctional medical services provider, alleging claims for deliberate indifference to his need for medical treatment and medical negligence under state law. The district court granted summary judgment for the defendant. The court held that the correctional medical services provider's decision not to provide normal treatment for the prisoner's Hepatitis C did not amount to deliberate indifference to the prisoner's need for medical treatment, in violation of his Eighth Amendment right to be free from cruel and unusual punishment. The court noted that normal treatment was contraindicated by the prisoner's psychiatric illness, and that the prisoner received full treatment that was necessary and appropriate based on documented literature and national databases. According to the court, the prisoner failed to present expert medical testimony, as required to prevail under the Delaware Medical Malpractice Act, on medical negligence claims against the correctional medical services provider. (Delaware Correctional Center)

<p>U.S. Appeals Court FAILURE TO PROVIDE CARE WORK ASSIGNMENT DELIBERATE INDIFFERENCE</p>	<p><i>Gabriel v. Hamlin</i>, 514 F.3d 734 (7th Cir. 2008). A state prisoner who was seriously burned while working in a prison kitchen filed a § 1983 action against prison officials alleging that they were recklessly indifferent to his serious medical needs. The district court dismissed the action for want of prosecution, and subsequently denied a motion for reconsideration. The prisoner appealed. The appeals court reversed and remanded, finding that dismissal of the prisoner's claim was not warranted as a sanction. According to the court, the prisoner's failure to secure a trial deposition of his expert as a contingency did not justify the harsh sanction of dismissal for want of prosecution. (Big Muddy River Correctional Center, Illinois)</p>
<p>U.S. Appeals Court DELIBERATE INDIFFERENCE MALPRACTICE</p>	<p><i>Gibson v. Moskowitz</i>, 523 F.3d 657 (6th Cir. 2008). The representative of the estate of a mentally disabled inmate who died of dehydration in a state prison brought a § 1983 action against a prison psychiatrist and others, alleging deliberate indifference to serious medical needs, and asserting medical malpractice claims. The district court denied the defendants' motion for summary judgment, and subsequently entered judgment, upon a jury verdict, in favor of the representative. The court awarded \$1.5 million in compensatory damages and \$3 million in punitive damages. The psychiatrist appealed. The appeals court affirmed in part and reversed in part. The court held that evidence was sufficient to support a determination that the inmate had an objectively serious medical condition and that the psychiatrist subjectively ignored the inmate's serious medical needs. The court found that the compensatory damages award was not excessive and that the representative was entitled to recover punitive damages. The court found that the punitive damages award was not excessive.</p> <p>According to the court, the psychiatrist was in charge of the inmate's treatment team, he admittedly was aware that the temperature in the observation room where the inmate was held exceeded 90 degrees, and that the combination of the inmate's medication and the room temperature was potentially deadly. A psychiatric expert testified that the inmate's medication affected the part of the brain that regulated body temperature and dissipated heat, and another medical expert testified that the inmate's dehydration occurred over a period of several days. Evidence was presented that during that period, the inmate lost 42 pounds. The psychiatrist never asked for the inmate's temperature to be monitored, even when he had learned from a nurse and other prison employees that the inmate had vomited. The nurse had advised the psychiatrist that the inmate was suffering from dehydration and severe weight loss, and that his condition was deteriorating. The psychiatrist did not examine the inmate, change his medication, or move the inmate to a cooler room.</p> <p>The case was remanded to the district court to provide justification for its allocation of \$1.5 million in compensatory damages awarded by the jury between the § 1983 Eighth Amendment deliberate indifference claim and the medical malpractice claim. The court had allocated \$683,500, representing Michigan's high-tier non-economic damages cap to the medical malpractice claim, and the rest to the deliberate indifference claim, but it failed to provide any explanation for the allocation. The appeals court held that the allocation did not follow intuitively from the evidence, since a higher standard of culpability was required for the deliberate indifference claim. (Riverside Correctional Facility, Michigan)</p>
<p>U.S. Appeals Court DELIBERATE INDIFFERENCE MALPRACTICE MEDICATION NEGLIGENCE</p>	<p><i>Gil v. Reed</i>, 535 F.3d 551 (7th Cir. 2008). A federal prisoner brought a Bivens action against a prison doctor, physician's assistant, and the United States alleging negligence, malpractice, and deliberate indifference to his serious medical needs in violation of his Eighth Amendment rights. The district court granted summary judgment in favor of defendants. On appeal, the appeals court vacated and remanded. On remand, the district court again granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court again vacated and remanded. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the refusal of the physician's assistant to fill the prisoner's prescription for antibiotics harmed the prisoner, and whether the prison physician acted with deliberate indifference to the prisoner's serious medical needs when he prescribed medication which a specialist had warned against while simultaneously canceling other prescribed products. (Federal Correctional Institution, Oxford, Wisconsin)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE DENTAL CARE</p>	<p><i>Gonzales v. Brevard</i>, 531 F.Supp.2d 1019 (W.D.Wis. 2008). A state prisoner filed a § 1983 action claiming that a dentist and nurses employed by the Department of Corrections violated his Eighth Amendment rights due to the prisoner's pain and bleeding following a tooth extraction. The defendants moved for summary judgment. The district court granted summary judgment in favor of the defendants. The court held that the dentist and nurses were not deliberately indifferent to the prisoner's serious dental health needs following a tooth extraction that was not closed with sutures. The court noted that the dentist and nurses provided reasonable medical treatment that did not substantially depart from accepted professional judgment by packing the surgical opening, as a common alternative to sutures. (Columbia Correctional Institution, Wisconsin.)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE MENTAL HEALTH PSYCHOTROPIC DRUGS SUICIDE</p>	<p><i>Graham v. Van Dycke</i>, 564 F.Supp.2d 1305 (D.Kan. 2008). An inmate brought a § 1983 action against medical providers working at a state correctional facility, alleging violations of her Eighth Amendment due process rights arising from a strip search conducted by a male officer. She also challenged her mental health confinement. The district court granted summary judgment for the medical providers. The court held that the prison doctor's decision to remove the inmate from her cell after she became agitated and demanded two psychotropic drugs and to place her in mental health segregation was not deliberate indifference. The court noted that the doctor's decision was based on the inmate's previous history of mental illness and the doctor's knowledge that the inmate previously had a bad experience using one of the drugs she requested. The inmate threatened to harm other inmates, and the doctor feared for the inmate's safety because she had access to scissors. The court found that removal of the female inmate from her cell into administrative segregation and removal of her clothing, after she became agitated and demanded psychotropic drugs, did not violate her privacy or Eighth Amendment due process rights, even though officers who performed such tasks were all male. According to the court, the inmate was on suicide watch, which required removal of clothing to avoid self-injury, removal was done pursuant to established procedure and was videotaped, and a staffing shortage rendered it impractical to include a female officer on the removal team. (Topeka Correctional Facility, Kansas)</p>

<p>U.S. Appeals Court DELAY IN CARE DELIBERATE INDIFFERENCE MEDICATION</p>	<p><i>Grieverson v. Anderson</i>, 538 F.3d 763 (7th Cir. 2008). A federal pretrial detainee who was a Canadian citizen and who was held in a county jail brought actions against a city and against a sheriff, jail commander, sergeant, jail officers, and the United States marshal. The detainee sued the defendants in their official and individual capacities, asserting state-law negligence and constitutional claims, § 1983 claims, and claims under the Alien Tort Claims Act. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The court found that the detainee did not show that the alleged practice at the county jail of dispensing an inmate or detainee's entire drug prescription at one time was a widespread practice, reflective of a policy choice made by the county sheriff, as required to establish a § 1983 claim against the sheriff in his official capacity. According to the court, the detainee did not establish the frequency of the claimed practice or indicate how many such disbursements to others he witnessed. The court held that summary judgment was precluded by verifying medical evidence of a genuine issue of material fact as to whether a delay in securing medical care for the detainee's broken nose was deliberate indifference to his serious medical needs. According to the court, evidence that the detainee suffered a nasal fracture, could experience further bleeding, and possibly would need to see a specialist, and that the detainee later underwent painful nose surgery, would help a jury determine whether the one and one-half day delay by jail officers in getting the detainee medical attention unnecessarily prolonged and exacerbated the detainee's pain. (Marion County Jail, Indiana)</p>
<p>U.S. Appeals Court RESTRAINTS</p>	<p><i>Grinter v. Knight</i>, 532 F.3d 567 (6th Cir. 2008). A state prisoner, proceeding pro se, brought §§ 1981 and 1983 actions against prison officials, alleging violations of his right to due process, right to equal protection, and Eighth Amendment rights. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part and reversed in part. The court held that the prisoner had no due process liberty interest in freedom from use of four-point restraints or in having a prison nurse arrive before corrections officers placed the prisoner in the restraints. According to the court, such restraints were expected adverse consequences of confinement, the prisoner had been accused of hitting a corrections officer, and officers entered the prisoner's cell to conduct an investigation. (Kentucky State Penitentiary)</p>
<p>U.S. Appeals Court INADEQUATE CARE</p>	<p><i>Hannah v. U.S.</i>, 523 F.3d 597 (5th Cir. 2008). A federal prisoner filed a <i>pro se</i> complaint under the Federal Tort Claims Act (FTCA) against the United States and others involved in the medical treatment that he received while suffering from Methicillin-Resistant Staphylococcus Aureas (MRSA), a sinus infection. After the prisoner's untimely motion for appointment of an expert witness was denied, the United States moved for summary judgment. The district court granted the motion and dismissed the lawsuit. The prisoner appealed. The appeals court affirmed. The court held that the district court did not abuse its discretion in failing to appoint an expert witness, and that under Texas law, the prisoner was required to present expert testimony to establish the applicable standard of care with respect to the treatment of MRSA and to show how the care he received breached that standard. According to the court, his failure to designate or hire an expert to testify on his behalf entitled the United States to judgment as a matter of law. (Federal Medical Center, Fort Worth, Texas)</p>
<p>U.S. Appeals Court DELAY IN CARE DELIBERATE INDIFFERENCE EMERGENCY CARE PRIVATE PROVIDER</p>	<p><i>Harrison v. Ash</i>, 539 F.3d 510 (6th Cir. 2008). The personal representative of the estate of an inmate who died after suffering a severe asthma attack at a jail brought a § 1983 action against jail nurses and officers, alleging deliberate indifference to the inmate's serious medical needs. The inmate died while serving a 35-day sentence for failing to pay child support. The district court denied the defendants' motion for summary judgment and the defendants appealed. The court held that the appeals court had jurisdiction over the officers' appeal and that the officers were entitled to qualified immunity, and that the court did not have jurisdiction to consider the nurse's appeals. The court found that an officer working in the jail's medical unit reasonably responded to the substantial risk to the inmate's health from asthma and, thus, was not deliberately indifferent to the inmate's serious medical needs in violation of the Eighth Amendment. According to the court, the officer, after being contacted by the inmate from his cell to report that he was having difficulty breathing, notified the nursing staff of the inmate's complaints, who in turn arranged for emergency medical transport to the hospital, where the inmate was subsequently pronounced dead. After being contacted by the nurse to request that an ambulance be called, one officer contacted an ambulance and later drove the ambulance to the hospital after being told to do so by the other officer so that emergency medical staff could treat the inmate while in route to the hospital. The court held that the jail nurses, as employees of a for-profit private medical provider, rather than the county, could not assert a qualified immunity defense to the § 1983 action. Although the nurses were acting under the color of state law, because of the contractual relationship between the county and the provider, there was no firmly rooted common law practice of extending immunity to private actors, and policy rationales undergirding qualified immunity did not support extending immunity to the nurses. (Macomb County Jail, Michigan)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE INADEQUATE CARE</p>	<p><i>Hart v. Bertsch</i>, 529 F.Supp.2d 1032 (D.N.D. 2008). A state inmate brought a § 1983 action against prison officials for violations of his constitutional right to receive necessary medical care. The inmate alleged that the officials failed to provide adequate medical care for his serious medical needs because he had been housed in a cell that utilized "steam heat," and that officials had not provided him with a medical alert button necessary due to his sleep apnea. The officials moved for summary judgment. The district court granted the motion. The court held that the officials did not act with deliberate indifference toward the inmate's central sleep apnea condition or alleged sensitivity toward "steam heat," as would have violated the Eighth Amendment prohibition against cruel and unusual punishment. The court noted that the inmate had been subjected to a multitude of physical examinations and diagnostic tests in an effort to diagnose the cause of his breathing complaints, and that the treating physician found no medical or factual basis to support another physician's recommendation that the inmate needed to avoid steam heat. According to the court, the inmate failed to follow through with recommended treatments, and the physician had never received a recommendation that the inmate be provided with a medical alert button, nor would such a procedure have been consistent with the inmate's condition. (North Dakota State Penitentiary)</p>

U.S. District Court
FAILURE TO PROVIDE
CARE

Hart v. Celaya, 548 F.Supp.2d 789 (N.D.Cal. 2008). A state prisoner brought a § 1983 action against corrections officers, alleging excessive force and deliberate indifference to his serious medical needs. The district court granted summary judgment for the defendants. The court held that the officers did not use excessive force in releasing pepper-spray into the prisoner's holding cell after he refused to submit to an unclothed body search. The court noted that the officer released pepper-spray into the cell only after the prisoner refused to comply with the direct orders of three different officers of increasingly higher rank to submit to the search, after the officer explained to the prisoner that all inmates entering administrative segregation were required to submit to an unclothed body search, after the prisoner began yelling and pushing up against his cell door causing it to shake and rattle, and after the officers were concerned that the prisoner would either harm himself or break out of his cell and endanger others. The court found that the prisoner did not suffer from a "serious medical need" within the meaning of the Eighth Amendment when he was pepper-sprayed in his cell, allegedly roughly handled by corrections officers as they took him to an outside area for decontamination and required him to kneel on a concrete surface for approximately 45 minutes during decontamination. After decontamination the prisoner was examined by a medical technician who listed no evidence of injury and documented the prisoner's decontamination from pepper-spray. A physician's subsequent examination found no long-term or lasting skin, knee, shoulder or pepper-spray related injuries. (Salinas Valley State Prison, California)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
INADEQUATE CARE

Hayes v. Snyder, 546 F.3d 516 (7th Cir. 2008). A former prisoner brought an action against prison officials, alleging the officials were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner's testicular growths and cysts, painful urination and excruciating pain constituted a serious medical condition and a reasonable jury could infer that the prison physician was deliberately indifferent to these needs. The court held that the physician was not entitled to qualified immunity. The court noted that the prison physician never prescribed prescription-strength pain killers, stopped providing even minimal pain treatment to the prisoner, and rejected the prisoner's request to see a specialist. The court found that non-medical prison officials were not deliberately indifferent to the prisoner's serious medical need in violation of the Eighth Amendment, where the officials responded readily and promptly to each of the prisoner's letters and grievances and were entitled to defer to the professional judgment of medical officials on questions of the prisoner's medical care. (Hill Correctional Center, Illinois)

U.S. Appeals Court
TREATMENT
DELIBERATE
INDIFFERENCE

Hernandez v. Velasquez, 522 F.3d 556 (5th Cir. 2008). A state prisoner brought a § 1983 action alleging violations of his Eighth Amendment and due process rights. The district court granted summary judgment to all defendants and the prisoner appealed. The appeals court affirmed. The court held that the prisoner failed to show that he was placed at a substantial risk of serious harm when he was placed on lockdown status for 13 months, and therefore he could not show deliberate indifference on the part of prison personnel to his health or safety, as required for prison personnel to be liable under § 1983 for imposing conditions of confinement that constituted cruel and unusual punishment under the Eighth Amendment. The court noted that even if the prisoner suffered from muscle atrophy, stiffness, loss of range of motion and depression, there was no indication that those conditions posed a substantial risk of serious harm. The court held that the prisoner failed to show that prison personnel failed reasonably to address his medical needs, as required for prison personnel to be liable under § 1983 for deliberate indifference to the prisoner's serious medical needs in violation of the Eighth Amendment. The court noted that sick call requests that the prisoner submitted while he was in lockdown, complaining of muscle soreness, stiffness and loss of range of motion, bore notations from medical staff showing that they responded to the prisoner in a timely manner, treating his back pain with heat packs, conducting an x-ray, advising him to take medication for soreness and recommending exercises for soreness and stiffness. (Texas Department of Criminal Justice, Polunsky Unit)

U.S. Appeals Court
EQUAL PROTECTION
INADEQUATE CARE

Hines v. Anderson, 547 F.3d 915 (8th Cir. 2008). Inmates appealed an order of the district court that had terminated a consent decree that regulated prison medical care. Inmates had filed a class action against the state in 1973, resulting in a 1977 consent decree that set medical standards for the prison. The appeals court affirmed the district court's ruling. The court held that the Prison Litigation Reform Act (PLRA) did not require an investigation and/or evidentiary hearing before termination of a consent decree. The court noted that the consent decree that regulated prison medical care did not constitute a final judgment, and therefore inmates had no property right that would entitle them under the due process clause to further discovery and a pre-termination evidentiary hearing. The court found that although the record presented a picture of what, at times, may have constituted less than optimum care of inmates, it failed to show current and ongoing deliberate disregard of the inmates' serious medical needs, which was required to maintain the consent decree. According to the court, the type of day-to-day oversight on all aspects of medical care encompassed in the consent decree was broader than necessary to assure protection of the right to reasonable medical care in the face of a known substantial risk of harm to the inmate. Because the consent decree was not narrowly tailored nor was it the least intrusive means to protect the inmates' Eighth Amendment rights, it violated the provisions of PLRA. (Minnesota Correctional Facility at Oak Park Heights)

U.S. District Court
MEDICATION

Hubbs v. County of San Bernardino, CA, 538 F.Supp.2d 1254 (C.D.Cal. 2008). A civilly committed sexually violent predator (SVP) brought a civil rights action against a sheriff and county claiming numerous violations of his constitutional and statutory rights. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that the SVP stated a civil rights due process claim against the county and a civil rights due process claim against the sheriff and county regarding conditions of his confinement at the jail. The SVP alleged that policies regarding conditions of confinement and denial of medical care injured him, and that the sheriff did not properly train his subordinate employees to prevent those injuries. The SVP alleged that the defendants did not provide prescribed medications and that a holding cell was cold and did not have a mattress,

hygiene supplies, or bed roll. The court found that the SVP stated a Fourteenth Amendment due process claim against the sheriff and county, on allegations that, pursuant to the sheriff's policies, he was neither provided with prescribed medications in a manner directed by his treating physicians, nor allowed to have medications that were sent with him, and those deprivations caused him severe pain and suffering, made him sick and listless, and caused him to suffer from a migraine headache that lasted for four days. The SVP also alleged that he suffered from severe urinary problems, which included great difficulty in emptying his bladder, as a result of the deprivation. (West Valley Detention Center, San Bernardino County, California)

U.S. District Court
DENIAL OF CARE

Hurt v. Birkett, 566 F.Supp.2d 620 (E.D.Mich. 2008). A state inmate brought an action against prison employees under § 1983, alleging conspiracy, racial discrimination, retaliation, deliberate indifference, excessive force, and failure to report in connection with an incident in which the inmate's arm was broken. The district court dismissed the action. The court held that the inmate's allegations, that state prison employees engaged in a campaign of harassment based on race, failed to state an equal protection claim. The court noted that a single allegation was insufficient to raise the inmate's right to relief above the speculative level. The court found that the inmate's allegations that prison employees conspired to deny him medical care after his arm was broken, in violation of the Eighth Amendment, failed to state a claim of conspiracy against the employees, absent details and allegations of specific acts made in furtherance of such conspiracy. The court held that prison employees were not liable for excessive force for breaking the inmate's arm, where a video of the incident in which the inmate's arm was broken showed the inmate starting an altercation and needing to be subdued, and it was clear that the force applied by the employees was applied in a good-faith effort to restore discipline. (Marquette Branch Prison, Michigan)

U.S. District Court
FAILURE TO PROVIDE
CARE
RECORDS

Husayn v. Gates, 588 F.Supp.2d 7 (D.D.C. 2008). A detainee at the United States Naval Base in Guantanamo Bay, Cuba, filed a petition for a writ of habeas corpus challenging his detention as an enemy combatant. After denial of the detainee's motion for disclosure of his medical records, the detainee moved for reconsideration. The district court granted the motion in part and denied in part. The court held that counsel was entitled to review the detainee's medical records and staff records regarding his seizure-related episodes, despite the government's contention that the records were inherently related to detention, treatment, or conditions of confinement, and thus were exempted from judicial review. The court found that the records were necessary to permit counsel to assess whether and to what extent the detainee's medical condition affected his right to habeas relief, and to determine whether to challenge the legitimacy of his Combatant Status Review Tribunal (CSRT) hearing. The detainee alleged that he suffered over 120 seizures since he was first detained in 2006, and that they are currently frequent and severe. He alleged that they consist of excruciating pain in his head near the site of an old mortar injury that left him unable to think clearly or speak for an extended period. (United States Naval Base in Guantánamo Bay, Cuba)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE

Iko v. Shreve, 535 F.3d 225 (4th Cir. 2008). The estate and family of a deceased inmate brought a § 1983 survival and wrongful death action against correctional officers, alleging violations of the inmate's Eighth Amendment rights. The district court granted, in part, the officers' motion for summary judgment. The officers appealed. The appeals court affirmed in part and reversed in part. The court held that an officer violated the deceased inmate's Eighth Amendment right to be free from excessive force, arising from the inmate's death after his extraction from his cell involving the use of pepper spray, and thus the officer was not entitled to qualified immunity on § 1983 claims. The court held that correction officers were deliberately indifferent to the medical needs of the deceased inmate in violation of the inmate's Eighth Amendment right to adequate medical care, and thus were not entitled to qualified immunity on § 1983 claim brought by the inmate's estate and family. According to the court, the officers' training required decontamination after the use of pepper spray, the state's medical examiner credited pepper spray as contributing to the inmate's death, a lay person would have inferred from the inmate's collapse that he was in need of medical attention, the officers witnessed the inmate's collapse, caught him, and directed him into a wheelchair, and yet the inmate received no medical treatment. The officers argued that the inmate did not appear fazed by the pepper spray and that the inmate's opportunity to breathe fresh air while he was wheeled from the medical room was an adequate alternative to receiving actual medical care. (Western Correctional Institution, Maryland)

U.S. District Court
INADEQUATE CARE

Illina v. Zickefoose, 591 F.Supp.2d 145 (D.Conn. 2008). A federal prisoner filed a § 2241 petition for a writ of habeas corpus, alleging that she was denied necessary medical care in violation of her Eighth Amendment rights. The district court held that the claim was cognizable as a habeas petition. According to the court, the claim asserted by the prisoner who had been diagnosed with cervical cancer, that she was denied necessary medical care in federal prison in violation of her Eighth Amendment right to be free from cruel and unusual punishment, and seeking restoration of certain medical treatment, specifically hormone medication, was cognizable as a habeas petition challenging her conditions of confinement pursuant. (Federal Correctional Institution, Danbury, Connecticut)

U.S. District Court
DELAY IN TREATMENT
MEDICATION
NEGLIGENCE

Jackson v. Correctional Corporation of America, 564 F.Supp.2d 22 (D.D.C 2008). An inmate brought an action against a prison's medical provider, alleging medical negligence and violations of the Eighth Amendment. The court held that the inmate stated a medical negligence claim and the provider was liable under the theory of respondeat superior. The inmate alleged that he was deprived of medication prescribed for his stomach ailments for 19 days. The court held that an award of \$9,500 in compensatory damages for medical negligence was warranted, where the inmate experienced a burning pain in his stomach and esophagus that increased over time without his medication and at times prevented him from sleeping or eating. (Center for Correctional Health Policy and Studies, Inc., Correctional Corporation of America, District of Columbia Correctional Treatment Facility)

U.S. Appeals Court DELIBERATE INDIFFERENCE INADEQUATE CARE	<p><i>Jackson v. Kotter</i>, 541 F.3d 688 (7th Cir. 2008). A prisoner brought an action against federal prison employees and the federal government, alleging negligence under the Federal Tort Claims Act (FTCA) and constitutional claims pursuant to Bivens. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that a Physician's Assistant (PA) in the prison did not act with deliberate indifference toward the prisoner in response to an alleged back injury suffered by the prisoner after being escorted out of his cell for a strip search. According to the court, the PA saw the prisoner shortly after his alleged injuries and ordered an x-ray, personally observed the prisoner's condition and took into consideration prior x-rays of his spine, and afforded some of the pain treatment that the prisoner demanded. (United States Penitentiary, Terre Haute, Indiana)</p>
U.S. District Court MEDICATION MENTAL HEALTH TRANSFER	<p><i>Jarecke v. Hensley</i>, 552 F.Supp.2d 261 (D.Conn. 2008). A prisoner who suffered from antisocial personality and borderline personality disorders challenged his mental health treatment and an attempt to transfer him to a correctional facility with dormitory housing, alleging violation of the Eighth Amendment. The prisoner moved for a preliminary injunction to prevent his transfer and to be prescribed lithium and assigned to a single cell. The district court denied the motion. The court found that the prisoner did not have a likelihood of success on the merits of his claim, and that the prisoner would not suffer irreparable harm without an injunction. The court noted that the prisoner's medical treatment was adequate, as lithium was generally not used to treat such disorders, and that no medical diagnosis precluded his transfer to a dormitory setting or required confinement in single cell. (Connecticut)</p>
U.S. District Court DELIBERATE INDIFFERENCE DENTAL CARE	<p><i>Johnston v. Maha</i>, 584 F.Supp.2d 612 (W.D.N.Y. 2008). A pretrial detainee brought an action against employees of a county jail, alleging violations of his constitutional rights under § 1983 and violations of the Americans with Disabilities Act (ADA). The defendants moved for summary judgment and the district court granted the motion. The court held that the inmate failed to exhaust administrative remedies for the purposes of the Prison Litigation Reform Act (PLRA) as to some of his § 1983 and Americans with Disabilities Act (ADA) claims against employees of the county jail, where the inmate either did not pursue appeals at all, or did not pursue appeals to the final step. The court held that evidence was insufficient to show that medical staff at the county jail acted with deliberate indifference to the inmate's medical needs as to requested dental care, as required to support his § 1983 claim for violation of the Eighth Amendment. The court noted that although the inmate had to wait two months to see a dentist, the dentist filled the inmate's cavities and took x-rays related to that treatment. (Genesee County Jail, New York)</p>
U.S. Appeals Court FAILURE TO PROVIDE CARE DELIBERATE INDIFFERENCE	<p><i>Jones v. Minnesota Dept. of Corrections</i>, 512 F.3d 478 (8th Cir. 2008). The trustee for the heirs of an inmate brought an action against a state Department of Corrections, corrections officers and prison nurse alleging deliberate indifference to the inmate's serious medical need in violation of Eighth Amendment. The district court granted summary judgment in favor of the defendants and trustee appealed. The appeals court affirmed. The court held that the inmate did not have a medical need so obvious that a layperson would easily recognize the need for a doctor's immediate attention, as required to establish an objectively serious medical need without a physician's diagnosis. The court found that the corrections officers and a prison nurse did not violate the Eighth Amendment prohibition against cruel and unusual punishment by deliberate indifference to the inmate's serious medical need. The court noted that although the inmate appeared to be unable to stand or walk under her own power, did not respond to officers' directions, rolled on the ground grunting and groaning and had dried blood and cuts on her lips, prison personnel had no background knowledge that made it obvious that those symptoms required medical attention and the inmate never expressed a need for medical attention. (Blue Earth County Jail and Minnesota Correctional Facility- Shakopee)</p>
U.S. District Court DELIBERATE INDIFFERENCE INTAKE SCREENING NEGLIGENCE	<p><i>Jones v. Oakland County</i>, 585 F.Supp.2d 914 (E.D.Mich. 2008). The personal representative of an arrestee's estate brought an action against a county and two employees of the jail where the arrestee died of heart failure. The arrestee had been brought to the jail on a bench warrant for failing to appear at a court proceeding. Two days after her admission she was found unresponsive in her cell and could not be revived. It was subsequently determined that she died of heart failure (ischemic cardiomyopathy). The defendants moved for summary judgment and the district court granted the motion. The court held that neither a jail interviewer, whose only contact with the arrestee was a classification interview lasting between five and fifteen minutes, nor a jail nurse, who first came into contact with the arrestee when she was summoned to assist in CPR and other efforts to revive the arrestee after she was found unresponsive in her jail cell, were deliberately indifferent to the arrestee's serious medical needs. According to the court, neither employee perceived a substantial risk to the arrestee's health and well-being and yet disregarded that risk, and any purported negligence in the interviewer's assessment of the arrestee's medical needs did not rise to the level of deliberate indifference. The court held that the conduct of the interviewer, whose only contact with the arrestee was a classification interview lasting between five and fifteen minutes, did not amount to "gross negligence" within the meaning of Michigan's governmental immunity statute, and therefore she was not liable for failing to secure immediate medical treatment for a condition that shortly would result in the arrestee's death. (Oakland County Jail, Michigan)</p>
U.S. District Court COSTS DELAY IN CARE DELIBERATE INDIFFERENCE	<p><i>Jones v. Westchester County Department of Corrections Medical Dept.</i>, 557 F.Supp.2d 408 (S.D.N.Y. 2008). A county prisoner brought pro se action against a county corrections department, warden, and administrative liaison, alleging deliberate indifference to his serious medical needs. The district court held that the prisoner's complaint, stating that he was scheduled for necessary surgery to alleviate chronic and extreme pain, and stating facts tending to show that prison officials denied him surgery in order to shift the cost to another agency, sufficiently alleged that he was denied adequate care, as required to state a claim for deliberate indifference to his serious medical needs. According to the court, the prisoner's complaint, stating that his hips caused him chronic and extreme pain, and that his pain would have been alleviated if he had been given hip replacement surgery, sufficiently alleged that his medical needs were serious, as required to state a deliberate indifference</p>

claim. The court found that the prisoner's complaint, stating that an administrative liaison made the final decision not to let him have hip replacement surgery, and that she personally, and with deliberate indifference to his suffering, put the county's financial concerns ahead of his medical needs, alleged with requisite specificity the personal involvement of the administrative liaison, as required to state a cause of action against her for deliberate indifference to his serious medical needs in violation of the Eighth Amendment. (Westchester County Department of Corrections, New York)

U.S. District Court
CONTAGIOUS DISEASES

Joy v. Healthcare C.M.S., 534 F.Supp.2d 482 (D.Del. 2008). An inmate filed an action under § 1983, raising constitutional claims against a Governor, mayor, and corrections officials. The district court held that the prisoner stated an Eighth Amendment claim against the warden based on his exposure to tuberculosis, where he alleged that the warden was aware that inmates were not thoroughly screened for disease before going into the general population and that correctional medical services did not have a policy in place to examine inmates before placing them into the general population. (Howard R. Young Correctional Institution, Delaware)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
TRANSFER

Kinslow v. Pullara, 538 F.3d 687 (7th Cir. 2008). A state inmate filed a § 1983 action against prison officials at the Illinois Department of Corrections (IDOC) and the New Mexico Department of Corrections (NMDOC), and against a private transportation company and its employees. The inmate alleged violation of his constitutional right to adequate medical treatment during his transfer between institutions, resulting in the failure of chemotherapy for his advanced liver disease from hepatitis C. The district court dismissed the claims against the NMDOC, and dismissed the claims against the remaining parties after settlement. The inmate appealed. The appeals court affirmed. The court held that NMDOC officials lacked sufficient contacts with Illinois for the exercise of personal jurisdiction. The court noted that New Mexico officials had only arranged and planned the inmate's transfer by a handful of phone calls, but did not purposefully avail themselves of the privileges of conducting activities in Illinois, and had not deliberately engaged in significant activities or created continuing obligations in Illinois. The inmate's transfer took place in October 2004. The court noted that although the inmate's bus trip to New Mexico could have been completed in less than 24 hours, the route that the private transport company (TransCor) chose lasted six days. Moreover, while the Illinois and New Mexico prison officials were all well aware of the inmate's prescribed treatment and of how strictly it had to be followed, they failed to establish procedures that would ensure proper medical care for the inmate during the trip. According to the court, "During his transfer, everything that could go wrong with [the inmate's] treatment, did." (Illinois Department of Corrections, New Mexico Department of Corrections, TransCor America, LLC)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
SMOKE-FREE
ENVIRONMENT

Lee v. Young, 533 F.3d 505 (7th Cir. 2008). A former state prisoner brought a pro se § 1983 action against prison officials, alleging that the officials exhibited deliberate indifference to his serious medical needs, in connection with the prisoner's exposure to secondhand smoke that allegedly triggered his asthma. The district court granted summary judgment in favor of the officials, and the prisoner appealed. The appeals court affirmed, finding that the officials were not deliberately indifferent. According to the court, although the prisoner complained to medical staff, the officials did not ignore the medical staff's advice, since no doctor ever recommended that the prisoner be transferred to avoid exposure to the secondhand smoke. The court noted that medical professionals concluded that the prisoner's asthma was controlled. When the prisoner requested a non-smoking cell he was given one, his cellmate was issued a disciplinary ticket when he smoked in their non-smoking cell, and the ventilation system was repaired when the prisoner complained. (Shawnee Correctional Center, Illinois)

U.S. Appeals Court
INVOLUNTARY
TREATMENT

Levine v. Roebuck, 550 F.3d 684 (8th Cir. 2008). A state inmate brought § 1983 claims against a correctional officer and nurses alleging that they violated his Fourth and Eighth Amendment rights by forcing him to undergo catheterization to avoid prison discipline when he could not provide a urine sample for a random drug test. The district court granted the defendants' motions for summary judgment and the inmate appealed. The appeals court affirmed. The court held that the prison nurses' actions in attempting catheterization of the inmate were objectively reasonable and did not violate the inmate's Eighth Amendment rights against brutality. The court noted that the nurses were following a request from a correctional officer, and the inmate had undergone voluntary catheterization in the past when he was unable to urinate. (Western Missouri Correctional Center)

U.S. District Court
DELIBERATE
INDIFFERENCE

Lindell v. Schneider, 531 F.Supp.2d 1005 (W.D.Wis. 2008). A prison inmate brought a § 1983 action against state prison employees, claiming violations of his Eighth and First Amendment rights. The defendants moved for summary judgment. The court granted the motion in part and denied the motion in part. The court held that the employees did not exhibit deliberate indifference to the medical condition of the inmate, in violation of the Eighth Amendment, by limiting him to 2.5 hours of exposure to sunlight per week. The court found that the inmate failed to show a health risk associated with his being forced to use unwashed outerwear when exercising. The court ruled that summary judgment was precluded by fact issues as to whether a corrections officer directly told the inmate that he was being denied access to a desired program because he filed complaints, whether another officer failed to intervene when the inmate was told he was being retaliated against, and as to the existence of direct evidence of retaliation. The court noted that there was evidence that two prison security officers directly stated that the inmate was being placed in restricted housing and denied participation in a desired program because he brought administrative complaints. (Wisconsin Secure Program Facility)

U.S. District Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE

Lloyd v. Lee, 570 F.Supp.2d 556 (S.D.N.Y. 2008). A prisoner brought a pro se § 1983 action against prison doctors and a mayor, alleging that the defendants denied him adequate medical care while he was incarcerated in violation of his constitutional rights. The district court dismissed the action in part and denied the defendants' motion for dismissal in part. The court held that the prisoner's amended complaint sufficiently alleged a serious deprivation, as required to state an Eighth Amendment claim, and the complaint sufficiently alleged that doctors acted with deliberate indifference to the prisoner's serious medical needs. The court found that the doctors alleged to have been involved only in the first few weeks of the prisoner's medical treatment could not be

charged with deliberate indifference to his serious medical needs. The court found that a qualified immunity defense did not shield the doctors from liability. The prisoner alleged he was denied magnetic resonance imaging (MRI) scan for months and that, as a consequence, his shoulder injury was not properly diagnosed and his surgery was unreasonably delayed, and that inadequate medical treatment caused a condition of urgency, degeneration, and extreme pain, and the delayed surgery that was necessary to his recovery. The court noted that an unconvicted detainee's rights are at least as great as those of a convicted prisoner, and district courts apply the same "deliberate indifference" test developed under the Eighth Amendment to Fourteenth Amendment claims. (Manhattan House of Detention and Riker's Island Corrections Building, New York)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE

Lockett v. Suardini, 526 F.3d 866 (6th Cir. 2008). A state prisoner sued two prison officers and two prison nurses, alleging violations of his free speech and Eighth Amendment rights. The district court entered summary judgment for the officers and nurses. The prisoner appealed. The appeals court affirmed. The court held that the prisoner's act of calling a hearing officer a "foul and corrupted bitch" was not protected conduct. The court found that the prison officers did not use excessive force in violation of the Eighth Amendment in restraining the prisoner after he insulted a hearing officer, where the prisoner did not dispute that he was angered, bit an officer's hand, and verbally threatened the officers. The prisoner stated that the officers merely attempted to shove him down stairs and "almost" broke his glasses, and the prisoner by his own account suffered at most "minor lacerations and cuts." According to the court, the prisoner's injuries from the altercation with the officers, consisting of minor cuts and lacerations, did not create an objectively serious medical need, and any denial of medical treatment thus did not violate his Eighth Amendment rights. (Alger Maximum Correctional Facility, Michigan)

U.S. District Court
HANDICAP
RA- Rehabilitation Act
RESTRAINTS
TRANSPORTATION
WHEELCHAIR

Miller v. Johnson, 541 F.Supp.2d 799 (E.D.Va. 2008). A state prisoner brought an action against a state department of corrections and warden, seeking damages under the Rehabilitation Act. The inmate suffered from Guillain-Barre syndrome, a paralyzing neurological disorder that caused nerve damage in his feet and ankles. As a consequence of his disease, the inmate was unable to bend his left foot at the ankle and was able to walk only with great difficulty. He was able to climb stairs only while holding handrails in order to steady himself. According to the court, the inmate was a qualified person with a disability within the meaning of the Rehabilitation Act. The inmate alleged that officials refused to provide needed accommodations, including the use of a cane and a wheelchair, use of elevators, and transport without cuffing his hands to a waist chain. The district court denied the defendants' motion to dismiss. The district court held that by accepting federal funding, the department waived sovereign immunity as a bar to the prisoner's action. (Greensville Correctional Center, Virginia)

U.S. Appeals Court
DENIAL
FAILURE TO PROVIDE
CARE

Moore ex rel. Estate of Grady v. Tuelja, 546 F.3d 423 (7th Cir. 2008). Administrators of an arrestee's estate filed a § 1983 action alleging that police officers and jail personnel deprived the arrestee of his rights under the Fourth and Fourteenth Amendments by using excessive force and denying him medical care. The district court entered judgment on a jury verdict in the defendants' favor and denied the administrators' motions for judgment as a matter of law and for a new trial. The administrators appealed. The appeals court affirmed. The court held that there was sufficient evidence to support the jury's findings. A physician had testified that the nature of the arrestee's injuries indicated that he had most likely been beaten with a baton by jail personnel. But all medical experts agreed that the arrestee suffered from advanced heart disease and died of a heart attack, the arrestee had been in two automobile accidents on the date of his death and had suffered a hand laceration immediately after the second accident, and there was evidence that the arrestee's wrist injuries occurred in an accident or while he was being transported to jail, and that his head injuries occurred when he fell to the floor after a heart attack. (Chicago Police Department, Illinois)

U.S. District Court
DELIBERATE
INDIFFERENCE

Murphy v. Gilman, 551 F.Supp.2d 677 (W.D.Mich. 2008). A civil rights action was brought against state prison officials, raising claims arising from the death of a prisoner, who died from dehydration after a four-day period during which he received no medical care and little water and food. A jury found that certain defendants were deliberately indifferent to the prisoner's serious medical needs, the defendants were grossly negligent, and one defendant was liable for intentional infliction of emotional distress. The jury awarded \$250,000 in actual damages, and \$2,500,000 in punitive damages. The defendants moved for judgment as a matter of law, and to stay enforcement of the judgment. The plaintiff filed a motion for a new trial. The district court denied the motions, finding that evidence supported the finding that an official knew of the obvious risks to the prisoner. The court held that punitive damages of \$1,250,000 per prison official defendant was not constitutionally excessive for the dehydration death of a physically vulnerable prisoner, who was trapped without physical necessities or medical care for five days during a heat wave and who was awarded \$250,000 in actual damages. The court noted that evidence established that prison officials kept the prisoner's water turned off, knew that the prisoner was not drinking, and knew the prison was on a heat alert. (Bellamy Creek Corr'l Facility, Michigan)

U.S. District Court
DELAY IN CARE

Myrie v. Calvo/Calvoba, 591 F.Supp.2d 620 (S.D.N.Y. 2008). A pretrial detainee brought a pro se § 1983 action alleging jail medical personnel violated his Eighth Amendment right to adequate medical care. The medical personnel filed a pre-answer motion to dismiss the complaint. The district court granted the motion. The court held that the detainee's claim that deprivation of his eyeglasses caused significant eye deterioration constituted a serious deprivation of medical needs, but the allegation that a jail physician neglected to take care of his vision problem in a sufficiently prompt manner did not sufficiently allege the physician was deliberately indifferent to the detainee's serious medical needs. According to the court, allegations that jail medical personnel's delay in locating his medical file, and the resulting cancellation of his appointment with a physician, delayed or denied his access to medical treatment in violation of Due Process failed to state a claim. (Otis Bantum Correctional Center, New York)

U.S. District Court
DELIBERATE
INDIFFERENCE
INADEQUATE CARE

Petrig v. Folz, 581 F.Supp.2d 1013 (S.D.Ind. 2008). An inmate filed a § 1983 action in state court alleging that county jail officials failed to protect him from an assault by his cellmate and were deliberately indifferent to his serious medical needs. The case was removed to federal court and the district court granted summary judgment for the sheriff, in part. The court held that the sheriff was not liable under § 1983 in his individual capacity for failing to provide proper medical care after the inmate was assaulted by his cellmate, where the sheriff was not personally involved in any wrongful conduct, and was not personally responsible for the inmate's care after the attack. The court held that summary judgment was precluded by genuine issues of material fact as to whether reasonable jail officials should have realized that the inmate, who was suffering from a lacerated spleen, had an objectively serious medical need, and whether a 21-hour delay in having a physician evaluate and treat the inmate was reasonable. The court found that the county jail's failure to maintain medical staff on-site and available to examine the injured inmate for more than an entire day, and its failure to immediately transport the inmate, who was in obvious distress, to a hospital, were sufficiently indicative of a possible custom, policy, or practice that contributed to the inmate's injury, precluding summary judgment. (Posey County Jail, Indiana)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
EMERGENCY CARE
MALPRACTICE

Phillips v. Roane County, Tenn., 534 F.3d 531 (6th Cir. 2008). A representative of the estate of a pretrial detainee who died in a county jail of untreated diabetes brought an action against correctional officers, a jail doctor, and paramedics, alleging deliberate indifference to the detainee's serious medical condition under § 1983 and asserting state law medical malpractice claims. The district court denied the defendants' motion for summary judgment and the defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The court found that the detainee had a sufficiently serious medical condition, as required to prevail in a § 1983 deliberate indifference claim against jail officers and others, under the Due Process Clause. The court noted that at one point the detainee was found unconscious in her cell without a pulse, and for approximately two weeks after that incident, the detainee complained to officers and a doctor about chest pains, numbness, dizziness, vomiting, nausea, constipation, and a possible kidney infection. The court held that the alleged conduct of the correctional officers in observing and being aware of the detainee's serious medical condition, which included signs of nausea, vomiting blood, swelling, lethargy, and chest pains, and in allegedly disregarding jail protocols, which required the officers to transport the detainee to a hospital emergency room for evaluation upon complaints of chest pain, amounted to deliberate indifference to the detainee's serious medical condition, in violation of the detainee's due process rights. The court found that the paramedic's conduct in allegedly disregarding a jail protocol which required the paramedic to transport detainees to a hospital emergency room when they complained of chest pains, by failing to transport the detainee upon responding to an incident in which the detainee allegedly lost consciousness, had no pulse, and complained of chest pain and nausea after she regained consciousness, amounted to deliberate indifference to the detainee's serious medical condition, in violation of her due process rights. The court found that county officials were not liable under § 1983 for their alleged failure to properly train jail officers as to the proper protocols for obtaining medical treatment for the detainee, absent a showing that any individual official encouraged, authorized, or knowingly acquiesced to the officers' alleged deliberate indifference. The court found that the alleged conduct of a county jail doctor in being aware of the detainee's serious medical condition, which included signs of nausea, vomiting blood, swelling, lethargy, and chest pains, but failing to conduct more than a cursory examination, and in allegedly disregarding jail protocols, amounted to deliberate indifference to the detainee's serious medical condition, in violation of the detainee's due process rights. Because the detainee had a clearly established right under the Due Process Clause of the Fourteenth Amendment to receive medical treatment to address serious medical needs, the court found that jail officials were not entitled to qualified immunity for their alleged conduct in failing to provide the diabetic detainee with medical treatment. (Roane County Jail, Tennessee)

U.S. Appeals Court
INADEQUATE CARE
RECORDS
DELIBERATE
INDIFFERENCE

Popoalii v. Correctional Medical Services, 512 F.3d 488 (8th Cir. 2008). A state prisoner brought a § 1983 action against multiple staff members of the state department of corrections (DOC) alleging deliberate indifference to her serious medical conditions. The district court struck the prisoner's expert affidavit and granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed. The court held that DOC staff members were not deliberately indifferent to the prisoner's serious medical condition of cryptococcal meningitis, which resulted in her eventual blindness, as required to prevail in a § 1983 Eighth Amendment claim. According to the court, the prisoner had none of the normal signs or risk factors of cryptococcal meningitis. The court noted that although the staff probably should have been more vigilant in obtaining the prisoner's medical records, which would have disclosed her condition, there was no showing that they knew of the prisoner's condition. (Women's Eastern Reception Diagnostic and Corr'l Center, Missouri)

U.S. District Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE
INADEQUATE CARE

Porterfield v. Durst, 589 F.Supp.2d 523 (D.Del. 2008). An inmate brought an action against prison physicians and a correctional medical service, alleging Eighth Amendment violations following the amputation of his finger. The finger had been injured when the tray slot door to his cell was slammed shut by a correctional officer. The defendants moved for summary judgment. The district court granted summary judgment in part and denied in part. The court held that the inmate failed to establish that the physicians' conduct contributed to his injury because the physicians' administration of a particular antibiotic and prescription of post-surgery physical therapy fell within the ambit of their discretionary medical judgment. The court held that summary judgment was precluded by genuine issues of material fact regarding whether a correctional medical service was deliberately indifferent to the inmate's serious medical needs. (Corr'l Medical Services, Inc., Delaware Dept. of Correction)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE

Potter v. Ledesma, 541 F.Supp.2d 463 (D.Puerto Rico 2008). A federal inmate filed an action to recover damages he suffered when prison officials failed to provide medical treatment after a cell door closed on his finger. The district court granted the officials' motion to dismiss in part and denied in part. The court held that the Federal Tort Claims Act's (FTCA) exclusivity provision did not bar the inmate's Eighth Amendment claim. According to the court, the inmate's allegation that he was entitled to money damages due to prison officials' deliberate indifference to his serious medical needs after a cell door closed on his finger raised a cognizable claim for violation of his Eighth Amendment rights. (Puerto Rico)

<p>U.S. District Court DELIBERATE INDIFFERENCE NEGLIGENCE</p>	<p><i>Presley v. City of Blackshear</i>, 650 F.Supp.2d 1307 (S.D.Ga. 2008). A mother brought an action against a city police officer and a county paramedic, arising out of her son's death while detained in a county jail after his arrest. The district court granted the defendants' motion for summary judgment. The court held that the arresting officer was not deliberately indifferent to the serious medical needs of the detainee who died of an apparent drug overdose after being arrested on drug charges and placed into custody at a county jail, absent evidence that the arresting officer actually saw the detainee swallow any drugs that allegedly led to his death. The court held that the county paramedic who responded to the jail was not deliberately indifferent despite any alleged negligence in the paramedic's original diagnosis. The court noted that the paramedic promptly responded to both calls from county jail concerning the detainee, and, each time, examined the detainee to determine whether further medical treatment was needed. According to the court, the paramedic's alleged bad judgment and negligence in caring for the pretrial detainee who died of an apparent drug overdose, was insufficient to show a lack of good faith for the purposes of statutory immunity from negligence or malpractice liability under Georgia law. (<i>City of Blackshear and Pierce County Jail, Georgia</i>)</p>
<p>U.S. District Court PRIVACY</p>	<p><i>Ringgold v. Lamby</i>, 565 F.Supp.2d 549 (D.Del. 2008). An inmate filed a § 1983 action against a correctional officer, alleging deliberate indifference amounting to cruel and unusual punishment based on the officer's alleged refusal to let him leave his cell early to serve food and the officer's alleged discussion of his hygiene and HIV status with another prisoner. The district court granted the officer's motion for summary judgment. The court held that the officer's alleged discussion of the prisoner's hygiene and HIV status with another prisoner was only verbal harassment and therefore could not be cruel and unusual punishment. The court noted that the inmate's right to privacy under the Fourteenth Amendment prohibited the officer from making any statements to another prisoner about the inmate's hygiene and HIV status, and the statements did not involve correctional goals or institutional security. The court found that the officer's refusal to allow the inmate to leave his cell to serve a meal as a prison food worker was a good faith error and not cruel and unusual punishment, where the officer thought that the inmate worked on a different crew. (<i>Howard R. Young Correctional Institution, Rhode Island</i>)</p>
<p>U.S. Appeals Court ABORTION</p>	<p><i>Roe v. Crawford</i>, 514 F.3d 789 (8th Cir. 2008). An inmate brought a class action against corrections officials challenging the Missouri Department of Corrections (MDC) policy prohibiting transportation of pregnant inmates off-site for elective, non-therapeutic abortions. The district court determined that the MDC policy was unconstitutional and entered judgment for the inmate. Corrections officials appealed. The appeals court affirmed. The court held that the MDC policy could not withstand scrutiny under <i>Turner</i>. The court noted that even if the MDC policy rationally advanced the prison's legitimate security interests, the policy acted as a complete bar to elective abortions. The prison policy allowed transportation "outcounts" to outside facilities only for medically necessary therapeutic abortions due to a threat to the mother's life or health. According to the court, obtaining an abortion prior to incarceration was not a valid alternative means of exercising the right. According to the court, the MDC policy did not reduce the overall number of outcounts and so did not reduce any strain on financial or staff resources, and ready alternatives to the MDC policy existed including reverting to the previous policy of allowing outcounts for elective abortions. (<i>Missouri Department of Corrections, Women's Eastern Reception, Diagnostic and Correctional Center</i>)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE INADEQUATE CARE MEDICATION</p>	<p><i>Sanderson v. Buchanon</i>, 568 F.Supp.2d 217 (D.Conn. 2008). An inmate brought a § 1983 suit against corrections officials, alleging that he was provided constitutionally inadequate medical care. The district court granted summary judgment in favor of the defendants. The court held that there was no deliberate indifference to the serious medical needs of the inmate regarding his stomach pain, thus defeating his § 1983 claim asserting an Eighth Amendment violation. According to the court, even assuming that the inmate did have an ulcer, all that could be drawn from the facts was that prison staff unadvisedly gave him an over-the-counter drug used to treat minor digestive system upset and that his symptoms continued for several more days. (<i>Carl Robinson Correctional Institution, Connecticut</i>)</p>
<p>U.S. District Court CONTRACT SERVICES DELAY IN TREATMENT MEDICATION</p>	<p><i>Sauve v. Lamberti</i>, 597 F.Supp.2d 1312 (S.D.Fla. 2008). A former prisoner brought a § 1983 action against a sheriff and correctional health services corporation, alleging that the defendants denied the prisoner access to medications while he was incarcerated. The district court denied the defendants' motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to the extent that a doctor employed by the corporation with which the county contracted for correctional health care services was aware of the prisoner's history of drug problems, mental health issues, and prior noncompliance with treatment at the time of his decision not to place the prisoner on medication. The court also found genuine issues of material fact as to whether the decision not to place the prisoner on medication for the first 49 days of his incarceration was based on the medical judgment of the doctor. The court held that summary judgment was also precluded by genuine issues of material fact as to whether the corporation had a practice or policy that resulted in the prisoner being denied medication for 49 days during his incarceration. The court ruled that the sheriff failed to establish an entitlement to summary judgment, even though the former prisoner presented evidence only as to the private corporation with which the county contracted for correctional health care services because the county remained liable for constitutional deprivations caused by policies or customs of the corporation. (<i>Broward County Jail, Florida, and Armor Correctional Health Services</i>)</p>
<p>U.S. District Court ADA-Americans with Disabilities Act DELIBERATE INDIFFERENCE FAILURE TO PROVIDE CARE</p>	<p><i>Shaw v. TDCJ-CID</i>, 540 F.Supp.2d 834 (S.D.Tex. 2008). A legally blind state inmate brought an action alleging that prison officials failed to remedy unsafe conditions in handicapped showers, in violation of his constitutional rights, Title II of Americans with Disabilities Act (ADA), the Rehabilitation Act (RA), and the Texas Tort Claims Act (TTCA). The inmate also alleged that prison medical officials were deliberately indifferent to his serious medical needs. The district court granted summary judgment for the officials. The court held that prison officials did not discriminate against the legally blind inmate as the result of their alleged failure to remedy unsafe conditions in the prison's handicapped showers, and thus the officials were not liable under Title II of Americans with Disabilities Act (ADA) for injuries the inmate sustained in a slip and fall accident. The court</p>

found that prison officials were not deliberately indifferent to the inmate's serious medical needs, in violation of the Eighth Amendment, as a result of their failure to remedy unsafe slippery conditions in the prison's handicapped showers, absent a showing that the officials were aware of and deliberately ignored an excessive risk. According to the court, prison medical officials were not deliberately indifferent to the inmate's broken hand, in violation of the Eighth Amendment, despite the inmate's contention that their failure to operate resulted in excessive pain and disfigurement. The court noted that a physician saw the inmate the morning after he reported the accident, X-rays indicated that the fracture would heal properly without surgery, the physician properly diagnosed the injury and prescribed pain medication, a brace, and a bandage, and the inmate received physical therapy to help restore motion and strength. (Estelle Unit, Texas Department of Criminal Justice-Correctional Institutions Division)

U.S. District Court
DELIBERATE
INDIFFERENCE
DENIAL
MEDICATION

Smith v. County of Los Angeles, 535 F.Supp.2d 1033 (C.D.Cal. 2008). The estate of a deceased county jail inmate brought a § 1983 action against a county and officials, claiming violation of the inmate's Fourth, Fifth, Eighth and Fourteenth Amendment rights, arising out of denial of the inmate's request for an asthma inhalator. The district court denied the defendants' motion to dismiss. The court held that the Eleventh Amendment immunity of state officials did not apply to the county sheriff. The court found that the estate stated a claim that the county was liable when the inmate died allegedly because he was denied an asthma inhalator. The court held that the allegation that the county "promulgated, created, maintained, ratified, condoned, and enforced a series of policies, procedures, customs and practices which authorized the arbitrary punishment and infliction of pain, torture, and physical abuse of certain inmates and detainees" was sufficient to state a claim. The court found that the estate stated a claim that officials violated the Eighth Amendment by showing deliberate indifference to his medical condition, through allegations that they ignored the inmate's plea to be furnished with his asthma inhalator. (Los Angeles County Men's Central Jail, California)

U.S. District Court
DELIBERATE
INDIFFERENCE
MEDICATION
MENTAL HEALTH

Swift v. Tweddell, 582 F.Supp.2d 437 (W.D.N.Y. 2008). An inmate brought a pro se § 1983 action against a sheriff, deputies, and jail employees. The district court denied the defendants' motion for summary judgment. The court found that the jail employees were not deliberately indifferent to the inmate's serious medical needs, in violation of the Eighth Amendment, in connection with a delay in prescribing the inmate's "mental health" medications. The court noted that on the day that the inmate submitted a request for mental health clinic services, the jail nurse referred the request to the county Mental Health Department (MHD) pursuant to standard practice at the jail, but because the inmate did not appear to be an emergency case and because he made no further requests for mental health services, he was not seen by a psychiatrist from MHD for more than two months. He was prescribed Prozac but did not, according to the court, suffer serious adverse effects as a result of the temporary gap between his request for mental health care and his psychiatric examination. (Steuben County Jail, New York)

U.S. District Court
CONTRACT SERVICES
MENTAL HEALTH
SUICIDE

Tatsch-Corbin v. Feathers, 561 F.Supp.2d 538 (W.D.Pa. 2008). Survivors of an inmate who committed suicide sued a jail's forensic specialist under § 1983, claiming violations of the Fourteenth Amendment's prohibition against deprivations of life without due process. The district court denied the forensic specialist's motion to dismiss. The court found that the fact that the jail's forensic specialist lacked a contractual relationship with either the jail or a health care contractor retained by the county did not preclude her from being considered a "state actor," as required for imposition of liability under § 1983 in connection with the inmate's suicide. According to the court, her role was to provide mental health care to inmates, regardless of her other job responsibilities or the contractual nuances through which she came to work at the jail, and she could not have done so without the authorization of the state. The court found that the inmate's survivors alleged sufficient facts to establish that the forensic specialist should have known, or did know, that the inmate presented a suicide risk and failed to take necessary or available precautions to protect him. According to the court, alleged facts suggested that the inmate had made various threats to kill himself, which had been taken seriously enough by jail officials to warrant the request of an evaluation by a mental health professional, and he had a documented history of attempted suicide and psychiatric hospitalization, of which the specialist was allegedly aware. (Blair County Prison, Pennsylvania)

U.S. District Court
DENIAL

Tindal v. Goord, 530 F.Supp.2d 465 (W.D.N.Y. 2008). A state prisoner brought a pro se § 1983 action against state department of corrections employees, alleging denial of proper medical care in violation of the Eighth Amendment. The district court granted summary judgment for the plaintiffs. The court held that the prisoner received adequate medical treatment. The court noted that the prisoner received extensive treatment, including a test for syphilis, and was diagnosed as suffering from certain ailments other than a sexually transmitted disease, such as folliculitis and a possible bacterial infection, for which he was prescribed antibacterial and pain medications. (New York State Department of Correctional Services)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

U.S. v. Conatser, 514 F.3d 508 (6th Cir. 2008). Jail officers were convicted in district court on charges arising from their participation as corrections officers in a conspiracy to violate the rights of detainees and prisoners in a county jail. The officers appealed and the appeals court affirmed. The court held that evidence was sufficient to support the determination that one officer joined a conspiracy. Three conspirators testified that the officer was among those second-shift officers who would accompany a second-shift supervisor into a cell or stand outside the cell while the supervisor committed unjustified assaults on loud, obnoxious or uncooperative inmates. According to the court, evidence indicated that the officer, on a specific occasion involving the death of an inmate, followed the supervisor and a coconspirator as they took the inmate to a detox cell, and the officer stood outside while the inmate was assaulted. The court found that a sentence of life imposed upon a supervising corrections officer was reasonable, even though another officer had inflicted the injuries that ultimately killed an inmate, given that the supervising officer's actions in denying the inmate necessary and appropriate medical care resulted in his death. (Wilson County Jail, Tennessee)

<p>U.S. Appeals Court INVOLUNTARY MEDICATION PSYCHOTROPIC DRUGS</p>	<p><i>U.S. v. Green</i>, 532 F.3d 538 (6th Cir. 2008). A pretrial detainee who had been determined to be mentally incompetent to stand trial on narcotics trafficking indictments, appealed the order of the district court for involuntary administration of psychotropic medications. The appeals court affirmed, finding that an important governmental interest was at stake in the prosecution, as required to support an order for involuntary medication. (Federal Medical Center, Rochester, New York)</p>
<p>U.S. District Court INVOLUNTARY MEDICATION PSYCHOTROPIC DRUGS</p>	<p><i>U.S. v. Moruzin</i>, 583 F.Supp.2d 535 (D.N.J. 2008). A defendant was indicted on charges of bank robbery and jury tampering. The government moved for the involuntary administration of antipsychotic medication to the defendant to render him competent to stand trial. The district court denied the motion. The court held that the administration of medication would not significantly further the state's interests, that alternatives existed to involuntary administration of the drug Haldol, and that involuntary administration of Haldol was not in the defendant's best medical interest. (Federal Medical Center, Butner, North Carolina)</p>
<p>U.S. Appeals Court DENIAL OF CARE</p>	<p><i>Vondrak v. City of Las Cruces</i>, 535 F.3d 1198 (10th Cir. 2008). An arrestee filed a § 1983 action against a city and its police officers alleging illegal arrest, excessive force, inadequate medical attention, and failure to train. The district court granted in part and denied in part the defendants' motion for summary judgment. The parties filed cross-appeals. The appeals court affirmed in part, reversed in part, dismissed in part, and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the police officers ignored the arrestee's complaints that his handcuffs were too tight, and whether the arrestee suffered permanent nerve injury because of the handcuffing. The court noted that for purposes of determining the police officers' qualified immunity from liability under § 1983 for use of excessive force, the arrestee's right to be free from unduly tight handcuffing, and the contours of that right, were clearly established in 2003. The court also found that it was clearly established that all law enforcement officials had an affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence, and thus one of the officers was not entitled to qualified immunity from liability, where the officer was in close proximity to the initial handcuffing, and was present thereafter. The arrestee had been taken into custody and transported to the police station, where two blood alcohol tests were administered. Both tests showed no alcohol. He was held for another 90 minutes, during which time he made several requests for someone to loosen his handcuffs because his wrists were hurting. All requests were ignored. Eventually, the officers charged the arrestee with Driving While Under the Influence to the Slightest Degree, and they released him on his own recognizance. The charge was later dropped. Following his release, the arrestee went to an emergency room. A toxicology screening report showed no drugs or alcohol. A doctor who treated the arrestee observed "multiple superficial abrasions and ecchymosis" on both wrists. He diagnosed the arrestee with neurapraxia in both wrists, and a soft tissue sprain of the right wrist. The pain and discomfort in the arrestee's wrists did not subside, and it interfered with his ability to practice as an orthodontist and to play golf. He was diagnosed with a permanent radial nerve injury in his wrists that was caused by the handcuffing. (Las Cruces Police Department, New Mexico)</p>
<p>U.S. District Court SMOKE</p>	<p><i>Williams v. District of Columbia</i>, 530 F.Supp.2d 119 (D.D.C. 2008). A former inmate brought a § 1983 action against District of Columbia and corrections officials seeking damages related to his alleged exposure to second-hand smoke while he was in jail. Defendants moved for summary judgment. The court granted summary judgment for the defendants. The court held that a potential future injury to the former inmate arising from his alleged exposure to environmental tobacco smoke (ETS) while he was in jail was too remote and speculative to support standing in the inmate's § 1983 action. The court noted that the expert report submitted by the inmate indicating a increased risk of heart disease and lung cancer for the jail population exposed to ETS during the inmate's period of incarceration did not indicate a probability of harm to the inmate. (District of Columbia Department of Corrections Central Detention Facility)</p>
<p>U.S. District Court ADA- Americans with Disabilities Act HEARING IMPAIRED</p>	<p><i>Williams v. Hayman</i>, 657 F.Supp.2d 488 (D.N.J. 2008). A state prisoner brought an action for violation of the Americans with Disabilities Act (ADA), alleging denial of various social and educational programs and services at a prison because he was deaf, and naming as a defendant the Commissioner of the New Jersey Department of Corrections (NJDOC), the Executive Director of the New Jersey Parole Board, the prison's chief administrator, the prison's assistant administrator, the prison's parole administrator, a corrections officer, two social workers at prison, and the prison's psychiatrist. The district court granted summary judgment for the defendants in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner's deafness inhibited his capacity to express his grievances comprehensibly in writing in accordance with prison grievance program's requirements. The court also found a genuine issue of material fact as to the prison social worker's ability to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. (South Woods State Prison, New Jersey)</p>
<p>U.S. District Court FAILURE TO PROVIDE CARE</p>	<p><i>Zuhair v. Bush</i>, 592 F.Supp.2d 16 (D.D.C. 2008). An alien, who had petitioned for habeas relief from his detention in the Guantanamo Bay military facility, brought an emergency motion to compel immediate medical relief. The district court held that the court would appoint its own medical/mental health expert to examine the detainee and provide the court with a report and any recommendations. The court noted that evidence suggested that the health of the petitioner was continuing to deteriorate. (United States Naval Base in Guantánamo Bay, Cuba)</p>

U.S. District Court
SMOKE-FREE
ENVIRONMENT

Abuhouran v. U.S., 595 F.Supp.2d 588 (E.D.Pa. 2009). A prisoner brought a negligence action against the United States under the Federal Tort Claims Act alleging prison officials exposed him to excessive amounts of environmental tobacco smoke (ETS). The defendants moved for summary judgment and the district court granted the motion. The court held that the prisoner was precluded, under the discretionary function exception of the Federal Tort Claims Act (FTCA), from challenging the warden's designation of smoking areas, as federal regulations explicitly assigned the exercise of choice or judgment to the warden to designate areas subject to ETS. The court noted that the stated policy considerations for implementing the "no smoking areas" in prisons was to provide a clean air environment and to protect the health and safety of staff and inmates, suggesting the designation of smoking areas was the kind of discretionary function the FTCA exception was meant to shield. The court held that under Pennsylvania law, the prisoner failed to present any medical evidence or expert witnesses to establish a causal connection between his exposure to environmental tobacco smoke (ETS) and his alleged injury, as required to prevail on his negligence claim. The court also held that the prisoner failed to present any evidence of an actual injury. (Federal Detention Center, Philadelphia, Pennsylvania)

U.S. District Court
ADEQUACY OF CARE
DELIBERATE
INDIFFERENCE
SMOKE-FREE
ENVIRONMENT

Adams v. Banks, 663 F.Supp.2d 485 (S.D.Miss. 2009). An inmate brought a § 1983 action against a warden and other prison officials for exposure to unreasonable levels of secondhand smoke, or environmental tobacco smoke (ETS), and for denial of adequate medical care. The defendants moved for summary judgment, and the inmate moved for summary judgment on his claim against a prison nurse. The district court held that summary judgment was precluded by genuine issues of material fact as to whether the inmate was exposed to unreasonably high levels of environmental tobacco smoke (ETS) from cellmates who smoked in his cell and from other inmates in the area outside his cell. The court also found fact issues as to whether the complaints made by the inmate were sufficient for the warden and assistant supervisor to infer that ETS posed a substantial risk of serious harm to him, such that they acted with deliberate indifference to the inmate's situation. The court found that summary judgment was precluded by genuine issues of material fact as to the seriousness of the inmate's medical condition as a result of exposure to environmental tobacco smoke (ETS) in his cell, as well as to the nature of a prison nurse's responses to the inmate's three sick call request forms complaining of coughing, chest pains, nausea, dizziness, difficulty breathing and vomiting as a result of exposure to ETS. The court held that neither the warden nor the assistant supervisor were involved in a decision to deny the inmate medical care as a result of exposure to secondhand smoke, and thus they were not deliberately indifferent to the inmate's serious medical needs in violation of the Eighth Amendment. (Wilkinson Co. Correctional Facility, Mississippi)

U.S. District Court
CONTRACT SERVICES
INADEQUATE CARE

Austin v. Taylor, 604 F.Supp.2d 685 (D.Del. 2009). A state prisoner brought an action alleging a § 1983 claim for inadequate medical care in violation of the Eighth Amendment and a state law medical negligence claim against a medical service corporation under contract with the state to provide healthcare services at a prison. The district court dismissed the case in part. The court held that the corporation that provided prison healthcare was not a state actor entitled to Eleventh Amendment immunity on the state prisoner's § 1983 claim. The court noted that despite having been named in hundreds of § 1983 actions, the corporation had never been held to be an arm of the state for Eleventh Amendment purposes. The court noted that the corporation was an autonomous actor and was not immune from state taxation, and any judgment against the corporation would not be paid from the state treasury. According to the court, although the corporation could not be held liable for allegedly medically negligent acts of an employee under the theories of respondeat superior or vicarious liability, the corporation could be directly liable for acts of the employee if the employee's acts were deemed the result of the corporation's policy or custom that was so likely to result in the violation of constitutional rights that the corporation could reasonably be said to have been deliberately indifferent to the prisoner's serious medical need in violation of the Eighth Amendment. The court noted that a "policy" of the corporation is made when a decision-maker possessing final authority to establish a policy with respect to an allegedly violative action issues an official proclamation, policy or edict. According to the court, the "custom" of the corporation can be proven by showing that a given course of conduct, although not specifically endorsed or authorized by law, is so well-settled and permanent as to virtually constitute law. (Howard R. Young Correctional Institution, Wilmington, Delaware)

U.S. District Court
DELAY OF CARE

Baker v. Wilkinson, 635 F.Supp.2d 514 (W.D.La. 2009). A Louisiana state prisoner brought a § 1983 action, in forma pauperis, against a warden, assistant warden, prison operator, and two nurses, alleging that he was denied adequate medical care related to hemorrhoids. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prisoner suffered an injury as a result of the delay in appropriate medical care, whether he was entitled to damages for emotional distress, and whether he was entitled to nominal or punitive damages. (Winn Correctional Center, Louisiana, Corrections Corporation of America)

U.S. District Court
DELIBERATE
INDIFFERENCE
DENIAL
MEDICATION

Blackstock v. Corrections Corp. of America, 660 F.Supp.2d 764 (W.D.La. 2009). A state inmate brought an action against a prison medical provider, seeking preliminary injunctions requiring that the prison provide him prescribed medications. The district court granted the motion. The court held that the prison physician's refusal, for no valid reason, to provide Neurontin, prescribed by an outside neurologist, constituted deliberate indifference. The court noted that the prison had specifically referred the inmate to the neurologist because the prison physician, who was not a neurologist, needed the specialist's expertise in a serious and complicated medical case. Neurontin was available in a generic form and was less expensive than what the prison was giving the inmate, and Neurontin was a drug that had helped the inmate and was a successful treatment for him both before and after his arrival at prison. According to the court, the inmate would likely suffer irreparable injury in the absence of a preliminary injunction requiring that the prison provide him medications prescribed by the outside neurologist. (Winn Correctional Center, Louisiana)

<p>U.S. District Court MALPRACTICE NEGLIGENCE DELIBERATE INDIFFERENCE</p>	<p><i>Brace v. Massachusetts</i>, 673 F.Supp.2d 36 (D.Mass. 2009). The administrator of a female detainee’s estate sued the Commonwealth of Massachusetts and a number of individuals having some role in providing medical services to inmates at a county correctional facility, including a clinician, asserting claims for negligence and medical malpractice, and alleging that the detainee was deprived of her constitutional rights by deliberate indifference to her medical needs. A clinician moved to dismiss certain counts. The district court allowed the motion in part and denied in part. The court held that dismissal of a medical malpractice claim after a medical tribunal found that there was insufficient evidence to raise a legitimate question of liability did not preclude the deceased detainee's estate from stating a § 1983 claim against a prison clinician for deliberate indifference to the inmate's medical needs. The court held that the deceased detainee's estate stated a § 1983 wrongful death claim against the jail clinician for deliberate indifference to the inmate's medical needs, in violation of her Eighth and Fourteenth Amendment rights. The estate alleged that the clinician observed the detainee while she was in obvious medical distress and took the minimal step of making a phone call to a medical unit about the detainee's condition. (Hampden County House of Correction, Massachusetts)</p>
<p>U.S. District Court CONTRACT SERVICES DELIBERATE INDIFFERENCE DENTAL CARE</p>	<p><i>Brathwaite v. Correctional Medical Services</i>, 630 F.Supp.2d 413 (D.Del. 2009). A state prison inmate brought a § 1983 action against a corporation that provided medical services to correctional facilities, and individual defendants including a dentist affiliated with the corporation, alleging deliberate indifference to his dental needs in violation of the Eighth Amendment. The district court granted the defendants’ motion for summary judgment. The court held that denials of the inmate's requests for a root canal procedure were not deliberate indifference, given the dentist's repeated recommendation of extraction and the inmate's refusal to consent to the extraction. The court noted that, under the Eighth Amendment, prisoners are entitled to medical treatment, but prisoners have no right to choose the specific form of medical treatment when the treatment provided is reasonable. (Correction Medical Services, Delaware Department of Corrections)</p>
<p>U.S. District Court INADEQUATE CARE POLICIES TRAINING</p>	<p><i>Brickell v. Clinton County Prison Bd.</i>, 658 F.Supp.2d 621 (M.D.Pa. 2009). A former inmate filed a § 1983 action against a county, county prison board, and various county officials to recover for injuries she sustained while working in a jail kitchen. The district court dismissed the case in part, and denied dismissal in part. The court held that the sheriff was not subject to supervisory liability under § 1983 for alleged failure to obtain adequate medical treatment for the inmate after she suffered burns while working in a jail kitchen, where the sheriff did not participate in or have knowledge of any violations of the inmate's rights, did not direct jail employees to commit the violations, and did not acquiesce in the employees' violations. The court found that the inmate's allegation that a county prison board failed to adopt, and the jail's warden and deputy wardens failed to implement, policies regarding treatment of severe burns and general medical treatment was sufficient to state a claim against the board and officials under § 1983 for violation of her Eighth Amendment right to adequate medical care, where the inmate claimed that there was a total absence of policy concerning medical treatment for severe burns or general medical care when prison facilities were inadequate. (Clinton County Prison Board, Clinton County Correctional Facility, Pennsylvania)</p>
<p>U.S. District Court FAILURE TO PROVIDE CARE</p>	<p><i>Browne v. San Francisco Sheriff's Dept.</i>, 616 F.Supp.2d 975 (N.D.Cal. 2009). A former state pretrial detainee filed a § 1983 action against nearly 50 defendants, seeking redress for alleged injuries caused by deputies and medical staff of a sheriff's department. The district court granted summary judgment to the defendants. The court held that a deputy's alleged placing of a “white tip poisonous spider” in a safety cell before moving the pretrial detainee back into the cell, grabbing the detainee and bending his arm while he threw him out of the cell, and putting his knee into the center of the detainee's back did not rise to the level of malicious and sadistic use of force, as required for a Fourteenth Amendment excessive force claim. The court noted that there was no evidence that the detainee was injured or that he sought medical treatment for any injuries. (San Francisco County Sheriff's Department, San Francisco County Jail, California)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE INADEQUATE CARE</p>	<p><i>Browning v. Pennerton</i>, 633 F.Supp.2d 415 (E.D.Ky. 2009). A pro se federal prisoner brought an action against prison officials, alleging that the officials violated the Eighth Amendment by deliberately failing to heed his warning that another inmate was going to harm him and for providing inadequate medical treatment after the inmate attacked him. The court held that the prisoner failed to allege that he personally warned prison supervisors of threats made by another inmate and his resulting fear for his safety, as required to state an Eighth Amendment failure to protect claim against the supervisors. The court found that prison supervisors were not physicians qualified to render medical treatment and lacked involvement in treating the prisoner's injuries, and thus the supervisors could not be held liable for failing to provide adequate medical treatment to the prisoner following an assault by another inmate. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner, who had warned prison officers that he faced imminent danger from another inmate, was incarcerated under conditions that posed a substantial risk of serious harm, and whether the officers were deliberately indifferent to that substantial risk. (U.S. Penitentiary-Big Sandy, Kentucky)</p>
<p>U.S. District Court ADA-Americans with Disabilities Act WORK ASSIGNMENT</p>	<p><i>Burke v. North Dakota Dept. of Correction and Rehabilitation</i>, 620 F.Supp.2d 1035 (D.N.D. 2009). A state inmate filed a § 1983 action against prison officials alleging statutory and constitutional violations, including interference with his free exercise of religion, lack of adequate medical care, retaliation for exercising his constitutional rights, failure to protect, refusal to accommodate his disability, and cruel and unusual punishment. The district court granted summary judgment for the defendants. The court held that: (1) failure to provide Hindu worship services on Thursdays did not violate the inmate's equal protection rights; (2) the decision to reduce Hindu worship services at the facility did not violate the Free Exercise Clause; (3) restriction of the Hindu inmate's use of camphor, kumkum, incense, and a butter lamp during worship services did not violate the Free Exercise Clause; and (4) failure to find a qualified Hindu representative to assist the inmate in the study of his religion did not violate the Free Exercise Clause. According to the court, the officials' requirement that the inmate work did not violate the Eighth Amendment, even though the inmate suffered from mental illness and</p>

hepatitis C, and the Social Security Administration had determined that he was disabled. The inmate had not requested accommodations in his working conditions on account of his disabilities, and there was no evidence that the inmate was being forced to work beyond his physical strength or that the jobs were endangering his life or health. The court noted that the prison policies and procedures manual established that all inmates were expected to work, regardless of their disability status.

The court found that the inmate's purported schizoid/sociopathic personality did not substantially limit any major life activity, and thus did not constitute a "disability" under ADA, where the inmate did not describe the nature and severity, duration, the anticipated duration, or the long-term impact of his mental impairment. The court held that the inmate failed to demonstrate that his mental impairment substantially limited his ability to care for himself. Similarly, the inmate's hepatitis C did not substantially limit any major life activity, and thus did not constitute a "disability" under ADA. (North Dakota State Penitentiary)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Burks v. Raemisch, 555 F.3d 592 (7th Cir. 2009). A prisoner who allegedly suffered permanent vision impairment due to a prison's failure to treat his eye condition while he was incarcerated brought a civil rights action against prison officials for deliberate indifference to a serious medical need. The district court dismissed the prisoner's complaint, and he appealed. The appeals court affirmed in part and remanded. The court held that the prisoner's allegations regarding a prison official's role as head of the prison's medical unit in treatment of the prisoner's eye condition were sufficient to support his § 1983 claim against the official for deliberate indifference to a serious medical need. Although the prisoner's complaint did not say that he ever spoke with the official or explain how she came to know of his eye condition, it may have been possible to show through discovery that the physicians and nurses to whom the prisoner spoke reported to the official on his condition, and that the official rather than the other members of the health unit made the decision to leave the condition untreated. The court found that a prison complaint examiner was not deliberately indifferent to the prisoner's serious medical need when she rejected as untimely the prisoner's grievance regarding the alleged failure of the prison's medical staff to treat his eye condition. The court noted that the examiner was fulfilling her duty to dismiss untimely grievances, and was not required to go beyond the duties of her job and try to help the prisoner. (Milwaukee Secure Detention Facility, Wisconsin)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
MEDICATION

Burton v. Lynch, 664 F.Supp.2d 349 (S.D.N.Y. 2009). A state prisoner brought a § 1983 action against a prison superintendent, corrections officers, prison nurses and a physician alleging violations of his federal constitutional rights. A nurse, the superintendent, and the physician moved to dismiss and the district court granted the motion in part and denied in part. The court held that the prisoner's grievance relating to his alleged beating by corrections officers, for which the prisoner sought an investigation into the beating and to be seen by a doctor, presented no ongoing situation that the prison's superintendent could remedy, such that the superintendent was not personally involved in the alleged violation of the prisoner's constitutional right. According to the court, although the request to see a doctor referred to an ongoing situation, by the time superintendent received it the prisoner had been seen by a doctor, and by the time superintendent answered the prisoner's appeal the prisoner had been transferred to another prison. The court found that the prisoner's allegations that when he saw a prison doctor he could not straighten his left arm without receiving a lot of pain from his elbow, and that the doctor refused to examine his elbow, saying only that was "there was nothing wrong with it without touching it or x-rays," were sufficient to allege facts which plausibly could support a finding that the prisoner's elbow condition was sufficiently serious, as required to state a claim for deliberate indifference to his serious medical needs under the Eighth Amendment. The court found that the prisoner's allegations: (1) that a prison doctor retaliated against him for a previous grievance he had filed against the doctor by denying medical evaluation, treatment, and adequate pain medication; (2) that all levels of the inmate grievance process determined that the doctor had, by his own admission, prescribed the prisoner a medication to which he was allergic; (3) that the doctor failed to detect a condition which was later determined to require surgery on the prisoner's elbow; (4) and that the doctor told the prisoner his elbow looked fine and that his allergy to the medication was the prisoner's "problem," were sufficient to state a case of retaliation under the First Amendment. (Fishkill Correctional Facility, New York)

U.S. District Court
DELIBERATE
INDIFFERENCE
MENTAL HEALTH
SUICIDE

Cabral v. County of Glenn, 624 F.Supp.2d 1184 (E.D.Cal. 2009). A pretrial detainee brought a § 1983 action against a city and a police officer alleging violations of the Fourth and Fourteenth Amendments and claims under California law. The city and officer filed a motion to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee, a psychotic and suicidal individual who collided with the wall of a safety cell and broke his neck, failed to plead that a police officer, who extracted the detainee from his holding cell and used a stun gun and pepper spray on him following an incident in which the detainee rubbed water from his toilet on his body, was deliberately indifferent to the detainee's need for medical attention, as required to state due process claim under § 1983. According to the court, the detainee failed to allege that the officer knew he was suicidal and was not receiving medical care, or that the officer attempted to interfere with the detainee's receipt of such medical attention. The court found that the detainee's allegations that the officer used a stun gun, a stunt-type shield and pepper spray in an attempted cell extraction while the detainee was naked, unarmed and hiding behind his toilet were sufficient to state an excessive force claim under § 1983. The court denied qualified immunity for the officer, even though the detainee had not responded to the officers' commands to come out of his cell. The court noted that the law clearly established that police officers could not use a stun gun on a detainee who did not pose a threat and who merely failed to comply with commands. (City of Willows Police Department, California)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
MISDIAGNOSIS
PRETRIAL DETAINEE

Caiozzo v. Koreman, 581 F.3d 63 (2nd Cir. 2009). The estate of a pretrial detainee who died in custody at a county jail, brought a § 1983 action against county corrections officials and medical staff, alleging deliberate indifference to the detainee's serious medical condition in violation of the Fourteenth Amendment. The district court granted summary judgment in favor of the defendants. The estate appealed. The appeals court affirmed. The appeals court held: (1) the subjective standard for analyzing a claim of deliberate indifference to medical needs of a convicted prisoner held in state custody also applied to the pretrial detainee, overruling *Liscio v. Warren* and

Benjamin v. Fraser; (2) the estate was required to prove that the defendants disregarded a risk of harm to the detainee of which the defendants were aware; and (3) a nurse was not deliberately indifferent to the detainee's serious medical condition of alcohol withdrawal. The court noted that the nurse incorrectly believed that the detainee was intoxicated, and there was no evidence that the nurse actually believed that the detainee was in danger of imminent severe alcohol withdrawal. The detainee had previously been incarcerated at the facility on at least 27 separate occasions, and had been treated for chronic alcoholism by the facility's medical staff. (Albany County Correctional Facility, New York)

U.S. District Court
COSTS

Campbell v. Credit Bureau Systems, Inc., 655 F.Supp.2d 732 (E.D.Ky. 2009). An inmate brought an action under the Fair Debt Collection Practices Act (FDCPA) against collection agencies, stemming from purported charges for medical care while incarcerated. The district court granted the defendants' motions for summary judgment. The court held that the inmate's certified letters to collection agencies, notifying them that he disputed the debt and requesting validation, did not entitle the inmate to protection under the Fair Debt Collection Practices Act (FDCPA) provision requiring agencies to temporarily cease collection efforts and assist debtors in understanding the source and nature of the debt, where the letters were not timely delivered. But the court held that the collection agencies failed to establish that the inmate initiated the action in bad faith or with nefarious motive, for the purposes of a fee request. (Federal Medical Center in Lexington, Kentucky)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
SPECIAL DIETS

Cardinal v. Metrish, 564 F.3d 794 (6th Cir. 2009). A prisoner brought an action against a warden seeking monetary damages, as well as declaratory and injunctive relief. The prisoner asserted violations of the Eighth Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA) based on the failure to provide him with kosher food which resulted in his not eating for eight days. The district court granted summary judgment in favor of the warden. The prisoner appealed. The court held that the warden was entitled to Eleventh Amendment immunity on the prisoner's claim seeking monetary damages for the alleged violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) for not providing him with kosher meals. According to the court, even though the state accepted federal funds for its prisons, RLUIPA did not contain a clear indication that receipt of federal prison funds was unambiguously conditioned on a state's consent to be sued for monetary damages. The court held that there was no evidence that the warden knew of and disregarded an excessive risk to the prisoner's health or safety, as required to support the prisoner's claim against the warden for deliberate indifference to his medical needs in violation of the Eighth Amendment based on failure to provide him with kosher food. (Hiawatha Correctional Facility, Michigan)

U.S. District Court
DELIBERATE
INDIFFERENCE
PRETRIAL DETAINEE

Christian v. Wagner, 611 F.Supp.2d 958 (S.D.Iowa 2009). A pretrial detainee brought an action against county jail officials and employees, seeking to recover damages for injuries he allegedly sustained as a result of his exposure to a cleaning solvent used to clean cells. Following a jury verdict in favor of the defendants, the detainee filed a combined motion for a new trial and for judgment as a matter of law. The district court denied the motion. The court held that the detainee's claim was properly construed as a deliberate indifference to a serious medical need claim, not a general conditions of confinement claim. According to the court, whether the detainee had a serious medical need to be removed from the cleaning solvent was an issue for the jury. (Johnson County Jail, Iowa)

U.S. District Court
AIDS-Acquired Immune
Deficiency Syndrome
CONTAGIOUS
DISEASES
DELIBERATE
INDIFFERENCE

Clark v. Williams, 619 F.Supp.2d 95 (D.Del. 2009). An inmate sued state corrections officials, claiming that they violated his Eighth Amendment rights when he was incarcerated in a cell with an inmate infected with human immunodeficiency virus (HIV) and Hepatitis B, and by failing to provide him with medical treatment when he contracted Hepatitis B. The district court held that the inmate had no administrative remedy, and thus, the exhaustion requirement of the Prison Litigation Reform Act (PLRA) did not have to be met. The court ruled that the issue of whether prison officials were aware that the inmate was living under conditions that exposed him to a communicable disease that posed an unreasonable risk of serious harm to his future health was a triable fact issue. According to the court, the medical services administrator and a physician were not deliberately indifferent to the inmate's medical needs. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court
DELIBERATE
INDIFFERENCE
INADEQUATE CARE
MISDIAGNOSIS

Conseillant v. Alves, 599 F.Supp.2d 367 (W.D.N.Y. 2009). A prisoner brought a § 1983 action against a physician employed by the New York State Department of Correctional Services (DOCS) alleging improper or inadequate treatment, in violation of his rights under the Eighth Amendment. The district court granted summary judgment in favor of the physician. The court held that the prisoner's allegations that a nurse practitioner misdiagnosed him as suffering from hepatitis, and that the defendant physician knew of this misdiagnosis but allowed the prisoner to think he had a deadly disease, were insufficient to demonstrate deliberate indifference. The court noted that the prisoner's medical treatment was not so inadequate as to amount to "cruel or unusual punishment" prohibited by the Eighth Amendment. According to the court, the prisoner did not establish that he had a "serious medical need," or that the physician ignored any serious medical need. The court noted that the physician was not personally involved in any misdiagnosis, as the evidence only showed that the physician ordered follow-up testing, not that he told the prisoner that he had an active hepatitis infection. (New York State Department of Correctional Services)

U.S. District Court
NEGLIGENCE

Creed v. Virginia, 596 F.Supp.2d 930 (E.D.Va. 2009). The father of a prisoner who died while in custody brought an action in state court against the state of Virginia, a county sheriff, a prison supervisor, a prison director, and various prison employees. The father alleged that the prisoner died when he was placed in a choke hold and stopped breathing during a medical examination before his planned transfer to a hospital for involuntary commitment, asserting civil rights and supervisory liability claims under § 1983, as well as state law claims for negligence, gross negligence, and willful and wanton negligence. After the case was removed to federal court the prisoner's father and state moved to remand. The district court granted the motion. (Prince William-Manassas Regional Adult Detention Center, Virginia)

<p>U.S. Appeals Court CONTRACT SERVICES INADEQUATE CARE NEGLIGENCE</p>	<p><i>Dominguez v. Correctional Medical Services</i>, 555 F.3d 543 (6th Cir. 2009). A prisoner brought an action against a registered nurse and other defendants, asserting a state law claim of gross negligence and § 1983 claims for alleged subjection to excessive force and inadequate medical care in violation of the Eighth Amendment. The nurse moved for summary judgment. The district court denied summary judgment as to the § 1983 claim of inadequate medical care and the state law claim of gross negligence. The nurse appealed. The appeals court affirmed. The court held that summary judgment was precluded due to a genuine issue of material fact as to whether the nurse acted with deliberate indifference to the prisoner's serious medical needs. The court also found summary judgment was precluded by a genuine issue of material fact as to whether the nurse's conduct in providing care for the prisoner was the proximate cause of the prisoner's injury. (Carson City Correctional Facility, Michigan)</p>
<p>U.S. District Court CONTRACT SERVICES FAILURE TO PROVIDE CARE NEGLIGENCE SUICIDE</p>	<p><i>Edwards v. District of Columbia</i>, 616 F.Supp.2d 112 (D.D.C. 2009). The representative of the estate of a woman who committed suicide while being held in a District of Columbia jail brought an action against the District and the jail's medical services contractor in the Superior Court for the District of Columbia, alleging negligence in the provision of mental health care in ensuring that the woman was not a danger to herself. The representative also alleged that the District and contractor failed to adequately provide a medical response upon discovering the woman in the immediate moments after her suicide. The contractor removed the case to federal district court and moved to dismiss. The district court held that the representative was required to exhaust administrative remedies under the Federal Tort Claims Act (FTCA) on claims against the contractor before bringing an action under FTCA and that the court lacked subject matter jurisdiction over the FTCA claims and claims against the District. (District of Columbia Jail)</p>
<p>U.S. District Court CONTRACT SERVICES DELIBERATE INDIFFERENCE FAILURE TO PROVIDE CARE</p>	<p><i>Estate of Henson v. Wichita County, Tex.</i>, 652 F.Supp.2d 730 (N.D.Tex. 2009). Daughters of a pre-trial detainee, who died from chronic obstructive pulmonary disease while being held in a county jail, brought a § 1983 action against the county and jail physician, among others, for violation of the detainee's Fourth and Fourteenth Amendment rights. The court held that summary judgment was precluded by genuine issues of material fact as to whether the jail physician was a supervisor, whether a policy of intimidation of jail nurses was a moving force behind the alleged violation of the rights of the detainee, whether the physician failed to supervise nurses, and, if so, whether his failure to supervise amounted to deliberate indifference. The court held that the jail physician was entitled to assert a defense of qualified immunity, even though he was a contract physician. (Wichita County Jail, Texas)</p>
<p>U.S. District Court ADEQUACY OF CARE DELIBERATE INDIFFERENCE MENTAL HEALTH PRIVATE PHYSICIAN PRIVATE PROVIDER RIGHT TO REFUSE</p>	<p><i>Estate of Rice ex rel. Rice v. Correctional Medical Services</i>, 596 F.Supp.2d 1208 (N.D.Ind. 2009). The estate of a prisoner who died while detained at a county jail, where he suffered from schizophrenia and various complications as the result of his refusal to take his medication and his self-imposed starvation, brought an action against a private hospital and a physician at the hospital. The estate alleged that the physician deprived the prisoner of his constitutional rights in violation of § 1983, and that the hospital and physician negligently failed, under state law, to provide adequate medical care and treatment to the prisoner. The district court granted summary judgment for the defendants in part. The court held that an expert's summary judgment report, in which he stated, among other things, that the treating physician was fully aware that the deceased prisoner had been refusing food, drink, and medications, and that she had no reason to believe that the same pattern would not subsequently continue back in jail, was admissible. The court also found that the expert's summary judgment report that the physician who treated the schizophrenic prisoner prior to his death showed indifference to the prisoner's serious medical condition "by turning a blind eye to the likely outcome of a return to jail" was admissible. The court noted that the expert was not offering a legal conclusion as to the treating physician's subjective knowledge.</p> <p>The court found that the prisoner had a serious medical need, as an element of his alleged Eighth Amendment violation. The court noted that the prisoner went to a hospital because he was not taking his medications, was not eating, had lost 50 pounds in 13 months, and was uncommunicative. Medical records indicated that the prisoner had severe mental problems, including schizophrenia, which posed a risk of serious damage to his future health. The physician who treated the prisoner acknowledged the seriousness of his condition in her medical recommendation, and ten weeks after his hospital stay, the prisoner died from malnutrition. (Elkhart County Jail, Indiana)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE FAILURE TO PROVIDE CARE</p>	<p><i>Farnam v. Walker</i>, 593 F.Supp.2d 1000 (C.D.Ill. 2009). A state prisoner who suffered from cystic fibrosis filed a civil rights action against a prison under the Eighth Amendment alleging deliberate indifference to his serious medical needs. The prisoner filed a motion for preliminary injunction which the district court granted. The court noted that the risk of irreparable harm had not abated and an inference existed that at least some prison personnel participated in, and acquiesced to, deliberate indifference to the prisoner's cystic fibrosis. According to the court, personnel with medical training and the ability to intervene subjectively knew of the prisoner's needs and yet disregarded them in such a way that a nominally competent professional would not have, and the prison denied the prisoner's appointment at a cystic fibrosis center via a "corporate utilization review" for no stated reason or explanation. (Graham Correctional Center, Illinois)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE MEDICATION</p>	<p><i>Fleming v. Sharma</i>, 605 F.Supp.2d 399 (N.D.N.Y. 2009). The wife of a deceased prisoner, individually and as administratrix of the prisoner's estate, brought an action under § 1983 against a prison physician and a medical director, alleging that the defendants were deliberately indifferent to the prisoner's serious medical needs in violation of his Eighth Amendment rights, and seeking loss of consortium as a result of the prisoner's death. The district court granted summary judgment for the defendants in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison physician and medical director were deliberately indifferent to the serious medical needs of the prisoner, who suffered from congestive heart failure, and who died while under the defendants' care. The defendants allegedly failed to provide the prisoner with medication to stabilize his heart condition, despite the recommendations of four different physicians that the prisoner be treated with the medication. According to the court, the prison physician and the medical</p>

director were not entitled to qualified immunity from the § 1983 claim brought by the wife where the very nature of the action called into question the reasonableness of the defendants' decision not to administer medication. (Mohawk Correctional Facility, New York)

U.S. District Court
ADA-Americans with
Disabilities Act
MEDICATIONS

Flynn v. Doyle, 630 F.Supp.2d 987 (E.D.Wis. 2009). Prisoners at a state correctional institution brought a class action against a governor and other defendants, alleging that medical and mental health care provided to them at the institution violated the Eighth Amendment and Title II of Americans with Disabilities Act (ADA). The prisoners moved for a preliminary injunction and the district court granted the motion. The court found that the class of prisoners was reasonably likely to succeed at trial on the merits of its Eighth Amendment claims against a governor, institution and other defendants alleging that continued use of correctional officers to distribute medications at the institution posed a substantial risk of serious harm to members of the class. According to the court, the defendants knew of the risk but failed to take reasonable steps to abate it. (Taycheedah Correctional Institution, Wisconsin)

U.S. District Court
ADA- Americans with
Disabilities Act
EQUAL PROTECTION
INADEQUATE CARE
RA- Rehabilitation Act
STAFF

Flynn v. Doyle, 672 F.Supp.2d 858 (E.D.Wis. 2009). Female inmates filed a class action alleging that medical, dental, and mental health care provided to prisoners at a state facility violated the Eighth Amendment, Equal Protection Clause, Title II of Americans with Disabilities Act, and Rehabilitation Act. The officials moved for partial summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether there were systemic and gross deficiencies in staffing, facilities, and procedures at the state correctional facility that resulted in provision of inadequate medical care for female inmates. The court also found that summary judgment was precluded on the inmates' claim that the state violated Title II of ADA by failing to provide access to programs to inmates with mobility, visual, and hearing disabilities. The court found a genuine issue of material fact as to the effectiveness of accommodations offered to disabled inmates at a state correctional facility. The court found that the female inmates' allegation that the state provided inpatient mental health services for male inmates, but not for female inmates, was sufficient to state claim against the state under the Equal Protection Clause, despite the state's contention that the disparity was natural outgrowth of the historically small number of female inmates in the state. (Taycheedah Correctional Institution, Wisconsin)

U.S. District Court
DELIBERATE
INDIFFERENCE
INTAKE SCREENING
MENTAL HEALTH
PRETRIAL DETAINEE
PRIVATE PHYSICIAN
RECORDS
SUICIDE

Francis ex rel. Estate of Francis v. Northumberland County, 636 F.Supp.2d 368 (M.D.Pa. 2009). The administrator of the estate of a detainee who committed suicide while in a county prison brought an action against the county and prison officials, asserting claims for Fifth and Fourteenth Amendment reckless indifference and Eighth Amendment cruel and unusual punishment under § 1983. The administrator also alleged wrongful death under state law. The county defendants brought third-party claims against a psychiatrist who evaluated the detainee, and the psychiatrist counter-claimed. The county defendants and psychiatrist moved separately for summary judgment. The court held that the County, which paid \$360,000 in exchange for a release of claims brought by the estate of the detainee, would be entitled to indemnity on third-party claims against the psychiatrist who evaluated the detainee if a jury determined that the psychiatrist was at fault in the detainee's suicide. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the evaluating psychiatrist knew the pretrial detainee was a suicide risk and failed to take necessary and available precautions to prevent the detainee's suicide as would show deliberate indifference to the detainee's medical needs; (2) whether the evaluating psychiatrist was an employee of the county prison entitled to immunity under the Pennsylvania Political Subdivision Tort Claim Act (PSTCA) or was an independent contractor excluded from such immunity; (3) whether the evaluating psychiatrist's failure to appropriately document the pretrial detainee's medical records led to the detainee's removal from a suicide watch; (4) whether the recordation of the pretrial detainee's suicide watch level was customary, precluding summary judgment as to whether the evaluating psychiatrist had a duty to record this information; (5) whether the evaluating psychiatrist's failure to communicate the appropriate suicide watch level to county prison officials resulted in the pretrial detainee's suicide; and (6) whether the evaluating psychiatrist communicated the appropriate suicide watch level for the pretrial detainee to county prison officials and whether the psychiatrist was required to record the watch level in the detainee's medical records.

The court found that the county prison had an effective suicide policy in place and thus the psychiatrist who evaluated the pretrial detainee had no viable Fourteenth Amendment inadequate medical care and failure to train counterclaims under § 1983 against the county. According to the court, while at least one individual at the prison may have failed to carry out protocols for the diagnosis and care of suicidal detainees, the policy would have been effective if properly followed as was customary at the prison.

The court held that the county prison warden adequately trained subordinates with regard to protocols for the care and supervision of suicidal inmates and adequately supervised execution of these protocols, and thus the psychiatrist who evaluated the pretrial detainee had no viable counterclaim under § 1983 against the warden for failure to adequately train or supervise under the Fourteenth Amendment. (Northumberland County Prison, Pennsylvania)

U.S. Appeals Court
DELAY IN TREATMENT
DELIBERATE
INDIFFERENCE
MEDICATION

Giles v. Kearney, 571 F.3d 318 (3rd Cir. 2009). A state inmate filed a § 1983 action against correctional officers and others, alleging excessive force and deliberate indifference to his medical needs. The district court entered summary judgment in favor of some officers, and entered judgment in favor of the remaining defendants. The inmate appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the inmate had ceased resisting before correctional officers kicked or "kneed" him in the side. According to the court, an administrative assault determination and a state court no contest plea for the inmate's hitting of a correctional officer, before he was wrestled to the ground, did not provide a blank check justification for the correctional officers' excessive use of force thereafter. The court held that the district court's determination that correctional officers did not act with deliberate indifference to the inmate's serious needs when they denied his request for pain medication and administered pepper spray to subdue the inmate after he became agitated was not a clear error. The court noted that

the inmate was in an infirmary, had suffered a broken rib and a punctured lung, and was at risk of death as the result of a delay in diagnosis and transfer to a hospital. The officer checked with the nurse on duty and found that no medication was prescribed, the inmate ignored repeated requests to calm down and continued shouting and hitting and shaking a door late at night, and the officers administered a single spray of pepper spray. (Sussex Correctional Institution, Delaware)

U.S. District Court
DELIBERATE
INDIFFERENCE
EQUAL PROTECTION

Goodson v. Willard Drug Treatment Campus, 615 F.Supp.2d 100 (W.D.N.Y. 2009). A state prisoner filed a pro se § 1983 action against prison officials and a prison's drug treatment facility, claiming violation of his rights under the Eighth Amendment and the Equal Protection Clause. The district court granted summary judgment for the defendants. The court held that the prison's assignment of the prisoner to a top bunk from which he fell and was injured while confined in the prison's drug treatment facility, where he was sent for medical reasons relating to a herniated disc in his lower back, did not deprive the prisoner of his Eighth Amendment right to be free from cruel and unusual punishment. The court noted that the prisoner did not have a serious medical need for a lower bunk, and the prison did not make the top bunk assignment in deliberate indifference to the prisoner's medical needs. (Willard Drug Treatment Campus, New York State Department of Correctional Services)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Griffin v. Arpaio, 557 F.3d 1117 (9th Cir. 2009). A state inmate brought a § 1983 action against a county sheriff and others, alleging cruel and unusual punishment and unsafe living conditions based on their failure to assign him a lower bunk for medical reasons. The defendants moved to dismiss for failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA). The district court granted the motion and the inmate appealed. The appeals court affirmed. Although the court found that a prison grievance need only alert the prison to the nature of the wrong for which redress is sought and the inmate's failure to grieve deliberate indifference to his serious medical needs did not invalidate his exhaustion attempt, the inmate did not properly exhaust administrative remedies under PLRA. The court held that the inmate's grievance regarding his need for a lower bunk assignment did not provide sufficient notice of the staff's alleged disregard of his lower bunk assignments to allow officials to take appropriate responsive measures, as required to properly exhaust administrative remedies under the Prison Litigation Reform Act (PLRA) before he brought a § 1983 action. The officials responding to the inmate's grievance reasonably concluded that a nurse's order for a lower bunk assignment solved the inmate's problem. (Maricopa County Sheriff, Arizona)

U.S. Appeals Court
CONTAGIOUS DISEASE
DELIBERATE
INDIFFERENCE

Hagan v. Rogers, 570 F.3d 146 (3rd Cir. 2009). Fourteen state prisoners jointly filed a single § 1983 complaint, on behalf of themselves and a purported class, claiming violation of their Eighth and Fourteenth Amendment rights by prison officials' purported deliberate indifference to the exposure of prisoners to an outbreak of a serious and contagious skin condition, allegedly scabies. The prisoners sought class certification, requested to proceed in forma pauperis (IFP) under the Prison Litigation Reform Act (PLRA), and sought appointment of counsel. The district court denied joinder (combining actions), dismissed with leave to amend for all except one prisoner, and denied class certification. The prisoners appealed. The appeals court reversed in part, vacated in part, and remanded. The appeals court held that: (1) IFP prisoners were not barred from joinder by PLRA; (2) each joined prisoner was required to pay the full individual filing fee; and (3) the typicality and commonality requirements were satisfied for class certification. The court noted that prisoners proceeding in forma pauperis (IFP) remained within the definition of "persons" under the permissive joinder rule, and thus, the prisoners were not categorically barred from joinder in their civil rights action, despite concerns that joinder would undermine PLRA by permitting split fees or avoiding the three-strike rule that limited IFP status. (Adult Diagnostic and Treatment Center, New Jersey)

U.S. District Court
FAILURE TO PROVIDE
CARE

Hamilton v. Lajoie, 660 F.Supp.2d 261 (D.Conn. 2009). An inmate filed a pro se § 1983 action against the State of Connecticut, a warden, and correctional officers, seeking compensatory and punitive damages for head trauma, abrasions to his ear and shoulder, and post-traumatic stress due to an officers' alleged use of unconstitutionally excessive force during a prison altercation. The inmate also alleged inadequate supervision, negligence, and willful misconduct. The court held that the inmate's factual allegations against correctional officers, in their individual capacities, were sufficient for a claim of excessive force in violation of the inmate's Eighth Amendment rights. The officers allegedly pinned the inmate to the ground near his cell, following an inspection for contraband, and purportedly sprayed the inmate in the face with a chemical agent despite his complaints that he had asthma. The court found that the inmate's allegations against the warden in his individual capacity were sufficient for a claim of supervisory liability, under § 1983, based on the warden's specific conduct before and after the altercation between the inmate and correctional officers. The inmate alleged that the warden was responsible for policies that led to his injuries and for procedures followed by medical staff following the incident, and the warden failed to properly train officers, to adequately supervise medical staff, to review video evidence of the incident, and to order outside medical treatment of the inmate's injuries even though a correctional officer received prompt medical care at an outside hospital for his head injury sustained in the altercation. (Corrigan-Radgowski Correctional Center, Connecticut)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
EQUAL PROTECTION
FAILURE TO PROVIDE
CARE

Harris v. City of Circleville, 583 F.3d 356 (6th Cir. 2009). A pretrial detainee brought a § 1983 action against a city and police officers, alleging that he was subjected to excessive force and inadequate medical care, and discriminated against on account of his race, while being booked at a jail. The district court denied the defendants' motion for summary judgment and the defendants appealed. The appeals court affirmed. The appeals court held that summary judgment was precluded by fact issues on the excessive force claim, the deliberate indifference claim, and the equal protection claim. The court held that summary judgment was precluded by genuine issues of material fact as to whether police officers' use of force against the detainee, in yanking at the detainee's neck and kicking his leg out from under him causing the detainee to fall and hit his head, in using a takedown maneuver to get the detainee down on the floor in a booking area, and in kicking the detainee in the ribs, was objectively reasonable or shocked the conscience. According to the court, summary judgment was precluded by a genuine issue of material fact as to whether the detainee had a serious need for medical care that was so obvious that even

a layperson would easily recognize the need for a doctor's attention, following the police officers' exercise of force against him. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether police officers used excessive force and delayed medical treatment of the detainee on account of his African-American race. (Circleville City Jail, Ohio)

U.S. District Court
CHILDREN
DELAY IN CARE
FAILURE TO PROVIDE
CARE
FEMALE PRISONERS

Havard v. Puntner, 600 F.Supp.2d 845 (E.D.Mich.,2009). The guardian of a minor child, who was born in a county jail while her mother was incarcerated there, brought a § 1983 action against jail employees for injuries sustained during and immediately after the birthing process. The district court denied the employees' motion to dismiss. The court held that the minor child was a "person" within the Fourteenth Amendment at the time of her § 1983 claims against jail employees, for injuries allegedly sustained as a result of alleged unconstitutional conduct during and immediately after the birthing process. The child was allegedly injured by the employees' failure to provide medical attention to the mother in violation of the child's due process rights, such that the child was not in a hospital at the time of her birth, the physicians and the facilities of the hospital were not available to resuscitate her when she was born, and she was not resuscitated until she arrived at the hospital following transport from the jail, at which time she had no respiration or heartbeat. The court found that deputies and a nurse at the county jail were not entitled to qualified immunity from the § 1983 action brought on behalf of the minor child, where the constitutional duty to care for helpless infants who have newly come into the world, including the duty to care for them by anticipation, during the birthing process, was clearly established at the time of the birth. The court noted that the defendants allegedly left the mother in her cell for two hours even though they were aware that she was in active labor, crying out for help, and that, once called, paramedics did not arrive until the child was being delivered and did not have the equipment to resuscitate the child when she was delivered. (Wayne County Jail, Michigan)

U.S. District Court
CONTRACT SERVICES
EYE CARE
PRIVATE PROVIDER

Hinton v. Corrections Corp. of America, 624 F.Supp.2d 45 (D.D.C. 2009). An inmate, acting pro se and in forma pauperis, brought a § 1983 action against a private corporation that operated the treatment facility where the inmate was held in custody, alleging the facility failed to provide prescription eyeglasses in violation of the Eighth Amendment. The district court dismissed the case. The court held that the inmate's allegations were insufficient to state a § 1983 claim for an Eighth Amendment violation. According to the court, the corporation had no duty to provide eye glasses, eye care, or eye treatment, as the corporation's contract with the government did not stipulate that the corporation was to provide eye care, and a separate entity, other than the corporation, was under contract to provide eye care to inmates at the facility. (Central Treatment Facility, District of Columbia, operated by Corrections Corporation of America)

U.S. Appeals Court
MALPRACTICE
MEDICATION
MENTAL HEALTH
PRIVACY
SUICIDE

Hunter v. Amin, 583 F.3d 486 (7th Cir. 2009). The sister of a pretrial detainee who committed suicide in a county jail brought an action on her own behalf, and as the personal representative of the estate of her deceased brother, against a jail psychiatrist, county sheriff, and the county, asserting claims under § 1983, as well as claims of medical malpractice. The district court granted summary judgment in favor of the defendants and the sister appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the county jail's policy that prevented the pretrial detainee from speaking to the jail psychiatrist without a jail officer being present did not violate the detainee's constitutional rights, so as to serve as the basis for holding the county liable for the detainee's death under § 1983. According to the court, the pretrial detainee had a constitutional right to adequate mental health treatment, but there was no evidence suggesting that the detainee could not have received adequate mental health treatment in the presence of a corrections officer. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the jail psychiatrist committed medical malpractice by discontinuing the medication of the detainee who later committed suicide. (St. Clair County Jail, Illinois)

U.S. Appeals Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE
X-RAY

Jenkins v. County of Hennepin, Minn., 557 F.3d 628 (8th Cir. 2009). An inmate brought a § 1983 action against a county, the supervisor of a jail's nursing staff, and others alleging he received constitutionally inadequate medical care while incarcerated. The district court granted summary judgment in favor of the defendants and the inmate appealed. The appeals court affirmed. The court found that the supervisor of the jail's nursing staff did not act with deliberate indifference to the inmate's serious medical condition when she determined that the inmate should be sent for an x-ray in a day or two. The inmate was unable to open his jaw completely, blow his nose, or chew. According to the court, the decision reflected a medical judgment that the inmate's injury, though possibly serious, was not urgent and nothing indicated that a one-day delay was detrimental to the inmate's recovery. The court held that the inmate failed to establish that any of the jail's official policies reflected deliberate indifference to his serious medical needs, as required to support his § 1983 claim. (Hennepin County Adult Detention Center, Minnesota)

U.S. District Court
DELAY OF CARE
DENIAL

Jennings v. Hart, 602 F.Supp.2d 754 (W.D.Va. 2009). The administrator of an inmate's estate brought an action against a sheriff and several other current or former officers in a county sheriff's department, alleging claims under § 1983 and a state wrongful death act for one officer's alleged wrongful denial of medical care to an inmate in the county jail. The district court denied the officers' motion to dismiss on the grounds of sovereign immunity. The district court held that the officers lacked the discretion to keep the inmate at the jail and deny her the opportunity to be seen by a neurologist or other medical professional for ten days following referral by a nurse practitioner. The officers allegedly ignored the inmate's repeated requests for help and worsening physical condition, including severe headaches, dizziness, pressure in her head, loss of appetite, and fluid drainage in her ears. By the time the officers contacted outside medical professionals, the inmate was suffering from brain abscesses and a stroke which lead to her death. (Culpeper County Jail, Virginia)

<p>U.S. District Court POLICIES FAILURE TO PROVIDE CARE DELIBERATE INDIFFERENCE</p>	<p><i>Jones v. Pramstaller</i>, 678 F.Supp.2d 609 (W.D. Mich. 2009). The personal representative for a prisoner's estate brought a § 1983 action against prison employees and others, alleging that the defendants were deliberately indifferent to the prisoner's known serious medical need in violation of his Eighth Amendment right to be free of cruel and unusual punishment. The representative also brought state law claims for gross negligence and recklessness. Several employees moved for judgment on the pleadings, or, in the alternative, for summary judgment. The district court granted the motions in part and denied in part. The court held that the personal representative stated a claim against a prison physician by alleging that the physician should have realized the likely gravity and urgency of the prisoner's condition when he read a report that the prisoner had lost control of his muscles, could not walk, and had his eyes rolling back in his head involuntarily, but failed to order an immediate examination of the prisoner. The court also held that a claim was stated against the prison's coordinator of healthcare services by alleging that the coordinator failed to investigate whether the prisoner was under a physician's care after his symptoms and complaints indicating a grave and urgent medical condition were reported to her, and to act promptly once she learned that he was not. According to the court, the prison's warden and deputy director were entitled to rely on the judgment of the healthcare risk management coordinator, indicating that she had checked on the prisoner's well-being and assuring them that his medical needs were being addressed, and, thus, they were not liable under § 1983 for deliberate indifference to the prisoner's known serious medical need. The court ordered further discovery to determine whether the director and coordinator failed to put in place policies and procedures requiring that prisoner complaints, symptoms, or diagnoses of a certain type or severity be communicated to officials within a certain time period after the information became available. (Ernest Brooks Correctional Facility, Michigan)</p>
<p>U.S. District Court ADA-Americans with Disabilities Act DELIBERATE INDIFFERENCE EYE CARE FAILURE TO PROVIDE CARE</p>	<p><i>Kempainen v. Aransas County Detention Center</i>, 626 F.Supp.2d 672 (S.D.Tex. 2009). An inmate brought an action against a county, alleging that jail personnel were deliberately indifferent to his serious medical needs because they failed to provide him prescription eyeglasses in violation of the Eighth Amendment and the Americans with Disabilities Act (ADA). The county moved for summary judgment, and the inmate moved to amend his complaint. The district court denied both motions. The court held that summary judgment was precluded by genuine issues of material fact as to whether the county had a policy or practice of denying eye examinations and prescription eyeglasses to indigent inmates due to funding issues, and whether that policy amounted to deliberate indifference to the inmate's serious medical needs, in violation of Eighth Amendment. According to the court, the inmate was not substantially limited in the major life activity of seeing, and thus was not disabled within the meaning of the Americans with Disabilities Act (ADA), since the inmate's sight was correctable through prescription eyeglasses. (Aransas County Detention Center, Texas)</p>
<p>U.S. Appeals Court DELAY IN CARE DELIBERATE INDIFFERENCE WORK ASSIGNMENT</p>	<p><i>Knight v. Wiseman</i>, 590 F.3d 458 (7th Cir. 2009). A state prisoner brought a § 1983 action against correctional officers, alleging that they violated his Eighth and Fourteenth Amendment rights by requiring him to work despite a prior shoulder injury and delaying medical treatment following a subsequent re-injury. The district court granted summary judgment in favor of officers and the prisoner appealed. The appeals court affirmed. The court held that state correctional officers' conduct, in making the prisoner with a previous shoulder injury engage in work gang duty along a highway upon arrival to the work camp, did not constitute an Eighth Amendment deliberate indifference to any serious medical condition involving the prisoner's shoulder injury, absent evidence showing that the officers knew of his prior shoulder injury before he reinjured it. According to the court, even if the correctional officers knew of the prisoner's previous shoulder injury when they made him engage in work gang duties along the highway, such conduct did not constitute Eighth Amendment deliberate indifference to the prisoner's serious medical needs since the prisoner did not have any medical work restrictions on his record. The court noted that as soon as the prisoner informed the officers that he was so hurt that he could not do any work at all, the officers took the necessary steps to secure him the medical treatment to which he was entitled, which a doctor determined to be ibuprofen and bed rest. The court held that the period of time between when the prisoner re-injured his shoulder during work gang duty and when he received medical treatment did not constitute Eighth Amendment deliberate indifference on the part of the correctional officers supervising the work, notwithstanding an independent decision of a van driver to take a brief, mile-long detour on the trip back to the work camp. The court noted that the officers could not abandon the remainder of the work gang and the severity of the injury did not appear to call for the cancellation of the detail altogether, so they placed the prisoner on the next available transport back to the work camp, and two and a half hours, at most, passed between the injury and the treatment. (Vandalia Correctional Center, Illinois)</p>
<p>U.S. Appeals Court DELIBERATE INDIFFERENCE FAILURE TO PROVIDE CARE</p>	<p><i>Krout v. Goemmer</i>, 583 F.3d 557 (8th Cir. 2009). The administratrix of a pretrial detainee's estate brought a § 1983 action against police officers and correctional officers alleging excessive force and deprivation of medical care. The district court denied the defendants' motions for summary judgment and the defendants appealed. The appeals court dismissed in part, affirmed in part, and reversed in part. The appeals court held that the correctional officers' response to the pretrial detainee's inability to walk or feel his legs and difficulty breathing was not deliberately indifferent to his medical needs under the Due Process Clause of the Fourteenth Amendment. The court noted that the detainee was closely monitored and checked by an officer every 15 minutes, the detainee did not want medical attention, the detainee stated he was doing fine, emergency medical services (EMS) technicians examined the detainee's neck and neuromuscular function and determined there was nothing unusual, the detainee declined to go to a hospital at least three times, and officers repositioned the detainee's neck to ease his breathing. (Pope County Detention Center, Russellville Police Department, Arkansas)</p>
<p>U.S. District Court ADEQUACY OF CARE DELIBERATE INDIFFERENCE</p>	<p><i>Lewis v. Naku</i>, 650 F.Supp.2d 1090 (E.D.Cal. 2009). An inmate brought a § 1983 suit claiming that a prison physician was deliberately indifferent to his medical needs in violation of the Eighth Amendment's prohibition against cruel and unusual punishment. The physician moved for summary judgment. The district court granted the motion. The court held that the physician was not deliberately indifferent to the inmate's medical needs when he failed to properly diagnose the inmate's back injury. According to the court, the physician was at most, negli-</p>

gent in his diagnosis. The court noted that at one visit, the inmate did not inform the physician that he had back pain, and at a subsequent visit at which the inmate's back pain was at issue, the physician examined the inmate and determined that he was not in distress and that his lumbar spine was remarkable only for point tenderness at the mid back, and then diagnosed the inmate with osteoarthritis and wrote him a prescription for a pain killer and a muscle relaxant. (Salinas Valley State Prison, CSP–Solano, California)

U.S. District Court
CONTAGIOUS
DISEASES
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE
QUARANTINE

Malles v. Lehigh County, 639 F.Supp.2d 566 (E.D.Pa. 2009). A prisoner, who allegedly contracted Methicillin Resistant Staphylococcus Aureus (MRSA) while incarcerated at a county prison, brought an action under § 1983 against the county prison and the prison medical provider, alleging that the defendants unconstitutionally failed to provide him timely, adequate medical care and to protect him from getting infected, and that the provider was negligent under state law. The district court granted the defendant's motion for summary judgment. The court held that neither prison nurses' perfunctory examinations of the prisoner nor their failure to recognize the prisoner's MRSA for five days constituted deliberate indifference to the prisoner's serious medical needs. The court found that the failure of the county prison and/or the company which contracted with the county to provide medical services to inmates at the prison to fully execute their own plans to more aggressively prevent the spread of MRSA did not provide the basis for the prisoner's Eighth Amendment failure-to-protect claim in his § 1983 action. The court noted that the county and/or the company certainly could provide inmates with conditions that exceeded the relatively low bar of the Eighth Amendment, but they were not required to do that simply because they made plans to do so. The court held that the alleged failure of the county prison and the company which contracted with the county to provide medical services to inmates at the prison to quarantine inmates infected with MRSA, to properly clean and maintain shower facilities, to warn inmates about MRSA and educate them about prevention, and generally to take more precautions against the spread of MRSA did not deprive the prisoner who allegedly contracted MRSA at the prison of life's necessities according to contemporary standard of decency, as would constitute cruel and unusual punishment under Eighth Amendment. According to the court, the county prison and company which contracted with the county to provide medical services to inmates were not deliberately indifferent to the risk that the prisoner would contract MRSA in prison, as would violate the Eighth Amendment, where the prison and company engaged in some efforts to stop the spread of MRSA, even if they did not do everything they could or planned to do. (Lehigh County, Pennsylvania, and PrimeCare Medical, Inc.)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
PRETRIAL DETAINEE

Mann v. Taser Intern., Inc., 588 F.3d 1291 (11th Cir. 2009). The administrators of an estate, the husband, and guardians of the children of an arrestee who died following her arrest by sheriff's deputies and her admission to a county jail, brought an action under § 1983 and state law against the deputies and the manufacturer and distributor of the stun gun used by deputies during the arrest. The district court granted summary judgment to the defendants and the plaintiffs appealed. The appeals court affirmed. The appeals court held that the use of the stun gun constituted reasonable force where the arrestee's behavior was violent, aggressive and prolonged, demonstrating that she was clearly a danger to herself and others, and the deputy warned the arrestee to stop her behavior and discharged his stun gun only after she refused to comply with the his orders. According to the court, the plaintiffs failed to establish that the arrestee's death was caused by the use of a stun gun. The court noted that the plaintiffs' own medical expert testified that, while it would have been naive of him to say that the use of the stun gun did not contribute in some degree to the arrestee's death, he was unable to declare to a reasonable degree of medical certainty that the arrestee would have survived but for its use.

The court held that the sheriff's deputies were not deliberately indifferent to the arrestee's serious medical condition of "excited delirium" when they opted to take her to jail instead of to a hospital. Although one deputy had knowledge of the arrestee's past methamphetamine use, and the arrestee's mother and another person told a different deputy that the arrestee was sick and needed to go to the hospital, the deputies had no prior knowledge of the medical condition called "excited delirium" or its accompanying risk of death. The court noted that the arrestee's physical resistance and verbal communication suggested to the deputies that, although agitated, the arrestee was not in immediate medical danger, which was an opinion shared by emergency medical personnel called to the scene by the deputies. (Whitfield County Sheriff's Office, Georgia)

U.S. District Court
DELAY IN CARE
DENTAL CARE
SPECIAL DIETS

Marquez v. Quarterman, 652 F.Supp.2d 785 (E.D.Tex. 2009). A prisoner, proceeding pro se and in forma pauperis, brought a § 1983 action complaining about the prison system's refusal to provide him with dentures. The district held that the prisoner's allegations were sufficient to state an Eighth Amendment "deliberate indifference to medical needs" claim under § 1983, where the prisoner complained about an inability to chew food, stomach cramps, gas, and spastic colon, which resulted in a loss of weight of 13 pounds since his arrival at the prison system. According to the court, the prisoner did not state an Eighth Amendment deliberate indifference claim under § 1983 against the dental clinic, where the hygienist was not involved in the denial of dentures, but instead referred the prisoner to dentists for screening to see if he should receive dentures. The court noted that the hygienist was receptive to the prisoner's request and forwarded his name for consideration, as opposed to being deliberately indifferent by automatically denying his request for dentures. The court allowed the prisoner to proceed with his deliberate indifference claims against a food services officer, who purportedly denied him a soft food diet, despite the prescription for it. (Polunsky Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
INTAKE SCREENING

Martinez v. Beggs, 563 F.3d 1082 (10th Cir. 2009). A pretrial detainee's estate brought a § 1983 action against a sheriff, deputies, and board of county commissioners alleging violations of the Fourteenth Amendment for deliberate indifference to the detainee's serious medical needs after the detainee died while in police custody. The district court granted summary judgment in favor of the defendants on qualified immunity grounds. The plaintiff appealed. The appeals court affirmed. The court held that the arresting officers and custodial officers had no reason to suspect that the detainee, who was intoxicated, posed a risk of heart attack and death, as required to support a claim that the officers violated the Fourteenth Amendment by being deliberately indifferent to the detainee's serious medical needs. (Cleveland County Detention Center, Oklahoma)

U.S. Appeals Court
ADA-Americans with
Disabilities Act
DELIBERATE
INDIFFERENCE
INADEQUATE CARE

Mason v. Correctional Medical Services, Inc., 559 F.3d 880 (8th Cir. 2009). A state prisoner brought an action against the manager of his prison housing unit and the director of prison medical services, alleging that they violated his Eighth Amendment rights by failing to facilitate or render adequate medical treatment. The prisoner also brought an action against the Missouri Department of Corrections (MDOC), alleging violations of the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the director and the MDOC. Following a jury verdict in favor of the manager, the district court denied the prisoner's post-trial motion for judgment as a matter of law. The prisoner appealed. The appeals court affirmed. The court held that there was no admissible evidence that the director of prison medical services was informed of the prisoner's serious medical need arising from a blood clot in his left eye, and thus there was no basis for an Eighth Amendment claim against the director alleging deliberate indifference to this serious medical need. The court held that even if the defendant knew of the prisoner's serious medical need, he is not liable under the Eighth Amendment if he believed, albeit unsoundly, that the risk to which the facts gave rise was insubstantial or nonexistent. The court found that recreational activities, medical services, and educational and vocational programs at state prisons are "benefits" within the meaning of the ADA, and qualified individuals with a disability are entitled to meaningful access to such benefits. The court held that the blind prisoner was provided with meaningful access to prison benefits, including library benefits, which required him to read and write, as required by the ADA. According to the court, given the sufficiency of the accommodations provided, the prison was not required to provide alternative accommodations such as Braille materials or computer software that would read written materials aloud. The prisoner was provided with an inmate reader, who was available to read to the prisoner in person and to create audio tapes of written material at the prisoner's request. The prisoner was also granted access to audio materials by mail and to a tape recorder.

The court held that the prison did not deny the blind prisoner meaningful access to prison facility benefits, in violation of the ADA, when it did not provide the prisoner with a trained outside assistant capable of assisting him in his day-to-day activities. The prisoner was provided with an inmate assistant, and the court found that it would be unduly burdensome to require the prison to furnish the prisoner with a trained handler from outside the prison, given that such a person would not be trained in safety and security matters, and would require the escort of a prison guard at all times. The court found that the prison did not deprive the blind prisoner of meaningful access to the prison's exercise and recreation facilities, in violation of the ADA, where the prison provided the inmate an assistant who walked with the prisoner, and the prisoner chose not to engage in other activities, such as weightlifting. According to the court, the prisoner was not denied meaningful access to his prison housing unit's ADA compliance officer, in violation of the ADA. The prisoner knew the identity of the ADA compliance officer, the officer had answered requests that the prisoner submitted and had not refused the prisoner's requests for assistance, and the prisoner was not entitled to a general disability assessment. (Northeast Correctional Center, Missouri)

U.S. District Court
DELIBERATE
INDIFFERENCE
INADEQUATE CARE
MEDICATION
SPECIAL DIET
TREATMENT

Mastroianni v. Reilly, 602 F.Supp.2d 425 (E.D.N.Y. 2009). An inmate brought a § 1983 action against a sheriff and medical personnel at a county correctional center, alleging a violation of his Fifth, Eighth, and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants in part, and denied in part. The court held that the inmate's treatment by the jail's director of psychiatry and its mental health group did not pose any particular risk of harm or result in actual adverse consequences to the inmate, as would constitute deliberate indifference to serious medical needs in violation of the Eighth Amendment. The inmate was seen by someone in the mental health department, including the director, on a regular basis, and when he saw the director, he examined the inmate and discussed his problems. The inmate's medications were changed during the course of his treatment as a result of meeting with practitioners in the mental health department, and on one occasion the inmate complained to the director about his medication being discontinued and the director reacted appropriately and had it reinstated. The court found that jail medical staff were not deliberately indifferent to the inmate's medical needs for the treatment of kidney stones in violation of the Eighth Amendment. Although the inmate disagreed with the course of treatment he received, he received regular medical attention for the condition and underwent the necessary diagnostic tests. At the onset of symptoms, the inmate filled out a sick call form and was brought to the the medical department where he was given a urine test and instructed to drink water. He returned to medical approximately every three days during this episode and was prescribed pain medication. He was then given a sonogram test and passed the stone naturally without surgical intervention.

The court held that jail medical staff were not deliberately indifferent to the inmate's medical needs for treatment of a back injury sustained as a result of a fall down the dormitory stairs. Immediately following the accident, the inmate was taken to a hospital and sometime thereafter he was given a magnetic resonance imaging (MRI) as a result of continuing back pain. The inmate was diagnosed with herniated disks following the fall. After leaving jail, the treatment recommended by a specialist was stretching and exercise, which the inmate indicated was helpful to the condition. According to the court, jail staff was not, in violation of the Eighth Amendment, deliberately indifferent to a known or obvious risk that the inmate would develop diabetes from an allegedly high starch diet, and staff was not deliberately indifferent to the inmate's medical needs when he developed diabetes while incarcerated. Prior to his incarceration, the inmate's physicians had advised him to observe a low-salt, low-fat diet. The inmate did not recall his physicians advising him that starches and sugars could increase his blood sugar. Upon discovery of the inmate's elevated blood sugar levels, he was placed on a diabetic diet, received daily blood glucose tests, and was prescribed diabetic medications.

The court held that summary judgment was precluded by genuine issues of material fact as to whether the jail's medical staff disregarded a serious risk of harm to the inmate in response to his repeated complaints of worsening heart symptoms, and as to whether the jail staff's alleged failure to provide the inmate with prescribed doses of medication for his high blood pressure, heart condition, and diabetes up to 150 times during a two-year period caused the deterioration of the inmate's health or posed an unreasonable future risk of harm. (Nassau County Correctional Center, New York)

<p>U.S. Appeals Court DELIBERATE INDIFFERENCE FAILURE TO PROVIDE CARE MISDIAGNOSIS</p>	<p><i>McRaven v. Sanders</i>, 577 F.3d 974 (8th Cir. 2009). The guardian of an incapacitated detainee brought a § 1983 action on behalf of the detainee against a supervising detention facility officer, a practical nurse, and other detention facility officers, alleging deliberate indifference to the detainee's medical needs. The district court denied qualified immunity to the defendants and they appealed. The appeals court affirmed. The court held that the supervising officer could not have reasonably relied on the practical nurse's opinion that the detainee did not require hospitalization and, thus, was not entitled to qualified immunity. The court noted that the officer was aware of the cocktail of potent drugs the detainee had consumed and that circumstances strongly suggested he did not consume the drugs in prescribed dosages, the officer was aware the detainee exhibited symptoms of extreme intoxication, and the officer knew or reasonably should have known that the practical nurse based his assessment on the faulty assumption that the detainee was under the influence of alcohol, not drugs. The court held that summary judgment was precluded by genuine issues of material fact as to the deputies' and sergeant's subjective knowledge of the detainee's medical need, and the care that the nurse provided to the detainee. The court also found that a sergeant who was trained in cardiopulmonary resuscitation (CPR) and who made no attempt to resuscitate the detainee was not entitled to qualified immunity, since the sergeant was aware of the detainee's medical need and was capable of providing assistance, but failed to do so. (Garland County Adult Detention Center, Arkansas)</p>
<p>U.S. Appeals Court CONTRACT SERVICES</p>	<p><i>Medical Development Intern. v. California Dept. of Corrections and Rehabilitation</i>, 585 F.3d 1211 (9th Cir. 2009). A medical services provider for two California Department of Corrections and Rehabilitation (CDCR) prisons brought an action in state court against CDCR and the receiver appointed by the United States District Court for the Northern District of California to oversee the delivery of medical care to prisoners incarcerated by the CDCR. The provider sought damages for the receiver's refusal to pay for services it provided under contract with CDCR. After the case was removed to the district court, the court granted the receiver's motion to dismiss. The provider appealed, but the appeal was stayed to allow the provider to seek leave from the Northern District to sue the receiver. Subsequently, the Northern District denied the provider's request, and then denied the provider's motion for clarification. The provider appealed. The appeals court affirmed in part, vacated in part, and remanded to the United States District Court for the Eastern District of California. The appeals court held that the receiver was not immune in his official capacity from the claim of a medical services provider seeking damages for the receiver's refusal to pay for services it provided under contract with CDCR. The court noted that the receiver held "all powers vested by law in the Secretary of the CDCR as they relate[d] to the administration, control, management, operation, and financing of the California prison medical health care system," which necessarily included the power to control CDCR with regard to paying the provider. (California Department of Corrections and Rehabilitation)</p>
<p>U.S. District Court DELAY IN CARE DELIBERATE INDIFFERENCE NEGLIGENCE</p>	<p><i>Moore v. Thomas</i>, 653 F.Supp.2d 984 (N.D.Cal. 2009). A state prisoner filed a civil rights action in California state court against prison defendants, alleging various claims stemming from his incarceration. After removal to federal court, the defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the alleged force was applied by a correctional officer maliciously and sadistically to cause harm to the prisoner, or whether the officer was using the force necessary to subdue the prisoner, who was engaged in a mutual combat with a fellow inmate and refused to follow orders that he stop fighting. The court also found a fact issue as to whether the force used was excessive. The court held that a one month delay in the treatment of the prisoner's fractured jaw did not constitute deliberate indifference to the prisoner's serious medical needs in violation of the Eighth Amendment because the defendant physicians were not responsible for the delay in providing medical treatment. According to the court, even if the physicians had the opportunity to do so and knew that there was a substantial risk that the prisoner's condition would worsen without receiving treatment, the delay may have amounted to negligence, but was not enough to establish deliberate indifference and also did not cause substantial harm because the type of jaw fracture the prisoner had sustained was one that would heal normally over a relatively short period of time. (Pelican Bay State Prison, California Medical Facility)</p>
<p>U.S. District Court ADA-Americans with Disabilities Act DELIBERATE INDIFFERENCE</p>	<p><i>Nails v. Laplante</i>, 596 F.Supp.2d 475 (D.Conn. 2009). A state prisoner filed a civil rights action alleging that physicians had been deliberately indifferent to his medical needs and violated his rights under the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that the prisoner's disagreement over the treatment provided by the defendant physicians was insufficient to show that the physicians actually were aware of a substantial risk that the prisoner would suffer serious harm as the result of their actions or inactions, as required for a claim of deliberate indifference under Eighth Amendment, or a claim under Title II of ADA. The court noted that a private suit for money damages under Title II of ADA could have been maintained against the physicians in their official capacities only if the prisoner, as plaintiff, could have established that the Title II violation had been motivated by either discriminatory animus or ill will due to the prisoner's disability. (Osborn Correctional Institution, Connecticut)</p>
<p>U.S. Appeals Court DELIBERATE INDIFFERENCE RESTRAINTS</p>	<p><i>Nelson v. Correctional Medical Services</i>, 583 F.3d 522 (8th Cir. 2009). A state inmate brought a § 1983 action against the director of the Arkansas Department of Correction (ADC), and a corrections officer, alleging that while giving birth to her child she was forced to go through the final stages of labor with both legs shackled to her hospital bed in violation of the Eighth Amendment. The district court denied the defendants' motion for summary judgment. On rehearing en banc, the Court of Appeals affirmed in part, reversed in part and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the corrections officer's conduct in forcing the inmate to go through the final stages of labor with both legs shackled to her hospital bed constituted "deliberate indifference" in violation of the Eighth Amendment. The appeals court held that the inmate, in the final stages of labor, had a "clearly established" right not to be shackled absent clear and convincing evidence that she was a security or flight risk, and thus a government official would not be protected from § 1983 liability for violating that right based on qualified immunity. (Arkansas Department of Correction, McPherson Unit)</p>

- U.S. District Court
 DELIBERATE
 INDIFFERENCE
 FEMALE PRISONERS
 NEGLIGENCE
- Parlin v. Cumberland County*, 659 F.Supp.2d 201 (D.Me. 2009). A female former county jail inmate brought an action against jail officers, a county, and a sheriff, under § 1983 and Maine law, alleging deliberate indifference to her serious medical needs, negligence, and excessive force. The district court granted summary judgment for the defendants in part and denied in part. The court held that: (1) the officers were not deliberately indifferent to a serious medical need; (2) an officer who fell on the inmate did not use excessive force; (3) the county was not liable for deprivation of medical care; and (4) the county was not liable for failure to train. The court held that the officers were not entitled to absolute immunity from excessive force claims where a genuine issue of material fact existed as to whether the officers used excessive force in transferring the jail inmate between cells. According to the court, there was no evidence that jail officers were subjectively aware of the jail inmate's serious medical condition, where the inmate made no mention of her shoulder injury to the officers other than crying out "my shoulder" after she had fallen. (Cumberland County Jail, Maine)
- U.S. District Court
 ADA- Americans with
 Disabilities Act
 HANDICAP
 FACILITIES
 PRETRIAL DETAINEE
 RA- Rehabilitation Act
 WHEELCHAIR
- Phipps v. Sheriff of Cook County*, 681 F.Supp.2d 899 (N.D.Ill. 2009). Paraplegic and partially-paralyzed pretrial detainees currently and formerly housed at a county prison brought a class action against the county and county sheriff, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The parties cross-moved for summary judgment. The district court denied the motions for summary judgment. The court held that the sheriff waived the affirmative defense that the plaintiffs failed to exhaust their administrative remedies, as required by the Prison Litigation Reform Act (PLRA), where the sheriff raised that defense for the first time in his motion for summary judgment. The court held that paraplegic and partially-paralyzed pretrial detainees who were formerly housed at the county prison were not "prisoners confined in jail" for the purposes of the Prison Litigation Reform Act (PLRA), and thus their civil rights claims were not subject to, or barred by, PLRA. The court held that the pretrial detainees adequately alleged discrimination based on the prison's failure to provide wheelchair-accessible bathroom facilities. According to the court, the detainees met the PLRA physical injury required. In addition to alleging mental and emotional harm, the detainees complained of bed sores, infections, and injuries resulting from falling to the ground from their wheelchairs and toilets, which were undeniably physical injuries. According to the court, the county and county sheriff failed to establish that they were not recipients of federal funds, as would render them beyond the reach of the Rehabilitation Act's requirements. The court held that county prison facilities to which the paraplegic and partially-paralyzed pretrial detainees claimed to have been denied access--showers, toilets, and sinks--were "services" and "programs" within the meaning of Title II of ADA, which forbade discrimination against persons with disabilities in the area of public services, programs, and activities. The court found that summary judgment was precluded by genuine issues of material fact as to whether the paraplegic and partially-paralyzed pretrial detainees were intentionally discriminated against, and as to whether modifications to county prison facilities requested by the detainees were reasonable. The court found no evidence that the detainees were excluded from electronic monitoring or drug rehabilitation programs by the county department of corrections, as would support their Americans with Disabilities Act (ADA) claim. (Cook County Department of Corrections, Illinois)
- U.S. Appeals Court
 ADA-Americans with
 Disabilities Act
 INADEQUATE CARE
- Plata v. Schwarzenegger*, 560 F.3d 976 (9th Cir. 2009). In a class action brought on behalf of state prisoners, alleging that state officials were providing inadequate health care in violation of the Eighth Amendment and the Americans with Disabilities Act (ADA), the receiver appointed to oversee the provision of health care at state prisons moved for an order of contempt based on the state's failure to fund the receiver's capital projects. The district court ordered the state to fund the projects and to show cause why it should not be held in contempt. The state appealed, and alternatively filed a petition for a writ of mandamus. The appeals court dismissed the appeal and denied the writ of mandamus. According to the court, the state failed to prove that it would be damaged or prejudiced in a way not correctable on appeal, weighing against granting the state's petition for a writ of mandamus to prevent the district court from holding it in contempt based on its failure to fund the receiver's capital projects. (California Department of Corrections and Rehabilitation)
- U.S. District Court
 DELIBERATE
 INDIFFERENCE
 FAILURE TO PROVIDE
 CARE
 SUICIDE
- Powers-Bunce v. District of Columbia*, 594 F.Supp.2d 54 (D.D.C. 2009). The mother of a detainee who hung himself in a holding cell at a police precinct headquarters brought an action against the District of Columbia and individual police and Secret Service officers alleging constitutional violations and tort claims for her son's suicide. The detainee hung himself shortly after he was arrested by the Secret Service for cocaine possession and driving with a suspended license. The detainee had been placed in a jail cell away from other detainees around 2:00 a.m. No one checked on the detainee while he was alone in his cell between 2:30 a.m. and 4:16 a.m. He was found hanging from the bars of the jail cell by his tube socks tied in a knot around 4:16 a.m. The district court dismissed claims against the police officers and the Secret Service officers in their entirety. The court held that the arresting Secret Service officers were not the custodians of the detainee and therefore had no "special relationship" with the detainee giving rise to an affirmative duty to resuscitate the detainee, as would support the due process claims of the detainee's mother against the officers for deliberate indifference in their failure to resuscitate. According to the court, although the officers had taken temporary custody of the detainee and might have obtained a key to the cell, the District, not the officers, was the custodian which owed an affirmative duty of protection to the detainee. (Metro Police Dept., Third District Precinct Headquarters, District Columbia)
- U.S. District Court
 DELAY IN CARE
 DELIBERATE
 INDIFFERENCE
 INTAKE SCREENING
 PRETRIAL DETAINEE
 SUICIDE
- Powers-Bunce v. District of Columbia*, 659 F.Supp.2d 173 (D.D.C. 2009). A mother, for herself and as the personal representative of an arrestee who hanged himself in a holding cell at a police precinct shortly after he was arrested by the United States Secret Service, brought an action against the District of Columbia and several police and Secret Service officers. The District of Columbia moved for judgment on the pleadings, or in the alternative, for summary judgment. The district court granted the motion. The court held that: (1) the District of Columbia did not violate the Fifth Amendment right of the arrestee to be free from deliberate indifference to his substantial risk of committing suicide; (2) the District of Columbia could not be held liable for a police officers' failure to attempt to revive the arrestee; and (3) the District of Columbia could not be held liable for officers' inadequate training and supervision. The court noted that although a Secret Service officer suspected the arrestee was under the influence of cocaine after he had observed his jittery behavior and discovered a half-used bag of

cocaine on the arrestee during a search at the precinct, there was no evidence that cocaine-users were a greater suicide risk or that jittery behavior was a warning sign of impending suicide. According to the court, there was no evidence that police officers who accepted custody of the arrestee had subjective knowledge of his suicidal tendencies or actually drew the inference that the arrestee was a suicide risk, and there was no evidence that a Secret Service officer communicated either his suspicion of the arrestee's cocaine use or his observation of jittery behavior to either police officer. The court held that inadequate training and supervision of District of Columbia police officers, who failed to follow police department procedures when they did not attempt to revive the arrestee who had hanged himself in his cell, failed to expeditiously obtain assistance from Emergency Medical Services, and failed to maintain and operate the video surveillance system, did not reflect a deliberate or conscious choice by the District of Columbia, as required to hold the District of Columbia liable under § 1983 for the detainee's death. (District of Columbia Metropolitan Police Department, Third District Precinct)

U.S. Appeals Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE
DENIAL

Rodriguez v. Plymouth Ambulance Service, 577 F.3d 816 (7th Cir. 2009). A prisoner, proceeding in forma pauperis, brought a § 1983 action against medical providers alleging that, while acting under the color of state law, they violated the Eighth Amendment's prohibition against cruel and unusual punishment by exhibiting deliberate indifference to his serious medical needs. The district court dismissed the case and the prisoner appealed. The appeals court affirmed in part, vacated and remanded in part. The court held that the prisoner's allegation that after an emergency medical technician-paramedic (EMT) inserted an intravenous line (IV) in his right arm, EMTs ignored his complaints of pain, would be sufficient to state an Eighth Amendment claim of deliberate indifference against the EMTs under § 1983, if the prisoner could establish that the EMTs were state actors. The court found that the ambulance service company was not liable to the prisoner under § 1983 for the alleged actions of its employees in being deliberately indifferent to the prisoner's serious medical needs, absent allegations of wrongdoing on the part of the company. According to the court, the hospital that affirmatively declined to assume the state's responsibility to provide medical care to the prisoner did not operate under the color of state law in providing care to the prisoner, and thus the hospital could not be liable under § 1983 for exhibiting deliberate indifference to prisoner's serious medical needs. The court held that the prisoner sufficiently alleged a state action against the hospital, as required to state a claim for deliberate indifference against the hospital under § 1983, by alleging he was placed in a prison ward of the hospital, an allegation suggesting the hospital had an ongoing relationship with the prison authorities for the care of prisoner-patients in need of hospitalization, and that his stay at the facility was not simply for emergency medical treatment, but rather involved a stay of several days. (St. Agnes Hospital, Waupun Memorial Hospital, Kettle Moraine Correctional Institution, Wisconsin)

U.S. Appeals Court
INFORMED CONSENT
MALPRACTICE
PRIVACY

Sanchez v. Pereira-Castillo, 590 F.3d 31 (1st Cir. 2009). A state prisoner brought a § 1983 claims against correctional officials, a prison warden, a prison's correctional officer, and a physician, and medical battery and medical malpractice claims against the physician, relating to strip searches, x-rays, rectal examinations, and exploratory surgery to detect and recover suspected contraband. The district court dismissed the suit and the prisoner appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that the digital rectal examinations were not unreasonable where the procedures were the direct culmination of a series of searches that began when a metal detector used to scan the prisoner's person gave a positive reading, the prisoner had two normal bowel movements before the searches were conducted, a physician examined him upon arrival at the hospital and found him to be asymptomatic, and several lab tests were found to be "within normal limits." The court noted that the searches were carried out by medical professionals in the relatively private, sanitary environment of a hospital, upon suspicion that the prisoner had contraband, namely a cell phone, in his rectum, and with no abusive or humiliating conduct on the part of the law enforcement officers or the doctors.

But the court found that the exploratory surgery of the abdomen of the prisoner was unreasonable where the surgery required total anesthesia, surgical invasion of the abdominal cavity, and two days of recovery in the hospital. The court noted that the surgery was conducted despite several indications of the absence of contraband, including the results of two monitored bowel movements and two rectal examinations. According to the court, an x-ray, as a much less invasive procedure, could have confirmed the results. The court held that the prisoner's signed consent form for the exploratory surgery of his abdomen did not preclude the prisoner's claim that he was deprived of his Fourth Amendment rights, where the prisoner was pressured and intimidated into signing the consent, had been under constant surveillance for more than a day prior to the surgery, had been forced to submit to searches, x-rays, and invasive rectal examinations prior to his signing the consent form, and had twice been forced to excrete on a floor in the presence of prison personnel. The court held that the prisoner's allegations against correctional officers were sufficient to allege that the officers caused the hospital's forced exploratory surgery on the prisoner, as required to state a § 1983 claim against the officers. The prisoner alleged that the officers were directly involved in all phases of the search for contraband and in the ultimate decision to transport the prisoner to the hospital for a rectal examination or a medical procedure to remove the foreign object purportedly lodged in the prisoner's rectum. According to the court, the prisoner's allegation that correctional officers exerted pressure on hospital physicians that examined the prisoner was sufficient to allege the state compulsion necessary to state a claim of § 1983 liability against a surgeon.

The court found that correctional officers' conduct, in forcing the prisoner to undergo an invasive abdominal surgery, was a violation of a clearly established constitutional right, such that the officers were not entitled to qualified immunity from § 1983 liability. (Bayamón 501 Unit of the Commonwealth of Puerto Rico Administration of Corrections, and Río Piedras Medical Center)

U.S. District Court
ADA- Americans with
Disabilities Act
DELIBERATE
INDIFFERENCE

Schaub v. County of Olmsted, 656 F.Supp.2d 990 (D.Minn. 2009). An inmate at a county detention center brought an action against a county, detention center, center director, probation officer, and several unnamed defendants, alleging that he was injured as result of failure to accommodate his medical condition of paraplegia. The district court denied the defendants' motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether members of county detention center staff were deliberately indifferent to the inmate's serious medical needs arising from paraplegia; (2) whether failure to oversee nursing staff at the detention center was the "moving force" behind the delay in treating the inmate's

wounds and pressure sores on his return to the county detention center; (3) whether the county detention center's unwritten policy barring medical care to work-release inmates was the "moving force" behind the inmate's injuries during his first two months in the center; and (4) whether the county detention center's modifications in permitting the inmate to attend to his hygiene at home, or rely on nursing staff to bathe him, were reasonable, and whether the inmate was excluded from appropriate medical care because of his disability. (Olmsted County Adult Detention Center, Minnesota)

U.S. Appeals Court
INADEQUATE CARE
MEDICATION

Shepherd v. Dallas County, 591 F.3d 445 (5th Cir. 2009). A pretrial detainee sued a county under § 1983, alleging that conditions of confinement, specifically the jail's failure to administer pills he needed to ameliorate chronic hypertension, violated his due process right to medical care while in custody. The district court, entered judgment on jury verdict for the detainee. The county appealed. The appeals court affirmed, finding that the action was an attack on conditions of confinement rather than on episodic acts or omissions of particular jail officials. The court noted that the jail medical director testified that the jail's medical services were inadequate, and a clinical pharmacist testified that the administration of medication at the jail was so inadequate that half or more of the inmates did not receive their prescription medications. The court held that a Department of Justice (DOJ) report concerning jail conditions was not excludable as being more prejudicial than probative, inasmuch as the report was relevant in that it provided strong support for the claim that medical care at the jail was constitutionally inadequate, and, although findings in the report were prejudicial to the county's cause, they were probative as well. (Dallas County Jail, Texas)

U.S. Appeals Court
ADA- Americans with
Disabilities Act
DELIBERATE
INDIFFERENCE
RA- Rehabilitation Act

Shomo v. City of New York, 579 F.3d 176 (2nd Cir. 2009). A pro se prisoner brought a § 1983 action, alleging deliberate indifference to a serious medical condition in violation of the Eighth Amendment, and violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court dismissed the ADA and Rehabilitation Act claims, and granted summary judgment in favor of the defendants on the Eighth Amendment claims. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the prisoner's allegations that he was disabled based on the physical limitations in the use of his arms, and that the defendants denied him access to infirmary-style housing and other prison services on the basis of his disability, were sufficient to suggest that the prisoner could have viable claims against prison officials under the ADA and the Rehabilitation Act, and thus, the pro se prisoner was entitled leave to re-plead his dismissed complaint. (New York City Department of Corrections)

U.S. District Court
CONTRACT SERVICES
INADEQUATE CARE
PROSTHESES

Silva v. Clarke, 603 F.Supp.2d 248 (D.Mass. 2009). An inmate brought a civil rights suit against the Commissioner of the Massachusetts Department of Correction (DOC), a subcontracted medical provider and an employee of the provider, claiming that his Eighth Amendment rights were being violated due to inadequate medical care. The inmate moved for a preliminary injunction and a defendant moved to dismiss. The district court dismissed the action, finding that the inmate's assertion that he was not being provided with medically-required footwear failed to state a claim. The court noted that the inmate did not allege a complete denial of medical treatment, but rather that prison officials refused to follow the recommendation of one of the physicians who examined him, and he was examined by several doctors and given custom made orthotics. (Souza-Baranowski Correctional Facility, Massachusetts)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Sledge v. Kooi, 564 F.3d 105 (2nd Cir. 2009). A state inmate brought a § 1983 action alleging violation of his Eighth Amendment rights, against a physician at a state correctional facility. The inmate alleged deliberate indifference in refusing to provide him with proper medical treatment for his alleged eczema, back pain, stomach disorders, allergies, and asthma. The district court granted summary judgment for the physician and the inmate appealed. The appeals court affirmed. The court held that the inmate's alleged medical conditions did not constitute a serious medical need. (Auburn Correctional Facility, New York)

U.S. District Court
INADEQUATE CARE
POLICIES

Smith v. District of Columbia, 674 F.Supp.2d 209 (D.D.C. 2009). The parent of a deceased inmate brought an action against the District of Columbia, stemming from the inmate's death following incarceration. Prior to being incarcerated, the inmate was partially paralyzed and confined to a wheelchair as a result of gunshot wounds. The parent alleged that while confined, these injuries prompted the inmate to make repeated "requests for medical care treatment, and attention including, but not limited to, providing medication when ordered by his physicians, providing prompt and adequate dressing changes to prevent the formation and growth of decubitus sores, [and] providing sanitary cell conditions." The parent alleged that the District failed to "provide a healthcare system that included prompt, proper, adequate, and reasonable medical care and treatment to all persons incarcerated under their care, custody, and supervision." The inmate died eight months after his release from the facility. The district court granted the District's motion for dismissal. The court held that the parent failed to assert a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. (Correctional Treatment Facility, District of Columbia)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE

Smith v. Smith, 589 F.3d 736 (4th Cir. 2009). An inmate brought a § 1983 action against a prison nurse alleging she exhibited deliberate indifference to his serious medical need in violation of the Eighth Amendment. The district court dismissed the complaint. The inmate appealed. The appeals court reversed and remanded, finding that the inmate stated a claim for deliberate indifference by alleging that he was prescribed treatment by a doctor and that when he sought to receive that treatment, he was unable to do so because the prison nurse ripped up the order to report slip (OTR), which authorized his treatment. (Evans Correctional Institute, South Carolina)

U.S. Appeals Court
INTAKE SCREENING
PRETRIAL DETAINEE

Spears v. Ruth, 589 F.3d 249 (6th Cir. 2009). The estate of a deceased detainee brought a § 1983 action against a police officer and a city, alleging deliberate indifference to the detainee's serious illness or injury while in the officer's care. The district court denied summary judgment and the officer and city brought an appeal. The appeals court reversed and remanded. The court held that the pretrial detainee's condition and need for medical

attention was not so obvious to the police officer as to establish the existence of a serious medical need, for the purposes of a claim of deliberate indifference in violation of due process. The officer allegedly failed to inform emergency medical technicians (EMT) on the scene and at the jail that the detainee, who later died from respiratory and cardiac failure resulting from cocaine use, had admitted that he smoked crack cocaine. According to the court, the EMTs and jail nurse, who presumably had a greater facility than the average layperson to recognize an individual's medical need, observed the detainee's behavior and administered tests based on those observations, and both the EMTs and the jail officers concluded that the detainee did not need to be transported to the hospital. After admission to the jail, the detainee continued to hallucinate and officers placed him in a restraint chair "for his own safety," tasing him to "relax his muscles." The detainee remained restrained for approximately three and a half hours, during which time he was calm but continued to hallucinate. Shortly after the officers released him from the chair, the detainee began to shake and spit up blood and then became unconscious. He was taken to a hospital where he was diagnosed with respiratory and cardiac failure and multi-organ failure resulting from cocaine use. He lapsed into a coma and died eleven months later. (City of Cleveland, Bradley County Justice Center, Tennessee)

U.S. Appeals Court
 DELIBERATE
 INDIFFERENCE
 INTAKE SCREENING
 PRETRIAL DETAINEE

Tamez v. Manthey, 589 F.3d 764 (5th Cir. 2009). Survivors of a pretrial detainee, who died while in custody from acute cocaine intoxication when the bag of cocaine that he swallowed before his arrest burst in his intestines, brought a § 1983 action, alleging that police officers and prison officials were deliberately indifferent to the detainee's need for medical care. The district court granted the summary judgment in favor of the defendants. The plaintiffs appealed. The appeals court affirmed. The court held that police detectives were not deliberately indifferent to the medical needs of the detainee. The court noted that the detectives' knowledge that the detainee had pupils that were maximally dilated and that he needed medical clearance did not show that the detectives were aware of an unjustifiably high risk to the detainee's health, or that the risk to the detainee's health was so obvious that they should have inferred such a risk. According to the court, jailers were not deliberately indifferent to the medical needs of the detainee. According to the court, the fact that the jailers were told the detainee needed medical clearance and that he had dilated pupils did not show that the jailers knew or should have known of a substantial risk to the detainee's health. (Harlingen City Jail, Cameron County Carrizales-Rucker Detention Center, Texas)

U.S. Appeals Court
 DELIBERATE
 INDIFFERENCE

Teague v. Mayo, 553 F.3d 1068 (7th Cir. 2009). A prisoner brought a § 1983 action against corrections officers. The district court granted summary judgment for the officers on the claim of deliberate indifference to the prisoner's serious medical needs, and, following a jury trial, entered judgment for the officers on an excessive force claim. The prisoner appealed. The appeals court affirmed. The court held that while the prisoner was in segregation, two corrections officers could not have been deliberately indifferent to his serious medical needs relating to his degenerative joint disease and other back problems, in violation of Eighth Amendment, where the officers were not assigned to the segregation unit at the time. (Menard Correctional Institution, Illinois)

U.S. District Court
 ADA-Americans with
 Disabilities Act
 DELAY IN CARE
 HANDICAP
 PROSTHESES
 RA-Rehabilitation Act

Thomas v. Pennsylvania Dept. of Corr., 615 F.Supp.2d 411 (W.D.Pa. 2009). A state prison inmate who was an above-the-knee amputee brought a § 1983 action against the Pennsylvania Department of Corrections and individual corrections officials and medical personnel, alleging that denial of his request for a handicap cell, and the delay in replacing and inadequate replacement of his prosthesis, violated the Eighth Amendment, Rehabilitation Act, Americans with Disabilities Act (ADA), and state law. The district court granted summary judgment for the defendants. The court found that there was no evidence that state corrections officials were aware that the amputee prisoner was at risk of assault at the hands of fellow inmates due to the denial of his request for a handicap cell, as required to support the prisoner's Eighth Amendment failure-to-protect claim against officials. Except for a single reference to an altercation with a fellow prisoner, the prisoner's requests for a handicap cell included no indication that the prisoner was concerned about being attacked, only that he was having difficulty moving about in a standard cell. The court held that the officials' and medical personnel's delay in replacing the amputee prisoner's prosthesis did not amount to deliberate indifference to the prisoner's medical needs in violation of the Eighth Amendment, even if the replacement process took longer than it should have. The court noted that the prisoner had been without the use of his former prosthesis for approximately two years before coming under the protection of the state corrections system, during which time he ambulated well on crutches, and once in the system, efforts were made to repair his old prosthesis, and failing that, to provide him with a new prosthesis.

According to the court, the state medical personnel's denial of the amputee prisoner's requests for a handicap cell did not amount to deliberate indifference to the prisoner's medical needs in violation of the Eighth Amendment. Each request for a handicap cell was reviewed, but a determination was made that since the prisoner ambulated well with crutches and subsequently was fitted with a prosthesis, a handicap cell was medically unnecessary. The court found that the prisoner's disagreement with that determination did not render it deliberate indifference. The court held that state corrections officials and medical personnel provided the prisoner with reasonable accommodation for his disability, in the form of a non-hydraulic replacement prosthetic following the loss of his hydraulic prosthetic, precluding recovery in the prisoner's ADA Title II failure-to-accommodate claim. (State Correctional Institution at Camp Hill, State Correctional Institution at Houtzdale, Pennsylvania)

U.S. District Court
 DELAY IN CARE
 DELIBERATE
 INDIFFERENCE
 FAILURE TO PROVIDE
 CARE
 INTERFERENCE

Tommassello v. Stine, 642 F.Supp.2d 910 (D.Minn. 2009). A federal prisoner, who suffered from recurrent skin cancers, brought an action against prison officials, alleging a violation of his Eighth Amendment right to be free from cruel and unusual punishment by delaying needed surgeries and by interfering with post-surgical wound care. The defendants moved for dismissal or for summary judgment on the basis of qualified immunity. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether prison officers, one of whom told federal prisoner "I told you I'd teach you a lesson" and the other who said "I don't care" in response to the prisoner's complaint about his serious infection and request for medical care for the serious infection, were deliberately indifferent to the prisoner's infection. The court also found a fact issue as to whether a prison doctor acted with deliberate indifference toward the prisoner's serious infection when he visited the prisoner twice in segregation and saw that his back was

seeping pus and blood yet ignored his condition and did nothing to help him. According to the court, summary judgment was precluded by a genuine issue of material fact as to whether the federal prison camp's clinical director acted with deliberate indifference as to his role in the prisoner's delay in having cancer lesions, caused by his Gorlin syndrome, treated by a micrographic surgeon. (Federal Prison Camp in Duluth, Minnesota, Federal Medical Center, in Rochester, Minnesota)

U.S. District Court
DELIBERATE
INDIFFERENCE
INADEQUATE CARE

Vann v. Vandenbrook, 596 F.Supp.2d 1238 (D.Wis. 2009). A prisoner brought a § 1983 action against a crisis intervention worker, registered nurse, and several corrections officers, alleging deliberate indifference to a serious medical need in violation of the Eighth Amendment. The prisoner moved to proceed in forma pauperis and for the appointment of counsel. The district court granted the motion to proceed in part and denied in part, and denied the motion for appointment of counsel. The court held that the prisoner stated a § 1983 claim against the intervention worker and the unknown officer where they were aware of the prisoner's suicide risk when the worker refused to place the prisoner in an observation program and the officer provided the prisoner with a razor and a nail clipper and left the prisoner unattended. The court found that the registered nurse's failure to provide treatment to the prisoner constituted deliberate indifference to the prisoner's serious medical needs, as required for the prisoner to state a § 1983 claim for violation of the Eighth Amendment, where the prisoner had sustained 133 self-inflicted wounds that were bleeding and the nurse merely inspected his wounds. According to the court, the corrections officers who performed an emergency cell extraction of the prisoner following his suicide attempt, transported him to a day room where the prison's registered nurse performed an inspection of the prisoner's wounds, thus precluding the prisoner's § 1983 claim against the officer for deliberate indifference to his serious medical needs in violation of Eighth Amendment. The court held that the prisoner's proffered reasons for appointment of counsel—that the case was legally and factually complex, that the claim required the testimony of medical experts, and that he lacked legal training to present the case, especially in front of a jury, were universal among pro se litigants and thus constituted insufficient grounds for the appointment of counsel. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
DENIAL
MEDICATION

Vaughn v. Gray, 557 F.3d 904 (8th Cir. 2009). A detainee's sister brought a § 1983 action against several officers and county employees alleging they were deliberately indifferent to the detainee's serious medical needs which resulted in his death. The district court denied the defendants' motion for summary judgment based on qualified immunity and the defendants appealed. The appeals court affirmed. The court held that a genuine issue of material fact existed as to whether jail officials deliberately disregarded the medical needs and condition of the detainee. The detainee was charged with first-degree sexual assault. During the jail's intake procedure, he completed a medical intake form, indicating that he had a history of mental illness, headaches, epilepsy/seizures, ulcers, and kidney/bladder problems, but indicating that he did not have a history of heart problems or high or low blood pressure. Although the detainee had no medications with him upon his arrival at the jail, his mother later brought his medications, including an anti-depressant. He received his medication for several days until the prescription ran out. He missed several doses before a new prescription arrived. During the time he was without medication, his cellmate told jail employees that the detainee had been ingesting shampoo and engaging in other odd behavior. The detainee was moved to an isolation cell to be monitored on an hourly basis. He was observed vomiting and asked to see a nurse but he was not provided access. He was later found dead in his cell. An autopsy determined that he died of natural causes: arteriosclerotic cardiovascular disease, causing a heart attack that resulted in his death. (Greene County Jail, Arkansas)

U.S. District Court
COSTS
WORK ASSIGNMENT

Vuncannon v. U.S., 650 F.Supp.2d 577 (N.D.Miss. 2009). A parolee brought an action against a county and others, alleging claims under § 1983 arising out of injuries he sustained in an accident while operating a forklift as part of a work release project. The court held that summary judgment for the county on the hospital's claim was precluded by a genuine issues of material fact as to (1) whether the parolee was a county prisoner, indigent, and unable to pay; (2) whether the parolee was in need of hospitalization for the entire length of time; and (3) whether the hospital's charges were reasonable and customary. (Shelby County Health Care Corporation, Tennessee, and Tippah County, Mississippi)

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
MALPRACTICE
MEDICATION
MENTAL HEALTH
NEGLIGENCE

Wade v. Castillo, 658 F.Supp.2d 906 (W.D.Wis. 2009). A state prisoner brought a § 1983 action against prison psychiatrists, alleging that the psychiatrists committed medical malpractice and exhibited deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The psychiatrists moved for summary judgment. The district court granted the motion in part, and denied in part. The court held that summary judgment was precluded by genuine issues of material fact existed as to whether the prisoner, who was diagnosed with a psychotic disorder, had a serious medical need at the time the prison psychiatrist discontinued the prisoner's medications, and whether the psychiatrist was aware that he was exposing the prisoner to a substantial risk of serious harm by taking him off the medications. The court held that the refusal of the prisoner's treating psychiatrist to prescribe psychotropic medication did not amount to deliberate indifference to the prisoner's serious medical need, as would violate the Eighth Amendment, where the psychiatrist did not prescribe medication because he was uncertain whether the prisoner had a psychotic disorder. The court found that summary judgment was precluded by genuine issues of material fact as to whether the prisoner's treating psychiatrist met the requisite standard of care for psychiatrists when he refused to prescribe psychiatric medication to the prisoner and in providing psychiatric care to the prisoner, and as to whether the psychiatrist's alleged negligence was a substantial factor in causing the prisoner's harm. (Green Bay Correctional Institution, Dodge Correctional Institution and Racine Correctional Institution, Wisconsin)

U.S. District Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE

Williams v. Correctional Medical Services, 629 F.Supp.2d 360 (D.Del. 2009). An inmate brought a pro se § 1983 action against a corporation that provided medical services to correctional facilities and the correctional facility's medical authority, commissioner and warden, among others, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The district court held that the correctional facility's medical authority's mistaken belief that the inmate suffering from a suspected hernia was transferred to a

different facility, allegedly resulting in a delay in his medical care, was not deliberate indifference to his serious medical needs in violation of the Eighth Amendment, absent evidence that the authority ignored the inmate's condition. But the court found that summary judgment was precluded by a genuine issue of material fact as to whether the corporation that provided medical services to correctional facilities was deliberately indifferent to the inmate's serious medical needs when the provider delayed treatment of the inmate's suspected hernia for approximately two years after a physician first recommended treatment. (James T. Vaughn Correctional Center, Delaware)

2010

U.S. District Court
MENTAL HEALTH

Antonetti v. Skolnik, 748 F.Supp.2d 1201 (D.Nev. 2010). A prisoner, proceeding pro se, brought a § 1983 action against various prison officials, alleging various constitutional claims, including violations of the First, Fifth, Sixth, Eighth and Fourteenth Amendments. The district court dismissed in part. The court held that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim that prison officials violated the Eighth Amendment by depriving him of needed medical care. The prisoner alleged that he was housed in segregation/isolation, leading to a mental health breakdown, and: (1) that he was seen by mental health professionals eight times over a five year period instead of every 90 days as required by administrative regulations; (2) that mental health professionals recommended he pursue art and music for his mental health but that prison officials denied him the materials; (3) and that the officials' actions resulted in the need to take anti-psychotic and anti-depression medications due to suffering from bouts of aggression, extreme depression, voices, paranoia, hallucinations, emotional breakdowns and distress, unreasonable fear, and systematic dehumanization. The court found that the prisoner's allegations that he was subjected to a policy of a minimum of five hours of outside exercise per week but that administrative regulations provided for a minimum of seven hours and controlling consent decrees required eight hours, were sufficient to state a colorable § 1983 claim under the Eighth Amendment. The court held that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim for violations of his Fourth Amendment right to be free of unlawful searches and Eighth Amendment right to be free of cruel and unusual punishment. The prisoner alleged that whenever he was moved from his cell to any other location he was made to stand in a brightly lit shower in full view of female employees, made to strip naked, place his bare feet on a filthy floor covered in insects and scum, spread his buttocks, lift his penis, then put his fingers in his mouth without any opportunity to wash his hands, and that the process was unnecessary because inmates were in full restraints, escorted and solitary at all times. The court found that the prisoner's allegations were sufficient to state a colorable § 1983 Eighth Amendment claim for violation of his right to be free of cruel and unusual punishment where the prisoner alleged the exercise provided to him was to stand in a completely enclosed cage alone, in extreme heat or cold without water, shade, exercise equipment or urinals, and that as a result he suffered sunburns, cracked and bleeding lips and a lack of desire to exercise, resulting in a loss of physical and mental health. (High Desert State Prison, Nevada)

U.S. District Court
DELIBERATE
INDIFFERENCE
POLICIES
TRAINING

Beatty v. Davidson, 713 F.Supp.2d 167 (W.D.N.Y. 2010). A former pretrial detainee brought a § 1983 action against a county, jail officials, and a nurse, alleging that the defendants denied him adequate medical care while he was a pretrial detainee, in violation of his Fourteenth Amendment rights. The defendants moved for summary judgment. The district court denied the motion. The court held that the detainee's diabetic condition was a serious medical condition and that a genuine issue of material fact existed as to whether the nurse was deliberately indifferent to the detainee's diabetic condition, precluding summary judgment for the nurse. The court held that summary judgment was precluded by a genuine issue of material fact as to whether jail officials were grossly negligent in supervising subordinates who allegedly violated the former pretrial detainee's constitutional rights. According to the court, a genuine issue of material fact existed as to whether the county lacked a system at its jail for managing chronically ill inmates and failed to train and properly supervise its staff, precluding summary judgment for the county on the former pretrial detainee's municipal liability claim under § 1983. (Erie County Holding Center, Pennsylvania)

U.S. Appeals Court
DENTAL CARE
DELIBERATE
INDIFFERENCE

Berry v. Peterman, 604 F.3d 435 (7th Cir. 2010). A state prisoner brought a pro se § 1983 action against a prison nurse, doctor, and jail administrator, alleging deliberate indifference to his tooth pain and decay, which ultimately required a root canal. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner who suffered from tooth decay and serious pain, which ultimately required a root canal, had an objectively serious medical condition, as required to support the prisoner's § 1983 Eighth Amendment deliberate indifference action, based on the alleged failure of a prison nurse and doctor to refer him to a dentist. The court found that the jail administrator did not act with deliberate indifference to the state prisoner's serious medical condition of tooth pain and decay, by failing to refer the prisoner to a dentist for treatment, and thus, the administrator was not liable, where the administrator consulted with the prison medical staff, forwarded the prisoner's concerns to the state Department of Corrections (DOC), and responded timely to the prisoner's complaints. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison doctor acted with deliberate indifference to the state prisoner's serious medical condition of tooth decay and severe pain, by failing to refer the prisoner to a dentist for treatment, despite the prisoner's persistent complaints.

The court found that summary judgment was precluded by a genuine issue of material fact as to whether a prison nurse acted with deliberate indifference to the state prisoner's serious medical condition by failing to recommend a dental visit or deferring to the prison doctor's determination that the prisoner could wait to see the dentist, despite prisoner's persistent complaints. (Waushara County Jail, Wisconsin)

U.S. District Court
FEMALE PRISONERS
RESTRAINTS

Brawley v. Washington, 712 F.Supp.2d 1208 (W.D.Wash. 2010). A female former inmate brought a § 1983 action against the Washington State Department of Corrections and various officials, seeking relief from violations of her constitutional rights that she alleged occurred during the birth of her first child. The Department filed a motion for summary judgment, which the district court granted in part and denied in part. The court held that

the female inmate, who was shackled to a hospital bed while giving birth, showed, from an objective standpoint, that she had a serious medical need and was exposed to an unnecessary risk of harm for the purposes of her § 1983 Eighth Amendment claim. The court held that summary judgment was precluded by material issues of fact as to whether officers were deliberately indifferent to the risks of harm to the inmate and her serious medical needs when they shackled her to a hospital bed. According to the court, the inmate showed that shackling inmates while they were in labor was clearly established as a violation of the Eighth Amendment's prohibition against cruel and unusual punishment, thereby barring the Department of Corrections' qualified immunity defense. (Washington State Corrections Center for Women)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE
POLICIES
STAFF

Brown v. Callahan, 623 F.3d 249 (5th Cir. 2010). The estate of a pretrial detainee, who died of a gastrointestinal hemorrhage while in pretrial custody, brought a § 1983 action against a county sheriff in his individual and official capacity for failure to train and supervise the jail's medical employees and for maintaining an unconstitutional policy of deliberate indifference to serious medical needs. The district court denied the sheriff's motion for summary judgment based on qualified immunity. The sheriff appealed. The appeals court reversed. The court held that the county sheriff was not deliberately indifferent to a known or obvious risk of inadequate medical care toward pretrial detainees arising from the supervising jail physician's unpleasant attitude or practice of intimidation toward jail nurses, which allegedly discouraged nurses from calling the physician or sending patients to the emergency room. The court noted that the detainee's gastrointestinal hemorrhage was neither referred for treatment by a hospital emergency room nor treated by the jail's supervising physician. According to the court, despite the physician's bad temper, despite one nurse's expressed fear of an "ass-chewing" from the physician had she sent the detainee to the emergency room, and even though the nurses and physician had disagreed in two instances on whether inmates should be sent to an emergency room, the two nurses had previously decided to send inmates to the emergency room over the physician's objections. The sheriff had reportedly counseled the physician and ordered the nurses to act appropriately notwithstanding the physician's distemper, and there was no prior instance in which the sheriff's instruction to the nurses was not followed. (Wichita County Jail, Texas)

U.S. District Court
DELIBERATE
INDIFFERENCE
FEMALE PRISONERS
NEGLIGENCE

Castro v. Melchor, 760 F.Supp.2d 970(D.Hawai'i 2010). A female pretrial detainee brought a § 1983 action against correctional facility officials and medical staff, alleging the defendants were deliberately indifferent to his serious medical needs resulting in the delivery of a stillborn child. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the correctional facility's medical staff subjectively knew the pretrial detainee's complaints of vaginal bleeding presented a serious medical need. The court held that the staff's failure to ensure the detainee received an ultrasound and consultation was no more than gross negligence, and the medical staff did not deny, delay, or intentionally interfere with the pretrial detainee's medical treatment. According to the court, summary judgment was precluded by genuine issues of material fact as to whether the correctional facility officials' actions and inactions in training the facility's medical staff resulted in the alleged deprivation of the pretrial detainee's right to medical treatment and whether the officials consciously disregarded serious health risks by failing to apply the women's lock-down policies. Following a verbal exchange with a guard, two officers physically forced the detainee to the ground from a standing position. While she was lying on the ground on her stomach, the officers restrained her by holding their body weights against her back and legs and placing her in handcuffs. The detainee was approximately seven months pregnant at the time. (Oahu Community Correctional Center, Hawai'i)

U.S. District Court
SUICIDE

Choate v. Merrill, 685 F.Supp.2d 146 (D.Me. 2010). The estate of a prison inmate who committed suicide brought an action against individual prison officers, administrators of the correctional facility, and the facility's health care provider, claiming that their violations of the inmate's civil and constitutional rights caused his death. All defendants moved to dismiss and/or for summary judgment. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the inmate was in fact dead when a prison officer first discovered him hanging in his cell. (Special Management Unit, Maine State Prison)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
PRETRIAL DETAINEE

Christian v. Wagner, 623 F.3d 608 (8th Cir. 2010). A pretrial detainee brought a § 1983 action against jail officials and employees, alleging a due process violation arising out of his exposure to a cleaning solvent. After a jury found in favor of the defendants, the district court denied the detainee's motion for a new trial or judgment as a matter of law. The detainee appealed. The appeals court affirmed. The appeals court held that the jury could reasonably find that the detainee failed to show that a physician or other medical personnel had diagnosed him with a serious medical need while incarcerated, as would support a finding that such need was objectively serious. The court noted that medical personnel who examined the detainee found no objective evidence supporting a diagnosis, and the record did not contain a medical order to jail employees. The court also held that evidence supported the finding that the detainee's need for medical attention was not so obvious that a layperson must have recognized it, as would support a finding that such need was objectively serious. According to the court, the detainee's testimony that he informed jail employees that he coughed up blood and experienced difficulty breathing was corroborated only by his mother, whereas several jail employees testified they did not observe the detainee suffering adverse reactions to cleaning solutions and had no recollection of his complaining of a medical problem. (Johnson County Jail, Iowa)

U.S. Appeals Court
INTERFERENCE WITH
TREATMENT
MENTAL HEALTH
SUICIDE
DELIBERATE
INDIFFERENCE

Clouthier v. County of Contra Costa, 591 F.3d 1232 (9th Cir. 2010). The estate of a pretrial detainee brought a § 1983 action against a county, mental health specialist, and two sheriff's deputies alleging they violated the detainee's due process rights by failing to prevent his suicide while he was confined. The district court granted summary judgment in favor of the defendants and the estate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the estate had to show that the detainee was confined under conditions posing a substantial risk of serious harm and that correction officers were deliberately indifferent to that risk. The court held that summary judgment was precluded by a genuine issue of material fact as to whether

the mental health specialist at the jail, who was on notice of the pretrial detainee's suicidal condition, was deliberately indifferent to a substantial risk of harm to the detainee when she removed the detainee from an observation log and told deputies that the detainee could be given regular clothes and bedding. According to the court, it was clearly established at the time of detention that a reasonable mental health professional would not have removed key suicide prevention measures put in place by a prior mental health staff member, and therefore the specialist was not entitled to qualified immunity. The court found that the estate failed to establish that a sheriff's deputy at the jail knew that moving the detainee to the general population in the jail posed a substantial risk of serious harm to the detainee, where the deputy only knew that the detainee had missed meals and free time, and that the detainee had been taken off an observation log. The court noted that the deputy spoke to the detainee all weekend and noted he had a positive outlook on wanting to get out of the room, and earlier that day the mental health specialist found that the detainee was not actively suicidal at the time. The court held that the estate failed to establish that another sheriff's deputy knew that the detainee was suicidal and deliberately ignored that risk, where the deputy knew only that the detainee was suicidal and needed to be on 15-minute checks and the mental health specialist told the deputy to give the detainee his regular clothes and bedding. The court noted that nothing indicated that the deputy saw the detainee's knotted sheet. According to the court, the county did not have a longstanding custom or practice of moving pretrial detainees from an observation cell into the general population without consultation with mental health staff, or a longstanding practice of miscommunication between mental health staff and custodial staff. The court found no pattern of repeated wrongful conduct by county staff, and nothing that indicated another suicide resulted from the improper transfer of a detainee.

The court found that the affidavit of the estate's expert, who opined that custodial staff and mental health staff did not work together as a team, was speculative and conclusory, and thus was insufficient to avoid summary judgment. The court noted that the factual basis for the expert's declaration was limited to a sequence of events and statements of participants surrounding the detainee's transfer to the general population in the jail, and the report did not address the key question of whether the alleged disconnect was so obvious as to have been deliberate indifference. (*Contra Costa County Martinez Detention Facility, California*)

U.S. Appeals Court
CONTAGIOUS DISEASES

Duvall v. Dallas County, Tex., 631 F.3d 203 (5th Cir. 2010). A pretrial detainee brought a § 1983 action against a county for personal injuries stemming from a staph infection that he contracted while incarcerated in the county's jail. At the conclusion of a jury trial in the district court the detainee prevailed. The county appealed. The appeals court affirmed. The court held that: (1) sufficient evidence supported the finding that the county's actions in allowing the infection were more than de minimis; (2) sufficient evidence existed to support the finding that the county had an unconstitutional custom or policy in allowing the infection to be present; and (3) sufficient evidence supported the finding that the detainee contracted the infection while in jail. The court noted that physicians testified that there was a "bizarrely high incidence" of the infection and that they were not aware of a jail with a higher percentage of the infection than the county's jail. According to the court, there was evidence that jail officials had long known of the extensive infection problem yet continued to house inmates in the face of the inadequately controlled staph contamination, and that the county was not willing to take the necessary steps to spend the money to take appropriate actions. The court noted that there was evidence that the jail had refused to install necessary hand washing and disinfecting stations and had failed to use alcohol-based sanitizers, which were the recommended means of hand disinfection. (*Dallas County, Texas*)

U.S. District Court
ALCOHOL/DRUGS
POLICIES
DELIBERATE
INDIFFERENCE

Estate of Crouch v. Madison County, 682 F.Supp.2d 862 (S.D.Ind. 2010). An inmate's estate brought a § 1983 suit against a county and corrections officers, claiming that the officers were deliberately indifferent to the inmate's serious medical needs in violation of the Eighth Amendment, and that the county was liable for failure to train its officers or establish policies regarding the medical care of inmates. The defendants moved for summary judgment. The district court granted the motion. The court held that the inmate did not show signs of an objectively serious need for medical attention prior to 3:00 a.m. on the day of his death from a drug overdose, at which time he was found unresponsive. According to the court, the Indiana Tort Claims Act entitled the corrections officers and county to immunity on state law negligence claims arising from the inmate's death, which occurred while he was assigned to a community corrections program maintained under the supervision of a governmental entity. (*Madison County Community Justice Center, Indiana*)

U.S. District Court
GID- Gender Identity
Disorder
TRANSSEXUAL

Fields v. Smith, 712 F.Supp.2d 830 (E.D.Wis. 2010). Wisconsin Department of Corrections (DOC) inmates, who were diagnosed with Gender Identity Disorder (GID), brought a § 1983 action against DOC officials, alleging, among other things, that the officials violated the Eighth and Fourteenth Amendments by enforcing a statutory provision preventing DOC medical personnel from providing hormone therapy or sexual reassignment surgery to inmates with GID, and from evaluating inmates with GID for possible hormone therapy. The inmates sought a permanent injunction barring enforcement of the statute against them and other inmates. The court held that: (1) GID or transsexualism was a "serious medical need" for the purposes of the Eighth Amendment; (2) as matter of first impression, enforcement of the statute against the inmates violated the Eighth Amendment; (3) as matter of first impression, the statute was facially unconstitutional under the Eighth Amendment; (4) the possibility that certain inmates seeking treatment for gender issues might have had conditions not requiring hormone therapy did not repel a facial challenge to the statute; and (5) as matter of first impression, the statute violated the Equal Protection Clause both as applied to the inmates and on its face. The district court granted the motion, issuing a "...permanent injunction that restrains the defendants from enforcing or attempting to enforce the provisions of Wis. Stat. § 302.386(5m), by direct, indirect or other means, against any prisoner to whom the statute would otherwise apply and specifically against the plaintiffs." (*Wisconsin Department of Corrections*)

U.S. Appeals Court
DENTAL CARE
DELIBERATE
INDIFFERENCE

Flanory v. Bonn, 604 F.3d 249 (6th Cir. 2010). A prisoner, proceeding pro se, brought a § 1983 action against prison officials, alleging violations of the Eighth Amendment. The district court granted the defendants' motions to dismiss. The prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner's deprivation of dental care was not temporary, as required for his Eighth Amendment claim, where the inmate was denied toothpaste for 337 days. According to the court, the prisoner's deprivation of toothpaste by the prison

caused him physical injury, as required for his Eighth Amendment claim, where the inmate was diagnosed with periodontal disease of the gums and one tooth was extracted. The court held that the prisoner's allegations that he was denied toothpaste for 337 days, that he filed various grievances about the deprivation, and that he was diagnosed with periodontal disease of the gums and one tooth was extracted as a result of the deprivation, were sufficient to plead that prison officials were deliberately indifferent to his hygiene needs, as required for his Eighth Amendment claims. (Newberry Correctional Facility, Michigan Department of Corrections)

U.S. Appeals Court
INTAKE SCREENING
MEDICATION
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Gayton v. McCoy, 593 F.3d 610 (7th Cir. 2010). The administrator of a female detainee's estate brought a § 1983 action against correctional facility officials and nurses, alleging they violated her due process rights by failing to provide adequate medical care. The district court entered summary judgment for the defendants, and the administrator appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court did not abuse its discretion in finding a physician unqualified to offer expert testimony that the detainee's death from non-specific heart failure would have been prevented had she been given her congestive heart failure medication, where the physician lacked specific knowledge in cardiology and pharmacology, and he provided no basis for his testimony except that the detainee's medication treated heart disease. But the appeals court held that the district court abused its discretion in finding the physician unqualified to offer expert testimony that the detainee's vomiting combined with her diuretic medication may have contributed to her tachycardia and subsequent death from non-specific heart failure. The court held that a correctional facility nurse who examined the detainee during intake was not deliberately indifferent to his serious medical needs posed by her heart condition, as required to establish violation of the detainee's due process right to adequate medical care in the § 1983 action. The court noted that, even though the nurse failed to follow the facility's protocol requiring her to contact a doctor when an inmate complained of chest pains, the nurse placed the detainee on a list to have her vital signs checked each morning, and the nurse arranged for the detainee to get her congestive heart failure medication. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the nurse who examined the detainee following her complaints of nausea was deliberately indifferent to his serious medical needs posed by her heart condition and vomiting. In its decision, the court noted that "On the other hand, Nurse Pam Hibbert was presented with ample evidence that Taylor needed medical treatment." (Peoria County Jail, Illinois)

U.S. District Court
CONTRACT SERVICES
INADEQUATE CARE
PRIVATE PROVIDER

George v. Sonoma County Sheriff's Dept., 732 F.Supp.2d 922 (N.D.Cal. 2010). A county inmate's estate and survivors filed a § 1983 action alleging that the inmate received inadequate medical care from medical staff at a county detention facility and at a medical center. The court held that the medical center, that was contractually obliged to undertake medical treatment of inmates from the county detention center, and its physicians, were state actors, and thus were subject to liability under § 1983 in action alleging that county inmate's death was result of inadequate treatment he received at the center, even though the center was a privately owned facility that cared for patients other than inmates, and inmates could be sent to other facilities. The court held that summary judgment for the defendants was precluded by genuine issues of material fact as to whether physicians at the medical center with which the county had contracted to provide care for its inmates had an ulterior financial motive to discharge the inmate before his condition had stabilized, had a predetermined length of inmate's hospital stay, and had no intention of fully treating the inmate. (Sonoma County Main Adult Detention Facility, and Sutter Medical Center, California)

U.S. Appeals Court
PSYCHOTROPIC DRUGS
SPECIAL HOUSING

Graves v. Arpaio, 623 F.3d 1043 (9th Cir, 2010). Pretrial detainees in a county jail system brought a class action against a county sheriff and the county supervisors board, alleging violation of the detainees' civil rights. The parties entered into a consent decree which was superseded by an amended judgment entered by stipulation of the parties. The defendants moved to terminate the amended judgment. The district court entered a second amended judgment which ordered prospective relief for the pretrial detainees. The district court awarded attorney fees to the detainees. The sheriff appealed the second amended judgment. The appeals court affirmed. The court held that the district court did not abuse its discretion by ordering prospective relief requiring the sheriff to house all detainees taking psychotropic medications in temperatures not exceeding 85 degrees and requiring the sheriff to provide food to pretrial detainees that met or exceeded the United States Department of Agriculture's Dietary Guidelines for Americans. The district court had held that air temperatures above 85 degrees greatly increased the risk of heat-related illnesses for individuals taking psychotropic medications, and thus that the Eighth Amendment prohibited housing such detainees in areas where the temperature exceeded 85 degrees. (Maricopa County Sheriff, Jail, Maricopa County Supervisors, Arizona)

U.S. District Court
DELIBERATE
INDIFFERENCE
INADEQUATE CARE
WORK ASSIGNMENT

Hardy v. 3 Unknown Agents, 690 F.Supp.2d 1074 (C.D.Cal. 2010). A state prisoner brought a § 1983 action against prison physicians, alleging that the physicians failed to provide adequate medical care, in violation of the Eighth Amendment, and that one physician retaliated against him for filing grievances, in violation of the First Amendment. The physicians moved for summary judgment. The district court granted summary judgment in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner had an ear infection, constituting a serious medical need, while under the prison physician's care, and, if so, whether the physician was deliberately indifferent to that need. The court found that a state prison physician was not entitled to qualified immunity from the prisoner's § 1983 claim alleging that the physician provided inadequate medical care for his ear infection, where a reasonable physician would have understood that failure to examine and treat the prisoner's ear in response to his complaints about ear pain and difficulty hearing would violate the Eighth Amendment. According to the court, the state prison physician's prescribing of medication for the prisoner's psoriasis without actually examining the prisoner's back did not amount to deliberate indifference to the prisoner's serious medical needs, as would violate the Eighth Amendment. The court noted that whether or not the physician's prescribing of medication without a back examination was sound medical practice, it was hardly a failing of constitutional magnitude.

The court held that the prison physician was not deliberately indifferent to the prisoner's serious medical

needs, in violation of the Eighth Amendment, in refusing to approve a “lay-in” or reduction of duties based on the prisoner's back problems. The court found that the reasons given for the physician's decision, including lack of documentation as to whether the prisoner underwent back surgery and his observations of the prisoner, were reasonable. (California State Prison-Los Angeles County)

U.S. District Court
DELIBERATE
INDIFFERENCE
INTAKE SCREENING
PRIVATE PHYSICIAN

Hardy v. City of New York, 732 F.Supp.2d 112 (E.D.N.Y. 2010). An inmate brought an action against a city correctional department and correctional officers, among others, alleging deliberate indifference, false arrest, and malicious prosecution. The defendants moved to dismiss and for summary judgment. The district court granted the motions in part and denied in part. The court held that the inmate failed to demonstrate that correctional center officers were deliberately indifferent to his serious ear condition in violation of the Eighth Amendment, notwithstanding the contention that he was unreasonably forced to wait 10 days after his referral to see a specialist. The court noted that the inmate met with medical staff during intake and on at least four other occasions during his five-week incarceration, he was immediately and continually treated with oral antibiotics and other medications, and his symptoms were not so alarming as to indicate the need for immediate access to a specialist. The court held that summary judgment was precluded by a genuine issue of material fact as to whether it was objectively reasonable for correctional transit facility officers and correctional facility medical staff to believe that their conduct in dealing with the inmate's serious ear condition did not violate clearly established law. (City of New York Department of Correction, Otis Bantum Correctional Center)

U.S. Appeals Court
ALCOHOL/DRUGS
INTAKE SCREENING
PRETRIAL DETAINEE
DELIBERATE
INDIFFERENCE

Harper v. Lawrence County, Ala., 592 F.3d 1227 (11th Cir. 2010). Following a pretrial detainee's death from alcohol withdrawal while in a county jail, the detainee's estate brought an action against the county, sheriff, police officers, and others under § 1983 and state law, alleging deliberate indifference to the detainee's serious medical needs. The district court denied the defendants' motion to dismiss and the defendants appealed. The appeals court affirmed and reversed in part. The court held that allegations supported a claim that jailers were deliberately indifferent to the detainee's serious medical needs, but that the sheriff and others did not have actual knowledge of the detainee's erratic and strange behavior while in jail. The court found that allegations supported a claim that the sheriff and jail administrators were deliberately indifferent. The court held that allegations that jailers were told by other inmates and other jail staff that the pretrial detainee was displaying erratic and strange behavior, and that jailers took no steps to secure immediate medical attention for the detainee, supported a § 1983 claim that jailers were deliberately indifferent to the detainee's serious medical needs under the due process clause. The court held that the detainee's estate failed to allege how the sheriff and jail administrators could possibly have had actual knowledge of the detainee's erratic and strange behavior while in jail, as required to support a § 1983 claim alleging deliberate indifference to the detainee's serious medical needs.

According to the court, for the purposes of a jailer's claim of qualified immunity from the § 1983 claim that he was deliberately indifferent to the pretrial detainee's serious medical needs under the due process clause, it was clearly established at the time of the detainee's confinement that a jail official who was aware of, but ignored, dangers of acute alcohol withdrawal and waited for an emergency before obtaining medical care was deliberately indifferent to the inmate's constitutional rights. The court found that the complaint's specific allegations that the sheriff and jail administrators who were responsible for management and administration of the jail had customs or policies of improperly screening inmates for alcohol withdrawal and improperly handling inmates addicted to alcohol or drugs, together with its factual detail concerning a prior similar incident, satisfied the pleading standards for stating a § 1983 claim of deliberate indifference to the pretrial detainee's serious medical needs under the due process clause based on supervisor liability. (Lawrence County Jail, Alabama)

U.S. Appeals Court
NEGLIGENCE
PRETRIAL DETAINEE

Harriman v. Hancock County, 627 F.3d 22 (1st Cir. 2010). An arrestee brought an action against a county, sheriff, and corrections officers alleging excessive force, false arrest, conspiracy, deprivation of due process, negligence, and intentional infliction of emotional distress. The district court granted the defendants' motion for summary judgment and the arrestee appealed. The appeals court affirmed. The court held that in the detainee's excessive force claim the detainee's assertion that officers' accounts of his fall in his jail cell were inconsistent and inherently unbelievable was insufficient to defeat the defendants' motion for summary judgment. The court noted that the detainee conceded he had no recollection of an alleged beating, the officers were consistent in reporting that they saw the detainee fall and heard sounds in his cell that resembled a fall, all officers reported that they did not strike the detainee and did not see anyone strike the detainee, and a neurologist did not opine on the cause of the detainee's injuries. (Hancock County Jail, Maine)

U.S. District Court
DELIBERATE
INDIFFERENCE
TRANSFER
TRANSPORTATION

Hartmann v. Carroll, 719 F.Supp.2d 366 (D.Del. 2010). A state inmate filed a § 1983 action alleging that prison officials failed to provide professional prevention, diagnosis, and treatment for his thyroid disease and failed to provide medical transportation. The district court granted summary judgment in favor of the defendants. The court held that the officials were not liable for failing to provide a medical transfer, where the officials had no personal involvement in the transfer decision, and were not aware of the risk of serious injury that could have occurred to the inmate and purposefully failed to take appropriate steps. The court found that a state prison medical official was not deliberately indifferent to the inmate's thyroid disease, in violation of the Eighth Amendment, where the inmate received medical care for his throat complaints and his thyroid condition. (James T. Vaughn Correctional Center, Delaware)

U.S. District Court
EQUIPMENT
MALPRACTICE
NEGLIGENCE
CONTRACT SERVICES

Jaundoo v. Clarke, 690 F.Supp.2d 20 (D.Mass. 2010). A state prisoner brought an action against various Massachusetts Department of Correction (DOC) and UMass Correctional Health Service (UMCH) officials and employees, alleging that the defendants unlawfully deprived him of necessary medical care by confiscating his crutches while he was incarcerated in a maximum security prison. The prisoner moved for leave to file an amended complaint. The district court granted the motion in part and denied in part. The court held that UMCH had sovereign immunity from the prisoner's proposed negligence and medical malpractice claims and that a UMCH employee had immunity from liability for her alleged negligence and medical malpractice, under the

Massachusetts Tort Claims Act (MTCA). The court held that the prisoner stated a deliberate indifference claim under § 1983 against a Massachusetts Department of Correction (DOC) employee, a correctional officer, by alleging that the officer intentionally created and submitted an incident report in which he falsely claimed that he had seen prisoner running, for the purpose of depriving the prisoner of his crutches. The court found that supervisory and failure to train claims were precluded, where officials and employees did not directly participate in the decision to deprive the prisoner of his crutches. (Massachusetts Department of Correction, UMass Correctional Health Service, MCI-Cedar Junction)

U.S. District Court
DELIBERATE
INDIFFERENCE
FEMALE PRISONERS
PRETRIAL DETAINEE
SUICIDE ATTEMPT

Jessup v. Miami-Dade County, 697 F.Supp.2d 1312 (S.D.Fla. 2010). A pre-trial detainee who had been placed on suicide precaution status at a county detention center for women, filed a state action against a corrections officer and the county, asserting negligence and claims under § 1983 for the officer's deliberate indifference to his serious medical needs, and against the county for failure to train or discipline staff. The defendants removed the case to federal court and moved for summary judgment. The district court granted the motion. The court held that the detainee's actions of drinking from a toilet, smearing menstrual blood on a window, and stepping on and off a ledge in her cell, did not indicate a "strong likelihood" that she was about to inflict self-harm, as required for jail officials to be liable for deliberately disregarding the detainee's serious medical needs in violation of the Fourteenth Amendment, when they failed to place her in four-point restraints. The detainee subsequently injured her head. The court noted that the detainee's activities were bizarre but not violent, aggressive or out of control as would require restraints. According to the court, a jail official did not act in a fashion "beyond gross negligence," as required to hold her liable for deliberate disregard of the pre-trial detainee's serious medical needs, in violation of the Fourteenth Amendment, when the official failed to act to stop the detainee from self-inflicting head and nose injuries by banging her head against a cell wall during her confinement after being placed on a suicide watch. The officials immediately ordered the detainee to stop head banging activity and tried to open her cell. (Miami-Dade Women's Detention Center, Florida)

U.S. District Court
DELIBERATE
INDIFFERENCE
HANDICAP
WORK ASSIGNMENT

Jones v. Michigan, 698 F.Supp.2d 905 (E.D.Mich. 2010). A state inmate brought a § 1983 action against a state correctional facility's classification director and a correction officer. The defendants moved for summary judgment. The district court granted the motion. The court held that the inmate's grievance against the classification director and correction officer gave fair notice of his claim that he was harassed and forced to perform work as a sports equipment handler, despite fact that he was wearing a neck brace and walking with a cane due to injuries arising from an automobile accident. But the court found that the correction officer was not deliberately indifferent to the inmate's injuries, in violation of the Eighth Amendment, where the officer was never told by the inmate that he could not perform work duties as a sports equipment handler. Similarly, the classification director was not deliberately indifferent to the inmate's injuries, in violation of the Eighth Amendment, where the director was never advised of an accommodation notice or of the physician's diagnoses that the inmate could not perform work duties. (Saginaw Correctional Facility, Michigan)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE
EMERGENCY CARE
NEGLIGENCE

Jones v. Muskegon County, 625 F.3d 935 (6th Cir. 2010). A father, as the personal representative of the estate of a deceased pretrial detainee, brought an action against a county and various corrections officers and medical staff, alleging constitutional claims pursuant to § 1983, gross negligence and intentional infliction of emotional distress. The district court granted the defendants' motions for summary judgment. The father appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that assignment charts listing corrections officers assigned to the pretrial detainee's area during the period in which his health deteriorated, and affidavits from other detainees who witnessed his deterioration and the officers' alleged failure to assist the detainee, were insufficient to create a fact issue as to whether the officers were deliberately indifferent towards the detainee's serious medical needs in violation of the Fourteenth Amendment. The court noted that the affidavits referred to "guards" in a general sense without specifying wrongdoing attributable to any particular officer, and did not specify which officers observed the detainee's deterioration or ignored his requests for medical care.

The court found that a correctional officer's failure to immediately call an ambulance upon observing the pretrial detainee's deteriorating health condition was not deliberate indifference towards his serious medical needs as would violate the Fourteenth Amendment, where the officer believed the decision to call an ambulance was not hers to make but was command's, and the officer attended to the detainee's medical needs and made efforts to make him more comfortable. But the court found that summary judgment was precluded by a genuine issue of material fact as to whether prison nurses were aware of the risk to the pretrial detainee's health and chose to disregard the risk, and whether the prison nurses were grossly negligent under Michigan law as to the pretrial detainee's medical care. (Muskegon County Jail, Michigan)

U.S. District Court
INADEQUATE CARE

Kasiem v. Switz, 756 F.Supp.2d 570 (S.D.N.Y. 2010). A state prisoner, proceeding pro se, brought a § 1983 action against the New York Department of Correctional Services (DOCS) and prison employees, alleging violations of his rights involving the defendants' purported failure to adequately treat his claimed hearing problems and related ear pain. The district court granted summary judgment for the defendants. The court held that the prisoner failed to exhaust his administrative remedies, as required under the Prison Litigation Reform Act (PLRA), prior to bringing a § 1983 action, where any grievances possibly covering his claims were never fully exhausted or became exhausted only months after the suit was filed. (Sullivan Correction Facility, New York)

U.S. District Court
DELIBERATE
INDIFFERENCE
DENIAL
GID- Gender Identity
Disorder

Konitzer v. Frank, 711 F.Supp.2d 874 (E.D.Wis. 2010). A prisoner, a biological male suffering from Gender Identity Disorder (GID), brought an action against prison officials alleging violation of Eighth Amendment's prohibition against cruel and unusual punishment by denying him certain medical services related to his disorder. The district court granted summary judgment for the prison officials in part and denied in part. The court held that the prisoner's Gender Identity Disorder (GID) was a "serious medical need," as required to establish the prisoner's § 1983 claim alleging that denial of his request for the opportunity to live as a female, as part of his treatment for GID, violated his Eighth Amendment rights. According to the court, although the prisoner had

received some hormonal therapy to provide relief from GID symptoms, denial of the opportunity to live as a female allegedly caused the prisoner to be depressed, resulting in self-mutilation of his genitals and suicide attempts. The court held that summary judgment was precluded by a genuine issue of material fact as to whether triadic therapy for Gender Identity Disorder (GID), which consisted of hormone therapy, real-life experience living as the preferred gender, and sex reassignment surgery, was the appropriate treatment for the prisoner. The court also found that summary judgment was precluded by genuine issues of material fact regarding whether prison officials' denial of a request by the male prisoner to live as a female by, for example, wearing makeup and female undergarments and removing facial hair, constituted deliberate indifference to the prisoner's serious medical needs, and whether security concerns justified such denial. (Wisconsin Department of Corrections)

U.S. District Court
NEGLIGENCE
TRANSFER

Lin Li Qu v. Central Falls Detention Facility Corp., 717 F.Supp.2d 233 (D.R.I. 2010). A federal immigration detainee's widow sued the Government under the Federal Tort Claims Act (FTCA), asserting claims arising out of the detainee's care while he was detained by Immigration and Customs Enforcement (ICE). The government moved to dismiss. The district court denied the motion. The court held that the widow met the FTCA's notice requirement and that her FTCA claims were not barred by the independent contractor defense. The court held that the widow stated negligence claims actionable under the Federal Tort Claims Act (FTCA), when she alleged that after the Government was aware, or should have been aware, of the detainee's deteriorating medical condition, it acted negligently when it ordered the transfers of the detainee to different facilities and when it improperly reviewed the basis for his custody and detention. (Immigration and Customs Enforcement, Wyatt Detention Center, Rhode Island, Franklin Co. House of Corrections, Greenfield, Mass., Franklin County Jail, Vermont)

U.S. District Court
FAILURE TO PROVIDE
CARE
PRETRIAL DETAINEE

Lum v. County of San Joaquin, 756 F.Supp.2d 1243 (E.D.Cal. 2010). An arrestee's survivors brought an action against a county, city, and several city and county employees, alleging § 1983 claims for various civil rights violations and a state law claim for wrongful death arising from the arrestee's accidental drowning after his release from the county jail. The defendants moved to dismiss portions of the complaint and the survivors moved for leave to amend. The district court granted the defendants' motion in part and denied in part, and granted the plaintiffs' motion. The survivors alleged that the city's police sergeants made a decision to arrest the individual for being under the influence in public, despite lack of evidence of alcohol use and knowledge that the individual was being medicated for bipolar disorder, and to book him on a "kickout" charge so that he would be released from jail six hours later. The court found that the arresting officers, by taking the arrestee into custody, created a special relationship with the arrestee, similar to the special relationship between a jailer and a prisoner, so as to create a duty of care for the purposes of wrongful death claim under California law, arising from the arrestee's accidental drowning following his release from the county jail. The court noted that it was foreseeable that the arrestee needed medical attention and that there was a risk posed by releasing him without providing such attention. The court held that the county, city, and arresting officers were entitled to immunity, under a California Tort Claims Act section related to liability of public entities and employees for the release of prisoners, for the wrongful death of the arrestee, only as to the basic decision to release the arrestee from the county jail, but not as to the defendants' ministerial acts after the initial decision to release the arrestee. The court noted that the arrestee had a lacerated foot, was covered with vomit and had trouble walking, and had a seizure while he was in a holding cell. The arrestee's body was found floating in the San Joaquin River, approximately two miles west of the county jail, shortly after he was released. (San Joaquin County Jail, California)

U.S. Appeals Court
DENTAL CARE
DELAY OF TREATMENT
DELIBERATE
INDIFFERENCE

McGowan v. Hulick, 612 F.3d 636 (7th Cir. 2010). A prisoner who suffered complications from an upper molar extraction brought a pro se action, under § 1983 and Illinois law, against a dentist, a prison's dental director, the regular prison physician, and the prison warden, alleging that they were all negligent and deliberately indifferent to his plight. The district court dismissed the complaint with prejudice and denied the plaintiff's motion for reconsideration. The appeals court vacated and remanded. The court held that the prisoner's allegations were sufficient to state an Eighth Amendment deliberate indifference claim against the dental director for delay in obtaining treatment. According to the court, the prisoner was forced to wait three months to see a dentist after he first complained of dental pain, the prison dental director knew that the prisoner needed to see an oral surgeon after a botched extraction yet required him to wait in pain for two months until a contract oral surgeon was scheduled to come to the prison, and the director stalled in authorizing a referral to an outside surgeon after the contract surgeon cancelled his planned visit. The court held that the prisoner's allegation that the prison dentist decided to extract his tooth rather than to fill it, was insufficient to state an Eighth Amendment deliberate indifference claim, where there was no allegation that the dentist chose extraction without exercising professional judgment. (Menard Correctional Center, Illinois)

U.S. District Court
MEDICATION
DELIBERATE
INDIFFERENCE
DENIAL

Miller v. Beard, 699 F.Supp.2d 697 (E.D.Pa. 2010). An inmate brought a § 1983 suit against prison officials, a health care provider and medical personnel, alleging deliberate indifference to his serious medical needs under the Eighth and Fourteenth Amendment. The defendants moved for summary judgment. The court held that a prison nurse was not deliberately indifferent to the inmate's mental health issues, thus defeating his § 1983 claim of an Eighth Amendment violation, despite the claim that she engineered the discontinuance of his psychotropic medications by falsely accusing him of hoarding his medication. According to the court, the nurse had a reasonable subjective fear that the inmate was hoarding his medication. The court held that summary judgment was precluded by genuine issues of material fact as to whether a physician failed to provide adequate treatment for the inmate after taking the inmate off powerful psychotropic medications, and whether the abrupt discontinuance of the medications had a negative impact on the inmate's mood and behavior.

The court found that the injuries the inmate suffered as a consequence of the physician's refusal to provide him with asthma, allergy, and migraine medication were not "serious," thus defeating the inmate's § 1983 claim of an Eighth Amendment violation in deliberate indifference to his serious medical needs. (State Correctional Institution at Pittsburgh, Pennsylvania)

U.S. District Court DELIBERATE INDIFFERENCE NEGLIGENCE PRETRIAL DETAINEE	<p><i>Molina v. New York</i>, 697 F.Supp.2d 276 (N.D.N.Y. 2010). A juvenile detainee brought an action against a state, its Office of Children and Family Services (OCFS) that operated a youth correctional facility, state and facility officials, and detention aides, asserting § 1983 claims and claims of negligence and assault and battery. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the juvenile detainee's allegations that detention aides at the youth correctional facility broke his arm while restraining him were sufficient to support a plausible Eighth Amendment claim that the aides used excessive force. The court held that the detainee's allegations that he had to wait approximately 15 hours before being diagnosed and scheduled for surgery despite the obviousness of his injuries and his own pleading for assistance, were sufficient to state an Eighth Amendment claim of deliberate indifference to his serious medical needs. (Louis Gossett Jr. Residential Center, New York)</p>
U.S. District Court DENTAL CARE EMERGENCY CARE DELIBERATE INDIFFERENCE	<p><i>Mosby v. Cavey</i>, 686 F.Supp.2d 868 (W.D.Wis. 2010). A pretrial detainee sued medical personnel at a county jail, asserting a Fourteenth Amendment claim of deliberate indifference to his serious medical need. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to when the inmate's impacted wisdom tooth presented an emergency condition requiring surgery, and whether dentists refused to refer him to an outside oral surgeon because they were not permitted to make such referrals. The court also found genuine issues of material fact as to whether a failure of prison nurses to schedule the inmate to see the dentists or consult with the dentists was intentional mistreatment likely to seriously aggravate the inmate's serious dental condition. (Dane County Jail, Wisconsin)</p>
U.S. Appeals Court DELIBERATE INDIFFERENCE PSYCHOTROPIC DRUGS	<p><i>Orr v. Larkins</i>, 610 F.3d 1032 (8th Cir. 2010). An inmate brought a § 1983 claim against prison officials alleging his rights under the Due Process Clause of the Fourteenth Amendment and the Eighth Amendment were violated when he was kept in administrative segregation for nine months. The district court dismissed the complaint as frivolous and the inmate appealed. The appeals court affirmed. The court held that the inmate's nine-month stay in administrative segregation did not constitute an atypical and significant hardship when compared to the burdens of ordinary prison life, as required to support the inmate's claim that his liberty interests under the Fourteenth Amendment were violated. The court found that prison officials who provided the inmate with anti-depressants, and later with anti-psychotic medication, during his nine-month stay in administrative segregation, were not deliberately indifferent to the inmate's worsening mental illness, as required to support the inmate's Eighth Amendment claim. (Eastern Reception, Diagnostic and Correctional Center, Missouri)</p>
U.S. District Court ADA-Americans with Disabilities Act DENIAL EQUIPMENT HANDICAP HEARING IMPAIRED RA-Rehabilitation Act	<p><i>Paulone v. City of Frederick</i>, 718 F.Supp.2d 626 (D.Md. 2010). An arrestee, a deaf woman, brought an action against a state, a county board, and a sheriff alleging violations of the Americans with Disabilities Act (ADA), the Rehabilitation Act, and related torts. The state and sheriff moved to dismiss or, in the alternative, for summary judgment. The district court granted the motions in part and denied in part. The court held that the arrestee failed to allege that any program or activity she was required to complete following her arrest for driving under the influence (DUI) and during her subsequent probation, received federal funds, as required to state Rehabilitation Act claims against the state for discriminating against her and denying her benefits because of her deafness. The court found that the arrestee stated an ADA claim with her allegations that, after her arrest and during her detention, police officers denied her the use of a working machine that would have allowed her to make a telephone call, help in reading and understanding forms, and access to a sign language interpreter. (Frederick County Board of County Commissioners, Frederick County Adult Detention Center, Maryland)</p>
U.S. Appeals Court DELAY IN TREATMENT DELIBERATE INDIFFERENCE FEMALE PRISONERS	<p><i>Pourmoghani-Esfahani v. Gee</i>, 625 F.3d 1313 (11th Cir. 2010). A female pretrial detainee brought a § 1983 action against a deputy sheriff, alleging excessive force and deliberate indifference to her serious medical needs. The district court denied the deputy's motion for summary judgment and the deputy appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the deputy sheriff was not qualifiedly immune from the pretrial detainee's § 1983 excessive force claim, since the deputy's alleged actions, including slamming the detainee's head to the floor seven to eight times while she was restrained, if proven, were obviously beyond what the Constitution would allow under the circumstances. The court held the deputy sheriff's alleged actions or inactions following her altercation with the pretrial detainee, if proven, did not constitute deliberate indifference to the detainee's serious medical needs, where: the detainee alleged that the deputy dispatched her to her cell directly after the altercation; the nurse saw her within approximately two minutes of her arrival in the cell; the nurse informed the deputy that the detainee had a possible nose injury but that her nose was not broken; the nurse and an officer then attended to the detainee within approximately five minutes of the detainee's cellmate's first signals for help; and, the detainee then received continuous medical care until she was taken to hospital. The court noted that no preexisting law clearly established that an approximately two-to-five-minute delay of medical care, either while the detainee moved from a waiting room to her cell following an altercation or while her cellmate waited for the guard to respond to her signaling, was a constitutional violation.</p> <p>The appeals court accepted the depiction of events from recordings from closed-circuit video cameras placed throughout jail, rather than crediting the detainee's account of the altercation, where the video obviously contradicted the detainee's version of the facts. But the court noted that video failed to convey spoken words or tone and sometimes failed to provide unobstructed views of the events, and the court credited the detainee's version where no obviously contradictory video evidence was available. (Hillsborough County Jail, Florida)</p>
U.S. Appeals Court CONTRACT SERVICES DENIAL	<p><i>Reed-Bey v. Pramstaller</i>, 603 F.3d 322 (6th Cir. 2010). A state prison inmate brought a § 1983 action against the Michigan Department of Corrections, the health-management company that provided medical services for a prison, and several prison and company officials. The inmate alleged that the defendants violated his Eighth Amendment rights by denying him adequate medical care for a separated shoulder he suffered during a prison basketball game. The district court granted the defendants' motions for summary judgment and dismissal for the inmate's failure to exhaust administrative remedies. The inmate appealed. The appeals court reversed. The court</p>

held that the inmate properly exhausted administrative remedies as required under the Prison Litigation Reform Act (PLRA) with respect to his § 1983 claim that prison officials violated his Eighth Amendment rights, even though the inmate failed to identify the “names of all those involved” in the grievance as required by the prison’s internal grievance policies. The court noted that the inmate invoked one complete round of the prison’s three-step grievance procedure and the prison addressed the merits of the inmate’s claim at each step of the process rather than defaulting the inmate’s claim as procedurally barred. (Mound Correctional Facility, Michigan Department of Corrections, and Corrections Medical Services, Inc.)

U.S. District Court
ADA-Americans with
Disabilities Act
DELIBERATE
INDIFFERENCE
EQUIPMENT
RA- Rehabilitation Act

Robinson v. Catlett, 725 F.Supp.2d 1203 (S.D.Cal. 2010). A state inmate filed a § 1983 action against prison officials alleging constitutional violations and violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The officials moved for summary judgment. The district court granted the motion. The court held that the decision to assign the inmate to an upper bunk did not demonstrate deliberate indifference to his serious medical needs. The court noted that the inmate requested a vacant cell, rather than a lower bunk assignment, and officials assigned the inmate to a lower bunk once they understood problem. The court held the confiscation of the inmate’s cane did not demonstrate deliberate indifference to his serious medical needs and did not violate the Rehabilitation Act. The cane was confiscated after the inmate attempted to strike another prisoner with it. The court found that prison officials’ denial of the disabled inmate’s request for his own cell did not amount to intentional discrimination on the basis of a disability, required to warrant the award of monetary damages under ADA or the Rehabilitation Act, even though officials had initially placed the inmate in an upper bunk. (Calipatria State Prison, California)

U.S. Appeals Court
ADA- Americans with
Disabilities Act
MENTAL HEALTH
SUICIDE
DELIBERATE
INDIFFERENCE

Simmons v. Navajo County, Ariz., 609 F.3d 1011 (9th Cir. 2010). Parents of a pretrial detainee who committed suicide while in custody brought a state-court action against various jail personnel, their supervisors, and their county employer, asserting claims under state tort law, § 1983, and the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants and the parents appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that there was no evidence that a prison nurse knew the pretrial detainee who subsequently committed suicide was in substantial danger of killing himself, as required to demonstrate the prison nurse was deliberately indifferent to such risk in violation of the Fourteenth Amendment. According to the court, although the nurse was aware that the detainee had previously attempted to take his own life, suffered from depression, and was at some risk of making another attempt, at the time detainee killed himself, over a month had elapsed since his suicide attempt, during which time the detainee received counseling, took antidepressants, and by all accounts, was doing better. The court found that prison nurses were not deliberately indifferent, under the Fourteenth Amendment, to the detainee who committed suicide, because they failed to ensure that the detainee had daily evaluations pursuant to the suicide prevention policy, absent evidence that they knew detainee was in a suicidal crisis. According to the court, the prison nurses’ failure to retrieve the used gauze the pretrial detainee used to hang himself did not constitute deliberate indifference in violation of the Fourteenth Amendment, absent evidence that the prison nurses were aware the pretrial detainee had accumulated the gauze. The court found that the teenage pretrial detainee waved the prison nurse away on the morning of the day he committed suicide, when the nurse tried to speak with him, because he was absorbed in watching television, did not show that the prison nurse was subjectively aware of the detainee’s risk of suicide, so as to support a deliberate indifference claim against the prison nurse under the Fourteenth Amendment. (Navajo County Jail, Arizona)

U.S. Appeals Court
ALCOHOL/DRUGS
FAILURE TO PROVIDE
CARE
FEMALE PRISONER
PRETRIAL DETAINEE

Smith v. County of Lenawee, 600 F.3d 686 (6th Cir. 2010). A female detainee’s estate brought an action against a county, sheriff, on-call physician, police officers, and parole agent, under § 1983 and state law, arising out of the detainee’s death while in the county’s custody. The district court denied the parole agent’s motion for summary judgment on a gross negligence claim. The agent filed interlocutory appeal. The appeals court reversed. The court held that the parole agent’s failure to intercede on behalf of the detainee in county custody, upon arriving at the jail to serve the detainee a notice of parole violation charges and determining that the detainee was unable to be transported or served, was not the “proximate cause” of the detainee’s death, so as to entitle the agent to governmental immunity from gross negligence liability under Michigan law. The court noted that the detainee was in the custody of county jail officials in the hours leading up to her death, the parole agent worked for the state Department of Corrections, not the county, the detainee had been experiencing delirium tremens (DT) symptoms for close to 48 hours prior to arrival at the jail, a physician had been notified of the detainee’s condition and told jail officials to monitor the detainee, the agent was present at the jail for a matter of minutes only, and county jail officials failed to check the detainee until 40 minutes after the agent left the jail. (Lenawee County Sheriff’s Department, and Michigan Department of Corrections)

U.S. District Court
DENIAL

Stack v. Karnes, 750 F.Supp.2d 892 (S.D. Ohio 2010). An inmate brought a § 1983 action against a county and the county Board of Commissioners, alleging violations of the Eighth and Fourteenth Amendments. The defendants filed a motion to dismiss. The district court granted the motion in part and denied in part. The court held that the county was not entitled to immunity afforded under Ohio law to counties. The court found that the inmate’s allegations that the county historically had a policy, custom, and practice of failing to implement adequate training programs for jail personnel, and that he was denied medical treatment for his diabetes, were sufficient to state a Monell claim against the county for violation of the Eighth Amendment. According to the court, the county Board of Commissioners had no duty to keep a safe jail, and therefore, could not be liable in the inmate’s § 1983 action alleging he was denied adequate medical care in violation of the Eighth Amendment, where the sheriff was the entity in charge of the jail, rather than the Board. (Franklin County Corrections Center, Ohio)

U.S. District Court
DENTAL CARE
INADEQUATE CARE

Swan v. U.S., 698 F.Supp.2d 227 (D.Mass. 2010). A prisoner brought a pro se action against the United States under the Federal Tort Claims Act (FTCA), asserting negligence after federal medical center officials allegedly failed to provide him with adequate dental care. The government moved for summary judgment. The district court held that a fact issue as to whether the prisoner was afforded the right to preventative dental care precluded

summary judgment. Despite his periodontal disease, the prisoner did not receive a dental cleaning for almost one year following his arrival. (Federal Medical Center Devens, Massachusetts)

U.S. District Court
DENIAL
TRANSFER

Tafari v. McCarthy, 714 F.Supp.2d 317 (N.D.N.Y. 2010). A state prisoner brought a § 1983 action against employees of the New York State Department of Correctional Services (DOCS), alleging, among other things, that the employees violated his constitutional rights by subjecting him to excessive force, destroying his personal property, denying him medical care, and subjecting him to inhumane conditions of confinement. The employees moved for summary judgment, and the prisoner moved to file a second amended complaint and to appoint counsel. The court held that a state prison correctional officer's alleged throwing of urine and feces on the prisoner to wake him up, while certainly repulsive, was de minimis use of force, and was not sufficiently severe to be considered repugnant to the conscience of mankind, and thus the officer's conduct did not violate the Eighth Amendment. The court found that officers who were present in the prisoner's cell when another officer allegedly threw urine and feces on the prisoner lacked a reasonable opportunity to stop the alleged violation, given the brief and unexpected nature of the incident, and thus the officers present in the cell could not be held liable for failing to intervene. The court found that even if a correctional officers' captain failed to thoroughly investigate the alleged incident in which one officer threw urine and feces on the prisoner to wake him up, such failure to investigate did not violate the prisoner's due process rights, since the prisoner did not have due process right to a thorough investigation of his grievances.

According to the court, one incident in which state correctional officers allegedly interfered with the prisoner's outgoing legal mail did not create a cognizable claim under § 1983 for violation of the prisoner's First and Fourteenth Amendment rights, absent a showing that the prisoner suffered any actual injury, that his access to courts was chilled, or that his ability to legally represent himself was impaired. The court held that there was no evidence that the state prisoner suffered any physical injury as result of an alleged incident in which a correctional officer spit chewing tobacco in his face, as required to maintain an Eighth Amendment claim based on denial of medical care. The court found that, even if a state prisoner's right to file prison grievances was protected by the First Amendment, a restriction limiting the prisoner's filing of grievances to two per week did not violate the prisoner's constitutional rights, since the prisoner was abusing the grievance program. The court noted that the prisoner filed an exorbitant amount of grievances, including 115 in a two-month period, most of which were deemed frivolous. The court held that summary judgment was precluded by a genuine issue of material fact as to whether state correctional officers used excessive force against the prisoner in the course of his transport to a different facility. The court held that state correctional officers were not entitled to qualified immunity from the prisoner's § 1983 excessive force claim arising from his alleged beating by officers during his transfer to a different facility, where a reasonable juror could have concluded that the officers knew or should have known that their conduct violated the prisoner's Eighth Amendment rights, and it was clearly established that prison official's use of force against an inmate for reasons that did not serve penological purpose violated the inmate's constitutional rights. The inmate allegedly suffered injuries, including bruises and superficial lacerations on his body, which the court found did not constitute a serious medical condition.

The court held that state prison officials' alleged retaliatory act of leaving the lights on in the prisoner's cell in a special housing unit (SHU) 24 hours per day did not amount to cruel and unusual treatment, in violation of the Eighth Amendment. According to the court, the prisoner failed to demonstrate a causal connection between his conduct and the adverse action of leaving the lights on 24 hours per day, since the illumination policy applied to all inmates in SHU, not just the prisoner, and constant illumination was related to a legitimate penological interest in protecting both guards and inmates in SHU. (New York State Department of Correctional Services, Eastern New York Correctional Facility)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Tate v. Troutman, 683 F.Supp.2d 897 (E.D.Wis. 2010). A county jail inmate filed a § 1983 action alleging that officials failed to provide constitutionally sufficient medical care. The inmate moved for the entry of a default judgment. The district court granted the motion in part and denied in part. The court held that a county jail officer and medical officials were not personally involved in the allegedly inadequate medical treatment provided to the inmate after a fall in his cell, and thus were not liable under § 1983 for any compensatory or nominal damages for an Eighth Amendment violation. The court noted that even though the inmate suffered pain after the fall and had blood in his bowel movements, the inmate had a history of severe low back and bilateral neck pain, headaches, and rectal bleeding before the fall. The court held that county jail officials failed to provide adequate medical care for the inmate's dislocated shoulder, in violation of the Eighth Amendment, and thus the inmate was entitled to an award of compensatory damages for past pain and suffering. The court noted that the jail physician refused to see the inmate or speak to him, jail officials rejected the inmate's grievances regarding his inadequate medical treatment, and the inmate experienced physical pain and emotional distress for three or four weeks due to his lack of adequate diagnosis and treatment of his shoulder injury by immobilization.

The court concluded that an award of \$27,000 was the appropriate amount to compensate the inmate for his past pain and suffering, where the inmate experienced pain and suffering for about one month. The court found that county jail officials showed callous indifference towards the inmate's medical needs, and thus a punitive damages award of \$9,000 was warranted to deter or punish the Eighth Amendment violation. The court also found that the inmate was entitled to prejudgment interest on the compensatory damage award at an average monthly prime rate compounded annually from the period beginning on the date of his injury through the date of the entry of judgment. (Milwaukee County Jail, Wisconsin)

U.S. Appeals Court
CONTRACT SERVICES
POLICIES
DELIBERATE
INDIFFERENCE

Thomas v. Cook County Sheriff's Dept., 604 F.3d 293 (7th Cir. 2010). A mother brought a § 1983 and state wrongful death action against a county, sheriff, and various officers and medical technicians at a county jail after her son died from pneumococcal meningitis while being held as a pretrial detainee. The mother asserted a claim of deliberate indifference to medical needs as well as a common-law claim for wrongful death. Following a jury verdict for the mother, the district court, ordered the reduction of the total damage award from \$4,450,000 to \$4,150,000. The defendants appealed. The appeals court affirmed in part and reversed and remanded in part. The

court held that the issue of whether county corrections officers were subjectively aware of the pretrial detainee's serious medical condition that culminated in death from pneumococcal meningitis, as required to support the detainee's survivor's § 1983 deliberate indifference action against a county and officers, was for the jury, given the cellmates' and other witnesses' accounts of the detainee's vomiting and exhibiting other signs of serious illness within plain view of officers without any response from them, and given testimony as to the inmates' various complaints to officers regarding his condition. According to the court, issues of whether the county had a custom or practice of failing to timely review jail inmates' medical requests, and a causal link between such failure and the death of the pretrial detainee from pneumococcal meningitis were for the jury. The court noted that the supervisor and individual medical technicians for the contractor that handled medical services for inmates testified to the practice of not retrieving inmate medical requests on a daily basis, and the detainee's fellow inmates testified to having filed numerous medical requests on the detainee's behalf.

The court found that a causal link was not shown between the county sheriff's department's alleged policy of understaffing the county jail and the pretrial detainee's death from pneumococcal meningitis. Although individual deputies employed as corrections officers were shown to have known of and ignored the detainee's medical needs, there was no evidence that such inaction was due to understaffing rather than other causes. The court found that a compensatory damages award of \$4 million was not excessive. The award was not out of line when measured against those in other similar cases, and the award had rational connection with evidence that the detainee was 32 years old, had three children whom he supported, and had died of a treatable illness after numerous fellow inmates had alerted corrections officers about his condition. (Cook County Jail, Illinois)

U.S. Appeals Court
MISDIAGNOSIS
DUE PROCESS
DELIBERATE
INDIFFERENCE

Townsend v. Jefferson County, 601 F.3d 1152 (11th Cir. 2010). A detainee who suffered a miscarriage at a county jail brought a civil rights action against the county, county sheriff, two deputies, and the nurse who had examined her. The district court denied the deputies' motion for summary judgment on qualified immunity grounds, and they appealed. The appeals court reversed and rendered. The court held that the injury suffered by the pregnant detainee who used crack cocaine daily and had a miscarriage at the county jail was not caused by any deliberate indifference to his serious medical needs by the deputies, in violation of due process. According to the court, the deputies knew that the detainee had spoken with a nurse at the jail who determined that the detainee's condition was not an emergency, and there was no evidence that the detainee's situation was so obviously dire that the deputies must have known that the nurse had grossly misjudged her condition. (Birmingham Jail, Jefferson County, Alabama)

U.S. District Court
INVOLUNTARY
MEDICATION
MENTAL HEALTH

U.S. v. Burhoe, 692 F.Supp.2d 137 (D.Me. 2010). The government moved for order permitting involuntary administration of medication to render a defendant competent to stand trial on charge of possession of firearms after having been previously committed to a mental institution. The district court held that the government established an important governmental interest in the prosecution of the defendant, granting the motion. The court noted that the defendant was charged with the offense of possession of firearms after having been previously committed to a mental institution, arising out of an incident in which he allegedly fired a rifle at a state trooper and ultimately was shot by the police, and there were also state charges pending against the defendant for aggravated attempted murder and reckless conduct with a firearm, arising out of the same incident that brought about the federal charge. (Maine)

U.S. District Court
ADA-Americans with
Disabilities Act
DELIBERATE
INDIFFERENCE
HEARING IMPAIRED

Ulibarri v. City & County of Denver, 742 F.Supp.2d 1192 (D.Colo. 2010). Deaf detainees, and the estate of one detainee who committed suicide, brought a civil rights action challenging their arrests and detentions by the members of city and county's police and sheriff departments. The district court granted the defendants' motions for summary judgment in part and denied in part. The court held that failure to provide a deaf detainee with a sign language interpreter during the intake process did not constitute disability discrimination. The court found that jail deputies were not deliberately indifferent to a deaf detainee's needs. But the court held that summary judgment was precluded by genuine issues of material fact as to whether the deaf detainee had access to the jail's services after he was booked and placed in his housing assignment to the same extent as inmates who could communicate verbally, and whether the detainee could access the jail's services without assistance.

The court held that jail deputies were not deliberately indifferent to needs of a deaf detainee who committed suicide, and because there was no underlying Eighth Amendment violation, supervisor defendants were not liable in either their official or individual capacities for the detainee's suicide, and the municipality was not liable for failure to adequately train and supervise the deputies. The court noted that no evidence indicated that the detainee had been suicidal prior to his incarceration or at the time of his medical screening, but rather, evidence established that the detainee could communicate through writing and otherwise sufficiently to at least alert medical staff that he needed assistance. The court noted that medical staff made regular and frequent visits to the jail. But the court also held that summary judgment was precluded by genuine issues of material fact existed as to whether the sheriff's department breached a duty to the detainee to take reasonable care to prevent the detainee from committing suicide, and whether any such breach proximately caused the detainee's suicide.

The court held that jail officials' late night release of the deaf detainee and the potential harm from being unable to communicate or get herself home did not demonstrate the level of outrageousness required to establish a substantive due process violation under a state-created danger theory. According to the court, the detainee failed to show that officers would have been aware of the risk that, instead of waiting in the facility for public transportation to begin, the detainee would leave and accept a ride from a stranger. The detainee was released at 2:00 a.m. and she was given bus tokens by a deputy sheriff. Her husband had called the facility to say that he was on his way to pick her up, but the message was not relayed to the detainee. There was a waiting area in the lobby of the facility but she did not notice it and attempted to get herself home on her own. (City and County of Denver Police and Sheriff Departments, Pre-arraignment Detention Facility, Denver County Jail, Colorado)

U.S. District Court
EQUIPMENT
TREATMENT

Webster v. Fischer, 694 F.Supp.2d 163 (N.D.N.Y. 2010). An inmate brought a civil rights action against prison officials, alleging discrimination, retaliation, harassment, and violations of his constitutional rights, federal statutes, state law, and regulations. The inmate sought declaratory judgment and injunctive relief, as well as money damages in the amount of \$500,000. The district court granted the defendants' motion for summary judgment. The court held that misbehavior reports and disciplinary actions were not in retaliation for the inmate's participation in an inmate liaison committee, where the inmate was found guilty of the charges in the misbehavior reports based on admissions at a disciplinary hearing. The court found that the inmate did not suffer from the infliction of any physical injury or pain as a result of a corrections officers' allegedly harassing conduct.

According to the court, the inmate did not suffer deprivation of a constitutionally protected liberty interest by confinement in a special housing unit for 90 days. The court held that the inmate's sleep apnea was not sufficiently serious to warrant Eighth Amendment protection, where the inmate admitted that he did not use a breathing machine for a 90-day period that he was confined to a special housing unit, and there was no evidence that the inmate experienced any physical deterioration or other consequences as a result of the lapse in treatment.

The court held that there was no evidence that the inmate was placed on a mail watch or that any of his mail was illegally opened or intentionally misdirected. (Cayuga Correctional Facility, New York State Department of Correctional Services)

U.S. District Court
SUICIDE

Wells v. Bureau County, 723 F.Supp.2d 1061 (C.D.Ill. 2010). The estate of a 17-year-old pretrial detainee who committed suicide while in custody at a county jail brought an action against the county, county sheriff, and corrections officers, alleging claims pursuant to § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the fact that the pretrial detainee, who committed suicide while in custody at a county jail, did not need a mental health professional when he was booked at the jail after being arrested on charges of illegal consumption of alcohol by a minor and possession of drug paraphernalia, was not dispositive of whether the detainee presented a serious need when he was booked at the jail approximately two weeks later after being arrested on charges of contributing to the delinquency of a minor.

The court held that information received by booking officers after pretrial detainee's suicide, including information that the detainee had been kicked out of his father's house, that the detainee was living in a tent, that the detainee and his girlfriend had a suicide pact, and that the detainee had commented to other inmates that if he was going to prison he would "shoot himself," was irrelevant to establishing what was in the officers' minds at time they were alleged to have been deliberately indifferent to the risk that the detainee would commit suicide. According to the court, the corrections officers lacked actual knowledge of a significant likelihood that the detainee would imminently seek to take his own life, or even of facts that would promote the inference of a subjective awareness of such a substantial risk, and thus the officers did not act with deliberate indifference to that risk in violation of due process, despite any alleged negligence in assessing and observing the detainee prior to his suicide. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the county sheriff's policy that correctional officers not personally observe prisoners during the overnight shift was constitutionally inadequate. From 10 PM to 6:30 AM, detainees are locked in their cells. During the overnight period from 11 PM on June 8, 2007, to 5 AM on June 9, 2007, Officer Keefer did eleven cell checks on Cellblock 2. While standing in the guard walkway, officers are able to look into two of the four cells and observe detainees in those cells, but officers are unable to see the detainees in the other two cells in the cellblock. During her checks, Officer Keefer personally observed the detainees in two of the cells in Cellblock 2 because she could see them from the guard walkway, but did not observe Wells in his cell because she was unable to see into his cell from the guard walkway. At 6:45 AM, when another officer let the detainees in Cellblock 2 out of their cells for breakfast, he discovered Wells hanging in his cell. (Bureau County Jail, Illinois)

U.S. District Court
DELAY OF CARE
DELIBERATE
INDIFFERENCE
PRETRIAL DETAINEE
TRAINING

Wereb v. Maui County, 727 F.Supp.2d 898 (D.Hawai'i 2010). Parents of a pretrial detainee, a diabetic who died in custody, brought an action against a county and county police department employees, alleging under § 1983 that the defendants were deliberately indifferent to the detainee's medical needs, and asserting a claim for wrongful death under state law. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The detainee died in a 2-cell police lockup. The court held that county police officers and public safety aids who did not interact with or observe the pretrial detainee not moving in his cell were not subjectively aware of the serious medical need of the detainee, and thus those officers and aids were not deliberately indifferent to that need, in violation of the detainee's due process rights. The court held that summary judgment as to the § 1983 Fourteenth Amendment deliberate indifference claim was precluded by a genuine issue of material fact as to whether county police officers who interacted with the pretrial detainee and/or a county public safety aid who did not see the detainee move around in his cell while she monitored him over video had subjective knowledge of the serious medical need of detainee, precluding summary judgment.

The court found that neither county police officers who interacted with the pretrial detainee, nor a county public safety aid who did not see the detainee move around in his cell while she monitored him over video, were entitled to qualified immunity from the § 1983 Fourteenth Amendment deliberate indifference claim brought by the detainee's parents, where at the time of the detainee's death, it was clearly established that officers could not intentionally deny or delay access to medical care. The court held that summary judgment was precluded on the § 1983 municipal liability claim by genuine issues of material fact as to whether the county adequately trained its employees to monitor the medical needs of the pretrial detainees, and, if so, as to whether the county's inadequate training of its employees was deliberately different, and as to whether inadequate training "actually caused" the death of the pretrial detainee. (Lahaina Police Station, Maui County, Hawaii)

U.S. Appeals Court
NEGLIGENCE
DELIBERATE
INDIFFERENCE

Williams v. Jackson, 600 F.3d 1007 (8th Cir. 2010). A former inmate brought Eighth Amendment claims against a prison maintenance supervisor and three correction officers alleging that they willfully and maliciously exposed him to ultraviolet radiation resulting in physical injury. The district court denied the defendants' motion for summary judgment, and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that correction officers were not entitled to qualified immunity from the inmate's claims alleging that

officers used excessive force and acted with deliberate indifference, in violation of the Eighth Amendment, in removing the shield used to protect cell occupants from exposure to ultraviolet radiation from a germicidal ultraviolet radiation lamp used for the treatment of tuberculosis. The court found that officers acted in retaliation for a comment made by another inmate during a “shake down” of the cell, and that officers ignored demands to replace the shield or deactivate the light, since reasonable officers were on sufficient notice that they may not purposefully expose inmates to potentially harmful radiation in the complete absence of a penological purpose. The court found that the inmate’s allegation that the prison’s maintenance supervisor received notice that correction officers had removed the protective shield but failed to take timely action to replace the shield alleged was nothing more than simple negligence, and thus was insufficient to state an Eighth Amendment violation. (East Arkansas Regional Unit, Arkansas Department of Corrections)

U.S. District Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE
PRIVATE PHYSICIAN
WORK ASSIGNMENT

Wright v. Genovese, 694 F.Supp.2d 137 (N.D.N.Y. 2010). A state prisoner, who underwent open-heart surgery, brought a § 1983 action against a private physician and three physicians who were employed by, or contractors for, the Department of Correctional Services (DOCS). The prisoner alleged that the physicians denied him constitutionally adequate medical care and equal protection of law. The district court granted the physicians’ motions for summary judgment. The court held that, to the extent the physicians were being sued in their official capacities, they were immune from suit. The court found that the private physician was not deliberately indifferent to the prisoner’s medical needs and that the primary treating physician and a consulting cardiologist did not act with deliberate indifference in how they addressed the prisoner’s work restrictions following his surgery. According to the court, the primary treating physician was not deliberately indifferent to the prisoner’s serious medical needs with respect to prescribing post-operative cardiac and pain medication. (Shawagunk Correctional Facility, New York).

U.S. District Court
GID- Gender Identity
Disorder
POLICIES
DELIBERATE
INDIFFERENCE
TRANSSEXUAL

Young v. Adams, 693 F.Supp.2d 635 (W.D.Tex. 2010). An inmate suffering from a gender identity disorder brought a pro se, in forma pauperis § 1983 suit against prison officials, claiming that they collectively denied him hormone treatment, in violation of the Eighth Amendment’s prohibition against cruel and unusual punishment. The district court dismissed the action for failing to comply with time limitations. The court noted that, even if the case had met the time limitations, medical staff at the correctional facility were not deliberately indifferent to the serious medical needs of an inmate, where the inmate did not meet the requirements to receive hormone treatment under the correctional facility’s policy for treatment of gender disorder, which included a confirmed parole or discharge date of 180 days. The court noted the inmate was referred to a mental health unit for evaluation, and he was an intact male who was still manufacturing testosterone. (Alfred D. Hughes Unit, Texas Department of Criminal Justice, Institutional Division)

2011

U.S. District Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE
MEDICATION

Alexander v. City of Muscle Shoals, Ala., 766 F.Supp.2d 1214 (N.D.Ala. 2011). A pretrial detainee sued a city, city police officers, jailers, a mayor, and city council members, asserting § 1983 claims alleging deliberate indifference to his serious medical needs and his health and safety. The court found that qualified immunity applied to bar the § 1983 liability of jailers for deliberate indifference to the serious medical needs of the pretrial detainee, because the detainee failed to argue against the qualified immunity defense. According to the court, once a defendant raises a defense of qualified immunity, the plaintiff bears the burden of establishing both that the defendant committed the constitutional violation and that the law governing the circumstances was already clearly established at the time of the violation, and the detainee failed to adequately respond to the qualified immunity defense. The court noted that the jailers did not contact medical professionals at the detainee’s request for four days at most, and that the detainee, who complained that he was in pain, at that point had been without prescription pain medication to which he was addicted for at least three days. The court also noted that the detainee had already faked a suicide attempt to garner jailers’ attention and had also been both combative and difficult. (City of Muscle Shoals Municipal Jail, Alabama)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
RECORDS-ACCESS

Alsbaugh v. McConnell, 643 F.3d 162 (6th Cir. 2011). A state prisoner filed a civil rights action alleging excessive force and deliberate indifference against numerous state and private defendants. The district court granted summary judgment against the prisoner. The prisoner appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the prisoner’s request for a videotape of a fight was of the nature that it would have changed legal and factual deficiencies of his civil rights action alleging excessive force, and thus the prisoner was entitled to production of it, since the videotape would have shown how much force had been used in subduing the prisoner. But the court held that the prisoner who was alleging excessive force and deliberate indifference was not entitled to the production of his medical records before considering the state’s motion for summary judgment, where the state and private defendants produced enough evidence to demonstrate that medical personnel were not deliberately indifferent to his medical needs. (Ionia Max. Security Corre’l Facility, Michigan)

U.S. Appeals Court
GID- Gender Identity
Disorder
TRANSSEXUAL

Battista v. Clarke, 645 F.3d 449 (1st Cir. 2011). A Massachusetts civil detainee, who was anatomically male but suffered from gender identity disorder (GID), brought an action against Massachusetts officials alleging “deliberate indifference” to her medical needs, and seeking an injunction requiring that hormone therapy and female garb and accessories be provided to her. The district court granted preliminary injunctive relief, and the state officials appealed. The appeals court affirmed. The appeals court held that the record supported the district court’s conclusion that Massachusetts officials were deliberately indifferent to the medical needs of the civil detainee or exercised an unreasonable professional judgment by denying her female hormone therapy. The court noted that it had been fifteen years since the detainee first asked for treatment, and for ten years, health professionals had been recommending hormone therapy as a necessary part of the treatment. According to the court, when, during the delay, the detainee sought to castrate herself with a razor blade, state officials could be said to have known that the detainee was at a “substantial risk of serious harm.” (Massachusetts Treatment Center for Sexually Dangerous Persons)

<p>U.S. District Court DELAY IN TREATMENT DELIBERATE INDIFFERENCE POLICIES</p>	<p><i>Burgos v. Philadelphia Prison System</i>, 760 F.Supp.2d 502 (E.D.Pa. 2011). A pretrial detainee brought a § 1983 action against a city prison system, health service and officials, alleging wrongful delay in receiving medical treatment for his broken arm. The district court granted the defendants’ motion for summary judgment in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact, regarding whether the prison health service's actions in failing to timely refer the detainee to an orthopedic surgeon for treatment of a broken arm constituted an official “policy” of deliberate indifference to the detainee's serious medical needs, for the purposes of municipal liability under § 1983, and whether the prison health administrator significantly delayed the detainee's medical treatment for non-medical reasons. (Philadelphia Prisons Systems, Prison Health Services, Inc.)</p>
<p>U.S. Appeals Court FAILURE TO PROVIDE CARE FEMALE PRISONERS</p>	<p><i>Cobige v. City of Chicago, Ill.</i>, 651 F.3d 780 (7th Cir. 2011). The estate of a deceased female arrestee brought a § 1983 action against a city and police officers, alleging failure to provide medical care in violation of the Fourth Amendment and the Illinois wrongful death law. After a jury verdict in favor of the estate, the city and officers filed motions for judgment as a matter of law and/or for a new trial. The district court denied the motions. The city and officers appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that evidence presented at trial in the estate's § 1983 action was sufficient to establish causation of the arrestee's death, where evidence from one of the arrestee's cellmates, two deputy sheriffs and a civilian aide at the lockup, permitted a jury to find that she experienced severe abdominal pain throughout her confinement. A professor and head of coronary care at university hospitals testified that the pain led the arrestee to produce more epinephrine, which combined with a pre-existing heart condition caused her death, and uterine tumors found during a post-mortem examination led to his conclusion that the arrestee had suffered serious abdominal pain. The court held that the probative value of evidence of the deceased arrestee's police record, time in prison, and drug addiction outweighed the danger of unfair prejudice, where the evidence bore directly on the appropriate amount of damages and that a new trial on the issue of damages was warranted. (Chicago Police Department lockup, Illinois)</p>
<p>U.S. Appeals Court FAILURE TO PROVIDE CARE SUICIDE DELIBERATE INDIFFERENCE</p>	<p><i>Coscia v. Town of Pembroke, Mass.</i>, 659 F.3d 37 (1st Cir. 2011). The estate of a detainee who committed suicide after being released from custody brought a § 1983 action against police officers, their supervisors, and a town, alleging that the officers and supervisors were deliberately indifferent to the arrestee's medical needs and that the town failed to train the officers to prevent detainee suicides. The district court denied the individual defendants' motion for judgment on the pleadings and they appealed. The appeals court reversed. The appeals court held that the estate failed to state a claim for deliberate indifference to a substantial risk of serious harm to health under the Fourteenth Amendment. According to the court, the estate failed to allege facts sufficient to demonstrate a causal relationship between the police officers' failure to furnish medical care to the detainee during a seven-hour period of custody and the detainee's act of committing suicide by walking in front of a train 14 hours after his release from custody. The court noted that the detainee had been thinking about suicide at the time he was arrested, the detainee was thinking about suicide at the time he was released from custody, and when the police released the detainee from custody they placed him in no worse position than that in which he would have been had they not acted at all. The court found that in the absence of a risk of harm created or intensified by a state action, there is no due process liability for harm suffered by a prior detainee after release from custody in circumstances that do not effectively extend any state impediment to exercising self-help or to receiving whatever aid by others may normally be available. The twenty-one-year-old detainee had been involved in a one-car accident, he was arrested about eleven o'clock in the morning and brought to the police station. On the way there he said he intended to throw himself in front of a train, and he continued to utter suicide threats at the station house accompanied by self-destructive behavior, to the point of licking an electrical outlet. As a consequence, the police did not lock him in a cell, but placed him in leg restraints and followed an evaluation protocol that showed a high suicide risk. He was not examined by a doctor, but was released on his own recognizance about six o'clock that evening. (Town of Pembroke, Massachusetts)</p>
<p>U.S. Appeals Court DELAY IN TREATMENT POLICIES PRETRIAL DETAINEE</p>	<p><i>Craig v. Floyd County, Ga.</i>, 643 F.3d 1306 (11th Cir. 2011). A pretrial detainee who was admitted to a county jail after being cleared for admittance by a medical center to which he was transported following his arrest, brought a civil rights action against the county based on its nine-day delay in eventually providing him with surgical treatment for multiple fractures to his head. The district court granted the county's motion for summary judgment. The detainee appealed. The appeals court affirmed. The appeals court held that the pretrial detainee failed to show that a nine-day delay by medical personnel at the county jail in providing him with appropriate surgical treatment for multiple fractures to his skull was the result of any unconstitutional custom or policy of allegedly not referring detainees to physicians, of relying on hospital clearance forms instead of performing their own diagnostic tests on detainees transported to jail from a hospital, or of using the least costly means to treat detainees. The court noted that the detainee's only proof of any such policy or custom was that nine medical providers had evaluated him sixteen times at the county jail, before he was finally transported to a medical center when a tomography scan of his head revealed these fractures. According to the court, while nine different medical providers were involved in the detainee's treatment before a tomography was eventually ordered, this was insufficient to show that the county had a policy or custom of constitutional violations against detainees that was either persistent or so widespread as to have the force of law, as required to subject the county to liability under § 1983. (Floyd County Jail, Georgia)</p>

U.S. District Court
DELIBERATE
INDIFFERENCE
PRIVACY
TREATMENT
FAILURE TO PROVIDE
CARE
DELAY IN CARE
EYE CARE
SMOKE

Davidson v. Desai, 817 F.Supp.2d 166 (W.D.N.Y. 2011). An inmate at a state prison filed a pro se § 1983 action against prison officials and medical staff alleging that they had been deliberately indifferent to his serious medical needs, and had interfered with his attempts to file grievances regarding his medical care, in violation of the First, Eighth, and Fourteenth Amendments. The defendants moved alternatively for judgment on the pleadings and for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the state inmate's shoulder surgery, related to his degenerative disc disease, was delayed because of the inmate's refusal to submit to a pre-operative chest x-ray, or whether it was delayed due to the prison's deliberate indifference to his serious medical needs. According to the court, the inmate's allergies were not a "sufficiently serious condition" under the Eighth Amendment, and thus prison officials' failure to provide the inmate with allergy treatment did not constitute deliberate indifference, where the inmate had undergone allergy testing, allergy sensitivity injections were recommended, but when the inmate arrived for allergy injections he objected to the fact that the injection serum had not been drawn into a syringe within his view and refused the injections.

The court also found that the inmate's breathing difficulties and possible asthma did not constitute "sufficiently serious conditions" under the Eighth Amendment, and thus prison officials' failure to house the inmate in a prison infirmary where levels of allergens were allegedly lower than levels in other parts of prison was not deliberate indifference. The court held that summary judgment was precluded by genuine issues of material fact as to whether the inmate suffered serious health problems caused by exposure to environmental tobacco smoke (ETS), and whether officials knew of, yet disregarded an excessive risk to the inmate's health. According to the court, there was no evidence that prison officials' delays in providing the inmate with an updated prescription to his corrective eyeglass lenses had resulted in symptoms which impaired his daily activities, as required to support the inmate's claim against the prison for deliberate indifference to his serious medical needs. The court noted that the inmate was able to order glasses from an outside source, he made no claims that the lack of a proper prescription had resulted in eye strain or headaches, and during the delay, the inmate was able to continue to research and write in support of his legal actions. The court held that the state prison's sick call procedures, which required that, prior to seeing a physician or nurse practitioner, the inmate discuss his medical issues with a nurse while in close proximity to other inmates at sick call such that others were able to overhear medical concerns, did not violate the inmate's right to privacy under the Fourteenth Amendment. The court noted that the inmate's medical conditions were not so unusual so as to provoke an intense desire to preserve confidentiality, nor would result in hostility and intolerance from others if disclosed. (Elmira Correctional Facility, New York)

U.S. District Court
INADEQUATE CARE
DELIBERATE
INDIFFERENCE
MENTAL HEALTH

Davis v. Correctional Medical Services, 760 F.Supp.2d 469 (D.Del. 2011). A state inmate filed a § 1983 action alleging that prison medical officials failed to provide mental health treatment, failed to follow policies and procedures to prevent officers and other inmates from harassing him, and failed to provide adequate medical treatment for his broken nose. The district court granted the officials' motions to dismiss and for summary judgment. The court held that the failure of the prison's mental health administrator to speak to the inmate or to investigate his complaint regarding his treatment and his living conditions did not violate any recognizable constitutional right, as required to sustain the inmate's § 1983 claim against the administrator. According to the court, prison medical officials were not deliberately indifferent to the inmate's fractured nose, in violation of the Eighth Amendment, where the officials took an x-ray two months after the incident, the inmate did not complain about his nasal condition for seven months, once he did, the condition was consistently monitored and evaluated on several occasions, and the inmate was approved for surgery, but he refused to undergo the procedure. (James T. Vaughn Correctional Center, Delaware)

U.S. Appeals Court
GID- Gender Identity
Disorder
TRANSSEXUAL
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE

Fields v. Smith, 653 F.3d 550 (7th Cir. 2011). Wisconsin Department of Corrections (DOC) inmates, who were diagnosed with Gender Identity Disorder (GID), brought a § 1983 action against DOC officials, alleging, among other things, that the officials violated the Eighth and Fourteenth Amendments by enforcing a statutory provision preventing DOC medical personnel from providing hormone therapy or sexual reassignment surgery to inmates with GID, and from evaluating inmates with GID for possible hormone therapy. The inmates sought a permanent injunction barring enforcement of the statute against them and other inmates. The district court granted judgment on behalf of the plaintiffs and the defendants appealed. The appeals court affirmed. The appeals court held that: (1) enforcement of the statute constituted deliberate indifference to the inmates' serious medical needs; (2) the statute facially violated the Eighth Amendment; (3) deference to prison administrators in implementing the ban was not warranted; and (4) the district court did not abuse its discretion in enjoining the entirety of the Wisconsin Inmate Sex Change Prevention Act. (Wisconsin Department of Corrections)

U.S. District Court
DELIBERATE
INDIFFERENCE
DENTAL CARE

Francis v. Carroll, 773 F.Supp.2d 483 (D.Del. 2011). A former inmate, proceeding pro se and in forma pauperis, brought a § 1983 action against a former warden and other Department of Correction administrators, alleging violations of the Eighth and Fourteenth Amendments. The defendants filed a motion for summary judgment and the district court granted the motion. The court held that denial of dental floss by the prison's medical provider to the inmate was not deliberate indifference to his dental needs by prison administrators, as would violate the Eighth Amendment, where the administrators were entitled to rely upon the provider to care for the inmate's dental needs, and the prison permitted dental loops that provided the same hygiene function as floss. According to the court, denial of dental floss to the inmate did not violate Fourteenth Amendment equal protection, where the inmate was treated no differently than other inmates, and the denial was based upon security concerns. (James T. Vaughn Correctional Center, Delaware)

U.S. Appeals Court
INADEQUATE CARE
DELIBERATE
INDIFFERENCE
DELAY IN CARE

Gonzalez v. Feinerman, 663 F.3d 311 (7th Cir. 2011). A state prisoner filed a civil rights action claiming that two prison physicians and a warden did not provide adequate care for his hernia. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the prisoner stated a claim that prison physicians were deliberately indifferent to his inguinal hernia and chronic pain from that hernia, as serious medical conditions, by pursuing a standard of care that they knew to be ineffective. The physicians only recommended minimal or no pain medications and refused to au-

thorize surgical repair, and the prisoner's ongoing pain was so debilitating that he could not carry on his daily activities or sleep comfortably. The court noted that the physicians never altered their response to his hernia over a period of more than two years as the condition and associated pain worsened over time.

According to the court, the warden was a proper defendant in the civil rights action claiming that two prison physicians did not provide adequate care for his hernia, since the prisoner sought injunctive relief and the warden would be responsible for ensuring that any injunctive relief would be carried out. The court noted that if the prisoner was seeking only damages, the warden's lack of personal involvement would have been conclusive, but since the prisoner also sought injunctive relief, it was irrelevant whether the warden participated in the alleged violations. (Menard Correctional Center, Illinois)

U.S. District Court
DELIBERATE
INDIFFERENCE
INADEQUATE CARE

Hale v. Rao, 768 F.Supp.2d 367 (N.D.N.Y. 2011). An inmate brought an action against prison officials alleging deliberate indifference to his serious medical needs, and alleging that the conditions of his confinement violated the Eighth Amendment. Prison officials moved for summary judgment. The district court granted the motion in part and denied in part. The court excused the state inmate's failure to exhaust administrative remedies prior to bringing the claim in federal court because prison staff had thrown out a grievance filled out by another inmate on the inmate's behalf, refused to provide the inmate with the materials needed to file another grievance, and threatened to physically assault him if he attempted to utilize the grievance procedure. The court noted that the inmate was illiterate and had a poor understanding of the grievance procedure. The court held that the inmate was adequately treated following an alleged assault by a corrections officer, precluding the inmate's claim under the Eighth Amendment alleging deliberate indifference to his serious medical needs. The inmate received medical treatment including at least ten stitches to close the open wounds on his left shin, and an x-ray of his leg to determine if the bone was fractured. Medical staff later re-evaluated his leg injury, cleaned the wound, and provided pain killers. The court found that allegations by the inmate that prison conditions were unsanitary due to the presence of insects in an infirmary room, and that medical staff pulled a staple out of his abdomen by hand, failed to establish the inmate's claim under the Eighth Amendment that his conditions of confinement constituted cruel and unusual punishment, absent evidence that the conditions at the prison prevented the inmate from receiving appropriate medical care. (Downstate Correctional Facility, New York)

U.S. District Court
SUICIDE
DELIBERATE
INDIFFERENCE
NEGLIGENCE

Hawkins v. County of Lincoln, 785 F.Supp.2d 781 (D.Neb. 2011). The personal representative of a hospital patient brought a § 1983 action against the hospital, a county, a city, and related defendants for claims arising when the patient was brought to the hospital at the time of his arrest, was released by the hospital to a county jail, and subsequently hanged himself at the jail. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether prison officials were objectively aware that the prisoner posed a risk of harm to himself that included a risk of suicide. According to the court, although the prisoner had serious medical needs in connection with his risk of suicide, no prison correctional officers, jailers, and/or law enforcement officers were deliberately indifferent to the prisoner's needs, even though it might have been negligent for individual defendants to take the prisoner off a suicide watch without having him evaluated by a physician or other professional. According to the court, the defendants' conduct was not more blameworthy than mere negligence. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the county acted with deliberate indifference by failing to have a specific policy for determining when an inmate could be removed from a suicide watch and placed in a situation that could increase the likelihood of a successful suicide attempt. (Lincoln County Jail, Nebraska)

U.S. District Court
MEDICATION

Hodge v. Murphy, 808 F.Supp.2d 405 (D.R.I. 2011). A pretrial detainee brought a pro se action against a state prison warden and others, alleging the defendants failed to properly dispense his daily medication for migraines and pain resulting from a fractured lower back. The district court dismissed the action. The court held that the allegation that the pretrial detainee suffered undue pain as the result of prison officials' failure to properly dispense daily medication was insufficient to establish a serious medical need involving a substantial risk of serious harm, as required to state a due process claim against the prison officials under the Fourteenth Amendment. (Donald W. Wyatt Detention Facility, Central Falls, Rhode Island)

U.S. Appeals Court
DENTAL CARE

Holden v. Hirner, 663 F.3d 336 (8th Cir. 2011). A pretrial detainee filed a § 1983 action against officials of a county jail for allegedly violating his Fourteenth Amendment rights under the Due Process Clause by allegedly failing to protect him from an assault by three other inmates, and failing to provide adequate medical treatment for his tooth pain. The district court granted prison officials summary judgment and the detainee appealed. The appeals court affirmed. The court held that there was no evidence that the pretrial detainee was incarcerated under conditions posing a substantial risk of serious harm in the protective custody pod in which the detainee was imprisoned as a sex offender, even though one of the assaulting inmates was involved in another fight four days before the altercation with the detainee. The court noted that the pod was designed to provide greater supervision and security for vulnerable inmates who were more likely to be assaulted, and nothing in the record established that the prior fight involved a sex offender. According to the court, even if the pretrial detainee faced a substantial risk of serious harm from other inmates in the protective custody pod, there was no evidence that officials at the county jail were deliberately indifferent to his safety, where the detainee did not tell officials that he felt threatened by other inmates, and the officials had no knowledge of any specific danger to the detainee in the pod. The court held that the pretrial detainee's tooth pain did not constitute a serious medical need, as required to support the detainee's Fourteenth Amendment claim of deprivation of his due process rights by officials of the county jail. The court noted that a nurse employed by the jail evaluated the detainee's teeth and gums on multiple occasions and never noted bleeding, swelling, infection, or other visible symptoms of tooth pain. The nurse never determined that the detainee's tooth pain required treatment, and the detainee was observed eating without difficulty and later refused to have his tooth extracted. The court found that the detainee's prognosis was not negatively impacted by any delay in treatment. (Marion County Jail, Missouri)

U.S. District Court
DELIBERATE
INDIFFERENCE
DENTAL CARE
INVOLUNTARY
TREATMENT

Holmes v. Fischer, 764 F.Supp.2d 523 (W.D.N.Y. 2011). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights by subjecting him to non-random urinalysis drug testing, confining him in a special housing unit (SHU), and denying medical care. The defendants moved for a more definite statement, to strike the complaint, and to dismiss. The district court denied the motion. The inmate alleged that, while incarcerated in a special housing unit (SHU): (1) he was routinely cuffed from behind, aggravating left shoulder and leg conditions resulting from previous injuries, (2) he was subjected to continuous illumination in his cell, rendering it impossible to sleep; (3) officials interfered with the inmate grievance he attempted to file regarding constant SHU cell illumination; (4) he was denied dental floss; (5) he was denied, during winter months, proper boots, gloves, hat, and thermos; (6) he was exposed to feces thrown by mentally-ill inmates confined to SHU; (7) he was denied proper medical treatment and tests; and (8) he was subjected to urinalysis testing which so traumatized him as to cause physical harm. The court held that these allegations were sufficient to state claims under the Eighth Amendment for cruel and unusual punishment and deliberate indifference to necessary medical care. According to the court, the inmate's allegations that he was subjected to urinalysis based on reports from confidential informants whose credibility and reliability had not been confirmed, despite the complete absence of any history of drug use, and that two random urinalysis tests to which he was subjected were done to retaliate against him for filing inmate grievances regarding non-random urinalysis testing, were sufficient to state an unreasonable search claim under the Fourth Amendment. The court found that the inmate's allegation that, as a result of repeated non-random urinalysis drug testing to which he was subjected, he suffered physical harm, including insomnia, nausea, headaches, burning eyes, aggravation of an old gunshot wound, inability to exercise, and appetite loss, was sufficient to state a cruel and unusual punishment claim under the Eighth Amendment. (Elmira Correctional Facility, and Southport Correctional Facility, New York)

U.S. District Court
EQUIPMENT
DELIBERATE
INDIFFERENCE

Jaundoo v. Clarke, 783 F.Supp.2d 190 (D.Mass. 2011). A state prisoner brought an action under § 1983 against various prison officials and employees, alleging that the defendants unlawfully deprived him of necessary medical care by confiscating his crutches while he was incarcerated in a maximum security prison. The district court held that summary judgment for a corrections officer was precluded by a genuine issue of material fact as to whether the prisoner's knee had healed sufficiently that he no longer needed crutches. According to the court, summary judgment for a nurse was precluded by a genuine issue of material fact as to whether the nurse knew or had a reason to know of the prisoner's serious medical condition and whether it was reckless for the nurse to rely on a corrections officer's report that the prisoner had been moving around without his crutches. The court also found genuine issues of material fact as to whether another corrections officer falsely reported that the prisoner was running on both feet without his crutches, and whether that officer conveyed such information to induce prison medical staff to take away the prisoner's crutches. The court found that the conduct of a health services administrator, in failing to immediately investigate the confiscation of the prisoner's crutches, did not rise to the level of deliberate indifference to the prisoner's serious medical needs. (Massachusetts Correctional Institution at Cedar Junction)

U.S. District Court
ADA- Americans with
Disabilities Act
HEARING IMPAIRED

Johnson v. Florida Dept. of Corrections, 826 F.Supp.2d 1319 (N.D.Fla. 2011). A hard-of-hearing inmate at a state prison, who had allegedly been denied the benefit of television and radio services provided to other inmates, filed suit against the state department of corrections seeking accommodation in the form of volume-boosting listening devices, and alleging violations of the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Equal Protection Clause of the Fourteenth Amendment. The defendant moved to dismiss. The district court denied the motion. The court held that even though the inmate was transferred to a different prison after filing grievances and prior to filing suit, he sufficiently exhausted his administrative remedies under PLRA, since officials had been alerted to his problem and had the opportunity to resolve it before being sued. The court noted that even though the prison to which the inmate had been transferred would require him to have different adaptive technology than the type which he had originally sought, his claim arose from the same continuing failure of the prison to provide him with access to television and radio audio. (Polk Correctional Inst., Florida)

U.S. Appeals Court
AIDS- Acquired Immune
Deficiency Syndrome
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE
INADEQUATE CARE

Leavitt v. Correctional Medical Services, Inc., 645 F.3d 484 (1st Cir. 2011). A state inmate brought a § 1983 action against a private contractor that provided medical care at a prison and the contractor's employees, among others, alleging that the defendants provided inadequate medical care for his human immunodeficiency virus (HIV) at a jail and a prison. The district court granted the defendants' motions for summary judgment and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the physician assistant at the jail was deliberately indifferent to the serious medical needs of the inmate, in failing to refer him to an infectious disease specialist or to otherwise treat his HIV in a timely manner, and as to whether the assistant's alleged deprivation of care subjected the inmate to serious harm, both short-term and long-term. The court held that the regional medical director employed by the private contractor that provided medical care did not act with deliberate indifference to the serious medical needs of the HIV positive inmate in failing to sign off on necessary referrals to specialists and in failing to follow up on the inmate after committing to intervene more personally in his care. The court noted that, after examining the inmate, the director not only ordered updated blood work, but also took the unusual step of ordering that the inmate's follow-up appointment specifically be with him, and when the director finally saw the inmate's lab results three months after the labs were drawn, the director approved the inmate's referral to specialists. (Maine State Prison, and York County Jail, Maine)

U.S. District Court
DELIBERATE
INDIFFERENCE
DENIAL
POLICIES
PRETRIAL DETENTION

Newbrough v. Piedmont Regional Jail Authority, 822 F.Supp.2d 558 (E.D.Va. 2011). The administrator of an immigration detainee's estate brought an action against the federal government, a regional jail authority and various of its employees, and several agents of the United States Immigration and Customs Enforcement (ICE), alleging § 1983 claims in relation to medical treatment received by detainee while in jail, and a claim for wrongful death. The defendants moved to dismiss and the plaintiff moved for a stay. The court held that the stricter deliberate indifference standard, rather than the professional judgment standard, applied to the § 1983 denial-of-medical-care claims brought by the administrator, where immigration detention was more similar to pretrial detention rather than the involuntary commitment of psychiatric patients, in that immigration detention served to

secure the detainee's appearance at future proceedings and to protect the community, and pre-removal detention was generally limited in duration. The court held that the allegations of the administrator were sufficient to allege that a prison nurse deliberately denied, delayed, or interfered with the detainee's medical care with knowledge of his serious condition, as required to state a § 1983 denial-of-medical-care claim under Fourteenth Amendment's Due Process Clause. The administrator alleged that the nurse visited the detainee while he was held in isolation in a medical segregation unit with an apparent inability to walk or stand, and yet withheld medication because the detainee was unwilling to stand up and walk to the door to receive that medication. The court noted that the nurse acknowledged that not giving the detainee his medication could cause severe problems. The court found that the nurse did not deny, delay, or intentionally interfere with the immigration detainee's medical treatment, where the nurse documented her observations regarding the detainee's acute back pain, sleeplessness, and unresponsiveness, and then related those observations to superior prison officials, including a prison doctor. According to the court, allegations of the administrator were sufficient to allege that a prison doctor deliberately denied, delayed, or interfered with the detainee's medical care with knowledge of his serious condition, where the administrator alleged that the doctor received multiple reports from his subordinates regarding the detainee's back pain, his inability to stand, and elevated vital signs and yet failed to act or personally assess the detainee's condition, to provide more than perfunctory treatment, or to follow up on prescribed courses of treatment. The court found that the administrator sufficiently alleged that the regional jail authority and its superintendent failed to adequately train jail staff, as required to state a § 1983 policy-or-custom claim in relation to the detainee's medical care under the Fourteenth Amendment's Due Process Clause. The administrator alleged that prison officers regularly refused to refer requests for medical attention unless a request was in writing, regardless of the urgency of a detainee's need, that prison staff either failed to recognize symptoms of grave illness or ignored them, and that, even in the face of the detainee's potentially fatal infection, staff provided no more than an over-the-counter pain reliever. The court found that the administrator's allegations were sufficient to allege that the jail's superintendent, even if newly hired, was aware of the shortcomings in his facility's medical care, as required to state a § 1983 supervisory liability claim, where the administrator alleged that numerous public investigations and media coverage reported the poor quality of the jail's health services and the superintendent failed to act to improve those services. (Piedmont Regional Jail Authority, Virginia, and U.S. Immigration and Customs Enforcement Agency)

U.S. District Court
 ADA- Americans with
 Disabilities Act
 CONTRACT SERVICES
 DELIBERATE
 INDIFFERENCE
 RA- Rehabilitation Act
 WORK ASSIGNMENT

O'Neil v. Texas Dept. of Criminal Justice, 804 F.Supp.2d 532 (N.D.Tex. 2011). The next friend to a deceased prisoner's minor daughter who died of an asthma attack while confined brought a § 1983 action against the Texas Department of Criminal Justice (TDCJ), a prison doctor, the company that provided health care services at the prison, and others, alleging violations of the Eighth Amendment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act (RA). The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a picket officer, in failing to respond to the emergency call button of the prisoner who was suffering from an asthma attack and in refusing to respond to the cellmate's verbal calls to help the prisoner during an asthma attack, knew of a substantial risk of serious harm to the prisoner and failed to act with deliberate indifference to that harm. The court found that the officer was not entitled to qualified immunity.

The court held that summary judgment on claims alleging violations of Americans with Disabilities Act (ADA) and Rehabilitation Act (RA). Rehabilitation Act of 1973, was precluded by a genuine issue of material fact as to whether the Texas Department of Criminal Justice (TDCJ), in failing to put the prisoner who suffered from asthma on job restriction from temperature or humidity extremes, failing to allow the prisoner access to his medication on the day he died as the result of an asthma attack, and failing to provide the prisoner with periodic physician follow-up appointments, failed to accommodate the prisoner's disability. The court held that summary judgment on alleged violations of Americans with Disabilities Act (ADA) and Rehabilitation Act (RA) was precluded by a genuine issue of material fact as to whether the company that provided health care services at the prison, in failing to respond to emergency calls for help for the prisoner who suffered from asthma and failing to provide the prisoner with prompt medical attention on the day he died as the result of an asthma attack, failed to accommodate the prisoner's disability. (Jordan Unit, Texas Department of Criminal Justice)

U.S. District Court
 MENTAL HEALTH

Ocasio v. Konesky, 821 F.Supp.2d 571 (W.D.N.Y. 2011). An inmate, proceeding pro se, brought a § 1983 claim against a social worker employed by a Department of Correctional Services (DOCS), alleging he was wrongfully removed from a mental health program. The social worker filed a motion for summary judgment, which the district court granted. The court held that the social worker's removal of a designation permitting the inmate to participate in an intensive mental health program administered by Department of Correctional Services (DOCS) was not retaliation for the inmate's complaints, where the designation was based upon the worker's observations of the inmate's symptoms, and the conclusions were seconded by the inmate's treating physicians and other DOCS staff. (Wende Correctional Facility, New York)

U.S. Appeals Court
 DELIBERATE
 INDIFFERENCE
 FAILURE TO PROVIDE
 CARE

Ortiz v. City of Chicago, 656 F.3d 523 (7th Cir. 2011). A female arrestee's estate brought a civil rights action against a city and a number of its police officers, alleging claims arising out of the arrestee's denial of medical care and death during detention. The district court barred the proposed testimony of the estate's medical expert, and granted summary judgment in favor of the defendants. The estate appealed. The appeals court affirmed in part and reversed in part. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether it was objectively unreasonable for police officers to take no action to seek medical care for the arrestee, and as to whether the arrestee would not have died or experienced pain and suffering prior to her death had the police officers taken her to a hospital. The court held that remand was required for the district court to determine whether the medical expert's testimony that, assuming the arrestee died of a heroin overdose, she would have suffered less if she had been taken to the hospital, would help a jury understand whether the police officers' failure to take the arrestee to the hospital exacerbated her injury. According to the court, the police officers were not entitled to qualified immunity where it was clearly established at the time of arrestee's

death that the Fourth Amendment protected a person's rights until she had had a probable cause hearing, and that providing no medical care in the face of a serious health risk was deliberate indifference. (Chicago Police Department 23rd District Lockup, Illinois)

U.S. District Court
DELIBERATE
INDIFFERENCE
TRAINING

Palmer v. Board of Com'rs for Payne County Oklahoma, 765 F.Supp.2d 1289 (W.D.Okla. 2011). A former pre-trial detainee in a county detention center filed a § 1983 action against a sheriff, deputy sheriff, and county jail administrator for alleged deliberate indifference to the detainee's serious medical needs in violation of the Due Process Clause. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that a deputy sheriff was not deliberately indifferent to the pretrial detainee's serious medical needs, in violation of the Due Process Clause, due to a bacterial infection that required surgical excision of three gangrenous areas of the detainee's body, but rather, he took active and reasonable steps to abate any harm to the detainee. According to the court, there was no evidence of inadequate training of jailers as to the passing on of doctor's instructions for inmates, as required to establish the deliberate indifference of the county sheriff to the serious medical needs of the pretrial detainee who contracted a bacterial infection, in violation of due process.. (Payne County Jail, Oklahoma)

U.S. Appeals Court
RESTRAINTS
TRANSPORTATION

Reynolds v. Dormire, 636 F.3d 976 (8th Cir. 2011). A state prisoner filed a pro se § 1983 action against a prison warden and correctional officers (COs), asserting Eighth Amendment claims arising from refusal to remove the prisoner's restraints on a day-long journey to a medical appointment, and from his alleged injuries from falling five feet into a sally port pit designed to facilitate visual inspections of vehicle undercarriages at an entryway into the prison. The district court dismissed the complaint for failure to state a claim. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the prisoner's complaint was devoid of any allegation suggesting that correctional officers acted with deliberate indifference to the prisoner's safety in restraining him throughout the day, as required to support an Eighth Amendment claim in his § 1983 action, since the complaint merely alleged that the officers refused to remove the prisoner's restraints. But the court held that the prisoner's complaint sufficiently alleged claims of deliberate indifference to his safety in violation of the Eighth Amendment by two correctional officers, but not the other three officers who were simply on duty in the vicinity of the prisoner's accident in which he fell five feet into a sally port pit. According to the court, the complaint sufficiently pleaded that the two officers were aware of a substantial risk to the prisoner's safety but recklessly disregarded that risk. The prisoner alleged that one officer parked the prison van about three feet from edge of the pit, that the prisoner was obliged to back out of the van, using a stool to descend from the vehicle, with his legs shackled and his arms secured by a black box restraint, that the second officer supervising the prisoner's exit started backing away rather than assisting the prisoner, and that officers knew about the hazard because another prisoner had fallen into the same pit on the same day. (Northeast Correctional Center, Missouri)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
DELAY IN CARE

Schaub v. VonWald, 638 F.3d 905 (8th Cir. 2011). A paraplegic state prisoner brought an action against the director of a county adult detention center (ADC), the county, and others, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. Following a bench trial, the district court held that the director violated the prisoner's Eighth Amendment rights, and awarded the prisoner \$114,000 in lost wages, \$100,000 in pain and suffering, and \$750,000 in punitive damages. The director appealed. The appeals court affirmed. The appeals court held that: (1) the district court did not clearly err in finding that the prisoner's condition constituted a serious medical need; (2) the director was subjectively aware of the prisoner's serious medical needs; (3) the director knowingly and deliberately disregarded the prisoner's serious medical needs; (4) the prisoner's need for medical attention would have been obvious to a layperson, and thus submission of verifying medical evidence was unnecessary; (5) expert testimony on the causation of the prisoner's serious medical condition was unnecessary; (6) the director's conduct involved callous indifference to the prisoner's serious medical needs, and thus the award of punitive damages was warranted; and (7) the director had the burden to introduce evidence of his net worth to minimize a potential punitive damages award. The court noted that the prisoner's oozing sores and smell of infection due to pressure sores, made his serious medical needs obvious to a layperson, and a letter from the prisoner's doctor, summarizing the prisoner's medical condition and needs, and the prison medical staff's observations, documenting new areas of skin breakdown due to pressure sores, provided sufficient medical evidence verifying the escalating seriousness of the prisoner's condition. (Olmsted County Adult Detention Center, Minnesota)

U.S. District Court
DELIBERATE
INDIFFERENCE
DENIAL

Scott v. Antonini, 764 F.Supp.2d 904 (E.D.Mich. 2011). A prisoner brought a § 1983 action against doctors, alleging denial of his right to medical treatment. After the appeals court affirmed the dismissal of the complaint in part, reversed in part and remanded, the remaining doctor defendant filed a motion for summary judgment. The district court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the prisoner's multiple complaints of severe and constant pain were a sufficiently serious medical need requiring treatment; (2) whether the doctor knew of and disregarded an excessive risk to the prisoner's health and safety; and (3) whether the prisoner had an obvious need for medical care. The prisoner alleged that the doctor was deliberately indifferent to his medical needs that arose after he had undergone radiation treatment for prostate cancer. (G. Robert Cotton Correctional Facility, Michigan)

U.S. District Court
DELIBERATE
INDIFFERENCE
FEMALE PRISONERS
POLICIES

Shultz v. Allegheny County, 835 F.Supp.2d 14 (W.D.Pa. 2011). The administratrix of the estate of an inmate who died after developing bacterial pneumonia while pregnant brought a § 1983 action against a county, jail health services, and various officials and employees of county jail, alleging they ignored her serious medical problems. The county and official filed a motion to dismiss. The district court denied the motion. The court held that allegations that the inmate had complained of symptoms involving her breathing and lungs to jail personnel but was told to "stick it out," that she feared impending death and communicated that to officials and her mother, that her condition progressed to the point where she had difficulty breathing and had discharge from her lungs, that she

was taken to the infirmary with additional symptoms including nausea and vomiting, which had been present for several days, that she was treated for influenza without taking cultures or other testing, that there was no outbreak of the flu within the jail, that her condition did not improve, that she continued to complain of difficulty breathing and lung discharge, that she was taken to a medical facility intensive care unit, and that tests were performed there but her condition had already progressed to the point where it was fatal were sufficient to plead deliberate indifference to her serious medical need. The court found that allegations that her condition could have been easily controlled and cured with testing were sufficient to plead a cost-cutting/saving custom or policy existed and was the moving force in the inmate's death, as required for the § 1983 action. (Allegheny Correctional Health Services Inc., Allegheny County Jail, Pennsylvania)

U.S. District Court
MENTAL HEALTH
SUICIDE
INADEQUATE CARE

Smith v. Atkins, 777 F.Supp.2d 955 (E.D.N.C. 2011). The mother of a schizophrenic inmate who committed suicide at a jail and the mother of the inmate's children brought a § 1983 action in state court against a county deputy sheriff, jail officials, a medical contractor, and a nurse employed by the contractor, alleging that the defendants violated the inmate's Eighth Amendment rights in failing to provide adequate medical care. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motions. The court held that the deputy sheriff who happened to be at the jail delivering a prisoner when the inmate, who had been diagnosed with schizophrenia, committed suicide, did not know that the inmate was at a substantial risk of committing suicide or intentionally disregarded such risk. The court found that the deputy was not liable under § 1983 where the deputy did not know the inmate or anything about him, or have any responsibilities associated with the inmate's custody. The court also found that jail officials were not deliberately indifferent towards the schizophrenic inmate who was awaiting transfer to a state prison, as would violate the inmate's Eighth Amendment rights, because there was no indication that the officials subjectively knew that the inmate was at a substantial risk of committing suicide and intentionally disregarded that risk. According to the court, simply because the jail inmate, who was diagnosed with schizophrenia, had previously been on a suicide watch at the jail did not put jail officials on notice that he was suicidal during his subsequent incarceration two years later. The court held that jail officials' mere failure to comply with a state standard and a jail policy requiring a four-time per hour check on any prisoner who had ever been on a suicide watch did not violate the Eighth Amendment rights of the inmate. The court found that the mother of the inmate failed to show a direct causal link between a specific deficiency in training and an alleged Eighth Amendment violation, as required to sustain the mother's § 1983 Eighth Amendment claim against jail officials based on their alleged failure to train jail employees. (Bertie–Martin Regional Jail, North Carolina)

U.S. District Court
DENIAL
INADEQUATE CARE

Thomas v. U.S., 779 F.Supp.2d 154 (D.C.C. 2011). A federal prisoner brought an action against the United States, the Federal Bureau of Prisons (BOP), and the BOP's Administrator of National Inmate Appeals, alleging he was deprived of adequate medical treatment in violation of the Eighth Amendment. The defendants moved to dismiss. The court granted the motion in part and denied in part. The court held that the prisoner stated a claim for injunctive relief under the Eighth Amendment, seeking an order compelling prison officials to provide adequate medical treatment for his chronic ailments, "severe cramps all over his body" that were "debilitating," by alleging that he had not received proper treatment for his ailments. (Fed. Corr'l Complex, Terre Haute, Indiana)

U.S. District Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE
MENTAL HEALTH

Troy D. v. Mickens, 806 F.Supp.2d 758 (D.N.J. 2011). Two juvenile delinquents brought a § 1983 action against mental health providers and the New Jersey Juvenile Justice Commission (JJC), alleging that the actions of the defendants while the delinquents were in custody violated the Fourteenth Amendment and New Jersey law. One of the plaintiffs was 15 years old when he was adjudicated as delinquent and remained in custody for a total of 225 days. For approximately 178 of those days, the delinquent was held in isolation under a special observation status requiring close or constant watch, purportedly for his own safety. Although the delinquents were placed in isolation for different reasons, the conditions they experienced were similar. Each was confined to a seven-foot-by-seven-foot room and allowed out only for hygiene purposes. The rooms contained only a concrete bed slab, a toilet, a sink, and a mattress pad. One delinquent was allegedly held in extreme cold, and the other was allegedly isolated for four days in extreme heat. Both were denied any educational materials or programming, and were prevented from interacting with their peers. One delinquent's mattress pad was often removed, a light remained on for 24 hours a day, and he was often required to wear a bulky, sleeveless smock. Both delinquents were allegedly denied mental health treatment during their periods in isolation. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the New Jersey Juvenile Justice Commission (JJC) and mental health providers were deliberately indifferent towards conditions of confinement, in protecting and in providing medical care for the juvenile delinquent housed in JJC facilities; (2) whether placing the juvenile delinquent housed in temporary close custody and special observation status implicated a liberty interest; (3) whether a juvenile delinquent housed in New Jersey Juvenile Justice Commission (JJC) facilities had procedural due process protections available to him upon a change of status; (4) whether the juvenile delinquent had a liberty interest implicated in his transfer to a more restrictive placement; (5) whether the juvenile delinquent had sufficient procedural due process protections available to him upon transfer to a more restrictive placement; and (6) whether the New Jersey Juvenile Justice Commission (JJC) and mental health providers acted with malice or reckless indifference. (New Jersey Juvenile Justice Commission, Juvenile Medium Security Facility, New Jersey Training School, Juvenile Reception and Assessment Center)

U.S. District Court
FEMALE PRISONERS
FAILURE TO PROVIDE
CARE

Webb v. Jessamine County Fiscal Court, 802 F.Supp.2d 870 (E.D.Ky. 2011). An inmate brought a § 1983 action against a county fiscal court, a judge, detention center, and jailers, alleging that the defendants were deliberately indifferent to his serious medical needs, resulting in her being forced to endure labor unassisted by medical personnel and to give birth to her child in a holdover cell. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the pregnant inmate had a "serious medical need" during the overnight hours in which she, at the end of her pregnancy term, experienced readily recognizable symptoms of labor, and as to whether the county jailer who communicated with the inmate on the night in question, and who was

purportedly a certified nursing assistant (CNA), perceived the facts necessary to draw the inference that a serious medical condition existed and then disregarded that condition. According to the court, the fact that the inmate gave birth to a healthy baby in a holdover cell following a normal and, by all appearances, unremarkable course of labor and delivery, went to the amount of damages to be awarded in the inmate's § 1983 action against the county defendants, but did not change the fact that the type of injury the inmate allegedly suffered was cognizable under the Eighth Amendment. (Jessamine County Detention Center, Kentucky)

U.S. District Court
DELIBERATE
INDIFFERENCE
TRAINING
ALCOHOL/DRUGS

Wereb v. Maui County, 830 F.Supp.2d 1026 (D.Hawai'i 2011). The parents of a diabetic pretrial detainee who died in custody brought an action against a county and county police department employees, alleging under § 1983 that the defendants were deliberately indifferent to the detainee's medical needs, and asserting a claim for wrongful death under state law. The district granted summary judgment, in part, in favor of the defendants. The county moved for reconsideration. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by fact issues on the claim that the county failed to train jail employees to monitor detainees' serious medical needs. The court found that the county and its police department were not liable for their alleged failure to train employees on the risks and symptoms of alcohol withdrawal. According to the court, assuming that the detainee died from alcohol withdrawal, no other prisoner in the county jail had suffered injury from alcohol withdrawal for more than 17 years before the detainee's death, so that such a failure to train did not constitute deliberate indifference. (Lahaina, Maui, Police Station, Hawai'i)

U.S. District Court
DENTAL CARE
INADEQUATE CARE

Wesolowski v. Harvey, 784 F.Supp.2d 231 (W.D.N.Y. 2011). A former prisoner brought a pro se civil rights action against the Superintendent of, and a dentist at, a correctional facility, alleging that he was subjected to cruel and unusual punishment in violation of his Eighth Amendment rights, due to a lack of dental care. The defendants moved for summary judgment. The district court granted the motion and dismissed the case. The court held that the allegation that the prisoner was subjected to a delay of seven months between his first request for dental treatment and his first examination by a dentist failed to state a claim for deliberate indifference to his serious medical needs. The court found that the allegation that the prisoner was only offered painkillers, with the option of immediate extraction of the three affected teeth, or fillings, was insufficient to state a claim for inadequate medical care. According to the court, the allegation that the prisoner was deprived of adequate dental care was insufficient to state a claim against the facility superintendent where no underlying constitutional deprivation occurred that the superintendent ignored, was informed of, created, permitted, or toward which he could have been deliberately indifferent. The court noted that the prisoner's prior requests for treatment were made at a different institution, to different persons, who were not parties to his lawsuit. (Southport Corr'l. Facility, N. Y.)

2012

U.S. Appeals Court
HANDICAP
HEARING IMPAIRED
DELIBERATE
INDIFFERENCE

Akhtar v. Mesa, 698 F.3d 1202 (9th Cir. 2012). A state prisoner brought a § 1983 action against correctional officers, alleging deliberate indifference to his serious medical needs in connection with the officers' alleged failure to comply with the prisoner's medical orders, which required the prisoner to be housed in a ground floor cell. The district court dismissed the action and denied the prisoner's motion to alter or amend the judgment. The prisoner appealed. The appeals court affirmed and remanded. The court held that the district court abused its discretion by failing to consider arguments that directed the court to crucial facts showing he might have exhausted his administrative remedies, and in addition to being pro se, the prisoner was illiterate, disabled, and had limited English skills. The court found that the prisoner satisfied the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA) prior to filing his § 1983 action against the correctional officers, where the prisoner filed grievances addressing the officers' alleged failure to comply with medical orders several months before filing the complaint. The court held that the prisoner stated a § 1983 Eighth Amendment claim against correctional officers for deliberate indifference to his serious medical needs. The prisoner alleged that he suffered from numerous medical conditions and was hearing and mobility impaired, that his medical orders stated that the prisoner was mobility impaired and had housing restrictions requiring a lower bunk, no stairs, and no triple bunk, and that the correctional officers knew of those medical orders, but failed to comply with them. (Mule Creek State Prison, California)

U.S. District Court
GID- Gender Identity
Disorder
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Alexander v. Weiner, 841 F.Supp.2d 486 (D.Mass. 2012). An inmate, who was a male-to-female transsexual diagnosed with Gender Identity Disorder (GID), brought an action against prison medical staff, alleging violations of the Eighth and Fourteenth Amendments for failing to provide adequate medical treatment for her GID. The district court denied the defendants' motion to dismiss. The court held that allegations by the inmate that she was a male-to-female transsexual diagnosed with Gender Identity Disorder (GID), that laser hair removal or electrolysis was part of her treatment prescribed by doctors under contract with the prison, and that she was denied this medical care were sufficient to plead that her serious medical need was not adequately treated in violation of the Eighth Amendment. The court also held that allegations that she was denied this care on at least three separate occasions, despite a long history of administrative appeals and requests for doctors' orders to be followed, were sufficient to plead deliberate indifference by prison officials in violation of the Eighth Amendment. According to the court, allegations that the associate medical director at the prison had direct responsibility for administering medical care ordered by physicians, and that the director failed to permit the inmate to receive her prescribed treatment, were sufficient to plead personal involvement by the director in deliberate indifference to serious medical needs, as required for the inmate's § 1983 claim alleging violations of the Eighth Amendment. The court also found that the assistant deputy commissioner for clinical services at the prison was aware of the inmate's prescribed course of treatment, that the inmate was denied treatments, and that the commissioner responded to filed grievances by claiming the grievances were resolved and then telling the inmate to address her concerns with primary care providers, were sufficient to plead the commissioner's personal involvement in deliberate indifference to her serious medical needs. (Massachusetts Department of Correction)

<p>U.S. District Court EMERGENCY CARE NEGLIGENCE WORK ASSIGNMENT DELIBERATE INDIFFERENCE</p>	<p><i>Allen v. Ford</i>, 880 F.Supp.2d 407 (W.D.N.Y. 2012). A state inmate brought a § 1983 action against correction officers, alleging negligence in failing to provide adequate safety equipment while he was working in a cafeteria and in failing to provide treatment when he burned himself, as well as asserting deliberate indifference in instruction and supervision. The officers moved for summary judgment. The district court granted the motion. The court held that: (1) the negligence claims were precluded by sovereign immunity; (2) one officer did not know of and disregard the severity of the prisoner's injuries; and (3) the officer advising the prisoner to sign up for sick call for the following morning, rather than providing emergency sick call at that time, was not deliberately indifferent. The court noted that the prisoner reported the incident to the officer, who asked if he was badly burned, the prisoner responded that he did not know, the prisoner's skin did not blister until after he returned to his cell at the end of his shift, and the prisoner visited the medical department the next morning and was transferred to a county medical center. (New York State Department of Corrections, Wende Correctional Facility)</p>
<p>U.S. District Court ADA- Americans with Disabilities Act DELIBERATE INDIFFERENCE MEDICATION MENTAL HEALTH RA- Rehabilitation Act</p>	<p><i>Anderson v. Colorado</i>, 887 F.Supp.2d 1133 (D.Colo. 2012). A mentally ill inmate sued a state, its Department of Corrections (DOC), the DOC's director, and a warden, asserting claims for alleged violations of due process, the Eighth Amendment bar against cruel and unusual punishment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. Following a bench trial, the district court held that: (1) denying the inmate in administrative segregation any opportunity to be outdoors and to engage in some form of outdoor exercise for period of 12 years was a serious deprivation of a human need; (2) the defendants were deliberately indifferent to the inmate's mental and physical health; (3) the inmate failed to establish that he was denied a necessary and appropriate medication in violation of ADA and the Rehabilitation Act; (4) the defendants had to assign a department psychiatrist to reevaluate the inmate's current mental health treatment needs and take steps concluded to be appropriate in the psychiatrist's medical judgment; (5) the inmate failed to establish a violation of his rights under the Eighth Amendment, ADA, and the Rehabilitation Act due to the alleged denial of treatment provided by a multi-disciplinary treatment team; (6) the inmate had a due process-protected liberty interest in progressing out of administrative segregation; and (7) the new stratified incentive system that was being implemented with respect to inmates in administrative segregation, if used fairly, was consistent with due process. (Colorado Department of Corrections, Colorado State Penitentiary)</p>
<p>U.S. District Court ADA-Americans with Disabilities Act DELIBERATE INDIFFERENCE FAILURE TO PROVIDE CARE MEDICATION MENTAL HEALTH RA- Rehabilitation Act</p>	<p><i>Anderson v. Colorado, Dept. of Corrections</i>, 848 F.Supp.2d 1291 (D.Colo. 2012). An inmate brought an action against a state, the Department of Corrections (DOC), the DOC's director, and a warden asserting violations of the Eighth and Fourteenth Amendments as well as violations of the Americans with Disabilities Act (ADA) and Rehabilitation Act. The inmate moved for partial summary judgment and to reopen discovery, and the defendants moved for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to whether the maximum security prison's denial of outdoor exercise to the inmate for the more than 11 years of his incarceration was sufficiently serious and whether prison officials acted intentionally or with deliberate indifference. The court also found genuine issues of material fact as to whether the inmate's lack of outdoor exercise during his 11 years of incarceration caused his muscles to grow weaker, on the grounds that the inmate could demonstrate a physical injury. The court held that summary judgment was precluded by genuine issues of material fact as to whether prison officials arbitrarily administered a demerit program that would allow the inmate to progress to higher levels and ultimately out of administrative segregation and into the general population, depriving him of a liberty interest without the due process guaranteed by the Fourteenth Amendment.</p> <p>The court held that summary judgment was also precluded by genuine issues of material fact as to whether a primary reason that the inmate had not progressed out of administrative segregation and into the general population was that he was denied a prescribed non-formulary medication, such that his mental illness was improperly and inadequately treated, and whether prison officials were deliberately indifferent to the inmate's serious mental health condition when he did not receive certain medications prescribed by physicians for the treatment of his mental illness. The court also held that summary judgment was precluded by genuine issues of material fact as to whether the inmate received adequate treatment for his mental illness, with regard to his Rehabilitation Act and ADA claims against the state and prison officials. (Colorado State Penitentiary)</p>
<p>U.S. District Court DENIAL INADEQUATE CARE POLICIES PRIVATE PROVIDER</p>	<p><i>Bektic-Marrero v. Goldberg</i>, 850 F.Supp.2d 418 (S.D.N.Y. 2012). The wife of an inmate who died of cancer-related causes while in the custody of a county department of correction (DOC) brought an action against the county, DOC officials, and entities that contracted with the county to provide medical care and treatment to DOC inmates and employees of those entities. The wife alleged under § 1983 that the inmate received inadequate medical care, and asserted related state-law claims for wrongful death and medical malpractice. The defendants moved to dismiss for failure to state a claim and/or for summary judgment. The district court granted summary judgment for the defendants in part, and denied in part. The court held that the physicians who were under contract with the county to provide medical services to inmates at the county jail on a part-time basis acted under the color of state law, within the meaning of § 1983, when they treated the inmate, and thus the physicians were subject to liability under § 1983. The court held that the allegations that the health care coordinator for the DOC denied or delayed responding to the wife's request for the inmate's medical records, which she hoped to use to have the inmate's parole restored and to seek a second medical opinion, and that the coordinator expressly denied the wife's request to provide the inmate with a liquid dietary supplement which wife would supply at her own cost, sufficiently pled the coordinator's personal involvement in the alleged deprivation of necessary medical care to the inmate, so as to subject the coordinator to liability under § 1983. The court found that the United States Department of Justice (DOJ) report which concluded that the provision of medical care to inmates by the county department of correction (DOC) was constitutionally deficient in several respects sufficiently alleged that the county's "custom" of providing inadequate care to inmates was the cause of Eighth Amendment violations sustained by the inmate. (Westchester County Department of Correction, New York)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE</p>	<p><i>Bell v. Luna</i>, 856 F.Supp.2d 388 (D.Conn. 2012). A state inmate brought a § 1983 action against prison officials and a prison doctor, alleging that the defendants subjected him to unconstitutional conditions of confinement and showed deliberate indifference to his serious medical needs, in violation of the Eighth Amendment. The defend-</p>

ants moved to dismiss for failure to state claim. The district court granted the motion in part and denied in part. The court held that the state prison doctor was not deliberately indifferent to the inmate's health in failing to take sufficient measures to treat the inmate's joint and back pain, or in failing to prescribe the inmate with an analgesic cream, as would violate the inmate's Eighth Amendment rights. The court found that forcing the inmate to go nearly seven months with a torn, partially unstuffed, unhygienic mattress was a condition of confinement sufficiently serious to implicate the Eighth Amendment. According to the court, the inmate's allegations that a unit manager "willfully, wantonly, and maliciously disregarded" the inmate's repeated requests for an adequate and hygienic mattress stated a claim under § 1983 against the manager for cruel and unusual punishment in violation of his Eighth Amendment rights. The court held that the unit manager was not entitled to qualified immunity from the inmate's § 1983 claim where the law of the Second Circuit would have put the manager on notice at the time of the alleged violation that failing to provide the inmate with an hygienic, working mattress for over half a year ran afoul of the Eighth Amendment. (MacDougall-Walker Correctional Inst., Connecticut)

U.S. District Court
DELIBERATE
INDIFFERENCE
POLICIES
STAFF

Bruner-McMahon v. Hinshaw, 846 F.Supp.2d 1177 (D.Kan. 2012). The administrator of the estate and the children of a deceased inmate brought a § 1983 action against a prison medical contractor, its employees, county officials, and prison employees, alleging violations of the Eighth Amendment. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a deputy knew that the inmate faced a risk of a serious medical condition and chose to ignore it. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether a deputy who found the inmate lying on the floor in his cell but did not contact the clinic was deliberately indifferent to the risk of serious medical need. The court found that a deputy who helped escort the inmate back to his cell was not deliberately indifferent to the inmate's serious medical need, as would violate the Eighth Amendment after the inmate died a couple days later, even though the deputy saw the inmate acting strangely and moving slowly, where the deputy believed the inmate had a mental health condition and did not need emergency care from a medical provider, and the deputy believed the deputy in charge at that time would address the matter, and the deputy had no other contact with the inmate. According to the court, a county custom, practice, or policy did not cause alleged constitutional violations by jail deputies in not getting medical care for inmate, as required for supervisory liability for the sheriff in his official capacity. The court noted that policy required that inmates receive necessary medical care without delay, deputies were expected to use common sense when responding to an inmate request or a known need, if an inmate appeared ill or a deputy otherwise recognized the need for medical attention the deputy was supposed to advise the inmate to place his name on sick call, contact a supervisor, or call the medical facility, and, in the event of a medical emergency, the deputy could call an emergency radio code alerting a medical facility to respond immediately. (Sedgwick County Adult Detention Facility, Kansas)

U.S. District Court
EXAMINATIONS
FEMALE PRISONERS

Choquette v. City of New York, 839 F.Supp.2d 692 (S.D.N.Y. 2012). Female detainees filed § 1983 actions against a city and city officials alleging that the policy, practice, and custom of the city department of correction (DOC) of subjecting female detainees to a forced gynecological examination upon admission to DOC custody violated their constitutional rights. The detainees alleged that they were not informed of what the exam entailed and were subjected to, or threatened with, punishment if they questioned or refused the exam. The defendants moved to dismiss. The district court denied the motion. The court held that the statute of limitations for the detainees' claims was tolled until the gynecological exam class claims were dismissed from the class action challenging the DOC's alleged practice of conducting strip searches, where the potential gynecological exam class was pleaded in both the original complaint and the first amended intervenor complaint, and the settlement agreement did not provide unequivocal notice that the gynecological exam class claims were not being pursued. (New York City Department of Correction, Rose M. Singer Center, Rikers Island)

U.S. District Court
EXAMINATIONS
NEGLIGENCE
RECORDS
TRANSFER

Coffey v. U.S., 870 F.Supp.2d 1202 (D.N.M. 2012). The mother of a deceased inmate brought an action against the government under the Federal Tort Claims Act (FTCA), alleging, among other things, that Bureau of Indian Affairs (BIA) was negligent in failing to medically screen the inmate prior to his transfer to a different facility. The government moved to dismiss for lack of subject matter jurisdiction and for failure to state claim or, in the alternative, for summary judgment. The district court denied the motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact: (1) as to whether the Bureau of Indian Affairs (BIA), which transferred custody of the inmate with a heart condition to a county jail, where he died, engaged in conduct that breached its duty to conduct some screening of the inmate's condition; (2) as to whether BIA's conduct caused the inmate's death; (3) as to whether BIA engaged in conduct that breached its duty to take some steps to ensure that the jail would learn of his condition; (4) as to whether BIA's conduct caused the inmate's death; (5) as to whether BIA engaged in conduct that breached its duty to take some steps to ensure that the inmate's medical needs were addressed when it chose to transfer him; and (6) as to whether BIA engaged in conduct that breached its duty to act reasonably in terms of sending the inmate to the jail. (Reno Sparks Indian Colony, Nevada, and Washoe County Jail, Nevada)

U.S. District Court
DENIAL
MEDICATION
NEGLIGENCE
TRANSFER

Coffey v. U.S., 906 F.Supp.2d 1114 (D.N.M. 2012). The mother of a decedent, a Native American who died in a county correctional institution, brought actions on behalf of her son and his children against the government, alleging wrongful death and negligence claims arising from his treatment while in the institution. After a two-day bench trial, the district court found that: (1) the notice provided to the Bureau of Indian Affairs (BIA) in the mother's administrative claim was sufficient, thereby providing jurisdiction over the mother's wrongful death and negligence claims; (2) the BIA's decision whether to screen and transfer the inmate were not choices susceptible to policy analysis, and thus, the discretionary-function exception to the Federal Tort Claims Act (FTCA) did not preclude jurisdiction; (3) the mother's negligent screening claims were precluded; (4) the mother's negligent transfer claims were precluded; and (5) the mother's wrongful death claims, arising under FTCA, were precluded. The mother had filed a standard two-page form and submitted it to Indian Health Services and the Department of Health and Human Services (HHS), claiming that her son was denied medication, and that he was transferred by BIA to another correctional facility. The district court concluded that the United States Government

was not liable for the detainee's death. (U.S. Department of the Interior-Bureau of Indian Affairs, McKinley County Detention Center, Nevada)

U.S. District Court
EMERGENCY CARE
MEDICATION
RECORDS
DELIBERATE
INDIFFERENCE

Cordell v. Howard, 879 F.Supp.2d 145 (D.Mass. 2012). A federal inmate, who allegedly suffered from a blood disorder, brought a pro se *Bivens* action against four prison medical providers, alleging that the defendants overdosed him with medication, falsified his medical records, refused to provide him with emergency medical care, and failed to intervene to correct improper medical treatment, in violation of the Eighth Amendment. The defendants moved to dismiss. The district court denied the motion. The former inmate alleged that: (1) he suffered from a blood disorder that was controlled by blood thinning medication; (2) during his incarceration the prison medical providers violated his Eighth Amendment rights by giving him overdoses of that medication; (3) the providers falsified his medical records in an attempt to cover up their improper treatment; (4) the overdoses were life threatening and caused him severe pain and bleeding; and (5) the providers refused to give him emergency medical care. The court held that these allegations stated an Eighth Amendment claim of deliberate indifference against the providers. (Federal Medical Center- FMC Devens, Massachusetts)

U.S. District Court
DELIBERATE
INDIFFERENCE

Currie v. Cundiff, 870 F.Supp.2d 581 (S.D.Ill. 2012). The administrator of the estate of a deceased detainee brought an action against a county, jail officials, and health care providers, alleging various claims, including claims pursuant to § 1983 and the Illinois Wrongful Death Act, as well as for punitive damages. The court held that allegations by the administrator of the estate of the deceased arrestee, that jail officials and health care providers acted with deliberate indifference in dealing with his diabetes while he was in custody, were sufficient to plead that they acted with reckless or callous disregard to federally protected rights, as required to seek punitive damages in the § 1983 proceedings alleging violations of the Fourth Amendment. The detainee died as a result of diabetic ketoacidosis while confined in the county jail. (Williamson County Jail, Illinois)

U.S. Appeals Court
EQUAL PROTECTION
WORK ASSIGNMENT

Davis v. Prison Health Services, 679 F.3d 433 (6th Cir. 2012). A homosexual state inmate, proceeding pro se and in forma pauperis, brought an action against prison health services, the health unit manager, the public works supervisor, and a corrections officer, alleging that he was improperly removed from his employment in a prison public-works program because of his sexual orientation. The district court dismissed the complaint for failure to state a claim and the inmate appealed. The appeals court reversed and remanded. The court held that the inmate stated an equal protection claim against prison personnel by alleging that: (1) public-works officers supervising his work crew treated him differently than other inmates, ridiculed and belittled him, and "made a spectacle" of him when they brought him back to the correctional facility after a public-works assignment because of his sexual orientation; (2) the officers did not want to strip search him because he was homosexual and would make "under the breath" remarks when selected to do so; and there were similarly situated, non-homosexual, insulin-dependent diabetic inmates who participated in the public-works program and who were allowed to continue working in the program after an episode in which the inmate believed he was experiencing low blood sugar, which turned out to be a false alarm, while the inmate was removed from the program. (Florence Crane Correctional Facility, Michigan)

U.S. District Court
DENIAL
MEDICATION
SPECIAL HOUSING
WHEELCHAIR

Dilworth v. Goldberg, 914 F.Supp.2d 433 (S.D.N.Y. 2012). A released pretrial detainee and his wife brought an action against a county, its health care corporation, and 47 related individuals, for federal and state claims arising from his confinement at a county jail. The district court partially dismissed the claims and the plaintiffs moved to amend. The district court granted the motion in part and denied in part. The court found that New York's three-year limitations period began to run on the date in which the pretrial detainee was directed by an officer to sign fraudulent papers indicating he caused his own injuries and that would waive his legal claims against the county and jail officials. According to the court, it was appropriate for the now-released pretrial detainee to amend his complaint to assert his section 1983 unconstitutional conditions of confinement claim, under the Eighth Amendment, against the officer, since there were sufficient allegations in the proposed pleading to support the claim. The court noted that loss of consortium claims are not cognizable under § 1983 because they do not involve an injury based on a deprivation of the plaintiff's rights, privileges, and immunities. The detainee, an African-American, was detained in the jail when he slipped and fell on wet wax that had been left on a corridor floor by a trustee inmate. He "suffered severe injuries to his head, back, and right arm, and lost consciousness due to the fall." He was taken to the jail infirmary and given a " cursory " examination, which allegedly resulted in the understatement of his actual medical condition. Rather than allowing him to return to his cell to rest, he was ordered to go to a visit and he was threatened with a charge of disobeying a direct order if he did not comply. He suffered several subsequent health problems but was not taken to an outside source of medical care. He was given a wheelchair and assigned to a dormitory with inmates who had medical problems. While confined in the dorm he was allegedly denied meals on several occasions, was not able to take a shower, and was refused pain medication. He alleged further complaints about his treatment and conditions. (Westchester County Department of Corrections, New York Medical College, Westchester County Health Care Corporation, New York)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
SUICIDE

Estate of Miller, ex rel. Bertram v. Tobiasz, 680 F.3d 984 (7th Cir. 2012). The minor siblings of an inmate who committed suicide brought a § 1983 action against correctional facility staff members, alleging deliberate indifference to the inmate's serious medical condition involving a long history of suicide attempts, self-harm, and mental illness. The district court granted qualified immunity to the management-level defendants and others, but denied qualified immunity to an intake nurse, psychology associate, and prison guards. The defendants who were denied qualified immunity appealed. The appeals court affirmed. The appeals court held that the inmate's siblings adequately alleged that the intake nurse and a psychology associate were subjectively aware that the inmate was a suicide risk, as required to state a claim alleging deliberate indifference to the inmate's serious medical condition. The court found that the inmate's siblings adequately alleged that prison guards were subjectively aware that the inmate was a suicide risk. According to the court, the siblings adequately alleged that the intake nurse and psychology associate failed to take reasonable steps to prevent the harm from the inmate's suicidal tendencies, and that prison guards failed to take reasonable steps to prevent the harm from the inmate's suicidal

tendencies. The court held that the intake nurse, psychology associate, and prison guards were not entitled to qualified immunity. The court noted that the guards allegedly knew or should have known of the inmate's mental illness and suicide attempts because he was adjudicated mentally ill, he had court-ordered medications he refused to take the night he died, and he had a well-documented history of suicidal behavior. The inmate was housed in a unit where inmates in need of greater supervision were placed. The guards allegedly failed to call for medical attention despite finding the inmate with no pulse and not breathing on the floor of his cell with a white cloth wrapped around his neck, and waited to assemble an entry team and then applied restraints to the inmate before removing the ligature from around his neck. (Columbia Correctional Institute, Wisconsin)

U.S. District Court
CONTRACT
SERVICES
DELIBERATE
INDIFFERENCE
POLICIES
PRETRIAL DETAINEE
SUICIDE
SUICIDE ATTEMPT

Ferencz v. Medlock, 905 F.Supp.2d 656 (W.D.Pa. 2012). A mother, as administrator for her son's estate, brought deliberate indifference claims under a wrongful death statute against prison employees, and the prison's medical services provider, following the death of her son when he was a pretrial detainee in a county prison. The employees and provider moved to dismiss. The district court granted the motion in part and denied in part. The district court held that under Pennsylvania law, the mother lacked standing to bring wrongful death and survival actions in her individual capacity against several prison employees for her son's death while he was in prison, where the wrongful death and survival statutes only permitted recovery by a personal representative, such as a mother in her action as administratrix of her son's estate, or as a person entitled to recover damages as a trustee ad litem. The court found that the mother's claims that a prison's medical services provider had a policy, practice, or custom that resulted in her son's death were sufficient to overcome the provider's motion to dismiss the mother's § 1983 action for the death of her son while he was in prison.

Upon admission to the facility, the detainee had been evaluated and scored a 12 on a scale, which was to have triggered classification as suicidal (a score of 8 or more). The Classification Committee subsequently did not classify the detainee as suicidal as they were required to do under the jail classification policy, and no member of the Committee communicated to medical contractor staff or correctional officers responsible for monitoring the detainee that he was suicidal and going through drug withdrawal. At the time, the jail was equipped with an operational and working video surveillance system and there was a video camera in the detainee's cell. The video surveillance of the cell was broadcast on four different television monitors throughout the jail, all of which were working and manned by officers. Additionally, the work station thhhatt was located around the corner from the cell, approximately 20 feet away, was equipped with one of the four television monitors. The monitor was situated on the wall above the desk at the work station, such that it would be directly in front of the officer manning the station if he was sitting facing his desk. The detainee attempted suicide by trying to hang himself with his bed sheet from the top of the cell bars, which took several minutes and was unsuccessful. After the attempt, however, the detainee left the bed sheet hanging from the top of his cell bars and started to pace in his cell in visible mental distress. This suicide attempt, as well as the hanging bedsheet were viewable from the nearby work station video surveillance monitor as well as the other three monitors throughout the jail. A few minutes later the detainee attempted to commit suicide a second time by hanging himself with his bed sheet from the top of his cell bars. This suicide attempt took several minutes, was unsuccessful, and was viewable from the work station video surveillance monitor as well as the other three monitors throughout the jail. A few minutes later, the detainee attempted to commit suicide a third time by hanging himself with his bed sheet. This time, he hung himself from his bed sheet for over twenty minutes, without being noticed by any of the four officers who were manning the four video surveillance monitors. In fact, one officer admitted he was asleep at his work station at the time. By the time another officer noticed the hanging, nearly 30 minutes had passed. The detainee was cut down and transported to a local hospital where he was subsequently pronounced dead due to asphyxiation by hanging. (Fayette County Prison, Pennsylvania, and PrimeCare Medical, Inc.)

U.S. District Court
EYE CARE
MEDICATION
DELIBERATE
INDIFFERENCE

Flournoy v. Ghosh, 881 F.Supp.2d 980 (N.D.Ill. 2012). An inmate with ocular hypertension brought a § 1983 action against a state prison physician and warden, alleging deliberate indifference to his serious medical need, in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court denied the motions. The court held that summary judgment was precluded by material fact issues regarding: (1) whether the physician was deliberately indifferent to the inmate's ocular hypertension; and (2) whether the warden was alerted to the medical staff's failure to promptly provide the inmate prescriptions. (Stateville Corr'l., Illinois)

U.S. District Court
PRETRIAL DETAINEE
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Frank v. County of Ontario, 884 F.Supp.2d 11 (W.D.N.Y. 2012). A pretrial detainee brought a state action against a county, a jail physician, and a nurse practitioner, alleging medical malpractice and deliberate indifference to his serious medical need under §§ 1983 and 1985. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motion. The court held that there was no evidence that the pretrial detainee who had a history of colitis had a serious medical need, as required to support a claim for deliberate indifference to his serious medical need in violation of Fourteenth Amendment. The court noted that the detainee was repeatedly examined during his relatively brief stay at the jail, and the defendants ordered tests on more than one occasion, which generally yielded normal results that did not indicate a need for surgery or more aggressive treatment. The court also found no evidence that the jail physician and or nurse practitioner unreasonably delayed treatment of the detainee's colitis. According to the court, the fact that the detainee did not undergo surgery for his condition until some weeks after he was discharged from jail suggested that the detainee did not need emergency surgery as a result of treatment that he had received at the jail. (Ontario County Jail, New York)

U.S. District Court
DENIAL
POLICIES
DELIBERATE
INDIFFERENCE

Gabriel v. County of Herkimer. 889 F.Supp.2d 374 (N.D.N.Y. 2012). The administrator of a pretrial detainee's estate brought a § 1983 action against a county, jail officials, and jail medical personnel, alleging deliberate indifference to a serious medical need, due process violations, and a state claim for wrongful death. The county brought a third-party complaint against a hospital demanding indemnity. The defendants moved for summary judgment and the hospital moved to dismiss the third-party complaint. The district court held that severance of the third party complaint involving the hospital was warranted, where a separate trial regarding indemnity, following a verdict on liability, would be both economical and convenient. The court found that summary judgment

was precluded by material fact issues as to: (1) whether a nurse practitioner was aware of the detainee's history of depression, anxiety, tachycardia, angina, mitral valve prolapsed, degenerative back disease, and sciatic nerve, but consciously disregarded the risk of harm to him; (2) whether the detainee had a serious medical condition; and (3) whether a policy or custom of the county led to the denial of medical treatment for the detainee. According to the court, there was no evidence that a corrections officer disregarded an excessive risk to the safety of the pretrial detainee, noting that when the officer witnessed the detainee fall, he assisted him and promptly contacted the medical unit. According to the court, a lieutenant was not a policymaker, as required to support a § 1983 claim by the estate, where the lieutenant was responsible for jail security and had no involvement in the jail's medical policies and procedures. (Herkimer County Jail, New York)

U.S. District Court
SUICIDE
EMERGENCY CARE
PRETRIAL DETAINEE

Glover v. Gartman, 899 F.Supp.2d 1115 (D.N.M. 2012). The personal representative of the estate of a pretrial detainee who committed suicide while in custody brought an action against a warden of a county detention center and corrections officers, alleging under § 1983 that the defendants violated his substantive due process rights when they provided him with razor blades and failed to respond in a timely manner to his emergency calls for help. The officers moved to dismiss for failure to state a claim. The district court granted the motion. The court held that a county corrections officer's act of providing the pretrial detainee with two razor blades and then leaving the detainee alone for over an hour so that detainee could shave before trial, during which time the detainee committed suicide, did not violate the detainee's substantive due process rights under the United States Constitution or the New Mexico Constitution, where the officer did not know that the detainee posed any suicide risk. The court also held that the officer was entitled to qualified immunity from the § 1983 claim that the officer violated the pretrial detainee's substantive due process rights, where there was no due process violation, as the officer did not know that the detainee posed any suicide risk, and a detainee's substantive due process right not to be left alone with razor blades was not clearly established at the time of the incident. The court also found that a corrections officer was entitled to qualified immunity from the § 1983 claim that the officer violated the substantive due process rights of the detainee by failing to respond to the detainee's calls for help. According to the court, the officer's conduct did not rise to the level of a due process violation, and the substantive due process right of the detainee to have an officer respond to a call was not clearly established absent evidence that the officer heard the call or knew of a suicide risk. (Lea County Detention Center, New Mexico)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
TRANSFER

Gomez v. Randle, 680 F.3d 859 (7th Cir. 2012). A state inmate filed a § 1983 action alleging excessive force, deliberate indifference to his serious medical condition, and retaliation for filing a grievance. After appointing counsel for the inmate and allowing him to proceed in forma pauperis, the district court granted an attorney's motion to withdraw and dismissed the case. The inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the statutory period for the inmate to file a § 1983 action alleging that an unidentified corrections officer who fired two rounds from shotgun into the inmate population violated an Eighth Amendment's prohibition against excessive force was tolled while the inmate completed the administrative grievance process. The court held that the issue of when the inmate completed the prison's grievance process with regard to his claim involved fact issues that could not be resolved on a motion to dismiss. According to the court, the inmate's allegation that an unidentified corrections officer fired two rounds from a shotgun into inmates who were not involved in an ongoing altercation was sufficient to state an excessive force claim under the Eighth Amendment. The court found that the inmate's allegations that he suffered a shotgun wound that caused excessive bruising and bleeding, that prison officials waited four days before treating his wound, and that he experienced prolonged, unnecessary pain as result of a readily treatable condition, were sufficient to state a claim for deliberate indifference to his serious medical condition, in violation of the Eighth Amendment. The court found that the inmate's allegations that he used the prison's grievance system to address his injury and lack of treatment he received following his injury, that he was transferred to a correctional center where he had known enemies when he refused to drop his grievance, and that there was no other explanation for his transfer, were sufficient to state a claim of retaliation in violation of his First Amendment right to use a prison grievance system. (Illinois Department of Corrections, Stateville Correctional Center)

U.S. Appeals Court
DELAY OF CARE
NEGLIGENCE
X-RAY

Gonzalez v. U.S., 681 F.3d 949 (8th Cir. 2012). A former federal inmate filed suit under the Federal Tort Claims Act (FTCA), alleging that employees of the United States negligently caused a significant delay in the proper treatment of leg injuries that he suffered while playing softball in federal custody. Following a bench trial, the district court found the government liable and awarded compensatory damages of \$813,000. The government appealed. The appeals court affirmed, finding that the damages award of \$813,000 was not excessive. According to the court, the award was not excessive for the former federal inmate's pain and suffering and mental anguish suffered from the morning he sought medical treatment for an injury to his left leg and ankle sustained in a prison-sanctioned softball game until the date x-rays were taken approximately one month later, and the pain and suffering and mental anguish reasonably certain to be experienced for the remainder of the former inmate's expected life, which the district court determined to be 22 years, where the government breached a duty of care by failing to treat the ankle in four weeks prior to the taking of x-rays, and the inmate suffered a continuing injury following his surgery. (Federal Correctional Institution, Forrest City, Arkansas)

U.S. District Court
DELIBERATE
INDIFFERENCE
INADEQUATE CARE

Gulley v. Ghosh, 864 F.Supp.2d 725 (N.D.Ill. 2012). An inmate brought a § 1983 action against a prison doctor, alleging that inadequate treatment of his sciatic nerve pain amounted to deliberate indifference to his medical needs in violation of the Eighth Amendment. The doctor moved to dismiss for failure to state a claim. The district court denied the motion. The court held that the inmate stated a cause of action against the prison doctor under § 1983 for deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment. The inmate alleged that the doctor persisted in a course of treatment he knew was ineffective to treat the inmate's sciatica, the inmate alleged he experienced six months of untreated pain before the doctor prescribed him a small dose of medication that did not alleviate the pain, and the inmate alleged the doctor told him he prescribed a minimal amount of medication because it would be cheaper than sending the inmate to an outside neurologist. (Stateville Correctional Center, Illinois)

<p>U.S. District Court DELIBERATE INDIFFERENCE</p>	<p><i>Hartmann v. Carroll</i>, 882 F.Supp.2d 742 (D.Del. 2012). A state prisoner brought a § 1983 action, proceeding pro se and in forma pauperis, against a warden, deputy warden, and an employee of the medical healthcare contractor for the Delaware Department of Correction (DOC). The prisoner alleged deliberate indifference to his medical needs. The prisoner requested counsel, and the employee moved to dismiss. The district court denied the request for counsel and denied the motion to dismiss. The court held that evidence did not support the conclusion that the prisoner was incompetent, where the prisoner had actively participated in the litigation, and he had been able to represent himself in court. (Sussex Correctional Institution, Delaware)</p>
<p>U.S. District Court ADA- Americans with Disabilities Act AIDS- Acquired Immune Deficiency Syndrome RA- Rehabilitation Act SPECIAL HOUSING</p>	<p><i>Henderson v. Thomas</i>, 891 F.Supp.2d 1296 (M.D.Ala. 2012). State prisoners, on behalf of themselves and a class of all current and future HIV-positive (HIV+) prisoners, filed a class action against prison officials, seeking declaratory judgment that the Alabama Department of Corrections' (ADOC) policy of segregating HIV+ prisoners from the general prison population violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and seeking an injunction against further enforcement of the policy. The district court denied the officials' motion to dismiss. The court held that the prisoners' class action complaint plausibly alleged that HIV-positive prisoners suffered from an impairment that substantially limited a major life activity, as required to state claims that the ADOC HIV-segregation policy discriminated against prisoners on the basis of a disability in violation of ADA and the Rehabilitation Act. According to the court, the complaint provided information on the contemporary medical consensus regarding HIV treatment and alleged that each named plaintiff was diagnosed with HIV, that HIV was an impairment of the immune system, that HIV substantially limited the named plaintiffs in one or more major life activities, and that HIV qualified as a disability. The court found that the prisoners' class action complaint plausibly alleged that they were otherwise qualified individuals with a disability due to their HIV-positive status on the grounds that reasonable accommodations could be made to eliminate the significant risk of HIV+ prisoners transmitting HIV while integrated with other prisoners. The complaint alleged details of the programs and accommodations for which HIV+ prisoners were ineligible, alleged that all but two state penal systems had integrated HIV+ prisoners into the general prison population, and alleged that the National Commission on Correctional Health Care counseled against segregation. (Ala. Dept. of Corrections)</p>
<p>U.S. District Court AIDS- Acquired Immune Deficiency Syndrome ADA- Americans with Disabilities Act FEMALE PRISONERS RA- Rehabilitation Act SPECIAL HOUSING TRANSFER</p>	<p><i>Henderson v. Thomas</i>, 913 F.Supp.2d 1267 (M.D.Ala. 2012). Seven HIV-positive inmates brought an action on behalf of themselves and class of all current and future HIV-positive inmates incarcerated in Alabama Department of Corrections (ADOC) facilities, alleging that ADOC's HIV segregation policy discriminated against them on the basis of their disability, in violation of the Americans with Disabilities Act (ADA) and Rehabilitation Act. After a non-jury trial, the district court held that: (1) the class representatives had standing to sue; (2) the claims were not moot even though one inmate had been transferred, where it was reasonable to believe that the challenged practices would continue; (3) inmates housed in a special housing unit were "otherwise qualified," or reasonable accommodation would render them "otherwise qualified;" (4) the blanket policy of categorically segregating all HIV-positive inmates in a special housing unit violated ADA and the Rehabilitation Act; (5) housing HIV-positive inmates at other facilities would not impose an undue burden on the state; and (6) food-service policies that excluded HIV-positive inmates from kitchen jobs within prisons and prohibited HIV-positive inmates from holding food-service jobs in the work-release program irrationally excluded HIV-positive inmates from programs for which they were unquestionably qualified and therefore violated ADA and the Rehabilitation Act. The court also found that female HIV-positive class representative had standing to challenge ADOC policies that HIV-positive women were segregated within the prison from general-population prisoners and that women were allowed work-release housing at one facility, but not at ADOC's other work-release facility for women. The court held that modification of the ADOC medical classification system to afford HIV-positive inmates individualized determinations, instead of treating HIV status as a dispositive criterion regardless of viral load, history of high-risk behavior, physical and mental health, and any other individual aspects of inmates, was a reasonable accommodation to ensure that HIV-positive inmates housed in the prison's special housing unit were "otherwise qualified," under the Americans with Disabilities Act (ADA) and the Rehabilitation Act, for integration into the general prison population. According to the court, requiring ADOC to dismantle its policy of segregating HIV-positive female inmates in a particular dormitory at a prison would neither impose undue financial and administrative burdens nor require fundamental alteration in the nature of ADOC's operations. The court suggested that it was almost certain that ADOC was wasting valuable resources by maintaining its segregation policy, in that a large space at a prison filled with empty beds was being used to house only a few women. (Alabama Department of Corrections)</p>
<p>U.S. District Court CONTRACT SERVICES INADEQUATE CARE POLICIES DELIBERATE INDIFFERENCE</p>	<p><i>Jones v. Correctional Medical Services, Inc.</i>, 845 F.Supp.2d 824 (W.D.Mich. 2012). The personal representative of the estate of an inmate, who died of viral meningoencephalitis while under the control of the Michigan Department of Corrections (MDOC), brought an action against prison officials and personnel, as well as the company which contracted to provide medical services to the inmate and the company's employees, alleging that the defendants violated the inmate's Eighth Amendment right to adequate medical care. The representative also asserted state law claims for gross negligence and intentional infliction of emotional distress. The court held that the company that provided medical services to inmates under a contract with the Michigan Department of Corrections (MDOC) could not be held liable under § 1983 on a supervisory liability theory in the action brought by the personal representative, but the company was subject to suit under <u>§ 1983</u>. The court found that the personal representative failed to establish that policies or customs of the company which provided medical services to inmates under contract with the MDOC were involved in the inmate's treatment, as required to sustain a <u>§ 1983</u> Eighth Amendment claim against the company based on the inmate's alleged inadequate medical treatment. The court held that summary judgment was precluded by genuine issues of material fact as to whether the doctor employed by company was aware of the serious medical needs of the inmate, as to whether the doctor's treatment of the inmate displayed deliberate indifference, and as to whether the doctor's inaction or delay proximately caused the inmate's death. (Ernest Brooks Facility, Mich. , and Correctional Medical Services)</p>

<p>U.S. District Court CONTRACT SERVICES DELAY IN CARE</p>	<p><i>Jones v. Pramstaller</i>, 874 F.Supp.2d 713 (W.D.Mich. 2012). The estate of a prisoner who died of viral meningoencephalitis brought an action under § 1983 against a doctor who provided the prisoner with medical care under contract with the contractor that provided health care to state prisoners. The doctor moved for disqualification of the estate's expert witness. The district court granted the motion. The court held that the estate failed to show that the expert witness' testimony was based on common sense rather than expertise and experience, and the estate failed to show that the expert witness's opinion was based on reliable principles and methods. The proposed expert witness, a physician, believed that the doctor's unreasonable delay in having the prisoner hospitalized was probably a cause of the prisoner's death. (Ernest Brooks Facility, Michigan Department of Corrections)</p>
<p>U.S. Appeals Court DELIBERATE INDIFFERENCE POLICIES</p>	<p><i>King v. Kramer</i>, 680 F.3d 1013 (7th Cir. 2012). The widow of a deceased pre-trial detainee brought a § 1983 action against a county, officers, and nurses, alleging violations of the Fourteenth Amendment. The district court granted summary judgment in favor of the defendants. The widow appealed. The appeals court affirmed in part and reversed in part. The court held that the county jail officers were not deliberately indifferent to the pre-trial detainee's serious medical needs, as would violate the Fourteenth Amendment, even though severe seizures led to his death. The court noted that the officers were not responsible for administering medical care and they immediately notified nursing staff when the seizures began, and the officers monitored the detainee while waiting for a nurse to arrive. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a prison nurse's actions regarding treatment of the pre-trial detainee were so far afield from an appropriate medical response to the detainee's seizures that they fell outside the bounds of her professional judgment. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the county had a policy or custom resulting in violations of the pre-trial detainee's constitutional rights, precluding summary judgment in a § 1983 action alleging violations of the Fourteenth Amendment following the detainee's death. (La Crosse County Jail, Wisconsin)</p>
<p>U.S. District Court DELAY IN CARE DELIBERATE INDIFFERENCE DENIAL</p>	<p><i>Kneen v. Zavaras</i>, 885 F.Supp.2d 1055 (D.Colo. 2012). A state prisoner brought an action against prison officials in a state facility operated by a private corporation, for violations of his Eighth Amendment rights, seeking injunctive relief, as well as nominal damages, actual damages, and \$1 million in compensatory damages against each defendant. The defendants moved to dismiss and the prisoner moved to amend. The district court granted the defendants' motion, and granted in part and denied in part the plaintiff's motion. The court held that the prisoner failed to allege a factual basis demonstrating that a prison official's position as a warden impacted the prisoner's health or the decisions made with regard to his treatment, or lack thereof, as required to support the prisoner's § 1983 deliberate indifference claim against warden as an individual in his supervisory capacity based on the denial of treatment for Hepatitis. The court found that the prisoner stated a claim against the prison's health administrator as an individual in her supervisory capacity under § 1983 for deliberate indifference, based on the denial of his request for Hepatitis treatment, by alleging: (1) the health administrator was responsible for reviewing prisoner complaints regarding the denial and delay of medical care; (2) the health administrator reviewed the prisoner's complaints regarding the denial and delay of medical care; and (3) the health administrator knew that the prisoner had been diagnosed with chronic Hepatitis C, had lab results which indicated that treatment was immediately warranted, and had also suffered from Esophageal Varicies, a serious and life threatening complication of cirrhosis. (Colorado Department of Corrections, Crowley County Correctional Facility, operated by the Corrections Corporation of America)</p>
<p>U.S. District Court FAILURE TO PROVIDE CARE GID- Gender Identity Disorder DELIBERATE INDIFFERENCE</p>	<p><i>Kosilek v. Spencer</i>, 889 F.Supp.2d 190 (D.Mass. 2012). A Massachusetts prisoner suffering from gender identity disorder (GID) brought an action, alleging his rights were being violated by the Massachusetts Department of Corrections' (DOC) refusal to provide him with male-to-female sex reassignment surgery for his GID, and seeking an injunction requiring the DOC to provide him with the surgery. The district court entered summary judgment for the prisoner, finding that: (1) the prisoner's gender identity disorder (GID) constituted a serious medical need that triggered Eighth Amendment protection; (2) DOC officials had actual knowledge of the prisoner's serious medical need; (3) the DOC Commissioner's refusal to provide the surgery in order to avoid public and political criticism was not a legitimate penological purpose; and (4) the DOC Commissioner's deliberate indifference would continue in the absence of injunction. (Massachusetts Department of Correction, MCI Norfolk)</p>
<p>U.S. Appeals Court MEDICATION CONTRACT SERVICES</p>	<p><i>Kress v. CCA of Tennessee, LLC</i>, 694 F.3d 890 (7th Cir. 2012). Inmates at a county jail filed a § 1983 action against a sheriff, warden, jail doctor, and the private contractor which operated the facility, alleging that inadequate medical care and unsafe conditions at the jail violated the Eighth and Fourteenth Amendments. The inmates sought injunctive and monetary relief. The district court granted summary judgment in favor of the contractor and the inmates appealed. The appeals court affirmed. The appeals court held that: (1) the district court did not abuse its discretion in determining that the inmates failed to satisfy the typicality requirement for class certification; and (2) there was no evidence of a continuing violation, as would warrant injunctive relief. The inmates claimed that the change in the number of daily rounds of medicine given, from three per day to two per day, with exceptions for inmates with unique medical needs, amounted to inadequate medical care in violation of the inmates' rights under the Eighth Amendment. (Corrections Corporation of America, Marion County Correctional Center, Indianapolis, Indiana)</p>
<p>U.S. Appeals Court SUICIDE DELIBERATE INDIFFERENCE POLICIES PRETRIAL DETAINEE</p>	<p><i>Luckert v. Dodge County</i>, 684 F.3d 808 (8th Cir. 2012). The personal representative of the estate of her deceased son, who committed suicide while detained in a county jail, filed a § 1983 action against the county and jail officials for allegedly violating due process by deliberate indifference to the detainee's medical needs. Following a jury trial, the district court entered judgment for the personal representative, awarding actual and punitive damages as well as attorney fees and costs. The jury awarded \$750,000 in compensatory damages and \$100,000 in punitive damages. The district court denied the defendants' motion for judgment as a matter of law and the defendants appealed. The appeals court reversed the denial of the defendants' motion and vacated the awards. The appeals court held that while the detainee had a constitutional right to protection from a known risk of suicide, the jail nurse and the jail director were protected by qualified immunity, and the county was not liable. Accord-</p>

ing to the court, the county jail nurse's affirmative but unsuccessful measures to prevent the pretrial detainee's suicide did not constitute deliberate indifference to his risk of suicide, where the nurse assessed the detainee twice after learning from his mother that he had recently attempted suicide, the nurse arranged for the detainee to have two appointments with the jail's psychiatrist, including an appointment on the morning of the detainee's suicide, the nurse contacted the detainee's own psychiatrist to gather information about the detainee's condition, she reviewed the detainee's medical records, and she responded in writing to each of the detainee's requests for medical care. The court held that the county jail director's actions and omissions in managing jail's suicide intervention practices did not rise to the level of deliberate indifference to the pretrial detainee's risk of suicide, even though the director delegated to the jail nurse significant responsibility for suicide intervention before formally training her on suicide policies and procedures, and the jail's actual suicide intervention practices did not comport with the jail's written policy. The court noted that the jail had a practice under the director's management of identifying detainees at risk of committing suicide, placing them on a suicide watch, and providing on-site medical attention, and the detainee remained on suicide watch and received medical attention including on the day of his suicide. The court held that the county lacked a custom, policy, or practice that violated the pretrial detainee's due process rights and caused his suicide, precluding recovery in the § 1983 action. The court found that, even though the county had flaws in its suicide intervention practices, the county did not have a continuing, wide-spread, and persistent pattern of constitutional misconduct regarding prevention of suicide in the county jail. (Dodge County Jail, Fremont, Nebraska)

U.S. District Court
FEMALE PRISONER
MEDICATION
RIGHT TO REFUSE

Manning v. Sweitzer, 891 F.Supp.2d 961 (N.D.Ill. 2012). An arrestee brought an action against various village police officers and a village alleging unreasonable search and seizure of her vehicle, denial of the right to counsel, cruel and unusual punishment, conspiracy under § 1985, failure to train, unlawful detention, and several state law claims. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the detainee's allegation that she was offered medication for her unnamed mental ailment while incarcerated, but that she declined to accept the medication "for fear of overmedication or a harmful interaction," failed to establish that she was subjected to inhumane conditions or that the police were deliberately indifferent to a serious medical need, as required to support her claim that she was subjected to cruel and unusual punishment in violation of the Eighth Amendment and the Due Process Clause. According to the court, the arrestee's failure to allege any other incidents of wrongdoing by the village, combined with her failure to show that the unconstitutional consequences of the village's alleged failure to train its police officers were patently obvious, precluded her claim against the village. (Village of Park Forest Police Dept., Illinois)

U.S. Appeals Court
CONTAGIOUS DISEASE
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

McCaster v. Clausen, 684 F.3d 740 (8th Cir. 2012). An inmate brought a § 1983 action against a jail superintendent, the jail nursing supervisor, five nurses he encountered while incarcerated, and a county, asserting that they had been deliberately indifferent to his serious medical need for treatment due to tuberculosis. The district court granted summary judgment on immunity grounds to the administrators and the county, but denied summary judgment to the nurses. The nurses appealed. The appeals court held that two nurses were entitled to qualified immunity from the inmate's action, but summary judgment was precluded by genuine issues of material fact for three of the nurses on the inmate's Eighth Amendment claim. The court held that although one nurse might have been negligent in failing to perceive of, or further investigate, the inmate's signs of illness in connection with tuberculosis, she did not deliberately disregard the inmate's need for medical treatment, and thus, she was entitled to qualified immunity from the inmate's § 1983 Eighth Amendment claims. The court noted that the nurse only met the inmate during his intake exam, she noted his elevated pulse, his weight loss and coughing, he did not complain of medical issues directly to her or on the screening form, and he played basketball within several days of his intake exam. The court found that a second nurse did not deliberately disregard the inmate's need for medical treatment arising from tuberculosis, and thus, she was entitled to qualified immunity. According to the court, the nurse's interaction with the inmate lasted two minutes and was confined to reading the result of his Mantoux test, and although the result was not read correctly, the error did not show indifference to the inmate's medical needs. The court held that summary judgment was precluded by a genuine issue of material fact as to whether three nurses who knew from other inmates and correctional staff, of the inmate's medical needs due to tuberculosis, were deliberately indifferent to the inmate's medical needs in violation of the Eighth Amendment. The court noted that the inmate's condition worsened during his 56 day sentence for fifth degree assault, and he was transferred to a hospital emergency room two days before he was scheduled for release. (Ramsey County Correctional Facility, Minnesota)

U.S. Appeals Court
SUICIDE
MENTAL HEALTH
DELIBERATE
INDIFFERENCE
PRIVATE PROVIDER

McCullum v. Tepe, 693 F.3d 696 (6th Cir. 2012). A deceased inmate's mother sued a prison psychiatrist under § 1983, claiming that he was deliberately indifferent to the serious medical need of the inmate, who hung himself from his bed. The district court denied the psychiatrist's motion for summary judgment and he appealed. The appeals court affirmed, finding that the psychiatrist could not invoke qualified immunity. According to the court, a physician employed by an independent non-profit organization, but working part-time for a county as a prison psychiatrist, could not invoke qualified immunity in a § 1983 suit arising out of his activities at the prison. The court found that there was no common-law tradition of immunity for a private doctor working for a public institution at the time that Congress enacted § 1983. (Butler County Prison, Community Behavioral Health, Ohio)

U.S. Appeals Court
SUICIDE
JUVENILE
MENTAL HEALTH
DELIBERATE
INDIFFERENCE

Miller v. Harbaugh, 698 F.3d 956 (7th Cir. 2012). The mother of a minor who hanged himself while incarcerated at a state youth detention facility, on her own behalf and as the minor's representative, brought a § 1983 action against state officials, alleging deliberate indifference to the minor's serious mental illness. The 16-year-old youth had a history of mental illness and was known to have attempted suicide at least three times. The district court granted summary judgment for the officials. The mother appealed. The appeals court affirmed. The appeals court held that, even assuming that state supervisory officials' decision to use metal bunk beds in rooms of a youth detention facility that were occupied by residents who were mentally disturbed but did not appear to be imminently suicidal, amounted to deliberate indifference to the residents' serious medical needs, the law was not then so clearly established as to defeat the officials' defense of qualified immunity to the due process claim. The

court found that a psychologist at the state youth detention facility, who had authorized the minor's transfer after learning of minor's unsuccessful participation in the facility's drug abuse program, was not deliberately indifferent to the minor's serious medical needs, in violation of due process. According to the court, even if he knew that the minor, who had mental health issues, presented a suicide risk and that the transferee facility was using metal bunk beds like that which the minor thereafter used to hang himself. The court found that the psychologist's involvement with the minor was minimal, the decision to make the transfer was made after the psychologist met with the facility's entire treatment staff, and the psychologist did not know which room at the transferee facility the minor would be given or that the facility's other suicide prevention measures would prove to be inadequate. (Illinois Youth Center, Kewanee, Illinois)

U.S. Supreme Court
INADEQUATE CARE
PRIVATE PROVIDER

Minneci v. Pollard, 132 S.Ct. 617 (2012). A prisoner at a federal facility operated by a private company filed a pro se complaint against several employees of the facility, alleging the employees deprived him of adequate medical care, in violation of the Eighth Amendment's prohibition against cruel and unusual punishment, and caused him injury. The district court dismissed the complaint and the prisoner appealed. The appeals court reversed and remanded, and, subsequently, amended its opinion. The U.S. Supreme court reversed, finding that the prisoner could not assert an Eighth Amendment *Bivens* claim for damages against private prison employees. (Wackenhut Correctional Corporation- Federal Correctional Institution at Taft, California)

U.S. District Court
DELIBERATE
INDIFFERENCE
EMERGENCY CARE
FEMALE PRISONERS
NEGLIGENCE

Moulton v. DeSue, 966 F.Supp.2d 1298 (M.D.Fla. 2012). The personal representative of a jail inmate's estate brought a § 1983 action against correctional officers, a nurse, and a sheriff, alleging deliberate indifference to the inmate's right to adequate medical care while in pretrial confinement, which resulted in her death. The defendants filed motions for summary judgment. The district court denied the motions in part and granted the motions in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officers' failure to call emergency rescue when the pregnant jail inmate complained of stomach cramps constituted more than grossly negligent disregard of a substantial risk of a serious harm, precluding summary judgment for the officers on the deliberate indifference to the inmate's serious medical need claim. According to the court, correctional officers were on notice that their alleged actions or inactions violated the jail inmate's clearly established Fourteenth Amendment right to adequate medical care, and, thus, the officers were not entitled to qualified immunity in § 1983 action. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officers acted with ill will or malice toward the jail inmate, or exhibited reckless indifference. (Bradford County Jail, Florida)

U.S. District Court
INVOLUNTARY
MEDICATION
MENTAL HEALTH
TRAINING
DELIBERATE
INDIFFERENCE

Olaniyi v. District of Columbia, 876 F.Supp.2d 39 (D.D.C. 2012). A pretrial detainee brought an action against the District of Columbia and the United States, asserting claims under § 1983 and the Federal Tort Claims Act (FTCA), arising from his detention and a separate incident involving a traffic stop. The defendants moved for summary judgment. The district court granted the motion. The court held that past alleged deficiencies in medical services at the District of Columbia jail that were unrelated to unconstitutional forced medication of inmates could not have put the District on notice of the need for training to avoid an alleged due process violation arising from the detainee's being forcibly injected with a psychoactive drug while residing in the jail's mental health unit, and thus could not sustain a finding of deliberate indifference necessary to hold the District liable under § 1983 for an alleged due process violation. The court also held that the detainee failed to establish a pattern of similar due process violations by untrained or inadequately trained jail employees that could have put the District on notice of a need for more training with respect to forced medication of inmates, thus precluding the detainee's § 1983 due process claim against the District based on a failure to train theory. (Mental Health Unit of the District of Columbia Jail)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
INTAKE SCREENING
MENTAL HEALTH
RELEASE

Paine v. Cason, 678 F.3d 500 (7th Cir. 2012). The guardian of the estate of an arrestee, who allegedly suffered from bipolar disorder, brought a § 1983 action against a municipality and police officers, alleging civil rights violations in connection with the arrest and subsequent release from custody without being provided access to mental health treatment. The arrestee was raped at knifepoint after her release and either jumped or was pushed from a window, causing permanent brain damage. The district court denied summary judgment in part for the defendants. The defendants sought relief through interlocutory appeal. The appeals court affirmed in part, denied in part, and remanded. The appeals held that: (1) the arrestee, as a person in custody, had clearly a established right for police to provide care for her serious medical condition; (2) whether the police should have understood that the arrestee had a serious medical condition, and thus should have provided care, was a factual issue that could not be decided on interlocutory appeal; (3) causation was a factual issue not suited to resolution on interlocutory appeal of denial of qualified immunity; (4) the arrestee did not have a clearly established constitutional right for her release to be delayed pending mental-health treatment; (5) the arrestee had a clearly established due process right for the police to not create danger, without justification, by arresting her in a safe place and releasing her in a hazardous one while unable to protect herself; (6) the arresting officer was entitled to qualified immunity; (7) the watch officer was not entitled to qualified immunity; and (8) a detention aide was not entitled to qualified immunity. According to the court, a police officer who was responsible for preparing the arrestee's individual-recognizance bond and collecting possessions that were to be returned on her release, and who received a telephone call from the mother of the arrestee regarding the arrestee's bi-polar condition and did nothing in response and who did not even note the call in a log, was not entitled to qualified immunity to the civil rights claims that the police had created a danger, without justification. The court found that the detention aide who was responsible for evaluating inmates, observed the arrestee behaving in a mentally unstable way, such as smearing menstrual blood on her cell walls, and transferred another person out of the arrestee's cell because of her inappropriate behavior, and yet did nothing to alert other personnel at the stationhouse, was not entitled to qualified immunity to the civil rights claims that the police did not arrange for medical treatment of serious conditions while the arrestee's custody continued. (8th District Station, 2nd District Station, Chicago Police Dept.)

U.S. District Court
CONTAGIOUS DISEASE
CONTRACT SERVICES
POLICIES
DELAY IN CARE

Parkell v. Danberg, 871 F.Supp.2d 341 (D.Del. 2012). A state inmate who developed a staphylococcus infection brought an action against the corporation that contracted with the prison to provide medical services to inmates and the corporation's employees, alleging under § 1983 that the defendants were deliberately indifferent to his serious medical needs, in violation of Eighth Amendment. The inmate also alleged that the corporation violated his substantive due process rights by refusing to treat him while he was housed in isolation. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The district court held that the inmate stated a § 1983 Eighth Amendment medical needs claim against the employee with his allegations in his complaint that: (1) an employee of the corporation refused to examine the inmate; (2) the employee ignored the inmate's complaints of an infected arm, and refused to administer a pain reliever; (3) over the next few days his condition worsened and correctional officers notified the on-duty physician regarding the inmate's condition; and (4) the physician performed a medical procedure on the inmate's elbow approximately one week following his visit with the employee. The court found that the inmate stated a § 1983 Eighth Amendment medical needs claim against the corporation with his allegations that the corporation had policies, customs, or practices of refusing to treat the inmate, who developed a staphylococcus infection, particularly when he was housed in isolation. According to the court, the inmate stated a § 1983 substantive due process claim against the corporation with his allegations that he was subjected to conditions significantly worse than other inmates under similar circumstances, and that because of his security classification, the corporation refused to treat him while housed in isolation, and refused to enter his cell to provide treatment while he was housed in the infirmary. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court
SUICIDE
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE
MEDICATION
MENTAL HEALTH
PRETRIAL DETAINEE

Ponzini v. Monroe County, 897 F.Supp.2d 282 (M.D.Pa. 2012). Survivors of a pretrial detainee sued prison officials, medical care providers and a corrections officer under § 1983 and state tort law, claiming that they were deliberately indifferent to the serious medical needs of the detainee, who committed suicide. The detainee allegedly did not receive his medication during his confinement. The survivors noted that one of the medications, Paxil, has "a short half-life and leaves a user's system very quickly," and that its withdrawal symptoms include "worsening of underlying anxiety or depression, headache, tremor or 'shakes', gastrointestinal distress and fatigue-, all of which were allegedly present in detainee during his incarceration." The detainee had also been taking Trazadone. The survivors alleged that during the period in which the detainee was incarcerated at the facility, officers were aware that the detainee should have been monitored closely and placed on a suicide watch. The survivors asserted that, although the detainee was not on a suicide watch, the inmate housed in an adjacent cell was on such a watch. An officer was expected to pass the neighboring cell, and by virtue of its location, the detainee's cell, every fifteen minutes. The survivors alleged that the officer falsified documents demonstrating that he properly made his rounds every fifteen minutes, and that officer failure to properly maintain a suicide watch on the detainee's neighbor facilitated the detainee's own suicide. The detainee killed himself by swallowing shreds of his own t-shirt. The court held that the survivors stated a § 1983 claim under the Fourteenth Amendment against prison officials for deliberate indifference to the serious medical needs of the detainee, who committed suicide allegedly as a result of a lack of daily medication necessary to treat depression and other psychological issues. According to the court, the complaint raised the possibility that prison officials knew that the detainee suffered from a severe medical condition and did not attempt to provide appropriate, necessary care in a timely manner. The court held that the survivors also stated a § 1983 claim under the Fourteenth Amendment against the corporate medical provider for deliberate indifference. (PrimeCare Medical, Inc., and Monroe County Correctional Facility, Pennsylvania)

U.S. Appeals Court
COSTS
DENTAL CARE

Poole v. Isaacs, 703 F.3d 1024 (7th Cir. 2012). A state inmate brought a § 1983 action against prison officials, alleging that a required \$2.00 copayment for dental care furnished at a correctional center violated his Eighth Amendment rights. The district court allowed the action to proceed against the center's healthcare administrator after screening the complaint, but then granted summary judgment for the administrator. The inmate appealed. The appeals court held that the imposition of a modest fee for medical services provided to inmates with adequate resources to pay the fee, standing alone, does not violate the United States Constitution. According to the court, the issue of whether the inmate should have been given the benefit of an exemption from the required copayment was state-law question that could not be pursued under § 1983. (Big Muddy River Correctional Center, Illinois)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
EQUAL PROTECTION

Powell v. Symons, 680 F.3d 301 (3rd Cir. 2012). A state prisoner filed a § 1983 action asserting Eighth Amendment claim that a physician was deliberately indifferent to his medical needs. The district court granted summary judgment for the defendant and the prisoner appealed. Another prisoner filed a similar claim and the district court granted summary judgment for defendants and that prisoner appealed. The appeals were consolidated. The appeals court reversed and remanded, finding that the district court abused its discretion as to one prisoner in not entering an order appointing an appropriate representative under the guardian ad litem rule, and that a letter from a physician as to the other prisoner sufficed to put the district court on notice that the prisoner possibly was incompetent. The court noted that the letter from the physician stated that the prisoner "is under my care for Major Depression and Attention Deficit Disorder. I do not feel he is competent at this time to represent himself in court. I would recommend that he be given a public defender, if at all possible." (SCI-Rockview, Pennsylvania)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
SPECIAL DIETS

Prude v. Clarke, 675 F.3d 732 (7th Cir. 2012). An inmate brought a § 1983 action against a sheriff and jail personnel, alleging that he was subjected to cruel and unusual punishment in violation of the Eighth Amendment as a result of his exclusive diet of nutritoaf, a bad-tasting food given to prisoners as a form of punishment. The parties moved for summary judgment. The district court granted summary judgment to the defendants and the inmate appealed. The appeals court affirmed in part and reversed in part. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether jail officials were aware that the inmate was being sickened by his exclusive diet of nutritoaf, yet did nothing about it. According to the court, deliberate withholding of nutritious food from a prison inmate, or substitution of a tainted or otherwise sickening

food, with the effect of causing substantial weight loss, vomiting, stomach pains, and maybe an anal fissure, or other severe hardship, violates the Eighth Amendment prohibition against cruel and unusual punishment. (Milwaukee County Jail, Wisconsin)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
NEGLIGENCE

Reilly v. Vadlamudi, 680 F.3d 617 (6th Cir. 2012). An inmate brought a suit against a doctor and nurses who treated him in prison, claiming Eighth Amendment violations under § 1983 as well as medical malpractice under Michigan law. The district court denied immunity claims asserted by the doctor and one of the nurses, and they appealed. The appeals court reversed. The court held that the physician was not deliberately indifferent to the medical needs of the inmate who was found to have a serious form of bone cancer, thus precluding imposition of § 1983 liability on the inmate's Eighth Amendment claim, where the physician had made a single contact with the inmate who had no history of any symptoms suggesting cancer. The court held that the physician was not grossly negligent regarding the inmate, thus precluding imposition of liability under Michigan law, where the physician examined the inmate ten months before his complaints of severe "headaches that cause[d] him to vomit," and during the physician's single contact with the inmate, the inmate had a headache and left eye swelling and no other symptoms. The court held that the nurse was not deliberately indifferent to the medical needs of an inmate found to have a serious form of bone cancer, thus precluding imposition of § 1983 liability on the inmate's Eighth Amendment claim. The court noted that the nurse examined the inmate only twice, his initial diagnosis, that a "small raised area over the left eye" appeared to be a calcium deposit, warranted no treatment, and following the second visit, the nurse made a referral to an optometrist. (Mound Correctional Facility, Michigan)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
MENTAL HEALTH
PRETRIAL DETAINEE
SUICIDE

Rice ex rel. Rice v. Correctional Medical Services, 675 F.3d 650 (7th Cir. 2012). Following a pretrial detainee's death while incarcerated, his parents, representing his estate filed suit pursuant to § 1983, alleging among other things that jail officials and medical personnel had deprived the pretrial detainee of due process by exhibiting deliberate indifference to his declining mental and physical condition. The district court entered summary judgment against the estate. The estate filed a second suit reasserting the state wrongful death claims that the judge in the first suit had dismissed without prejudice after disposing of the federal claims. The district court dismissed that case on the basis of collateral estoppel, and the estate appealed both judgments. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether jail officials were deliberately indifferent to the pretrial detainee's conditions of confinement, and whether his conditions of confinement were sufficiently serious to support his Fourteenth Amendment due process claim. The court noted that whether the detainee himself created the unsanitary conditions was a fact relevant to the claim, but given detainee's mental condition, it did not foreclose the claim.

The court found that the estate failed to show that the detainee's assignment to an administrative segregation unit of the jail for approximately seven months violated the detainee's due process rights, where the estate failed to identify feasible alternatives and to tender evidence supporting the contention that the detainee likely would have fared better in one of those alternative placements. The court held that jail officials did not employ excessive force, in violation of due process, to the pretrial detainee who had been fighting with his cellmate and failed to comply with a directive that he step out of his cell which he refused to leave for 18 hours, by spraying his face with pepper foam, and placing him in a restraint chair. The court held that jail officials did not have notice of a substantial risk that the mentally ill pretrial detainee might be assaulted by other inmates, as required to support the pretrial detainee's claim of deliberate indifference in violation of due process. The court noted that while jail personnel were aware that the detainee had a hygiene problem, they had no notice that he was at risk of assault because of that problem, particularly within the more secure confines of the administrative segregation unit.

The court found that neither jail guards or supervisors were deliberately indifferent to the risk that the mentally ill pretrial detainee might engage in a behavior such as compulsive water drinking that would cause him to die within a matter of hours and did not consciously disregard that risk, and therefore they were not liable for his death under § 1983. According to the court, while a factfinder might conclude that the guards exhibited a generalized recklessness with respect to the safety of the inmates housed in the administrative segregation unit by failing to conduct hourly checks of the unit, there was no evidence that the guards or supervisors were subjectively aware of the possibility that the detainee might injure himself to the point of death before anyone could intervene. (Elkhart County Jail, Indiana)

U.S. Appeals Court
DELAY IN TREATMENT

Richards v. Mitcheff, 696 F.3d 635 (7th Cir. 2012). A state prisoner brought a § 1983 action against a prison doctor, alleging that a delay in treatment violated the Eighth Amendment. The district court granted the doctor's motion to dismiss and the prisoner appealed. The appeals court reversed and remanded, finding that the allegations were sufficient to plead incapacitation. According to the court, the prisoner's allegations that he had several surgeries that disabled him, that he was in constant pain and unable to walk when out of a hospital, and that he filed suit as soon as he could muster concentration and energy to do so, were sufficient to plead incapacitation, as required to toll the limitations period under Indiana law for the prisoner's § 1983 claim against the prison doctor for violations of the Eighth Amendment. (Pendleton Correctional Facility, Indiana)

U.S. Appeals Court
SUICIDE
DELIBERATE
INDIFFERENCE

Rosario v. Brawn, 670 F.3d 816 (7th Cir. 2012). The father of a detainee who committed suicide while in police custody brought a § 1983 action against police officers, alleging deliberate indifference to the detainee's risk of suicide in violation of the detainee's right to due process under Fourteenth Amendment. The district court granted summary judgment to the police officers, and the father appealed. The appeals court affirmed. The court held that the police officers did not intentionally disregard a substantial risk that the detainee would commit suicide, as required for liability on a due-process claim alleging deliberately indifferent treatment of the detainee. The detainee committed suicide while being transported to a mental health facility after exhibiting self-destructive behavior. The officers failed to discover the detainee's razor blade, which he used to commit suicide. According to the court, their overall actions toward the detainee showed protection and compassion by searching the detainee, arranging for assessment of his mental condition, ensuring his comfort during transportation, and personally administering first aid despite his resistance. (Washington County Sheriff, Wisconsin)

U.S. District Court
INVOLUNTARY
MEDICATION
MENTAL HEALTH
POLICIES

Santos v. Bush, 874 F.Supp.2d 408 (D.N.J. 2012). A mentally ill inmate brought an action under § 1983 against a doctor and a warden at the prison where he was formerly housed, alleging that the defendants forcibly medicated him without due process. The defendants moved for summary judgment. The district court granted the motion. The court held that the prison warden was not involved in any of the mental health evaluations the inmate received or the development of his treatment plans, nor did the warden have any direct involvement, or even actual knowledge, of the specific circumstances surrounding the involuntary administration of psychotropic medication to the inmate, as would subject her to liability under § 1983 on the inmate's due process claims. According to the court, the warden's letter to the inmate's grandmother related to issues of the inmate's unwillingness to take psychotropic medication voluntarily was insufficient to demonstrate personal involvement, or knowledge and acquiescence, by the warden in approving or otherwise deciding whether the inmate should have been involuntarily medicated, as would subject the warden to liability under § 1983. The court found that the involuntary medication administration (IMA) procedure utilized by the New Jersey Department of Corrections (DOC), and the prison's involuntary administration of psychotropic medication to the mentally ill inmate, complied with substantive due process. According to the court, the procedure was reasonably related to the state's legitimate interests in responding to the dangers posed by the mentally ill inmate, providing inmates with treatment in their medical interest, and ensuring the safety of prison staff, administrative personnel, and inmates. The court found that the prison's administration of psychotropic drugs to the mentally ill inmate under its involuntary medication administration (IMA) procedure did not violate the inmate's procedural due process rights, where: (1) the inmate was diagnosed with a serious mental illness, based on a series of well-documented delusions, paranoid beliefs, and behaviors exhibited by the inmate; (2) at least four psychiatrists evaluated the inmate at various points during his treatment; (3) four separate treatment review committees (TRC) were convened during the inmate's treatment; (4) the inmate received notice of each TRC hearing; and (5) the inmate's involuntary medication was periodically reviewed in accordance with the IMA procedure. (South Woods State Prison, New Jersey)

U.S. District Court
DELIBERATE
INDIFFERENCE
SPECIAL DIET

Schwartz v. Lassen County ex rel. Lassen County Jail (Detention Facility), 838 F.Supp.2d 1045 (E.D.Cal. 2012). The mother of a deceased pretrial detainee brought a § 1983 action on behalf of herself and as successor in interest against a county, sheriff, city, police department, and several officers, alleging violations of the Fourteenth Amendment. The defendants filed a motion to dismiss. The district court granted the motion in part and denied in part. The court held that allegations that: (1) the undersheriff knew the pretrial detainee from various encounters with the county, including his diverticulitis and congenital heart condition that required a restricted diet; (2) the undersheriff gave testimony to set bail for the detainee at \$150,000 on a misdemeanor offense; (3) the detainee's doctor sent a letter explaining the detainee should be put on house arrest as opposed to detention because of his medical condition; (4) the detainee had to be admitted to a hospital for emergency surgery during a previous confinement; (5) the detainee's mother requested he be released for medical attention; (6) the detainee lost over 40 pounds during two weeks of detention; (7) the detainee requested to see a doctor but was told to "quit complaining;" and (8) the undersheriff personally knew the detainee was critically ill, were sufficient to plead that the undersheriff knew of and failed to respond to the detainee's serious medical condition, as would be deliberate indifference required to state a § 1983 claim alleging violations of Fourteenth Amendment due process after the detainee died. According to the court, allegations that the pretrial detainee's health was visibly deteriorating, that he had requested medical care on numerous occasions, and that the undersheriff knew of his health issues but failed to ensure that the prison provided him medical care, were sufficient to plead a causal connection between the undersheriff's conduct and denial of medical care for the detainee's serious medical need, as required to state a § 1983 supervisory liability claim against the undersheriff alleging violations of Fourteenth Amendment due process after the detainee died. The court found that allegations that the undersheriff owed the pretrial detainee an affirmative duty to keep the jail and prisoners in it, and that he was answerable for their safekeeping, were sufficient to plead a duty, as required to state a claim of negligent infliction of emotional distress (NIED) under California law against the undersheriff after the detainee died. (Lassen Co. Adult Detention Facility, California)

U.S. Appeals Court
ADA- Americans with
Disabilities Act
FEMALE PRISONERS
NEGLIGENCE

Shelton v. Arkansas Dept. of Human Services, 677 F.3d 837 (8th Cir. 2012). The administratrix of the estate of a mental health patient brought an action against various public officials and health professionals, alleging shortcomings in the way the medical professionals responded after the patient hanged herself while a patient at the facility. The district court dismissed the action. The administratrix appealed. The appeals court affirmed. The court held that the state actors' discovery of an unconscious voluntary mental health patient hanged in her room did not trigger duties related to involuntary commitment nor did it give rise to a constitutional-level duty of care. According to the court, after the state actors discovered the patient, she was no different than any unconscious patient in an emergency room, operating room, or ambulance controlled by the state actors, and, in such circumstances, the state actors owed patients state-law duties of care based upon standards for simple or professional negligence. The court found that the physician's decision to remove the mental health patient from a suicide watch was a medical-treatment decision, and therefore a claim based on that decision could not be brought pursuant to either the Americans with Disabilities Act (ADA) or the Rehabilitation Act, absent any allegation that the removal from suicide watch was influenced by anything other than the physician's judgment. (Arkansas State Hospital)

U.S. Appeals Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE

Smith v. Knox County Jail, 666 F.3d 1037 (7th Cir. 2012). A pretrial detainee brought a pro se action against a county jail under § 1983, alleging that jail officials violated the Eighth Amendment because they were deliberately indifferent to his serious medical needs after a fellow inmate attacked him. The district court dismissed the case and the detainee appealed. The appeals court vacated and remanded. The court held that the detainee stated a claim for deliberate indifference under the Due Process Clause of the Fourteenth Amendment with his allegations that while he was asleep in his cell a guard opened the door and allowed another inmate to attack him, that he requested medical attention after the attack but received none for five days, and that the guard knew of his "obvious blood," dizziness, throwing up, blind spots, severe pain, and loss of eye color. (Knox Co. Jail, Illinois)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
DENIAL
INTERFERENCE WITH
TREATMENT
POLICIES

Snow v. McDaniel, 681 F.3d 978 (9th Cir. 2012). A state death-row inmate brought a § 1983 action for declaratory, injunctive, and monetary relief against prison officials and medical personnel, alleging, among other things, deliberate indifference to his medical needs in violation of his rights under the Eighth Amendment. The district court granted summary judgment for the defendants. The inmate appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that: (1) factual issues precluded summary judgment for the defendants on the issue of whether denial of a recommended treatment violated the inmate's Eighth Amendment rights; (2) factual issues precluded summary judgment for the defendants on the ground that the decision to treat the inmate pharmacologically, rather than surgically, was a mere difference of opinion over the course of treatment that did not establish deliberate indifference; (3) factual issues precluded summary judgment for the warden and the assistant warden on the claim for deliberate indifference to the inmate's serious medical needs; (4) factual issues precluded summary judgment for the head of the prison's utilization review panel on the claim for deliberate indifference to the inmate's serious medical needs; (5) the Eleventh Amendment applied to bar the claim against the state and the state corrections department for monetary damages based on the alleged custom or policy of refusing to provide certain types of medical care to inmates; and (6) factual issues precluded summary judgment for the defendants on the inmate's Eighth Amendment claim for injunctive relief. (Ely State Prison, Nevada Department of Corrections)

U.S. District Court
DELIBERATE
INDIFFERENCE
GID- Gender Identity
Disorder
POLICIES
TRANSSEXUAL

Soneeya v. Spencer, 851 F.Supp.2d 228 (D.Mass. 2012). A state prisoner, a male-to-female transsexual, brought an action against the Commissioner of the Massachusetts Department of Correction (DOC), alleging violations of her Eighth Amendment rights. Following a bench trial, the district court held that the prisoner's gender identity disorder (GID) was a serious medical need and the treatment received by the prisoner was not adequate. The court found that the Commissioner was deliberately indifferent to the prisoner's serious medical need and the DOC's pattern of obstruction and delay was likely to continue, as required for the prisoner to obtain injunctive relief on her Eighth Amendment claim, where the DOC's policy for treating GID imposed a blanket prohibition on cosmetic and sex reassignment surgery without exception. The court noted that the transsexual prisoner's gender identity disorder was a "serious medical need" within the meaning of the Eighth Amendment, the prisoner's GID was diagnosed by a physician as needing treatment, and she had a history of suicide attempts and self castration while in custody. The court found that the treatment received by the transsexual prisoner was not adequate, although the DOC provided the prisoner with psychotherapy and hormone treatment, it failed to perform an individual medical evaluation aimed solely at determining appropriate treatment for her GID as a result of its blanket prohibition on cosmetic and sex reassignment surgery. (MCI-Shirley, Massachusetts)

U.S. District Court
DELIBERATE
INDIFFERENCE
PRETRIAL DETAINEE
RESTRAINTS
SUICIDE ATTEMPT

Stanfill v. Talton, 851 F.Supp.2d 1346 (M.D.Ga. 2012). The father of a pretrial detainee who died while in custody at a county jail brought a § 1983 action individually, and as administrator of the detainee's estate, against a county sheriff and others, alleging that the defendants violated the detainee's rights under the Eighth and Fourteenth amendments. The county defendants moved for summary judgment, and the father cross-moved for partial summary judgment and for sanctions. The district court granted the defendants' motion for summary judgment. The court held that the father failed to establish that the county defendants had a duty to preserve any video of the detainee in his cells, as would support sanctions against the defendants in the father's civil rights action. The court noted that the defendants did not anticipate litigation resulting from the detainee's death, the father did not file suit until almost two years after the detainee's death, and there was no indication that the father requested that the defendants impose a litigation hold or provided the defendants any form of notice that litigation was imminent or even contemplated until the lawsuit was actually filed.

The court found that county correctional officers' use of force in placing the detainee in a restraint chair was not excessive, in violation of the Fourteenth Amendment, where less than one hour before the detainee was placed in the chair he had tied tourniquet around his arm, somehow removed metal button from his prison jumpsuit, cut his wrist or arm, and sprayed blood across his cell. The court noted that the officers were familiar with the inmate's history of self-mutilation, and the extent of injury inflicted by the officers' use of the chair was minimal, and the officers made some effort to temper the severity of their use of force. After the detainee was placed back in the restraint chair, he was given water, and a jail nurse, at one officer's request, took the inmate's blood pressure, pulse, and breathing rate, and determined that the detainee appeared in normal health and needed no further medical care. The court also held that the officers' continued restraint of the detainee in the restraint chair was not excessive, as would violate the Fourteenth Amendment where the officers were aware of detainee's history of self-mutilation, the detainee posed a serious risk of harm to himself, and the particular circumstances confronting the officers justified the continued use of restraints until the officers were reasonably assured that the situation had abated. According to the court, even if the history of the detainee as a "cutter" constituted a serious medical need, there was no evidence that the county correctional officers were deliberately indifferent to that need, in violation of the Fourteenth Amendment, where the only risk of harm the officers were subjectively aware of was the detainee's potential to injure himself. Despite the detainee's refusal to speak with medical staff upon arrival at jail, he was immediately classified as a suicide risk due to his self-destructive history and was placed on a suicide watch, and for two days, the detainee remained on suicide watch in jail custody, whereby he was observed at least every 15 minutes, without incident. The court concluded that there was no causal connection between the county correctional officers' alleged indifference to the detainee's medical needs and detainee's death while in custody at the county jail, as would support a Fourteenth Amendment deliberate indifference claim brought by the detainee's father. The court noted that the father's medical expert opined that the detainee's death was not causally related to his restraint in the chair, and although the expert listed dehydration as a contributing cause of the detainee's sudden cardiac dysrhythmia that led to the detainee's death, the expert did not testify that the detainee would have survived had he not been dehydrated. The court held that the father failed to show, by way of medical evidence, that an alleged six-minute delay of a correctional officer in performing resuscitation efforts once the detainee was found unresponsive, was the cause of the detainee's death, as would support the father's Fourteenth Amendment deliberate indifference claim against the county defendants. The court ruled that "All parties can agree that Stanfill's death was unfortunate, and that in hindsight, perhaps more could

have been done. Hindsight, however, is not an appropriate lens through which to view the Defendants' actions. The Plaintiff has failed to meet his burden of proving that the Defendants violated Stanfill's constitutional rights. The Defendants are therefore entitled to qualified immunity." (Houston County Detention Center, Georgia)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
INVOLUNTARY
TREATMENT

U.S. v. Loughner, 672 F.3d 731 (9th Cir. 2012). In a prosecution for attempted assassination of a Congresswoman, murder of federal judge, murder and attempted murder of other federal employees, injuring and causing death to participants at a federally provided activity, and related weapons offenses, the district court denied the defendant's emergency motion to enjoin an involuntary medication decision, and he appealed. The appeals court affirmed. The appeals court held that: (1) procedures used to determine whether the defendant ought to be involuntarily medicated complied with due process; (2) the Bureau of Prisons (BOP) medical facility did not act arbitrarily in finding that the defendant was a danger to himself and that antipsychotic medication was in his best interest; and, (3) due process did not require the BOP to specify a medication regimen before it could involuntarily medicate the defendant. (U.S. Medical Center for Federal Prisoners in Springfield, Missouri)

U.S. District Court
DENTAL CARE
COSTS

Weeks v. Hodges, 871 F.Supp.2d 811 (N.D.Ind. 2012). An inmate brought an action against a county sheriff and a jail commander, in their individual and official capacities, alleging under § 1983 that the defendants violated his Eighth Amendment rights in connection with his dental treatment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact existed as to whether the county sheriff and/or the jail administrator acted with deliberate indifference to the inmate's serious dental needs when they took no action to follow through on the jail dentist's diagnosis that the inmate needed to have his wisdom tooth removed, when it became clear that neither the inmate nor his mother were going to pay for the procedure. According to the court, there was no evidence that the county jail had a widespread practice of refusing inmates medical or dental care unless the inmates could pay for it themselves, as would support the inmate's § 1983 Eighth Amendment claim against the municipality arising from his allegedly deficient dental care. (Whitley County Jail, Indiana)

U.S. District Court
FAILURE TO PROVIDE
CARE
PRETRIAL DETAINEE
RELEASE

Wells v. City of Chicago, 896 F.Supp.2d 725 (N.D.Ill. 2012). The representative of the estate of a detainee who died on the night he was to be released from custody brought an action against a city and city police officers, alleging under § 1983 that the defendants unlawfully detained the detainee and denied him medical care. Following a trial, the jury returned a verdict for the representative and against four defendants on the unlawful detention claim, and for the defendants on claims relating to denial of medical care. The defendants moved for judgment as a matter of law or, in the alternative, a new trial or remittitur on the issue of damages. The district court granted the motions in part and denied in part. The district court held that: (1) the issue of whether the defendants held the detainee for more than 48 hours before being taken before a judge or being released, or for less than 48 hours for an improper purpose, was for the the jury; (2) the officers had probable cause to arrest the detainee for a crime with an intent element; (3) the issue of whether individual officers participated in the unlawful detention was for the jury; (4) the officers were not entitled to qualified immunity from the unlawful detention claim; (5) the award of \$1 million in compensatory damages was excessive; and (6) the award of \$150,500 in punitive damages was not warranted where there was little to indicate that the defendants acted with evil intent or callous indifference to the detainee's rights.. The court noted that, although the detainee suffered significant physical pain during the time he was detained, as well as intense humiliation and severe mental and emotional distress, he was in custody for, at most, 53 hours, and only the final five hours of his detention were unlawful. The detainee had driven a semi-trailer truck through a bus stop and into a Chicago Transit Authority "L" Station, killing two women and injuring 20 people. After brief treatment in a hospital, the police transported him to a police station, where he was interviewed and then placed in a holding cell. He ultimately only received a traffic citation, though police kept investigating the collision until the time of his death. Officers were making arrangements to take the detainee to a hospital for evaluation after finding that he had difficulty walking once removed from his cell. He died in the hospital 6 weeks later. (City of Chicago Police Department, Illinois)

U.S. Appeals Court
CONTRACT SERVICES
DELAY IN TREATMENT
INADEQUATE CARE

Wheeler v. Wexford Health Sources, Inc., 689 F.3d 680 (7th Cir. 2012). A state prison inmate brought a § 1983 action alleging prison officials and the prison's medical provider refused to provide effective care for the inmate's golf-ball-size hemorrhoids, leaving him in excruciating pain, in violation of the Eighth Amendment. After receiving no ruling on his first two motions for preliminary injunctive relief, the inmate moved for preliminary injunctive relief for a third time, seeking to compel the defendants to arrange for an operation to address his condition. The district court denied the motion and the inmate appealed. The appeals court vacated and remanded. The appeals court held that the district court failed to comply with a statutory command to screen "as soon as practicable" the inmate's complaint. The district court still had not screened the complaint after ten months, and the appeals court required the district court to swiftly screen the complaint, to authorize service of process on all defendants involved in the inmate's medical treatment, to give the defendants a short time to respond to the inmate's motion for preliminary injunctive relief, and to promptly conduct an evidentiary hearing to determine whether the inmate was entitled to such relief. (Wexford Health Sources, Pinckneyville Correctional Center, Illinois)

U.S. Appeals Court
DELAY IN TREATMENT
DELIBERATE
INDIFFERENCE

Wilhelm v. Rotman, 680 F.3d 1113 (9th Cir. 2012). A state inmate brought a pro se § 1983 action, alleging that a delay by prison medical providers in treating his hernia amounted to deliberate indifference to his medical needs in violation of the Eighth Amendment. The district court dismissed the complaint for failure to state a claim pursuant to the prisoner complaint screening statute. The inmate appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that the inmate's hernia was a "serious medical need" under the test for an Eighth Amendment claim for deliberate indifference to the inmate's serious medical needs. The court found that the inmate adequately pleaded an Eighth Amendment claim for deliberate indifference to his serious medical needs against the prison physician by alleging that the physician repeatedly diagnosed the inmate as suffering from a hernia and repeatedly concluded that referral for surgery was necessary, that the inmate failed to

receive the prescribed treatment for more than one year, and that the delay in treatment was attributable to the physician's failure to request a referral properly and his inexplicable cancellation of a second referral request. (California Substance Abuse Treatment Facility, Corcoran)

U.S. District Court
ADA- Americans with
Disabilities Act
CONTRACT SERVICES
EQUAL PROTECTION

Wilkins-Jones v. County of Alameda, 859 F.Supp.2d 1039 (N.D.Cal. 2012). A detainee at a county jail who had limited mobility and deformed hands as a result of systemic lupus and rheumatoid arthritis brought an action against the contractor that provided medical care assessment services for detainees, and its employees, alleging violations of Title II of the Americans with Disabilities Act (ADA), the California Disabled Persons Act (CDPA), and the California Unruh Civil Rights Act. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) the private contractor was not liable as a public entity or instrumentality under the ADA; (2) the contractor qualified as a "business establishment," under the California Unruh Civil Rights Act; (3) the complaint properly asserted a deprivation of full and equal accommodations, as required to state a claim under the California Unruh Civil Rights Act; (4) the allegations were insufficient to assert intentional discrimination, as required to state a claim against the contractor for violation of the California Unruh Civil Rights Act; (5) the CDPA applied to county jails and the accommodations and services provided therein; and (6) the allegations stated a claim against contractor under the CDPA. The jail inmate who had limited mobility and deformed hands alleged that she was unable to use the toilet in the jail as needed, causing her injuries, and that she was deprived of access to jail's facilities, beds, showers, walkways, and benches. According to the court, this properly asserted a deprivation of full and equal accommodations, as required to state a claim against the private contractor that contracted with county to provide medical care assessment services for the county jail. (County of Alameda, California)

U.S. District Court
CONTRACT SERVICES
DELAY IN TREATMENT
MEDICATION
POLICIES
DELIBERATE
INDIFFERENCE

Williamson v. Correct Care Solutions LLC, 890 F.Supp.2d 487 (D.Del. 2012). A state prisoner, proceeding pro se and in forma pauperis, brought a § 1983 action against the contractor that provided medical services at a prison, and several of the contractor's employees, alleging deliberate indifference to his serious medical needs. The district court denied the defendants' motion to dismiss. The court held that the prisoner stated a claim against the contractor by alleging that he suffered from serious medical conditions requiring daily medication, that the contractor failed to provide him medication for 14 days, that the lack of medication resulted in necessary medical attention, and the delay in ordering and dispensing medication was the result of the contractor's cost containment policies and customs. The court found that the prisoner also stated a § 1983 claim against the investigator for the contractor that provided medical services at the prison, for deliberate indifference to his serious medical needs, by alleging that the investigator was aware of the prisoner's serious medical conditions requiring daily medication and a specific type of knee brace, but failed to determine that lack of medication for a 14 day period was an emergency, and failed to approve the prisoner's emergency grievances for a knee brace. According to the court, a § 1983 claim was also stated against the physician employed by the contractor, for deliberate indifference to his serious medical needs, by alleging that the physician was aware of the prisoner's serious medical conditions but refused to follow-up on an order for the prisoner's specialty knee brace, and instead provided a neoprene knee sleeve. (James T. Vaughn Correctional Center, Delaware)

U.S. District Court
ADA- Americans with
Disabilities Act
DELIBERATE
INDIFFERENCE
EQUAL PROTECTION
MEDICATION
PRETRIAL DETAINEE
RA- Rehabilitation Act
TRAINING
TRANSPORTATION

Woods v. City of Utica, 902 F.Supp.2d 273 (N.D.N.Y. 2012). A wheelchair-using, paraplegic arrestee sued a city, police officer, a county, a former sheriff, and county corrections officers, bringing federal causes of action for violations of the Americans with Disabilities Act (ADA), the Rehabilitation Act, and Fourteenth Amendment equal protection and due process. The arrestee alleged that he was lifted out of his wheelchair and placed on the floor of a sheriff's van, forcing him to maneuver himself onto a bench seat which caused his pants and underwear to fall, exposing his genitals, that he was not secured to the bench with a seatbelt, causing him to be thrown about the passenger compartment and suffer leg spasms during his ride to the jail, that he was forced to urinate into an empty soda bottle and handle his sterile catheter with his hands that were dirty from moving himself around the floor of the van, and that the county corrections officers stood by as he struggled to maneuver himself out of the van and into his wheelchair while other inmates watched. The city and county defendants moved for summary judgment. The district court held that: (1) the city did not fail to accommodate the arrestee's disability, for purposes of the ADA and Rehabilitation Act claims; (2) summary judgment was precluded by fact issues as to whether the arrestee was denied the benefit of safe and appropriate transportation by the county on the day of his arrest when he was moved from a police station to a county jail; (3) the county was entitled to summary judgment to the extent the arrestee's claims involved his transportation from the jail to court proceedings on two other dates; (4) fact issues existed as to whether the county defendants were deliberately indifferent to the paraplegic inmate's known medical need for suppositories every other day, in violation of due process, but they were not deliberately indifferent to his need for catheters and prescription pain medication; and (5) the county defendants were not entitled to qualified immunity. The court noted that while the county defendants disputed the arrestee's version of the facts, corrections officers all denied receiving any training regarding how to transport disabled inmates. (Utica Police Department, Oneida County Correctional Facility, New York)

U.S. District Court
DELAY IN CACRE
EMERGENCY CARE
DELIBERATE
INDIFFERENCE
PRETRIAL DETAINEE

Wright v. County of Franklin, Ohio, 881 F.Supp.2d 887 (S.D. Ohio 2012). A pretrial detainee brought a § 1983 action against a county, sheriff, deputy, medical staff, and physician, alleging deliberate indifference to his serious medical needs in violation of the Fourteenth Amendment, and state common law claims. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the pretrial detainee who had abdominal pain had a serious medical need, as required to support a § 1983 claim against the county, sheriff, deputy, medical staff, and physician for deliberate indifference to his serious medical need in violation of the Fourteenth Amendment. According to the court, as a result of the delay in diagnosis and treatment, the detainee was later rushed to a hospital, diagnosed with a small bowel obstruction and a mass in his colon, and subjected to emergency surgery. The court found that summary judgment was precluded by a genuine issues of material fact as to: (1) whether a nurse failed to exercise judgment and instead chose to ignore serious symptoms that ultimately led to the pretrial detainee with abdominal pain having to undergo multiple major surgeries; (2) whether nurses did basically nothing in the face of the pretrial detainee's alarming

symptoms, including vomiting blood and severe abdominal pain, which later proved to be precursor to a serious gastrointestinal issue. The court found that there was no evidence that the county or sheriff had a policy or custom of recklessly training medical staff who were contracted to work at the prison, as required to support the pretrial detainee's § 1983 claim for failure to train. The court noted that the Sheriff's Office and the county did not do enough to ensure that nurses were familiar with policies applicable to inmates who need medical care. (Franklin County Correctional Center, Correctional Care Plus, Ohio)

2013

U.S. District Court
FAILURE TO PROVIDE
CARE
INADEQUATE CARE

Alsobrook v. Alvarado, 986 F.Supp.2d 1312 (S.D.Fla. 2013). A state prisoner who was seriously injured in a fight with his cellmate brought a § 1983 action against a warden, corrections officers, prison nurse, the prison's healthcare provider, and the Secretary of the Florida Department of Corrections. The defendants moved to dismiss. The district court granted the motions in part and denied in part. The court held that the prisoner sufficiently alleged that a corrections officer was deliberately indifferent to a risk of serious harm posed by the cellmate, in violation of the Eighth Amendment, where: (1) the prisoner alleged that his cellmate told the officer that he would become violent if the prisoner was not removed from the cell; (2) the prisoner requested to be separated from his cellmate; (3) the officer did nothing in response to this information; and (4) that a fight ensued, which resulted in serious injuries to the prisoner. The court held that the prisoner sufficiently alleged that the treatment he received from a prison nurse after he was brought to the infirmary following a fight with his cellmate was so grossly inadequate that it amounted to no treatment at all, and thus he stated a § 1983 claim that the nurse was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. The prisoner alleged that he was brought to the infirmary with open wounds, swelling on his head and face, and covered with blood, that he vomited while awaiting treatment and, after being "treated," he left the infirmary with open wounds, swelling on his head and face, covered with blood, and with four ibuprofen in his pocket. (South Florida Reception Center, Florida)

U.S. Appeals Court
ADA- Americans with
Disabilities Act
EQUAL PROTECTION
RA- Rehabilitation Act
RECORDS

Armstrong v. Brown, 732 F.3d 955 (9th Cir. 2013). Disabled state prisoners and parolees brought a class action against state prison officials, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Seventeen years later, the plaintiffs moved for an order requiring officials to track and accommodate the needs of the class members housed in county jails and to provide a workable grievance procedure. The prisoners and parolees filed a renewed motion, which the district court granted. The defendants appealed. The appeals court affirmed in part and dismissed in part. The court held that: (1) Amendments to the California Penal Code relating to the legal custody of parolees did not relieve officials of responsibility for the discrimination suffered by disabled parolees housed in county jails, past and present, or of their obligation to assist in preventing further Americans with Disabilities Act (ADA) violations; and (2) orders requiring officials to track and accommodate the needs of disabled prisoners and parolees housed in county jails and to provide a workable grievance procedure were consistent with the Americans with Disabilities Act (ADA) and the Rehabilitation Act and did not infringe on California's prerogative to structure its internal affairs. (California Department of Corrections and Rehabilitation)

U.S. District Court
HEARING IMPAIRED
POLICIES
TRANSLATOR

Armstrong v. Brown, 939 F.Supp.2d 1012 (N.D.Cal. 2013). Prisoners brought a class action against the Governor of California, the state Department of Corrections and Rehabilitation and a number of related directors and executive officers, seeking to enforce prior orders requiring the defendants to provide sign language interpreters (SLI), and to hold the defendants in contempt for violations. The district court granted the motion to enforce the prior orders. The court held that setting a policy which failed to provide SLIs for hearing-impaired inmates during rounds by psychiatric technicians warranted enforcement of the order against the defendants, and the defendants' failure to provide SLIs for hearing-impaired inmates at classes attended by deaf inmates also warranted an enforcement order. But the court decided that civil contempt sanctions were not appropriate because officials were making substantial efforts to reach compliance with the orders by voluntarily increasing both contract and civil services positions for qualified SLIs. (Substance Abuse Treatment Facility, California Department of Rehabilitation and Corrections)

U.S. District Court
ADA- Americans with
Disabilities Act
DELIBERATE
INDIFFERENCE

Ball v. LeBlanc, 988 F.Supp.2d 639 (M.D.La. 2013). State death row inmates brought a § 1983 action against a state department of corrections and state officials, seeking declaratory and injunctive relief based on allegations of violations of the Eighth Amendment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The district court granted declaratory and injunctive relief in part and denied in part. The court held that the temperature and humidity of cells presented a substantial risk of harm to death row inmates, as required for their claims against the prison and officials, alleging the conditions of confinement violated the Eighth Amendment. The court noted that: (1) the inmates were regularly subjected to temperatures above 90.5 degrees and heat indices above 100 degrees; (2) the heat index inside death row tiers was often higher than that outside the facility; (3) inmates were subjected to consecutive days with heat indices above 100 degrees; (4) inmates were at risk of heat-related illnesses including heat stroke and worsening of their underlying conditions, which included diabetes, hypertension, and uncontrolled blood pressure; and (5) two inmates were over age 55, increasing the risk for them. The court found that prison officials had knowledge that the heat and humidity in death row tiers placed inmates at a substantial risk of harm, as required to find the officials were deliberately indifferent to the serious medical needs for the purpose of the inmates' Eighth Amendment claims. The inmates had submitted multiple administrative complaints regarding the heat, and officials responded that they knew it was "extremely hot." According to the court, prison officials disregarded the substantial risk of serious harm to death row inmates regarding heat and humidity in cells, as required to find that the officials were deliberately indifferent to the serious medical needs for the purpose of the inmates' Eighth Amendment claims, where the officials did not take any actions to reduce the heat conditions despite knowledge of the conditions. The court found that there was no evidence that death row inmates were limited in any major life activities due to their medical conditions, including hypertension, obesity, and depression, as required for their claims against the prison and officials, alleging

violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. (Louisiana State Penitentiary)

U.S. District Court
MENTAL HEALTH

Barnes v. Ross, 926 F.Supp.2d 499 (S.D.N.Y. 2013). A mentally ill inmate brought a § 1983 action against the Commissioner of the New York Department of Corrections and Community Supervision (DOCCS) and employees of the New York Office of Mental Health asserting Eighth Amendment and equal protection claims. The mentally ill African-American inmate alleged that he and other minorities were subject to discriminatory treatment because of their race, in that white inmates were sent to the hospital for proper treatment, while African-Americans and Latino inmates were placed in observation for long periods and then were sent back to their cells, where they would harm themselves or try to commit suicide. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) requirements of class certification were not satisfied; and (2) the inmate failed to plausibly allege an Eighth Amendment claim of deliberate indifference to his serious medical needs (Sullivan Correctional Facility, New York)

U.S. Appeals Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE
MENTAL HEALTH
PRETRIAL DETAINEE
SUICIDE

Belbachir v. County of McHenry, 726 F.3d 975 (7th Cir. 2013). The administrator of the estate of a female federal detainee who committed suicide in a county jail filed suit against the county, county jail officials, and employees of the medical provider that had a contract with the county to provide medical services at the jail, alleging violation of the detainee's due process rights and Illinois tort claims. The district court granted summary judgment in favor of all county defendants. The administrator appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court found that the jail inmate who was detained by federal immigration authorities pending her removal hearing was in the same position as a lawfully arrested pretrial detainee. The court noted that a pretrial detainee was entitled, pursuant to the due process clause, to at least as much protection during her detention as convicted criminals were entitled to under the Eighth Amendment—namely protection from harm caused by a defendant's deliberate indifference to the inmate's safety or health. The court asserted that persons who have been involuntarily committed are entitled, under the due process clause, to more considerate treatment during detention than criminals whose conditions of confinement are designed to punish.

The court found that the alleged conduct of a clinical social worker at the county jail who interviewed the detainee, in noting that the detainee suffered from a major depressive disorder, hallucinations, acute anxiety, and feelings of hopelessness, but allegedly failing to report those findings to the jail guards or any other jail staff or to recommend that the detainee be placed on a suicide watch or receive mental health treatment, amounted to deliberate indifference to the detainee's risk of suicide, in violation of the detainee's due process rights. The court held that a nurse manager employed by the medical provider was not deliberately indifferent to the detainee's risk of suicide, as would violate the detainee's due process rights, where the nurse manager treated the detainee for panic attacks and anxiety, and recommended that she be given a cellmate and transferred to a medical treatment area at the jail, both of which were done, and there was no showing that the nurse manager knew that the detainee was suicidal.

According to the court, the county sheriff's and county jail director's failure to provide annual training to jail staff on how to recognize the risk of suicide in detainees, and their failure to implement a suicide prevention policy, did not render the county liable under § 1983 for the detainee's suicide during her detention at the jail, absent a showing that such failures caused the detainee's suicide. (McHenry County Jail, Illinois)

U.S. District Court
PRETRIAL DETAINEE
TRANSFER
TRANSPORTATION

Benton v. Rousseau, 940 F.Supp.2d 1370 (M.D.Fla. 2013). A pretrial detainee, who alleged that he was beaten by drivers while being transported to prison, brought a § 1983 action against drivers of a private company which was in the business of transporting prisoners throughout the State of Florida. The district court held that the inmate established a § 1983 First Amendment retaliation claim and a § 1983 Fourteenth Amendment excessive force claim. According to the court: (1) the prisoner engaged in constitutionally protected speech because he complained about conditions of his confinement in the transport vehicle; (2) the driver of transport vehicle engaged in adverse or retaliatory conduct by pulling the inmate out of the van and onto the ground and beating and kicking the inmate; and (3) there was a causal connection between the driver's retaliatory action and inmate's protected speech, in that the incident would not have occurred but for the inmate's complaints regarding conditions of his confinement. The court noted that the inmate's injuries included headaches and facial scars, and his injuries, although perhaps not serious, amounted to more than de minimis injuries. The court ruled that the inmate was entitled to \$45,012 in compensatory damages because the inmate had scarring on his face and suffered from headaches and numbness in his side, he suffered the loss of a \$12 shirt, and he suffered mental and emotional anguish as a result of actions of drivers of transport van, who kicked and beat him. The court held that the inmate was entitled to punitive damages in the amount of \$15,000 based on the violation of his First and Fourteenth Amendment rights by the drivers. The court noted that although the drivers were no longer employed by their private employer, the employer did not investigate after the incident nor did it punish the drivers for their actions, and imposition of punitive damages would deter the drivers from taking similar actions in the future. (United States Prisoner Transport, Hernando County Jail, Florida)

U.S. Appeals Court
JUVENILE
MENTAL HEALTH
DELAY IN CARE

Blackmon v. Sutton, 734 F.3d 1237 (10th Cir. 2013). A former juvenile pretrial detainee brought a § 1983 action against various members of a juvenile detention center's staff, alleging they violated the Fourteenth Amendment rights guaranteed to him as a pretrial detainee. The district court denied the defendants' motion for summary judgment based on qualified immunity. The defendants appealed. The appeals court affirmed in part, and reversed in part. The court held that the eleven-year-old pretrial detainee's right to be free from punishment altogether was clearly established at the time the staff allegedly used a chair bearing wrist, waist, chest, and ankle restraints to punish detainee, for the purposes of the juvenile detention center's staff's qualified immunity defense. According to the court, the senior correctional officer approved a decision by one of his subordinates, a fully grown man, to sit on the chest of the eleven-year-old without any penological purpose. The court found that the detainee's Fourteenth Amendment due process rights were violated when employees allegedly failed to provide the eleven-year-old detainee with any meaningful mental health care despite his obvious need for it. The

court noted that prison officials who assumed a “gate keeping” authority over the prisoner’s access to medical professionals were deliberately indifferent to the detainee’s medical needs when they denied or delayed access to medical care. But the court also held that the detainee’s alleged right to be placed in a particular facility of his choice while awaiting trial was not clearly established at the time the director failed to transfer detainee to a nearby shelter, for purposes of the juvenile detention center director’s qualified immunity defense.. The court stated: “Weeks before eleven-year-old, 4’11,” 96–pound Brandon Blackmon arrived at the juvenile detention center in Sedgwick, Kansas, officials there made a new purchase: the Pro–Strait Restraining Chair, Violent Prisoner Chair Model RC–1200LX. The chair bore wrist, waist, chest, and ankle restraints. In the months that followed, the staff made liberal use of their new acquisition on the center’s youngest and smallest charge. Sometimes in a legitimate effort to thwart his attempts at suicide and self-harm. But sometimes, it seems, only to punish him. And that’s the nub of this lawsuit.” (Juvenile Residential Facility, Sedgwick County, Kansas)

U.S. District Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE
DELAY IN CARE
POLICIES

Bredbenner v. Malloy, 925 F.Supp.2d 649 (D.Del. 2013). A former inmate brought a pro se § 1983 action against a corrections officer, the corporation which contracted to provide medical services to inmates, the health services administrator, and a nurse practitioner, alleging violations of his constitutional rights by virtue of the defendants’ alleged deliberate indifference to his serious medical needs. The court held that summary judgment for the defendants was precluded by a genuine issue of material fact as to whether the treatment the inmate received for his injured wrist from the date of the injury until he saw a physician was adequate, and as to whether the prison health services administrator was personally involved in the inmate’s treatment. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether policymakers at the corporation which contracted to provide medical services to inmates knew of the inmate’s injured wrist but did nothing to address it. (James T. Vaughn Correctional Center, Delaware)

U.S. Appeals Court
INADEQUATE CARE

Budd v. Motley, 711 F.3d 840 (7th Cir. 2013). A state inmate filed a § 1983 action alleging that, as a pretrial detainee, he was subjected to unconstitutional conditions of confinement at a county jail and that the sheriff was deliberately indifferent to his medical needs. The district court dismissed the complaint, and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the detainee’s allegations were sufficient to state a plausible claim under the Due Process Clause for subjecting him to unconstitutional conditions of confinement. The prisoner alleged that: (1) on one occasion he was confined with eight inmates in a portion of the county jail intended for three; (2) he had to sleep on the floor alongside broken windows and cracked toilets; (3) on another occasion he and other inmates had to sleep on the floor even though shower water leaked there; (4) cells had broken windows, exposed wiring, extensive rust, sinks without running water, toilets covered in mold and spider webs, and a broken heating and cooling system; (5) inmates were denied any recreation; and (6) the jail furnished inmates with no supplies to clean for themselves.

The appeals court found that county jail officials were not deliberately indifferent to the pretrial detainee’s serious medical needs, in violation of the Due Process Clause even if he was dissatisfied with the treatment he received from a jail nurse. The court noted that the detainee was taken to see a nurse as soon as he informed the officer on duty about his leg wound, he was taken to a hospital promptly after writing a letter to the sheriff asking to see a doctor, and the detainee received medical attention, medication, testing, and ongoing observation at the hospital. (Edgar County Jail, Illinois)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
MEDICATION
DELIBERATE
INDIFFERENCE

Burgess v. Fischer, 735 F.3d 462 (6th Cir. 2013). An arrestee brought an action under § 1983 against a county board of commissioners, sheriff, deputies, and jail nurse, alleging violations of his constitutional rights during his arrest. The defendants moved for summary judgment and the district court granted the motion. The arrestee appealed. The appeals court affirmed in part, vacated in part, reversed in part, and remanded. The appeals court held that: (1) a genuine issue of material fact existed as to whether the force used against the arrestee was reasonable; (2) a corrections officer and the jail nurse were not liable for failure to prevent deputy sheriffs from using excessive force, absent a showing that the nurse and officer had both the opportunity and the means to prevent the harm from occurring; (3) the nurse was not liable for deliberate indifference to the arrestee’s medical needs, where the arrestee’s latent cranial injury was not so obvious that a lay person would easily have recognized the necessity for a doctor’s attention; (4) the county board of commissioners was not liable under § 1983 for any alleged conduct of deputy sheriffs in violating the arrestee’s federal constitutional rights, absent a showing that any county policy or custom was the moving force behind the alleged violations; (5) a genuine issue of material fact existed as to whether a deputy sheriffs’ use of force against the arrestee was reckless under Ohio law; (6) a genuine issue of material fact existed as to whether a deputy sheriff assaulted the arrestee in response to an off-color jibe; and (7) genuine issues of material fact existed as to whether the county board of commissioners, sheriff, and deputies knew that litigation was probable and whether their destruction of videotape evidence of deputies’ use of force against the arrestee was willful. The court also found that the jail nurse did not act with malice and in a wanton and willful manner in allowing the arrestee to sit in a county jail cell for 12 hours with serious injuries, where the nurse attended to the arrestee, assessed what she perceived to be minor injuries, provided him with ibuprofen for his pain, and advised him he could contact someone for further medical assistance if necessary. (Greene County Jail, Ohio)

U.S. District Court
CONTRACT SERVICES
MAPRACTICE
MEDICATION
POLICIES

Bustetter v. Armor Correctional Health Services, Inc., 919 F.Supp.2d 1282 (M.D.Fla. 2013). A former inmate brought an action against a sheriff’s department, the sheriff, a medical services contractor, a doctor, a nurse, and a pharmacy, alleging medical malpractice, negligence, and violations of § 1983. The inmate alleged that the medical services contractor had a policy of not telling an inmate what medications he was being given, that the contractor had another policy of providing no medications if an inmate refused to take any of his medications, that measurement of his blood sugar levels and administration of his insulin to treat his diabetes was limited to twice a day, that he was given excess levels of statins, and that he was not informed, upon his release, of what medication he was given or of its side-effects. The defendants moved to dismiss. The district court granted the motions in part and denied in part. The court held that the inmate’s allegations were sufficient to state Eighth

Amendment claims against the contractor, nurse, and doctor. When he was taken into custody at the jail for a non-violent traffic offense, the inmate informed the medical staff of his medical conditions and current medications. The inmate's medical conditions included Type I diabetes, for which he was insulin dependent and taking two types of insulin three to five times per day, a prior heart attack, and blindness in one eye. (Sarasota County Jail, Florida)

U.S. District Court
AIDS- Acquired Immune
Deficiency Syndrome
MEDICATION
RECORDS

Canales v. Gatzunis, 979 F.Supp.2d 164 (D.Mass. 2013). A former county jail inmate brought an action in state court against a county sheriff's department, the sheriff, the jail superintendent, a state public safety commissioner, and others, alleging the defendants subjected him to reckless, negligent, and cruel medical treatment. Some defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court found that because the county sheriff's department and other county defendants voluntarily removed to inmate's action to federal court, the defendants did not enjoy Eleventh Amendment immunity against any Massachusetts Tort Claims Act (MTCA) claims they would be subject to in state court as a result of waiver. The court held that the former jail inmate's allegations that the county defendants had a "disorganized medical program" at the jail and failed to maintain a "quality assurance program," and that the jail failed "to maintain adequate and accurate medical records," insufficiently pled that the jail superintendent was personally involved in misinforming the inmate that he had HIV and mistakenly administering another prisoner's HIV medication to the inmate, as would subject the superintendent to supervisory liability for his subordinates' alleged Eighth Amendment violations under § 1983. According to the court, the inmate's allegations that the "defendants" told the inmate that he had HIV and administered HIV medication to him, even though he did not have HIV, did not sufficiently state that the county jail superintendent was personally involved with the inmate's medical treatment or otherwise took any action with respect to the inmate, as would support the inmate's intentional infliction of emotional distress claim against the superintendent, in his individual capacity, under Massachusetts law. (Suffolk County House of Correction, Massachusetts)

U.S. District Court
FEMALE PRISONERS
PRETRIAL DETAINEE
SUICIDE ATTEMPT
DELIBERATE
INDIFFERENCE

Chennault v. Mitchell, 923 F.Supp.2d 765 (E.D.Va. 2013). The guardian for an incapacitated former pretrial detainee filed § 1983 action against a former sheriff and former officers of the sheriff's department for alleged violation of the detainee's Fourteenth Amendment right to due process, by deliberate indifference to her medical needs that resulted in her permanent brain damage from an attempted suicide. The defendants moved to dismiss. The district court granted the motion. The court held that sheriff's department officers were not deliberately indifferent to the serious medical needs of the detainee, as required to support the detainee's § 1983 claim for violation of her Fourteenth Amendment due process rights, where the officers had no knowledge or even any reason to suspect that the detainee presented a risk of suicide, rather than merely a risk of violent behavior towards officers. According to the court, the sheriff's department officers' pepper spraying of the detainee due to her violent behavior toward the officers, and then failing to decontaminate her, did not establish that the officers knew of and disregarded a substantial risk of harm to the detainee, where the officers did not know or have reason to believe that the detainee was suicidal at the time that she was sprayed, the detainee did not allege that the use of spray was unnecessary or excessive in amount, and the detainee did not exhibit any adverse reactions to the spray or to the lack of decontamination. The court found that the sheriff's department officers' failure to support the detainee's body and/or neck when they cut her shirt on which she hung herself on cell bars in an attempted suicide did not constitute deliberate indifference to her serious medical needs in violation of her Fourteenth Amendment due process rights. The court noted that, even though the detainee's injuries were increased from sliding down cell bars and forcibly striking her head on the cell door, the officers faced an emergency and needed to act quickly and decisively to save the detainee's life. According to the court, their actions "...were not only reasonable in this situation, but laudable." The court held that the detainee's § 1983 claim that the sheriff failed to train jail personnel, to ensure they could adequately respond to the medical needs of combative and/or intoxicated detainees, was foreclosed by the lack of a Fourteenth Amendment violation by jail personnel and a lack of a causal link between the sheriff's policies and the detainee's attempted suicide, where jail personnel were not deliberately indifferent to the detainee's medical needs in violation of the detainee's due process rights, and there was no pattern of unconstitutional violations resulting in suicides or attempted suicides. (Richmond City Jail Annex, Virginia)

U.S. District Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE
EXAMINATIONS
POLICIES
PRETRIAL DETAINEE
STAFF

Christie ex rel. estate of Christie v. Scott, 923 F.Supp.2d 1308 (M.D.Fla. 2013). An estate brought a § 1983 action against a private prison health services provider and corrections officers following the death of a detainee after he was pepper-sprayed over 12 times in 36 hours. The provider moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether failure of the nurses to inspect the detainee after each time he was pepper-sprayed constituted deliberate indifference; (2) whether the sheriff knew that corrections officers were using pepper spray nearly indiscriminately; (3) whether corrections officers were deliberately indifferent to the detainee's physical and medical needs; and (4) whether corrections officers' repeated pepper-spraying of the detainee while he was restrained naked in a chair was malicious and sadistic to the point of shocking the conscience. The estate alleged that the nurses' failed to evaluate the detainee after each time he was pepper-sprayed, failed to follow their employer's policy by not monitoring the detainee every 15 minutes for the periods he was restrained, and failed to offer the detainee fluids or a bedpan while he was restrained. The nurses allegedly checked the inmate only two times during the five hours he was restrained. The court found that the health services provider did not have a policy of understaffing that constituted deliberate indifference to the detainee's health, as required to support a § 1983 claim against the private provider. (Lee County Jail, Florida)

U.S. District Court
FAILURE TO PROVIDE
CARE
MENTAL HEALTH

Coleman v. Brown, 922 F.Supp.2d 1004 (E.D.Cal. 2013). State prison inmates brought Eighth Amendment challenges to the adequacy of mental health care and medical health care provided to mentally ill inmates and the general prison population, respectively. The inmates moved to convene a three-judge panel of the district court to enter a population reduction order that was necessary to provide effective relief. The motions were granted and the cases were assigned to same panel, which ordered the state to reduce the prison population to 137.5% of

its design capacity. The state moved to vacate or modify the population reduction order. The district court denied the motion. The three-judge panel of the district court held that: (1) the state's contention that prison crowding was reduced and no longer a barrier to providing inmates with care required by the Eighth Amendment did not provide the basis for a motion to vacate the order on the ground that changed circumstances made it inequitable to continue applying the order; (2) the state failed to establish that prison crowding was no longer a barrier to providing inmates with care required by the Eighth Amendment; and (3) the state failed to establish it had achieved a durable remedy to prison crowding. (California Department of Rehabilitation and Corrections)

U.S. District Court
INADEQUATE CARE
MENTAL HEALTH

Coleman v. Brown, 960 F.Supp.2d 1057 (E.D.Cal. 2013). California prisoners with serious mental disorders brought a class action against a Governor, alleging that due to prison overcrowding, they received inadequate mental health care, in violation of the Eighth Amendment prohibition of cruel and unusual punishment. Separately, California prisoners with serious medical conditions brought a class action asserting constitutional claims similar to those in the other action. In the case concerning mental health care, the district court found Eighth Amendment violations and appointed a special master to oversee the development and implementation of a remedial plan. In the case concerning medical care, the State stipulated to a remedial injunction, and, after the State failed to comply with that injunction, the district court appointed a receiver to oversee remedial efforts. A three judge district court panel consolidated the two cases and the panel entered a remedial order requiring the State to reduce its prison population to 137.5 percent of design capacity within two years. The Governor appealed. The United States Supreme Court affirmed the population reduction order. The district court subsequently denied the defendants' motion to vacate or modify the population reduction order, and directed the defendants to comply with the population reduction order. The defendants' moved to stay the order directing compliance pending appeal to the United States Supreme Court. The district court denied the motion, finding that: (1) the State was not likely to succeed on the merits of the prisoners' lawsuit challenging prison conditions; (2) the State would not be irreparably injured absent a stay; (3) issuance of a stay would substantially injure the prisoners; and (4) the public interest favored denying the stay. (California)

U.S. District Court
EXAMINATION
FACILITIES
HANDICAP
RA- Rehabilitation Act
WHEELCHAIR

Cooke v. U.S. Bureau of Prisons, 926 F.Supp.2d 720 (E.D.N.C. 2013). Detainees who used wheelchairs and who were civilly committed at a federal corrections facility as sexually dangerous persons filed suit, seeking injunctive relief against the United States Bureau of Prisons for its alleged failure to accommodate their disabilities in violation of the Architectural Barriers Act (ABA), the Rehabilitation Act, the Religious Freedom Restoration Act (RFRA), and the First and Fifth Amendments. The government moved to dismiss and for summary judgment, and the detainees moved for discovery and to deny the government's motions. The district court granted the motions in part and denied in part. The court found that although the detainees failed to exhaust administrative remedies prior to filing suit under the ABA, the detainees were not "prisoners" as defined by the Prison Litigation Reform Act (PLRA) and thus did not have to exhaust administrative remedies before filing suit.

The court found that the detainees, by alleging that, unlike detainees without disabilities, they could not access the prison's religious library or an outdoor pagan worship area, stated claims under the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act (RFRA) in their action seeking injunctive relief against the Bureau of Prisons for failing to accommodate their disabilities. The court held that the detainees failed to state a claim for a violation of the constitutional right to privacy. According to the court, even assuming that the detainees had a limited constitutional right to privacy in medical treatment, the inmates alleged that the prison medical facility had no private, wheelchair-accessible examination room, but did not allege harm from the use or disclosure of their medical information. (Butner Federal Correctional Complex, North Carolina)

U.S. District Court
DELIBERATE
INDIFFERENCE
FEMALE PRISONERS

Cooper v. Rogers, 968 F.Supp.2d 1121 (M.D.Ala. 2013). A female state prisoner filed a § 1983 action against jail officials in Alabama court, alleging deliberate indifference to her serious medical needs in violation of the Eighth Amendment. After the action was removed to federal court, officials moved for summary judgment. The district court granted the motion. The court held: (1) officials were acting within scope of their discretionary authority when they denied the pregnant prisoner medical care, as required to invoke qualified immunity; (2) the prisoner's prolonged vaginal bleeding accompanied by pain was a serious medical need; (3) officials acted with deliberate indifference to the prisoner's serious medical needs; but (4) evidence was insufficient to establish that deliberate indifference to prisoner's serious medical needs caused her miscarriage. The court noted that officials were aware that the prisoner was pregnant and that she was experiencing vaginal bleeding and pain, the prisoner testified that she made almost daily verbal requests for medical attention, officials ignored her requests or responded by threatening to send her to a women's prison, and told her to keep the baby inside of her. (Bullock County Jail, Alabama)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
MEDICATION
PRETRIAL DETAINEE

Currie v. Chhabra, 728 F.3d 626 (7th Cir. 2013). The administrator of the estate of a deceased arrestee brought an action against a county, jail officials, and health care providers, alleging various claims, including claims pursuant to § 1983 and the Illinois Wrongful Death Act, and for punitive damages. The district court denied the providers' motion to dismiss based on qualified immunity. The providers appealed prior to disposition by the district court. The appeals court affirmed. The appeals court held that the health care providers were not entitled to qualified immunity to the arrestee's estate's civil rights claim under the Fourth Amendment alleging that the providers' failure to monitor the arrestee's blood sugar level, provide insulin shots, and deliver other necessary medical care while the arrestee was detained in the county jail. According to the court, the officials' conduct was objectively unreasonable and caused the detainee's death, which resulted from diabetic ketoacidosis, a life-threatening condition associated with untreated Type I diabetes. The court noted that although prior Fourth Amendment medical care cases spoke only of "officers," those opinions did not hint at any special Fourth Amendment exemption for health care professionals. (Williamson County Jail, Illinois)

U.S. Appeals Court GID- Gender Identity Disorder	<i>De'lonta v. Johnson</i> , 708 F.3d 520 (4 th Cir. 2013). A pre-operative transsexual inmate filed a § 1983 action alleging that state prison officials' continued denial of consideration for sex reassignment surgery as treatment for her gender identity disorder (GID) constituted deliberate indifference to her serious medical need in violation of the Eighth Amendment. The district court dismissed the complaint, and the inmate appealed. The appeals court reversed and remanded. The court held that the inmate's allegation was sufficient to state a plausible Eighth Amendment claim against the officials, even though the officials had provided the inmate with hormone treatment and mental health consultations, and had allowed her to live and dress as a woman, where the standard protocol for treatment of GID indicated that sex reassignment surgery might be necessary for individuals who continued to present with severe GID after one year of hormone therapy and dressing as woman. The court noted that the officials failed to evaluate the inmate concerning her suitability for surgery, despite her repeated complaints as to the persistence of her symptoms and the inefficacy of her existing treatment. (Powhatan Correctional Center, and Buckingham Correctional Center, Virginia Department of Corrections)
U.S. District Court INVOLUNTARY MEDICATION INVOLUNTARY NOURISHMENT	<i>Dhiab v. Obama</i> , 952 F.Supp.2d 154 (D.D.C. 2013). An alien who was engaged in a voluntary hunger strike while detained at the U.S. Naval Base at Guantanamo Bay, Cuba, moved for a preliminary injunction against force-feeding him and the administration of medications related to the force-feeding without his consent. The district court denied the motion, finding that it lacked jurisdiction to consider the motion. (U.S. Naval Base at Guantanamo Bay, Cuba)
U.S. District Court CONTRACT SERVICES COSTS INADEQUATE CARE	<i>Duran v. Merline</i> , 923 F.Supp.2d 702 (D.N.J. 2013). A former pretrial detainee at a county detention facility brought a pro se § 1983 action against various facility officials and employees, the company which provided food and sanitation services to the facility, and the medical services provider, alleging various constitutional torts related to his pretrial detention. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that fact issues precluded summary judgment on: (1) the conditions of confinement claim against a former warden in his official capacity; (2) an interference with legal mail claim against a correctional officer that alleged that the facility deliberately withheld the detainee's legal mail during a two-week period; (3) a First Amendment retaliation claim based on interference with legal mail; and (4) a claim for inadequate medical care as to whether the detainee's Hepatitis C condition was a serious medical condition that required treatment and whether the provider denied such treatment because it was too costly. The detainee asserted that overcrowding at the county detention facility, which allegedly led to the detainee being forced to sleep and eat his meals next to open toilet, and led to inmate-on-inmate violence, contributed to his assault by another inmate. According to the court, the long-standing conditions of confinement whereby the county detention facility was overcrowded for at least 24 years and facility officials "triple-celled" inmates, allegedly leading to unsanitary conditions, amounted to a "custom" for the purposes of the former detainee's § 1983 Fourteenth Amendment conditions of confinement claim against a former warden in his official capacity. The court held that the food service provider's serving the detainee cold meals for a 45-day period while the kitchen in the county detention facility was being renovated, was not "punishment," as would support the inmate's § 1983 Fourteenth Amendment conditions of confinement claim against the provider, absent evidence that the food served to the detainee was spoiled or contaminated, that a significant portion of the detainee's diet consisted of such food, or that the food service caused more than a temporary discomfort. The court also held that the alleged actions of the food service provider in serving the detainee one food item when another ran out, failing to serve bread with the inmate's meal, serving the inmate leftovers from days before, serving juice in a dirty container on one occasion, serving milk after its expiration date, and serving meals on cracked trays that caused the detainee to contract food poisoning, did not amount to a substantial deprivation of food sufficient to amount to unconstitutional conditions of confinement, as would violate the inmate's due process rights. (Atlantic County Justice Facility, New Jersey)
U.S. Appeals Court MEDICATION SUICIDE	<i>Earl v. Racine County Jail</i> , 718 F.3d 689 (7 th Cir. 2013). An inmate brought a § 1983 action against a county jail and various jail officers, asserting claims for denial of due process and deliberate indifference to his serious medical condition. The district court granted the defendants' motion for summary judgment, and the inmate appealed. The appeals court affirmed. The appeals court held that the inmate's five days on suicide watch were neither long enough nor harsh enough to deprive him of a due-process-protected liberty interest, where: (1) the only changes to the inmate's meals were that trays upon which food was served were disposable foam rather than plastic; (2) eating utensils were quickly removed after each meal; (3) the inmate was not denied bedding but was given a mattress and a blanket; (4) the inmate was denied writing materials for only the first 48 hours; and (5) rather than being prohibited human contact, deputies were assigned to closely and personally monitor the inmate to ensure his safety. The court found that jail officers were not deliberately indifferent to the inmate's allergic reaction to suicide garments in violation of the Eighth Amendment. The court noted that after the inmate told an officer about his allergic reaction to a suicide gown, the officer called a nurse who immediately examined the inmate and gave him cream and medication, and the officers appropriately deferred to the nurse's medical decision that the inmate did not need different garments because there was no sign of rash or bumps on the inmate. (Racine County Jail, Wisconsin)
U.S. District Court DELIBERATE INDIFFERENCE FAILURE TO PROVIDE CARE	<i>Eason v. Frye</i> , 972 F.Supp.2d 935 (S.D.Miss. 2013). A pretrial detainee brought a pro se § 1983 action against an officer and a sheriff, alleging that the officer used excessive force by releasing his canine while responding to a fight between the detainee and another inmate, and that he did not receive immediate medical attention after the incident. The defendants moved for summary judgment. The district court granted the motion. The district court held that: (1) the detainee failed to allege that the sheriff was personally involved in the dog bite incident, as required for § 1983 liability; (2) the officer did not use excessive force; (3) prison officials were not deliberately indifferent to the detainee's serious medical needs where there was no evidence that the officials refused to treat the detainee, ignored his complaints, or intentionally treated him incorrectly; (4) the detainee failed to state a § 1983 failure to train or supervise claim; (5) the sheriff was entitled to qualified immunity from the failure to

train claim, where the detainee made no specific allegations about how the sheriff was unreasonable in his training and supervising methods; and (6) the detainee could not maintain a claim for mental or emotional suffering. The court noted that the detainee refused to stop fighting when the officer ordered him to stop, thus causing an obvious threat to security. In response, the officer applied the amount of force necessary to restore order on the tier, and as soon as the detainee went to the ground and stopped fighting, the officer ordered the dog to release its grip. The detainee suffered a minor injury when he was bitten by the dog. According to the court, the detainee made no specific allegations regarding how the training and supervision program at the detention facility was inadequate or defective, he contended that his numerous complaints and grievances went unanswered but provided no evidence of inadequate training or supervision, and he made no allegation of an official policy that caused the allegedly inadequate training and supervision. (Harrison County Adult Detention Center, Mississippi)

U.S. District Court
NEGLIGENCE
INADEQUATE CARE
CONTRACT SERVICES

Estate of Henson v. Wichita County, 988 F.Supp.2d 726 (N.D.Tex. 2013). Family members of a pretrial detainee who died from chronic obstructive pulmonary disease (COPD) while being held in a county jail brought a § 1983 action against a county and a jail physician, among others, for violation of the detainee's Fourth and Fourteenth Amendment rights, and asserted claims under state law for negligence and breach of contract. The defendants moved for summary judgment based on qualified immunity. The district court granted the motions in part, and denied in part. The physician and the county moved for reconsideration. The district court granted the motion, finding that the physician was not subject to supervisory liability under § 1983, absent any finding that the nurse refused to treat the detainee, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical need. The court held that the county was not liable in the § 1983 claim brought by family members, absent a showing of an underlying constitutional violation by a county employee or a county policy that permitted or caused some constitutional violation. (Wichita County Jail, Texas)

U.S. District Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE
EMERGENCY CARE
POLICIES
PRETRIAL DETAINEE
PRIVATE PHYSICIAN
TRANSPORTATION

Estate of Prasad ex rel. Prasad v. County of Sutter, 958 F.Supp.2d 1101 (E.D.Cal. 2013). The estate of a deceased pretrial detainee brought an action against jail employees and officials, as well as medical staff, alleging violations of the Fourteenth Amendment. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) although the detainee died at a hospital, liability for the jail employees and officials was not precluded, where the jail employees and officials could have contributed to detainee's death despite the transfer to the hospital; (2) allegations were sufficient to plead deliberate indifference to serious medical needs by the deputies and medical staff; (3) allegations were sufficient to state a claim for supervisory liability; (4) allegations were sufficient to state a claim for supervisory liability against the corrections officers in charge; (5) allegations were sufficient to state a claim against the county; (6) allegations were sufficient to state a claim for wrongful death under California law; and (7) the health care provider was a state actor.

The court found that a statement by health care providers, in an attachment to the complaint, that even if the detainee had been transferred to the hospital sooner, it "probably" would not have changed his death, was possibly self serving, and did not contradict the complaint's allegations that the detainee's death was unnecessary and unavoidable. According to the court, allegations that the county maintained customs or practices whereby no medical staff whatsoever were at the jail for one-sixth of every day, that the staff lacked authority to respond to emergency and critical inmate needs, and that the jail records system withheld information from affiliated health care providers, were sufficient to state a § 1983 claim against the county, alleging violations of the Fourteenth Amendment after the pretrial detainee died.

The court held that allegations that deficiencies in medical care at the jail, including lack of 24-hour emergency care, were longstanding, repeatedly documented, and expressly noted by officials in the past, and that the doctor who was employed by the health care provider that contracted with the prison was aware of the deficiencies, and that the doctor discharged the pretrial detainee to the jail were sufficient to plead deliberate indifference to serious medical needs, as required to state a § 1983 action against the doctor for violations of the Fourteenth Amendment after the detainee died. (Sutter County Jail, California)

U.S. District Court
DELAY IN TREATMENT
EMERGENCY CARE
TRANSPORTATION

Fluker v. County of Kankakee, 945 F.Supp.2d 972 (C.D.Ill. 2013). An inmate and his wife filed a § 1983 action in state court against a county and the county sheriff's office to recover for injuries the inmate suffered when a correctional officer who was driving his prison transport vehicle was required to brake suddenly, causing the inmate to hurtle forward and hit his head on a metal divider. The case was removed to federal court. The district court granted the defendants' motion for summary judgment. The court held that: (1) the officials' failure to fasten the inmate's seatbelt did not violate the Eighth Amendment; the official's alleged driving above the posted speed limit did not violate the Eighth Amendment; and the officials' failure to immediately call for an ambulance did not violate the Eighth Amendment. The court noted that the officials, who were not medically trained, called a supervisor for guidance within one minute of the accident, and were told to continue to the jail where a trained first responder immediately assessed the inmate and cleaned and bandaged a laceration on his head when the transport van arrived 7 to 10 minutes later. The inmate was transported to a hospital within 10 to 15 minutes of arriving at the jail. (Jerome Combs Det. Center, Kankakee County, Ill.)

U.S. District Court
EXAMINATIONS
INADEQUATE CARE
MEDICATION
PRETRIAL DETAINEE
RECORDS

Ford-Sholebo v. U.S., 980 F.Supp.2d 917 (N.D.Ill. 2013). The wife of a deceased pretrial detainee who suffered from a seizure disorder, individually and as administrator of the detainee's estate, brought a wrongful death action against the United States pursuant to the Federal Tort Claims Act (FTCA). The district court held that: (1) evidence supported a finding that the detainee had a seizure disorder; (2) correctional facility employees breached the standard of care for treating the detainee's seizure disorder; (3) the employees' failures and breaches of the standard of care proximately caused the detainee's death; and (4) an award of damages to the wife in the amount of \$40,000 for the loss of consortium was appropriate. The court noted that the testimony of the administrator's expert physician and a pathologist who was subpoenaed to testify at trial, that the detainee suffered from a seizure disorder, was overwhelmingly credible, while testimony of the government's two experts, that the detainee did not have seizure disorder, was incredible and unreliable.

According to the court, the standard of care for treating the detainee's seizure disorder required correctional facility personnel, including physicians and physician assistants, to examine the detainee on a monthly basis, review the detainee's medical records, draw the detainee's blood for the purpose of monitoring the level of anti-seizure medication in his blood and obtain corresponding lab reports, and inform the detainee about the risks and benefits of taking or not taking medication, and to counsel him about his medication. The court found that the facility breached the appropriate standard of care, where required monthly evaluations were not conducted, facility personnel failed to make any efforts to retrieve the detainee's medical records while they were treating the detainee, facility physicians were derelict in their duty to review medical records they actually possessed and then to meet with the detainee in light of information they derived from those records, and physicians failed to talk to the detainee about his medication, to ask him why he was not taking his medication, and to counsel him about his noncompliance. (Metropolitan Correctional Center, Chicago, and Kankakee Co. Det. Center, Illinois)

U.S. District Court
EYE CARE
DELIBERATE
INDIFFERENCE
INADEQUATE CARE

Foster v. Ghosh, 4 F.Supp.3d 974 (N.D.Ill. 2013). A state inmate brought an action against Illinois Department of Corrections officials and an optometrist who treated him in prison, alleging under § 1983 that the defendants were deliberately indifferent to his serious medical needs, in violation of the Eighth Amendment. The inmate moved for a preliminary injunction requiring the defendants to grant him access to an ophthalmologist to evaluate his cataracts. The district court granted the motion. The court held that the optometrist and medical director were deliberately indifferent to the inmate's serious medical needs and that the inmate would suffer irreparable harm absent the issuance of an injunction. According to the court, the only treatment the inmate received in prison was a prescription for eyeglasses, which was not effective, and the inmate's request for a consultation was not expensive, unconventional, or esoteric. The court noted that the cost the defendants would bear providing adequate care to the inmate did not outweigh the irreparable harm the inmate would endure if his cataracts remained unevaluated. (Stateville Correctional Center, Illinois)

U.S. District Court
DELIBERATE
INDIFFERENCE
SPECIAL DIET
RELIGION

Garnica v. Washington Dept. of Corrections, 965 F.Supp.2d 1250 (W.D. Wash. 2013). A state prisoner brought an action in state court against the Washington Department of Corrections (DOC) and DOC personnel, alleging violations of First, Eighth, and Fourteenth Amendments, and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The action was removed to federal court, and the defendants moved for summary judgment. The district court granted the motion. The court held that even if the ailments that the Muslim prisoner experienced during a Ramadan fast were related to meals provided to him by prison personnel during the fast, those ailments were not sufficiently serious to constitute a serious medical need, as required to establish prison personnel's deliberate indifference to a serious medical need, in violation of the Eighth Amendment. The court found that prison personnel did not act with deliberate indifference to the Muslim prisoner's health and safety with respect to the meals provided to the prisoner during his Ramadan fast, and thus, there was no violation of the prisoner's Eighth Amendment rights. The court noted that prison personnel acted with the intent to provide the prisoner and other Ramadan participants with proper nutrition and calories during Ramadan, and when they learned the caloric value of the prison's Ramadan meals had been miscalculated, they corrected the caloric values and added supplements to the meals to ensure that the goal of 2,700 average calories was met. When the prisoner complained of diarrhea, constipation, and headaches during Ramadan, he was seen by a DOC medical professional and was treated for his complaints.

The court held that the prisoner's right to practice his Muslim religion was not substantially burdened, within the meaning of RLUIPA, by the nature or quantity of food provided to him by prison personnel during the Ramadan fast. According to the court, although the prisoner was not satisfied with the quality or quantity of the food provided, he and other Ramadan participants were given a daily meal and supplements. The court found that meals contained an average of 2700 calories and he and other vegetarian participants received additional snacks to compensate for meat items they could not consume. The court noted that even though one meal that was provided contained only approximately 1900 calories due to a mistake in packaging the Ramadan meals, the mistake was corrected the next day and thereafter the prisoner was given calorically and nutritionally adequate meals throughout the Ramadan fast. (Clallam Bay Corrections Center, Washington Department of Corrections)

U.S. Appeals Court
HEARING IMPAIRED
ADA-Americans with
Disabilities Act

Gilmore v. Hodges, 738 F.3d 266 (11th Cir. 2013). A pretrial detainee, proceeding pro se, brought a § 1983 action against prison officers, alleging violations of the First and Fourteenth Amendments, as well as the Americans with Disabilities Act (ADA), in failing to provide batteries for his hearing aids. The district court granted summary judgment for the officers. The detainee appealed. The appealed court affirmed. The court found genuine issues of material fact as to whether the detainee's severe hearing loss that could be corrected by hearing aids was an objectively serious medical need, and whether prison officials' response to the detainee's need for batteries for his hearing aids was objectively insufficient. But the court held that the detainee's right to a functioning hearing aid was not clearly established at the time, and therefore the officers were entitled to summary judgment. (Wakulla County Jail, Florida)

U.S. District Court
ADA- Americans with
Disabilities Act
DELIBERATE
INDIFFERENCE
FEMALE PRISONERS
MEDICATION
MENTAL HEALTH
RA- Rehabilitation Act
RIGHT TO REFUSE
SPECIAL DIET

Hahn v. Walsh, 915 F.Supp.2d 925 (C.D.Ill. 2013). The estate of a diabetic pretrial detainee brought an action against a city, police officers, a county, the county sheriff, and a jail medical provider, alleging under § 1983 that the defendants were deliberately indifferent to the detainee's serious medical needs. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that a city police officer at the scene of the arrest who had no involvement with the diabetic detainee could not be held liable under § 1983 for being deliberately indifferent to the serious medical needs of detainee, who died from diabetic ketoacidosis after she was taken to a county jail. The court also found that city police officers who transported the detainee to the county jail, rather than a hospital, were not deliberately indifferent to the serious medical needs of the detainee, where the officers were entitled to defer to the judgment of the paramedics on the scene. According to the court, there was no evidence that the county sheriff knew of a serious risk to the health of the diabetic pretrial detainee and consciously disregarded that risk, that any prior deaths at the jail involved medical care provided to an inmate, much less that medical care involved an inmate with diabetes, or that the sheriff's decisions about certification of the jail's medical contractor had any adverse effect on the detainee, as

would subject the sheriff to liability under § 1983, in his individual capacity, for his alleged deliberate indifference to the detainee's serious medical needs. The court found that the county's actions in shutting off water to the mentally ill, diabetic pretrial detainee's cell when the inmate was stuffing clothing into the cell's toilet did not violate the detainee's Fourteenth Amendment rights. According to the court, the estate's claim against the county that the detainee, who died of diabetic ketoacidosis after allegedly refusing diabetic treatment and food while incarcerated, was not properly treated for her mental illness and diabetes was not actionable under the Americans with Disabilities Act (ADA) or the Rehabilitation Act. (Champaign County Jail, Illinois)

U.S. District Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE
JUVENILE
MENTAL HEALTH
PSYCHOTROPIC DRUGS

Harrelson v. Dupnik, 970 F.Supp.2d 953 (D.Ariz. 2013). The mother of 17-year-old inmate who died while housed at a county jail brought an action in state court against the county, the county sheriff, the healthcare provider which contracted with the county to provide medical and mental health care at the jail, and employees of the provider, individually and on behalf of the inmate's estate, alleging under § 1983 that the defendants were deliberately indifferent to the inmate's serious medical needs. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that: (1) the county defendants' duty to provide medical and mental health services to an inmate was non-delegable; (2) intervening acts of the medical defendants did not absolve the county defendants of liability for alleged negligence; (3) the mother failed to state a claim for wrongful death; (4) the county was not deliberately indifferent to the inmate's rights; (5) the provider was not subject to liability; but (6) a fact issue precluded summary judgment as to an Eighth Amendment medical claim against the employees.

According to the court, the duty of the county and the county sheriff to provide medical and mental health services to the 17-year-old county jail inmate, who suffered from bipolar disorder and depression, was non-delegable, and thus the county and sheriff were subject to vicarious liability, under Arizona law, for the alleged medical malpractice of the healthcare provider which contracted with the county to provide medical and mental health services at the jail. The court noted that there was no evidence that the legislature intended to permit the county or sheriff to delegate their duties and obligations they owned to the inmate.

The court found that the intervening acts of the contract medical provider, in allegedly failing to properly diagnose and treat the inmate's medical and mental health needs, both before and after the inmate received an injection of a psychotropic medication, were not so extraordinary as to absolve the county and the county sheriff of liability for their failure to protect the inmate. The court found that there was no evidence that the county jail's policy or custom of placing inmates in protective custody for their own protection amounted to deliberate indifference to the constitutional rights of the inmate, who died while on protective custody status. According to the court, there was no evidence that the county had actual notice of a pattern of risk of harm or injury as a result of the county jail officials' use of isolation, or an administrative segregation policy in the juvenile detention housing unit at the county jail, or that any omissions in the county's policies necessarily gave rise to the situation in which the inmate, died from a purported cardiac event.

The court found that summary judgment was precluded by genuine issues of material fact as to whether the inmate's prescribing physician knew of the inmate's serious medical need for a full psychiatric assessment, and failed to timely provide that assessment, and as to whether jail medical personnel were aware that the inmate was suffering from a reaction to a psychotropic medication or unknown serious medical illness, and, if so, whether they were deliberately indifferent. (Pima County Adult Detention Complex, and Conmed Healthcare Management, Inc., Arizona)

U.S. District Court
ADA-Americans with
Disabilities Act
CONTAGIOUS
DISEASES
DELIBERATE
INDIFFERENCE
RA-Rehabilitation Act

Hilton v. Wright, 928 F.Supp.2d 530 (N.D.N.Y. 2013). A state prison inmate infected with the Hepatitis C virus (HCV) brought a class action against the New York State Department of Correctional Services and Community Supervision (DOCCS) and its chief medical officer, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment, as well as violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Following class certification, the parties entered into a settlement agreement resolving injunctive and equitable claims. The defendants moved for summary judgment on the remaining damages claims. The inmate's attorneys moved for attorney's fees and out-of-pocket expenses incurred monitoring the settlement agreement. The district court granted the defendants' motion for summary judgment, awarded fees to the inmate's attorneys, but denied expenses. The inmate appealed. The appeals court vacated and remanded. On remand, the district court held that: (1) the Eleventh Amendment barred an Eighth Amendment claim against an officer in his official capacity; (2) the inmate waived the Eighth Amendment claim based on initial denial of treatment due to his short prison term; (3) a fact issue precluded summary judgment on the Eighth Amendment claim based on denial of treatment due to the inmate's failure to complete a substance abuse program;(4) a fact issue precluded summary judgment on the ADA and Rehabilitation Act claims; and (5) enlargement of the cap set forth in the agreement was appropriate. (New York State Department of Correctional Services and Community Supervision)

U.S. District Court
POLICIES
SUICIDE
TRAINING

Holscher v. Mille Lacs County, 924 F.Supp.2d 1044 (D.Minn. 2013). Trustees for the next-of-kin of a pretrial detainee who committed suicide while incarcerated at a county jail brought an action against the county, alleging under § 1983 that the county provided inadequate medical care to the detainee, in violation of his due process rights. The trustees also asserted related claims for negligence and wrongful death under state law. The court moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the county had actual knowledge of the pretrial detainee's risk of suicide, as to whether the county was deliberately indifferent to that risk, and as to whether the detainee's death was the result of an unconstitutional custom. The court also held that summary judgment was precluded by genuine issues of material fact as to whether the county's training of its jail employees on proper implementation of its suicide prevention policy was adequate, as to whether the county was deliberately indifferent in failing to revise its training, and as to whether any inadequate training on the part of the county caused the pretrial detainee's suicide. (Mille Lacs County Jail, Wisconsin)

<p>U.S. Appeals Court DELIBERATE INDIFFERENCE MEDICATION RECORDS</p>	<p><i>Jackson v. Pollion</i>, 733 F.3d 786 (7th Cir. 2013). A state inmate brought an action against a nurse practitioner and a correctional counselor, alleging under § 1983 that the defendants were deliberately indifferent to his hypertension, for which he was not receiving his prescribed medication. The district court granted the defendants' motion for summary judgment. The inmate appealed. The appeals court affirmed. The appeals court held that the defendants were not deliberately indifferent to the inmate's hypertension by failing to provide him with his prescribed medication for a three-week period. The court noted that the nurse practitioner did not know that the inmate was not receiving his medication, and the counselor, who was not a member of the prison's medical staff, though he knew about the inmate's problem, he assumed that medical staff would address it. (Menard Correctional Center, Illinois)</p>
<p>U.S. Appeals Court MEDICATION POLICIES</p>	<p><i>Johnson v. Douglas County Medical Dept.</i>, 725 F.3d 825 (8th Cir. 2013). An inmate brought a § 1983 action against a county, alleging failure to provide him with necessary medication. The district court granted the county's motion for summary judgment and the inmate appealed. The court held that jail employees' denial of the inmate's medication for one morning, which resulted in a seizure, did not establish a continuing, widespread, persistent pattern of unconstitutional misconduct by the employees, as required to subject the county to liability in the inmate's § 1983 action. According to the court, there was no evidence that county policymaking officials received notice of denial of medication prior to the inmate's seizure and made a deliberate choice to ignore or tacitly authorize the denial, and no other inmates were denied medication. (Douglas County Correctional Center, Correct Care Solutions, Nebraska)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE FEMALE PRISONER PRETRIAL DETAINEE</p>	<p><i>Keele v. Glynn County, Ga.</i>, 938 F.Supp.2d 1270 (S.D.Ga. 2013). A pretrial detainee's estate brought an action against a county, county sheriff, and officials at the county detention facility in their official and individual capacities, alleging that, while detained, the detainee's access to necessary medical care was delayed or deficient and that the delay or deficiency led to the detainee's death. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the detainee's bruised or fractured ribs and rash were objectively serious medical needs, as required for the estate's deliberate indifference claim against officials at the county detention facility under Fourteenth Amendment. According to the court, a lay person would be alerted to the necessity of medical attention after the detainee lost control of her bowels, began to hallucinate, vomited repeatedly, became pale and developed blisters inside her mouth, and thus the detainee had an objectively serious medical need when the symptoms manifested, as required for the estate's deliberate indifference claim against the officials. The court found that summary judgment was precluded by genuine issues of material fact regarding whether the nurse at the county detention facility was subjectively aware that the pretrial detainee faced a substantial risk of serious harm, whether the nurse was more than grossly negligent in disregarding that risk of harm, and whether the nurse's actions caused the detainee's injuries, including death. The court noted that a reasonable nurse in the county detention facility nurse's position would have known that delaying provision of medical care to a pretrial detainee with the detainee's symptoms, which included hallucinating, withdrawing from pain medication, pale, vomiting, hives, complaining of feeling bad, and not eating, drinking, or getting up to do any activity, violated her constitutional rights, and thus the nurse failed to establish an entitlement to qualified immunity from deliberate indifference claims under the Fourteenth Amendment. According to the court, it was clearly established that knowledge of the need for medical care and intentional refusal to provide that care constituted deliberate indifference, and the law was clearly established that nearly half a day was too long to fail to properly respond to a medical need. (Glynn County Detention Center, Georgia)</p>
<p>U.S. District Court DENTAL CARE DELAY IN TREATMENT DELIBERATE INDIFFERENCE</p>	<p><i>King v. Chapman</i>, 4 F.Supp.3d 1017 (N.D.Ill. 2013). An inmate brought a § 1983 action against prison medical and dental providers, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The district court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the delay in providing a new dental "night guard" to the inmate by a dentist working for the state was deliberate indifference; (2) whether a prison dentist was deliberately indifferent to the inmate's serious medical needs in delaying sending the inmate to a specialist and in prescribing medication to the inmate; and (3) whether the medical director was deliberately indifferent to the inmate's serious medical needs in obtaining physical therapy for the inmate after surgery. (Wexford Health Sources, Inc., Menard Correctional Facility, Stateville Correctional Facility, Illinois)</p>
<p>U.S. Appeals Court DELIBERATE INDIFFERENCE MENTAL HEALTH SUICIDE</p>	<p><i>Lemire v. California Dept. of Corrections and Rehabilitation</i>, 726 F.3d 1062 (9th Cir. 2013). The estate, parents, and daughter of a mentally ill inmate who died in custody brought a § 1983 action against the California Department of Corrections and Rehabilitation (CDCR), CDCR officials, and prison staff. The plaintiffs sought to recover damages for alleged violations of the Eighth Amendment, based on the inmate's right to be free from cruel and unusual punishment, and the Fourteenth Amendment, based on the family's substantive due process right of familial association. The district court granted summary judgment to the plaintiffs. The appeals court affirmed in part, vacated in part, and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether: (1) withdrawal of all floor staff from a prison building which housed mentally ill inmates, for up to three and a half hours, created an objectively substantial risk of harm to the unsupervised inmates in the building; (2) the captain who called staff meetings, and a warden, who purportedly authorized the meetings, were aware of risks posed by withdrawing all floor officers from the building for over three hours; (3) any risk of harm could have been prevented with adequate supervision; and (4) the actions of the warden and the captain shocked the conscience.</p> <p>The court also found genuine issues of material fact existed as to whether (1) floor officers who were the first prison personnel to arrive in the cell of the mentally ill inmate who apparently committed suicide were deliberately indifferent to the inmate's serious medical needs when they failed to provide cardiopulmonary resuscitation (CPR), despite being trained to administer it; (2) the officers' failure to provide medical care caused the inmate's death; and (3) the officers' actions shocked the conscience, precluding summary judgment as to the § 1983</p>

Eighth Amendment medical claim brought by the inmate's family against officers and family's substantive due process claim against the officers. (California State Prison at Solano)

U.S. District Court
DELIBERATE
INDIFFERENCE
DENIAL

Lewis v. Zon, 920 F.Supp.2d 379 (W.D.N.Y. 2013). A Jewish inmate brought an action against a state's department of corrections and approximately 50 of its officials and employees pursuant to § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging denial of religious accommodations in violation of the First Amendment and RLUIPA. The inmate moved for summary judgment and the defendants cross moved to dismiss and/or for summary judgment. The district court denied the plaintiff's motion, and granted in part and denied in part the defendant's motion. The court held that: (1) there was no evidence that the defendants were deliberately indifferent to the inmate's medical needs during his hunger strike; (2) a material fact dispute regarding whether the inmate was denied medical treatment when he began experiencing pain after the culmination of his hunger strike precluded summary judgment on the claim for deliberate indifference to a serious medical need; and (3) the inmate's having to forego fresh bedding for a few hours after soiling his bedding was not a serious medical situation requiring treatment. (N. Y. State Department of Correctional Services, Upstate Correctional Facility, Downstate Correctional Facility, Wende Correctional Facility, Auburn Correctional Facility)

U.S. District Court
DELAY IN TREATMENT
DELIBERATE
INDIFFERENCE
RESTRAINTS

Maraj v. Massachusetts, 953 F.Supp.2d 325 (D.Mass. 2013). The estate of a deceased inmate brought a § 1983 excessive-force action against county corrections officers and others, alleging that they used excessive force and were deliberately indifferent to the inmate's medical needs, in violation of the Constitution. The district court partially granted the defendants' motions to dismiss and the defendants moved for summary judgment. The district court granted the motion. The defendants allegedly caused the inmate's death by using an emergency restraint belt and delaying medical treatment, but a prison medical examiner determined that the inmate had a pre-existing heart condition that ultimately led to the inmate's cardiac arrest, and the manner of death could not be determined. (Suffolk County House of Correction, Massachusetts)

U.S. District Court
TRANSPORTATION

McKinney v. U.S., 950 F.Supp.2d 923 (N.D.Tex. 2013). A 79-year-old federal prisoner, who allegedly had been injured while being transported to a medical center, filed suit against the United States pursuant to the Federal Torts Claim Act (FTCA). The district court denied the defendants' motion to dismiss, holding that the prisoner's tort claim was not barred under the discretionary function exception to FTCA's waiver of sovereign immunity. The court noted that a prisoner has the right to bring a cause of action under FTCA for a breach of the duty prescribed by federal statute requiring the Bureau of Prisons to provide for the safekeeping, care, and subsistence of all federal prisoners. The prisoner alleged that he was injured when officials failed to assist him on stairs when he was exiting an airplane, while he was fully restrained in handcuffs, shackles, and a belly chain. According to the court, there were no legitimate policy considerations at play in the officials' choice not to assist a fully restrained, elderly, ill, and outnumbered prisoner on the stairs of an airplane. The prisoner alleged that, due to his fall, he suffered intense pain, has reoccurring medical issues, must now use a walker to get around, continues to need medication for pain, and requires counseling to address the mental and emotional stress he has suffered. (FCI-Fort Worth, Texas, and Federal Medical Center, Butner, North Carolina)

U.S. District Court
SMOKE-FREE
ENVIRONMENT

Mearin v. Swartz, 951 F.Supp.2d 776 (W.D.Pa. 2013). State inmates, proceeding pro se, brought an action against prison officials and employees, alleging that exposure to environmental tobacco smoke (ETS) violated the Eighth Amendment, as well as asserting First Amendment retaliation claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoners' allegations were sufficient to plead they were exposed to unreasonably high levels of environmental tobacco smoke (ETS), as required to state a § 1983 claim for violations of the Eighth Amendment against various prison officials and employees. One prisoner alleged that he was exposed to constant smoking by cellmates, inmates in neighboring cells, and by corrections officers and staff, which resulted in his suffering from constant coughs, headaches, chest pains, shortness of breath, vomiting, and fatigue. A second prisoner alleged that he was constantly exposed to second hand smoke by other inmates and employees while in certain housing, which resulted in his suffering from constant headaches, coughs, dizziness, breathing difficulties, and burning sensations in his chest. The prisoners alleged that officials and employees had actual knowledge of their exposure to ETS and of the risks of harm to the prisoners' health, but failed to rectify conditions and to enforce the prison's zero tolerance smoking policy. The court found that the prisoners' allegations that they had made requests to unit managers to be housed with non-smoking cellmates, that the managers had knowledge of the prisoners' need to be housed with non-smokers, that the managers denied the requests, that the prisoners suffered various health conditions from exposure to smoke, and that the prisoners submitted grievances about smoke exposure, were sufficient to state a § 1983 claim against case managers for violations of the Eighth Amendment. (State Correctional Institution at Greene, Pennsylvania)

U.S. District Court
ADA-Americans with
Disabilities Act
DELIBERATE
INDIFFERENCE
EMERGENCY CARE
FACILITIES
POLICIES
TRAINING

Morris v. Dallas County, 960 F.Supp.2d 665 (N.D.Tex. 2013) The parents of a detainee who died while in custody at a county jail brought a § 1983 action in state court against the county, the county jail medical staff, and officials, alleging violation of the Americans with Disabilities Act (ADA) and constitutional violations. The action was removed to federal court. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment for the defendants was precluded by fact issues with regard to: (1) the nurses who were defendants; (2) the claim that the county failed to monitor the detainee's health; and (3) failure to train officers on how to observe and assess the jail detainees' medical needs and respond to those needs. The court noted that the way the jail infirmary was structured, including the lack of direct access between the detainees and the nursing staff, and the absence of procedures for communication between the nurses and the correctional officers concerning emergent medical symptoms, were a county custom. According to the court, whether that custom was adopted or continued, even though it was obvious that its likely consequence would be a deprivation of medical care for the detainees, precluded summary judgment in favor of the county in the § 1983 deliberate indifference claim brought against the county. (Dallas Co. Jail, Tex.)

U.S. District Court
INADEQUATE CARE
MENTAL HEALTH

Moses v. Westchester County Dept. of Corrections, 951 F.Supp.2d 448 (S.D.N.Y. 2013). The estate of a deceased prisoner brought a § 1983 action against a county, its department of corrections (DOC), and a corrections officer, alleging state and federal claims after the prisoner was beaten by the officer. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court found that the family exercised reasonable diligence in pursuing the action, as required to equitably toll the limitations period for the § 1983 action. The estate alleged that the corrections officer “kicked and stomped” on the prisoner’s head, causing injuries that eventually led to his death. The officer was indicted in county court for assault and the Federal Bureau of Investigations opened an investigation into allegations that the officer had used excessive force against the prisoner. The officer was eventually convicted of reckless assault. The prisoner’s death also prompted a federal investigation into conditions at the jail, and investigators found a number of instances of the use of excessive force by jail staff, a failure to provide an adequate review system, and a failure to provide adequate mental and medical health care. (Westchester Department of Corrections, New York)

U.S. District Court
FACILITIES
PRETRIAL DETAINEES
TREATMENT

Nelson v. District of Columbia, 928 F.Supp.2d 210 (D.D.C. 2013). A detainee brought a § 1983 claim against the District of Columbia arising from his stay in jail. The defendant moved to dismiss and the district court granted the motion. The court held that denial of one telephone call and access to stationery during the detainee’s five-day stay in a “Safe Cell,” which was located in the jail’s infirmary, did not implicate his First Amendment right of free speech or right of access to courts. The court found that the detainee’s alleged exposure to “dried urine on the toilet seat and floor” and garbage during his five-day stay, along with the denial of a shower, did not rise to the level of a Fifth Amendment due process violation. According to the court, placement of detainee in a Safe Cell was not motivated by a desire to punish the detainee, but rather by a nurse’s desire to attend to the detainee’s ailments after his “legs and back gave out” twice. The court noted that denial of the detainee’s request to have the cell cleaned was for the non-punitive reason that the detainee would not be in the cell that long. (D.C. Jail, District of Columbia)

U.S. District Court
ADA- American with
Disabilities Act
DELIBERATE
INDIFFERENCE
HANDICAP
WHEELCHAIR

Newell v. Kankakee County Sheriff’s Department, 968 F.Supp.2d 973 (C.D.Ill. 2013). A disabled federal detainee who was housed at a county jail for two months brought an action against the county sheriff’s department and county officials under § 1983 and the Americans with Disabilities Act (ADA). The defendants moved to dismiss. The district court denied the motion. The court held that the detainee’s allegations that the county officials developed, supervised, and enforced policies and practices of the jail, ensured that grievances were received in the proper manner and were properly responded to, and were aware of his serious medical needs and his grievances, yet turned a blind eye to the situation, were sufficient to state a claim against the officials in their individual capacities in his civil rights action alleging he was denied medical care and kept in unsafe and unhealthy conditions while he was housed at the county jail. The detainee allegedly had multiple disabilities that he sustained in an auto accident, including weakness and numbness in his left side and he partially dragged his left leg. He also had incontinence with urine and bowel movements and required the use of adult diapers. He was unable to stand still without assistance, which made showering and using the toilet difficult. The detainee alleged that despite his obvious disabilities and medical issues, he was assigned to a regular dorm on the top floor of the jail, and a to a top bunk. He had to hop on one leg to go up or down the stairs and needed assistance from other inmates to get into and out of his bunk. He was allegedly not given adult diapers until his third day at the jail, and even then, he was not given an adequate supply of diapers and would sometimes sit in a soiled diaper for days, and in clothes with urine and feces on them. He alleged that he was not given enough biohazard bags, and the soiled diapers and bags piled up in his cell. One day, when there was no one to assist the detainee, he fell while attempting to get out of his bunk and he sat for two hours until someone came to help him. As a result, his left leg worsened and his right leg was numb, he could not walk at all and was forced to crawl down stairs on his buttocks, and scoot along the floor and walk on his hands.

The court found that the detainee’s allegations that he was denied medical care and kept in unsafe and unhealthy conditions while he was housed at the county jail, and that the jail was not an exceptionally large facility, were sufficient to state claim against the corrections officer working at the jail in his individual capacity. According to the court, the situation described by the inmate, if true, would have been obvious to any correctional officer working in the area in which the inmate was housed.

The court held that the detainee’s allegations that correctional staff at the county jail acted pursuant to an official policy or custom not to perform a medical intake, investigate inmates’ medical issues or complaints about problems with walking if they were ambulatory, nor provide sufficient medically-necessary hygiene items such as adult diapers to inmates, among other things, were sufficient to allege that an official policy or custom was a “moving force” in the alleged violation of his rights, as required to state official capacity claims under Monell. The court held that the detainee’s allegation that he was barred from basic facilities on the basis of his disabilities while he was housed at the county jail was sufficient to allege discriminatory intent, as required to state an ADA claim against the county sheriff’s department. (Jerome Combs Detention Center, Kankakee, Illinois)

U.S. Appeals Court
DELAY IN TREATMENT
DELIBERATE
INDIFFERENCE
DENTAL CARE
STAFF

Peralta v. Dillard, 704 F.3d 1124 (9th Cir. 2013). An inmate brought a civil rights action against a prison dentist, alleging deliberate indifference to his serious medical needs. The district court entered judgment in favor of the dentist, and the inmate appealed. The appeals court affirmed. The court held that the dentist could not be held personally liable for deliberate indifference to the inmate’s serious medical needs if he could not render or cause to be rendered the needed dental services because of a lack of resources that he could not cure. The court noted that the dentist and other doctors tried to address the shortage through various means, including requests for more resources and changing staff schedules to allow staff to see more patients, but they had no control over the staffing budget, which was set at the state level. (California State Prison, Los Angeles County)

<p>U.S. District Court CONTRACT SERVICES DELIBERATE INDIFFERENCE MEDICATION POLICIES</p>	<p><i>Prosser v. Nagaldinne</i>, 927 F.Supp.2d 708 (E.D.Mo. 2013). An inmate brought a § 1983 and tort action against prison physicians, medical contract monitors, and the director of Missouri Department of Corrections (MDOC). The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by genuine issue of material fact as to whether the prison physician's care of the inmate fell so far below the reasonable standard of care as to amount to deliberate indifference. The court found that the correctional services regional medical director's denial of referral requests from the inmate's physical therapist for a nerve conduction study and a neurologist consultation following inmate's back surgery did not constitute deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment. The court noted that the medical director promptly and appropriately responded to several requests for specialized care, and she denied requests for a nerve conduction study and neurologist consultation based upon the opinions of inmate's treating surgeon, who did not order a nerve conduction study and did not believe that one was medically necessary. According to the court, even if a prison physician misdiagnosed the inmate's foot drop as rheumatoid arthritis, the physician's treatment of the inmate did not constitute deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment, where the physician reviewed the inmate's medical history, diagnosed him with rheumatoid arthritis, and provided treatment to him by ordering a cane for him. The court held that the policy of the corporation providing medical services to prison inmates, which required inmates to be admitted to the infirmary in order to receive narcotic pain medication, did not constitute deliberate indifference to the serious medical needs of the inmate who was recovering from back surgery, where the policy served a legitimate purpose of promoting the safety and well-being of the inmates. (Corizon, Inc. f/k/a Correctional Medical Services, Inc., Missouri Department of Corrections, Farmington Correctional Center)</p>
<p>U.S. Appeals Court EQUIPMENT INTERFERENCE WITH TREATMENT</p>	<p><i>Pride v. Correa</i>, 719 F.3d 1130 (9th Cir. 2013). A prisoner brought a § 1983 action against two members of a prison's committee that reviewed medical notes, claiming that the members violated his Eighth Amendment rights by acting with deliberate indifference towards his serious medical needs in denying his prescribed knee brace and egg crate mattress. The district court granted summary judgment to the committee members. The prisoner appealed. The appeals court reversed and remanded with directions. The appeals court held that the prisoner's § 1983 action seeking an injunction was not duplicative of an earlier class action, <i>Plata v. Brown</i>, and was not conclusively in the <i>Plata</i> stipulation, where the prisoner's action did not refer to systemic relief for inmates generally. The court noted that the <i>Plata</i> stipulation stated that it only had preclusive effect on other actions seeking class or systemic relief, and the procedural provisions of the stipulation only applied to systemic reform goals and not individual claims. (Calipatria Prison, California)</p>
<p>U.S. Appeals Court MENTAL HEALTH NEGLIGENCE</p>	<p><i>Quigley v. Tuong Vinh Thai</i>, 707 F.3d 675 (6th Cir. 2013). The administrator of a deceased prisoner's estate brought a § 1983 action against a prison psychiatrist, alleging violations of the Eighth Amendment, as well as state claims for gross negligence. The district court denied the psychiatrist's motion for summary judgment and the psychiatrist appealed. The appeals court affirmed. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the psychiatrist violated prisoner's Eighth Amendment right; (2) whether the psychiatrist violated the prisoner's clearly established right; (3) whether the psychiatrist's treatment of the prisoner's depression was so reckless as to demonstrate a substantial lack of concern for whether an injury resulted; and (4) whether the psychiatrist's treatment of prisoner's depression was the proximate cause of prisoner's death. (Mich. Department of Corrections Guidance Center, and Correctional Medical Services, Inc.)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE EQUAL PROTECTION MENTAL HEALTH SUICIDE ATTEMPT</p>	<p><i>Randle v. Alexander</i>, 960 F.Supp.2d 457 (S.D.N.Y. 2013). An African-American state inmate with a history of serious mental illness brought an action against officials of the New York State Department of Corrections and Community Supervision (DOCCS), correctional officers, and mental health personnel, alleging under § 1983 that the defendants were deliberately indifferent to his serious medical needs and that he was retaliated against, in violation of his First Amendment rights, among other claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the correctional officers' alleged actions in forcing the inmate to fight a fellow inmate, and threatening to beat the inmate with a baton and engage in a joint cover-up if the two inmates did not "finish" their fight within a specified area of the prison, which ultimately resulted in the fellow inmate sustaining fatal injuries in the fight, had no legitimate penological purpose, and was far afield of the species of force employed to restore or maintain discipline. The court held that the alleged actions reflected indifference to inmate safety, if not malice toward the inmate, as supported the inmate's § 1983 Eighth Amendment failure to protect claim. The court found that the inmate stated an Eighth Amendment inadequate medical care claim against mental health personnel. The inmate alleged that he had a history of serious mental illness, that his symptoms increased following a forced fight with a fellow inmate, that the inmate attempted suicide on three occasions, two of which required his hospitalization, that prison mental health personnel evidenced deliberate indifference to his medical needs, as they recklessly disregarded the risk the inmate faced as result of special housing unit (SHU) confinement, and that the inmate was confined to SHU despite a recommendation that he be placed in a less-restrictive location. (Green Haven Correctional Facility, Protective Custody Unit, New York State Department of Corrections)</p>
<p>U.S. District Court WHEELCHAIR ADA- Americans with Disabilities Act</p>	<p><i>Randolph v. Wetzel</i>, 987 F.Supp.2d 605 (E.D.Pa. 2013). A state inmate brought an action against public officials employed by the Commonwealth of Pennsylvania and prison medical providers, alleging, among other things, that the defendants violated the Americans with Disabilities Act (ADA) and provided inadequate medical treatment. The defendants moved for summary judgment, and the inmate cross-moved for partial summary judgment. The district court granted the defendants' motions in part and denied in part, and denied the inmate's motion. The district court held that state prison officials were not deliberately indifferent to the inmate's allegedly serious medical condition, in violation of the Eighth Amendment, in requiring the inmate to use a wheelchair to access outdoors for "yard time" or to see visitors, rather than transporting the inmate on a gurney. The court noted that the officials relied on the medical providers' judgment that the inmate was able to sit up and get into a wheel-</p>

chair. The court found that the allegedly excessive bright lighting at prison facilities which was left on for 24 hours-a-day, was related to a legitimate penological concern of providing security for staff and inmates, and thus the lighting did not violate the Eighth Amendment.

According to the court, the inmate's absence at his misconduct hearings, allegedly due to his injuries, and his subsequent sentence of 540 days of disciplinary custody, did not violate his procedural due process rights, where the inmate received both advanced written notice of the claimed violation and a written statement of the fact finders as to the evidence relied upon in reaching their decision. The court found that the inmate's alleged restricted access to his personal effects and legal mail when he was moved between cells, and his alleged denial of access to a law library, did not result in an actual injury to inmate, thus precluding his § 1983 access to courts claim. The court noted that the inmate proceeded with all of his legal claims in addition to his complaint of denial of access to courts. (SCI Graterford, SCI Greene, Pennsylvania)

U.S. Appeals Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE

Ray v. Wexford Health Sources, Inc., 706 F.3d 864 (7th Cir. 2013). A state prison inmate brought a § 1983 action against a prison physician and physician's employer, alleging violation of the Eighth Amendment prohibition against cruel and unusual punishment as a result of the physician's failure to treat the inmate's shoulder pain. The district court granted summary judgment to the defendants and the inmate appealed. The appeals court affirmed. The court held that the prison physician did not display deliberate indifference to the inmate's serious medical condition of shoulder pain, as required to support a § 1983 claim against the physician for cruel and unusual punishment in violation of the Eighth Amendment. The court noted that, although the inmate did not receive an MRI (magnetic resonance imaging) scan that he wanted because the physician diagnosed the inmate with arthritis and did not believe an MRI scan would help in treatment, the inmate received medical treatment for his shoulder pain, including frequent examinations, x-rays, and painkillers, and he was assigned to a lower bunk so he could avoid arm motions that he found painful. (Western Illinois Correctional Center)

U.S. District Court
CELLS
DELAY OF CARE
DENIAL

Robinson v. Phelps, 946 F.Supp.2d 354 (D.Del. 2013). A state prisoner brought a § 1983 action against prison officials alleging excessive force and failure to protect. The district court held that the prisoner stated cognizable and non-frivolous claims for excessive force, failure to protect, and denial of medical care. The prisoner alleged that on one occasion a sergeant assaulted him and that a lieutenant arrived during the assault and that he sustained injuries but was denied medical care by these officers and other prison personnel, that another sergeant shoved and pushed him when he was taken to a medical grievance hearing, making his injuries worse, that this sergeant shoved him to the ground while escorting him to the shower, and then dragged him when he could not get up, requiring that he be taken away by stretcher, and that other officers later choked him until he lost consciousness. The court found that the prisoner also stated cognizable and non-frivolous Eighth Amendment claims against a prison physician for denial or delay of medical treatment; the prisoner alleged that after he was assaulted by a corrections officer, he was seen by the physician, who would not prescribe pain medication and advised the prisoner that he would be x-rayed within seven to ten days, but the x-rays were not taken for a month and a half, and he alleged that some months later he was taken to an outside facility for a magnetic resonance imaging (MRI) of the neck and back. According to the court, the prisoner's allegations were sufficient to state an Eighth Amendment claim that the physicians denied his requests for medically necessary accommodations. The prisoner alleged that medical officials did not authorize his housing on a lower bunk and, as a result, he slept on the floor, that an officer later moved him to an upstairs cell even though he knew that the prisoner required lower housing due to his neck and back injuries, and that the prisoner showed the officer a memo from a superior officer indicating the prisoner needed the housing, (James T. Vaughn Correctional Center, Delaware)

U.S. Appeals Court
DELAY IN TREATMENT
DELIBERATE
INDIFFERENCE
INADEQUATE CARE
RESTRAINTS
TRANSPORTATION

Rogers v. Boatright, 709 F.3d 403 (5th Cir. 2013). A state prisoner brought a § 1983 action against corrections officers and their supervisor, alleging that he was seriously injured when the prison van in which he was riding stopped abruptly, and that he was provided with inadequate and untimely medical care for his injuries. The district court dismissed the suit. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the prisoner stated a non-frivolous claim that an officer acted with deliberate indifference to his safety in violation of the Eighth Amendment. The prisoner alleged that he sustained a serious injury while being transported in a prison van because a corrections officer operated the van recklessly and had to brake suddenly to avoid hitting another vehicle, that he was shackled in leg irons and handcuffs and was not provided with a seatbelt and thus could not protect himself when the prison van stopped abruptly, and that the officer had told another officer that other inmates similarly had been injured the prior week and during other incidents. A dissenting appeals judge asserted that "...there is no constitutional requirement that inmates be buckled with seatbelts during transportation. Nearly all courts have rejected such claims, because the use of seatbelts on shackled prisoners presents inevitable, non-trivial security concerns for other passengers and the guards." The appeals court held that the corrections officers transporting the prisoner to a hospital in a prison van did not show deliberate indifference to the prisoner's serious medical needs, in violation of the Eighth Amendment, when, after the prisoner was injured, the officers proceeded to the hospital, had the prisoner checked by a physician, but then failed to take the prisoner to the emergency room for treatment of his bleeding wounds as that physician had directed, but instead brought the prisoner to the prison's medical facility, where he was treated some five hours later. (Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division)

U.S. District Court
INJURY
EQUIPMENT
WHEELCHAIR
DELIBERATE
INDIFFERENCE

Sistrunk v. Khan, 931 F.Supp.2d 849 (N.D.Ill. 2013). A pretrial detainee with a leg injury brought a pro se § 1983 action against a county jail physician, alleging deliberate indifference to his medical needs in violation of the Fourteenth Amendment. The district court granted the physician's motion for summary judgment. The court found that there was no evidence that the detainee's perceived need for a wheelchair, rather than crutches, due to his injured and infected leg, was an objectively serious medical need, as required to support the pro se § 1983 claim against the jail physician for deliberate indifference to a serious medical need under the Due Process Clause of the Fourteenth Amendment. The court noted that, although the detainee's physical therapist and hospi-

tal physicians recommended that he be placed in wheelchair “for now,” such accommodation was not medically necessary in light of the fact that the detainee’s left leg was uninjured and could support weight, and the wheelchair recommendation was preliminary to more active ambulation by detainee. According to the court, the physician’s decision to issue the detainee crutches instead of a wheelchair when detainee had one good leg was not so far afield as to demonstrate an absence of professional judgment. The court noted that there was no evidence that the jail physician was aware that the detainee had fallen, let alone that he had a serious medical need for treatment of his injuries, as required to support a § 1983 claim for deliberate indifference to serious medical need under the Due Process Clause of the Fourteenth Amendment. (Cook County Department of Corrections, Illinois)

U.S. District Court
INADEQUATE CARE
MENTAL HEALTH

Slevin v. Board of Com'rs for County of Dona Ana, 934 F.Supp.2d 1270 (D.N.M. 2013). A detainee brought an action against a county board of commissioners, detention center director, and medical director, alleging violations of his rights with regard to his medical care. The detainee alleged that, because of his mental illness, officials at the Detention Center kept him in administrative segregation for virtually the entire 22 months of his incarceration, without humane conditions of confinement or adequate medical care, and without periodic review of his confinement, causing his physical and mental deterioration, in violation of the Americans with Disabilities Act. The jury awarded the detainee \$3 million in punitive damages against the Detention Center Director, and \$3.5 million in punitive damages against the facility medical director. The jury fixed the amount of compensatory damages at \$15.5 million, which included \$500,000 for each month that detainee was incarcerated, plus an additional \$1 million for each year since the detainee’s release from custody. The defendants moved for a new trial or for reduction of the damages awards. The district court denied the motion, finding that the compensatory damages award was supported by substantial evidence and it would not be set aside on the ground that it was the product of passion or prejudices. The court also declined to set aside the punitive damages awards as excessive. (Doña Ana County Detention Center, New Mexico)

U.S. Appeals Court
DELAY OF CARE
DELIBERATE
INDIFFERENCE
DENTAL CARE
MEDICATION

Smego v. Mitchell, 723 F.3d 752 (7th Cir. 2013). A civilly committed sex offender brought a § 1983 claim against a dentist, doctors, and a dental hygienist at a state detention facility, alleging that they acted with deliberate indifference to the offender’s serious dental problems. The district court granted summary judgment in favor of the defendants. The plaintiff appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the dentist acted with an unjustifiably high risk of harm that was either known or so obvious that it should be known in delaying dental treatment for the offender for decay in multiple teeth, and failing to prescribe appropriate pain medication, for a time period of about 30 months, during which the offender was suffering from pain. The court also found fact issues as to whether the dental hygienist intentionally obstructed or delayed dental treatment for the offender for decay in multiple teeth. (Rushville Treatment and Detention Center, Illinois)

U.S. District Court
MEDICATION
PRETRIAL DETAINEE
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Sours v. Big Sandy Regional Jail Authority, 946 F.Supp.2d 678 (E.D.Ky. 2013). The administrator of a detainee’s estate filed a § 1983 action against jail officials alleging deliberate indifference to the detainee’s serious medical needs, negligence, and violation of state regulations. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) the nurse, a deputy jailer, and the center’s administrator were not deliberately indifferent to the detainee’s serious medical needs; (2) the nurse’s determination that the detainee did not need insulin “right away” was a discretionary decision for which she was entitled to qualified official immunity; (3) the nurse was not entitled to qualified official immunity for her alleged failure to leave adequate instructions to deputy jailers for the care of the detainee; and (4) the jailers were entitled to qualified official immunity. The court noted that, under Kentucky law, the detention center nurse’s duty to ensure that the diabetic pretrial detainee could be cared for in her absence was mandatory and ministerial, and thus the nurse was not entitled to qualified official immunity in the wrongful death action brought by the administrator, for her alleged failure to leave adequate instructions for deputy jailers for the care of the detainee. According to the court, the nurse was aware that the jailers were unlikely to be able to identify the symptoms of diabetic ketoacidosis and that there was no information in the detention center about diabetes. *On appeal*, the court affirmed in part and reversed in part. The appeals court held that the nurse was not entitled to qualified immunity. (Big Sandy Regional Detention Center, Kentucky)

U.S. District Court
INTERFERENCE WITH
TREATMENT

Staples v. U.S., 948 F.Supp.2d 1 (D.D.C. 2013). A federal prisoner brought a pro se action against the United States and several employees of the Bureau of Prisons, alleging violations of the Eighth Amendment. The district court held that the inmate stated Eighth Amendment violations with his allegations that: (1) two corrections officers at the federal prison ignored the his medical restriction, which required him to sleep on a lower bunk bed; (2) the officers told the prisoner to sleep on a top bed or to sleep on the floor; (3) he was forced to sleep on the floor and suffered unnecessary physical pain in his back and left hip; and (4) his condition was ignored. The prisoner alleged that the conditions continued for over two weeks in spite of his complaints. (Federal Correctional Institution Schuylkill, Minersville, Pennsylvania)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
INADEQUATE CARE
QUARANTINE

Stoudemire v. Michigan Dept. of Corrections, 705 F.3d 560 (6th Cir. 2013). A female former prisoner brought an action against the Michigan Department of Corrections (DOC), a warden, and other DOC-associated officers, doctors, and nurses, asserting violations of § 1983, the Age Discrimination in Employment Act (ADEA), and state law. The prisoner alleged that she underwent three separate amputations as a result of inadequate health care by the defendants and was subjected to a strip search that served no legitimate penological purpose. The district court denied summary judgment to the warden and a corrections officer on their qualified immunity defenses to the § 1983 claims against them, and they appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the district court did not properly evaluate the warden’s qualified immunity defense to the prisoner’s Eighth Amendment claim of deliberate indifference to her serious medical needs, when it denied summary judgment on qualified immunity grounds to “defendants.” The court held that remand was warranted for the court to conduct a particularized analysis of whether the warden was deliberately indifferent to the conditions of the prisoner’s confinement while in quarantine. The court noted that the district

court did not mention any facts in the record that specifically pertained to the warden, nor did the court make any findings regarding the warden's knowledge or mental state. (Huron Valley Women's Corr'l. Facility, Michigan)

U.S. District Court
ADA- Americans with
Disabilities Act
DELIBERATE
INDIFFERENCE

Terbush v. Massachusetts ex rel. Hampden County Sheriff's Office, 987 F.Supp.2d 109 (D.Mass. 2013). An inmate brought a state court action against the Commonwealth of Massachusetts, a medical doctor, a registered nurse, and a physician assistant, alleging deliberate indifference to his serious medical needs and asserting claims under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The inmate alleged that his inability to provide a urine sample while participating in a day reporting program, was due to an alleged "Shy Bladder Syndrome" condition as well as subsequent medical issues following his return to a correctional facility. The day reporting program provided home-based incarceration for selected inmates with the goal of transitioning them back to the community. Inmates were still "incarcerated" but were allowed to live at home under strict reporting conditions, including drug testing. When the inmate could not produce a urine sample upon his admission to the program, he was returned to jail. The defendants removed the action to federal court, and moved for summary judgment. The district court granted the motion. The court found that the inmate's alleged "Shy Bladder Syndrome" condition was not a "disability" under the ADA, and even if the condition was a disability, the inmate did not meet the essential eligibility requirements for participation in the program and, therefore, was not a "qualified individual with a disability" under the ADA. The court noted that inmate had often refused to cooperate with medical advice, he received extensive medical care on practically a daily basis, sometimes multiple times a day, the inmate failed to inform anyone at the facility of his urinary retention until two or three days after returning to the facility, the inmate was sent to a hospital when he complained about his urinary retention, and while the inmate did not see an outside urologist until approximately one month later, at that point his medical issues were resolved. (Hampden County Sheriff's Department Day Reporting Program, Hampden County Correctional Center, Massachusetts)

U.S. Appeals Court
ALCOHOL/DRUGS
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
INTAKE SCREENING

Thompson v. King, 730 F.3d 742 (8th Cir. 2013). The estate of a detainee, who died in police custody from multiple drug intoxication, brought a § 1983 action against the arresting and detaining officers, alleging that the officers had shown deliberate indifference to the detainee's serious medical needs. The district court denied the officers' motion for summary judgment on the basis of qualified immunity. The officers appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the arresting officer's discovery of an empty bottle of a recently refilled anti-anxiety medication, and the detainee's statement that he had taken "a little" of the medication, did not amount to subjective knowledge that the detainee required medical attention, and thus the officer was entitled to qualified immunity in the § 1983 action arising from the subsequent death of the detainee in police custody. The court noted that the detainee presented no external injuries, and the detainee was conscious during the initial encounter, answering officers' questions and following instructions. The court found that summary judgment for the police officer in charge of the jail was precluded by a genuine issue of material fact as to whether the police officer had subjective knowledge of the serious medical need of the detainee and whether the officer deliberately disregarded that need. According to the court, a reasonable officer in charge of a jail would have known that a constitutional violation occurs by deliberately disregarding a detainee's serious medical needs, and thus the right was clearly established, and in turn the officer was not entitled to qualified immunity from the § 1983 claim arising from detainee's death while in police custody. (Saline County Detention Center, Arkansas)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
MENTAL HEALTH
PRETRIAL DETAINEE
PSYCHOTROPIC DRUGS

U.S. v. Hardy, 724 F.3d 280 (2nd Cir. 2013). The district court granted the motion of the United States to authorize the Bureau of Prisons to medicate a mentally ill detainee without his consent, and the detainee appealed. The appeals court affirmed, finding that there was no basis for disturbing the district court's order authorizing involuntary medication of the pretrial detainee to reduce the danger he posed to Bureau of Prisons staff. The court noted that involuntary medication of the detainee to reduce the danger he posed to staff was warranted, where the detainee suffered from schizophrenia, the consensus of the testifying psychiatrists and psychologists was that antipsychotic medication was the treatment of choice for someone with the detainee's condition. The court noted that the detainee's past conduct, which included threats of harm, attempts to bite or hit officers, repeated throwing of liquids in their faces, and attempted and actual stabbings, indicated that he posed a danger to others. (United States Bureau of Prisons, Metropolitan Corrections Center, New York City, Metropolitan Detention Center, Brooklyn, New York)

U.S. Appeals Court
CONTRACT SERVICES
DENIAL
EQUIPMENT
MEDICATION
SPECIAL DIET

Vandiver v. Prison Health Services, Inc., 727 F.3d 580 (6th Cir. 2013). A prisoner brought a pro se action alleging that the contract prison medical professionals were deliberately indifferent to his health care needs, and applied to proceed in forma pauperis (IFP). The district court denied the IFP application under the "three strikes" rule, and found that the prisoner failed to satisfy pleading requirements for an imminent danger exception. The prisoner appealed. The appeals court reversed and remanded, finding that the prisoner sufficiently alleged an imminent danger of serious physical injury, to satisfy the pleading requirements of the imminent danger exception. The prisoner alleged that the defendants continued to deny approved specialty care referral visits for his chronic illnesses of diabetes and Hepatitis C, that he faced a risk of coma or death resulting from the denial of physician-prescribed special shoes, a transport vehicle, a special diet and medication, and he had already undergone a partial amputation of his feet. (Prison Health Services, Earnest C. Brooks Correctional Facility, Mich.)

U.S. District Court
DELIBERATE
INDIFFERENCE
DENIAL

Verser v. Ghosh, 925 F.Supp.2d 1028 (N.D.Ill. 2013). An inmate brought a § 1983 action against prison medical staff, including the medical director, alleging denial of adequate medical care in violation of the Eighth Amendment. The director moved for summary judgment. The district court granted the motion. The court held that: (1) the alleged delay in treatment of the inmate's abdominal pain by the director was not deliberate indifference; (2) the director's prescribing of antacids for the inmate's abdominal pain was not deliberate indifference; (3) the director's refusal to prescribe pain medication recommended by a specialist for the inmate's abdominal pain was not deliberate indifference; and (4) the director's discharge of the inmate from the infirmary after his colonoscopy was not deliberate indifference. (Stateville Correctional Center, Illinois)

U.S. Appeals Court FEMALE PRISONERS POLICIES RESTRAINTS	<p><i>Villegas v. Metropolitan Government of Nashville</i>, 709 F.3d 563 (6th Cir. 2013). An Immigration detainee filed a § 1983 action against a metropolitan government alleging deliberate indifference to her serious medical needs after she was shackled during the final stages of labor and post-partum recovery. The district court entered judgment in the detainee's favor. A jury awarded the detainee \$200,000 in damages. The defendants appealed. The appeals court reversed and remanded. The appeals court held that summary judgment should not have been granted by the district court, where there were genuine issues of material fact as to whether the pregnant immigration detainee presented a flight risk, whether the officers who accompanied her to the hospital when she went into labor were aware of the hospital's no restraint order, and whether the detainee was at risk of physical or psychological harm as a result of being shackled. The appeals court also found genuine issues of material fact as to whether the hospital prescribed a breast pump to allow the detainee to express her breast milk postpartum, and whether a layperson would recognize the need to provide the detainee with a breast pump. (Metropolitan Gov. of Nashville and Davidson County, Davison County Sheriff's Office, Tennessee)</p>
U.S. Appeals Court COSTS WORK ASSIGNMENT	<p><i>Vuncannon v. U.S.</i>, 711 F.3d 536 (5th Cir. 2013). A county and the medical corporation that treated a county inmate sought reimbursement of medical expenses from the provider of workers' compensation insurance under the Mississippi Workers' Compensation Act (MWCA). The inmate was in a county work program under the sheriff's supervision, for which services he earned \$10 per day to be credited "toward any and all charges of F.T.A/cash bonds owed to the county." He was seriously injured in a forklift accident while helping law enforcement officials conduct a "drug bust" pursuant to that program. The inmate's treatment cost more than \$640,000. The district court granted summary judgment in favor of provider. The county appealed. The appeals court affirmed. The court held that the inmate did not qualify for reimbursement of medical expenses under MWCA. The appeals court noted that the county inmate was not an employee working under contract of hire, and therefore, did not qualify for reimbursement of medical expenses from the provider of workers' compensation insurance under the Mississippi Workers' Compensation Act (MWCA) after he was injured in a county work program. According to the court, there was no express, written contract between the inmate and the county, the inmate did not sign a document transmitted by the sheriff to a county justice court stating that the inmate was placed on a work detail, the document was transmitted after he began working for the county, and inmates were required to work under Mississippi law. (Tippah County Jail, Mississippi)</p>
U.S. District Court DELIBERATE INDIFFERENCE DELAY IN CARE	<p><i>Williams v. Erickson</i>, 962 F.Supp.2d 1038 (N.D.Ill. 2013). A state inmate brought an action alleging that a prison nurse's refusal to open the seal on a new colostomy bag so that he could change the bag violated the Eighth Amendment and Illinois law. The defendants moved to dismiss, and the district court denied the motion in part. The court held that the inmate's allegations were sufficient to: (1) state a claim for deliberate indifference to his serious medical needs; (2) state a claim for deliberate indifference to conditions of confinement; and (3) state a claim for intentional infliction of emotional distress (IIED) under Illinois law. The court noted that the inmate was required to sit in fecal waste for four hours while medical personnel who had the means of remedying the problem deliberately ignored him. (Stateville Correctional Center, Illinois Department of Corrections)</p>
U.S. Appeals Court CONTRACT SERVICES DELIBERATE INDIFFERENCE EQUIPMENT	<p><i>Withers v. Wexford Health Sources, Inc.</i>, 710 F.3d 688 (7th Cir. 2013). A prisoner brought a § 1983 action against a variety of health professionals employed by or under contract to a state prison, alleging deliberate indifference to his medical needs in violation of the Eighth Amendment. The district court granted the defendants' motion for summary judgment and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that a genuine issue of material fact existed as to whether a nurse who allegedly let the prisoner who was suffering from back pain to climb a ladderless bunk bed, resulting in his fall from the bunk bed, was deliberately indifferent to the prisoner's medical needs, precluding summary judgment. (Danville Correctional Center, Illinois)</p>
2014	
U.S. Appeals Court FAILURE TO PROVIDE CARE DELIBERATE INDIFFERENCE	<p><i>Al-Turki v. Robinson</i>, 762 F.3d 1188 (10th Cir. 2014). A prisoner brought a § 1983 action against several prison officials and a prison nurse for alleged failure to provide him with a medical evaluation or treatment while he suffered through several hours of severe abdominal pain from what turned out to be kidney stones. The district court granted qualified immunity to the prison officials, but denied the nurse's motion for summary judgment on qualified immunity grounds. The nurse appealed. The appeals court affirmed. The court held that the prisoner's claim of pain satisfied the objective component of his deliberate indifference claim, and that it was clearly established at the time of the incident that repeatedly refusing to provide treatment to a prisoner who was complaining of severe abdominal pain would be deliberate indifference. (Limon Correctional Facility, Colorado)</p>
U.S. District Court METHADONE MEDICATION INADEQUATE CARE	<p><i>Alvarado v. Westchester County</i>, 22 F.Supp.3d 208 (S.D.N.Y. 2014). Jail inmates, who were addicted to heroin before being taken into custody, brought a pro se § 1983 action against a county, the provider of on-site medical services at a jail, and county officials, alleging refusal to accept a grievance deprived them of First Amendment right to petition the government for redress, deliberate indifference to serious medical needs in violation of the Eighth and Fourteenth Amendments, and deliberate indifference to risk of inadequate medical care at the jail. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) the inmates had no First Amendment right to have grievances processed or investigated in any particular manner; (2) the mere receipt of the inmates' grievance by an assistant warden and the county executive was insufficient to establish their personal involvement; (3) the inmate's allegations established a deputy commissioner's personal involvement; (4) the allegations supported the inmates' § 1983 claim that the provider was deliberately indifferent; and (5) the allegations satisfied Monell's policy or custom requirement to support a § 1983 claim against county. The court noted that the inmates alleged that the county had knowledge of and acquiesced into a pattern of deliberate indifference to the risk that the provider of on-site medical services at jail was providing inadequate medical care where: the inmate sent a letter to county officials stating the provider was not issuing methadone to inmates who were using heroin; the inmates were experiencing withdrawal symptoms; the</p>

letter came less than three years after Department of Justice issued a report identifying areas of medical care provided at jail which fell below constitutionally required standards. (Correct Care Solutions Medical Services P.C., and Westchester County Jail, New York)

U.S. District Court
PRIVATE PROVIDER
MEDICATION
TRAINING
DELIBERATE
INDIFFERENCE

Awalt v. Marketti, 74 F.Supp.3d 909 (N.D.Ill. 2014). The estate and the widow of a pretrial detainee who died in a county jail brought civil rights and wrongful death actions against jail personnel and medical care providers who serviced the jail. The county defendants and the medical defendants moved for summary judgment. The district court held that: (1) the evidence was sufficient for a reasonable juror to find that the correctional officers and a jail superintendent were deliberately indifferent to the detainee's medical needs; (2) summary judgment was precluded by genuine issues of material fact as to whether the officers knew that the detainee was suffering seizures while in jail and failed to take appropriate action; (3) a reasonable juror could have found that neither a physician nor a nurse made a reasoned medical judgment not to prescribe a particular anti-seizure drug for the detainee; and, (4) in the Seventh Circuit, private health care workers providing medical services to inmates are not entitled to assert qualified immunity.

The court also found that summary judgment was precluded by genuine issues of material fact: (1) concerning whether failure of the sheriff's office and the jail's medical services provider to provide adequate medical training to correctional officers caused the detainee's death; (2) as to whether the sheriff's office and the jail's medical services provider had an implicit policy of deliberate indifference to medical care provided to detainees; (3) regarding whether correctional officers knew that the detainee was suffering seizures and ignored his suffering; (5) as to whether the decision of the sheriff's office and the jail's medical services provider not to implement a standardized grievance mechanism led to a widespread practice at the jail of ignoring or delaying response to grievances and medical requests made by detainees, and as to whether this failure was the moving force behind the pretrial detainee's seizure-related death; and (6) as to whether the sheriff's office and the jail's medical services provider had an express policy that prevented a nurse from restocking a particular medication until there were only eight pills left in stock and whether that policy was the moving force behind the pretrial detainee's seizure-related death. The court denied qualified immunity from liability to the correctional officers and the sheriff's office. (Grundy County Jail, Illinois)

U.S. Appeals Court
COSTS

Baker County Medical Services, Inc. v. U.S. Atty. Gen., 763 F.3d 1274 (11th Cir. 2014). A hospital commenced an action against various federal agencies and officials, seeking declaratory judgment that a statute imposing Medicare rate as full compensation for medical services rendered to federal detainees was an unconstitutional taking as applied to it. The district court dismissed the action. The hospital appealed. The appeals court affirmed. The court held that requiring the hospital to treat federal detainees at a Medicare rate on the basis that it had opted into the Medicare and Emergency Medical Treatment and Active Labor Act (EMTALA) was not a taking. (Baker County Medical Services, d.b.a. Ed Fraser Memorial Hospital, Florida)

U.S. Appeals Court
SUICIDE
PRIVATE PROVIDER
POLICIES

Barkes v. First Correctional Medical, Inc., 766 F.3d 307 (3rd Cir. 2014). The widow and children of a deceased inmate brought a § 1983 action against various administrators, including the commissioner of a state department of corrections (DOC) and a warden, and the private company that contracted with the DOC to provide medical services to prisons, alleging violations of the Eighth Amendment. The district court granted the defendants' motion for summary judgment, denied the plaintiffs' motion for reconsideration, and denied the parties' motions for summary judgment. The administrators appealed. The appeals court affirmed. The court held that: (1) an inmate's right to proper implementation of adequate suicide prevention tools was clearly established; (2) summary judgment was precluded by a genuine issue of material fact as to whether the policies of the company created an unreasonable risk of constitutional deprivation that was exacerbated by the supervision of the warden and the commissioner; and (3) a genuine issue of material fact existed as to whether the inmate's suicide was caused by failure to supervise the private company that contracted with the DOC to provide medical services. (Howard R. Young Correctional Institution, Delaware, and First Correctional Medical, Inc.)

U.S. District Court
CONTAGIOUS DISEASES
DELIBERATE
INDIFFERENCE

Beagle v. Schwarzenegger, 107 F.Supp.3d 1056 (E.D. Cal. 2014). Former and current state prisoners who contracted "Valley Fever" during their terms of incarceration brought a § 1983 action against state officials, alleging that they were recklessly exposed to dangerous conditions, and that the defendants were deliberately indifferent to their serious medical needs, in violation of the Eighth Amendment. The officials moved to dismiss. The court granted the motions in part and denied in part. The court held that the alleged reckless exposure of immunocompetent Caucasian state prisoners to risk of contracting "Valley Fever" was sufficient to state Eighth Amendment claim, and that the prisoners did not state a claim for deliberate indifference to their serious medical needs. According to the court, the alleged reckless exposure of immunocompetent Caucasian state prisoners to the risk of contracting "Valley Fever" by placing those prisoners in a prison facility that was experiencing an epidemic of "Valley Fever," without implementing any remedial or preventative measures to lower the prisoners' risk of contracting the disease, stated an Eighth Amendment deliberate indifference claim against the prison officials. (Pleasant Valley State Prison, Avenal State Prison, California)

U.S. Appeals Court
SUICIDE
CONTRACT SERVICES

Cady v. Walsh, 753 F.3d 348 (1st Cir. 2014). Following her son's death from self-inflicted injuries in a county jail, the mother of a pretrial detainee brought an action under § 1983 against employees of a private healthcare services provider, alleging deliberate indifference to the detainee's health in violation of the Due Process Clause. The provider's employees moved for summary judgment based on qualified immunity. The district court denied the motion and the employees appealed. The appeals court affirmed, finding that the employees failed to raise a purely legal challenge, depriving the court of jurisdiction. (Cumberland County Jail, Corizon Inc., Maine)

<p>U.S. Appeals Court MENTAL HEALTH SUICIDE ATTEMPT DELIBERATE INDIFFERENCE</p>	<p><i>Cano v. Taylor</i>, 739 F.3d 1214 (9th Cir. 2014). A former prisoner brought a § 1983 action against prison officials, alleging deliberate indifference to his mental health needs in violation of the Eighth Amendment, and violations of his right to freely exercise his religious beliefs and to have access to the courts, in violation of the First and Fourteenth Amendments. The district court granted summary judgment to the officials on the deliberate indifference claim and dismissed the remaining counts for failure to exhaust administrative remedies pursuant to the Prison Litigation Reform Act (PLRA). The former prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the inmate's claims for injunctive and declaratory relief arising out of alleged constitutional violations that occurred while in prison were mooted by his release from prison. The court found that there was no evidence that prison mental health care providers were deliberately indifferent to the prisoner's medical needs, as required to support an Eighth Amendment deliberate indifference claim, where the prisoner was seen by mental health care employees regularly for his complaints, and evidence showed that the prisoner's suicide threats were manipulative in nature. (Arizona Department of Corrections)</p>
<p>U.S. Appeals Court EYE CARE DELIBERATE INDIFFERENCE</p>	<p><i>Colwell v. Bannister</i>, 763 F.3d 1060 (9th Cir. 2014). An inmate, who was blind in one eye due to a cataract, brought an action against Nevada Department of Corrections (NDOC) officials and supervisory medical personnel, alleging under § 1983 that the defendants were deliberately indifferent to his serious medical needs in denying his requests for cataract-removal surgery. The district court granted the defendants' motion for summary judgment and the inmate appealed. The appeals court reversed and remanded, finding that the inmate's monocular blindness was a serious medical need and the NDOC director was the proper defendant. The court noted that although monocular blindness is not life-threatening, it is the loss of the function of an organ, the inmate's eye had been blind for more than a decade, the inmate's condition affected his perception and rendered him unable to see if he turned to the left. Several doctors, including an ophthalmologist, found the cataract and resulting vision loss "important and worthy of treatment," and the inmate's monocular blindness caused him a physical injury when he ran his hand through a sewing machine on two occasions while working in the prison mattress factory. According to the court, summary judgment was precluded by genuine issues of material fact as to whether the inmate, who was blind in his right eye due to a cataract, was harmed by prison officials' denial of his requests for cataract-removal surgery, as to whether the officials were deliberately indifferent to the inmate's monocular blindness, and as to whether a particular physician was personally involved in the inmate's medical care. (Nevada Department of Corrections)</p>
<p>U.S. District Court ADA- Americans with Disabilities Act</p>	<p><i>Cox v. Massachusetts Dept. of Correction</i>, 18 F.Supp.3d 38 (D.Mass. 2014). A mentally disabled state prisoner brought an action against a state department of correction (DOC) and various officials, alleging violations of the Eighth and Fourteenth Amendments, Americans with Disabilities Act (ADA), and Massachusetts Declaration of Rights. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court found that the prisoner's grievance alleging he was improperly classified, resulting in a sexual assault, provided the DOC with sufficient notice to investigate, and therefore, the prisoner's claims under the Americans with Disabilities Act (ADA) were administratively exhausted. The prisoner alleged that the DOC did not keep him safe and that he was mentally challenged. According to the court, the prisoner's allegations that he was sexually assaulted by other inmates, that he suffered other abuses, that prison officials knew of the risk of harm to the prisoner, that his history of mental illness was well-documented, and that officials were responsible for policies, procedures, and training that led to his injury were sufficient to state a § 1983 claim against the officials for violations of the Eighth Amendment, and a claim under the Massachusetts Civil Rights Act, absent allegations of threats, intimidation, or coercion by officials.</p> <p>The court held that the prisoner's allegations that prison officials knew of his disability, that medical professionals encouraged staff to provide appropriate housing to prevent the prisoner from being targeted by other inmates, and that he was sexually assaulted after failure to provide appropriate housing were sufficient to state a failure to accommodate claim under the Americans with Disabilities Act (ADA). (Massachusetts Department of Correction, Old Colony Correctional Center)</p>
<p>U.S. District Court RECORDS PRIVACY Acquired Immune Defi- ciency Syndrome (AIDS)</p>	<p><i>Doe v. Beard</i>, 63 F.Supp.3d 1159 (C.D.Cal. 2014). A state prisoner who was HIV-positive, brought an action against a medical technician, the technician's supervisor, corrections officers, and the California Department of Corrections and Rehabilitation (CDCR), alleging violations of his right to privacy under the Fourteenth Amendment Due Process Clause and the California constitution, based on the defendants' failure to retrieve the prisoner's medical file, which had been delivered to another prisoner. The defendants moved to dismiss for failure to state a claim. The district court denied the motion. The court held that the prisoner stated a § 1983 claim against corrections officers and a medical technician for violation of his right to privacy under the Fourteenth Amendment's Due Process Clause by alleging that they acted with deliberate indifference to a substantial risk of serious harm when they failed to retrieve his medical file, even after the prisoner explained that it had fallen into the hands of another prisoner and that he was receiving threats based on his HIV-positive status. The court found that prison officials were not entitled to qualified immunity from the prisoner's § 1983 claim, where the prisoner's right to medical privacy was clearly established and a reasonable prison official would have been on notice that he or she could not violate the prisoner's right to medical privacy without a legitimate penological objective. (California Institute for Men)</p>
<p>U.S. District Court MEDICATION MISDIAGNOSIS FAILURE TO PROVIDE CARE DELIBERATE INDIFFERENCE</p>	<p><i>Endl v. New Jersey</i>, 5 F.Supp.3d 689 (D.N.J. 2014). The parents of an inmate who died in a state prison brought a § 1983 action, individually and the mother as administrator of the inmate's estate, against the state, the department of corrections (DOC), a prison, corrections officers, a medical care provider, and physicians and nurses, alleging the inmate had been deprived of necessary medical care. The defendants filed motions to dismiss. The district court granted the motions in part and denied in part. The court held that corrections officers, who were sued in their official capacities, were not immune from liability under the New Jersey Tort Claims Act (TCA) where there were not just errors in medical judgment, but claims of deliberate or reckless indifference, and the survivors' clearly alleged conduct that may have been outside the scope of the officers' employment or that may</p>

have constituted willful misconduct. The court found that allegations that individual medical providers responsible for the inmate misdiagnosed the inmate's congestive heart failure as bronchitis, failed to provide a medical workup following the inmate's complaint of chest cavity pain, and failed to properly medicate him, were sufficient to support an Eighth Amendment claim for cruel and unusual punishment in the § 1983 action against the providers. (Northern State Prison, New Jersey)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Estate of Booker v. Gomez, 745 F.3d 405 (10th Cir. 2014). The estate of deceased pretrial detainee who died while in custody after officers restrained him in his response to his alleged insubordination, brought a § 1983 action in state court against the deputies and a sergeant, alleging excessive force, deprivation of life without due process, and failure to provide immediate medical care. Following removal to federal court, the district court denied the defendants' motion for summary judgment on qualified immunity grounds. The defendants appealed. The appeals court affirmed. The appeals court held that the detainee's right to be free from excessive force, including use of a neck restraint, stun gun, and pressure on his back while he was on his stomach and not resisting, was clearly established, for purposes of determining whether the deputies and sergeant were entitled to qualified immunity. According to the court, a reasonable officer would know that failing to check a pretrial detainee's vital signs or provide immediate medical attention after he was rendered unconscious by the use of force, which allegedly included at least a two-minute neck hold, 140 pounds of pressure on his back, and the use of stun gun for eight seconds, was deliberate indifference. (Downtown Det. Center, Denver, Colorado)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
EMERGENCY CARE
TRAINING

Finn v. Warren County, Kentucky, 768 F.3d 441 (6th Cir. 2014). The administrator of an inmate's estate and the guardian of the inmate's minor children brought a § 1983 action against a county, a jail's health care provider, and various jail employees, alleging violation of the inmate's Eighth and Fourteenth Amendment rights to receive adequate medical care while incarcerated. The district court granted summary judgment to some parties, and a jury returned verdicts for the remaining defendants on the remaining claims. The plaintiffs appealed. The appeals court reversed and remanded in part and affirmed in part. The court held that a supervisory jailer was not entitled to qualified immunity for his ministerial acts of training deputy jailers to follow a written emergency medical services (EMS) policy and to enforce that policy as written. When the inmate's condition worsened, cellmates threw objects at a speaker in the top of the cell to activate the intercom to get the guards' attention. The cellmates reported to the guards ten to fifteen times that something was wrong with the inmate and that he needed to be taken to the hospital. According to the inmates, the guards ignored their pleas for help and turned off the television in their housing unit. A senior supervisor's incident report alleged that he checked on the inmate several times, while the jail's observation log showed that he checked on the inmate only twice: at 5:27 a.m. and at 6:28 a.m. Later the inmate died in the cell, and although he was found dead in his cell, a deputy entered on the observation log "appears to be okay." (Warren County Regional Jail, Kentucky)

U.S. Appeals Court
INTAKE SCREENING
MEDICATION
MALPRACTICE
NEGLIGENCE
DELIBERATE
INDIFFERENCE

Fourte v. Faulkner County, Ark., 746 F.3d 384 (8th Cir. 2014). A pretrial detainee sued a county and jail officials for alleged deliberate indifference to his serious medical needs, after he became legally blind allegedly due to his high blood pressure while incarcerated. The district court denied the defendants summary judgment based on qualified immunity. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the lack of medical screening at intake, failure to prescribe medication, and a delay in administering medication were not deliberate indifference. The court held that the officials' failure to conduct medical screening of the detainee at intake did not constitute deliberate indifference to his serious medical needs, where the officials began logging the detainee's daily blood pressure in response to his complaints of heart problems. The court found that the officials' failure to prescribe medication for the detainee after several high blood pressure readings did not constitute deliberate indifference to his serious medical needs. The court noted that although the officials at most should have known they were committing malpractice by not prescribing medication, medical malpractice was not deliberate indifference. According to the court, the officials' delay in administering blood pressure medication to the detainee by failing to write a second prescription sooner, after the medication did not arrive following first prescription, did not constitute deliberate indifference to his serious medical needs, where the officials at most were negligent, and deliberate indifference required even more than gross negligence. (Faulkner County Jail, Arkansas)

U.S. District Court
FAILURE TO PROVIDE
CARE
TRAINING
MEDICATION

Graham v. Hodge, 69 F.Supp.3d 618 (S.D.Miss. 2014). The spouse of a pretrial detainee who died of cardiac arrhythmia brought a wrongful death action against a sheriff and a county alleging deliberate indifference to the detainee's medical care under the Due Process Clause of the Fourteenth Amendment, as well as failure to train under § 1983. The defendants moved for summary judgment. The district court granted the motion. The court held that a nurse was not deliberately indifferent to the detainee's medical needs, notwithstanding that the nurse waited 13 days to fax a medical authorization to a care center, that she sent the detainee to a medical clinic that had no cardiologist, that she was not aware for several months that the detainee was not taking necessary heart medication, and that the detainee ultimately died of cardiac arrhythmia. According to the court, the nurse regularly treated the detainee, which included providing him with his medication once she was made aware of its necessity, and the detainee's death was not proximately caused by the months-long lack of medicine. The court found that the detainee's death was not a highly predictable consequence of failing to train the jail nurse. (Jones County Adult Detention Facility, Mississippi)

U.S. District Court
FAILURE TO PROVIDE
CARE
MENTAL HEALTH
CONTAGIOUS
DISEASES

Graves v. Arpaio, 48 F.Supp.3d 1318 (D.Ariz. 2014). Pretrial detainees in the Maricopa County, Arizona, jail system brought a class action against the county and the county board of supervisors, seeking injunctive relief for alleged violations of their civil rights. The parties entered into consent decree which was superseded by amended judgments entered by stipulation of the parties. The defendants sought to terminate the remaining court-ordered injunctive relief regarding medical, dental, and mental health care for detainees. The district court denied the motion. The court held that: (1) termination of injunctive relief requiring the timely identification, assessment, and placement of detainees suffering from serious health conditions was not warranted; (2) termina-

tion of injunctive relief requiring the timely identification, assessment, and placement of detainees suffering from mental illness was not warranted; (3) termination of injunctive relief requiring the timely identification, segregation, and treatment of detainees with communicable diseases was not warranted; (4) termination of injunctive relief requiring that the detainees have ready access to care to meet their serious medical and mental health needs was not warranted; and (5) the detainees were the prevailing party for the purpose of awarding attorney's fees. (Maricopa County Jail, Arizona)

U.S. Appeals Court
INADEQUATE CARE
ADA- Americans with
Disabilities Act
POLICIES

Hahn v. Walsh, 762 F.3d 617 (7th Cir. 2014). A female pretrial detainee's estate brought an action against a county, sheriff, and medical services contractor, alleging the defendants failed to provide adequate medical treatment for the detainee's diabetes in violation of her rights under the Fourteenth Amendment, the Americans with Disabilities Act (ADA), the Rehabilitation Act, and Illinois law. After several of the estate's claims were dismissed, the district court entered summary judgment for the defendants on the estate's remaining claims. The estate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the district court abused its discretion in dismissing with prejudice the wrongful death claim brought by the detainee's estate for failure to include an affidavit and written report confirming the claim's merit, where the court made no specific finding that failure to include an affidavit and report was in bad faith or an attempt to delay litigation, and its conclusion that the estate could not timely file an amended complaint because the statute of limitations had lapsed failed to take into account the possibility that an amendment would relate back to the estate's initial, timely complaint.

The court found that the county sheriff's lack of a written policy or procedure for diabetic detainees whose blood sugar was not being measured and who refused to eat did not amount to deliberate indifference to the pre-trial detainee's serious medical needs in violation of her due process rights. According to the court, the deaths of seven correctional facility inmates and a single incident of an inmate complaining about his diabetes treatment were insufficient to put the sheriff on notice that his lack of a policy could cause the death of a detainee as a result of diabetic ketoacidosis, as none of the deaths were caused by complications from diabetes. (Champaign County Correctional Center, Illinois)

U.S. Appeals Court
DELAY IN CARE

Henderson v. Ghosh, 755 F.3d 559 (7th Cir. 2014). An inmate brought an action against prisoner health care providers and other corrections employees, alleging that the defendants were deliberately indifferent to his serious medical needs by failing to inform him of his declining kidney health until he had "stage 5 kidney failure." The district court denied the inmate's motions for recruitment of counsel during the pleading and discovery phases of the litigation, and granted summary judgment to the defendants. The inmate appealed. The appeals court reversed and remanded. The appeals court held that the district court abused its discretion in denying the inmate's two requests for appointment of counsel, where the inmate had a low IQ, was functionally illiterate, and was inexperienced with civil litigation, and the inmate's claim was factually and legally complex, requiring complex medical evidence and retention of expert witnesses. The court held that the inmate was prejudiced by the failure of the district court to appoint counsel, where the inmate was unable to obtain any medical evidence in opposition to summary judgment, the inmate was unable to timely file requests for discovery, and the inmate was unable to identify "John or Jane Doe" defendants who were dismissed for failure to prosecute. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
PRIVATE PROVIDER
ADA- Americans with
Disabilities Act
REHABILITATION ACT
HANDICAP

Hernandez v. County of Monterey, 70 F.Supp.3d 963 (N.D.Cal. 2014). Current and recently released inmates from a county jail brought an action against the county, the sheriff's office, and the private company that administered all jail health care facilities and services, alleging, on behalf of a class of inmates, that substandard conditions at the jail violated the federal and state constitutions, the Americans with Disabilities Act (ADA), the Rehabilitation Act, and a California statute prohibiting discrimination in state-funded programs. The inmates sought declaratory and injunctive relief. The defendants filed motions to dismiss. The district court denied the motions. The court held that both current and recently released inmates had standing to pursue their claims against the county and others for allegedly substandard conditions at the jail, even though the recently released inmates were no longer subject to the conditions they challenged. The court noted that the short average length of stay of inmates in the proposed class, which was largely made up of pretrial detainees, was approximately 34 days, and that short period, coupled with the plodding speed of legal action and the fact that other persons similarly situated would continue to be subject to the challenged conduct, qualified the plaintiffs for the "inherently transitory" exception to the mootness doctrine.

The court found that the inmates sufficiently alleged that the private company that administered all jail health care facilities and services operated a place of public accommodation, as required to state a claim for violation of ADA Title III. The court noted that: "The complaint alleges a litany of substandard conditions at the jail, including: violence due to understaffing, overcrowding, inadequate training, policies, procedures, facilities, and prisoner classification; inadequate medical and mental health care screening, attention, distribution, and resources; and lack of policies and practices for identifying, tracking, responding, communicating, and providing accessibility for accommodations for prisoners with disabilities." (Monterey County Jail, California)

U.S. District Court
MEDICATIONS
FAILURE TO PROVIDE
CARE
INTAKE SCREENING

Hinojosa v. Livingston, 994 F.Supp.2d 840 (S.D.Tex. 2014). The mother of a former inmate who died of hyperthermia while incarcerated brought an action against the prison's health care provider, asserting claims under the Americans with Disabilities Act (ADA) and the Rehabilitation Act, alleging the provider's failure to make accommodations for the inmate's disabilities resulted in the inmate's death. The provider moved to dismiss. The district court denied the motion. The court held that the mother alleged sufficient facts to state that the inmate was discriminated against by the prison's health care provider, in support of her claims under the ADA and the Rehabilitation Act, by alleging that the provider knew of the risks and dangers associated with certain medical conditions and medications, that the provider knew the inmate suffered from those conditions and used those medications, and that despite that knowledge, the provider failed to make reasonable accommodations, resulting in the inmate suffering more pain and punishment than non-disabled prisoners, namely, his death. The court

noted that the mother alleged that the provider knew both that the inmate suffered from hypertension, diabetes, schizophrenia, and/or depression, and was prescribed medications to treat his disabilities, and that extreme temperatures could be deadly, but still failed to protect the inmate from the extreme temperatures that ultimately resulted in the inmate's death. The court found that the mother alleged sufficient facts concerning the accommodations that should have been provided by the prison's health care provider without a request, but were denied or refused, as well as which facilities, programs, or services should have been modified by the provider, to state claims under the ADA and the Rehabilitation Act. The mother complained that the provider's intake process was flawed in that it could take up to 10 days for prisoners to receive an intake physical, and that the delay created a loophole that left inmates with heat sensitive conditions and disabilities especially vulnerable to death because they did not receive accommodations for their heat sensitive disabilities, and that the provider's failure to employ 24-hour medical staff at the prison resulted in a fatal delay and denial of vital medical care to the inmate. (Univ of Texas Medical Branch, Texas Dept. of Criminal Justice Garza West Unit)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELAY IN CARE
ALCOHOL/DRUGS

Imhoff v. Temas, 67 F.Supp.3d 700 (W.D.Pa. 2014). A pretrial detainee brought an action against employees of a county correctional facility, alleging deliberate indifference to his serious medical need, violation of his rights under the Fourteenth Amendment with regard to conditions of his confinement, and excessive force in violation of the Eighth Amendment. The employees moved to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee stated a claim against the employees for deliberate indifference to a serious medical need under the Fourteenth Amendment, where the detainee alleged that he informed facility personnel of his extensive drug use, that he had repeatedly requested medical assistance when he began experiencing seizures and hallucinations in conjunction with his drug withdrawal in the presence of facility personnel, and that he was provided no medical treatment for at least eight days despite his requests for medical attention. The court held that the employees were not entitled to qualified immunity from liability because a county correctional facility's constitutional obligation to provide care to inmates suffering unnecessary pain from a serious medical need was clearly established at the time the pretrial detainee allegedly began experiencing seizures in conjunction with drug withdrawal and was not provided medical treatment.

The detainee had initially been refused admission to the jail because he displayed signs of a drug overdose and he was admitted to a local hospital. After hospital personnel determined he was stable he was admitted to the jail. At one point in his confinement, the detainee acted out and banged his cell door with a plastic stool. This resulted in the retrieval of the stool by jail officers and, while he was held down by one officer, he was kicked in the face by another officer. When he yelled for help, an officer responded by choking the detainee and then spraying him with pepper spray, and he was not permitted to shower to remove the pepper spray for thirty minutes.

The court found that the detainee's allegations against the employees in their individual capacities regarding the intentional denial of medical treatment, excessive use of force, and violation of his rights under Fourteenth Amendment with regard to conditions of his confinement were sufficient to set forth a plausible claim for punitive damages. The detainee alleged that he was denied basic human needs such as drinking water, access to a toilet and toilet paper, and toiletries such as soap and a toothbrush. (Washington County Correctional Facility, Pennsylvania)

U.S. Appeals Court
EMERGENCY CARE
INADEQUATE CARE

Jackson v. Buckman, 756 F.3d 1060 (8th Cir. 2014). A pretrial detainee brought a § 1983 action against corrections facility employees and corrections officials alleging he received constitutionally deficient medical care and that medical officials used excessive force against him while responding to his medical emergency. The district court granted summary judgment to the defendants, and the detainee appealed. The appeals court affirmed. The court held that: (1) a physician was not deliberately indifferent to the detainee's surgical wound on his abdomen; (2) a nurse was not deliberately indifferent to the detainee's medical needs; (3) absent an underlying constitutional violation, the detainee could not maintain official-capacity and failure-to-supervise claims against a sheriff and a chief of detention; (4) a nurse's act of hitting the pretrial detainee's nose while administering an ammonia inhalant was not excessive force; and (5) the force used by nurses to move the pretrial detainee to his bed after he lost consciousness was not excessive. (Pulaski County Regional Detention Facility, Arkansas)

U.S. Appeals Court
SUICIDE
MEDICATION

Johnson v. Conner, 754 F.3d 918 (11th Cir. 2014). The mother and personal representative of a mentally ill inmate who committed suicide by hanging himself with bed sheet while in custody at a county jail filed suit against corrections personnel working at the jail at the time of the suicide, as well as various county entities. The mother alleged that jailers were responsible for administering her son's medication daily, and failed to do so, that her son had previously attempted to commit suicide with a bed sheet while incarcerated, and that the jailers failed to take appropriate precautions with her son following that suicide attempt. The district court denied immunity to the jailers and the jailers appealed. The appeals court certified questions to the Alabama Supreme Court, which the Supreme Court declined to answer. The appeals court held that the statute extending immunity to county jailers did not apply retroactively to conduct which occurred prior to its enactment. (Barbour County Jail, Alabama)

U.S. Appeals Court
MEDICAL CARE

King v. Kramer, 763 F.3d 635 (7th Cir. 2014). The estate of a pretrial detainee who died while awaiting trial in a county jail brought a civil rights action against the county and the health care provider for the jail. Following reversal in part of the grant of summary judgment in favor of the county and the provider, the court entered judgment for the county and the provider on a jury verdict. The estate appealed. The appeals court reversed and remanded, finding that: (1) the county was not liable for the death of the detainee who was found dead in his jail cell after jail medical staff rapidly tapered off his psychotropic medication, absent evidence that the county had an official custom or policy in place to deprive inmates of their prescribed medications; (2) the district court could not take judicial notice of a contract between the county and the provider; and (3) the indemnification agreement between the county and the provider was inadmissible to show liability. (La Crosse Jail, Wisconsin)

<p>U.S. Appeals Court FAILURE TO PROVIDE CARE DELIBERATE INDIFFERENCE EMERGENCY CARE</p>	<p><i>Kitchen v. Dallas County, Tex.</i>, 759 F.3d 468 (5th Cir. 2014). The widow of a pretrial detainee who died of asphyxiation while he was being extracted from his jail cell brought a § 1983 action against the county, detention officers, and others, alleging that the defendants used excessive force and acted with deliberate indifference to the detainee's medical needs. The defendants moved for summary judgment. The district court granted the motion in its entirety, and the plaintiff appealed. The appeals court reversed and remanded in part, and affirmed in part. The court held that summary judgment was precluded by genuine issues of material fact as to both the timing and the degree of force used in extracting the detainee from his jail cell. The court noted that the law was "clearly established" at the relevant time that use of force against an inmate was reserved for good-faith efforts to maintain or restore discipline, rather than for the purpose of causing harm, such that the defendants had reasonable warning that kicking, stomping, and choking a subdued inmate would violate the inmate's constitutional rights under certain circumstances. The court held that the widow failed to demonstrate that detention officers acted with deliberate indifference to the detainee's medical needs, even though they failed to contact medical staff prior to attempting to extract the detainee from his cell, where the need for participation of specialized staff to perform the extraction of a mentally ill inmate from a jail cell was not so apparent that even laymen would recognize this alleged medical need. (Dallas County Jail, Texas)</p>
<p>U.S. Appeals Court GID- Gender Identity Disorder FAILURE TO PROVIDE CARE</p>	<p><i>Kosilek v. Spencer</i>, 774 F.3d 63 (1st Cir. 2014). A state inmate brought an action against the Massachusetts Department of Corrections (DOC), alleging that the DOC's refusal to provide male-to-female sex reassignment surgery (SRS) to treat the inmate's gender identity disorder (GID) constituted inadequate medical care and deliberate indifference to the inmate's serious medical needs, in violation of the Eighth Amendment. The district court granted an injunction requiring the DOC to provide SRS, and the DOC appealed. The appeals court reversed. The court held that the DOC's decision not to provide SRS to treat the inmate's GID was not sufficiently harmful to the inmate so as to violate the Eighth Amendment, and the DOC was not deliberately indifferent in refusing to provide SRS. The court noted that the DOC continued to provide all ameliorative measures to the inmate, in addition to antidepressants and psychotherapy. The DOC solicited the opinion of multiple medical professionals, and the DOC's concerns about safety and security, including the provision of safe housing options for the inmate after SRS, were reasonable, according to the court. (Massachusetts Department of Corrections)</p>
<p>U.S. Appeals Court EYE CARE FAILURE TO PROVIDE CARE RIGHT TO REFUSE DELIBERATE INDIFFERENCE</p>	<p><i>Kuhne v. Florida Dept. of Corrections</i>, 745 F.3d 1091 (11th Cir. 2014). A former state prisoner filed a § 1983 claim, alleging that state corrections officials acted with deliberate indifference by failing to provide him with medical care for his retinopathy. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the "refusal of medical care" form signed by the prisoner was modified after he signed it to indicate that he was refusing medical treatment for his retinopathy; (2) whether the prisoner voluntarily declined treatment for his retinopathy; and if so, (3) whether he changed his mind and requested medical treatment for his retinopathy thereafter. (Jackson Correctional Institution, Florida)</p>
<p>U.S. Appeals Court METHADONE</p>	<p><i>Laganiere v. County of Olmsted</i>, 772 F.3d 1114 (8th Cir. 2014). The trustee for a state inmate's heirs and next of kin filed a § 1983 action alleging that officials at a county adult detention center deliberately disregarded the inmate's medical needs. The district court entered summary judgment in the defendants' favor, and the trustee appealed. The appeals court affirmed. The court held that a deputy at the county adult detention center did not deliberately disregard the inmate's serious medical needs, in violation of the Eighth Amendment, even though another inmate had told jail guards to check on him, and the deputy failed to prevent the inmate's death from a methadone overdose. The court noted that there was no evidence that the deputy was aware of the other inmate's statement, and the deputy checked on the inmate every half hour, observed the inmate asleep in his cell instead of engaged in the morning routine at the center, and did not observe anything unusual. (Olmsted County Adult Detention Center, Minnesota)</p>
<p>U.S. District Court MEDICATION FAILURE TO PROVIDE CARE</p>	<p><i>LCS Corrections Services, Inc. v. Lexington Ins. Co.</i>, 19 F.Supp.3d 712 (S.D.Tex. 2014). An insured prison operator brought an action seeking declaratory judgment that an insurer had a duty under a commercial umbrella liability policy to defend it in an underlying civil rights action. The underlying case was brought by the representative of a deceased inmate who allegedly died because of the operator's policy of not giving inmates their scheduled medications. The insurer moved for partial summary judgment. The district court granted the motion. The court held that the underlying claim for refusing to provide prescribed medications fell within the scope of the policy's professional liability exclusion, despite the operator's contention that the claim addressed administrative rather than professional conduct because it was a global administrative decision to deprive inmates of that particular medical care, where the exclusion extended to "failure to provide professional services." (Lexington Insurance Company, LCS Corrections Services, Inc., Texas)</p>
<p>U.S. District Court NEGLIGENCE DELIBERATE INDIFFERENCE</p>	<p><i>Martinson v. Leason</i>, 22 F.Supp.3d 952 (D.Minn. 2014). A prisoner brought an action under § 1983 against three county jail nurses in their individual capacities alleging deliberate indifference to the prisoner's health in violation of the Eighth Amendment prohibition of cruel and unusual punishment, as well as a negligence claim against the county, following amputation of nine fingers after an infection progressed to sepsis. The defendants moved for summary judgment. The district court granted the motion. The court held that: (1) the nurse who responded to a medication request was not reckless; (2) the nurse who knew the prisoner to be ill was not reckless; (3) failure to act reasonably in following a jail policy was not deliberate indifference; (4) a nurse was not aware of serious medical need; and (5) the prisoner's diarrhea and bloody cough was not a serious medical need. (Dakota County Jail, Minnesota)</p>

<p>U.S. District Court ALCOHOL/DRUGS FAILURE TO PROVIDE CARE POLICIES</p>	<p><i>M.H. v. County of Alameda</i>, 62 F.Supp.3d 1049 (N.D.Cal. 2014). A pretrial detainee’s estate brought a civil rights action against a county, its sheriff, sheriff’s deputies, and a correctional healthcare provider, alleging violations of § 1983 as well as common law claims for negligence, assault, and battery after the detainee died from alcohol withdrawal. The defendants moved for summary judgment. The district court held that summary judgment was precluded by fact issues: (1) with regard to the nurse who performed the detainee’s medical intake assessment to determine, if she was subjectively aware of his risk of alcohol withdrawal but did nothing prior to his death; (2) as to whether the county adequately implemented its training policies concerning recognition of inmates with alcohol and other drug problems; (3) with regard to the healthcare provider for failure to supervise the nurse who performed the detainee’s medical intake assessment and for failure to follow its own policies; and (4) as to whether a deputy was justified in using a stun gun against the detainee while moving him to an isolation cell and in delivering closed-fist strikes to the detainee’s back after a struggle ensued. The court also found a fact issue with regard to whether a social worker was subjectively reckless when she chose to see other inmates despite knowing that the pretrial detainee was at risk for severe alcohol withdrawal. The detainee had been arrested for jaywalking. (Alameda County, Glenn Dyer Detention Facility, California)</p>
<p>U.S. District Court DELAY IN CARE FAILURE TO PROVIDE CARE</p>	<p><i>Mori v. Allegheny County</i>, 51 F.Supp.3d 558 (W.D.Pa. 2014). An inmate who was seven and one-half months into a “high risk” pregnancy brought an action under § 1983 against a county for deliberate indifference to her health in violation of the Eighth Amendment prohibition of cruel and unusual punishment, and survival and wrongful death claims for violations of the Fourteenth Amendment, after the loss of the child following a placental abruption. The county moved to dismiss. The district court denied the motion. The court held that the prisoner: (1) stated an Eighth Amendment claim based on failure to monitor the unborn child after the prisoner complained of vaginal bleeding; (2) stated a claim against the county based on custom and practice; (3) sufficiently alleged a causal link between the policies and the loss of the child; (4) stated a claim against county officials for individual liability; and (5) stated wrongful death and survivor claims for the death of the child. The inmate alleged that individual policy makers, including the chief operating officer of the county jail’s health services, and the jail’s nursing supervisor, were responsible for the policies that led to failure to provide adequate medical treatment. The prisoner also alleged that she was made to wait over 24 hours before being sent to a hospital after her vaginal bleeding started, that she was transported by a police cruiser rather than ambulance, that it was well known that bleeding late in pregnancy often indicated serious medical issues, that the child was alive during birth, and that the delay in medical treatment contributed to the injuries during birth and the death of the child shortly after birth. (Allegheny County Jail, Pennsylvania)</p>
<p>U.S. Appeals Court COSTS DELIBERATE INDIFFERENCE</p>	<p><i>Morris v. Livingston</i>, 739 F.3d 740 (5th Cir. 2014). A state inmate, proceeding pro se, brought a § 1983 action against a governor, challenging the constitutionality of a statute requiring inmates to pay a \$100 annual health care services fee when they receive medical treatment. The district court dismissed the action. The inmate appealed. The appeals court affirmed. The appeals court held that: (1) the governor was entitled to Eleventh Amendment sovereign immunity where the state department of criminal justice was the agency responsible for administration and enforcement of the statute; (2) allegations were insufficient to plead deliberate indifference where the inmate did not allege he was denied medical care or that he was forced to choose between medical care or basic necessities; (3) the inmate received sufficient notice that he would be deprived of funds; and (4) it was not unreasonable for the prison to take funds from the state inmate’s trust fund account to pay for medical care. The court noted that the prison posted notices about the statute, the notices informed inmates of the fee and what it covered, and a regulation was promulgated that provided additional notice. (Texas Department of Criminal Justice, Stevenson Unit, Cuero, Texas)</p>
<p>U.S. District Court INADEQUATE CARE DELIBERATE INDIFFERENCE TRAINING</p>	<p><i>Nam Dang v. Sheriff of Seminole County, Fla.</i>, 38 F.Supp.3d 1333 (M.D.Fla. 2014). A pretrial detainee brought a § 1983 action against a county sheriff, county jail medical staff, and others, alleging that he was deprived of his constitutional right to receive adequate medical care for his meningitis, resulting in multiple strokes and severe brain damage. The defendants moved to dismiss. The district court denied the motions, finding that the pretrial detainee had serious medical needs, his allegations stated a claim against jail nurses for deliberate indifference to his serious medical needs, and the detainee stated a § 1983 claim against the county sheriff. The detainee allegedly experienced severe and increasing neck and back pain, minimal neck rotation, fever, and bouts of unconsciousness and was eventually diagnosed with meningitis, and ended up suffering multiple strokes and brain damage. The inmate alleged that the nurses who regularly attended to the detainee over a period of weeks were well aware of his increasing symptoms and declining health, that the nurses allegedly put him on muscle relaxants and returned him repeatedly to the general population, that the nurses allegedly made no meaningful effort to diagnose or treat his condition, until he passed out in a wheelchair, could not sit up, and became unresponsive. The court held that the detainee’s allegations that the lack of meaningful health care training of county jail personnel was the result of the county sheriff’s deliberate cost-cutting efforts, and that the lack of such training was reckless and created an obvious risk that the detainee’s constitutional right to adequate medical care for his serious medical need of meningitis would be violated, stated a § 1983 claim against county sheriff. (John E. Polk Correctional Facility, Seminole County, Florida)</p>
<p>U.S. District Court MEDICATION SPECIAL DIET DELIBERATE INDIFFERENCE</p>	<p><i>Noble v. Three Forks Regional Jail Authority</i>, 995 F.Supp.2d 736 (E.D.Ky. 2014). A diabetic former inmate brought an action against a regional county jail and a number of its employees, individually and in their official capacities, alleging both constitutional claims under § 1983 and state claims stemming from his incarceration. The defendants moved for summary judgment. The district court granted the motion. The court held that there was no evidence that the county jail maintained an official policy or custom to deprive inmates of medical care to save money, thus precluding the former inmate’s § 1983 Eighth Amendment deliberate indifference claim against jail arising from his alleged receipt of daily diabetes medication that was contrary to his doctor’s advice, and food that exacerbated his diabetic condition. The court found that the diabetic inmate was not at an excessive risk of serious harm, nor did county jail employees fail to take adequate precautions to protect the inmate from</p>

harm, and thus the employees were not deliberately indifferent to the inmate's serious medical condition, in violation of Eighth Amendment. The court noted that the inmate received substantial medical attention while incarcerated, and he was allowed special accommodations based on his diabetic condition, including taking his medication and blood sugar test kit to his cell. He was granted a specialized menu from the cafeteria, and his daily medication administration schedule was modified after consultation with a physician. (Three Forks Regional Jail Authority, Kentucky)

U.S. Appeals Court
MEDICATION
AIDS- Acquired Immune
Deficiency Syndrome
PRIVACY

Nunes v. Massachusetts Dept. of Correction, 766 F.3d 136 (1st Cir. 2014). Prisoners with HIV brought an action against the Massachusetts Department of Correction, a prison healthcare provider, and various corrections officials, challenging the decision to dispense HIV medication only in single doses at the dispensing window, alleging violation of the Eighth Amendment, the Rehabilitation Act, and the Americans with Disabilities Act (ADA). The district court granted summary judgment to the defendants. The prisoners appealed. The appeals court affirmed. The court held that: (1) the prison's change in the method for dispensing HIV medication did not violate the Eighth Amendment; (2) the requirement that prisoners obtain their HIV medication from the prison's dispensing window did not violate any right to privacy; (3) the change to dispensing HIV medication only at the prison's dispensing window was not disparate treatment; and (4) the prison offered a reasonable accommodation to a prisoner who claimed an inability to visit the dispensing window by offering to move the prisoner to the prison's medical unit. The court noted that prison doctors had raised concerns about a lack of privacy and whether prisoners would maintain their drug regimen, and the prison delayed implementing the change to investigate those concerns, and found no evidence that the provision of HIV medication from the dispensing window resulted in inadequate medical care. (Massachusetts Department of Corrections)

U.S. Appeals Court
DELAY IN CARE

Olson v. Morgan, 750 F.3d 708 (7th Cir. 2014). An inmate brought a pro se § 1983 action against prison officials asserting violations of the Eighth Amendment, specifically, that a correctional officer failed to move him to a new cell when he warned the officer that the cellmate was not taking medication and might become violent. The inmate also alleged that the manager of the prison's health-services unit delayed treatment of a broken tooth he suffered when the cellmate attacked him. The district court granted summary judgment in favor of the officials. The inmate appealed. The appeals court affirmed. The court held that there was no evidence that the correctional officer was subjectively aware that the cellmate was dangerous, as required to support the inmate's Eighth Amendment claim. The court held that there was no evidence that the manager of the prison's health-services unit failed to act promptly once she learned of inmate's broken tooth suffered when the cellmate attacked him, as required to support the inmate's Eighth Amendment. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
PRIVATE PROVIDER
INADEQUATE CARE
DENTAL CARE
MENTAL HEALTH

Parsons v. Ryan, 754 F.3d 657 (9th Cir. 2014). State prisoners, and the state's authorized protection and advocacy agency, filed a class action for declaratory and injunctive relief against senior officials from the Arizona Department of Corrections (ADC), asserting Eighth Amendment claims, based on allegedly serious systemic deficiencies in conditions of confinement in isolation cells, and in the provision of privatized medical, dental, and mental health care services. The district court granted class certification and prison officials appealed. The appeals court affirmed. The court found that the prisoners were not merely aggregating many claims of individual mistreatment, and instead were alleging that ADC policies and practices of statewide and systemic application exposed all inmates in ADC custody to substantial risk of serious harm, to which the senior officials allegedly were deliberately indifferent, even if the risk might ultimately result in different future harm for different inmates. (Arizona Department of Corrections)

U.S. Appeals Court
DENTAL CARE
COSTS
DELAY IN TREATMENT
DELIBERATE
INDIFFERENCE
STAFF

Peralta v. Dillard, 744 F.3d 1076 (9th Cir. 2014). A state inmate brought a § 1983 action against a prison's chief dental officer, its chief medical officer, and its staff dentist, alleging deliberate indifference to his serious medical needs. The district court granted judgment as a matter of law to the chief dental officer and the chief medical officer at the close of inmate's case, and entered judgment on the jury's verdict in favor of the dentist. The inmate appealed. The appeals court affirmed. The appeals court held: (1) it is appropriate to consider the resources available to a prison official who lacks authority over budgeting decisions, overruling *Jones v. Johnson*, 781 F.2d 769, and *Snow v. McDaniel*, 681 F.3d 978; (2) evidence warranted a jury instruction on the lack of resources available to the staff dentist; (3) evidence did not establish the chief medical officer's awareness of the inmate's dental needs; and (4) evidence did not establish the chief dental officer's awareness of the inmate's dental needs. The court noted that there was evidence that budgetary constraints actually affected the state prisoner's dental treatment: (1) where the staff dentist listed "staffing shortages beyond our control" as an explanation for the waiting list for dental procedures; (2) evidence was presented that the prison had less than half the number of dentists required by law; (3) there were no dental hygienists; and (4) that dentists frequently had to work without dental assistants. The staff dentist testified that staff shortages limited the amount of time he could have spent with the prisoner during any visit and that he focused on a prisoner's most pressing complaint because he did not have enough time. (California State Prison, Los Angeles County)

U.S. Appeals Court
MENTAL HEALTH
PRETRIAL DETAINEE
SUICIDE ATTEMPT
DELIBERATE
INDIFFERENCE

Pittman ex rel. Hamilton v. County of Madison, Ill., 746 F.3d 766 (7th Cir. 2014). By and through his guardian, a pretrial detainee brought a § 1983 action against a county and various jail officials, alleging the defendants were deliberately indifferent to his risk of suicide in violation of the Fourteenth Amendment. The district court granted the defendants' motion for summary judgment and denied the detainee's motion for a new trial. The detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that a nurse and doctor were not deliberately indifferent, that there was no evidence that the sheriff or a captain knew of a substantial risk of harm for the detainee, and that the jail's suicide prevention policies and practices were not so inadequate that they violated the detainee's rights. But the appeals court also held that summary judgment was precluded by a genuine issue of material fact as to whether a deputy and a sergeant were aware of the detainee's risk of suicide, where the detainee requested to see a crisis intervention person. According to the court, when an inmate presents an officer with a request to see a crisis intervention person and the officer also is aware that the

reason for the request well may be a serious psychological condition that is beyond the officer's capacity to assess definitively, the officer has an obligation under the Eighth Amendment to refer that individual to the person who, under existing prison procedures, is charged with making that definitive assessment. (Madison County Jail, Illinois)

U.S. Appeals Court
INADEQUATE CARE
DELIBERATE
INDIFFERENCE

Pyles v. Fahim, 771 F.3d 403 (7th Cir. 2014). A state prisoner brought a § 1983 action against a warden, medical contractor, and the contractor's physicians, alleging deliberate indifference to the risk of injury and to his medical needs. After dismissing the warden at the screening of the complaint, the district court granted the remaining defendants summary judgment. The prisoner appealed. The appeals court affirmed. The court held that a wet stairway, on which the prisoner allegedly slipped, was not a hazardous condition of confinement, in violation of the Eighth Amendment. According to the court, the decision by a physician not to schedule an MRI for a state prisoner who injured his back after slipping in a wet stairwell did not depart significantly from accepted professional norms; therefore, the physician was not deliberately indifferent to the prisoner's serious medical needs, in violation of the Eighth Amendment. The court found that the physician's failure to refer the prisoner to a specialist after the prisoner complained of back pain following a fall in a wet stairway was not deliberate indifference to the prisoner's serious medical needs, in violation of the Eighth Amendment, where the prisoner had a common ailment, the physician prescribed medications, and, after those medications did not appear to help, the physician tried new medications or dosages. (Menard Correctional Center, Illinois)

U.S. District Court
X-RAY
FAILURE TO PROVIDE
CARE

Rahman v. Schriro, 22 F.Supp.3d 305 (S.D.N.Y. 2014). A pretrial detainee brought a § 1983 action against a state prison commissioner, warden, deputy warden, deputy of security, and officers, alleging they violated the Fourteenth Amendment's Due Process Clause by forcing him to go through a radiation-emitting X-ray security screening machine in order to get to and from his daily work assignment. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the detainee sufficiently alleged a serious present injury or future risk of serious injury, as required to state a deliberate indifference claim against prison officials under the Fourteenth Amendment's Due Process Clause, by alleging that he was subjected to at least two full-body X-ray scans each day, that each scan exposed him to a level of radiation that was 10 to 50 times higher than that emitted by airport scanners, that radiation damages cells of the body and that even low doses of radiation increase an individual's risk of cancer, and that federal regulations prohibited prison officials from using even non-repetitive X-ray examinations for security purposes unless the device was operated by licensed practitioner and there was reasonable suspicion that the inmate had recently secreted contraband. According to the court, the detainee's allegations that a prison officer intentionally subjected him to a higher dose of radiation through a full-body X-ray screening machine while calling him a "fake Muslim, homosexual, faggot" were sufficient to allege that the force was not applied to maintain or restore discipline, as required to state an excessive force claim under Fourteenth Amendment's Due Process Clause. The court held that the alleged force exerted by a prison officer on the detainee by setting the full-body X-ray screening machine to a higher radiation dose on one occasion was not excessive in violation of the Fourteenth Amendment's Due Process Clause. The court noted that the alleged force was de minimis, and the use of a higher setting of radiation, which was designed to produce a better image, in a situation where detainee expressed resistance to the scanning process and could have been conceivably hiding contraband was not the type of force repugnant to the conscience of mankind.

The court found that the prison commissioner was not entitled to qualified immunity where the right to be free from deliberate indifference to serious medical needs was clearly established, and given the known dangers of radiation, a reasonable person would have understood that exposing the detainee to a cumulative level of radiation that posed a risk of damage to his future health could violate the Due Process Clause of the Fourteenth Amendment. (Anna M. Kross Center, Rikers Island, New York City Department of Correction)

U.S. District Court
INADEQUATE CARE
FAILURE TO PROVIDE
CARE
POLICIES
PRETRIAL DETAINEE
DELIBERATE
INDIFFERENCE

Revilla v. Glanz, 7 F.Supp.3d 1207 (N.D.Okla. 2014). Four pretrial detainees or representatives of their estates brought an action against a county sheriff, asserting claims under § 1983 and the Oklahoma Constitution, relating to allegedly deficient medical care. The sheriff filed a motion to dismiss. The district court denied the motion, finding that the plaintiffs stated a § 1983 claim against the sheriff for supervisory liability in his individual capacity, and a § 1983 claim against the sheriff for liability in his individual capacity. The court noted that the Due Process Clause of the Oklahoma Constitution protects pretrial detainees against the denial of medical attention. The plaintiffs alleged: (1) that the sheriff was responsible for ensuring that pretrial detainees received appropriate medical care; (2) that he was responsible for creating, adopting, approving, ratifying, and enforcing the policies that his subordinates allegedly violated; (3) that he failed to provide prompt and adequate care in the face of known and substantial risks to each detainee's health-; and (4) that he had long known of systemic deficiencies in the jail's medical care. The plaintiffs cited numerous incidents and reports, as well as inmate deaths, which they alleged provided clear notice to the sheriff of seriously deficient medical and mental health care which placed inmates at a serious risk of injury or death. One such notice included a report by the United States Department of Homeland Security's Office of Civil Rights and Civil Liberties which "found a prevailing attitude among clinic staff [at the Jail] of indifference." (Tulsa County Jail, Oklahoma)

U.S. District Court
INADEQUATE CARE
CONTRACT SERVICES
POLICIES
STAFFING
TRAINING

Revilla v. Glanz, 8 F.Supp.3d 1336 (N.D.Okla. 2014). Pretrial detainees or representatives of their estates brought an action against healthcare providers, doctors, and nurse, asserting claims under § 1983 and the Oklahoma Constitution, relating to allegedly deficient medical care. The defendants moved to dismiss. The district court denied the motion, finding that: (1) allegations were sufficient to plead the provider, doctors, and nurse were acting under the color of state law; (2) allegations were sufficient to state a § 1983 claim against the provider under the theory of municipal liability; and (3) the provider was not entitled to immunity from punitive damages afforded to municipalities. The court noted that the healthcare provider was endowed by the county with powers or functions that were governmental in nature, that provider was responsible for providing medical services at the jail, including creating and implementing policies and practices governing provision of care, as

well as training and supervision, that doctors and nurse were employees of the provider, that they had responsibility for overseeing and treating detainees, and that doctors served as the medical director.

The pretrial detainees and representatives of their estates also alleged that the provider refused to send detainees to a hospital for financial reasons, understaffed the medical unit, failed to properly train and supervise employees, and the provider was on notice of these deficiencies from reports by the National Commission on Correctional Health Care, the Oklahoma Department of Health, the United States Department of Homeland Security's Office of Civil Rights and Civil Liberties (CRCL), and the Jail's own medical auditor. (Correctional Healthcare Companies, Inc.)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Richards v. Jones, 31 F.Supp.3d 630 (D.Del. 2014). A state prison inmate, proceeding pro se and in forma pauperis, brought an action against medical staff pursuant to § 1983 for violations of his constitutional rights. The district court held that the inmate's claims against the prison medical director, a nurse practitioner, and director of nurses were frivolous and would be dismissed. The court found that the inmate adequately alleged a nurse practitioner and medical bureau chief were deliberately indifferent to a serious medical need. The nurse practitioner allegedly denied the inmate's grievance seeking treatment for his hernia and the medical bureau chief allegedly denied the inmate's appeal from the nurse practitioner's decision. (Sussex Correctional Institution, Delaware)

U.S. Appeals Court
CONTRACT SERVICES
DELIBERATE
INDIFFERENCE
DIAGNOSIS

Rouster v. County of Saginaw, 749 F.3d 437 (6th Cir. 2014). The representative of the estate of a detainee who died while in custody at a county jail brought a § 1983 action against the county, the contractor that provided medical services to the county jail, and the jail's nursing staff, who were employees of the contractor. The district court granted in part the defendants' motion for summary judgment. The representative appealed. The appeals court affirmed. The court held that the county jail's nursing staff did not have subjective knowledge of the detainee's perforated duodenal ulcers, which eventually resulted in sepsis and the detainee's death, and staff did not consciously disregard the detainee's condition or otherwise refuse to provide appropriate treatment, as required for staff to be liable in a § 1983 Fourteenth Amendment deliberate indifference claim. According to the court, although staff was aware that the detainee had complained of stomach cramping, diarrhea, and vomiting, and that he had been observed engaging in bizarre behavior, such as drinking from a toilet, they misdiagnosed him first with gas and diarrhea, and later with alcohol withdrawal. The court noted that the detainee never told any staff member about his previous treatment for his ulcer, staff did not ignore the detainee's symptoms, but attempted to treat him with over-the-counter medication and moved him to an observation cell for monitoring. (Saginaw County Jail, Michigan)

U.S. District Court
FEMALE PRISONERS
COSTS
CONTRACT SERVICES

Scott v. Clarke, 61 F.Supp.3d 569 (W.D.Va. 2014). Female inmates brought a § 1983 action alleging that a correctional facility failed to provide adequate medical care and that Commonwealth of Virginia Department of Corrections (VDOC) officials were deliberately indifferent to that failure, in violation of the inmates' Eighth Amendment rights. The inmates moved for class certification. The district court held that class certification was warranted under the subsection of the class action rule pertaining to cases where predominantly injunctive or declaratory relief was appropriate. The court found that the proposed class of approximately 1,200 female inmates housed at the state correctional facility who were subject to its medical care system was sufficiently large, on its face, to satisfy the size requirement for class certification, and that the "commonality" requirement for class certification was met. The court noted that one of the questions of fact was whether the VDOC medical contract system permitted improper cost considerations to interfere with the treatment of serious medical conditions. (Fluvanna Correctional Center for Women, Commonwealth of Virginia Department of Corrections)

U.S. District Court
COSTS
CONTRACT SERVICES
INADEQUATE CARE

Scott v. Clarke, 64 F.Supp.3d 813 (W.D.Va. 2014). Prisoners brought a § 1983 action against prison officials, alleging failure to provide adequate medical care in violation of the Eighth Amendment. The district court granted the prisoners' motion for summary judgment. The court held that: (1) the state department of corrections has a non-delegable duty to provide prisoners with medical care that meets constitutional minimum standards; (2) the prisoners had serious medical needs; and (3) a genuine issue of material fact existed as to whether the prison officials were deliberately indifferent to the prisoners' serious medical needs. The court noted that the prisoners serious medical needs included: (1) one prisoner who had sarcoidosis, which was a potentially life-threatening chronic inflammatory disease that could affect the body's vital organs; (2) another prisoner had Hepatitis C; (3) another prisoner had severely deformed ingrown toenail that made it difficult to walk when inflamed and infected, and she was profoundly hearing impaired; and (4) a final prisoner suffered from various medical problems, including degenerative disc disease affecting her neck and spine, bi-lateral carpal tunnel syndrome in her wrists, a bladder condition causing constant incontinence, and chronic kidney disease. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the decision by prison officials to favor lower contract costs over the likely quality of resulting care was deliberate indifference to the prisoners' serious medical needs. (Fluvanna Correctional Center for Women, Commonwealth of Virginia Dept. of Corrections)

U.S. District Court
FAILURE TO PROVIDE
CARE
COSTS
DENIAL

Sherley v. Thompson, 69 F.Supp.3d 656 (W.D.Ky. 2014). A state prisoner filed a pro se § 1983 action against the Commissioner of the Kentucky Department of Corrections (DOC), a prison warden, and other prison officials, alleging that his conditions of confinement violated his Eighth Amendment rights, that he was deprived of medical treatment in violation of the Eighth Amendment, and was subjected to race discrimination in violation of the Equal Protection Clause. The district court dismissed the case, in part. The court held that the prisoner stated claims against the warden and prison administrators for violation of his equal protection rights and his conditions of confinement. According to the court, the prisoner stated an Eighth Amendment claim against one prison nurse by alleging that the nurse failed to provide him with appropriate medical treatment for ant bites he sustained, due to his inability to pay for treatment.

The prisoner alleged that the prison had a policy or custom of segregating blacks and non-blacks, and that prison officials refused to place him in a non-black cell to get away from pests in his cell. The court held that the administrators allowed ants to infest his cell for weeks and that as a result, he received ant bites that caused him

to scratch until his skin was broken due to severe itching, in violation of his conditions of confinement rights under § 1983 and the Eighth Amendment. (Little Sandy Correctional Complex, Green River Correctional Complex, Kentucky)

U.S. District Court
INADEQUATE CARE

Stevens v. Gooch, 48 F.Supp.3d 992 (E.D.Ky. 2014). An inmate brought an action against a jailer and a county, asserting section 1983 and state law claims related to the adequacy of the jail's medical treatment. The defendants moved for summary judgment. The district court granted the motion. The court found that the inmate sufficiently exhausted administrative remedies under the Prison Litigation Reform Act (PLRA) prior to bringing the § 1983 action, where the inmate filed five grievances related to his ankle injury but never received a response from jail officials. (Lincoln County Jail, Kentucky)

U.S. District Court
CONTRACT SERVICES
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Stones v. McDonald, 7 F.Supp.3d 422 (D.Del. 2014). A state prisoner brought a § 1983 action against a prison warden, the Commissioner of the Delaware Department of Correction (DOC), the state's contractor for prison medical services, and a physician employed by the contractor, alleging deliberate indifference to his serious medical needs, relating to damage to the nerves in his left ankle and foot after the prisoner slipped off a curb and rolled his ankle. The prisoner filed motions to compel discovery, for appointment of counsel, and for appointment of a medical expert witness, and the state officials filed motions for summary judgment. The district court granted summary judgment to the defendants. The district court held that: (1) the physician's alleged negligence in not sending the prisoner for physical therapy did not provide the basis for an Eighth Amendment claim; (2) the prisoner's disagreement with a non-party physician's recommendation against surgery did not provide the basis for an Eighth Amendment claim; (3) the prisoner did not show a policy of the contractor that violated the prisoner's constitutional rights; and (4) the prisoner did not show state officials' personal involvement in the alleged constitutional violation. (Sussex Correctional Institute, Delaware)

U.S. District Court
ADA- Americans with
Disabilities Act
INADEQUATE CARE
WHEELCHAIR

Stoudemire v. Michigan Dept. of Corrections, 22 F.Supp.3d 715 (E.D.Mich. 2014). A female former prisoner, who was a double amputee, brought an action against the Michigan Department of Corrections (MDOC) and various MDOC-associated officers and healthcare professionals, asserting violations of § 1983, the Americans with Disabilities Act (ADA), and state law. The prisoner alleged failure to provide adequate health care and accommodations for disabled individuals. The district court denied summary judgment to the warden and a corrections officer on their qualified immunity defenses to the § 1983 claims. The defendants appealed. The appeals court affirmed in part, vacated in part, and remanded. On remand the district court held that: (1) a fact question as to whether the warden was aware of facts from which the inference could be drawn that a substantial risk of serious harm existed precluded summary judgment, and (2) it was clearly established that deliberate indifference to serious medical needs of prisoners constituted the unnecessary and wanton infliction of pain proscribed by Eighth Amendment. The prisoner alleged that she acquired MRSA following the amputation of her left leg. As a result of her condition, her housing assignment at the facility was changed from the infirmary to the segregation unit. The prisoner alleged that there was an absence of handicap facilities within this unit, that she was unable to safely transfer from her wheelchair to the bed or toilet, and that she was allowed only one shower during the two weeks while housed in segregation. (Huron Valley Women's Correctional Facility, Michigan)

U.S. Appeals Court
MENTAL HEALTH
SUICIDE
SPECIAL NEEDS

Townsend v. Cooper, 759 F.3d 678 (7th Cir. 2014). An inmate suffering from a significant mental illness brought a § 1983 action against prison officials, claiming that imposition of a behavior action plan in response to the inmate's disruptive behavior and threats of suicide violated his Fourteenth Amendment due process rights, deprived him of the minimal civilized measure of life's necessities and exhibited an indifference to his serious medical needs in violation of the Eighth Amendment. The district court granted summary judgment for the prison officials and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the behavior action plan resulted in an atypical and significant hardship compared to ordinary prison life, and thus, the inmate had a liberty interest in not being placed on the plan sufficient to support his Fourteenth Amendment due process challenge against the prison officials, where the plan involved removal of the inmate's personal property from his cell, provision of a bag lunch, provision of a paper gown, and limited access to toiletries. The court found that summary judgment was precluded by genuine issues of material fact as to whether prison officials acted in disregard of a substantial risk of serious harm to the inmate, and a fact issue as to whether the behavior action plan was imposed for safety reasons or as a disciplinary measure. The court found that prison psychologists were not deliberately indifferent to the serious medical needs of the inmate when they placed the inmate on the behavior action plan, where the psychologists repeatedly visited the inmate, regularly adjusted the inmate's access to property that he could use to harm himself, and repeatedly placed the inmate on observation status to ensure his safety when he was suicidal. (Green Bay Correctional Institution, Wisconsin)

U.S. District Court
MENTAL HEALTH
EXAMINATIONS
MEDICATION

Trueblood v. Washington State Dept. of Social and Health Services, 73 F.Supp.3d 1311 (W.D.Wash. 2014). Pretrial detainees brought a class action against the Washington Department of Social and Health Services and two state hospitals, alleging that in-jail waiting times for court-ordered competency evaluations and restoration services violated their Fourteenth Amendment due process rights. The detainees moved for summary judgment. The district court granted the motion, finding that in-jail waiting times for court-ordered competency evaluations and restoration services violated the Fourteenth Amendment substantive due process rights of mentally incapacitated pretrial detainees. The court noted that detainees were incarcerated for many weeks, not because they were convicted, found to be dangerous, or posed a flight risk, but because Department of Social and Health Services and state hospitals did not have sufficient bed space or available staff to provide the services they were required to provide. Some detainees were held in solitary confinement due to space issues, exacerbating any mental illness, and the rate of medication compliance was lower in jail. (Washington State Dept. of Social and Health Services, Western State Hospital and Eastern State Hospital)

<p>U.S. District Court TRANSPORTATION WHEELCHAIR ADA- Americans with Disabilities Act DELIBERATE INDIFFERENCE RA- Rehabilitation Act</p>	<p><i>Turner v. Mull</i>, 997 F.Supp.2d 985 (E.D.Mo. 2014). An inmate, who suffered from a demyelinating neurological disorder of unknown etiology, brought an action against a correctional officer, a warden, a transportation officer, and a health services administrator, alleging violations of the Eighth and Fourteenth Amendments, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The defendants moved for summary judgment. The district court granted the motion. The district court held that: (1) the prison's policy that inmates were not permitted to be transported in a handicapped-accessible van unless they appeared at the pickup area in a wheelchair did not violate the inmate's rights; (2) the warden failing to take action in response to letters by the inmate was not deliberate indifference; (3) a correctional officer and a transportation officer who did not transport the inmate in a handicapped-accessible van were not deliberately indifferent; (4) a supervisor was not deliberately indifferent; (5) the alleged exposure to urine and vomit during a van ride did not violate the Eighth Amendment; (6) the prison did not discriminate against inmate based on his disability by not transporting the inmate in a handicapped-accessible vehicle; and (7) the administrator did not discriminate against the inmate. (Eastern Reception Diagnostic Correctional Center, Missouri)</p>
<p>U.S. District Court FAILURE TO PROVIDE CARE PRETRIAL DETAINEE</p>	<p><i>Woodson v. City of Richmond, Va.</i>, 2 F.Supp.3d 804 (E.D.Va. 2014). A detainee in a city jail filed a § 1983 action against the city, the sheriff, and deputies, claiming constitutional and state law violations arising from the detainee's heat stroke allegedly caused by deliberate indifference to his need for medical care. The detainee was housed on the top floor of the jail during a time when outside temperatures exceeded 100 degrees, and when interior temperatures were even higher. The inmate suffered a heat stroke and was found unresponsive in his cell, and he had a body temperature of 106.1 degrees. The sheriff cross-claimed against the city for indemnification or contribution. The city moved to dismiss the cross-claim. The court dismissed the cross-claim, finding that the sheriff lacked the right to contribution and the right to indemnification for § 1983 claims or state law claims. (Richmond City Jail, Virginia)</p>
<p>U.S. District Court FAILURE TO PROVIDE CARE MENTAL HEALTH SUICIDE ATTEMPT DELIBERATE INDIFFERENCE</p>	<p><i>Young v. Choinski</i>, 15 F.Supp.3d 172 (D.Conn. 2014). A state prisoner brought an action against prison officials and personnel under § 1983, alleging deliberate indifference to his medical and mental health needs in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the prisoner failed to establish that his medical need was objectively serious, as required to support a claim against prison officials and personnel for deliberate indifference to a serious medical need in violation of Eighth Amendment. The court noted that, although the prisoner alleged he cut his arms with a metal object causing severe bleeding, none of wounds appeared to be bleeding on a video recording of the prisoner as he was escorted from his cell to a medical unit, the prisoner did not allege that the abrasions significantly interfered with his daily activities or caused him substantial or chronic pain, and he offered no evidence that the wounds required any further treatment beyond cleaning and antibiotic ointment.</p> <p>The court found that the prisoner suffered from a serious mental health need, as required to support claim against prison personnel for deliberate indifference to his serious mental health needs in violation of the Eighth Amendment, where the prisoner had been diagnosed with post-traumatic stress disorder, borderline personality disorder, and antisocial personality disorder, and the prisoner's health records reflected that he had made prior attempts and threats to commit suicide. The court held that summary judgment was precluded by a genuine dispute of material fact as to whether a corrections officer intentionally refused to take action to summon mental health or medical personnel to evaluate and treat the prisoner after he became aware of the prisoner's suicidal thoughts, and then the officer learned that the mental health unit had closed for the evening. (Northern Correctional Institution, Somers, Connecticut)</p>
<p>U.S. District Court FAILURE TO PROVIDE CARE MENTAL HEALTH SUICIDE ATTEMPT DELIBERATE INDIFFERENCE</p>	<p><i>Young v. Choinski</i>, 15 F.Supp.3d 194 (D.Conn. 2014). A prisoner, proceeding pro se, brought a § 1983 action against prison officials and personnel, alleging deliberate indifference to his serious medical and mental health needs, constituting cruel and unusual punishment in violation of the Eighth Amendment. After the district court granted the defendants' summary judgment motion in part and denied it in part, the defendants moved for reconsideration. The district court denied the motion. The court held that summary judgment was precluded by a genuine dispute of material fact as to whether a correctional officer was subjectively aware of the prisoner's serious mental health needs. The court found that the prisoner's complaint alleging deliberate indifference, failure to prevent and protect from self-harm, denial of medical care, and that a correctional officer failed to assist the prisoner with prompt medical attention was sufficient to state a claim against the officer for deliberate indifference to serious medical and mental health needs in violation of the Eighth Amendment. (Northern Correctional Institution, Somers, Connecticut)</p>
2015	
<p>U.S. District Court FAILURE TO PROVIDE CARE DELAY IN CARE</p>	<p><i>Baker v. Wexford Health Sources, Inc.</i>, 118 F.Supp.3d 985 (N.D. Ill. 2015). A state prisoner brought an action against the provider of prison health services and physicians, alleging that failure to treat his fractured arm violated the Eighth Amendment. The provider and physicians moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact regarding whether the policies and practices of the health services provider caused unacceptable delays in the treatment of the prisoner's fractured arm which both directly prolonged his pain and potentially precluded a physician from treating the prisoner on an acute and emergent basis. (Wexford Health Sources, Inc., Dixon Correctional Center, Illinois)</p>
<p>U.S. Appeals Court INADEQUATE CARE MEDICATION TRAINING</p>	<p><i>Brauner v. Coody</i>, 793 F.3d 493 (5th Cir. 2015). A state prisoner, who was a paraplegic, brought an action against a prison medical director, assistant warden, and prison doctors, alleging deliberate indifference to his serious medical condition. The district court denied the parties' cross-motions for summary judgment. The defendants appealed. The appeals court reversed, finding that: (1) prison doctors were not deliberately indifferent to the prisoner's serious medical needs by failing to provide him with adequate pain management; (2) officials</p>

were not deliberately indifferent by subjecting the prisoner to unsanitary showers; and (3) doctors did not fail to provide adequate training and supervision regarding proper wound care, even if the prisoner's wound care by nurses and other subordinates was occasionally sporadic, where the doctors were active in managing it, and they regularly changed the prescribed frequency of the bandage changes based on the changing condition of the prisoner's wounds, and also prescribed antibiotic therapy regimens to assist with healing. The court noted that it was undisputed that the showers were cleaned twice per day with bleach, that the prisoner was given a disinfectant spray bottle for his personal use, and that the prisoner was permitted to enter the showers before the other prisoners so that he could clean himself without interference, and there was no showing that the prisoner was ever prohibited from using the showers. (R.E. Barrow Treatment Center, Louisiana)

U.S. District Court
CONTAGIOUS
DISEASES

Brown v. Moore, 93 F.Supp.3d 1032 (W.D. Ark. 2015). An inmate, proceeding pro se and in forma pauperis, brought a § 1983 action against a sheriff and jail officials, alleging that his constitutional rights were violated. The defendants filed a motion for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by an issue of fact as to whether the inmate's being housed with a prisoner who had a staph infection constituted deliberate indifference. The court found that the inmate's assertion that his diet was not approved on a yearly basis by a dietician in compliance with Arkansas Jail Standards did not equate to a constitutional violation under the Eighth Amendment. (Boone County Detention Center, Arkansas)

U.S. Appeals Court
DELAY IN CARE
MEDICATION
DELIBERATE
INDIFFERENCE

Burton v. Downey, 805 F.3d 776 (7th Cir. 2015). A pretrial detainee brought a § 1983 action against a county, county jail, county sheriff, non-medical correctional officials, physician's assistants, and nurses, asserting due process violations based on deliberate indifference to his serious medical needs, relating to hip and elbow pain, a rash, and rectal bleeding. The district court denied the defendants' motion for summary judgment based on qualified immunity and the defendants appealed. The appeals court reversed and remanded. The court held that an alleged two-day delay in providing non-narcotic pain medication to the detainee was not deliberate indifference, failure to honor the detainee's preference for narcotic pain medication was not deliberate indifference, the detainee did not offer objective evidence of a serious medical need for narcotic pain medication, and failure to provide outside physical therapy was not deliberate indifference. The court noted that an orthopedic surgeon who had treated the detainee before his detention recommended to staff that the detainee receive in-cell therapy using a towel.

The court held that failure of county jail staff to provide the detainee, who suffered from hip pain, with a second mattress, did not constitute cruel and unusual punishment with respect to conditions of confinement, in the absence of evidence that a second mattress was essential medical care. (Jerome Combs Detention Center, Kankakee County, Illinois)

U.S. Appeals Court
MEDICATION

Chavarriga v. New Jersey Dept. of Corrections, 806 F.3d 210 (3d Cir. 2015). A former prisoner brought a § 1983 action in state court against the New Jersey Department of Corrections (NJDOC), the former New Jersey Attorney General, the New Jersey Commissioner of Corrections, a correctional sergeant, and various other correctional officers. The prisoner alleged that the defendants violated her constitutional rights when they transferred her from one place of confinement to another where they denied her potable water, clothing, sanitary napkins, and subjected her to an unlawful body cavity search. The district court granted summary judgment in favor of the Attorney General, Commissioner of Corrections, and correctional sergeant, and dismissed the remaining claims. The prisoner appealed. The appeals court affirmed in part and reversed in part and remanded. The appeals court held that: (1) NJDOC's policies regarding custodial placements and the Due Process Clause did not give the prisoner a liberty interest in being housed in a particular institution, as required to support a due process claim based on the prisoner's transfers among custodial facilities; (2) allegations that correctional officers deprived the prisoner of potable water were sufficiently serious so as to reach level of an Eighth Amendment violation; (3) allegations that correctional officers forced her to walk down a staircase and hallway naked in plain view of male prison personnel and inmates to reach a shower were sufficiently serious so as to reach the level of Eighth Amendment violation; (4) allegations that she was denied her sanitary napkins and medication for migraine headaches and menstrual cramps were sufficiently serious so as to reach the level of an Eighth Amendment violation; and (5) the prisoner plausibly alleged that a correctional officer maliciously searched her body cavities, as required to state a claim against the officer for using excessive force in violation of the Eighth Amendment, where the prisoner alleged facts demonstrating that a cavity search was not routine, that the cavity search was conducted in a manner that violated New Jersey regulations, and alleged that the cavity search was so painful that during the search prisoner cracked a molar while clenching her teeth. The court noted that a state has broad authority to confine an inmate in any of its institutions, and thus, courts recognize that a state's authority to place inmates anywhere within the prison system is among a wide spectrum of discretionary actions that traditionally have been the business of prison administrators rather than of the federal courts. (Garrett House Residential Community Release Facility, Edna Mahan Correctional Facility, New Jersey)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE

Coley v. Lucas County, Ohio, 799 F.3d 530 (6th Cir. 2015). The administrator of a pretrial detainee's estate brought a state court action against a county, county sheriff, police officer and police sergeant, alleging § 1983 violations of the detainee's constitutional rights and various state law claims. The district court denied the defendants' motions to dismiss and denied individual defendants' requests for qualified immunity. The defendants appealed. The appeals court affirmed. The court held that a police officer's act of shoving a fully restrained pretrial detainee in a jail booking area, causing the detainee to strike his head on the wall as he fell to the cement floor without any way to break his fall, constituted "gratuitous force" in violation of the detainee's Fourteenth Amendment right to be free from excessive force. The court noted that the detainee's state of being handcuffed, in a belly chain and leg irons, led to a reasonable inference that the officer's actions were a result of his frustration with the detainee's prior restraint behavior, since the detainee was not in any condition to cause a disruption that would have provoked the officer to use such force. The court held that the police officer was on notice that

his actions were unconstitutional, and therefore he was not entitled to qualified immunity from liability under § 1983. According to the court, the officer's attempts to cover up the assault by filing false reports and lying to federal investigators following the death of the detainee led to a reasonable conclusion that the officer understood that his actions violated the detainees' clearly established right not to be gratuitously assaulted while fully restrained and subdued.

The court held that a police sergeant's continued use of a chokehold on the unresisting, fully-shackled pre-trial detainee, after hearing the detainee choke and gurgle, and when a fellow officer was urging him release his chokehold, was objectively unreasonable, in violation of the detainee's Fourteenth Amendment right to be free from excessive force. The court noted that the sergeant's subsequent acts of telling other officers to leave the medical cell after the detainee was rendered unconscious, failing to seek medical help, and refusing to mention the use of a chokehold in incident reports, led to the inference that the sergeant was aware he violated the law and sought to avoid liability. According to the court, the police sergeant was on notice that his actions were unconstitutional, and therefore, he was not entitled to qualified immunity under § 1983.

The court found that the county sheriff could be held personally liable under § 1983, based on his failure to train and supervise employees in the use of excessive force, the use of a chokehold and injuries derived therefrom, and to ensure that the medical needs of persons in the sheriff's custody were met. According to the court, evidence that the sheriff helped his employees cover up their unconstitutional actions by making false statements to federal officials about his knowledge of his employees' assault, chokehold, and deliberate failure to provide medical attention to the detainee demonstrated that the sheriff at least implicitly authorized, approved or knowingly acquiesced in the unconstitutional conduct of the offending employees. The court noted that under Ohio law, allegations by the estate of the pretrial detainee that the county sheriff had full knowledge of the assault but intentionally and deliberately made false statements to federal officials were sufficient to state a claim that the sheriff ratified the conduct of his officers and, thus, was potentially personally liable for his officers' actions.

The court concluded that the officers' use of excessive force, failure to provide medical care, assault and battery, and wrongful death could be imputed to the sheriff in his official capacity since the sheriff's false statements to federal investigators were a position that was inconsistent to non-affirmance of the officers' actions. (Lucas County Jail, Ohio)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
INADEQUATE CARE
DELIBERATE
INDIFFERENCE

Conley v. Birch, 796 F.3d 742 (7th Cir. 2015). An inmate, who allegedly injured his hand in a physical altercation with a fellow inmate, brought a § 1983 action against a prison physician for deliberate indifference in violation of the Eighth Amendment. The district court granted summary judgment in the physician's favor, and the inmate appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the prison physician strongly suspected that the inmate's hand was fractured, precluding summary judgment in the physician's favor on the issue of whether the physician was aware of the inmate's condition on the inmate's deliberate indifference claim under the Eighth Amendment. The court also found a fact issue as to whether the prison physician acted with deliberate indifference to the inmate's serious medical needs by refusing either to promptly evaluate the inmate's suspected hand fracture or to provide appropriate precautionary treatment, such as a splint. (Vienna Correctional, Illinois)

U.S. Appeals Court
INTERFERENCE WITH
TREATMENT

DeBrew v. Atwood, 792 F.3d 118 (D.C. Cir. 2015). A federal inmate brought an action alleging that the Bureau of Prison's (BOP) response to his request for documents violated the Freedom of Information Act (FOIA), that the BOP and its officials violated the Takings and Due Process Clauses by retaining interest earned on money in inmates' deposit accounts, and that officials violated the Eighth Amendment by charging excessively high prices for items sold by the prison commissary and for telephone calls. The district court entered summary judgment in the BOP's favor and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the BOP did not violate FOIA by failing to produce recordings of the inmate's telephone conversations and that the inmate's failure to exhaust his administrative remedies precluded the court from reviewing whether the BOP conducted an adequate search. The court found that the Bureau of Prisons' (BOP) alleged practice of charging excessively high prices for items sold by prison commissary and for telephone calls did not violate Eighth Amendment. (Federal Bureau of Prisons, Washington, D.C.)

U.S. Appeals Court
DENIAL OF CARE

Dimanche v. Brown, 783 F.3d 1204 (11th Cir. 2015). A state prisoner brought a § 1983 action against prison officials, alleging he was subjected to harsh treatment in retaliation for filing grievances about prison conditions and asserting claims for cruel and unusual punishment, due process violations, and First Amendment retaliation. The district court dismissed the case for failure to exhaust administrative remedies and failure to state a claim pursuant to the in forma pauperis statute. The prisoner appealed. The appeals court reversed and remanded. The court held that the grievance sent by the state prisoner directly to the Secretary of the Florida Department of Corrections (FDOC) met the conditions for bypassing the informal and formal grievance steps at the institutional level under Florida law, and thus the prisoner satisfied the Prison Litigation Reform Act's (PLRA) exhaustion requirement with respect to his § 1983 claims alleging cruel and unusual punishment, due process violations, and First Amendment retaliation. The court noted that the prisoner clearly stated at the beginning of the grievance form that he was filing a grievance of reprisal, indicating he feared for his life and that he was "gassed in confinement for grievances [he] wrote," and clearly stated the reason for bypassing the informal and formal grievance steps, namely, his fear that he would be killed if he filed additional grievances at the institutional level, and alleged participation by high-ranking prison officials. The court found that the prisoner stated claims against prison officials for First Amendment retaliation and cruel and unusual punishment by alleging that prison guards and officials sprayed him with tear gas without provocation, denied him prompt medical care, filed false disciplinary reports, and threatened further retaliation, all in retaliation for filing grievances. (Liberty Correctional Institution, Florida)

<p>U.S. Appeals Court DENTAL CARE DELIBERATE INDIFFERENCE DELAY IN CARE</p>	<p><i>Dobby v. Mitchell-Lawshea</i>, 806 F.3d 938 (7th Cir. 2015). A state prisoner brought a § 1983 action against a correctional officer and a prison dentist, alleging that the defendants acted with deliberate indifference to his abscessed tooth. The district court granted summary judgment to the defendants, and the prisoner appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officer and the prison dentist acted with deliberate indifference to the prisoner’s serious medical need, in that the dentist did not examine the prisoner until two weeks after he reported a tooth abscess and the officer did not report the prisoner’s complaints of pain to the dentist, or to someone else on the prison’s medical staff, who could have alleviated the prisoner’s pain. (Stateville Prison, Illinois)</p>
<p>U.S. District Court CONTAGIOUS DISEASES</p>	<p><i>Doe v. New York</i>, 97 F.Supp.3d 5 (E.D.N.Y. 2015). A former inmate brought a § 1983 action against a former governor, prison doctors, and various other officials, alleging medical indifference to his Hepatitis infection in violation of the Eighth Amendment. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the inmate’s allegations were sufficient to plead the governor’s personal involvement in the creation of an alleged prison policy of not disclosing infections to inmates and only treating those with obvious symptoms. The inmate alleged that testing during routine physical and medical examinations revealed that he was infected and that he was not informed or treated, and that he was subjected to a variety of tests and that results should have put doctors on notice that he was infected, but he was never advised of an infection. The inmate alleged that a prison policy was implemented “in or about 1994” to not disclose to inmates Hepatitis infections and to only treat those with obvious symptoms, that the former governor took office in 1995, and that the governor was part of meetings discussing infection treatment and prevention. (New York State Department of Correctional Services)</p>
<p>U.S. District Court MEDICATION DELIBERATE INDIF- FERENCE</p>	<p><i>Dollar v. Gutierrez</i>, 111 F.Supp.3d 1114 (D. Nev. 2015). A prisoner brought a § 1983 action against prison medical staff, asserting that they were deliberately indifferent to his alleged serious medical needs. The district court dismissed the case. The court held that the prison medical staff’s alleged conduct of prescribing only ibuprofen and acetaminophen for the prisoner’s knee pain over a long period of time did not constitute deliberate indifference to the prisoner’s serious medical needs and thus did not violate Eighth Amendment. (Nevada Department of Corrections)</p>
<p>U.S. Appeals Court WRONGFUL DEATH MEDICAL CARE INTIMIDATION</p>	<p><i>Estate of Henson v. Wichita County, Tex.</i>, 795 F.3d 456 (5th Cir. 2015). The estate of a pretrial detainee who died from chronic obstructive pulmonary disease (COPD) while being held in a county jail brought a § 1983 action against the county, jail physician, and others, alleging violation of the detainee’s Fourth and Fourteenth Amendment rights, and asserted claims under state law for negligence and breach of contract. The district court granted in part, and denied in part, the defendants’ motions for summary judgment based on qualified immunity. The court of appeals reversed and remanded in part. The physician and county moved for reconsideration. The appeals court granted the motion and the estate appealed. The court held that there was no unstated policy of intimidation at the jail to prevent sending detainees to a hospital, and thus, the doctor could not be liable for alleged enforcement of such a policy. According to the court, the county’s multi-tiered health services plan, which provided that the county jail would employ six licensed vocational nurses, rather than registered nurses, and one jail physician, to provide medical care for pretrial detainees, and which did not require the nurses and physician to be present at jail facility at all times, but required them to be available via telephone and regularly present for sick call clinics, and provided that detainees facing emergency situations would be transported to a hospital, did not violate the due process rights of the pretrial detainee who died of chronic obstructive pulmonary disease (COPD) while held at the jail. According to the court, the county’s plan was reasonably related to its legitimate interest in providing medical attention to detainees with varying levels of need, and there was no showing that serious injury and death were the inevitable results of the plan. (Wichita County Jail, Texas)</p>
<p>U.S. District Court MEDICATIONS</p>	<p><i>Fant v. City of Ferguson</i>, 107 F.Supp.3d 1016 (E.D. Mo. 2015). City residents brought a class action lawsuit against a city, asserting claims under § 1983 for violations of Fourth, Sixth, and Fourteenth Amendments based on allegations that they were repeatedly jailed by the city for being unable to pay fines owed from traffic tickets and other minor offenses. The residents alleged that pre-appearance detentions lasting days, weeks, and in one case, nearly two months, in allegedly poor conditions, based on alleged violations of a municipal code that did not warrant incarceration in the first instance, and which were alleged to have continued until an arbitrarily determined payment was made, violated their Due Process rights. The residents alleged that they were forced to sleep on the floor in dirty cells with blood, mucus, and feces, were denied basic hygiene and feminine hygiene products, were denied access to a shower, laundry, and clean undergarments for several days at a time, were denied medications, and were provided little or inadequate food and water. The plaintiffs sought a declaration that the city’s policies and practices violated their constitutional rights, and sought a permanent injunction preventing the city from enforcing the policies and practices. The city moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) allegations that residents were jailed for failure to pay fines without inquiry into their ability to pay and without any consideration of alternative measures of punishment were sufficient to state a claim that the city violated the residents’ Due Process and Equal Protection rights; (2) the residents plausibly stated a claim that the city’s failure to appoint counsel violated their Due Process rights; (3) allegations of pre-appearance detentions plausibly stated a pattern and practice of Due Process violations; (4) allegations of conditions of confinement were sufficient to state a plausible claim for Due Process violations; and (5) the residents could not state an Equal Protection claim for being treated differently, with respect to fines, than civil judgment debtors. The court noted that the residents alleged they were not afforded counsel at initial hearings on traffic and other offenses, nor were they afforded counsel prior to their incarceration for failing to pay court-ordered fines for those offenses. (City of Ferguson, Missouri)</p>

U.S. District Court
DELIBERATE INDIF-
FERENCE
INADEQUATE CARE
FAILURE TO PROVIDE
CARE
POLICIES

Fisher v. Miami-Dade County, 114 F.Supp.3d 1247 (S.D. Fla. 2015). A former pre-trial detainee brought a § 1983 action against a county, alleging that during his detention in a county jail, county employees were deliberately indifferent to his serious medical needs. The county moved to dismiss for failure to state a claim. The district court denied the motion. The court held that the detainee: (1) sufficiently alleged that the county had policy that constituted deliberate indifference to jail detainees' serious medical needs (2) sufficiently alleged that County policymakers had notice of a pattern or practice of deliberate indifference to detainees' serious medical needs; and (3) sufficiently alleged that county policymakers failed to take action after being put on notice of the pattern of deliberate indifference to detainees' serious medical needs. According to the court, detailed allegations of a pattern of deliberate indifference to county jail detainees' medical needs, including 117 inmate deaths in the years preceding the plaintiff's detention, and 20 specific instances in which county employees withheld necessary medical care from detainees, or provided insufficient medical care, resulting in severe injury or death to those detainees, were sufficient to state a claim for municipal liability under § 1983. The court noted that direct complaints by detainees had been made to county officials, there were widespread news accounts in local newspapers and on local news television programs regarding treatment of detainees, the Department of Justice (DOJ) had conducted a three-year DOJ investigation into county employees' violations of detainees' constitutional rights, including the right to medical care, and there were more than half a dozen judicial orders from federal, state and county courts relating to detainees' medical treatment. The court noted that the detainee sufficiently alleged that county policymakers chose not to take action after being put on notice of county employees' deliberate indifference to jail detainees' serious medical needs, where the detainee alleged that systemic deficiencies occurred, including two deaths, following the mayor's promise to correct such deficiencies. (Miami-Dade Corrections and Rehabilitation Department, Florida)

U.S. District Court
PRETRIAL DETAINEE
INADEQUATE CARE
DELIBERATE
INDIFFERENCE

Frary v. County of Marin, 81 F.Supp.3d 811 (N.D.Cal. 2015). A deceased detainee's wife, mother, daughter, and estate brought an action against a county and certain county jail employees, alleging that the employees were deliberately indifferent to the detainee's serious medical needs while he was in custody. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The district court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether a deputy was aware of a substantial risk to the detainee's serious medical needs and disregarded that risk by failing to monitor the detainee more closely; (2) whether another deputy knew of and disregarded an excessive risk to the detainee's health when she failed to ascertain the circumstances of the detainee's prolonged unconsciousness, and when she falsely radioed another deputy falsely suggesting that the detainee had consciously refused breakfast; (3) whether a nurse recognized a serious risk to the detainee's health from ingesting street morphine pills and then failed to take reasonable precautionary steps to protect the detainee from that risk; (4) whether the sheriff's duties with respect to the county jail were causally connected to the alleged violations of the detainee's due process rights; (5) whether the county's policy and practice of indirect monitoring at the county jail was a moving force behind the alleged violation of the detainee's due process rights; and (6) whether the county's failure to implement policies at the county jail about how to monitor detainees with medical needs was the moving force behind the alleged violation of the due process rights of the detainee. The plaintiffs alleged that the Jail's regular practice and operating procedure was only to observe inmates indirectly, using "tower checks" where deputies looked out the tower window to observe the inmates from dozens of feet away, or listening to inmates through intercoms in their cells. (Marin County Jail, California)

U.S. District Court
INADEQUATE CARE
MEDICATION
PRIVATE PROVIDER
COSTS

Gannaway v. Prime Care Medical, Inc., 150 F.Supp.3d 511 (E.D. Pa. 2015). A state inmate brought § 1983 action against Pennsylvania Department of Corrections (DOC) employees, private companies and healthcare professionals contracted to provide medical services to DOC institutions, alleging that he received inadequate medical treatment throughout his incarceration, in violation of the Eighth Amendment, and that he was retaliated against, in violation of the First Amendment. The defendants moved for summary judgment. The district court granted the motions. The court held that private physicians employed by the vendor which contracted to provide medical services to state inmates were acting under the color of state law for the purposes of inmate's § 1983 claim that he received inadequate medical treatment in connection with an "internal stitch" from prior surgery, in violation of the Eighth Amendment. The court noted that the physicians consistently provided the inmate with medical care throughout his incarceration, and there was no indication that the physicians were aware of, or acquiesced in, the inmate's alleged deprivation of food while in a restricted housing unit (RHU). The court found that the medical providers were not deliberately indifferent to the inmate's serious medical needs, in violation of the Eighth Amendment, where the inmate received extensive medical treatment while in DOC custody, including regular medical visits, prescriptions for medication to treat pain, acid reflux, high blood pressure, and constipation, and various diagnostic testing.

The court found that there was no evidence that charges for medical co-payments and medications, which were required by DOC policy, rendered the inmate unable to obtain treatment for his purported serious medical needs, as would support his § 1983 Eighth Amendment deliberate indifference claim. (Pennsylvania State Correctional Institution (SCI) at Rockview, and Prime Care Medical).

U.S. District Court
MEDICATION
INADEQUATE CARE
FAILURE TO PROVIDE
CARE
DELIBERATE INDIF-
FERENCE

Hammond v. Rector, 123 F.Supp.3d 1076 (S.D. Ill. 2015). An inmate brought an action against employees of the Illinois Department of Corrections and a private medical company, alleging that the defendants were deliberately indifferent to his medical needs in violation of the Eighth Amendment. The district court granted the defendants' motion for summary judgment. The court held that non-medical prison staff did not show deliberate indifference to the inmate's medical needs, where the officials investigated the inmate's grievances, confirmed that he was receiving treatment for the complained of issues, and were not required to second guess the inmate's treating physicians regarding the appropriate level of care. The court found that decisions by a doctor who examined the inmate only once to deny the inmate a "physically challenged" designation and not provide additional pain medication, standing alone, were insufficient to amount to deliberate indifference to the inmate's medical needs in violation of the Eighth Amendment. (Wexford Health Sources, Inc., Pinckneyville Corr. Center, Illinois)

U.S. District Court
CELLS
POLICIES
PRIVATE PROVIDER

Hendrick v. Wexford Health Sources, Inc., 141 F.Supp.3d 393 (D. Md. 2015). A state prisoner brought a § 1983 action against prison officials, medical staff, and the corporation that provided medical services to a prison, alleging that his reassignment from a single cell to a double cell in contravention of his medical needs violated his Eighth Amendment rights. The medical staff and corporation moved to dismiss or for summary judgment. The district court granted the motion. The court held that the prisoner's allegations were insufficient to state a § 1983 claim against the private corporation that provided medical services to the prison, where the prisoner alleged no specific conduct by the corporation and did not allege a custom or policy of the corporation that resulted in a deprivation of his constitutional rights.

The court found that medical providers did not act with deliberate indifference to serious medical needs of the prisoner, who suffered from papilledema and pseudotumor cerebri, by returning him to a double cell instead of a single cell as he requested, and thus did not violate the prisoner's Eighth Amendment rights. The court noted that the medical director believed that having a cellmate would make the prisoner safer given his history of blacking out, there was no indication that the prisoner's prior placement in a single cell was an absolute medical necessity, there was no indication that the prisoner's cellmates threatened him or caused him any harm, and the prisoner's subjective concerns for his safety were insufficient to show an excessive risk to his health and safety. (North Branch Correctional Inst., and Wexford Health Sources, Inc., Maryland)

U.S. District Court
CONTAGIOUS DISEASES
ADA-American with
Disabilities Act
DELIBERATE INDIF-
FERENCE
PRIVATE PROVIDER
MEDICATIONS
SUICIDE
ALCOHOL/DRUGS
HEARING IMPAIRED

Hernandez v. County of Monterey, 110 F.Supp.3d 929 (N.D. Cal. 2015). The plaintiffs, current and recently released jail inmates seeking relief on behalf of a class, brought an action against the county, the sheriff's office, and the private company that administered jail health care facilities and services, alleging that standard conditions constituted deliberate indifference in violation of the Eighth and Fourteenth Amendments and failure to accommodate in violation of the Americans with Disabilities Act (ADA). The plaintiffs moved for a preliminary injunction. The district court granted the motion. The court held that the plaintiffs were likely to succeed on the merits in their action, alleging that county jail conditions constituted deliberate indifference in violation of Eighth and Fourteenth Amendments and failure to accommodate in violation of ADA. According to the court, there was significant evidence that the jail's policies and practices with regard to tuberculosis (TB) screening, suicide and self-harm prevention, alcohol and drug withdrawal, and continuing medical prescriptions, were non-compliant with contemporary standards and guidelines, placing inmates at risk and constituting deliberate indifference to their serious medical needs. The court noted that there was significant evidence that inmates with disabilities were excluded from access to exercise, religious services, and other meetings that were conducted in inaccessible locations, or from sign language interpreters, in violation of ADA. The court found that the plaintiffs were likely to suffer irreparable harm, absent preliminary injunctive relief, where the jail continued to fail to provide proper tuberculosis (TB) identification, isolation, diagnosis and treatment, to eliminate potential suicide hazards for unstable mentally ill patients, to continue community medications, and to properly treat inmates withdrawing from drugs and alcohol, and inmates with disabilities would continue to suffer access exclusion and lack of sign language interpreters.

The court also found that the preliminary injunction, targeting discrete county jail conditions, would be in the public interest where the public had an interest in preventing the spread of communicable diseases, enforcing the Americans with Disabilities Act (ADA), and eliminating discrimination on the basis of disability. (Monterey County Jail, California)

U.S. Appeals Court
MEDICATION

Hinojosa v. Livingston, 807 F.3d 657 (5th Cir. 2015). The mother of an inmate who died of complications from heatstroke while incarcerated brought an action against prison officials and employees, the Texas Department of Criminal Justice (TDCJ), the University of Texas Medical Branch (UTMB), and an official of UTMB, alleging that they were responsible for her son's death. Prison officials moved to dismiss on the basis of qualified immunity. The district court deferred ruling and the officials appealed. The appeals court dismissed the action, finding that it did not have jurisdiction over the appeal. The court held that the inmate's factual allegations, if true, would be sufficient to establish prison officials' liability for an Eighth Amendment violation and to overcome a qualified immunity defense, and that further clarification of the facts was necessary for the district court to rule on the prison officials' qualified immunity defense. The mother of the inmate alleged that officials subjected the inmate to dangerous heat conditions in conscious disregard of the serious risk that the heat posed for prisoners who, like the inmate, suffered from certain medical conditions, took certain medications, and had recently been transferred from air-conditioned jails to non-climate-controlled facilities. The mother alleged that the officials had promulgated and had power to change policies that allegedly caused the inmate's death, and the Eighth Amendment right not to be subjected to extremely dangerous temperatures without adequate ameliorative measures had been clearly established at the time of inmate's death. (Garza West Unit, Texas Department of Criminal Justice)

U.S. District Court
FAILURE TO PROVIDE
CARE
DENTAL CARE
MALPRACTICE

Hobbs v. Powell, 138 F.Supp.3d 1328 (N.D. Ala. 2015). The personal representative of a jail inmate's estate filed suit against the county sheriff, the captain in charge of jail guards, guards, and the physician contracted to provide health care services for the jail population, asserting claims for wrongful death, deliberate indifference to the inmate's serious medical needs, and a state law claim against the physician for medical malpractice. The jail defendants filed a motion to dismiss on the grounds of immunity, and the physician filed a motion to dismiss for failure to state claims. The district court denied the motions. The court held that: (1) the amended Alabama statute that extended qualified immunity of a sheriff and sheriff's deputies to corrections officers working in sheriffs' jails was a constitutionally permissible exercise by Alabama Legislature of its broad police power; (2) immunity under Alabama's Jailer Liability Protection Act required findings that jail personnel were acting within the scope of their official duties and that they were acting in compliance with law; (3) the personal representative adequately alleged the inmate's serious medical need; (4) the personal representative adequately alleged that the physician had subjective knowledge of, but failed to treat the inmate for an abscessed tooth; (5) the personal representative adequately alleged that the physician's failure to examine or provide any treatment to the inmate for an abscessed tooth was the cause of the inmate's death; and (6) the allegations stated a claim against the phy-

sician for medical malpractice under the Alabama Medical Liability Act. The personal representative alleged that the inmate submitted medical request forms through jail personnel for treatment of an abscessed tooth, that the physician ignored the requests, that a toothache caused noticeably severe swelling that required immediate medical attention, that inmate's pain and swelling was such that any reasonable person would know that he required immediate medical attention, and that, at some time before the inmate's release from jail several days later, the physician and/or agents of the entity that provided physician services to the jail observed the inmate through the window of a locked door but did not examine him in any way or refer him for any care. The inmate died at a hospital within hours after being released from the jail. (Winston County Jail, (Correctional Managed Care Consultants, LLC, and Winston County Jail, Alabama)

U.S. District Court
POLICIES
DELIBERATE INDIFFERENCE
JUVENILE
SUICIDE

Hughes v. Judd, 108 F.Supp.3d 1167 (M.D. Fla. 2015). Several juveniles, as representatives of other juveniles similarly situated, brought a § 1983 action asserting that the sheriff of a Florida county and the health care provider retained by the sheriff violated the juveniles' rights under the Fourteenth Amendment during the juveniles' detention at the county jail. The district court held that the plaintiffs failed to prove that either the sheriff or the health care provider was deliberately indifferent to any substantial risk of serious harm during the juveniles' detention, or that their policies or customs effected any other constitutional violation. According to the court, at most, the juveniles showed only that two persons, each of whom was qualified to testify as an expert, disfavored some of the sheriff's past or present managerial policies and practices and advocated the adoption of others they felt were superior for one reason or another. (Polk County Central County Jail, Florida, and Corizon Health, Inc.)

U.S. Appeals Court
SUICIDE

Jackson v. West, 787 F.3d 1345 (11th Cir. 2015). The estate of a detainee who committed suicide while in the custody of a county jail brought a § 1983 action against a county sheriff and against 10 corrections officers, alleging violation of the detainee's due process rights. The district court granted summary judgment in favor of three officers on qualified immunity grounds, but denied summary judgment on qualified immunity grounds with respect to the remaining officers. The remaining officers filed an appeal. The appeals court reversed, finding that the officers lacked a subjective knowledge of a strong risk that the detainee would attempt suicide, so that the officers did not act with deliberate indifference in failing to prevent the suicide. The court noted that the detainee had made explicit suicide threats and he was placed in the suicide prevention unit, as was proper protocol, and the detainee was released from that unit when prison medical staff later determined that he no longer presented such a risk. The court stated: "This case is troubling. The Marion County Jail tragically failed to keep Mr. James safe while he was incarcerated." (Marion County Jail, Florida)

U.S. District Court
FAILURE TO PROVIDE
CARE
MEDICATION

Johnson v. Clifton, 136 F.Supp.3d 838 (E.D. Mich. 2015). A pretrial detainee brought an action against a jail's medical director, alleging that, during his pretrial detention, the medical director was deliberately indifferent to his severe pain and infected ulcers. The director filed a motion for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded on the detainee's claim that the medical director knew that the detainee had an infection, but chose to not treat it with antibiotics.

According to the court, the medical director did not violate the due process clause by prescribing non-narcotic pain relievers to the detainee since the director's decision was objectively reasonable and the director was not deliberately indifferent to the detainee's pain. The court noted that the detainee has received 11 prescriptions for pain in 16 months. (Wayne County Jail, Michigan)

U.S. District Court
INADEQUATE CARE
DELIBERATE
INDIFFERENCE
PRIVATE PROVIDER

Kelly v. Ambroski, 97 F.Supp.3d 1320 (M.D. Ala. 2015). An African-American prisoner who had injured his back brought a § 1983 action against state prison officials, medical personnel, and the company providing prison medical services, alleging deliberate indifference to his serious medical need in violation of the Eighth Amendment, violation of his Fourteenth Amendment right to equal protection, and various state claims. The defendants moved for summary judgment. The district court granted the motion. The court held that the prisoner: (1) failed to show that the company maintained a policy or custom which contributed in any way to the claimed constitutional violations, as required to support a § 1983 claim; (2) did not show that the physician and the prison's health services administrator were deliberately indifferent to his back pain; (3) failed to establish that a warden and an assistant warden had any direct involvement in his medical treatment, as required to support a § 1983 claim against them for deliberate indifference to his serious medical need; and (4) the prisoner's conclusory allegations were insufficient to support an equal protection claim. According to the court, the African-American prisoner had no personal knowledge of white prisoners' medical and treatment history or their individual diagnoses to establish that they were similarly situated to him, and allegations did not establish that decisions by prison officials and medical personnel regarding his medical care were motivated by his race. The court noted that medical evidence showed that medical staff regularly examined the prisoner for his complaints of back pain, prescribed him pain medication, scheduled multiple diagnostic procedures for him, and sent him to several specialists outside of the prison, and the fact that the prisoner disagreed with the efficacy of the treatment recommended or simply preferred a different course of treatment did not amount to a constitutional claim. (Bibb Correctional Facility, and Corizon Correctional Healthcare, Alabama)

U.S. District Court
FAILURE TO PROVIDE
CARE

Kitchen v. Ickes, 116 F.Supp.3d 613 (D. Md. 2015). An inmate brought a § 1983 action against a corrections officer and a prison health care provider, alleging excessive force in the officer's use of pepper spray and deliberate indifference to a serious medical need. The officer and the provider moved to dismiss, or, in the alternative, for summary judgment. The district court granted the motion. The court held that the inmate exhausted his available administrative remedies as to his claim that the corrections officer used excessive force in spraying him with pepper spray, as required to file suit against the officer, under the Prison Litigation Reform Act (PLRA). The court noted that the inmate filed a request for an administrative remedy on the issue of alleged use of excessive force, appealed the decision rendered concerning his claim of excessive force, and subsequently filed a grievance with the inmate grievance office regarding the officer's use of pepper spray. (North Branch Correctional Institution, Maryland)

<p>U.S. District Court FAILURE TO PROVIDE CARE</p>	<p><i>Kucharczyk v. Westchester County</i>, 95 F.Supp.3d 529 (S.D.N.Y. 2015). An inmate who was allegedly denied surgery to repair a hernia brought a pro se action against a county and county jail officials under § 1983, alleging deliberate indifference to his health in violation of the Eighth Amendment prohibition of cruel and unusual punishment. The defendants moved to dismiss. The district court denied the motion, finding that the inmate had sufficiently alleged an objective deprivation of medical care and failure to act in spite of a known risk to his health. The court found that the inmate stated a claim for municipal liability, and was not required to exhaust administrative remedies. The inmate claimed that he had a hernia that required surgery, and was repeatedly denied a date for surgery to correct the hernia, and that county jail officials engaged in a widespread practice of denying necessary medical care. The court noted that a Department of Justice report had found significant medical care deficiencies at the jail. (Westchester County, N.Y. and Correct Care Solutions LLC)</p>
<p>U.S. Appeals Court DELIBERATE INDIFFERENCE SUICIDE</p>	<p><i>Letterman v. Does</i>, 789 F.3d 856 (8th Cir. 2015). Parents of a deceased prisoner, who died from injuries suffered while in jail, brought a § 1983 action against a prison sergeant, lieutenant, and case manager, alleging that the employees were indifferent to the prisoner's medical needs. The prisoner had been arrested for possession of marijuana and was given a 120 "shock sentence" in confinement. He became suicidal and was transferred to a padded cell at the request of mental health personnel. He was to have been personally observed every 15 minutes by staff and procedure required the prisoner to give a verbal response each time. After a shift change, the oncoming officer decided to monitor the prisoner via closed circuit television rather than making the required in-person rounds. During the shift, the prisoner injured himself in the cell and eventually died from his injuries. The district court denied the employees' motion for summary judgment, based on assertions of qualified immunity. The employees appealed. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether a prison sergeant, who was in charge of the unit where prisoner was kept, and a lieutenant, were deliberately indifferent to the risk of harm to the prisoner who died from injuries allegedly sustained in a padded cell. (Missouri Western Reception, Diagnostic and Correction Center)</p>
<p>U.S. District Court INADEQUATE CARE</p>	<p><i>McNeill v. Allen</i>, 106 F.Supp.3d 711 (W.D. N.C. 2015). A pre-trial detainee in a county detention facility brought an action against county sheriff's office captain under § 1983, alleging deliberate indifference to his medical needs in violation of the Fourteenth Amendment. The district court dismissed the case, finding that the detainee failed to plead personal involvement as required to maintain claim against sheriff's captain in his individual capacity under § 1983. The detainee alleged that jail staff did not adequately treat him for injuries he suffered after slipping on water in his jail cell. (Buncombe County Sheriff's Office and Jail, N. Carolina)</p>
<p>U.S. Appeals Court DENTAL CARE</p>	<p><i>Mead v. Palmer</i>, 794 F.3d 932 (8th Cir. 2015). A civilly committed sex offender brought a § 1983 action against a nurse and the civil commitment unit's director, alleging that they were deliberately indifferent to his serious medical needs. The district court denied the defendants' motion for qualified immunity from suit. The defendants appealed. The appeals court reversed and remanded. The court held that the nurse and the civil commitment unit's director did not deny the offender essential dental care by refusing his request for dentures, and thus were not deliberately indifferent to his serious medical needs in violation of the Fourteenth Amendment. The court noted that the offender was never prescribed dentures as a medical necessity, and despite his claims of inability to chew and discomfort, he was still able to eat and consume adequate calories and nutrition, he actually gained weight, and he never asked for a soft diet. (Iowa Department of Human Services, CCUSO Unit Cherokee Mental Health Institute)</p>
<p>U.S. Appeals Court DELAY IN CARE FAILURE TO PROVIDE CARE DELIBERATE INDIFFERENCE</p>	<p><i>Miller v. Campanella</i>, 794 F.3d 878 (7th Cir. 2015). An Illinois state inmate brought a § 1983 action against prison medical and administrative personnel, alleging deliberate indifference to his gastroesophageal reflux disease. The district court granted the defendants' summary judgment motion. The inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether prison medical and administrative personnel knew that the inmate had gastroesophageal reflux disease, which was a very unpleasant, potentially dangerous, yet readily treatable disease, and yet did nothing for two months. (Lawrence Correctional Center, Illinois)</p>
<p>U.S. District Court MEDICAL DIET</p>	<p><i>Montalvo v. Lamy</i>, 139 F.Supp.3d 597 (W.D.N.Y. 2015). An inmate brought an action against a sheriff, prison officials and a commissary, alleging that he was a diabetic and that, while incarcerated, he was not provided with a medically appropriate diet, was not permitted to purchase food items from the prison commissary, and was the subject of false misbehavior reports when he complained about his dietary issues. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate failed to allege that the prison commissary, operated by a private company, was acting under the color of state law, as required to state constitutional claims against the commissary. The court noted that the inmate did not allege that the commissary had a policy of denying commissary access to diabetic prisoners or had the authority to override the prison's policy with respect to inmates with dietary restrictions, and instead, alleged that the prison maintained a policy of limiting commissary access for prisoners with dietary restrictions. (Erie County Holding Center, New York)</p>
<p>U.S. District Court DELAY IN CARE DELIBERATE INDIF- FERENCE</p>	<p><i>Montoya v. Newman</i>, 115 F.Supp.3d 1263 (D. Colo. 2015). A former county jail detainee brought a § 1983 action against a sheriff, jail detention officer, and jail medical staff member, and a physician, alleging deliberate indifference to his serious medical needs. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the summary judgment was precluded by a genuine issue of material fact as to whether a county jail detention officer was aware of the detainee's serious medical need and was deliberately indifferent to that need when he failed to arrange for the detainee to see a doctor for at least two days, despite knowing that the detainee was coughing up bloody phlegm, had trouble breathing, and was not eating. The officer was also allegedly told by two other detainees, as well as the detainee's sister, and the detainee himself, the detainee needed to see a doctor. (Huerfano County Jail, Colorado)</p>

<p>U.S. Appeals Court DELAY IN CARE INADEQUATE CARE DELIBERATE INDIFFERENCE</p>	<p><i>Nally v. Ghosh</i>, 799 F.3d 756 (7th Cir. 2015). A state inmate filed a § 1983 action alleging that a prison’s medical staff was deliberately indifferent to his serious medical condition. The district court dismissed the complaint and the inmate appealed. The appeals court reversed and remanded, finding that dismissal on limitations grounds was not warranted. According to the court, the issue of when the state inmate learned that he was diabetic or pre-diabetic presented a fact question that could not be resolved on a motion to dismiss on limitations grounds the inmate’s § 1983 action alleging that the prison’s medical staff was deliberately indifferent to the results of blood tests, administered over a period of more than five years, that indicated that he was either diabetic or pre-diabetic, or had progressed from pre-diabetic to diabetic during period. (Stateville Prison, Illinois)</p>
<p>U.S. District Court MEDICATION FAILURE TO PROVIDE CARE INADEQUATE CARE DELIBERATE INDIFFERENCE</p>	<p><i>Niemiec v. UMass Correctional Health</i>, 89 F.Supp.3d 193 (D.Mass. 2015). A state inmate brought an action against employees of a former prison medical provider, alleging under § 1983 that the employees were deliberately indifferent to his serious medical needs in connection with his ongoing treatment for a variety of ailments, including severe back pain, migraine headaches, and hepatitis B and C, and that the employees violated the Massachusetts Civil Rights Act (MCRA). The employees moved for summary judgment. The district court granted the motion. The court held that: (1) the physician who treated the inmate over the course of several years was not deliberately indifferent to his serious medical needs; (2) the physician was not liable with respect to a claim based on discontinuance of a methadone prescription; (3) a nurse was not deliberately indifferent to the inmate’s serious medical needs; (4) a nurse practitioner was not deliberately indifferent to the inmate’s serious medical needs; (5) the medical director was not subject to supervisory liability; and (6) the inmate’s failure to receive a preferred pain medication or treatment program did not rise to a due process violation. (UMass Correctional Health, Souza–Baranowski Correctional Center, Massachusetts)</p>
<p>U.S. Appeals Court TRANSEXUAL</p>	<p><i>Norsworthy v. Beard</i>, 802 F.3d 1090 (9th Cir. 2015). A transsexual female prison inmate filed a § 1983 action against prison officials and medical staff for denying necessary medical treatment for the inmate’s gender dysphoria, in violation of the Eighth Amendment. The district court issued a preliminary injunction ordering the officials to provide the inmate with sex reassignment surgery, and the officials appealed. The injunction was stayed. The appeals court reversed and remanded, finding that the inmate’s release from prison rendered the action moot, and remand was warranted for determination of whether her release while her appeal was pending was the result of the officials’ actions. (California Department of Corrections and Rehabilitation)</p>
<p>U.S. District Court TRANSEXUAL GID- Gender Identify Disorder DELIBERATE INDIFFERENCE</p>	<p><i>Norsworthy v. Beard</i>, 87 F.Supp.3d 1104 (N.D.Cal. 2015). A transsexual female prison inmate brought a § 1983 action against prison officials and medical staff for denying necessary medical treatment for the inmate’s gender dysphoria in violation of Eighth Amendment. The inmate also alleged that the officials were deliberately indifferent to her medical needs and deprived her of her right to equal protection under the law when they denied her sex reassignment surgery. The officials moved to dismiss for failure to state a claim. The district court granted the motion in part and denied the motion in part. The court held that: (1) the inmate stated a claim for prospective injunctive relief; (2) the inmate stated an Eighth Amendment deliberate indifference claim based on denial of the request for sex reassignment surgery; (3) the inmate stated an equal protection claim; but (4) the inmate failed to state an Eighth Amendment deliberate indifference claim based on denial of a request for a legal name change. (Mule Creek State Prison, California)</p>
<p>U.S. District Court TRANSEXUAL GID- Gender Identify Disorder DELIBERATE INDIFFERENCE</p>	<p><i>Norsworthy v. Beard</i>, 87 F.Supp.3d 1164 (N.D.Cal. 2015). A transsexual female prison inmate brought a § 1983 action against prison officials and medical staff for denying necessary medical treatment for the inmate’s gender dysphoria in violation of Eighth Amendment. The inmate moved to strike expert testimony and for a preliminary injunction requiring the defendants to provide her with sex reassignment surgery (SRS). The defendants moved for judicial notice. The district court granted the motions in part and denied in part. The district court found that the expert report of a psychiatrist retained by the officials and medical staff would not be stricken for failure to comply with the requirements for disclosure of expert qualifications, and that the expert was qualified to testify regarding prison culture and the treatment that incarcerated persons with gender dysphoria should receive. The court noted that notwithstanding years of treatment in the form of hormone therapy and counseling, the inmate continued to experience severe psychological pain, and that the treating and examining psychologists agreed the inmate met the eligibility criteria for SRS under the standards of care for treating transsexual patients.</p> <p>The court held that: (1) the inmate was likely to succeed on the merits of the Eighth Amendment claim; (2) the inmate was suffering irreparable harm that would likely continue absent a preliminary injunction; (3) the balance of equities weighed in favor of granting an injunction; (4) it was in the public interest to grant an injunction; and (5) an injunction would meet the requirements of the Prison Litigation Reform Act (PLRA). (Mule Creek State Prison, California)</p>
<p>U.S. Appeals Court DELAY IN CARE DELIBERATE INDIFFERENCE PRIVATE PROVIDER</p>	<p><i>Perez v. Fenoglio</i>, 792 F.3d 768 (7th Cir. 2015). An inmate brought a pro se § 1983 action against prison officials alleging cruel and unusual punishment in violation of the Eighth Amendment, in particular, that the officials were deliberately indifferent to his severe hand injury, delaying his receipt of medically necessary surgery for ten months. After twice denying the inmate’s request for pro bono counsel, the district court dismissed the action with prejudice, for failure to state a claim. The inmate appealed and appellate counsel was appointed. The appeals court reversed and remanded. The court held that: (1) the inmate stated a claim against a prison physician for such serious delays in the provision of adequate treatment that the Eighth Amendment may have been violated; (2) the inmate stated a claim against a prison nurse for deliberate indifference; (3) the inmate sufficiently identified an unconstitutional policy or practice to state a claim under § 1983 against the private corporation that served as the prison’s health care provider; (4) the inmate stated a claim for deliberate indifference against the prison’s health care administrator; (5) the inmate stated a claim for deliberate indifference against prison grievance officials; (6) the inmate stated a valid First Amendment retaliation claim; and (7) the district court’s denial of the inmate’s request for pro bono counsel was not unreasonable. (Lawrence Correctional Center, Illinois)</p>

<p>U.S. Appeals Court INADEQUATE CARE DELIBERATE INDIFFERENCE</p>	<p><i>Petties v. Carter</i>, 795 F.3d 688 (7th Cir. 2015). A state prisoner brought a § 1983 action against two prison doctors, alleging that they were deliberately indifferent to his serious medical needs by failing to provide adequate medical care for his torn Achilles tendon. The district court granted summary judgment in favor of the doctors. The prisoner appealed. The appeals court affirmed, finding that a doctor's failure to order immediate immobilization of the prisoner's ankle with a splint or boot did not amount to deliberate indifference under the Eighth Amendment, and a doctor's failure to order physical therapy for the prisoner did not amount to deliberate indifference. According to the court, the doctor exempted the prisoner from walking to meals, prescribed pain medication, an anti-inflammatory, and crutches, and the doctor ordered an immediate magnetic resonance imaging (MRI) scan and referred him to an orthopedist, all of which amounted to meaningful and ongoing treatment for the prisoner's injury. (Stateville Correctional Center, Illinois)</p>
<p>U.S. District Court HEARING IMPAIRED ADA- Americans with Disabilities Act RA- Rehabilitation Act</p>	<p><i>Pierce v. District of Columbia</i>, 128 F.Supp.3d 250 (D.D.C. 2015). A deaf inmate who communicated with American Sign Language (ASL), but who had been forced to communicate with staff and other inmates only through lip-reading and written notes due to the lack of an interpreter to assist him, filed suit against the District of Columbia alleging discrimination and retaliation in violation of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Both sides moved for summary judgment. The district court granted the inmate's motion in part and denied the defendant's motion. The court held that: (1) the prison had affirmative duty to evaluate the newly incarcerated deaf inmate's accommodation requirements, and its failure to do so denied the inmate benefits under the Rehabilitation Act and ADA; (2) the prison was deliberately indifferent to the deaf inmate's need for accommodation, as would support an award of compensatory damages; and (3) summary judgment was precluded by a genuine issue of material fact as to whether the prison had placed the inmate in protective custody, and kept him there, because of the inmate's constant requests for accommodation. The court noted that the inmate's need for accommodation was obvious, in that the inmate did not speak and communicated only through American Sign Language (ASL), and the prison was required to identify precise limitations resulting from the disability and potential reasonable accommodations by way of an interactive assessment of the inmate. According to the court, the inmate's request for an American Sign Language (ASL) interpreter to assist him during anger management and substance abuse classes was sufficient to put the prison on notice that deaf inmate might need a similar accommodation to communicate effectively in other prison situations, such as in inmate programs, hall meetings, the orientation process, protective custody proceedings, graphic arts class, and medical consultations. (Correctional Treatment Facility, District of Columbia)</p>
<p>U.S. District Court DENTAL CARE DELAY IN CARE DELIBERATE INDIFFERENCE</p>	<p><i>Proctor v. Horn</i>, 95 F.Supp.3d 1242 (D. Nev. 2015). A state prisoner brought a § 1983 action against the state's department of corrections, a dentist, a dental assistant, a dental technician, and the prison's nursing director, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The parties moved for summary judgment. The district court denied the prisoner's motion, and granted the defendants' motion in part and denied in part. The court held that the dental assistant's responses to the prisoner's written requests regarding dental care did not show that she was deliberately indifferent to his serious medical needs, and that the dental technician's responses to prisoner's written requests regarding dental care did not amount to deliberate indifference. According to the court, when the prisoner asked about his status concerning referral to an oral surgeon, the assistant responded that the dentist would review his chart and that the matter would be determined by the prison's review panel. The court found that there was no evidence that the brief delay during the period of time that the assistant was responding to the prisoner's requests caused any harm, given that he saw the oral surgeon less than two months after his first request.</p> <p>The court held that summary judgment was precluded by a fact dispute as to whether the prisoner suffered harm as a result of the two month delay between complaints of pain and his receipt of dental care. (Nevada Department of Corrections, Northern Nevada Correctional Center)</p>
<p>U.S. Appeals Court TRANSSEXUAL GID- Gender Identity Disorder FAILURE TO PROVIDE CARE</p>	<p><i>Reid v. Griffin</i>, 808 F.3d 1191 (8th Cir. 2015). A prisoner, who was born male but identified as female, and who had performed a self-castration, brought a § 1983 action alleging that refusal by a prison, the prison medical director, the prison doctor, and the prison health psychiatrist to provide hormone-replacement therapy for Gender Identity Disorder (GID) was deliberate indifference to the prisoner's serious medical needs in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion. The prisoner appealed. The appeals court affirmed, finding that the defendants were not deliberately indifferent to the prisoner's serious medical needs. According to the court, in denying the prisoner estrogen-replacement therapy, the prison medical director, prison health psychiatrist, and prison doctor were not deliberately indifferent to prisoner's medical needs in violation of Eighth Amendment, where numerous mental-health professionals evaluated the prisoner, but none had diagnosed Gender Identity Disorder (GID) or concluded that GID treatment was appropriate, and the prisoner had several other mental health issues for which the prisoner received treatment and monitoring. (Varner Super Max Unit, Arkansas Dept. of Correction)</p>
<p>U.S. Appeals Court TRANSSEXUAL GID- Gender Identify Disorder DELIB. INDIFFERENCE FAILURE TO PROVIDE CARE</p>	<p><i>Rosati v. Igbinoso</i>, 791 F.3d 1037 (9th Cir. 2015). A transgender inmate brought a pro se § 1983 action alleging that prison officials violated the Eighth Amendment by their deliberate indifference to her serious medical needs. The district court dismissed the action without leave to amend. The inmate appealed. The appeals court reversed and remanded, finding that the inmate's complaint, alleging that she suffered from severe gender dysphoria for which male-to-female sexual reassignment surgery (SRS) was the medically necessary treatment, but that prison officials refused to provide the surgery, stated a cause of action under Eighth Amendment. (Pleasant Valley State Prison, California)</p>

U.S. Appeals Court
MEDICATION
FAILURE TO PROVIDE
CARE
PRIVATE PROVIDER

Rowe v. Gibson, 798 F.3d 622 (7th Cir. 2015). A prisoner brought § 1983 claims against prison administrators and employees of a prison medical services company, claiming that the defendants were deliberately indifferent to his serious medical needs by preventing him from having access to heartburn medication before he ate meals, and by denying him access to prescribed, rather than over-the-counter, heartburn medication for 33 days, in violation of the Eighth Amendment. The district court granted summary judgment to the defendants. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court found that summary judgment was precluded by issues of fact as to whether restricting the time the prisoner took heartburn medication, several hours after a meal, departed from professional practice, and whether prison medical staff told the prisoner that they were withholding the prisoner's heartburn medication to convince the prisoner not to file lawsuits. (Corizon, Inc., and Pendleton Correctional Facility, Indiana)

U.S. District Court
PRIVATE PROVIDER
POLICIES AND PRO-
CEDURES
INTAKE SCREENING

Sanders v. Glanz, 138 F.Supp.3d 1248 (N.D. Okla. 2015). A pretrial detainee's guardian filed a § 1983 action against a sheriff, the jail's private healthcare providers, and a booking nurse to recover for injuries that the detainee suffered from a severe assault by fellow prisoners. The defendants filed for dismissal. The district court granted the motions in part and denied in part. The court held that the detainee, who had been assaulted by other county jail inmates, stated a plausible municipal liability claim under § 1983 against the corporation that assisted in developing the sheriff's policies with respect to medical and mental health care of inmates, where the detainee alleged that the corporation shared responsibility with the sheriff to adequately train and supervise its employees, and that the corporation's policies, practices, and customs posed substantial risks to inmates' health and safety, but failed to take reasonable steps to alleviate those risks.

The court found that the detainee's allegations were sufficient to state a plausible claim against the sheriff in his individual capacity by alleging that the sheriff was responsible for creating and enforcing regulations, policies, practices, and customs at the county jail, and that pursuant to those practices, policies, and customs, the jail maintained a longstanding, constitutionally deficient system of medical and mental health care. According to the court, the sheriff knew of substantial risks created by that system but failed to take reasonable steps to alleviate the risks, but instead took intentional and active steps to conceal the dangerous conditions at the jail, and the sheriff disregarded known and obvious risks of severe harm from lack of adequate mental health assessment and treatment, classification, supervision, or protection. (David L. Moss Criminal Justice Center, Tulsa County Sheriff, Oklahoma, Correctional Healthcare Management, Inc. and, Correctional Healthcare Management of Oklahoma, Inc.)

U.S. Appeals Court
TRAINING
PRIVATE PROVIDER
FAILURE TO PROVIDE
CARE
NEGLIGENCE

Shadrick v. Hopkins County, Ky., 805 F.3d 724 (6th Cir. 2015). The mother of deceased inmate brought a § 1983 action against a county and a medical provider, which contracted with county to provide medical services to county inmates, alleging that the medical provider's failure to train and supervise its nurses violated the inmate's constitutional right to adequate medical care and that the medical provider was negligent under state law. The twenty-five year old inmate had entered the jail to serve a short sentence for a misdemeanor offense. He died three days later from complications of an untreated methicillin-resistant staphylococcus aureas (MRSA) infection. The district court granted summary judgment in favor of the medical provider. The mother appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether the medical provider's training program was inadequate, whether the inadequacy resulted from its deliberate indifference to inmate's right to adequate medical care, and whether the inadequacy caused, or was closely related to, the inmate's death. The court noted that the nurses were required to make professional judgments outside their area of medical expertise, and unless training was provided, the nurses lacked knowledge about the constitutional consequences of their actions or inactions in providing medical care to inmates.

The court found that the medical provider did not derive its existence and status from the county, and thus was not entitled to share the county's governmental immunity on a Kentucky negligence claim. The court noted that nearly all of the inmate's medical conditions-- high blood pressure, rheumatoid arthritis, gout, osteoporosis, and staph infection-- had been diagnosed by a private physician as mandating treatment, and deputy jailers could tell that the inmate needed prompt medical treatment even though they did not have the same medical training as the nurses who were employed at the county jail. (Hopkins County Detention Center, Southern Health Partners, Inc., Kentucky)

U.S. District Court
PRIVATE PROVIDER
INADEQUATE CARE

Shehee v. Saginaw County, 86 F.Supp.3d 704 (E.D.Mich. 2015). A diabetic inmate at a county jail, who fainted due to low blood sugar and broke his neck, brought a § 1983 action against the county and the private contractor that provided medical services to the jail, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion. The court held that the jail's medical director did not have authority to make a final policy regarding medical decisions, as required to hold the contractor and county liable under § 1983. The court found that the director's alleged practices of having limited contact with inmates, providing occasional care, and providing phoned-in treatment did not show deliberate indifference. (Saginaw County Jail, Michigan)

U.S. District Court
FAILURE TO PROVIDE
CARE
MEDICATION
DENTAL CARE

Shorter v. Baca, 101 F.Supp.3d 876 (C.D. Cal. 2015). A pretrial detainee brought an action against a county, sheriff, and deputies, alleging under § 1983 that the defendants denied her medical care, subjected her to unsanitary living conditions, deprived her of food, clean clothes, and access to exercise, and conducted overly invasive searches. The detainee had been classified as mentally ill and housed in a mental health unit at the detention facility. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to what policies governed classification of pretrial detainees who were mentally ill. The court found that there was no evidence that county jail employees' alleged failure to adequately treat the detainee's blood condition caused her measurable harm, where there was no indication that the alleged denial of treatment caused the detainee any physical pain, or that any mental anguish the detainee suffered was related to denial of her medication. The

court denied summary judgment to the defendants on the detainee's claim that she was denied dental treatment. (Century Regional Detention Facility, Los Angeles County, California)

U.S. District Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE
NEGLIGENCE
PRIVATE PROVIDER

Simmons v. Corizon Health, Inc., 122 F.Supp.3d 255 (M.D.N.C. 2015). The guardians and conservators of a county jail inmate, who suffered a catastrophic hypoxic brain injury after going into cardiac arrest caused by excessive internal bleeding from a perforated ulcer, brought an action against the jail medical provider, the county, the sheriff, and the local government excess liability fund, asserting claims for deliberate indifference, negligence, and loss of consortium. The provider moved to dismiss for failure to state a claim, and the remaining defendants moved to dismiss for failure to state a claim and for lack of personal jurisdiction. The district court granted the motions in part and denied in part. The court held that the medical provider's alleged violation of its contract with the county, which required it to comply with standards set by the National Commission on Correctional Health Care, with respect to its treatment of the county jail inmate could not serve as a basis for the inmate's negligence claim under North Carolina law.

The court found that the inmate and his guardians and conservators stated a deliberate indifference claim against the medical provider by alleging that the inmate made the provider's staff aware that he was experiencing severe stomach pain and was vomiting blood, that medical records documented the vomiting of blood, decreased urine output, and no bowel movements for two weeks, that despite his repeated complaints of severe stomach pain and vomiting blood, he received no further medical care and was not provided a physician consultation, and that shortly thereafter, he went into cardiac arrest caused by excessive internal bleeding from a perforated ulcer. The court also found that the allegations were sufficient to support a claim for punitive damages under § 1983.

According to the court, the fact that the county allegedly contracted out to the private medical provider did not preclude its obligation to provide inmates with medical care and the county could be held liable under § 1983 for the provider's allegedly constitutionally inadequate medical care of the inmate. The court noted that the provider was allegedly delegated some final policymaking authority and the county allegedly failed to review the provider's policies, such that some of the provider's policies became those of the county. (*Corizon Health, Inc.*, and Guilford County Jail, North Carolina)

U.S. District Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE
NEGLIGENCE

Simmons v. Corizon Health, Inc., 136 F.Supp.3d 719 (M.D.N.C. 2015). A county jail inmate, who suffered a catastrophic hypoxic brain injury after going into cardiac arrest caused by excessive internal bleeding from a perforated ulcer, brought a § 1983 action against the jail medical provider, the county, the sheriff, and the local government excess liability fund, asserting claims for deliberate indifference, negligence, and loss of consortium on the part of the inmate's guardian and conservator. After the district court denied the sheriff's motion to dismiss, the sheriff moved for reconsideration. The district court granted the motion, finding that a single, isolated prior alleged incident was insufficient to establish the sheriff's office policy or custom of deliberate indifference to the medical needs of prisoners, and the inmate failed to state a claim for deliberate indifference to the inmate's serious medical needs based on failure to train sheriff's deputies. (*Corizon Health Inc.* and Guilford County Sheriff, North Carolina)

U.S. District Court
FAILURE TO PROVIDE
CARE

Smith v. Eovaldi, 112 F.Supp.3d 779 (S.D. Ill. 2015). A state inmate, proceeding in forma pauperis, brought a § 1983 action against several prison officers, alleging use of excessive force and exposure to inhumane conditions in his cell. The prisoner alleged that after he had a "negative outburst" and was "maced" by a lieutenant and removed from his cell by a corrections officer, he was taken to an infirmary bullpen, where he was forced to lie on the floor. While he was on the floor, the prisoner alleged that officers kicked and punched him for ten minutes, causing him to defecate upon himself. He alleged that after the incident, he was stripped of his prison clothes and "inadequately seen" by "medical" personnel. At the screening stage of the case, the district court dismissed the complaint in part against some defendants, but declined to dismiss with regard to the others. The court held that the inmate sufficiently alleged § 1983 claims against several prison officers for use of excessive force by alleging that the officers engaged in prolonged attacks against him and that one officer subsequently attacked him again. The court allowed the prisoner's claims against several prison officers regarding conditions of his confinement to proceed. The prisoner alleged that two officers did not feed him for several days after the alleged attack against him, that two other officers did not allow the inmate to shower or otherwise clean off fecal matter for several months, and that two other officers denied him hygiene products and warm clothing during winter months. (Menard Correctional Center, Illinois)

U.S. District Court
PRIVATE PROVIDER
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Stojcevski v. County of Macomb, 143 F.Supp.3d 675 (E.D. Mich. 2015). A former county jail inmate, individually and as the administrator of the estate of his brother, who died after being incarcerated at the same jail, brought an action against a county, county officials and employees, the jail's private medical provider, and the provider's employees, alleging deliberate indifference to medical needs and municipal liability under § 1983 and gross negligence under state law. The defendants moved to dismiss. The court held that the employees' delegation of medical care of the inmate to an outside contractor did not entitle them to qualified immunity on Eighth Amendment deliberate indifference claims arising from the inmate's death. According to the court, regardless of the county's reliance on the contractor, if the employees were aware of a risk to the inmate's health, drew the inference that a substantial risk of harm to the inmate existed, and consciously disregarded that risk, they too would be liable for the inmate's injuries under § 1983. The court found that allegations by the administrator of the estate were sufficient to state a *Monell* claim against the county and the jail's private medical provider for municipal liability under § 1983. The court noted that although many of the policies and procedures set forth by the administrator in support of his claim, such as failure to adhere to national standards, did not state a constitutional violation, the examples of where such standards were not followed were factual allegations supporting his assertion that inmates at the jail were not afforded adequate medical treatment. (Macomb County Jail, Michigan)

<p>U.S. Appeals Court ADA- Americans with Disabilities Act DISCRIMINATION REHABILITATION ACT WHEELCHAIR</p>	<p><i>Turner v. Mull</i>, 784 F.3d 485 (8th Cir. 2015). A state inmate filed a § 1983 action alleging that correctional officials violated his rights under the Eighth Amendment, Fourteenth Amendment, Title II of the Americans with Disabilities Act (ADA), and Rehabilitation Act by failing to transport him in wheelchair-accessible van, exposing him to unsanitary conditions in the van, and retaliating against him for filing a complaint. The district court entered summary judgment in the officials’ favor and the inmate appealed. The appeals court affirmed. The appeals court held that the officials were not deliberately indifferent to the inmate’s serious medical needs when they precluded him from using a wheelchair-accessible van, even if the inmate was required to crawl into the van and to his seat. The court noted that the inmate was able to ambulate, stand, and sit with the use of leg braces and crutches, the inmate did not ask to use a readily available wheelchair, no physician ordered or issued a wheelchair for the inmate, and improperly using or standing on a lift was considered dangerous due to the possibility of a fall.</p> <p>According to the court, officials were not deliberately indifferent to the serious medical needs of the inmate in violation of Eighth Amendment when they required him to be transported and to crawl in an unsanitary van, where the inmate was exposed to unsanitary conditions on a single day for a combined maximum of approximately six hours.</p> <p>The court found that prison officials did not discriminate against the inmate on the basis of his disability, in violation of the Rehabilitation Act, when they refused to transport him in a wheelchair-accessible van, where the prison’s wheelchair-users-only policy was rooted in concerns over undisputed safety hazards associated with people standing on or otherwise improperly using a lift, and the inmate did not use a wheelchair or obtain a physician’s order to use a wheelchair-accessible van. (Eastern Reception Diagnostic Correctional Center, Missouri)</p>
<p>U.S. Appeals Court WHEELCHAIR TRANSPORTATION ADA- Americans with Disabilities Act REHABILITATION ACT</p>	<p><i>Wagoner v. Lemmon</i>, 778 F.3d 586 (7th Cir. 2015). A paraplegic inmate filed a § 1983 action alleging that a state department of corrections and its commissioner failed to properly accommodate his disability, in violation of his constitutional rights, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The district court entered summary judgment in the defendants’ favor and the inmate appealed. The appeals court affirmed. The court found that the officials did not violate the paraplegic inmate’s rights under Title II of ADA or the Rehabilitation Act as a result of their failure to provide him with an adequate wheelchair backrest or a wheelchair-ready van, despite the inmate’s allegation that he was inconvenienced with longer waits and humiliation, as when he had to crawl off a regular van because it did not accommodate his wheelchair. The court noted that the inmate did not assert that he was denied all access to some programs and activities, or that his access to others was severely limited, and the state provided the inmate with a new wheelchair before he filed his grievance about the backrest. (Indiana Department of Corrections)</p>
<p>U.S. Appeals Court FEMALE PRISONERS FAILURE TO PROVIDE CARE TRANSPORTATION TRANSFER</p>	<p><i>White v. Bukowski</i>, 800 F.3d 392 (7th Cir. 2015). A pregnant county prisoner brought a civil rights action under § 1983 against a county sheriff’s office, alleging violation of her Eighth Amendment rights, alleging deliberate indifference to her need for proper prenatal care and prompt transport to a hospital for delivery of her baby while she was in their temporary custody. The county moved to dismiss. The district court granted the motion and the prisoner appealed. The appeals court reversed and remanded, finding that no administrative remedies were available, and thus the prisoner did not fail to exhaust administrative remedies under the requirements of the Prison Litigation Reform Act. The prisoner alleged that the delay in her transport to the hospital contributed to her baby’s birth defects. According to the court, the prisoner had no opportunity to grieve the delay in transport until after the harm was done, the prisoner was uninformed about any deadline for filing a grievance, the prisoner would not have known that she would be transferred to another jail four days after returning from the hospital, and the prisoner could not have filed a grievance after she was transferred. (Kankakee County Jail, Illinois)</p>
<p>U.S. District Court FAILURE TO PROVIDE CARE DELIBERATE INDIF- FERENCE MEDICATIONS</p>	<p><i>White v. Clement</i>, 116 F.Supp.3d 183 (W.D.N.Y. 2015). A state prisoner sued the New York State Department of Corrections and Community Supervision (DOCCS) and a superintendent, two physicians, a registered nurse, a nurse administrator, and a chief medical officer (CMO), who were employed by DOCCS, claiming violation of the Eighth Amendment by denying adequate medical care. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a registered nurse ignored the prisoner’s excruciating pain and vomiting up blood from adverse reactions to his prescription medications, in retaliation for the prisoner’s filing of prison grievances. The court also held that summary judgment was precluded by a genuine issue of material fact remained as to whether the registered nurse refused to treat or to document the prisoner’s excruciating pain and vomiting up blood from his adverse reaction to his prescription medications. (New York State Department of Corrections and Community Supervision, Southport Correctional Facility)</p>
<p>U.S. District Court SUICIDE PRIVATE PROVIDER FAILURE TO PROVIDE CARE</p>	<p><i>White v. Washington County, Tenn.</i>, 85 F.Supp.3d 955 (E.D.Tenn. 2015). The mother of a county jail detainee who committed suicide in custody brought an action against the county, county sheriff, and the private contractor that provided health care services to county jail inmates, alleging federal constitutional claims and state-law negligence claims. The defendants moved to dismiss. The court held that claims against the private health care provider were “health care liability claims,” under Tennessee law, for which the mother was required to a file certificate of good faith and a pre-suit notice of a potential claim, where the mother asserted that the provider failed to properly assess or provide adequate care for detainee’s mental health issues. (Washington County Jail, Tennessee)</p>
<p>U.S. District Court DELIBERATE INDIFFERENCE FAILURE TO PROVIDE CARE</p>	<p><i>Woodson v. City of Richmond, Virginia</i>, 88 F.Supp.3d 551 (E.D.Va. 2015). A city jail inmate brought an action against city, sheriff, and deputies, alleging deliberate indifference to the inmate’s medical needs during a severe heat wave. The sheriff moved for summary judgment. The district court held that summary judgment was precluded by genuine issues of material fact as: (1) whether the sheriff instituted a policy of confining inmates with medical issues to their cells during mealtime, denying the inmates access to air conditioning in the dining hall; (2) whether the sheriff’s decisions to keep inmates confined would qualify as a policy; (3) whether the sheriff</p>

was subjectively aware that conditions at the jail posed a substantial risk of harm to inmates; (4) whether the sheriff was subjectively aware that his response to the risks posed to inmates by excessive heat was inadequate; (5) whether the sheriff's policy caused the inmate's injuries; (6) whether the sheriff's alleged failure to investigate two instances of heat-related deaths at the jail, was not persistent and widespread; and (7) whether the sheriff had at least a constructive knowledge of his deputies' alleged failure to perform required 30-minute security checks at a flagrant and widespread level. (Richmond City Jail, Virginia)

U.S. District Court
RESTRAINTS

Young v. District of Columbia, 107 F.Supp.3d 69 (D.D.C. 2015). A pretrial detainee who was shot in the back by a police officer brought an action against the municipal police department and the officer, alleging under § 1983 that the defendants violated his Fourth Amendment rights by seizing him without probable cause and using excessive force. The defendants moved for partial dismissal for failure to state claim. The district court granted the motions in part and denied in part. The court held that the officer was entitled to qualified immunity from the claim that handcuffing and shackling of the detainee during hospital treatment violated his due process rights, where the law regarding use of handcuffs and shackles on a pretrial detainee during hospital treatment was not clearly established at the time of the incident in question. The court held that the detainee failed to state a § 1983 claim based on the municipality's alleged failure to train the officer, absent allegations regarding any specific policy or custom, the enforcement of which caused the detainee's injury, or any particular deficiency in training or supervision resulting in the officer's allegedly shooting an unarmed man with his hands raised. (District of Columbia and D.C. Metropolitan Police Department)

2016

U.S. Appeals Court
EMERGENCY CARE
DELAY IN CARE

Bailey v. Feltmann, 810 F.3d 589 (8th Cir. 2016). An arrestee brought a § 1983 action against a law enforcement officer, alleging that the officer's decision to transport him to the jail rather than a hospital denied him emergency medical care for lacerations to his hand. The district court entered summary judgment in the officer's favor and the arrestee appealed. The appeals court affirmed. The court held that: (1) the Fourth Amendment right against unreasonable delay in medical care for an arrestee was not clearly established at the time of the incident; (2) it was clearly established, under the Due Process Clause, that pretrial detainees or arrestees had the right to be free from deliberately indifferent denial of emergency medical care; and (3) evidence did not support the finding that the arrestee had an objectively serious medical need for treatment. (Jefferson County Sheriff's Department, Missouri)

U.S. Appeals Court
DELAY IN CARE

Heard v. Tilden, 809 F.3d 974 (7th Cir. 2016). A state prisoner brought a § 1983 action against the medical director of a corrections department, the health care provider that contracted with the department to provide medical care for inmates, and a provider's employee, alleging that they violated the Eighth Amendment's ban on cruel and unusual treatment by delaying surgery for his recurrent hernia. The district court entered summary judgment in the director's, provider's, and employee's favor. The prisoner appealed. The appeals court affirmed in part, vacated and remanded in part. The court held that the prisoner's allegation that the medical director was involved directly in the choice to stall necessary surgery for the prisoner's recurrent hernia was sufficient to state a claim against the director, in his individual capacity, for deliberate indifference to the prisoner's medical need in violation of the Eighth Amendment. (Illinois Department of Corrections, Wexford Health Sources)

U.S. Appeals Court
RESTRAINTS

Hernandez v. Dart, 814 F.3d 836 (7th Cir. 2016). A prisoner brought a § 1983 action against a sheriff and the county that employed him, alleging excessive force and deliberate indifference for shackling him to his hospital bed and failing to provide assistance to move between his geriatric (jerry) chair and bed, with the result that his bed sores did not improve. The district court granted the defendants' motion for summary judgment based on the prisoner's alleged failure to exhaust his administrative remedies, and the prisoner appealed. The appeals court reversed and remanded. The court held that a prison employees' failure to inform the prisoner of the grievance procedure available to him at the time when he was hospitalized and complaining of being shackled to his hospital bed, meant that the grievance procedure was unavailable and that the prisoner did not have to exhaust his administrative remedies. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
DELAY IN CARE
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Mathison v. Moats, 812 F.3d 594 (7th Cir. 2016). A federal inmate brought a *Bivens* action against prison staff, alleging deliberate indifference to his serious medical needs when he suffered a heart attack. The defendants moved for summary judgment. The district court granted the motion and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that a prison supervisory lieutenant, who was not medically trained and who had learned of the inmate's symptoms of excruciating chest and arm pain only from talking to the inmate from outside his cell, inferred from the inmate that he was having heart attack, spent 20 minutes trying unsuccessfully to reach a prison nurse, had authority to call 911 and summon an ambulance, but failed to call a doctor or a hospital emergency room for advice. According to the court, that failure left the inmate in agony for almost five more hours, and thus the lieutenant was deliberately indifferent to the inmate's acute medical needs in violation of the Eighth Amendment.

The court found that a prison nurse, who was told second-hand by a person with no medical training, that the inmate was experiencing acute chest and arm pain, asked unspecified and unexplained questions, and did not request more information to help the nurse ascertain whether the inmate needed immediate treatment, failed to exhibit a minimum level of care to which the prisoner who was suffering a heart attack was entitled, and was liable for violation of the Eighth Amendment. The court noted that the nurse was aware of the inmate's medical history, which included the fact that the inmate was in the prison's chronic care program for treatment of his chronic high blood pressure, a condition that creates an increased risk of heart attack. (Federal Correctional Institution, Pekin, Illinois)

SECTION 30: MENTAL PROBLEMS (PRISONERS)

Detention and Corrections Caselaw Catalog *All Rights Reserved*
CRS Inc, 925 Johnson Dr., Gettysburg PA 17325 (717) 338-9100 www.correction.org/

The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1966

U.S. Supreme Court
COMMITMENT

Baxtrom v. Herold, 383 U.S. 107 (1966). Baxtrom was denied equal protection of the laws at the expiration of his penal sentence without the jury review available to all other persons civilly committed in New York. Baxtrom was further denied equal protection of the laws by his civil commitment to an institution maintained by the Department of Correction beyond the expiration of his prison term without a judicial determination that he is dangerously mentally ill, such as that afforded to all so committed, except those like Baxtrom, nearing the end of a penal sentence. (Dannemora State Hospital, New York)

U.S. District Court
PRETRIAL
DETENTION

Johnston v. Ciccone, 260 F.Supp. 553 (W.D. Mo. 1966). Pretrial confinement with convicted persons in the U.S. Medical Center for Federal Prisoners is not unconstitutional for persons found to be mentally ill. (United States Medical Center for Federal Prisoners)

1970

U.S. District Court
RESTRAINTS

Hamilton v. Schiro, 338 F.Supp. 1016 (E.D. La. 1970). Fact that disruptive psychotic inmates were sometimes moved into the hallway and shackled to the bars contributes to court's finding of unconstitutional violation. (Orleans Parish Prison, Louisiana)

1972

U.S. District Court
RESTRAINTS

Collins v. Schoonfield, 344 F.Supp. 257 (D. Md. 1972). Suicidal inmates, inmates suffering from narcotics withdrawal, and inmates with psychological problems may not be shackled to beds with metal restraints. (Baltimore City Jail, Maryland)

U.S. District Court
RESTRAINTS
PSYCHIATRIC CARE
SUPERVISION

Hamilton v. Landrieu, 351 F.Supp. 549 (E.D. La. 1972). Mentally deranged prisoners shall never be unsupervised or unescorted. The practice of chaining mentally disturbed inmates shall be stopped. Humane restraints must be provided. Arrangements shall be made for a program of psychiatric care. A medical aid shall be on jail premises during evening hours when no other medical personnel are present. (Orleans Parish Prison, Louisiana)

U.S. Appeals Court
WAIVER

Moore v. Ciccone, 459 F.2d 574 (8th Cir. 1972). Waiver signed by detainee held for psychiatric observation cannot effectively authorize opening and inspection of legal mail. (United States Medical Center For Federal Prisoners, Springfield, Missouri)

U.S. District Court
PADDED CELLS
RESTRAINTS

Taylor v. Sterrett 344 F.Supp. 411 (N.D. Tex. 1972), reh'g denied, 420 U.S. 983 (1974). Court orders that padded cells with hammocks be provided for insane persons. (Dallas County Jail, Texas)

1974

U.S. District Court
SEGREGATION

Berch v. Stahl, 373 F.Supp. 412 (W.D. N.C. 1974). Known homosexuals may be placed nonpunitively in solitary confinement but may not be denied regular prison privileges and amenities. Mentally disturbed inmates may be placed nonpunitively in solitary confinement but may not be denied regular prison privileges and amenities. Solitary confinement is not per se cruel and unusual, but it becomes so if the inmate is denied clothing. (Mecklenburg County Jail, North Carolina)

- U.S. Appeals Court
MEDICATION Nelson v. Heyne, 491 F.2d 352 (7th Cir. 1974), cert. denied, 417 U.S. 976 (1973). The court bars the use of tranquilizing drugs to punish juveniles. (Boys School and State Correctional Institution, Plainfield, Indiana)
- 1975
- U.S. District Court
PSYCHIATRIC CARE
TRANSFER
RESTRAINTS
HOSPITALIZATION Campbell v. McGruder, 416 F.Supp. 100 (D. D.C. 1975). If a detainee displays unusual behavior suggestive of possible mental illness, such behavior shall be immediately reported to the medical staff. The inmate will be seen by a psychiatrist within twenty-four hours and if mentally ill will be transferred to an appropriate hospital within forty-eight hours. Restraints will be used only in a hospital setting or medical authorization, with strict recordkeeping. (D.C. Jail)
- U.S. District Court
CONFINEMENT Craig v. Hocker, 405 F.Supp 656 (D. Nev., 1975). Prisoners brought action against the warden and others challenging various aspects of prison administration and the discipline of prisoners. The district court held: (1) that prisoners were not being denied medical care and treatment; (2) that statutes providing for prison confinement of mentally ill persons for security reasons were unconstitutional; and (3) that the prisoners were not entitled to damages. (Nevada State Prison)
- U.S. District Court
PSYCHIATRIC CARE Sykes v. Kreiger, 451 F.Supp. 421 (N.D. Oh. 1975). A psychiatric unit is to be built in the jail, and a plan for treatment is to be established. Emergency dental service must be provided. (Cuyahoga County Jail, Ohio)
- 1976
- U.S. District Court
PSYCHIATRIC CARE
INTAKE SCREENING Barnes v. Government of the Virgin Islands, 415 F.Supp. 1218 (D. VI. 1976). Medical services shall be provided only by appropriately trained personnel. A thorough medical exam shall be given to each inmate as part of intake and classification. A psychiatrist is to be present at least once a week. Programs are to be developed to help staff deal with inmates' mental problems. A mental status exam is to be given as part of intake procedure. (Golden Grove Adult Correctional Facility, Virgin Islands)
- U.S. District Court
HOSPITALIZATION Mitchell v. Untreiner, 421 F.Supp. 886 (N.D. Fla. 1976). Any inmate requiring hospitalization due to a potentially infectious or contagious disease, mental illness, or any other ailment requiring hospitalization, shall not be housed in the jail except upon emergency application to the court. (Escambia County Jail, Pensacola, Florida)
- U.S. District Court
RESTRAINTS Tate v. Kassulke, 409 F.Supp. 651 (W.D. Ky. 1976). Chaining a mentally disturbed inmate to a bed for any protracted length of time would be cruel and unusual punishment. (Jefferson County Jail, Kentucky)
- 1977
- U.S. District Court
SPECIAL HOUSING
INTAKE SCREENING Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. There shall be a special housing unit for detainees who need it for psychiatric, psychological or other medical reasons. The screening officer shall inquire as to detainee's need for psychological or counseling care and shall report to the correctional staff. (Platte County Jail, Missouri)
- U.S. Appeals Court
RIGHT TO
TREATMENT Bowring v. Godwin, 551 F.2d 44 (4th Cir. 1977). There is no underlying distinction between right to medical care and its psychological or psychiatric counterpart; the prisoner is entitled to the latter if physician or other health care provider, in exercise of ordinary care, concludes with reasonable medical certainty that: 1) there are symptoms of serious disease or injury, 2) which may be cured or alleviated, 3) and the potential for harm is substantial if untreated. (Virginia State Prison)
- 1978
- U.S. Appeals Court
TRANSFER Campbell v. McGruder, 580 F.2d 521 (D.C. Cir. 1978). An order requiring that mentally ill prisoners be removed from the jail within twenty-four hours of discerning such mental condition is upheld. (D.C. Jail)
- U.S. District Court
SEGREGATION
PSYCHIATRIC CARE Nelson v. Collins, 455 F.Supp. 727 (D. Md. 1978). Prisoners placed in isolated confinement because of aberrant behavior resulting from mental illness are entitled to prompt and adequate psychiatric assistance. (Maryland Penitentiary)
- U.S. District Court
TRAINING
STAFF Owens-El v. Robinson, 442 F.Supp. 984 (W.D. Penn. 1978). At least one nurse per shift is to have training in handling mental problems. (Allegheny County Jail, Pittsburgh, Pennsylvania)

1979

U.S. District Court
PSYCHIATRIC CARE

Feliciano v. Barcelo, 497 F.Supp. 14 (D.P.R. 1979). All inmates are to receive a physical examination within one week of receipt at the institution. Proper medical records are to be kept. Adequate medical facilities and equipment are to be achieved and maintained. The current population is to be surveyed for psychiatric problems. A medical director is to be appointed and his powers are set forth in the opinion. (Correctional System, Puerto Rico)

1980

U.S. District Court
MEDICATION
DUE PROCESS

Davis v. Hubbard, 506 F.Supp. 915 (N.D. Oh. 1980). Administration of mood altering drugs to a mental patient without the consent of the patient requires procedural due process absent an emergency. An emergency is a situation where the patient presents an imminent danger of physical harm to himself or others. Due process requires a hearing with an impartial decision maker. The decision maker need not be a judge or even a lawyer. (State Mental Institution, Ohio)

U.S. Appeals Court
SEGREGATION
PSYCHIATRIC CARE

McCray v. Burrell, 622 F.2d 705 (4th Cir. 1980), cert. denied, 449 U.S. 997 (1980). Regulations permitting the placement of an individual in an isolation cell and stripping him where he was dangerous to himself because of an apparent mental illness, are valid. However, where the guard failed to comply with the regulation and did not notify the psychiatrist of such placement because the guard did not believe that the individual was a danger to himself, the placement is unconstitutional. (Maryland State Penitentiary)

U.S. District Court
RIGHT TO
TREATMENT

Santori v. Fong, 484 F.Supp. 1029 (E.D. Penn. 1980). A statutorily established policy of provisions of psychiatric and psychological services to pretrial detainees does not create an enforceable entitlement to such services. (Chester County Farm Prison, Pennsylvania)

U.S. Supreme Court
TRANSFER
DUE PROCESS

Vitek v. Jones, 100 S.Ct. 1254 (1980). Pursuant to a Nebraska statute allowing transfer to a mental institution when an inmate is found to be suffering from a mental illness or defect which cannot be treated at the correctional facility, Jones was to be transferred from the Nebraska State Prison to a State Mental Hospital. In this suit against state officials, Jones challenged the adequacy of the procedures by which the statute permits transfers, on a procedural due process basis.

A three judge U.S. District Court declared the statute unconstitutional as violating the fourteenth amendment due process protections. The court permanently enjoined the state from transferring Jones, unless it adhered to certain procedures outlined by the Court.

The Supreme Court noted probable jurisdiction (434 U.S. 1060). Meanwhile, Jones had been paroled on condition that he accept psychiatric treatment at a VA Hospital. In light of this, the Supreme Court vacated the District Court's judgment and remanded the case to that court for a determination on the question of mootness. (Vitek v. Jones, 436 U.S. 407 1978). Both Jones and the state agreed the case was not moot. The district court reinstated its original judgment and the case came back to the Supreme Court for a hearing on the merits. Jones, meanwhile was back in prison for violation of parole. (Affirmed.)

HELD: The district court correctly identified a liberty interest in the Nebraska statute, under which a prisoner could reasonably expect that he would not be transferred to a mental hospital without a finding that he was suffering from a mental illness for which he could not secure treatment in the correctional facility. Further, the district court correctly concluded that transferring Jones to a mental institution had "some stigmatizing" consequences, which together with the mandating behavior modification treatment Jones would be subjected to at the hospital, constituted a major change in the conditions of confinement amounting to a grave loss "that should not be imposed without the opportunity for notice and an adequate hearing." 100 S.Ct. at 1261.

HELD: The objective expectation, firmly fixed in state law and official correctional practice that a prisoner would not be transferred unless he suffered from a mental disease or defect that could not be adequately treated in the prison, gave Jones a liberty interest that entitled him to the benefits of appropriate procedures in connection with determining the conditions that warranted his transfer to a mental hospital. 100 S.Ct. at 1261.

HELD: "Nebraska's reliance on the opinion of a designated physician or psychologist for determining whether the conditions warranting a transfer exist neither removes the prisoner's interest from due process protection, nor answers the question of what process is due under the Constitution." 100 S.Ct. 1262.

HELD: "[A] convicted felon...is entitled to the benefit of procedures appropriate in the circumstances before he is found to have a mental disease and transferred to a mental hospital." 100 S.Ct. at 1263.

HELD: "[T]he stigmatizing consequences of a transfer to a mental hospital for involuntary psychiatric treatment coupled with the subjection of the prisoner to mandatory behavior modification as a treatment for mental illness constitute the kind of deprivations of liberty that require procedural protections." 100 S.Ct. at 1264.

HELD: "Because prisoners facing involuntary transfer to a mental hospital are threatened with immediate deprivation of liberty interests they are currently enjoying and because of the inherent risk of a mistaken transfer, the district court properly determined that procedures similar to those required by the court in Morrissey v. Brewer, 408 U.S. 471 (1972) were appropriate in the circumstances present here. 100 S.Ct. at 1265.

The District Court held that to afford sufficient protection to the liberty identified, the following minimum procedures must be observed before transferring a prisoner to a mental hospital:

a. Written notice to the prisoner that a transfer to a mental hospital is being considered;

b. A hearing, sufficiently after the notice, to permit the prisoner to prepare, at which disclosure to the prisoner is made of the evidence being relied upon for the transfer and at which an opportunity to be heard in person and to present documentary evidence is given;

c. An opportunity at the hearing to present testimony of witnesses by the defense and to confront and cross-examine witnesses called by the state, except upon a finding, not arbitrarily made, of good cause for not permitting such presentation, confrontation or cross-examination;

d. An independent decision-maker;

e. A written statement by the fact finder as to the evidence relied on and the reasons for transferring the inmate;

f. Availability of legal counsel, furnished by the state, if the inmate is financially unable to furnish his own, and;

g. Effective and timely notice of all the frequency rights.

100 S.Ct. at 1264 (quoting Miller v. Vitek), 437 F.Supp. at 575. (State Prison, Nebraska)

1981

U.S. Appeals Court
SEGREGATION
DUE PROCESS

Littlefield v. Deland, 641 F.2d 729 (10th Cir. 1981). Confining a nonviolent mentally ill pretrial detainee in a strip cell without clothing, items of personal hygiene, bed or bedding and without out-of-cell recreation for nearly fifty-six days is punishment and thus violates due process. The intent to punish and the knowledge of conditions are implied from the facts. (Salt Lake County Jail, Utah)

U.S. Appeals Court
PSYCHIATRIC CARE
FAILURE TO
PROVIDE CARE

Woodall v. Foti, 648 F.2d 268 (5th Cir. 1981). Allegations that the plaintiff needed psychiatric care, that he was suicidal without such care and the concurrence of the prison psychiatrist indicating that he was unable to provide such care, state a claim upon which relief could be granted for deliberate indifference to known medical needs. In reviewing the case on its merits, the court should balance: (1) The seriousness of the illness; (2) The need for immediate treatment; (3) The likely duration of incarceration; (4) The possibility of harm through postponement of treatment; (5) The possibility of cure or improvement in the condition; (6) The extent to which the inmate is a danger to himself or others; against: (1) The availability and expense of psychiatric treatment; (2) The effect of such treatment on the operation of the institution. The court suggests that this test will not require a full hearing in most cases, and that it frequently can be resolved on the pleadings. (Orleans Parish Prison, Louisiana)

1983

U.S. Appeals Court
JUVENILE
COMMUNICATION

Doe v. Public Health Trust of Dade Co., 696 F.2d 901 (11th Cir. 1983). Communication with juvenile committed by parents may be limited. Following an action alleging deprivation of constitutional rights, the Eleventh Circuit Court of Appeals held that (1) voluntary, minor mental patients did not have a constitutional right to treatment in the least restrictive environment; (2) the hospital's rule precluding communication between voluntary, minor mental patients and parents does not constitute a constitutional violation if the rule was medically legitimate and therapeutic; and (3) the complaint stated a cause of action. (Jackson Memorial Hospital, Florida)

U.S. Appeals Court
TRANSFER
PADDED CELL
RESTRAINTS

Lazano v. Smith, 718 F.2d 756 (5th Cir. 1983). U.S. Fifth Circuit Court of Appeals remands case to determine if excessive force caused death of mentally ill inmate. Although mental health officials examined the inmate and recommended transfer to a mental facility, the inmate remained in the padded cell of the jail. The inmate died following a struggle with jail personnel when they entered the cell to restrain him from banging his head against the door. (Ector County Jail, Texas)

1984

U.S. Appeals Court COMMITMENT DETENTION

Lynch v. Baxley, 744 F.2d 1452 (11th Cir. 1984). U.S. appeals court rules that jails may not be used to detain persons awaiting involuntary civil commitment proceedings. The U.S. Court of Appeals for the Eleventh Circuit has declared that while the state has a compelling interest in the emergency detention of persons who threaten themselves or others, detaining such persons in jail is not the least restrictive means for achieving the goal. The suit drew court attention to the overcrowded and generally poor confinement conditions in Alabama county jails. The court further found that confinement in jails "...is particularly harmful to those who are mentally ill." (Alabama County Jails)

1985

U.S. District Court RESTRAINTS

Ferola v. Moran, 622 F.Supp. 814 (D.C. R.I. 1985). An inmate brought a civil rights action charging that defendants subjected him to cruel and unusual punishment by denying him psychiatric care and by cruelly and abusively shackling him to his bed. The United States District Court held that: (1) a record of care afforded the prisoner did not reflect denial of psychiatric care or deliberate indifference to his psychiatric needs; (2) shackling of the defendant violated the eighth amendment; (3) the director of Department of Corrections was liable; (4) the inmate was entitled to damages of \$1,000 for physical and psychological injury suffered; and (5) shackling of the inmate warranted equitable relief. There was no medical monitoring, control, or supervision of the inmate during the twenty hours he was confined. (Adult Corr. Inst., Rhode Island)

U.S. Appeals Court RESTRAINTS

Wells v. Franzen, 777 F.2d 1258 (7th Cir. 1985). The 7th Circuit Court of Appeals refused to grant summary judgment to officials accused of shackling an inmate for nine days without consulting a psychiatrist or physician to determine if he was suicidal. The inmate admits that after five days a psychiatrist did interview him, but it was too "shallow" for the doctor to make an adequate decision as to his suicidal tendencies. He insisted to officials throughout that he was not going to kill himself. Long-term restraint decisions are appropriately made by psychiatric personnel. Short-term decisions are appropriately made by nurses and non-psychiatric physicians, noted the Court. The Court dismissed various claims and ordered others to proceed, primarily, concerning the shackling itself. (Menard Correctional Center, Illinois)

1986

U.S. District Court STAFF

Duran v. Anaya, 642 F.Supp. 510 (D.N.M. 1986). State prisoners sought a preliminary injunction to halt layoffs of staff and filling of staff vacancies. The district court held that New Mexico prison inmates were entitled to a preliminary injunction prohibiting implementation of proposed staff reductions with respect to medical care, mental health care, and security. The state has a constitutional obligation to make available to prisoners a level of medical care that is reasonably designed to meet routine and emergency health care needs of prisoners, including medical treatment for inmates' physical ills, dental care and psychological or psychiatric care. Gross deficiencies in staffing establishes deliberate indifference to prisoners' health needs. A lack of financing is not a defense to a failure to satisfy minimum constitutional standards in prisons. (Department of Corrections, New Mexico)

U.S. Supreme Court DEATH PENALTY

Ford v. Wainwright, 106 S.Ct. 2595 (1986). A habeas corpus petition was filed on behalf of a death row prisoner. The supreme court held that: (1) the eighth amendment prohibits the state from inflicting the penalty of death upon a prisoner who is insane, and (2) Florida's procedures for determining sanity of a death row prisoner were not "adequate to afford a full and fair hearing" on the critical issue, and therefore the habeas petitioner was entitled to an evidentiary hearing in the district court, de novo, on the question of his competence to be executed. (Florida DOC)

State Appeals Court MEDICATION

Keyhea v. Rushen, 223 Cal. Rptr. 747 (Cal.App. 1st Dist. 1986). Taxpayers brought an action challenging involuntary psychiatric medication of prisoners. The Superior Court issued an injunction against long-term medication without adherence to certain procedural requisites, and the state appealed. The court of appeals held that prisoners were entitled to judicial determination of their competency to refuse treatment before they could be subjected to long-term involuntary psychotropic medication. By statute, prisoners could be deprived only of those rights whose deprivation was required to maintain reasonable security of the institution, and attendance of the prisoners at judicial hearings on competency to refuse treatment did not threaten the prison security. (California Medical Facility)

U.S. Appeals Court

Partridge v. Two Unknown Police Officers of Houston, 791 F.2d 1182 (5th Cir. 1986). Parents of a pretrial detainee who committed suicide brought a Section 1983 action against city and police department personnel. The appeals court ruled that

police officers at the municipal jail had a duty, at minimum, not to be deliberately indifferent to the pretrial detainee's serious medical needs, including need for psychological or psychiatric treatment. (Houston Police Dept., Texas)

1987

U.S. Appeals Court
TRANSFER

Baugh v. Woodard, 808 F.2d 333 (4th Cir. 1987). A class action was brought in which state prisoners alleged that procedures followed by the department of corrections in transferring a prisoner to a correctional mental health facility were inadequate to satisfy due process requirements. The United States District Court, 604 F.Supp 1529, required a hearing prior to a transfer in order to protect due process rights. The State appealed. The court of appeals held that a hearing conducted promptly after the prisoner's physical transfer to an in-patient mental health facility for treatment, but before commencement of any psychiatric treatment, would protect interest in avoiding erroneous mental health transfers and, therefore, would comply with due process without imposing undue burdens on the delivery of mental health care to prisoners. (Department of Corrections, North Carolina)

State Appeals Court
INTAKE SCREENING
PRETRIAL
DETENTION

Gordon v. City of New York, 517 N.E.2d 1331 (N.Y. 1987). The New York Court of Appeals stated that there is a duty to provide reasonable care when prison authorities know or should know that a prisoner has suicidal tendencies or that a prisoner might physically harm himself--to assure that such harm does not occur. But the city was found not liable for lack of knowledge or proper supervision when a detainee sustained injuries caused by his plunging headfirst into a toilet bowl located in his cell. The court found that the injury that occurred was not reasonably foreseeable and that the city took "every possible precaution" against foreseeable harm. The 19-year-old detainee, who was charged with attempted grand larceny and possession of burglary tools, exhibited "boisterous, irrational and delusional behavior" at the time of his arrest, and was consequently placed alone in a bare cell without a belt or shoelaces and with a correctional officer seated directly outside his cell monitoring him. The court rejected the argument that the detainee should have been physically immobilized or restrained until he received medical attention. The behavior that the detainee exhibited, which included climbing the bars of the cell, stating that he would like to fly, and yelling out "I am God," "Jesus Christ Superstar" was "not uncommon in holding pens and would not in itself warrant medical attention." The care taken in this case, according to the court, was reasonable and no liability was imposed given the facts that the detainee had stated his intention to feign insanity, although he appeared normal before the incident, and the officers had no knowledge of a suicidal history. (New York City Department of Corrections)

U.S. Appeals Court
MEDICATION

Lappe v. Loeffelholz, 815 F.2d 1173 (8th Cir. 1987). According to a federal appeals court, corrections officials in Iowa who forcibly injected an inmate with psychotropic medication were immune from suit because the law on the subject was unclear. The plaintiff was an inmate who alleged that he had been forcibly medicated without a hearing. The court found that the inmate should have been given notice and a hearing or other opportunity to establish a reason for refusing the medication. But, since the law requiring such hearings was not clearly established at the time and since officials are not required to guess the future path of the law, they were immune from this suit. The inmate argued that Vitek v. Jones, (445 U.S. 480) clearly established that he was entitled to a hearing before forced behavior modification but the court disagreed, ruling that Vitek only required a due process hearing before transfer to a mental hospital from a prison--which the inmate had received before his transfer. In this case, officials were faced with a question not covered under Vitek: Did an inmate who had a due process hearing and was released conditioned on continued medication have a right to a new hearing when treatment was refused? (Iowa State Penitentiary)

U.S. District Court
INVOLUNTARY
MEDICATION
CONFINEMENT

U.S. v. Ballard, 704 F.Supp. 620 (E.D.N.C. 1987). The Government filed a motion for the authority to involuntarily treat and medicate defendants who had been found incompetent to stand trial and were committed based on a finding of the danger they posed to themselves and others. The district court found that the government failed to establish that the defendants, who had been found to be incompetent to stand trial and had been committed based on a finding that they posed a danger to themselves or others, were mentally incompetent to make decisions regarding their medical treatment. The defendants suffered from severe mental problems, including paranoid schizophrenia and hallucinations, and the prison psychiatrist had testified that each of them was incompetent to make decisions regarding their medical treatment; however, the psychiatrist who testified on behalf of the defendants stated that they were competent to make their own decisions as to their medical care, and each defendant listed as one reason for discontinuing the medication the possible side effects of the drugs administered. (Federal Correctional Institution, Butner, North Carolina)

U.S. District Court
DUE PROCESS
MEDICATION

U.S. v. Bryant, 670 F.Supp. 840 (D. Minn. 1987). Determination in court hearing that a federal inmate needs psychiatric treatment does not automatically authorize the Bureau of Prisons to provide the inmate with whatever treatment it feels appropriate. The opportunity for exercise of professional judgment must still be provided as condition precedent to forcibly medicating inmate. According to a federal district court, while a prisoner did have a liberty interest in avoiding unwanted administration of the drug, this liberty interest must be balanced against the competing governmental interest. This balancing should be performed by the prison authorities, and not the court. The court must simply make sure that "professional judgment in fact was exercised." (FCI, Talledega, Alabama and Federal Medical Center, Rochester, Minnesota)

U.S. Appeals Court
DUE PROCESS
MEDICATION

U.S. v. Charters, 829 F.2d 479 (4th Cir. 1987), cert. denied, 110 S.Ct. 1317. The government sought order permitting medical personnel to forcibly medicate the defendant, who had been found incompetent to stand trial and ordered confined, with antipsychotic drugs. The federal district court entered an order permitting forcible medication, and the defendant appealed. The appeals court held that: (1) cause would be remanded for determination of whether defendant could be kept in federal custody; (2) forcible medication of defendant could not be justified based on Government's need to prevent violence or government's interest in trying defendant; (3) to determine competence of defendant to make decisions regarding his medical treatment, court should evaluate whether defendant had followed rational process in deciding to refuse antipsychotic medication and could give rational reasons for choice he had made; (4) if patient were incompetent to make decisions regarding his medical treatment, and clear and convincing evidence established what decision patient would have made if he were competent, it was proper to honor determination that incompetent patient would have made; but (5) if there were not clear and convincing evidence of what the patient's choice would have been, the best interests of patient test should be applied in determining proper medical treatment. (Federal Correctional Institution, Butner, North Carolina)

1988

U.S. Appeals Court
PRETRIAL
DETENTION
STAFF
PSYCHIATRIC CARE

Cabrales v. County of Los Angeles, 864 F.2d 1454 (9th Cir. 1988). A civil rights suit was brought against the county, the commander of the county jail, and others for the death of a pretrial detainee. Following a verdict against the county and jail commander, motion for judgment was denied by the U.S. District Court and attorney fees were awarded. The appeals court affirmed the lower court ruling, noting that the sufficiency of evidence could not be reviewed except for plain error absent a motion for directed verdict at the close of all the evidence.

There were issues of the fact as to the liability of the county and the jail commander on the ground of the policy of deliberate indifference to the detainee's medical needs. In order to impose liability on the county under a civil rights statute in the suicide on a theory that the county had a policy of deliberate indifference to the detainee's medical needs, it was not necessary to establish that any policymaker may have, by affirmative acts, established or adopted such a policy; rather, the notion of deliberate indifference connoted a regime where neglect of medical and psychological needs would suffice to prove a constitutional violation; acts of omission, as well as commission, may constitute predicate for finding of liability.

Even though the detainee was not denied access to medical and psychiatric help, but was in fact evaluated on several occasions by medical personnel, this did not preclude the finding of deprivation of constitutional rights without due process based on a deliberate indifference to medical needs, in light of the demonstration of inadequate staff such that psychiatric staff could only spend minutes per month with disturbed inmates, so that any psychological illness would go undiagnosed and untreated.

It was also found by the court that the plaintiff's unsuccessful claims against individual county officers were related to successful claims against the county and the commander of the county jail that inadequate psychiatric care led to the pretrial detainee's suicide. There was no abuse of discretion in reducing the attorney fee award by 25% to reflect limited success, where the plaintiff's overall relief was materially diminished for a failure to make out claims against individual defendants who could have been found individually liable for their own deliberate indifference to a detainee's medical and psychiatric needs. (Los Angeles County Jail, California)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE
SUPERVISION

Cortes-Quinones v. Jimenez-Nettleship, 842 F.2d 556 (1st Cir. 1988), cert. denied, 109 S.Ct. 68. The death of a psychiatrically disturbed prisoner whose body was dismembered a few months after his transfer to a district jail was caused by the "deliberate indifference" of prison officials to his health or safety problems, according to a federal appeals court. The court ruled found that information about the prisoner's psychiatric history was, or should have been, in his prison files, and that prison officials who approved of the transfer should have known of the inmate's psychological problem and that there was evidence that the inmate should never have been in the

general prison population. According to the court, it was unlikely that the inmate would have been killed if any of the officials had acted to segregate him from mentally sound prisoners at the jail. According to the appeals court, when prison officials intentionally place prisoners in dangerous circumstances, when they intentionally ignore prisoners' serious medical needs, or when they are deliberately indifferent either to a prisoner's health or safety, they violate the constitution. (Arecibo District Jail)

State Sup. Court
RECORDS
PRIVACY

Rules Regarding Inmate-Therapist Conf., 540 A.2d 212 (N.J.Super.A.D. 1988).

The Office of Inmate Advocacy appealed from a portion of a regulation adopted by the Department of Corrections concerning psychological services provided for prison inmates. The superior court found that the portion of the Department of Corrections regulation excepting from psychotherapist-patient privilege for inmate patients communications when it is believed that disclosure is more important to the interests of substantial justice or safety than protection of the relationship between a psychotherapist and patient is invalid as being broader than the situation which presents clear and imminent danger to the inmate or others. The portion of the regulation excepting from confidentiality the requirement of specified past crimes based upon a finding that the nature of the past crime presents a reasonable foreseeable danger is invalid as requiring disclosure without a regard to the existence of an identifiable intended victim, based only upon the dangerousness indicated by the prior act. Although prison therapists have certain administrative duties to the employer, such duties provide no basis for the Department of Corrections' imposition of diluted standard of care for therapists' treatment of inmates. The definition of adequate medical care does not depend upon who is paying the bills. (New Jersey Department of Corrections)

1989

U.S. Appeals Court
PRETRIAL
DETENTION

Danese v. Asman, 875 F.2d 1239 (6th Cir. 1989), cert. denied, 110 S.Ct. 1473. A pretrial detainee hung himself in his cell, using his shirt as a rope. He had been arrested for driving while intoxicated. His estate and his relatives filed a Section 1983 civil rights suit against individual officers and supervisory personnel, as well as the municipality. The federal district court found that the due process clause requires that certain steps be taken to protect a pretrial detainee who is suspected to be suicidally inclined, for the purposes of a Section 1983 action. In this case, the court ruled that the right to personal security under the fourteenth amendment is not extinguished by lawful confinement, and includes a prisoner's right to safe conditions. The lower court also concluded that a pretrial detainee's interest in safe conditions in a city jail, for purposes of a Section 1983 claim, applied not only to physical conditions of the jail itself, but also to allegedly unsafe conditions produced by the defendant officers' lack of action to protect the detainee. The court found that the detainee was deprived of his liberty interest by the officers' failure to protect him from self-injury despite their awareness of his threats of self-injury and his mental and physical condition. Further, the lower court also found that supervisory personnel could be held liable if the plaintiffs could prove their allegations that they failed to provide any training or establish any procedures for intake screening and suicide prevention; on appeal, however, the court found that they enjoyed qualified immunity. The court did rule, however, that the "punishment" analysis under the fourteenth amendment was inapplicable to the claim that the city fire department deprived a pretrial detainee of his constitutional rights by its failure to render lifesaving techniques after the detainee hanged himself in the city jail. The court reasoned that the fire department was not connected with the incarceration of persons allegedly in violation of the law. (Roseville City Jail, Michigan)

U.S. Appeals Court
COMMITMENT
HOSPITALIZATION
PRETRIAL
DETENTION

Green v. Baron, 879 F.2d 305 (8th Cir. 1989). A pretrial detainee brought a civil rights action against the staff of a mental facility. The U.S. District Court granted the inmate's a motion for judgment n.o.v. or, in the alternative, new trial, and, following a separate trial and damages, the defendants appealed. The appeals court found that the trial court properly granted judgment n.o.v. based on erroneous instructions. It was also found by the court that a pretrial detainee could not be punished, and the issue of whether he is punished depended upon whether deprivations he suffered were reasonably related to a legitimate government purpose and not excessive and, the jury could find that the treatment of a pretrial detainee in a mental health institute did not constitute punishment, even though he was deprived of bedding and clothing and hot meals. In view of the evidence that he was not placed in the treatment program until all other treatment efforts had failed, the staff believed that the deprivation were vital to the success of his behavioral modification program. The program was structured and supervised by medical personnel, and deprivations were medically supervised, limited in degree, and restricted in duration. (Security and Medical Facility, Oakdale, Iowa)

U.S. District Court
FAILURE TO
PROVIDE CARE
SEGREGATION
SPECIAL HOUSING

Langley v. Coughlin, 709 F.Supp. 482 (S.D.N.Y. 1989). Female inmates brought a class action against correctional authorities alleging violations of their eighth amendment rights arising from conditions of confinement in a "solitary" unit. Correctional authorities moved for summary judgment on the grounds of qualified immunity. The district court denied the motion for summary judgment, finding that the correctional authorities responsible for designing and implementing the inmate programs were not entitled to qualified immunity against the claims that female inmates were not provided with medical treatment and that mentally balanced inmates were housed with inmates who suffered from chronic mental illness. The Commissioner of the New York State Department of Correctional Services could be held liable in the Section 1983 suit to the extent he failed to develop and implement programs and policies regarding the treatment of mentally ill inmates or delegated that responsibility to others whom he then failed to supervise adequately.

The plaintiffs in this class action are inmates at Bedford Hills Correctional Facility ("BHCF"), who were housed in Building 118 from 1981 through August 1987. In Building 118 (also known as "solitary" or "Special Housing Unit" ("SHU")), plaintiffs were locked in their cells up to 23 hours of each day, with one hour for recreation. Those plaintiffs suffering from chronic mental illness ("mentally disordered women") were allegedly kept in excessive isolation and denied adequate mental health care in violation of their rights under the eighth and fourteenth amendments of the U.S. Constitution. The mentally disordered women are identifiable by their assaultive behavior and the marked deterioration they exhibited while in confinement. Those plaintiffs not suffering from chronic mental illness ("non-mentally disordered women") maintain that the conditions of their confinement subjected them to cruel and unusual punishment, in violation of the eighth amendment. Throughout the relevant period, the plaintiffs were subjected to noxious odors, noise, and danger as the mentally disordered women engaged in acts of self-destruction, arson, and assaultive behavior. Several mentally disordered women routinely spread feces and urine throughout the unit, flooded the unit with sewerage, and yelled and screamed day and night. These occurrences were frequent, rather than merely an isolated incident. The plaintiffs allege that all of the defendants were deliberately indifferent to their mental health needs. (Bedford Hills Correctional Facility, New York)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE
MEDICATION

Waldrop v. Evans, 871 F.2d 1030 (11th Cir. 1989). The parents of an inmate formerly incarcerated in state correctional institutions sued medical and supervisory personnel at those institutions for their alleged deliberate indifference to the inmate's serious mental health care needs. The U.S. District Court denied the defendants' motions for summary judgment based on the qualified immunity doctrine, and the defendants appealed. The appeals court, affirming the decision, found that the fact issue as to whether the prison psychiatrist who took the inmate off the psychotropic medication and refused to give the inmate Lithium for depression was deliberately indifferent to the inmate's psychiatric condition precluded summary judgment on the grounds of qualified immunity, and the fact issue as to whether the staff physician was deliberately indifferent to the inmate's psychiatric condition when he failed to notify the psychiatrist or take any other action in response to the inmate's self-inflicted injury precluded summary judgment on the grounds of qualified immunity. Grossly incompetent or inadequate care of an inmate can constitute a deliberate indifference to serious physical or psychiatric need in violation of the eighth amendment, as can a doctor's decision to take an easier and less efficacious course of treatment. The failure to respond to a known medical problem can also constitute deliberate indifference. (Diagnostic and Classification Center, Jackson, Georgia and Correctional and Medical Institution, Augusta, Georgia)

1990

U.S. Appeals Court
MEDICATION

Bee v. Greaves, 910 F.2d 686 (10th Cir. 1990). A former pretrial detainee brought an action against a physician, challenging his involuntary medication while confined. According to the court, law relative to forced medication clearly established the detainee's right to refuse the unwanted administration of antipsychotic drugs. The jail psychiatrist administered the medication to the pretrial detainee against his wishes. The appeals court found that a Utah law allowing involuntary medication of a mental patient did not give a jail psychiatrist qualified immunity from liability for involuntary medication of a pretrial detainee since Utah law applied only after a judicial involuntary commitment proceeding, which was not provided to the detainee. (Salt Lake County Jail, Utah)

U.S. Appeals Court
INTAKE SCREENING

Burns v. City of Galveston, Tex., 905 F.2d 100 (5th Cir. 1990). The mother of a detainee who committed suicide while in jail sued the city under Section 1983. The U.S. District Court entered a judgment for the city and the mother appealed. The Court of Appeals found that the alleged noncompliance by police department officials with a city policy requiring that detainees in jail be checked visually at hourly intervals did not form a basis for a Section 1983 action following the suicide of a detainee where the suicide occurred within one hour of confinement and would not

have been prevented by compliance with the requirement. It was also found by the court that the city was not required to provide psychological screening which might have detected suicidal tendencies of the detainee. The civil rights of the detainee were not violated by the city's failure to train officers in psychological screening procedures and to utilize a sample medical psychological screening questionnaire found in the detainee treatment manual. The detainee did not have an absolute right to psychological screening. (Galveston City Jail, Texas)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE
MEDICATION
PSYCHIATRIC
CARE

Greason v. Kemp, 891 F.2d 829 (11th Cir. 1990). The personal representatives of a Georgia prison inmate who committed suicide filed a civil rights action against prison officials who were responsible for his custody and those who provided his mental health care alleging deliberate indifference to his psychiatric needs. The U.S. District Court denied the defendant's motion for a summary judgment on the grounds of qualified immunity, and the defendants appealed. The appeals court affirmed the lower court decision finding that, at the time of the inmate's suicide, legal precedent clearly established that the eighth amendment protected inmates from deliberate indifference to psychiatric needs. The court also found that jury questions existed as to whether the conduct by both the mental health officials and the supervisory prison officials constituted deliberate indifference to the inmate's mental health needs, precluding a summary judgment on the issue of qualified immunity. Evidence created a question of fact as to whether the mental health center's psychiatrist provided grossly inadequate psychiatric care to the inmate and that he realized he was doing so at the time precluding a summary judgment for the psychiatrist on the grounds of qualified immunity. After the first brief visit with the inmate, the director abruptly discontinued the inmate's antidepressant medication without reviewing the inmate's clinical file or conducting a mental status examination which would have revealed the inmate's extensive history of mental illness and numerous hospital admissions for psychiatric reason. It also contained reports stating that the inmate would pose a substantial suicide risk without the antidepressant medication. (Georgia Diagnostic and Classification Center)

U.S. District Court
CONDITIONS OF
CONFINEMENT
FOOD
VISITATION
USE OF FORCE

Morrison v. Martin, 755 F.Supp. 683 (E.D.N.C. 1990). A state prisoner brought civil rights claims against state officials and employees, and the defendants moved for summary judgment. The district court found that it was without jurisdiction over the civil rights suit to the extent it sought recovery against state officials in their official capacity. It also found that the prisoner did not state a cognizable claim for relief under civil rights statutes by accusing correctional personnel of placing voices in his head to ask about his court case and emitting constant sound waves, as the court could take judicial notice that the impossible contentions could not be true. In addition, the vague and generalized civil rights claims by the prisoner that he had missed meals from time to time and occasionally had not had a mattress, which contained no information as to the location, date or circumstances, could not support an action based on Section 1983, and the subjection of the prisoner to verbal abuse or profanity does not rise to a level of constitutional deprivation cognizable in a civil rights action. Furthermore, the prisoner had no constitutional entitlement to contact visitation during a limited period of time while he was on administrative segregation pending custody review, particularly given the prisoner's refusal to cooperate with diagnostic and intake procedures, and the fact that denial of the contact visits was done pursuant to intake policy and thus constituted a legitimate administrative decision. The claim based on alleged removal of "various appeals materials" and a Bible from his cell for a period of 19 days while he was confined to suicide watch did not state a cognizable claim, particularly where materials were seized pursuant to established policies concerning suicide watch and the prisoner had not shown harm caused by the alleged seizure. Finally, the prisoner's allegation of excessive force was insufficient to state a Section 1983 claim against correctional officers, where the inmate's claims that prison staff subjected him to daily "stinging" and "humiliating impulses" which caused him to ejaculate and urinate on himself, were incredible. The entire picture presented in the inmate's unrealistic and delusional complaint rendered credible beyond doubt the officers' averments that any force used was needed to cope with the inmate's irrationality and that the degree of force used was not excessive. (North Carolina Department of Correction)

U.S. District Court
FAILURE TO
PROVIDE CARE
MEDICATION

Phillips v. Michigan Dept. of Corrections, 731 F.Supp. 792 (W.D. Mich. 1990). An alleged transsexual inmate brought an action against the Department of Corrections and prison officials under Section 1983, seeking an opportunity to continue estrogen treatment. On the inmate's motion for preliminary injunction, the district court found that the inmate suffered from a "serious medical need" within the meaning of the eighth amendment prohibition against cruel and unusual punishment, whether proper diagnosis of the inmate's condition was transsexualism or gender identity disorder of adolescence or adulthood, nontranssexual type, and the inmate was entitled to a preliminary injunction ordering the correctional officials to provide her with estrogen therapy. The institution had denied the inmate medical care through intentional conduct and deliberate indifference, the court ruled. The inmate had been the subject of ridicule and offensive remarks at the hands of the prison physician, and the

conduct of the prison officials actually reversed the therapeutic effects of the previous treatment. Psychological disorders of prison inmates may constitute a "serious medical need" within the meaning of the eighth amendment prohibition against cruel and unusual punishment. Thus, the general principles and standards of the eighth amendment apply to the provision of mental health care. (Riverside Correctional Facility, Michigan)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE
MEDICATION
RECORDS
STAFF

Smith v. Jenkins, 919 F.2d 90 (8th Cir. 1990). An inmate brought an action under Section 1983 against a psychiatrist for the Arkansas Department of Correction, claiming the psychiatrist denied him necessary medical treatment for his mental illness. The U.S. District Court entered summary judgment for the psychiatrist and the inmate appealed. The court of appeals, reversing and remanding, found that fact issues precluded summary judgment on the inmate's claim alleging that the psychiatrist had deprived him of legally necessary medication in violation of the Eighth Amendment. The court noted that neither the magistrate nor the district court reviewed any of the inmate's medical records, the record contained virtually no evidence of an appropriate standard of care, and the record failed to disclose whether the psychiatrist was qualified to diagnose and treat mental illness. (Cummins Unit, Arkansas Department of Corrections)

U.S. Appeals Court
MEDICATION

U.S. v. Watson, 893 F.2d 970 (8th Cir. 1990), cert. denied, 110 S.Ct. 3243. A prisoner brought an action challenging the right of prison officials to forcibly administer psychotropic drugs. The U.S. District Court denied relief, and the inmates appealed. The appeals court, affirming in part and reversing in part, found that the prisoners have a liberty interest in being free from psychotropic medication. Psychotropic medication may be administered only when prison officials believe that such medication is required to control the prisoner in the general prison population; and the fact that medication might improve the prisoner's condition to enable him to be released was an insufficient basis for forcibly administering psychotropic drugs. Psychotropic drugs may be constitutionally administered to a mentally ill federal prisoner whenever, in the exercise of professional judgment, the action is deemed necessary to remove the prisoner from seclusion and to prevent the prisoner from endangering himself or others; once that determination had been made, professional judgment must be exercised in the resulting decision to administer medication. (Missouri Federal Prison)

1991

U.S. Appeals Court
PRETRIAL
DETENTION

Bell v. Stigers, 937 F.2d 1340 (8th Cir. 1991). The guardian for a prisoner who attempted to hang himself with a belt that the jailer had not detected during a pat search filed a civil rights suit against an Iowa county and individual employees, alleging violations of the prisoner's constitutional rights. The district court granted summary judgment in favor of the county sheriff and communications operator on duty but denied summary judgment for the jailer, who appealed. The appeals court found that the jailer did not violate the civil rights of the prisoner, absent a showing that the jailer possessed a level of knowledge required under the deliberate indifference standard that would alert him to a strong likelihood that the prisoner would attempt suicide; the prisoner's offhand comment during the booking procedure "well I think I'll shoot myself" could not reasonably constitute a serious suicide threat when no gun was available, and there was no evidence that the jailer was familiar with a "suicide profile" or that he was under any duty to be. (Washington County Jail, Iowa)

U.S. District Court
TRANSFER

Benitez v. Gonda, 778 F.Supp. 200 (S.D.N.Y. 1991). In his pro se civil rights action against a licensed practical nurse at a state correctional facility, an inmate moved for preliminary injunction and writ of mandamus commanding his return from a "maxi-maxi" facility to which he had been transferred. The U.S. District Court found that the inmate's claims were insufficiently specific to support a grant of relief sought. Although the inmate claims that the regimen at the facility he was currently incarcerated in did not permit him to exercise during one-hour per day recreation period in the manner prescribed by a psychologist, he did not show why he could not perform corrective exercises during the remaining 23 hours, and the court found that the inmate was transferred as a result of his misbehavior and it was shown that the present facility had a fine medical staff and that there was no medical reason to transfer the inmate. (N.Y. State Southport Corr. Facility)

U.S. District Court
DUE PROCESS
INVOLUNTARY
MEDICATION

Breads v. Moehrle, 781 F.Supp. 953 (W.D.N.Y. 1991). A prison inmate filed an action against a prison official alleging that antipsychotic drugs were administered to him against his will in violation of his Eighth Amendment right to be free from cruel and unusual punishment and his due process rights. The inmate and the official filed motions for summary judgment. The U.S. District Court denied the motions, finding that the question of whether the inmate did indeed suffer from a serious mental illness, and if it existed was likely to cause harm if not treated precluded summary judgment. There was also a question of whether procedures existed to ensure that the administration of drugs

against an inmate's will would not be erroneous, and whether the official had personal knowledge of the procedures used to administer drugs against an inmate will. (Erie County Correctional Facility, New York)

U.S. District Court
INTAKE SCREENING

Christian By and Through Jett v. Stanczak, 769 F.Supp. 317 (E.D. Mo. 1991). Survivors of a prisoner who committed suicide in a holdover cell brought a Section 1983 action against the arresting officer and a police dispatcher. The defendants moved for summary judgment. The U.S. District Court found that the officer's failure to designate the arrestee as a suicide risk did not subject the officer to liability in the Section 1983 action, even though the arrestee committed the suicide while he was incarcerated in a holdover cell. The warnings concerning the arrestee's reference to suicide, his state of intoxication, and his abusive behavior were insufficient to apprise the officer of the arrestee's suicidal tendencies. It was also found that the police dispatcher was not liable under Section 1983 for the suicide of the prisoner; while the dispatcher's failure to turn on the camera in the holdover cell at the beginning of her shift may have constituted negligence on her part, it did not rise to the level of deliberate indifference. (City of Florissant Police Department, Missouri)

U.S. District Court
RETARDATION

Horne v. Coughlin, 795 F.Supp. 72 (N.D.N.Y. 1991). An inmate who was allegedly denied due process at a prison disciplinary hearing brought a civil rights action against prison officials. On the officials' motions for summary judgment, the district court found that the officials were sufficiently personally involved in the alleged due process violation to be held liable under the civil rights statute. The Commissioner of the New York State Department of Correctional Services (DOCS), by ratifying or condoning a challenged counsel substitution policy used in a prison disciplinary hearing, was sufficiently personally involved to be held liable to the inmate under Section 1983 for due process deprivation allegedly caused by the policy. In addition, the prison superintendent was personally involved in causing due process deprivations at the hearing arising when the retarded inmate was not provided with a counsel substitute, permitting him to be held liable to the inmate in the civil rights action. The superintendent knew of the inmate's retarded condition and had knowledge of proceedings against the inmate and his subsequent confinement without correcting the alleged constitutional infirmity. (Eastern Correctional Facility, Napanoch, New York)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE
PSYCHIATRIC
CARE

Leshore v. County of Worcester, 945 F.2d 471 (1st Cir. 1991). A civil rights action was brought against a county and county officials in connection with a suicide of a pretrial detainee. The U.S. District Court entered judgment on the verdict in favor of the defendants. It was found that there was no plain error in instructing the jury to consider whether the detainee was in need of psychiatric care "particularly" at the time of the suicide, or in a comment concerning the lack of evidence that a suicidal person remains forever suicidal, in light of evidence that the detainee's condition did appear to have changed following an earlier suicide watch, and since the jury was not precluded from finding that earlier manifestations were so severe that the defendants should have known that the detainee continued to need treatment on the date of the suicide. (Worcester House of Correction, Worcester, Massachusetts)

U.S. Appeals Court
INVOLUNTARY
MEDICATION

Maul v. Constan, 928 F.2d 784 (7th Cir. 1991). A former inmate brought a civil rights suit against a psychiatrist, a director of administrative services, and a supervisor of the psychiatric care unit at a correctional institution, alleging constitutional violations from forcible administration of psychotropic medications. The U.S. District Court awarded \$7,500 against each defendant. On appeal, the court of appeals found that the defendants waived a qualified immunity defense to the inmate's claim where they did not press the defense in any pretrial motions, at the pretrial conference, or at trial, and remand was warranted for clarification of the basis for the damage award of \$7,500 in damages against each defendant for the due process violation. (Westville Correctional Center, Indiana)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE

Torraco v. Maloney, 923 F.2d 231 (1st Cir. 1991). A mother of an inmate who committed suicide sued prison officials under Section 1983, alleging that the suicide was caused by the officials' deliberate indifference to the inmate's serious mental health and safety needs in violation of the Eighth Amendment. The U.S. District Court entered summary judgment for the officials, and the mother appealed. The court of appeals found that there was insufficient evidence of deliberate indifference. Even though they failed to provide the inmate with psychiatric -- as opposed to psychological -- care, and even though officials did not place the inmate in a "suicide cell," the record showed that prison officials accommodated the inmate both times he expressed a need for mental health attention. (MCI-Cedar Junction, Massachusetts)

U.S. District Court
FAILURE TO
PROVIDE CARE

Wyatt By and Through Rawlins v. Horsely, 793 F.Supp. 1053 (M.D. Ala. 1991). A request was filed for approval and entry of consent decrees in a class action arising out of health care providers' alleged failure to comply with certain minimum constitutional standards for adequate care of the mentally ill. The district court found that it could not approve the proposed consent decrees given the counsel's apparent failure to solicit comments on, let alone to obtain any backing for, the proposed changes in the court's previous orders. (Alabama Department of Mental Health and Mental Retardation)

1992

U.S. District Court
FAILURE TO
PROVIDE CARE

Arnold on Behalf of H.B. v. Lewis, 803 F.Supp. 246 (D. Ariz. 1992). A prisoner's guardian ad litem filed a Section 1983 action for the prisoner and others similarly situated for an injunction and declaration that prison officials' deliberate indifference to mental health needs was unconstitutional. The district court found that the prison officials' actions constituted deliberate indifference to serious medical needs in violation of the Eighth Amendment. The officials placed the prisoner in lockdown as punishment for symptoms of her paranoid schizophrenia as an alternative to providing mental health care. The officials knew that the mental health program at the facility was deficient and were aware that the prisoner's mental condition deteriorated when she was locked down in a small cell without treatment, but failed to correct the grossly inadequate psychiatric care. Prison officials' deliberate indifference to the mentally ill prisoner's serious medical needs justified injunctive relief ensuring that she received appropriate treatment. (Santa Maria Unit at Perryville Prison, Arizona)

U.S. District Court
COMMITMENT
RIGHT TO
TREATMENT

Cameron v. Tomes, 783 F.Supp. 1511 (D. Mass. 1992), modified, 990 F.2d 14. An involuntarily committed patient sued the Commissioner of the Department of Mental Health and the administrator of a treatment center for the sexually dangerous, alleging that the defendants had violated his constitutional rights by failing to provide him with minimally adequate treatment. The district court found that rigid application of some of the center's rules and policies to the patient was an unconstitutional failure to exercise professional judgment. According to the court, decisions about the treatment of an involuntarily committed patient cannot be constitutionally sufficient if in making them there is deliberate indifference to the patient's mental health needs. Applying a policy requiring patients to reach a destination within 10 minutes to an involuntarily committed patient with only one leg without any consideration for his disability failed to exercise professional judgment. (Massachusetts Treatment Center for the Sexually Dangerous)

U.S. Appeals Court
INVOLUNTARY
MEDICATION

Felce v. Fiedler, 974 F.2d 1484 (7th Cir. 1992). A parolee brought an action against corrections officials challenging the requirement that he take antipsychotic drugs. The United States District Court granted the corrections officials' motion for summary judgment, and the parolee appealed. The appeals court, reversing and remanding, found that the parolee had a liberty interest in parole without involuntary administration of antipsychotic drugs. Furthermore, the procedure followed by state officials in determining that the inmate's release on parole would be conditioned on the use of antipsychotic drugs was insufficiently neutral and independent to guard against an erroneous determination that he was an appropriate subject for the antipsychotic drug during the parole period. Although the parole plan was devised with medical advice, it was not subject to an independent medical evaluation. Corrections officials were qualifiedly immune from a claim for damages, as procedural due process rights were not clearly established at the time. (Wisconsin)

U.S. Appeals Court
FAILURE TO
PROVIDE CARE
PRETRIAL
DETENTION

Hall v. Ryan, 957 F.2d 402 (7th Cir. 1992). The estate of a detainee who committed suicide while being held in jail brought a Section 1983 action against police officers. The U.S. District Court denied the officers' motion for summary judgment, and appeal was taken. The court of appeals found that a jury question existed as to whether the police officers had treated the detainee, who had committed suicide in his cell, with wilful neglect, so as to lose the benefit of qualified immunity, when they neglected to consult his file after observing him cursing, flinging his shoes, urinating in his cell, and repeatedly flushing the toilet. (City of Decatur Police Department, Illinois)

U.S. Appeals Court
COMMITMENT
STAFF

McArdle v. Tronetti, 961 F.2d 1083 (3rd Cir. 1992). An inmate who had been sentenced for disorderly conduct filed a civil rights action against a prison physician and a prison counselor who diagnosed the inmate's alleged psychiatric condition and instituted involuntary commitment proceedings. The U.S. District Court found that the physician and counselor were entitled to official immunity and granted a motion to dismiss, and appeal was taken. The court of appeals found that the prison physician and prison counselor were immune from the Section 1983 liability with respect to claims of false diagnosis, false testimony and conspiracy, but were not immune from Section 1983 liability

with respect to filing of the petition for involuntary commitment. The prison counselor and prison physician were not protected by either witness or judicial immunity with respect to allegations by the prisoner that they were responsible for filing a petition for involuntary commitment which they knew contained lies. (Erie County Jail, Pennsylvania)

U.S. District Court
INVOLUNTARY
MEDICATION
TRANSFER

Washington v. Silber, 805 F.Supp. 379 (W.D. Va. 1992), affirmed, 993 F.2d 1541. An inmate who was temporarily committed to a correctional treatment center in Virginia filed a federal civil rights action against the doctor who administered antipsychotic drugs to him against his will. The district court found that the administration of those drugs did not violate substantive or procedural due process. Substantive due process was not violated in light of the general district judge's findings that the patient was unable to care for himself and that there were no less restrictive alternatives to involuntary admission. In addition, procedural due process was not violated; although the patient received no due process hearing on or about the date he was actually medicated, the doctor, in the exercise of his professional judgment, had delayed the judicially authorized medication to follow a more conservative course. (Marion Correctional Treatment Center, Marion, Virginia)

U.S. Appeals Court
INVOLUNTARY
MEDICATION

Williams v. Anderson, 959 F.2d 1411 (7th Cir. 1992). An inmate who was given an injection of an antipsychotic drug against his will brought a Section 1983 action against the prison's staff psychiatrist who prescribed the drug, and the staff nurse who administered it. The U.S. District Court granted the defendants' motions for summary judgment, and the inmate appealed. The court of appeals found that the prison physician and the nurse were qualifiedly immune from the Section 1983 liability; in 1985, when the incident took place, it was not clearly established that their action violated due process or the Eighth Amendment. (Menard Correctional Center, Illinois)

1993

U.S. District Court
FAILURE TO
PROVIDE CARE

Casey v. Lewis, 834 F.Supp. 1477 (D.Ariz. 1993). A class of inmates sued Arizona prison officials based on allegations of deliberate indifference to serious medical, dental, and mental health care needs and alleged that female prisoners' equal protection rights were violated with regard to mental health care services. The district court found that the treatment available to seriously mentally ill inmates in the prison system violated the Eighth Amendment. In addition, the unequal treatment of male and female inmates violated the female inmates' equal protection rights in addition to violating their Eighth Amendment rights. The court found that an injunction was appropriate in light of showing that, as a result of economic conditions, the prison system would continue to lock down inmates as an alternative to providing appropriate mental health care. (Arizona Department of Corrections)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
TRANSFER

Gay v. Turner, 994 F.2d 425 (8th Cir. 1993). A state inmate brought a civil rights action against prison officials alleging she was involuntarily detained at a state mental hospital and forcibly injected with antipsychotic drugs in violation of due process. The U.S. District Court granted summary judgment for the officials, and the inmate appealed. The court of appeals, affirming the decision, found that the temporary transfer of the inmate to a state mental hospital did not constitute a major change in conditions of confinement that required procedural protections. At the time prison officials acted in administering forced medications to the inmate, the inmates' rights to avoid unwanted administration of antipsychotic drugs were not sufficiently clear, and the officials were entitled to qualified immunity. (Fulton State Hospital, Missouri)

U.S. Appeals Court
INVOLUNTARY
MEDICATION

Leeks v. Cunningham, 997 F.2d 1330 (11th Cir. 1993), cert. denied, 114 S.Ct. 609. A pretrial detainee brought action under Section 1983 for a jail physician's alleged violation of his constitutional rights in subjecting him to antipsychotic medication against his will. The U.S. District Court denied the physician's motion for summary judgment, and he appealed. The appeals court, reversing and remanding, found that the pretrial detainee's right to refuse administration of an antipsychotic drug was not "clearly established" at the time of the alleged constitutional violation, so that the physician was entitled to qualified immunity for his acts. (Lake County Jail, Tavares, Florida)

U.S. District Court
DUE PROCESS
RIGHT TO
TREATMENT

Rodney v. Romano, 814 F.Supp. 311 (E.D.N.Y. 1993). A pretrial detainee petitioned for a writ of habeas corpus challenging refusal to permit the detainee to be seen by a clinical psychologist with expertise in hypnosis. The district court found that the proper remedy in a case involving inadequate medical treatment to a pretrial detainee is relief under Section 1983, not a writ of habeas corpus. Furthermore, refusing to permit the detainee to be seen by a clinical psychologist with expertise in hypnosis was not barbarous or shocking to the conscience of the court and did not violate due process; the examining psychologist determined that hypnotherapy would not be helpful and could potentially be counterproductive. (Suffolk County Jail, New York)

U.S. Appeals Court
DUE PROCESS
INVOLUNTARY
MEDICATION

Sullivan v. Flannigan, 8 F.3d 591 (7th Cir. 1993). On remand after appeal, the U.S. District Court entered judgment for prison officials on a prisoner's Section 1983 claims, and the prisoner appealed. The appeals court, affirming the decision, found that the prison officials had qualified immunity from a claim that prior procedures used to force the prisoner to take psychotropic drugs deprived the prisoner of due process. The court found the current procedures were constitutional so long as the drug or dosage administered did not rob the prisoner of his ability to think cogently or render him unable to speak on his own defense. (Menard Psychiatric Center, Illinois)

1994

U.S. District Court
PSYCHIATRIC CARE
SEGREGATION

Taifa v. Bayh, 846 F.Supp. 723 (N.D.Ind. 1994). Prisoners brought a class action suit challenging conditions of confinement at a prison operated by the Indiana Department of Corrections. The district court approved a settlement agreement involving assignment and transfer of prisoners, along with improvement of various prison conditions at the Maximum Control Complex (MCC). The state agreed only to assign prisoners to MCC under specified conditions and to transfer prisoners out of MCC after a specified period of time, subject to certain conditions, and agreed to alter MCC conditions in many areas. The agreement provided for expanded provisions for medical care including mandatory psychiatric evaluations for all prisoners upon their admittance. (Maximum Control Complex, Indiana Department of Corrections, Westville, Indiana)

U.S. Appeals Court
INVOLUNTARY
MEDICATION

Walker v. Shansky, 28 F.3d 666 (7th Cir. 1994), affirmed, 51 F.3d 276. A state inmate brought an action against medical personnel alleging that two forced injections of tranquilizing drugs violated his constitutional rights. The U.S. District Court entered summary judgment for the officials and the inmate appealed. The appeals court found that the administration to the inmate of the forced injections did not violate a prohibition against cruel and unusual punishment where the inmate was engaging in explosive and assaultive behavior and a psychiatrist concluded that the inmate's behavior was a result of a borderline personality disorder. The inmate's history of obduracy with respect to medical advice combined with the self-destructive behavior led the psychiatrist to conclude that the inmate was irrational when making a decision concerning his health and welfare. (Centralia Correctional Center, Illinois)

1995

U.S. Appeals Court
SPECIAL HOUSING

Anderson v. County of Kern, 45 F.3d 1310 (9th Cir. 1995). Pretrial detainees and convicted prisoners brought an action against prison officials under Section 1983. The U.S. District Court refused to enjoin prison officials from placing mentally disturbed or suicidal prisoners in safety cells. The detainees and prisoners appealed. The appeals court found that the district court did not err in refusing to enjoin the county from ever making use of safety cells for mentally disturbed or suicidal prisoners. There was ample testimony that some prisoners became so violent and such a danger to themselves that temporary placement in a safety cell was needed to deprive the prisoners of all means of harming themselves. The fact that some prisoners who were violent might be mentally disturbed or suicidal did not detract from the need. The deprivation of sinks, stand up toilets, and beds for short periods of time during violent episodes was constitutionally justifiable because the inmates were confined to the safety cells only for short periods of time. (Kern County Jail, California)

U.S. District Court
FAILURE TO PROVIDE
CARE
TRAINING
RECORDS
SEGREGATION

Coleman v. Wilson, 912 F.Supp. 1282 (E.D.Cal. 1995). Inmates challenged the adequacy of mental health care provided at institutions operated by the California Department of Corrections, alleging that the inadequacies were cruel and unusual punishment in violation of the Eighth Amendment. The district court reviewed the findings and recommendations of the chief magistrate judge after objections were filed by the defendants. The court found that evidence supported the magistrate's findings and recommendations regarding many aspects of the Department's mental health services, and ordered that a special master be appointed to monitor the Department's compliance with court-ordered injunctive relief. The court found that there were six components of a minimally-adequate prison mental health care delivery system under the Eighth Amendment: (1) a systematic program for screening and evaluating inmates to identify those in need of mental health care; (2) a treatment program that involves more than segregation and close supervision of mentally ill inmates; (3) employment of a sufficient number of trained mental health professionals; (4) maintenance of accurate, complete and confidential mental health treatment records; (5) the administration of psychotropic medication only with appropriate supervision and periodic evaluation; and (6) a basic program to identify, treat and supervise inmates at risk for suicide. The court found that evidence supported findings of deficiencies in all of these areas. The Department's mental illness screening procedures were based on self-reporting, use of records of prior hospitalization and/or past or current use of psychotropic medications, exhibition of bizarre behavior, and requests for care. The court found these procedures were used haphazardly and depended for efficacy on incomplete or nonexistent medical records, or observations of custodial staff who were inadequately trained to recognize the signs and symptoms of mental illness.

The court found that medication management for mentally ill inmates was constitutionally deficient because: computers were not networked preventing inmate medication to be tracked when an inmate was transferred; some inmates were receiving timely medication and appropriate monitoring while others were not; and some medications that were effective in the

treatment of serious mental disorders were not available. The court found deficiencies with the medical records maintained by the Department, including: disorganized, untimely and incomplete filing of medical records; incomplete or nonexistent treatment plans; and failure to send medical records with inmates when they were transferred. The court noted that it was the Department's responsibility to take reasonable steps to implement policies that would aid in obtaining medical information from counties from which inmates were transferred.

The court found that policies and practices regarding the housing of mentally ill inmates in administrative segregation and segregated housing units (SHU) violated the Eighth Amendment rights of those inmates. Evidence supported the finding that regulations providing for case review and psychological assessment of segregated inmates had little or no effect on actual practices.

Applying the "deliberate indifference" standard, rather than the "malicious and sadistic" standard, the court found that the use of tasers and 37mm guns against inmates with serious mental disorders had caused serious and substantial harm to mentally ill inmates, whether or not they were on psychotropic medication.

The court found that evidence established that the Department was significantly and chronically understaffed in the area of mental health employees. The court found that custody staff played inappropriate roles in decisions concerning involuntary medication at some institutions. Evidence supported the finding that custodial staff were inadequately trained in signs and symptoms of mental illness, supporting allegations that disciplinary and behavior control measures were inappropriately used against mentally ill inmates. The three-hour course received by all new correctional officers, and additional in-service training at the institution level, were not sufficient to prevent some officers from using punitive measures to control inmates' behavior without regard to the cause of the behavior.

The court supported the decision of the magistrate to refrain from specifying the exact mechanism for screening of inmates, the number of staff to be hired, the specific level of competence to be possessed by staff, the precise methods of medication management, and the manner of maintaining medical records. The magistrate appropriately proposed leaving matters of creation of protocols, standards, procedures and forms to be developed to the defendant, in consultation with court-appointed medical experts. (California Department of Corrections)

U.S. District Court
STAFF
RECORDS
TRAINING
SPECIAL HOUSING

Madrid v. Gomez, 889 F.Supp. 1146 (N.D.Cal. 1995). Inmates brought a class action suit challenging conditions of confinement at a new high-security prison complex in California. The district court found for the plaintiffs in the majority of issues presented, ordered injunctive relief and appointed a special master to direct a remedial plan tailored to correct specific constitutional violations. In the beginning of its lengthy opinion, the court noted that this "...is not a case about inadequate or deteriorating physical conditions...rather, plaintiffs contend that behind the newly-minted walls and shiny equipment lies a prison that is coldly indifferent to the limited, but basic and elemental, rights that incarcerated persons--including the 'worst of the worst'--retain under...our Constitution." The court held that the fact that a prison may be new does not excuse its obligation to operate it in a constitutionally acceptable manner.

The court held that prison inmates established prison officials' deliberate indifference to the use of excessive force by showing that they knew that unnecessary and grossly excessive force was being employed against inmates on a frequent basis and that these practices posed a substantial risk of harm to inmates. According to the court, officials consciously disregarded the risk of harm, choosing instead to tolerate and even encourage abuses of force by deliberately ignoring them when they occurred, tacitly accepting a code of silence, and failing to implement adequate systems to control and regulate the use of force. The court found that officials had an affirmative management strategy to permit the use of excessive force for the purpose of punishment and deterrence.

The court found the delivery of physical and mental health services to be constitutionally inadequate and that evidence demonstrated that officials knew that they were subjecting the inmate population to a substantial risk of serious harm, thus violating the Eighth Amendment. The court held that staffing levels were insufficient, training and supervision of medical staff was almost nonexistent and screening for communicable diseases was poorly implemented. Inmates often experienced significant delays in receiving treatment, there were no protocols or training programs for dealing with emergencies or trauma, there was no effective procedure for managing chronic illness, medical recordkeeping was deficient, and there were no programs of substance to ensure that quality care was provided.

According to the court, although conditions of confinement in the security housing unit did not violate the Eighth Amendment for all inmates, they did violate constitutional standards when imposed on certain inmates, including those who were at a particularly high risk for suffering very serious or severe injury to their mental health. The court found that conditions involved extreme social isolation and reduced environmental stimulation. The court held that prison officials had an actual subjective knowledge that conditions of isolation presented a substantial excessive risk of harm for mentally ill and other vulnerable inmates, and that the officials acted wantonly in violation of the Eighth Amendment.

The court ruled that the psychological pain that results from idleness in segregation is not sufficient to implicate the Eighth Amendment, particularly where exclusion from prison programs is not without some penological justification. (Pelican Bay State Prison, California)

U.S. Appeals Court
MEDICATION

Vaughan v. Lacey, 49 F.3d 1344 (8th Cir. 1995). An inmate filed a Section 1983 action claiming deliberate indifference to his serious medical needs. The U.S. District Court

granted the defendants summary judgment and the inmate appealed. The appeals court, affirming the decision, found that disagreement as to the proper course of treatment was not actionable under the Eighth Amendment. Prison staff were not deliberately indifferent to the inmate's mental health care needs. The jailer had no duty to give the inmate medications prescribed by a psychiatrist who was no longer treating the inmate, without consulting the physicians responsible for the care of the inmate. The doctors who had earlier treated the inmate at a federal prison camp also disagreed with the psychiatrist concerning the types and doses of psychiatric medications the inmate should receive. (Garland County Detention Center, Arkansas)

U.S. Appeals Court
INVOLUNTARY
MEDICATION

Walton v. Norris, 59 F.3d 67 (8th Cir. 1995). An inmate filed a § 1983 suit alleging that forced psychotropic medications violated his due process rights. The district court dismissed the case and the appeals court affirmed, finding that evidence was sufficient to justify the involuntary medication of the inmate. The court noted that the inmate's psychotic or delusional condition worsened every time his medication was discontinued. (Maximum Security Unit, Arkansas Department of Correction)

U.S. Appeals Court
MEDICATION
FAILURE TO PROVIDE
CARE
TRAINING

Young v. City of Augusta, Ga. Through DeVaney, 59 F.3d 1160 (11th Cir. 1995). A former prisoner brought an action against a city and others, alleging violation of his civil rights in connection with his mental health needs. The district court granted summary judgment for the defendants; the appeals court affirmed in part and reversed in part. The appeals court held that fact issues existed as to whether the prisoner suffered constitutional deprivations caused by the custom of inadequate selection or training of jail employees, of which the city should have been aware. The court found that a factual dispute existed as to whether city jail employees had engaged in an undue delay in furnishing medication, and whether the medication was dispensed by jail employees as prescribed. The court noted that jail medication charts were rife with gaps and contained indecipherable information. The prisoner claimed that city jail employees were inadequately selected or trained to recognize the need to remove a mentally ill inmate to a hospital or to dispense medication as prescribed, and that this deficiency reflected deliberate indifference by city policymakers. The court noted that other inmates had complained of lack of adequate treatment for serious medical problems stemming from mental illness, and that the alleged mistreatment and omissions suffered by the inmate occurred over a period of several months while three different jailers were charged with the inmate's care. Evidence of the details of the city's training program was absent from the record and the city did not submit any evidence concerning its selection of jail employees. (Augusta City Jail, Georgia)

1996

U.S. Appeals Court
FAILURE TO PROVIDE
CARE

Antonelli v. Sheahan, 81 F.3d 1422 (7th Cir. 1996). A county jail resident filed a pro se § 1983 action against jail officials, alleging constitutional deprivations. The district court dismissed the suit and the inmate appealed. The appeals court affirmed the lower court decisions regarding some conditions of confinement and issues, including floor-sleeping, theft of his property, lockdowns, denial of access to courts, and denial of opportunity to participate in rehabilitative programs to earn good-time credits. But the appeals court reversed the lower court by finding that several allegations were sufficient to state claims. The inmate's allegation that his health and well being deteriorated while confined because of inadequate exercise also stated a § 1983 claim. The inmate alleged that he was restricted to his cell or unit for extended periods of time and had insufficient space to exercise in his unit. His claims that his pleas for psychological treatment were ignored and that he was deprived of necessary medication were also sufficient to overcome a motion to dismiss. (Cook County Jail, Illinois)

U.S. Appeals Court
PRETRIAL DETAINEE
PSYCHIATRIC CARE

Estate of Cole by Pardue v. Fromm, 94 F.3d 254 (7th Cir. 1996). The estate and mother of a pretrial detainee who committed suicide in a psychiatric ward brought a civil rights action in state court against nurses and a psychiatrist who assisted in the detainee's treatment. After removal by the defendants to federal court the district court granted them summary judgment. The appeals court affirmed, finding that allegations of medical malpractice were not sufficient to sustain a § 1983 action. The court also held that the plaintiffs failed to demonstrate that the defendants were subjectively aware that the detainee would try to commit suicide. The court found that the plaintiffs failed to demonstrate deliberate indifference by the psychiatrist's classification of the detainee as a potential suicide risk rather than a high suicide risk. Although the defendants conceded that plastic bags such as the one the detainee used to asphyxiate himself posed a substantial risk to a patient intent on suicide, the court found that the fact that the detainee was placed on the lower of two levels of suicide precautions showed a subjective conclusion that the detainee did not intend to kill himself. The court noted that determining the point at which a detainee's right under the due process clause to be free from bodily restraint during psychiatric hospitalization intersects with the right to be restrained so he will not harm himself is a matter of medical judgment. (Marion County Jail and Wishard Memorial Psychiatric Ward, Indiana)

U.S. Supreme Court
PRIVACY

Jaffee v. Redmond, 116 S.Ct. 1923 (1996). Survivors of a man whom a police officer shot and killed sued the officer and village, alleging that the officer violated the deceased's constitutional rights by using excessive force. The district court entered judgment for the plaintiffs and the defendants appealed. The appeals court reversed. On review by the U.S. Supreme Court the

Court held that statements made by the defendant police officer to a licensed social worker in the course of psychotherapy and notes taken during their counseling sessions were protected by federal law from compelled disclosure. The Court noted that privileged communications between a psychotherapist and her patient served the public interest by facilitating appropriate treatment for individuals suffering the effects of mental or emotional problems; if the privilege were rejected then confidential conversations between psychotherapists and their patients would surely be chilled. The Court ruled that the federal privilege that clearly applies to psychiatrists and psychologists also extends to licensed social workers in the course of psychotherapy, with equal force. (Village of Hoffman Estates, Illinois)

U.S. District Court
INTAKE SCREENING
PRIVACY
EVALUATION

Molesky v. Walter, 931 F.Supp. 1506 (E.D.Wash. 1996). An inmate filed a § 1983 action against prison officials alleging he was compelled to undergo a psychological evaluation prior to his placement in minimum custody in violation of his constitutional rights. The district court granted summary judgment for the officials, finding that the examination did not involve a level of restraint which exceeded the inmate's sentence in such an unexpected fashion as to give rise to protection under the due process clause. The court also found that the examination did not amount to cruel and unusual punishment because it was not an atypical or significant hardship. According to the court, if the inmate had a right to privacy it was justifiably curtailed by the examination which promoted the legitimate penological purposes of determining the need for immediate medical, dental or mental health attention and identifying any need for the continuation of medications or other care. The court further found that the examination did not violate the inmate's equal protection rights. (Airway Heights Corrections Center, Washington)

U.S. Appeals Court
RIGHT TO TREATMENT

Riddle v. Mondragon, 83 F.3d 1197 (10th Cir. 1996). Twenty-one inmates who had been convicted of sex offenses filed separate civil rights claims against state prison officials, judges, legislators and other state officials. The district court consolidated the actions and granted the defendants' motion to dismiss. The inmates appealed the dismissal of certain claims relating to denial of medical treatment, failure to protect, and equal protection. The appeals court affirmed the lower court decision. The court found that the inmate's allegations that they were denied necessary specialized treatment did not show the requisite unnecessary and wanton infliction of pain by prison officials. The inmates had alleged that they suffered from a sex addiction mental disorder and that they were driven by deviant, sexually compulsive drives; these drives allegedly eroded their self-esteem to the point of apathy, reinforcing their fear and feelings of differentness. The inmates alleged that the weekly group counseling sessions they received were inadequate and that they should have been provided with specific treatment such as that provided to substance abusers. The court noted that the mere fact that the plaintiffs were convicted of sexual offenses did not mean that they have psychological disorders or that they are in need of psychiatric treatment. The inmates alleged that prison officials failed to include sex offenders within prison policies concerning minimum custody status, work release, community corrections, and purposeful classification in medium custody. They challenged their classification as violent offenders which made them ineligible for various pre- and post-sentencing programs. The court ruled that these allegations, if proven, would fail to establish that the different treatment afforded to sex offenders was irrational or arbitrary, and that sex offenders did not constitute a suspect class for equal protection purposes. (Southern New Mexico Correctional Facility)

U.S. District Court
FAILURE TO
PROVIDE CARE

Robey v. Chester County, 946 F.Supp. 333 (E.D.Pa. 1996). The mother and the minor children of a pretrial detainee who committed suicide after being taken off of a suicide watch brought civil rights and state law claims against the county, its board of prison inspectors, two wardens, a prison counselor and a psychologist who treated the detainee. The district court granted the defendants' motion for summary judgment in part and denied in part. The court ruled that the wardens' failure to institute disciplinary proceedings following the detainee's suicide did not constitute knowing acquiescence so as to preclude qualified immunity. The court also held that the prison counselor's failure to respond to requests to see the detainee was not a violation of clearly established rights so as to preclude qualified immunity, if the counselor had not known of the detainee's prior suicide attempt until after the detainee's death. However, the court ruled that reasonable jurors could find that the psychologist acted with deliberate indifference to the detainee's psychological needs so as to be liable under a § 1983 civil rights claim, precluding summary judgment. The psychologist knew when the detainee entered the prison of his prior suicide attempt and that the detainee was diagnosed upon entering the prison as suffering from major depression as well as impaired insights and judgment. The psychologist apparently ordered the discontinuation of the suicide watch and failed to perform a promised follow-up check. The court found evidence supporting a punitive damage claim only against the psychologist and that the county and board of prison directors had sovereign immunity from state law claims. (Chester County Prison, Pennsylvania)

U.S. District Court
PADDED CELLS
RESTRAINTS
ADA-AMERICANS WITH
DISABILITIES ACT

Roe v. County Com'n of Monongalia County, 926 F.Supp. 74 (N.D.W.Va. 1996). A mental health patient brought an action under the Americans with Disabilities Act (ADA) against a county and county officials for alleged statutory and constitutional violations which occurred when the patient was picked up on a mental health warrant. The district court denied the defendants' motions to dismiss, finding that the action was timely and that the patient stated a claim under ADA. The patient claimed he was held for a time in a padded cell, was handcuffed and shackled, was not given proper treatment or a hearing, and was not allowed to use a

bathroom, change clothes or eat without handcuffs. The court found that the inmate was unable to communicate with his family, was unable to attend to his personal hygiene, and was isolated and segregated in a manner that the ADA was designed to prevent. (Monongalia County Sheriff's Department)

U.S. Appeals Court
PSYCHIATRIC CARE
PSYCHOTROPIC
DRUGS

Steele v. Shah, 87 F.3d 1266 (11th Cir. 1996). A prisoner filed a civil rights action against a prison psychiatrist who discontinued his psychotropic medication. The district court granted summary judgment for the psychiatrist, but the appeals court reversed and remanded, finding that a jury could find deliberate indifference to the psychiatric needs of the prisoner if it accepted the prisoner's contentions. The court noted that a prisoner's psychiatric needs can constitute serious medical needs and the quality of psychiatric care a prisoner receives can be so substantially different than accepted standards that it can constitute deliberate indifference. The prisoner alleged that the psychiatrist discontinued his medication on the basis of one cursory interview without having reviewed any medical records beyond the treatment plan sent from another institution, and that the psychiatrist was aware that the inmate was considered by personnel at the other institution to be a potential suicide risk. According to the prisoner, the interview lasted less than one minute and included nothing that could be construed as an evaluation of his mental condition. After his psychotropic medication was discontinued the prisoner suffered from insomnia, anxiety and various bodily pains. He filed numerous grievances about his medication, wrote to his former caretakers, and in response the psychiatric nurse at his previous institution called the medical staff supervisor to make it clear that the prisoner was considered a suicide risk. (Orange County Jail, Florida)

U.S. District Court
PSYCHOTROPIC
DRUGS
INVOLUNTARY
MEDICATION

Young v. Breeding, 929 F.Supp. 1103 (N.D.Ill. 1996). An inmate brought an action against correctional officers, a warden, a nurse and a physician, alleging violation of his constitutional rights. The district court found that the inmate stated a claim against the nurse and correctional officers who allegedly refused to provide him with medical attention during an asthma attack, and against a warden who allegedly ordered the transfer of the inmate to a psychiatric center. The court also found that the inmate stated an Eighth Amendment claim regarding his confinement in a hospital unit's strip cell for approximately 20 days, where he was stripped and forced to endure the cold temperature of his cell and had to wrap himself in toilet paper to stay warm. The court found that the inmate stated a claim against a physician who allegedly forcibly medicated the inmate against his will each time the inmate requested to be released from the strip cell. Officers allegedly sprayed the inmate with mace and refused to provide him with medical attention. (Joliet Correctional Center, Illinois)

1997

U.S. District Court
PRETRIAL DETAINEES
STAFF
SEGREGATION
FAILURE TO
PROVIDE CARE

Carty v. Farrelly, 957 F.Supp. 727 (D.Virgin Islands 1997). Detainees and inmates housed in a criminal justice complex asked the court to find officials in civil contempt of a consent decree. The district court found that the consent decree comported with the principles of the Prison Litigation Reform Act (PLRA) because it was narrowly drawn, extended no further than necessary to correct the violation of federal rights, and was the least intrusive means necessary to correct the violations. The court found the officials in contempt for failing to comply with the terms of the consent decree, and continued noncompliance with a court order requiring officials to pay detainees' and inmates' attorney fees. The officials admitted they never fully complied with the order and failed to make meaningful progress toward reducing the inmate population. The officials had paid only \$50,000 of the \$155,000 attorney fees that the court had ordered paid to the National Prison Project of the American Civil Liberties Union.

According to the court, medical care was inadequate in violation of the Eighth Amendment, where an on-site nurse and physician and two part-time nurses serviced 168 to 190 prisoners, sick call was administered by prison security staff instead of medical staff, prisoners were not seen promptly as needed, the facility did not maintain adequate equipment for emergencies, personal hygiene items were not routinely distributed, intake health evaluations were inadequate, and the facility failed to offer outdoor access to all inmates.

The court cited "abominable" treatment of mentally ill inmates at the facility. Mentally ill inmates were housed together in clusters with often four or five inmates per cell, the majority of inmate assaults occurred in the clusters, and correctional staff taunted mentally ill inmates, rewarding them with cigarettes after instructing them to pull down their pants and hold their crotch, or crawl across the floor. According to the court, when overcrowding and commingling of mentally ill inmates with the general population contributes to inmate-to-inmate violence, the failure to remedy the situation constitutes deliberate indifference to the inmates' basic safety and security in violation of the Eighth Amendment. The court held that officials may not use restraints on mentally ill inmates as matter of course, but may restrain them only under special circumstances. The court also cited the failure of officials to house inmates according to an objectively based classification system and the failure to maintain separate housing for violent inmates. (Criminal Justice Complex, St. Thomas, Virgin Islands)

U.S. Appeals Court
PSYCHOTROPIC
DRUGS
INVOLUNTARY
MEDICATION

Doby v. Hickerson, 120 F.3d 111 (8th Cir. 1997). A former prisoner brought a § 1983 action alleging that a psychiatrist and other corrections personnel violated his due process rights by administering antipsychotic medications to him without his consent. The district court awarded the prisoner \$9,500 in compensatory damages and the defendants appealed. The appeals court affirmed, finding that the psychiatrist was only qualifiedly immune for a portion of the treatments in question, and that the record supported the amount of damages awarded. According to the court, the psychiatrist should have known of the Supreme Court's Harper decision when she met with the prisoner three weeks after it was handed down, and she was therefore not entitled to qualified immunity for administrations that occurred thereafter. The court noted that the prisoner was afforded virtually no procedural protections, and experienced severe side effects that continued for weeks after the medications were discontinued. (ADC Special Programs Unit, Arkansas)

U.S. District Court
FAILURE TO
PROVIDE CARE

Harris v. Lord, 957 F.Supp. 471 (S.D.N.Y. 1997). A Muslim inmate brought a § 1983 action against correctional officers after she was denied permission to attend a weekly religious service and when she did not obtain immediate mental health services. The district court found that the section of the Prison Litigation Reform Act (PLRA) that denied an inmate a civil action for mental or emotional injury without a showing of physical injury did not apply retroactively. The court held that the inmate had presented a viable claim under the First Amendment or the Religious Freedom Restoration Act (RFRA). The court found that the inmate did not establish that her medical needs following the denial of access to religious services were sufficiently serious such that denial of medical care violated the Eighth Amendment. The inmate was on her way to attend the religious service when an officer ordered her back to the recreation yard. When the inmate asked the officer why she could not attend her religious service the officer allegedly responded with obscenities. The inmate returned to her housing unit and requested to be seen by someone in the mental health department because she "was unstable" after her exchange with the officer and needed to "calm down." (Bedford Hills Correctional Facility, New York)

U.S. Supreme Court
SENTENCE

Kansas v. Hendricks, 117 S.Ct. 2072 (1997). Kansas' Sexually Violent Predator Act establishes procedures for the civil commitment of persons who, due to a "mental abnormality" or a "personality disorder," are likely to engage in "predatory acts of sexual violence." The Supreme Court upheld the Act, finding that the Act's definition of "mental abnormality" satisfies "substantive" due process requirements. An individual's constitutionally protected liberty interest in avoiding physical restraint may be overridden even in the civil context, noting that "this Court has consistently upheld involuntary commitment statutes that detain people who are unable to control their behavior and thereby pose a danger to the public health and safety, provided the confinement takes place pursuant to proper procedures and evidentiary standards." (Kansas)

U.S. District Court
PSYCHOTROPIC
DRUGS
FAILURE TO
PROVIDE CARE

McDuffie v. Hopper, 982 F.Supp. 817 (M.D.Ala. 1997). The son of a prisoner who committed suicide while in the custody of a state department of corrections sued corrections officials, private party doctors, and health care providers under § 1983. The son alleged wrongful death caused by negligence, indifference, or recklessness and malpractice. The district court denied summary judgment for the private party doctors and mental health care providers. The court determined that although these parties were government contractors, they were performing at their own behest motivated by a desire to make a profit, rather than at the behest of the sovereign government. The court found that genuine issues of material fact regarding whether treatment received by the prisoner was deliberately indifferent precluded summary judgment. The prisoner had tried to commit suicide at least four times and was receiving large doses of a psychotropic drug. The prisoner requested that all personal items be removed from his cell because his hallucinations were intensifying and made statements to prison personnel about suicide or self harm. But despite these reports of suicidal thoughts a decision was made to discontinue his psychotropic medication. He was placed in an isolation cell, which the court suggested might not have been the proper situation for his treatment. Although the prisoner complained about the discontinuation of his medication, he was not appropriately visited by the medical defendants and was not transferred from the isolation cell. He committed suicide by hanging himself with a bedsheet tied to the bars of his isolation cell. (Kilby Correctional Facility, Alabama, and Correctional Medical Services, Inc.)

1998

U.S. Appeals Court
PRETRIAL DETEN-
TION
FAILURE TO PRO-
VIDE CARE
PSYCHOTROPIC
DRUGS

Collignon v. Milwaukee County, 163 F.3d 982 (7th Cir. 1998). An arrestee's parents and estate sued county and village officials after the arrestee, who had a mental illness and some criminal history, committed suicide after he was released on bail. The district court granted judgment on pleadings for the village and granted summary judgment for the county defendants. The appeals court affirmed, finding that the treatment of the arrestee by a county psychiatrist while he was in pretrial detention did not violate substantive due process. The court also found that neither the police officers' failure to commence emergency detention proceedings, nor their return of the arrestee to his parents, amounted to a substantive due process violation. The court held

that due process was not violated by the alleged refusal of a police officer to provide the arrestee with access to medical personnel capable of assessing the arrestee's condition. The appeals court held that the treatment of the arrestee by a county psychiatrist did not violate the arrestee's substantive due process rights because the psychiatrist exercised professional judgment in the face of the known serious medical needs of the arrestee. The psychiatrist, who was principally responsible for deciding the course of the arrestee's treatment at the jail, prescribed a nontherapeutic dosage of an antipsychotic drug with the intention of forming a "therapeutic alliance" with the arrestee, planning to slowly increase the dosage so that the arrestee could gradually overcome his aversion to side effects. The arrestee was able to lead a productive life while on his prescribed medication to treat his schizophrenia, but he stopped taking his medication and was arrested for damaging property and placed in a county jail for 17 days. He was released on bail to his parents, and shortly thereafter was temporarily detained by village police officers, who also released him to his parents. The next day he committed suicide. (Shorewood Police Department and Milwaukee County, Wisconsin)

U.S. Appeals Court
PSYCHOTROPIC
DRUGS

Frost v. Agnos, 152 F.3d 1124 (9th Cir. 1998). A pretrial detainee brought a § 1983 suit against a sheriff, corrections officers and others alleging that he was subjected to unconstitutional conditions because of his disability. The district court entered judgment for the officers and the detainee appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court remanded the case to the district court to determine whether the detainee was administered a psychotropic drug without proper procedural safeguards. The detainee alleged that he was tricked into taking amitriptyline by a nurse who told him that it was a pain medication. He asserted that he would not have taken the medication if he had known that it had "antipsychotic" effects. (Madison Street Jail, Maricopa County, Arizona)

U.S. District Court
FAILURE TO
PROVIDE CARE

Giron v. Corrections Corp. of America, 14 F.Supp.2d 1252 (D.N.M. 1998). A female inmate who had been raped by a prison guard brought a § 1983 action alleging that officials deliberately disregarded a substantial risk of harm to her and denied her necessary psychological care. The district court granted summary judgment in favor of the officials. The court held that the officials' awareness of two prior incidents of sexual misconduct by other security and correctional officers was not sufficient to establish that the officials must have drawn the inference that a substantial risk of harm existed. The court found that the alleged "voyeuristic" location and viewability of shower areas, the absence of food tray slots in a segregation unit, and the staffing and monitoring of guards in the segregation unit, did not create a substantial risk of harm. The court held that the inmate was not deprived of necessary medical care following the incident. She received psychiatric care after she was sexually assaulted, her care was assessed by an independent psychiatric medical evaluator who concluded that her treatment had been "reasonable and appropriate," and she saw a psychiatrist 18 times and a psychologist at least 100 times during a six month period. (New Mexico Women's Corr'l Facility, operated by Corr. Corporation of America)

U.S. District Court
SUICIDE
FAILURE TO
PROVIDE CARE

Greffey v. State of Ala. Dept. of Corrections, 996 F.Supp. 1368 (N.D.Ala. 1998). The administrator of the estate of a prisoner who had committed suicide sued corrections officials in state court. The case was removed to the federal district court, which held that supervisors who were not aware of the prisoner's earlier unsuccessful suicide attempt were not deliberately indifferent to his serious medical needs. The court also found that a classification specialist who did know of the earlier attempt was not deliberately indifferent because he had fulfilled his duties to the prisoner by referring him to a staff psychologist. The court did not hold the psychologist liable, finding that while his diagnosis eventually proved inaccurate, his conduct rose at most to the level of negligence. The court noted that prisons, even the best ones, breed despondency and it is not unusual for prisoners to display signs of depression. Only those prisoners who presented a strong likelihood, rather than a mere possibility, of suicide are entitled to protection from self-destruction. (Kilby Correctional Facility, Alabama)

U.S. District Court
PRIVACY
FAILURE TO PRO-
VIDE CARE

Hetzel v. Swartz, 31 F.Supp.2d 444 (M.D.Pa. 1998). The administratrix of the estate of a county prison inmate who died from AIDS while confined brought a § 1983 action against a prison mental health counselor. The district court granted judgment for the counselor after a bench trial, finding that the counselor was not deliberately indifferent to the inmate's medical needs. The counselor had denied the inmate's requests for counseling to cope with his AIDS diagnosis. During the counselor's initial sessions with the inmate, the inmate was angry about missing medical records and was determined to recover compensation from the prison. The counselor decided that other inmates among his 100-inmate caseload were more in need of his time. The court also ruled that the counselor's release of information regarding the inmate's diagnosis of AIDS did not violate the inmate's privacy rights under a state law. The counselor released information about the inmate to a doctor and a nurse at the prison, who were entitled to the information under state law. (Luzerne County Prison, Pennsylvania)

U.S. District Court
MEDICATION
STAFF
TRANSFER
FAILURE TO
PROVIDE CARE

Morales Feliciano v. Rossello Gonzalez, 13 F.Supp.2d 151 (D.Puerto Rico 1998). In an ongoing action against a corrections system seeking improvement of medical and mental health care provided to inmates, an expert witness prepared a report documenting the state of compliance with prior orders that had been entered. The district court held that the correctional system continued to violate inmates' Fifth, Eighth, and Fourteenth Amendment rights by failing to provide adequate medical

care. The court found that the officials' actions or lack thereof contributed to the deaths of inmates and to the infliction of pain and suffering. The court ruled that there were systematic deficiencies in staffing, facilities, procedures and administration, and that officials acted in a manner that was deliberately indifferent to the basic human and health needs of inmates. The court found many violations of inmates' constitutional rights, including: failing to fully screen incoming inmates for infectious diseases such as tuberculosis or to detect mental health problems; failing to provide for a sick call system that ensured access to care and that was capable of handling emergencies; failing to carry out medical orders by neglecting to provide prescribed medication or disregarding special recommendations for surgery or specialized care, when officials were subjectively aware of conditions that required intervention; failing to consistently administer "unit dose" medication; failing to provide transportation to scheduled specialty appointments and physical therapy; failing to provide prescribed medical diets; failing to adequately train, supervise or retain health care personnel, which resulted in rampant under-staffing and the consequent impossibility to adequately meet the needs of the inmate population; failing to hospitalize inmates whose mental health condition required the therapeutic environment of a mental health treatment facility; allowing several mentally ill patients to continue to cohabitate with the general population without being tendered any type of mental health treatment; failing to timely provide necessary medical care outside their facilities when not available internally, due in part to a lack of personnel or transportation means; and demonstrating "manifest ineptitude" in maintaining medical records. The court noted that budgetary limitations or inadequate resources can never be a valid justification for constitutional violations. The court concluded that the system had failed to provide adequate facilities and equipment necessary for the provision of adequate health care of inmates pursuant to acceptable professional standards. But the court noted that despite the findings of the expert, the National Commission on Correctional Health Care had accredited the medical care programs in four prisons and awarded provisional accreditation to four more in 1992. But an expert found noncompliance with at least one essential standard at every accredited facility, and the Department of Health provided the court monitor's staff with credible evidence that employees had falsified documents in support of accreditation. (Administration of Correction, Puerto Rico)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
PSYCHOTROPIC
DRUGS
DUE PROCESS

U.S. v. Brandon, 158 F.3d 947 (6th Cir. 1998). A pretrial detainee sought a judicial hearing on the issue of whether he could be forcibly medicated with antipsychotic drugs to render him competent to stand trial. The district court held that an administrative hearing would be sufficient to satisfy due process, and the detainee appealed. The appeals court reversed and remanded, finding that due process required a judicial hearing and that the detainee should be allowed to present his own rebuttal testimony on the issues involved. The court also found that the strict-scrutiny standard of substantive due process review applied, and that the government must prove its case with clear and convincing evidence. (Federal Medical Center, Rochester, Minnesota)

U.S. District Court
COMMITMENT

U.S. v. Chairse, 18 F.Supp.2d 1021 (D.Minn. 1998). The government petitioned to have a prisoner, who was about to be released after serving a prison term, committed on the basis that he suffered from a mental disease or defect that would create a risk of danger if he was released. The district court denied the petition finding that although the government had shown that the prisoner suffered from the mental disease of bipolar disorder, it failed to show that release would create a substantial risk of bodily injury to others or damage to the property of others. According to the court, the prisoner, who had contracted HIV and frequently displayed hypersexuality, did not have a history of specific targets, his condition could be stabilized with medication, and no showing was made that conditions of supervised release could not protect the prisoner or society. (U.S. District Court, Minnesota)

1999

U.S. District Court
FAILURE TO PROVIDE
CARE

Brewer v. City of Daphne, 111 F.Supp.2d 1299 (S.D.Ala. 1999). The mother of a jail inmate who committed suicide brought a civil rights action against a city and city officials, alleging they failed to provide adequate psychological care to the inmate prior to his suicide and failed to protect him from self-inflicted harm. The district court granted summary judgment in favor of the defendants. The court held that there was no official policy, custom, or lack of training which gave rise to § 1983 liability against the city for failing to prevent the inmate's suicide. The inmate had been confined for more than a month of his 18-month sentence when he returned to the jail from a work release job and was found to be under the influence of alcohol. The inmate was found dead in his cell later having died from asphyxiation caused by hanging. The court found that evidence did not establish that the inmate had a serious psychological need prior to his death and that there was no proof that officials knew that the inmate faced a substantial risk of harm given his intoxicated state on the day of his death. (Daphne City Jail, Alabama)

U.S. District Court
PAMII Act- Protection
and Advocacy for
Mentally Ill Individuals
Act
RECORDS

Advocacy Center v. Stalder, 128 F.Supp.2d 358 (M.D.La. 1999). An advocacy group for the rights of mentally ill persons, formed pursuant to the Protection and Advocacy for Mentally Ill Individuals Act (PAMII Act), sued a state prison seeking release of an inmate's mental health records which were needed in connection with an investigation of the inmate's claims of mistreatment. The district court issued a temporary injunction that provided the records. The district court held that surrender of the records did not moot the action because the situation was capable of arising in other cases. The district court entered judgment for the advocacy group

and entered a permanent injunction in response to the unwillingness of the state to modify its policy. The court found that a state law that bars the release of prison inmate records until they have been reviewed by a state court judge violated the advocacy group's right to communicate with the population it was created to serve and the inmate's right of access to court. (David Wade Correctional Center, Louisiana)

U.S. Appeals Court
EVALUATION
MEDICATION
FAILURE TO PRO-
VIDE CARE
PSYCHIATRIC CARE
PSYCHOTROPIC
DRUGS
RESTRAINTS

Campbell v. Sikes, 169 F.3d 1353 (11th Cir. 1999). A state prisoner brought a § 1983 action against a prison official and mental health personnel and the district court granted summary judgment for the defendants. The appeals court affirmed. The appeals court held that a psychiatrist who worked part time at the prison was not deliberately indifferent, absent a showing of subjective mental intent, and that expert testimony did not establish the psychiatrist's subjective mental intent. The psychiatrist allegedly misdiagnosed the prisoner with polysubstance abuse rather than bipolar disorder, and therefore failed to treat the prisoner's bipolar disorder. The court found that the remaining defendants were not deliberately indifferent. The appeals court also found that a prison official and mental health personnel did not use excessive force in using an "L" shaped method of restraint and straightjacket to restrain the prisoner, absent evidence that the force was applied maliciously and sadistically. The court noted that the prisoner posed a serious threat to herself and others, lesser restraints were ineffective, the restraints caused no physical injury, and the prisoner's physical condition was carefully monitored. (Georgia Women's Correctional Institution)

U.S. District Court
EVALUATION
RIGHT TO TREATMENT
SPECIAL HOUSING

D.M. v. Terhune, 67 F.Supp.2d 401 (D.N.J. 1999). Inmates brought a class action suit against correctional officials challenging the adequacy of mental health treatment. Following the submission of proposed settlement agreement the district court held that the settlement was fair and that the plaintiffs qualified as the "prevailing party" for the purposes of an attorney fee award. The settlement consisted of: (1) amendment to the Department of Corrections [DOC] disciplinary regulations, (2) a mental health treatment plan, (3) a statement on new policies and procedures, (4) the funding, monitoring and enforcement of the settlement, and (5) no admission as to the liability of the defendants. According to the settlement, all new prisoners will receive a mental health assessment within 72 hours of arrival. The Department agreed to pay attorney fees in the amount of \$1,220,000 to resolve all fees and costs incurred by the prisoners' attorneys. (New Jersey Department of Corrections, Correctional Medical Services [CMS], and Correctional Behavioral Services, Inc. [CBS])

U.S. District Court
FAILURE TO PROVIDE
CARE
EQUAL PROTECTION

Farmer v. Hawk-Sawyer, 69 F.Supp.2d 120 (D.D.C. 1999). A transsexual prisoner brought an equal protection action against the federal Bureau of Prisons challenging medical treatment policies. The district court granted summary judgment for the defendants, upholding the Bureau's policy of requiring documentation of hormone therapy received prior to incarceration before administering hormone therapy to an inmate. The prisoner had alleged that she had been injured by the heightened documentation requirements that applied only to transsexuals but not to inmates with other mental illnesses. The prisoner was diagnosed with gender identity disorder (gender dysphoria) and is a pre-operative male-to-female transsexual. (Federal Correctional Institute-Butner, North Carolina)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
PSYCHOTROPIC DRUGS
DUE PROCESS

U.S. v. Morgan, 193 F.3d 252 (4th Cir. 1999). A pretrial detainee who was found incompetent to stand trial sought a review of an administrative order that permitted medical personnel to forcibly treat the detainee with antipsychotic medication. The district court upheld the order and the detainee appealed. The appeals court vacated the order and remanded the case. The appeals court found that the detainee was not entitled to an evidentiary hearing before the district court before being forcibly medicated, but that remand was required to determine whether a correctional officer had sufficient education and experience to act as the detainee's staff representative. According to the appeals court, medical personnel had an affirmative obligation to ensure that the detainee was represented by a qualified staff member. (United States Medical Center for Federal Prisoners, Springfield, Missouri)

U.S. Appeals Court
COMMITMENT

U.S. v. Muhammad, 165 F.3d 327 (5th Cir. 1999). The government petitioned for commitment of a federal prisoner who refused medical evaluation and treatment. The federal district court granted the petition and the appeals court affirmed, finding that the government had sufficiently established that the prisoner presented a danger to herself or others. The government's expert psychiatrist had testified that the prisoner was suffering from a severe mental illness and was in need of psychiatric medication and treatment. (Federal Medical Center Carswell, Fort Worth, Texas)

U.S. Appeals Court
MEDICATION
PSYCHOTROPIC
DRUGS

Wakefield v. Thompson, 177 F.3d 1160 (9th Cir. 1999). An inmate brought a § 1983 action against a prison officer alleging violation of his rights when the officer refused to provide him with his prescription psychotropic medication upon his release. The federal district court dismissed the case and the inmate appealed. The appeals court reversed and remanded, finding that the officer's alleged refusal to provide the inmate with his prescribed medication supported a claim of deliberate indifference to the inmate's serious medical needs. The appeals court held that the state must provide an outgoing prisoner who is receiving--and who continues to require-- medication with a supply sufficient to ensure that he has that medication available during a period of time reasonably necessary to permit him to consult a doctor and obtain a new supply. The court termed the state's failure to provide medication sufficient to cover this transitional period as an abdication of its responsibility to provide medical care to those, who by reason of

their incarceration, are unable to provide for their own medical needs. (San Quentin Prison, California)

U.S. Appeals Court
MEDICATION
PSYCHIATRIC CARE

Williams v. Mehra, 186 F.3d 685 (6th Cir. 1999). The personal representative of the estate of a deceased inmate who committed suicide while incarcerated at a state prison brought a § 1983 action against two prison psychiatrists. The district court denied summary judgment for the psychiatrists but the appeals court reversed and remanded, finding the psychiatrists were entitled to qualified immunity. The appeals court held that the failure of the psychiatrists to change the inmate's medication from tablets to liquid, despite some evidence of suicidal ideation, did not amount to deliberate indifference, absent evidence comparing the risks of liquid distribution to pill distribution. (State Prison of Southern Michigan)

2000

U.S. Appeals Court
COMMITMENT
PRETRIAL
DETENTION

Charles W. v. Maul, 214 F.3d 350 (2nd Cir. 2000). A prisoner who had been confined for up to 72 hours after he was found incompetent to stand trial on a misdemeanor charge to allow for a determination of the need for a civil commitment brought a § 1983 action. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded. The appeals court held that the confinement did not violate the prisoner's due process rights but that the prisoner had an equal protection right not to receive treatment that was more onerous than that given to candidates for civil commitment. (New York State Office of Mental Health)

U.S. District Court
INVOLUNTARY
MEDICATION

Dancy v. Simms, 116 F.Supp.2d 652 (D.Md. 2000). A state prison inmate sued correctional officials and others, alleging they forcibly administered psychotropic medication without his consent. The court granted summary judgment for the defendants, finding that the alleged forcible administration without a hearing, on 22 occasions over a two-year period, did not violate the inmate's due process rights because the decisions were made in the exercise of professional medical judgment and arose in the context of emergency situations. The inmate did not contest evidence of particular incidents when his behavior was abusive, self-injurious, or violent. (EMSA Correctional Care, Inc., Patuxent Institution, Maryland)

U.S. District Court
SUICIDE
FAILURE TO PROVIDE
CARE

Estate of Cills v. Kaftan, 105 F.Supp.2d 391 (D.N.J. 2000). The estate of a county jail inmate who committed suicide in his cell sued the county and officials under § 1983. The district court held that lower level jail personnel who removed the inmate from a suicide watch were not liable because they acted on statements of a nursing supervisor and social worker that the inmate was no longer suicidal. But the court denied summary judgment for the remaining defendants finding it was precluded by fact issues as to the adequacy of the policy governing suicide watches, that did not require qualified mental health professionals to clear an inmate from a suicide watch. The inmate, who had been sentenced to sixty days in the jail, had a history of depression and attempted suicide. The jail did not have a written suicide policy but the court found that a verbal policy was in effect at the time of the inmate's death. Under the verbal policy, an inmate on suicide watch was: (1) segregated from the general population; (2) checked by a guard every fifteen minutes; (3) given medical treatment and counseling; (4) dispossessed of clothing and other personal belongings; (5) required to wear a paper gown; and (6) restricted from accessing the commissary, telephone, and from having visitors. (Cumberland County Department of Corrections, New Jersey)

U.S. District Court
FAILURE TO PROVIDE
CARE

Garcia v. City of Boston, 115 F.Supp.2d 74 (D.Mass. 2000). A pretrial detainee brought an action against a city, a hospital and the hospital's emergency psychiatric services program, alleging excessive force and denial of medical and psychological care. The district court granted summary judgment for the defendants. The detainee had been arrested by the city police following a domestic disturbance and was taken to a police station where he was booked and placed in a cell. That evening the detainee made an apparent attempt to commit suicide by cutting his left wrist with the aluminum top of a juice container that had been given to him with his dinner. An ambulance was summoned but the detainee refused treatment. He was placed on the suicide list at the station and handcuffed to a bar on the wall in the booking area, where he could be closely monitored. The following evening the detainee again attempted to commit suicide when he obtained a book of matches and set fire to his own clothing while still handcuffed to the bar. He sustained burns and was taken to a hospital. Hospital personnel explored various mental health alternatives for the detainee but he was eventually returned to the police station and handcuffed to the bar, where he lit his shirt on fire fifteen minutes after returning from the hospital. The detainee's clothes were taken away and he remained in the booking area. Later that day the detainee pulled an officer's gun out of its holster, shot the officer and another prisoner, and was then shot by another officer. The district court held that the officials and hospital staff were not negligent in their failure to place the detainee in a state mental facility since the detainee was not eligible for placement while charges were pending. The court also held that firing of a gun at the detainee was not an excessive use of force because there was a clear need for the use of force, only one round was fired, and the detainee sustained only a limited injury. (Boston Police Department, Area B, District 2 Police Station, Massachusetts)

- U.S. District Court
MEDICATION
FAILURE TO
PROVIDE CARE
- Page v. Norvell, 186 F.Supp.2d 1134 (D.Or. 2000). A state inmate brought a § 1983 action against the manager of a correctional institution's counseling treatment services, alleging violation of his Eighth Amendment rights arising from a diagnosis of bipolar disorder. The district court denied the manager's motion for summary judgment, finding that there were genuine issues of material fact as to whether the manager had caused the prisoner not to receive a medication review, and whether the manager purposefully misdiagnosed the prisoner's mental illness. (Eastern Oregon Correctional Institution)
- U.S. Appeals Court
COMMITMENT
SEX OFFENDERS
- Page v. Torrey, 201 F.3d 1136 (9th Cir. 2000). A detainee who was civilly committed to a state hospital under California's Sexually Violent Predators Act applied to file an in forma pauperis § 1983 action. The district court denied the application and the detainee appealed. The appeals court reversed and remanded, finding that a detainee who was civilly committed to a state hospital was not a "prisoner" within the meaning of the of the Prison Litigation Reform Act (PLRA) and that he ceased being a prisoner when he was released from custody by the California Department of Corrections. (California's Sexually Violent Predators Act)
- U.S. District Court
SEGREGATION
FAILURE TO PROVIDE
CARE
- Perez v. County of Westchester, 83 F.Supp.2d 435 (S.D.N.Y. 2000). A former prisoner brought a § 1983 action against a county and county jail physicians alleging that he was not properly treated for depression and other psychological problems while he was confined. The district court granted summary judgment for the defendants. The court held that the physicians were not liable for violating the former prisoner's rights by placing him a medical isolation unit and taking away his clothing and personal items after he twice made suicidal overtures. (Westchester County Jail, New York)
- U.S. District Court
FAILURE TO PROVIDE
CARE
PRETRIAL
DETENTION
- Thornhill v. Breazeale, 88 F.Supp.2d 647 (S.D.Miss. 2000). Survivors of a pretrial detainee who committed suicide while in custody brought a § 1983 and wrongful death action. The district court held that a sheriff and deputy did not act with deliberate indifference by placing the detainee in a cell with a non-breakaway shower rod and neglecting to remove his shoes. But the court denied summary judgment on the issue of whether the jail's lack of a written policy for suicide prevention was reasonably related to a legitimate governmental interest. The plaintiffs challenged the lack of a policy relating to the administration of cardiopulmonary resuscitation (CPR) to detainees who attempt suicide, and the lack of a written policy for detection and prevention of suicide. The detainee was jailed awaiting trial for allegedly raping his estranged wife. The sheriff and his staff were aware of the detainee's troubled mental history and that he had threatened suicide on two prior occasions. He was initially placed in the jail's mental holding cell where he was isolated from other inmates. He was placed on suicide watch which, according to an unwritten policy, required him to be checked approximately every fifteen minutes. Items with which he could injure himself, including his shoes, were taken from him. After three days without incident the detainee was moved to a juvenile cell in the same section of the jail that was equipped with a toilet and shower and had a non-breakaway shower rod. He remained on suicide watch. He was given his shoes and allowed to leave his cell to exercise and watch television one morning but a deputy forgot to remove his shoes when placing the detainee back in the cell. The detainee hung himself with his shoelaces from the shower rod. He had been observed alive approximately ten minutes before he was found hanging. After he was found hanging it took a period of time for the officers to open the cell and he was eventually cut down and checked for vital signs. Finding no vital signs no attempts were made to revive him. (Lamar County Jail, Mississippi)
- U.S. Appeals Court
COMMITMENT
DUE PROCESS
- U.S. v. Frierson, 208 F.3d 282 (1st Cir.2000). The district court conducted a hearing in the absence of an inmate which ended in an order to involuntarily commit the inmate to a medical center for treatment of mental disease and the inmate appealed. The appeals court reversed and vacated the district court decision. The appeals court held that the inmate had a statutory right to attend the hearing and that a telephone call to the prison and the inmate's non-responsiveness to an officer's efforts to get him to the phone did not provide the inmate with the requisite opportunity to participate in the hearing. The court noted that the hearing had been largely conducted by the time the call was made and the inmate, who had earlier said he wanted to attend any hearing, was not told that this call was his opportunity to participate in the hearing. (Federal Medical Center-Devens, Massachusetts)
- U.S. District Court
INVOLUNTARY
MEDICATION
PSYCHOTROPIC
DRUGS
- U.S. v. Keeven, 115 F.Supp.2d 1132 (E.D.Mo. 2000). A detainee sought judicial review of a determination that psychotropic medication could be administered involuntarily because she was a danger to herself and others, and to render her competent to stand trial. The district court held that the detainee was not entitled to an evidentiary hearing prior to the forcible administration of medication and that her due process rights were adequately protected. The court also found that a psychiatrist who conducted an administrative hearing qualified as a neutral hearing officer because he was not currently involved with the diagnosis or treatment of the detainee at the time of the hearing. (Federal Medical Center, Carswell, Texas)
- U.S. Appeals Court
PSYCHOTROPIC
DRUGS
INVOLUNTARY
MEDICATION
- U.S. v. Weston, 206 F.3d 9 (D.C.Cir. 2000). A district court upheld the decision of the federal Bureau of Prisons to involuntarily administer psychotropic medication to a pretrial detainee. The detainee appealed and the appeals court reversed and remanded, finding that the record did not support the district court's conclusion that the medication was essential for safety. (Federal Correctional Institution in Butner, North Carolina)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE

Williams v. Kelso, 201 F.3d 1060 (8th Cir. 2000). The executor of the estate of a jail inmate who committed suicide while in custody sued jail employees under § 1983. The district court dismissed state law claims against health care providers but denied summary judgment for the defendants on certain claims. The appeals court affirmed the grant of summary judgment and reversed the denial of summary judgment on the remaining claims. The appeals court found that even though a psychologist had instructed jailers to check the inmate's vital signs every four to six hours, their failure to follow this instruction over a period of about seven hours was a matter of negligence, at most, and did not show deliberate indifference. The appeals court also held that there was no requirement under the Eighth Amendment that the jailers provide immediate medical attention to a disoriented, confused, belligerent detainee who had been arrested on an alcohol related misdemeanor charge. The court held that jail supervisors were entitled to qualified immunity on the claim of deliberate indifference in failing to initially segregate the inmate from other inmates upon booking. According to the court, the jail officials gave the inmate his medication, placed him in the misdemeanor section of the jail, regularly observed him, had him examined by a psychologist and psychiatrist, and were in the process of transferring him to a treatment center when his suicide occurred, and the inmate had given no overt indication that he was a suicide risk. The court noted that the plaintiff's expert witness even offered the opinion that persons who exhibited the symptoms that the inmate presented do not generally harm themselves. (Faulkner County Detention Facility, Arkansas)

2001

U.S. District Court
MEDICAL CARE
CONDITIONS

Carlyle v. Aubrey, 189 F.Supp.2d 660 (W.D.Ky. 2001). A former prisoner brought a § 1983 action against a county jail alleging Eighth Amendment violations. The district court granted summary judgment in favor of the defendants. The court held that the prisoner's medical needs were not treated with deliberate indifference, noting that medication was administered twice during the prisoner's one-day stay at the jail, he was intoxicated when arrested, and he admitted that his seizures caused memory loss. The court held that the prisoner was not subjected to unconstitutional conditions of confinement, even though water service in his cell was broken, he was forced to sleep on the floor, and he was fed only a bologna sandwich. The prisoner had admitted that he was offered drinking water on at least two occasions and that officers brought in water to flush the toilet. The court noted that although forcing a prisoner to sleep on the floor for extended periods may amount to an Eighth Amendment violation, the temporary inconvenience of one night spent on the floor does not. (Jefferson County Jail, Kentucky)

U.S. Appeals Court
SUICIDE
FAILURE TO PROVIDE
CARE

Comstock v. McCrary, 273 F.3d 693 (6th Cir. 2001). The personal representative of a prisoner's estate brought a civil rights action against prison medical personnel after the prisoner committed suicide while confined. The district court denied summary judgment for the defendants based on qualified immunity and the appeals court affirmed in part and reversed in part. The appeals court held that evidence was sufficient to establish that a prison psychologist subjectively perceived, and was deliberately indifferent to, the risk that the prisoner might commit suicide. The psychologist had released the prisoner from a suicide watch without making any reasoned assessment or evaluation of the prisoner's suicide risk at the time of release, despite concluding that the prisoner was sufficiently at risk to put him on suicide watch only one day before. The psychologist also admitted that he suspected that other inmates had targeted the prisoner as a snitch, a characterization that he knew was very perilous for the prisoner. (Reception and Guidance Center, State Prison of Southern Mich.)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
SUICIDE

Domino v. Texas Dept. of Criminal Justice, 239 F.3d 752 (5th Cir. 2001). A prison psychiatrist appealed the decision of a federal district court that denied his motion for summary judgment based on qualified immunity. The appeals court reversed and remanded, finding that the psychiatrist's incorrect diagnosis that a prisoner's suicide threat was not genuine, but was made to obtain secondary gain, did not amount to deliberate indifference. (Coffield Unit, Texas Dept. Crim. Justice)

U.S. Appeals Court
PSYCHOTROPIC
DRUGS

Fuller v. Dillon, 236 F.3d 876 (7th Cir. 2001). A prison inmate who had been given psychotropic medication against his will brought a § 1983 action against prison officials and medical personnel alleging violation of his due process rights. The district court granted summary judgment to the defendants and the appeals court affirmed. The appeals court held that the initial decision to medicate the prisoner was made by a treating psychiatrist, as required under the state's scheme for involuntary administration of medication. (Menard Psychiatric Center, Illinois)

U.S. District Court
SEX OFFENDERS

Rogers v. Illinois Dept. of Corrections Spec. Unit, 160 F.Supp.2d 972 (N.D.Ill. 2001). Present and former civil detainees in state correctional centers brought an action against psychologists who had recommended their confinement as "sexually violent persons" under Illinois' Sexually Violent Persons Commitment Act (SVPCA). The district court dismissed the claims of the present detainees, noting that they could petition for habeas corpus relief to challenge their current confinement. But the court found that the former detainees asserted a constitutional violation of equal protection by alleging that their race was a motivating factor for selecting them for confinement from a pool of eligible defendants, insofar as their race related to the race of their victims. The former detainees are all African-American offenders who committed crimes against at least one Caucasian victim. (Sheridan Correctional Center and Joliet Correctional Center, Illinois)

U.S. Supreme Court
SEX OFFENDER

Seling v. Young, 121 S.Ct. 727 (2001). An inmate who was being held under a state sexually violent predator statute petitioned for a writ of habeas corpus challenging the constitutionality of the law. The case eventually reached the United States Supreme Court, which held that the state supreme court's prior determination that the statute was civil rather than criminal precluded the inmate's double jeopardy and ex post facto challenge based on conditions of confinement. According to the Court, there is no federal constitutional bar to civil confinement of sexually violent predators with untreatable mental conditions, since the state has an interest in protecting the public from dangerous individuals with both treatable and untreatable conditions. (Community Protection Act of 1990, State of Washington)

U.S. District Court
PRIVACY

Swan v. U.S., 159 F.Supp.2d 1174 (N.D.Cal. 2001). A federal prison inmate brought an action against the United States and a prison staff psychologist alleging they failed to prevent an attack by another inmate, in violation of his Eighth Amendment rights. The district court granted summary judgment for the defendants. The court held that the psychologist did not act with deliberate indifference to the inmate's safety and was under no legal duty to disclose the inmate's confidential communications regarding a possible risk of harm from other inmates, or to pursue, on the inmate's behalf, protection that would have required disclosure of the inmate's counseling session statements. The inmate claimed that he provided information to the psychologist prior to the attack, who should have acted to prevent it. (Federal Corrections Institute, Dublin, California)

U.S. District Court
INVOLUNTARY
MEDICATION
PSYCHOTROPIC
DRUGS

U.S. v. Weston, 134 F.Supp.2d 115 (D.D.C. 2001). An appeals court affirmed the decision of the federal Bureau of Prisons to administer antipsychotic medication to a detainee who allegedly killed Capitol police officers. On remand to the district court, the court held that the government would be permitted to treat the defendant involuntarily with such medication because it was appropriate and essential in order to render the defendant non-dangerous based on medical/safety concerns, and to restore the defendant's competency to stand trial. (Federal Correctional Institute, Butner, North Carolina)

2002

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
PRETRIAL
DETENTION

Bozeman v. Orum, 199 F.Supp.2d 1216 (M.D.Ala. 2002). The representative of the estate of a pretrial detainee brought a § 1983 action against a sheriff and officials at a county detention facility, alleging that the detainee's death was the result constitutional violations. The district court held that detention officers' use of force to restrain the detainee did not violate his Fourteenth Amendment right against the use of excessive force, even though the officers threatened to "kick" the detainee's "ass." The officers apparently punched or slapped the detainee, and the detainee died as the result of the officers' actions, but the court found that some level of force was necessary to restore order where the detainee was apparently undergoing a mental breakdown in his cell. The court held that nurses at the detention facility were not deliberately indifferent to the serious medical needs of the detainee when they failed to obtain treatment and medication upon learning that the detainee had been evaluated for mental health problems and prescribed medication in the past. The court noted that the nurses had no knowledge during intake beyond a "slight flag" of past evaluations for mental illness and that the detainee had medication to help him "rest." The court also found that the failure of the detention facility to implement a policy requiring staff to follow up on inmates who had acknowledged past mental health problems or evaluations for mental health problems, did not violate the detainee's Fourteenth Amendment right to adequate medical care. The court held that municipal jails are not required to provide on-site psychiatric care for their inmates, and that the detention facility was not required to train its officers in diagnosing or treating mental illness. (Montgomery County Detention Facility, Alabama)

U.S. District Court
DUE PROCESS

Galloway v. Suffolk County Correctional Facility, 232 F.Supp.2d 4 (E.D.N.Y. 2002). A parole violator filed a § 1983 action alleging that prison officials deprived him of his right to due process when they removed him from a substance abuse program. The district court denied the officials' motion for judgment on the pleadings, finding that the parole violator had a state-conferred liberty interest in continued participation in the program, and therefore could not be discharged from the program without a hearing, even though he signed an application stating that a decision to remove him from the program was final. The court held that the county prison's High Impact Incarceration Program (HIIP) was a "substance abuse program" governed by state Mental Hygiene Law. The program involved sixty days of intensive therapy and a six-month aftercare phase. (Suffolk County Correctional Facility, New York)

U.S. Appeals Court
ADEQUACY OF CARE

Hallett v. Morgan, 287 F.3d 1193 (9th Cir. 2002). In a class action, female prisoners at a state prison secured a consent decree that addressed health care concerns. The prisoners challenged the prison's attempt to end the decree, sought additional time for court involvement and moved to have prison officials held in contempt for past violations of the decree. The district court denied the prisoners' motions and granted the prison officials' motion to terminate the consent decree. The prisoners appealed and the appeals court affirmed in part, reversed in part and remanded. The appeals court held that dental care and mental health care did not violate the Eighth Amendment, but ordered the district court to consider retrospective relief on remand. The court noted that the district court should have considered whether officials were in contempt for failing to comply with other medical care provisions of the consent decree. (Washington Corrections Center for Women)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE

Hallett v. Morgan, 296 F.3d 732 (9th Cir. 2002). A class of prisoners at a women's state prison who brought a § 1983 action against prison officials moved to extend jurisdiction over a consent decree for an additional period of time, to have prison officials held in contempt, and to compel discovery. The district court denied the motions and granted the prison officials' motion to terminate the consent decree. The appeals court affirmed in part, reversed in part, and remanded. The appeals court found that dental care and mental health conditions at the prison did not violate the Eighth Amendment. The appeals court found that officials' substantial compliance with the consent decree judgment was an acceptable defense to the prisoners' motion to hold the officials in civil contempt for past violations of the decree. The court remanded the case for reconsideration of allegations that the officials failed to comply with consent decree requirements regarding medical care. (Washington Corrections Center for Women)

U.S. District Court
FAILURE TO PROVIDE
CARE

Merriweather v. Sherwood, 235 F.Supp.2d 339 (S.D.N.Y. 2002). Prison officials moved, under the Prison Litigation Reform Act (PLRA), to dissolve a prison conditions consent decree entered 24 years earlier. Prisoners moved to postpone the automatic stay of the consent decree's provisions. The district court held that it lacked the discretion to postpone the automatic stay once the stay came into effect 30 days after the motion to dissolve was filed. The court noted that even assuming it had the discretion to postpone the automatic stay, the prisoners failed to show that they were entitled to a postponement, where the record did not demonstrate widespread or ongoing constitutional violations of rights to religious freedom, medical care, or access to counsel. According to the court, the prison was not constitutionally required to provide prisoners with the best possible mental health care, but merely with reasonable mental health care in accordance with the state's minimum standards for prison medical care. (Orange County Correctional Facility, New York)

U.S. District Court
SUICIDE
FAILURE TO PROVIDE
CARE

Pelletier v. Magnusson, 195 F.Supp.2d 214 (D.Me. 2002). A personal representative for the estate of an inmate filed a § 1983 action, alleging that state employees violated the Eighth Amendment by failing to prevent the inmate from committing suicide. The appeals court denied the defendants' motion for summary judgment, in part. The court found that summary judgment was precluded by a genuine issue of material fact as to whether correctional officers were aware of clinical meeting notes that indicated that the inmate was very anxious and was hearing voices, and whether they were aware through logs and verbal communication with officers, that the inmate had earlier instances of decompensation. The court also found that summary judgment was precluded because of the spoliation of missing or tampered documents relating to the inmate's medical treatment, and whether a clinical social worker refused to act on a medical recommendation that the inmate required a psychiatric evaluation. (Maine State Prison)

U.S. District Court
SUICIDE
FAILURE TO PROVIDE
CARE

Pelletier v. Magnuson, 201 F.Supp.2d 148 (D.Me. 2002). A personal representative for the estate of an inmate who committed suicide in a state prison filed a § 1983 complaint in state courts, alleging Eighth Amendment violations. The district court granted summary judgment for all of the medical defendants, finding that the alleged missing or tampered documents relating to the deceased inmate's medical treatment did not establish that employees of the prison's contracted health care provider were deliberately indifferent to his serious medical needs. The court held that a social worker, medical doctor, and regional supervisor of medical services were not deliberately indifferent. The court found that a licensed psychiatrist was not administratively negligent for allegedly not knowing that the inmate was psychotic and suicidal at all times. The court noted that the decision to scale down the inmate's care was made by a treatment team and was not the result of financial considerations. (Maine State Prison)

U.S. District Court
EVALUATION

Terry Ex Rel. Terry v. Hill, 232 F.Supp.2d 934 (E.D.Ark. 2002). Pretrial detainees brought a class action against the Arkansas Department of Human Services, claiming that inordinate delays in providing evaluation and treatment of detainees who were referred by the court to determine their fitness to stand trial, violated their Constitutional rights. The district court entered judgment for the detainees. The court held that the inordinate delays amounted to prohibited punishment that violated the detainee's due process rights. The court also found that the officials displayed deliberate indifference to the detainees' circumstances, violating their Eighth Amendment rights. According to the court, the Arkansas Constitution speaks of the State's duty toward the mentally ill, and the Arkansas State Hospital, a division of the Department of Human Services, has responsibility for treating citizens committed by civil courts or by criminal courts for evaluation. (Arkansas State Hospital, Arkansas Department of Human Services)

U.S. District Court
SEX OFFENDER

West v. Macht, 235 F.Supp.2d 966 (E.D.Wis. 2002). Civilly-committed sex offenders brought a § 1983 action against employees of a state treatment facility. The district court held that security-related seclusion placements did not violate the offenders' substantive due process rights because they were rationally related to the purpose of maintaining institutional security and could not reasonably be characterized as punitive. But the court found that fact issues existed as to whether treatment-related placements were based on staff psychologists' reasonable professional judgment, because expert testimony asserted that the placements were not consistent with accepted professional norms. (Wisconsin Resource Center, Wisconsin Department of Health and Family Services)

2003

U.S. District Court
FAILURE TO PROVIDE
CARE

Brooks v. Berg, 289 F.Supp.2d 286 (N.D.N.Y. 2003). An inmate brought an action against prison officials alleging that they denied him medical treatment for Gender Identity Disorder (GID) in violation of his rights. The district court denied summary judgment for the defendants. The court allowed the defendants to submit a new motion for summary judgment, in light of their concession that the inmate was entitled to treatment. The court noted that the defendants now admitted that the inmate was entitled to "the very medical treatment that was held to be required by this Court in its prior opinion." The court had held that Gender Identity Disorder was a serious medical need and that inmates with GID must receive *some* form of treatment. (Clinton Correctional Facility, New York)

U.S. Appeals Court
EVALUATION
DUE PROCESS

Oregon Advocacy Center v. Mink, 322 F.3d 1101 (9th Cir. 2003). Nonprofit organizations sued state officials, contending that delays by a state mental hospital in accepting mentally incapacitated criminal defendants for evaluation and treatment, violated the defendants' substantive and procedural due process rights. The district court entered an injunction requiring the hospital to admit criminal defendants within seven days of a trial court's finding of their incapacity to proceed to trial. The state officials appealed and the appeals court affirmed. The appeals court held that the hospital's delay in admitting incapacitated defendants violated their substantive due process rights. According to the court, under state law it is the state mental hospital, not counties, that has the duty to accept mentally incapacitated defendants for evaluation and treatment. (Oregon State Hospital)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
PSYCHOTROPIC
DRUG

Singleton v. Norris, 319 F.3d 1018 (8th Cir. 2003). A death row prisoner who was being forcibly administered psychotropic medication sought an order ordering a halt to the treatment. The state court denied his motions and he petitioned for a writ of habeas corpus seeking a stay of execution of his death sentence. The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that, on a matter of first impression, a state does not violate the Eighth Amendment or due process by executing an inmate who has regained competency through forced medication that is part of appropriate medical care. (State of Arkansas)

U.S. District Court
MEDICATION
INVOLUNTARY
MEDICATION

Whittington v. Vaughn, 289 F.Supp.2d 621 (E.D.Pa. 2003). A state prisoner who had been diagnosed as schizophrenic brought a § 1983 action against prison officials, alleging civil rights violations. The district court granted summary judgment for the officials. The court held that a unit manager's requests that the inmate take his psychotropic medication did not violate the inmate's due process rights. The court noted that although the inmate was urged to take his medication, and was punished for misbehavior that occurred when he was not taking his medication, and that he was never forcibly injected and was permitted to refuse medication. The court found that misconduct reports were "some evidence" that supported a hearing examiner's decisions to find the inmate guilty of misconduct, and that the examiner's denial of certain witnesses at the inmate's misconduct hearings did not violate the inmate's due process rights. (State Correctional Institution, Graterford, Pennsylvania)

2004

U.S. District Court
PRETRIAL
DETENTION
ADA- Americans with
Disabilities Act

Bolden v. Stroger, 306 F.Supp.2d 792 (N.D.Ill. 2004). Pretrial detainees brought an action challenging a county's policy of barring individuals with mental illness from various pre-release programs, and its policy of discharging mentally ill individuals without providing them with medication and referrals necessary to manage their illnesses. The district court dismissed the action, finding that a court monitoring consent decree that had created pre-release programs at the jail was the proper forum for claims regarding eligibility for the programs, and for challenging the treatment of mentally ill detainees, even though the Americans with Disabilities Act (ADA) was not in existence at the time the decree was originally entered. (Cook County Jail, Illinois)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE

Gates v. Cook, 376 F.3d 323 (5th Cir. 2004). A death row prisoner brought a suit on behalf of himself and other prisoners confined to death row, alleging that certain conditions of confinement on death row violated the Eighth Amendment's prohibition against cruel and unusual punishment. The district court found that a number of conditions violated the Eighth Amendment and issued an injunction designed to alleviate the conditions. The defendants appealed. The appeals court affirmed in part and vacated in part. The court held that the prison's accreditation by a national correctional association (American Correctional Association) was not proof that the conditions of confinement did not violate the Eighth Amendment. The court noted that compliance with association standards could be a relevant consideration, but was not evidence of constitutionality. According to the court, inmates were afforded insufficient mental health care, in violation of the Eighth Amendment. The court cited the isolation and idleness, squalor, poor hygiene, temperature, and the noise of extremely psychotic prisoners, which created an environment that was "toxic" to the prisoners' mental health. (Mississippi Department of Corrections, Unit 32-C, State Penitentiary in Parchman)

U.S. Appeals Court
PRIVATE PROVIDER
FAILURE TO PROVIDE
CARE

Morales Feliciano v. Rullan, 378 F.3d 42 (1st Cir. 2004). The government moved to terminate an injunction issued pursuant to a consent decree that addressed unconstitutional conditions of an inmate health care system. The district court denied the motion and the government appealed. The

appeals court affirmed. The court held that there was an adequate record of continuing constitutional violations and that the district court's order to privatize the system met the Prison Litigation Reform Act's (PLRA) requirements for narrowness, need, and lack of intrusiveness. The district court had found substandard conditions that included the following findings: one-fourth of all inmates who requested sick call did not get it; only 55% of all ambulatory care appointments actually took place; only 49% of specialist consultations deemed necessary for serious conditions were arranged; medically prescribed diets were routinely ignored; mortality rates were rising; and only 31.3% of inmates who had been diagnosed HIV-positive were receiving treatment. The appeals court voiced frustration with this case: "Like the legendary Phoenix, this class action litigation involving prison conditions in Puerto Rico is seemingly incapable of eternal rest...given the long and tortuous history of this litigation--two years ago, we acknowledged that 'the lore of this case is Byzantine.'" (Puerto Rico)

U.S. District Court
DUE PROCESS

Williams v. Consovoy, 333 F.Supp.2d 297 (D.N.J. 2004). A former state prisoner filed a § 1983 action against a psychologist and others, alleging that the decision deny parole violated his constitutional rights. The district court held that the psychologist was entitled to absolute immunity from liability because his assessment of the parole candidate was an adjudicative act. The psychologist performed the evaluation on the order of the state parole board, to assist it in making its parole determination. (New Jersey State Parole Board)

U.S. Appeals Court
SUICIDE

Woodward v. Correctional Medical Services, 368 F.3d 917 (7th Cir. 2004). The administratrix of the estate of a pretrial detainee who had committed suicide in a county jail brought a § 1983 action against a private contractor hired by the county to provide medical and mental health services at the jail, and against the contractor's agents. The district court entered judgment on a jury verdict against the contractor and the contractor's social worker, awarding \$250,000 in compensatory damages and \$1.5 million in punitive damages, and denied motions for summary judgment as a matter of law. The contractor appealed. The appeals court affirmed, finding that the contractor's employee's lack of training and carelessness were relevant toward establishing deliberate indifference, even though the employee herself was not found liable. The court held that the fact that no previous suicides had occurred in the jail did not preclude the contractor's liability. According to the appeals court, the district court did not abuse its discretion by letting the punitive damages award stand. The estate proffered evidence that the contractor failed to adequately train its employees and condoned employees' failure to complete mental health intake forms and the social worker's practice of challenging suicide watch referrals. According to the court, employees knew that the detainee was suicidal but failed several times to place him on suicide watch, in violation of its own written procedures. The court found that evidence of an alcohol-impaired nurse, intake backlogs, and claims of delayed or denied medical care to other inmates was relevant to the contractor's state of mind and was therefore admissible. (Lake County Jail, Illinois)

U.S. District Court
CONFINEMENT
RESTRAINTS
DELIBERATE INDIF-
FERENCE

Ziamba v. Armstrong, 343 F.Supp.2d 173 (D.Conn. 2004). A state inmate filed a civil rights action alleging that prison officials failed to provide constitutionally adequate health care, failed to protect him from the use of excessive force, and used excessive force. The district court granted summary judgment for the defendants in part, and denied it in part. The district court held that fact issues remained as to whether a prison supervisor adequately trained correctional officers with respect to the use of four-point restraints, and failed to respond to reports and complaints of use of force against the inmate. The court denied qualified immunity, finding that a reasonable prison official ought to have understood in 1998 that it was a constitutional violation to restrain a mentally ill prisoner for twenty-two hours, with no penal justification, no food or water, and no access to a bathroom. (Northern Correctional Institution, Connecticut)

2005

U.S. District Court
MEDICATION
FAILURE TO PROVIDE
CARE
MEDICATION
SUICIDE

Atkins v. County of Orange, 372 F.Supp.2d 377 (S.D.N.Y. 2005). Jail inmates brought a § 1983 action against a county and corrections officers, alleging indifference to their mental health needs and mistreatment. The defendants moved to preclude expert witness testimony and for partial summary judgment. The district court granted summary judgment in part and denied it in part. The court held that the county was not deliberately indifferent to the serious medical needs of a jail inmate, despite the inmate's claim that he was given a "woefully inadequate dosage" of medication and was not treated in a timely manner. The court noted that the medical record revealed that the inmate was seen by the mental health unit and a psychiatrist within one day of her admission to the jail and was on a "close watch" until he was seen by mental health personnel. The court found that the county was not deliberately indifferent to the serious medical needs of another inmate who alleged that she was prescribed the wrong medication and was given inadequate care while she was acutely manic. The court stated that the record demonstrated that the inmate was provided with mental health care upon each admission to the jail and that she was kept on "close watch" to ensure her safety until she was able to be seen by mental health staff. The court ruled that the county was not deliberately indifferent by allegedly delaying psychiatric assessment of an inmate and delaying the administration of psychotropic drugs. The court noted that the inmate was on "close watch" during the period of delay to ensure the inmate did not harm himself or others, and the inmate was seen immediately by various professionals after his two suicide attempts. The court found no deliberate indifference based on a three-day delay between the time an inmate was booked and the time she was seen by a psychiatrist, or based on the fact that on several occasions

she missed doses of her medication because she was out of her cell at the time of the scheduled administration of her medications. The court noted that there was no showing that the inmate was harmed as the result of the conduct, and that her medication schedule was switched to evenings to accommodate her as soon as the forensic clinic was notified that she had missed some of her medications. (Orange County Correctional Facility and County Commissioner of Mental Health, New York)

U.S. Appeals Court
SUICIDE

Cook Ex Rel. Tessier v. Sheriff of Monroe County, 402 F.3d 1092 (11th Cir. 2005). The personal representative of the estate of a pretrial detainee who committed suicide while incarcerated brought an action against a sheriff, in his official capacity, asserting claims for deliberate indifference to the detainee's medical needs in violation of § 1983, negligent training and supervision of jail employees, and vicarious liability for the employees' negligence. The district court excluded the representative's expert witness testimony, precluded reference to other suicides at the facility, and granted judgment as a matter of law for the sheriff. The representative appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court acted within its discretion in excluding evidence of other suicides at the jail. The court found that the plaintiff failed to establish that the detainee's suicide was foreseeable to the sheriff and therefore any deficiencies in the sheriff's training or supervision did not rise to the level of deliberate indifference. But the court held that evidence was sufficient to support a jury verdict on the plaintiff's claim that the sheriff was vicariously liable under state law for employees' alleged negligence. The court noted that the detainee made two written requests to see a psychiatrist, one on each of the two days immediately preceding his suicide, and that the detainee stated in one request that he was "mentally sick" and asked to see the psychiatrist "as soon as possible." Three deputies observed the detainee as nervous and anxious, and one specifically observed the detainee apparently having an anxiety attack and complaining of chest pains. (Monroe County Detention Center, Florida)

U.S. District Court
SUICIDE

Drake ex rel. Cotton v. Koss, 393 F.Supp.2d 756 (D.Minn. 2005). The legal guardian for an incapacitated person, who attempted to commit suicide while he was a pretrial detainee in a county jail, and the state human services department sued a county and various officials under § 1983 alleging Eighth and Fourteenth Amendment violations and a state law claim for negligence. The district court granted summary judgment in favor of the defendants. The court held that the officials did not act with deliberate indifference in failing to recognize and respond to the risk that the detainee was suicidal, even assuming there was a 72-minute gap between the last time the detainee was checked and when he was found. According to the court, the officials did not know that the detainee presented a substantial risk of suicide, based on a physician's reports describing the detainee's depression as only "mild" or "situational." There was nothing in the reports to suggest that anti-anxiety medication would have helped prevent the detainee's depression and attempted suicide. The court held that the officials acted with discretion with respect to their placement and treatment of the detainee, and in accordance with a physician's orders, and they promptly took the detainee to the hospital when they discovered he had harmed himself, and were therefore entitled to official immunity as to the negligence claims. (McLeod Co. Jail, Minnesota)

U.S. District Court
SUICIDE

Estate of Adbollahi v. County of Sacramento, 405 F.Supp.2d 1194 (E.D.Cal. 2005). Representatives of the estates of two county jail detainees, and one inmate, who committed suicide while in their cells brought a § 1983 action. The district court granted summary judgment in favor of the defendants in part, and denied in part. The court held that the county was not liable for failing to train jail personnel in suicide prevention where the county had a policy of periodic observation of cell occupants. The court noted that an officer, lacking knowledge that a detainee was suicidal, made no observations, and falsely entered on duty logs that he had done so. The court found that summary judgment was precluded by material issues of fact as to whether a jail commander ratified or encouraged the practice of "pencil-whipping," which involved making false entries on records showing observations of cell occupants that were not actually made. The court held that summary judgment was precluded by material issues of fact as to whether the county knowingly established a policy of providing an inadequate number of cell inspections and of falsifying logs showing completion of cell inspections, creating a substantial risk of harm to suicide-prone cell occupants. The court ruled that the sheriff and jail commander had immunity under state law from liability claims that there were holes in the bunks that could be used for death by hanging, where use of the bunk holes for suicide was not foreseeable. The court held that summary judgment was precluded by material issues of fact as to whether a county jail nurse ratified, condoned, and encouraged the deliberately indifferent behavior of a social worker who conducted an allegedly perfunctory interview of an inmate who later committed suicide. The court found that summary judgment was precluded by material issues of fact as to whether a psychiatric services clinician satisfied applicable standards of care, under state law. (Sacramento County Jail, California)

U.S. District Court
SEX OFFENDER
RECORDS
PRIVACY

Hubbs v. Alamao, 360 F.Supp.2d 1073 (C.D.Cal. 2005). A person who had been civilly confined at a state hospital as a sexually violent predator (SVP) brought a pro se § 1983 action alleging violation of his constitutional rights. The district court held that the plaintiff's right to privacy was not violated when the defendants reviewed his medical records when assessing whether he was a

sexually violent predator. According to the court, the state had a compelling government interest in identifying, confining and treating SVPs that outweighed the plaintiff's right to privacy in his medical records. The court found that the plaintiff's civil conspiracy and equal protection claims were barred because they implied the invalidity of his commitment. (Atascadero State Hospital, California)

U.S. District Court
MEDICATION
FAILURE TO PROVIDE
CARE

King v. Frank, 371 F.Supp.2d 977 (W.D.Wis. 2005). A state prison inmate brought a § 1983 action against corrections officials, alleging undue restrictions on telephone usage and access to written publications, improper cell illumination, and failure to provide adequate mental health care. The district court granted summary judgment in favor of the officials. The court held that the inmate was not deprived of a basic human need by the presence of a constantly illuminated nine-watt fluorescent light in his cell, even though he alleged that the light caused him sleeplessness and other problems. The court noted that a registered nurse and a psychologist both examined the inmate and concluded that he suffered no ill effects. The court found that the mental health care that the inmate received was adequate, noting that the inmate received treatment not only from the prison's psychological services unit, but also from his unit's supervisor as well. The court held that the inmate did not suffer inadequate medical treatment when a corrections officer responsible for distributing his prescription insomnia medication was unable to dispense it on one occasion because the prison had run out of the drug. The court found that the panic attack and similar symptoms claimed by the inmate could not have resulted from a single missed dose, and there was no showing of deliberate indifference. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
SUICIDE

Martin v. Somerset County, 387 F.Supp.2d 65 (D.Me. 2005). The representative of the estate of a county jail inmate who hanged himself in his cell, sued the county, sheriff and jail officials alleging violation of the inmate's federal and state rights. The district court granted summary judgment in part for the defendants, and denied it in part. The court held that summary judgment was precluded by fact issues as to whether jail officials displayed deliberate indifference to the inmate in violation of the Eighth Amendment, prior to the hanging. The court noted that it was necessary to determine if a jail shift supervisor and a control room officer subjectively knew that the inmate was suicidal and whether they unreasonably disregarded the risk. The court found that an officer who merely assisted in cutting down the inmate was not liable for deliberate indifference, where he brought a seat belt cutter to the cell on orders of the shift supervisor, and when it failed to release the sheet the inmate had used to hang himself, he brought scissors. The court found officials did not show deliberate indifference after the hanging when they did not apply cardio-pulmonary resuscitation, noting that the inmate was warm and appeared to be breathing, and it was only a few minutes before an emergency medical team arrived. The court held that the county did not show deliberate indifference to the suicide-prone inmate when it established a suicide prevention protocol, noting that the thrust of this claim was that the officials failed to *follow* the protocol in supervising the inmate. (Somerset County Jail, Maine)

U.S. District Court
SUICIDE
DELIBERATE INDIF-
FERENCE
STAFF

Perez v. Oakland County, 380 F.Supp.2d 830 (E.D.Mich. 2005). The father and personal representative of the estate of an inmate brought a suit under § 1983, alleging that the defendants violated the inmate's Eighth Amendment rights by failing to provide appropriate mental health treatment or monitoring when the inmate was being held in the county jail, leading to the inmate's suicide. The district court held that the county did not act with deliberate indifference in allowing the inmate caseworker, who allegedly lacked sufficient medical background or expertise, to make decisions affecting the health care needs of the inmate. The court noted that the challenged practice was widespread, with the "vast majority" of county jails allowing employees who were not psychiatrists, but who had been trained in suicide detection and prevention, to make determinations whether inmates were suicidal or potentially suicidal.

The court held that the father failed to establish that a deputy actually perceived a risk of placing the inmate in a single cell. The inmate had been placed in a single cell and no special watch status had been ordered by the inmate caseworker, who was responsible for cell assignments. The court held that the caseworker was entitled to qualified immunity because it was not established at the time of the inmate's suicide that the caseworker's actions of making determinations concerning the inmate's cell assignments, without first consulting the inmate's physician or psychiatrist, would violate the inmate's Eighth Amendment rights. According to the court, the jail psychiatrist did not disregard a known and serious medical need, where evidence demonstrated that even though the psychiatrist knew that the inmate was not taking his medication, he determined through his own direct evaluation that the inmate was suicidal. (Oakland County Jail, Michigan)

U.S. Appeals Court
SUICIDE

Snow ex rel. Snow v. City of Citronelle, AL., 420 F.3d 1262 (11th Cir. 2005). The administrator of the estate of a pretrial detainee who had committed suicide while in jail brought an action against a city, its mayor and several police department employees, alleging violations of the detainee's rights under the Eighth and Fourteenth Amendment and asserting a state wrongful death claim. The detainee had been arrested for driving under the influence of alcohol or drugs. The district court granted summary judgment for the defendants on the federal claims and dismissed the state law claims. The administrator appealed. The appeals court affirmed in part, reversed in part,

vacated in part, and remanded. The court held that police department employees who lacked a subjective knowledge of the detainee's potential for suicide were not liable, in their individual capacities, for any constitutional violations. The court noted that the employees had no knowledge of either the detainee's emergency room records showing that the detainee told emergency room staff she had attempted suicide four times before, or of doctor's notes showing that the detainee had suicidal ideation. The court denied summary judgment for one police officer, finding fact issues as to whether he believed that there was a strong risk that the detainee would attempt suicide and did not take any action to prevent her suicide. According to the court, the city's alleged lack of a suicide policy did not cause any constitutional violation. (City of Citronelle Jail, Alabama)

U.S. District Court
DELIBERATE INDIF-
FERENCE
FAILURE TO PROVIDE
CARE

Scarver v. Litscher, 371 F.Supp.2d 986 (W.D.Wis. 2005). A state prison inmate sued officials seeking damages for their alleged indifference to his illness and challenging his conditions of confinement. The district court entered judgment in favor of the officials. The court held that the officials did not show deliberate indifference to the inmate's mental illness condition, because he was examined and prescribed various antipsychotic medications. The inmate alleged that the only deficiency in his treatment was that officials failed to provide art supplies when they were requested. The court found that there were fact issues as to whether the inmate was subjected to conditions that were severe enough to violate the Eighth Amendment, but that the officials had qualified immunity from the inmate's damages suit. The court held that placing the mentally ill inmate in a continuously-illuminated maximum security cell without windows was not clearly established to be an Eighth Amendment violation at the time they placed the inmate in the most extreme isolation section of the maximum security prison. (Wisconsin Secure Program Facility)

U.S. Appeals Court
INVOLUNTARY
MEDICATION

U.S. v. Evans, 404 F.3d 227 (4th Cir. 2005). A detainee appealed the decision of a district court to medicate a detainee against his will to render him competent to stand trial. The appeals court vacated and remanded with instructions, finding that the government failed to demonstrate that involuntary medication would "significantly further" its prosecutorial interest and that it was "medically appropriate." According to the court, the government did not disclose the particular medication and dose range that it proposed to give the detainee, or indicate that it considered the detainee's particular mental or physical condition in reaching its conclusions. (Federal Correctional Institution, Butner, North Carolina)

U.S. Appeals Court
INVOLUNTARY
MEDICATION

U.S. v. Rivera-Guerrero, 426 F.3d 1130 (9th Cir. 2005). The district court entered an order permitting a defendant, who was committed to a federal medical center, to be involuntarily medicated. The defendant appealed. The appeals court reversed and remanded with instructions. The court held that the district court abused its discretion by denying the defendant's request for a continuance, which prevented him from presenting any evidence to rebut the government's medical assertions and precluded the development of the requisite medically-informed record. (Federal Medical Center, Springfield, Missouri)

U.S. District Court
INVOLUNTARY
MEDICATION

U.S. v. Rivera-Morales, 365 F.Supp.2d 1139 (S.D.Cal. 2005). After a defendant was determined to be incompetent to stand trial and was committed to the Attorney General for treatment, the government moved for an order directing the facility director to evaluate the defendant for future dangerousness. The district court held that the use of involuntary medication to restore the defendant to competency was inappropriate and ordered the defendant to be detained for an additional 30 days to determine if he was subject to state commitment. (Federal Medical Center, Butner, North Carolina)

2006

U.S. Appeals Court
PSYCHIATRIC CARE

Borello v. Allison, 446 F.3d 742 (7th Cir. 2006). A prisoner brought a federal civil rights suit against prison employees, alleging they were deliberately indifferent to the danger posed by leaving him in a cell with a mentally unstable cellmate, who attacked him. The district court denied the employees' motion for qualified immunity and they appealed. The appeals court reversed and remanded, finding that the prison employees did not deliberately condone the cellmate's attack on the prisoner, in violation of his Eighth Amendment rights, when they reasonably responded to the prisoner's complaints by honoring his request to be transferred to another cell, and by immediately taking the cellmate to a psychiatrist when he began acting strangely, and by interviewing both men. The prisoner was attacked by his cellmate one week after the cellmate's psychiatric evaluation. (Menard Correctional Center, Illinois)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
SEGREGATION

Clark-Murphy v. Foreback, 439 F.3d 280 (6th Cir. 2006). The estate of a state inmate who died of dehydration while in an observation cell brought two civil rights suits against prison employees, alleging deliberate indifference to the prisoner's medical needs in violation of the Eighth Amendment. The district court denied qualified immunity to 15 corrections officers and they appealed. The appeals court held that a captain and sergeant who assisted the inmate after he collapsed outside the mess hall were not subjectively indifferent to his serious medical needs in violation of his Eighth Amendment rights, and thus were entitled to qualified immunity. The court noted that each perceived that the inmate faced risks to his psychological health and took

reasonable steps to ensure that officers in charge of the inmate's care secured psychological services for him, and that neither officer had any further contact with the inmate or any reason to believe that the inmate's medical needs were not being met. The court found that prison officers and a psychologist who were in the position to perceive that the inmate, who was acting strangely and had been locked in an observation cell and had not received the psychological assistance he needed, were not entitled to qualified immunity on the Eighth Amendment claim alleging deliberate indifference given their interactions with the inmate and their apparent failure to go up the chain of command when a referral did not secure assistance for the inmate. The court also found that the officers and psychologist were not entitled to qualified immunity on the claim that they were deliberately indifferent to the hydration needs of the inmate who died of dehydration after six days in an observation cell, as they could have perceived a serious risk to the inmate based on a heat wave, the fact that water was repeatedly cut off to inmate's cell during their shifts, and the reports of other inmates that the inmate had called out for water. The court found that a correctional nurse who worked just one shift shortly after the inmate's placement in an observation cell was entitled to qualified immunity from liability given her limited exposure to the inmate and the resulting absence of evidence that there was reason to believe that the nurse perceived that psychological help had not been obtained for the inmate or that his condition was deteriorating. (Bellamy Creek Correctional Facility, Ionia, Michigan)

U.S. Appeals Court
PRETRIAL
DETENTION
INTAKE SCREENING

Drake ex rel. Cotton v. Koss, 445 F.3d 1038 (8th Cir. 2006). The legal guardian for an incapacitated person who attempted to commit suicide while he was a pretrial detainee in a county jail, and a state department of human services sued a county and various officials in their individual and official capacities under § 1983, alleging violations of the Eighth and Fourteenth Amendments, and asserted a state law claim for negligence. The district court granted the defendants' motion for summary judgment and the guardian appealed. The appeals court affirmed. On rehearing, the appeals court held that county jailers' actions did not constitute deliberate indifference, and the jailers' decision not to assign a special need classification to the pretrial detainee was a discretionary decision protected by official immunity. According to the court, the jailers' actions of conducting well-being checks of the pretrial detainee only every 30 minutes, failing to remove bedding and clothing, and failing to fill the detainee's anti-anxiety prescription in a timely manner did not constitute deliberate indifference. The court found that the jailers' view of the risk was shaped by the diagnosis and recommendations of a psychiatrist, who indicated that the detainee was not suicidal but simply manipulative. The court noted that the jailers' decision not to assign a special need classification to the pretrial detainee, that would have required more frequent observation, was a discretionary decision rather than a ministerial duty, protected by official immunity. The detainee was discovered hanging by a bed sheet from a ceiling vent in his cell. He was not breathing and the jailers immediately set to work resuscitating him and then transported him to a nearby hospital. He survived, but suffered serious brain injuries as a result of the suicide attempt. (McLeod County Jail, Minnesota)

U.S. District Court
PRETRIAL
DETENTION
RESTRAINTS

Glisson v. Sangamon County Sheriff's Department, 408 F.Supp.2d 609 (C.D.Ill. 2006). A detainee brought a civil rights action against county defendants and a police officer, alleging various violations of his constitutional rights in connection with his arrest and detention. The defendants moved to dismiss. The district court dismissed in part and declined to dismiss in part. The court held that the detainee sufficiently stated claims under the Eighth Amendment and Due Process Clause of the Fourteenth Amendment against a jail and a correctional officer with respect to both his first and second detentions. The court found that the detainee, who was awaiting a probation revocation hearing, sufficiently stated a claim under the Eighth and Fourteenth Amendments by alleging that the county jail maintained policies and customs that tolerated cruel and unusual punishment of convicted prisoners and pretrial detainees, and that the correctional officer strapped him to a wheelchair for several hours, forcing him to urinate on himself and to sit in his urine for several hours, while he was in a manic state. The inmate alleged that the jail and correctional officer knew of his mental condition because it was documented and that the officer's and jail's acts were intentional with malice and reckless disregard for his federally protected rights. The court held that the detainee sufficiently stated denial of access to courts claims against a county jail and correctional officers by alleging that the jail maintained a policy and practice of arbitrarily denying inmates' confidential consultations with their attorneys and that the officers directly participated in the arbitrary and capricious denial of his access to counsel. The court found that the detainee stated an equal protection claim against a county jail and officer by alleging that the jail maintained a policy and practice that discriminated against him because of his mental illness, and that an officer discriminated against him in terms of the type of confinement on the basis of his mental illness. (Sangamon County Jail, Village of Grandview Police, Illinois)

U.S. District Court
FAILURE TO PROVIDE
CARE
RESTRAINTS

Hadix v. Caruso, 461 F.Supp.2d 574 (W.D.Mich. 2006). State prisoners filed a class action under § 1983 in 1980, alleging that conditions of their confinement violated their constitutional rights. Following settlement of claims by consent decree, and termination of the enforcement of mental health provisions of the consent decree, a prisoner moved to reopen the judgment regarding mental health care and for the issuance of preliminary injunction. The district court granted the motion. The court held that reopening the mental health provisions of the consent decree was warranted

where many recurrent problems noted by physicians concerned “cracks” between medical and mental health care. The court noted that forcing separate enforcement actions on related topics would do a disservice to prisoners and administrators by forcing them to function under multiple enforcement regimes. According to the court, the prison’s failure to provide daily psychologist rounds to mentally ill prisoners in a segregation unit violated their Eighth Amendment rights, inasmuch as such prisoners often had psychiatric needs which could not be accommodated without rounds due to their lack of movement and the prisoners’ inability to request care, and that segregation often placed prisoners with mental illness at a heightened risk of mental decompensation and in conflict with correctional officers. The court held that the pattern and practice of non-treatment of prisoners with mental illness, and the uncoordinated treatment of prisoners presenting complicated cases with interdisciplinary problems, violated the Eighth Amendment, in that it deprived prisoners of necessary services for serious medical and mental health needs. The court found that the prison’s use of mechanical in-cell restraints, including “top of the bed” restraints consisting of chaining a prisoner’s hands and feet to a concrete slab, as disciplinary method and/or control mechanism constituted torture and violated the Eighth Amendment, notwithstanding a six-hour limit on bed restraints but which did not prohibit the use of other dangerous restraint devices at end of the six-hour period. (Southern Michigan State Prison, Jackson)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
PRETRIAL
DETENTION

Hills v. Kentucky, 457 F.3d 583 (6th Cir. 2006). An arrestee brought a civil rights action against a treating psychiatrist at a state correctional psychiatric center where the arrestee was held, alleging constitutional violations arising out of his being forcibly medicated. The district court denied the psychiatrist’s motion for summary judgment on the ground of qualified immunity and the psychiatrist appealed. The court of appeals reversed and remanded, finding that the psychiatrist was entitled to qualified immunity. According to the court, a reasonable governmental employee in the position of the treating psychiatrist who prescribed medication to be forcibly administered to the arrestee would not have clearly known his conduct was unlawful, and thus, the psychiatrist was entitled to qualified immunity in the arrestee’s civil rights action against him. The court order that authorized the arrestee’s transfer to the center for treatment and examination after the court had found that the arrestee was not competent to stand trial on a burglary charge, stated that the treatment ordered included forced medication if necessary, and after seven weeks of treatment, the center’s mental health professionals concluded that the arrestee could benefit from antipsychotic medication. (Kentucky Correctional Psychiatric Center)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Moots v. Lombardi, 453 F.3d 1020 (8th Cir. 2006). A state prisoner sued various prison officials, alleging that they were deliberately indifferent to his serious mental health needs and that they retaliated against him for filing a grievance. The district court entered summary judgment for the officials and the prisoner appealed. The appeals court affirmed and held that: (1) the failure to house the prisoner with cellmates of his choosing did not constitute deliberate indifference to his serious medical needs, where the officials had ample reasons for their action, including safety concerns, and the officials had no reason to know that their housing choices would have a serious negative impact on the prisoner’s mental health; (2) any failure to ensure that the prisoner’s medications were promptly transferred to solitary confinement did not constitute deliberate indifference to his serious medical needs, absent a showing by the prisoner that he suffered harm as a result; (3) a conduct violation for fighting did not constitute retaliatory discipline, where the prisoner was bruised around his eye, and the fact that a conduct violation was later expunged did not mean that there was not some evidence for its imposition; and (4) transfer to another prison did not constitute disciplinary retaliation, where he disputed neither the computation of his classification score nor the conclusion that his score made him ineligible to remain at the prison from which he was transferred. (Missouri Eastern Correctional Center)

U.S. Appeals Court
SUICIDE
DELIBERATE
INDIFFERENCE

Perez v. Oakland County, 466 F.3d 416 (6th Cir. 2006). The father and personal representative of an inmate’s estate brought a § 1983 action against a county, sheriff department, sheriff deputies, inmate caseworker, and psychiatrist alleging the defendants violated the inmate’s Eighth Amendment rights by failing to provide appropriate mental health treatment or monitoring while he was being held in a county jail, leading to the inmate’s suicide. The eighteen-year-old inmate had hanged himself from a bedsheet tied to a vent in his single cell. The district court granted the defendants’ motions for summary judgment and the father appealed. The appeals court affirmed. The court held that a county policy allowing a caseworker, who was not medical personnel, to make decisions regarding housing assignments for mentally ill inmates did not demonstrate deliberate indifference. The court noted that the caseworker was well-trained in mental health needs and suicide, nothing established that the policy had ever resulted in suicide or attempted suicide by another prisoner in the county jail, and the father’s expert stated that prisoner screening and placement decisions were commonly made by non-medical officials. The court held that the caseworker was entitled to qualified immunity because it was not clearly established at the time of the suicide that a county jail caseworker could be found to be deliberately indifferent to an inmate’s medical needs by moving him to single cell housing without first consulting the inmate’s treating physician or the jail’s psychiatrist, even though the inmate had threatened suicide and attempted suicide in the past. The court noted that the inmate was not deemed

suicidal when he was moved to a single cell, the inmate was not generally deprived of medical treatment involving his mental health needs, and prisoners had no general right to be correctly screened for suicidal tendencies. (Oakland County Jail, Michigan)

U.S. District Court
RIGHT TO
TREATMENT

Price v. Wall, 428 F.Supp.2d 52 (D.R.I. 2006). An inmate brought a § 1983 suit against corrections officials, alleging that he was intentionally transferred to the facility where he was confined in an effort to frustrate his rehabilitation, in retaliation for his filing of a motion to compel compliance with a state court order, in violation of the First Amendment. The defendants moved to dismiss. The district court held that the inmate stated a First Amendment retaliation claim where he alleged that corrections officials intentionally transferred him to the facility in retaliation for his court action. According to the court, the question was not whether the defendants had a right to transfer the inmate, but whether such action was accomplished for an unlawful purpose. The inmate had been required, as a condition of his sentence, to complete certain rehabilitative programs, including psychological and psychiatric treatment while incarcerated. After not receiving any of the court-mandated treatment, the inmate filed a motion in the state courts seeking to compel the Department of Corrections to comply with the state court order. After several skirmishes, the Department of Corrections agreed to provide the inmate with the court-mandated treatment. The parties further agreed that if the inmate successfully completed the first round of treatment, the Department of Corrections would upgrade his classification status, permitting him to participate in further rehabilitative treatment as mandated by the state court. The inmate successfully completed his first round of treatment and appeared before a classification board for review of his classification status. Based on his successful completion of the initial round of treatment and pursuant to the agreement between the inmate and the Department, the board recommended that the inmate's classification be upgraded. But the defendants refused to permit an upgrade and instead launched no less than three separate, unrelated investigations into various matters, delaying the inmate's classification status upgrade and prohibiting him from participating in further rehabilitation. (Rhode Island Department of Corrections)

U.S. Appeals Court
CONFINEMENT
SEGREGATION

Scarver v. Litscher, 434 F.3d 972 (7th Cir. 2006). A state prisoner brought a civil rights action against officials at a "supermax" prison, alleging that his conditions of confinement had aggravated his mental illness. The district court granted summary judgment for the officials and the prisoner appealed. The appeals court affirmed, finding that the officials did not unconstitutionally subject the prisoner to cruel and unusual punishment, absent evidence that they knew that the conditions were making his mental illness worse. According to the court, prison authorities must be given considerable latitude in the design of measures for controlling homicidal maniacs without exacerbating their manias beyond what is necessary for security. The prisoner alleged that the heat in the cells in the Summer interacted with his antipsychotic drugs and caused him extreme discomfort, and that the constant illumination of the cells also disturbs psychotics. The prisoner alleged that the low level of noise, without audiotapes, a radio, or any source of sound, prevented him from stilling the voices in his head. (Wisconsin Secure Program Facility)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
PSYCHOTROPIC
DRUGS
DUE PROCESS

Spann v. Roper, 453 F.3d 1007 (8th Cir. 2006). A state prisoner brought a § 1983 action against a prison nurse alleging deliberate indifference and violation of the due process clause. The district court granted summary judgment in favor of the nurse. The prisoner appealed. The appeals court affirmed in part and remanded in part. The court held that the nurse did not act with deliberate indifference in forcing the prisoner to take another inmate's medication. According to the court, summary judgment was precluded by fact questions as to: (1) whether the state prison nurse's mistaken conduct in forcing the prisoner to take psychiatric medication created a serious medical condition that the nurse knew of but ignored; and (2) whether immediate medical attention, such as pumping the prisoner's stomach, could have removed the medication before it was totally absorbed in the prisoner's system. The court found that the prisoner's due process rights were not implicated by the nurse's inadvertent administration of another inmate's psychiatric medication because the nurse's decision did not involve the treatment of an unwilling patient with psychiatric medication. A few minutes after taking the medication, the prisoner felt his legs collapse and the room spin. He awoke in pain in another room with a sore throat and dried blood. (Transitional Care Unit, Missouri)

U.S. District Court
DELAY IN CARE
SUICIDE

Thomas v. Walton, 461 F.Supp.2d 786 (S.D.Ill. 2006). A state prisoner brought civil rights claims against correctional officials, alleging use of excessive force, deliberate indifference to medical needs, and retaliation in violation of his First Amendment rights. The defendants' motion for partial summary judgment was granted in part and denied in part. The district court held that a one-day delay in providing access to a mental health professional following the prisoner's suicide attempt did not involve deliberate indifference and that a 10-day delay in providing medical attention was not deliberate indifference. The court found that the prisoner's repeated refusal to comply with an order to submit to a strip search during a cell inspection justified spraying him with the chemical agent. The court found that the spraying did not involve the use of excessive force, where the chemical was not used in a quantity greater than necessary to subdue the prisoner, secure his compliance with the order, and assure the safety of the officers. The court noted that the prisoner was being held in segregation in a maximum security prison and had a

history of assaults on correctional officers. (Tamms Correctional Center, Illinois)

U.S. District Court
PRETRIAL
DETENTION
DELIBERATE INDIF-
FERENCE

U.S. v. Terrell County, Ga., 457 F.Supp.2d 1359 (M.D.Ga. 2006). The federal government brought a Civil Rights of Institutionalized Persons Act (CRIPA) action against a county, county sheriff, and various other county officials, seeking a determination that county jail conditions were grossly deficient in violation of the Fourteenth Amendment. The district court granted the government's motion for summary judgment. The court held that the sheriff and other officials were deliberately indifferent to the jail's gross deficiencies in the areas of medical and mental health care for inmates, protection of inmates from harm, environmental health and safety of inmates, and fire safety, in violation of the due process clause. The court noted that the lack of funds is not a defense to, nor legal justification for, unconstitutional conditions of a jail, for the purpose of analyzing a deliberate indifference claim under the due process clause of the Fourteenth Amendment. Even if a defendant argues that it is planning or working towards construction of a new jail to remedy the unconstitutional conditions at the current facility, the failure to implement interim measures to alleviate those conditions demonstrates deliberate indifference, according to the court. (Terrell County, Georgia)

U.S. Appeals Court
EVALUATION

Williams v. Consvooy, 453 F.3d 173 (3rd Cir. 2006). A former state prisoner brought a § 1983 action against parole board members, a psychologist who contracted with the state to provide mental health services, and others, alleging that his arrest for a parole violation and the subsequent decisions of the parole board violated his Fourth and Eighth Amendment rights. The district court granted summary judgment for some parole board members and the arresting officer on immunity grounds, and granted the psychologist's motion for summary judgment. The former prisoner appealed. The appeals court affirmed and held that: (1) the claim against parole board members and the arresting officer was not cognizable under § 1983; and (2) the psychologist enjoyed absolute immunity. According to the court, regardless of the fact that federal habeas relief was no longer available, the parole revocation decision had not been rendered invalid, and success on the former prisoner's claims would necessarily invalidate a revocation decision. The court held that the private psychologist who contracted with the state to perform the evaluation and presented his findings to the adjudicative parole board, which then relied on his report and expertise in reaching its ultimate decision to deny the inmate parole, acted as an arm of the court and enjoyed absolute immunity from the inmate's § 1983 action alleging the wrongful denial of parole. (New Jersey State Parole Board)

U.S. District Court
PRETRIAL
DETENTION

Winters ex rel. Estate of Winters v. Arkansas Department of Health and Human Services, 437 F.Supp.2d 851 (E.D.Ark. 2006). The administrator of the estate of mentally ill pre-trial detainee/civil committee who had died of peritonitis while in custody of a sheriff sued the sheriff and the Arkansas Department of Human Services (DHS) under § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. Following bench trial, the district court held that neither DHS nor the sheriff caused or contributed to the death of the detainee/committee, and they were not liable under the Due Process Clause, Eighth Amendment, Rehabilitation Act, or ADA. The court found that the sheriff had no policy or custom to apprehend and incarcerate acutely mentally ill persons, as indicated by the fact that the detainee may have been only person under civil commitment ever housed in the sheriff's detention facility. (Benton County Jail, Arkansas)

2007

U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE
PSYCHOTROPIC
DRUGS

Anderson ex rel. Cain v. Perkins, 532 F.Supp.2d 837 (S.D.Miss. 2007). A daughter, as next friend of a jail detainee who suffered second-degree burns on her ankles, thighs, and buttocks while awaiting mental health commitment, brought a civil rights suit against a sheriff and a county. The sheriff moved for summary judgment on claims brought against him in his individual capacity. The district court granted the motion. The court held that the sheriff did not violate the detainee's right to be protected from harm, absent evidence showing that restraints were likely used to subdue her. The court found that the sheriff was not deliberately indifferent to the detainee's medical needs in failing to administer her anti-psychotic medications, where the detainee's refusal to take her medications prior to being taken into custody, coupled with her violent and psychotic behavior as the result of the refusal, was the basis for her commitment. The court found that the sheriff was not deliberately indifferent in failing to discover second-degree burns of an unknown origin on the detainee's ankles, thighs, and buttocks because jailers regularly observed the detainee through a viewing window in her cell door, but did not actually enter the cell to visually inspect the detainee for signs of injury. (Amite County Jail, Mississippi)

U.S. District Court
FAILURE TO
PROVIDE CARE
MEDICATION

Baylis v. Taylor, 475 F.Supp.2d 484 (D.Del. 2007). An inmate brought a § 1983 action against various defendants, alleging deliberate indifference to his serious medical needs. The defendants moved for dismissal. The district court granted the motion in part and denied in part. The court held that the inmate's administrative remedies with respect to his claim that prison personnel were deliberately indifferent to his serious medical needs were presumed to have been exhausted, for the purposes of the Prison Litigation Reform Act's requirement that administrative remedies be exhausted before a § 1983 action could be brought, since no further remedies were available to the inmate. The court held that the inmate failed to state a § 1983 claim for deliberate indifference to his serious medical needs against a prison doctor. The inmate alleged in his complaint that the doctor stopped prescribing a particular medication that the inmate deemed appropriate for treatment of his attention deficit disorder, but the court held that this indicated merely a difference of opinion as to treatment that did not rise to the level of an Eighth Amendment violation. According to the court, the inmate stated a § 1983 claim for deliberate indifference to serious medical needs against a prison psychologist by alleging that, despite his promises, the psychologist failed to provide the inmate with therapy for his attention deficit disorder, and failed to have the inmate revisit a psychiatrist. The court also found that the inmate stated a § 1983 claim for deliberate indifference to serious medical needs against a prison employee, with his complaint that alleged that the inmate had no teeth, that he presented himself for dental care, and that the employee refused to let the dental work go forward. (Delaware Correctional Center)

- U.S. District Court
FAILURE TO
PROVIDE CARE
- Dickens v. District of Columbia*, 502 F.Supp.2d 90 (D.D.C. 2007). A decedent's sister brought a wrongful death action against a railroad and the District of Columbia after the decedent was struck and killed by a train shortly after his release from prison. The defendants moved to dismiss the complaint. The district court granted the railroad's motion and denied the District's motion. The decedent's sister alleged that her brother was severely mentally ill and was released from the D.C. Jail without adequate preparation and without informing his relatives, which led to his death. (District of Columbia)
- U.S. District Court
DELIBERATE
INDIFFERENCE
SUICIDE
- Estate of Hill v. Richards*, 525 F.Supp.2d 1076 (W.D.Wis. 2007). The estate of a county jail inmate who committed suicide sued the social worker who interviewed the inmate shortly before her suicide, claiming deliberate indifference to the inmate's suicidal mental condition, in violation of the Eighth Amendment. The social worker moved for summary judgment. The court held that summary judgment was precluded by fact issues as to whether the worker was aware of a suicide risk, as the result of a statement by the inmate that she had poked herself with a thumbtack, and as to the adequacy of the worker's response to the inmate's statement. The court noted that expert testimony was not required to establish that the social worker violated the Eighth Amendment by being deliberately indifferent to the health and safety of the jail inmate; under those circumstances a jury of laypersons could conclude that there was a duty to protect the inmate. The social worker knew, from her experiences with the inmate, that the inmate had a history of depression, that she had been prescribed multiple medications for depression and that she previously had expressed a desire to die. The social worker also knew that the inmate had not been taking her medication for several weeks and that she was being housed in segregation at the jail, where neither other prisoners nor staff could easily monitor her. (Dane County Jail, Wisconsin)
- U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO
PROVIDE CARE
- Giddings v. Joseph Coleman Center*, 473 F.Supp.2d 617 (E.D.Pa. 2007). A parolee brought a civil rights action against a parole officer and warrant officers who transported him back to prison from a halfway house, alleging that they were deliberately indifferent to his serious physical and mental health needs in violation of the Eighth and Fourteenth Amendments. The defendants moved for summary judgment on the ground of qualified immunity. The district court granted the motion. The court held that the parole officer was entitled to qualified immunity from the Eighth Amendment claim that she was deliberately indifferent to the parolee's need for medical treatment for a self-inflicted cut on his arm, noting that the cut was not serious because the parolee did not experience significant blood loss or infection, and the officer was not indifferent to the cut as evidenced by her offer to take the parolee to the hospital the next day. The court ruled that the officer was entitled to qualified immunity from the claim that she was deliberately indifferent to parolee's mental health needs, where evidence did not show that the parolee's mental health needs were serious on the day he cut himself, as there was no indication of a genuine suicide attempt, and the officer was not indifferent to those needs as she sent the parolee to the mental health unit of the halfway house. (Joseph Coleman Center, Pennsylvania)
- U.S. District Court
DELIBERATE
INDIFFERENCE
INVOLUNTARY
TREATMENT
PSYCHOTROPIC
DRUGS
- Hendon v. Ramsey*, 528 F.Supp.2d 1058 (S.D.Cal. 2007). A state inmate filed a § 1983 action alleging that prison medical officials involuntarily administered anti-psychotic medications without following proper procedures and in deliberate indifference to his medical needs. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the involuntary administration of anti-psychotic medications to the inmate did not demonstrate deliberate indifference to the inmate's serious medical needs, as required to establish an Eighth Amendment violation, where the officials administered the drugs in an attempt to treat the inmate's mental health crisis. But the court held that the post-deprivation remedies available to the California inmate after the officials forcibly administered anti-psychotic drugs were insufficient to protect the inmate's due process liberty interest in being free from involuntary medication. According to the court, although state law established procedural safeguards before inmates could be involuntarily medicated, the prison officials allegedly disregarded their duty to comply with those established pre-deprivation procedures. The court found that the inmate's right to be free from arbitrary administration of anti-psychotic medication was clearly established by existing case law in 2002, the time of this incident, and therefore state prison officials were not entitled to qualified immunity from liability. (California State Prison-Sacramento)
- U.S. District Court
FAILURE TO
PROVIDE CARE
RECORDS
SUICIDE
- Justus v. County of Buchanan*, 517 F.Supp.2d 810 (W.D.Va. 2007). The administrator of a pretrial detainee's estate filed a § 1983 action against a sheriff and county jail employees arising out of the detainee's jail suicide. The detainee had a history of schizophrenia, bipolar disorder, anxiety, paranoia, and delusions and had been hospitalized for these conditions several times in the three years prior to his suicide. His treatment records show that he was hospitalized because family members reported suicidal ideation and bizarre, violent, and sexually inappropriate behavior. The defendants moved for summary judgment. The district court granted the motion. The court held that the sheriff's deputies' failure to provide the pretrial detainee with prompt medical care after they discovered him hanging in his cell did not amount to deliberate indifference to the detainee's serious bodily injuries, in violation of the detainee's due process rights. The court noted that, even though the detainee was still alive when they took him down approximately 13 minutes after discovering him, there was no showing of an affirmative causal link between their inaction and the detainee's death from hypoxic brain injury.
- The court found that the sheriff was not deliberately indifferent to the pretrial detainee's suicidal nature, and thus was not subject to liability under § 1983 for failing to take steps to prevent his suicide, even though a notation on an incident report two months before the detainee's suicide indicated that another prisoner reported that the detainee "was threatening suicide". The court found no proof that the report did not simply inadvertently escape the sheriff's knowledge.
- The court held that a reasonable sheriff would not have understood from existing law that the absence of an operating video surveillance system in the county jail would violate a suicidal pretrial detainee's constitutional rights, and thus the sheriff was entitled to qualified immunity from liability under § 1983, even though the jail policy and procedure manual required immediate repair of any defective security equipment, and the sheriff was aware that the equipment had not been operating for some time.
- According to the court, under Virginia law, the deputies' failure to provide the pretrial detainee with prompt medical

care after they discovered him hanging in his cell did not amount to gross negligence as required to overcome their immunity from tort liability. (Buchanan County, Virginia)

U.S. Appeals Court
SUICIDE
RESTRAINTS

Norris v. Engles, 494 F.3d 634 (8th Cir. 2007). A county jail detainee, who had been diagnosed with manic bipolar depression, sued a jail official under § 1983, alleging due process violations arising from his physical restraint. The district court denied the official's motion for summary judgment based upon qualified immunity. The official appealed. The appeals court reversed and remanded, finding that the official's alleged conduct of cuffing the detainee to a floor-grate toilet in an uncomfortable manner for approximately three hours, if proven, did not violate the detainee's substantive due process rights. According to the court, the official's alleged actions did not shock the conscience and thus did not violate the detainee's substantive due process rights, inasmuch as official took such action after the detainee, who had been diagnosed with manic bipolar depression, had threatened to pull out her own peripherally inserted central catheter (PICC) so that she would bleed to death, and after the detainee had shown that having her hands handcuffed behind her back was alone not an adequate form of restraint. (Independence County Jail, Arkansas)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
ADA- Americans With
Disabilities Act

O'Guinn v. Lovelock Correctional Center, 502 F.3d 1056 (9th Cir. 2007). A prisoner filed a pro se suit claiming prison officials denied him accommodation and treatment for mental illness, under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court dismissed the suit pursuant to the Prison Litigation Reform Act (PLRA) and the prisoner appealed. The appeals court affirmed. The court held that the prisoner's suit did not arise under § 1983 and that exhaustion is required under PLRA. The court found that the prisoner failed to exhaust administrative remedies. According to the court, the prisoner's filing of grievances requesting a lower bunk due to poor balance resulting from a brain injury were not equivalent to claims of denial of mental health treatment, and the prisoner's complaint to the United States Department of Justice (DOJ) did not exhaust the prison's internal grievance process. The court found that the DOJ's investigation of the prisoner's claims did not satisfy the exhaustion requirement as the investigation did not terminate the prisoner's rights to pursue ADA and Rehabilitation Act claims internally. (Lovelock Correctional Center, Nevada)

U.S. District Court
EVALUATION
SUICIDE

Probst v. Central Ohio Youth Center, 511 F.Supp.2d 862 (S.D. Ohio 2007). A plaintiff, on behalf of the estate of her son who committed suicide while incarcerated at juvenile detention facility, brought a wrongful-death action against the facility, its superintendent, a non-profit provider that performed suicide evaluations at the facility and a social worker employed by the provider. The plaintiff asserted claims under § 1983 and state law. The facility and non-profit moved for summary judgment. The district court denied the motion. The court held that under the state compulsion test, the private provider that performed suicide evaluations at the juvenile detention facility was not a "state actor" for § 1983 purposes. The court noted that the facility did not exert any control over suicide evaluations and the provider performed evaluations on an as-needed basis using its own standards and procedures. According to the court, the facility had discretion to implement the provider's recommendations resulting from the evaluations. But the court held that the private provider was a state actor for § 1983 purposes because it was performing a "public function." (Central Ohio Youth Center)

U.S. Appeals Court
HOSPITALIZATION
ADA- Americans With
Disabilities Act

Winters v. Arkansas Dept. of Health and Human Services, 491 F.3d 933 (8th Cir. 2007). The administrator of the estate of a mentally ill pretrial detainee/civil commitee who had died of peritonitis in a county jail sued a sheriff and the Arkansas Department of Human Services (DHS) under § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The district court entered judgment for the defendants. The administrator appealed and the appeals court affirmed. The appeals court held that the pretrial detainee was not discriminated against on the basis of his mental illness, as required to establish violation of the Americans with Disabilities Act (ADA) or the Rehabilitation Act. The court noted that the detainee was arrested for criminal trespass, and although he was not treated for his peritonitis due to his inability to communicate because of his mental illness, the sheriff and other jail officials sought immediate treatment for the detainee's mental illness, and attempted to transport him to a state hospital, but he was denied admittance due to lack of available space. The court found that neither the Arkansas Department of Human Services (DHS) nor the county sheriff were deliberately indifferent to the serious medical needs of the detainee, nor was there a policy or custom to deprive mentally ill detainees of treatment. According to the court, the detainee died from a condition that neither defendant knew of or suspected, the sheriff and other jail officers attempted to get the detainee into a mental health treatment facility, but no facility would accept custody of him. (Benton County Jail, Arkansas)

2008

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
MEDICATION

Gibson v. Moskowitz, 523 F.3d 657 (6th Cir. 2008). The representative of the estate of a mentally disabled inmate who died of dehydration in a state prison brought a § 1983 action against a prison psychiatrist and others, alleging deliberate indifference to serious medical needs, and asserting medical malpractice claims. The district court denied the defendants' motion for summary judgment, and subsequently entered judgment, upon a jury verdict, in favor of the representative. The court awarded \$1.5 million in compensatory damages and \$3 million in punitive damages. The psychiatrist appealed. The appeals court affirmed in part and reversed in part.

The court held that evidence was sufficient to support a determination that the inmate had an objectively serious medical condition and that the psychiatrist subjectively ignored the inmate's serious medical needs. The court found that the compensatory damages award was not excessive and that the representative was entitled to recover punitive damages. The court found that the punitive damages award was not excessive.

According to the court, the psychiatrist was in charge of the inmate's treatment team, he admittedly was aware that the temperature in the observation room where the inmate was held exceeded 90 degrees, and that the combination of the inmate's medication and the room temperature was potentially deadly. A psychiatric expert testified that the inmate's medication affected the part of the brain that regulated body temperature and dissipated

heat, and another medical expert testified that the inmate's dehydration occurred over a period of several days. Evidence was presented that during that period, the inmate lost 42 pounds. The psychiatrist never asked for the inmate's temperature to be monitored, even when he had learned from a nurse and other prison employees that the inmate had vomited. The nurse had advised the psychiatrist that the inmate was suffering from dehydration and severe weight loss, and that his condition was deteriorating. The psychiatrist did not examine the inmate, change his medication, or move the inmate to a cooler room.

The case was remanded to the district court to provide justification for its allocation of \$1.5 million in compensatory damages awarded by the jury between the § 1983 Eighth Amendment deliberate indifference claim and the medical malpractice claim. The court had allocated \$683,500, representing Michigan's high-tier non-economic damages cap to the medical malpractice claim, and the rest to the deliberate indifference claim, but it failed to provide any explanation for the allocation. The appeals court held that the allocation did not follow intuitively from the evidence, since a higher standard of culpability was required for the deliberate indifference claim. (Riverside Correctional Facility, Michigan)

U.S. District Court
PSYCHOTROPIC
DRUGS
SEGREGATION
SUICIDE

Graham v. Van Dycke, 564 F.Supp.2d 1305 (D.Kan. 2008). An inmate brought a § 1983 action against medical providers working at a state correctional facility, alleging violations of her Eighth Amendment due process rights arising from a strip search conducted by a male officer. She also challenged her mental health confinement. The district court granted summary judgment for the medical providers. The court held that the prison doctor's decision to remove the inmate from her cell after she became agitated and demanded two psychotropic drugs and to place her in mental health segregation was not deliberate indifference. The court noted that the doctor's decision was based on the inmate's previous history of mental illness and the doctor's knowledge that the inmate previously had a bad experience using one of the drugs she requested. The inmate threatened to harm other inmates, and the doctor feared for the inmate's safety because she had access to scissors. The court found that removal of the female inmate from her cell into administrative segregation and removal of her clothing, after she became agitated and demanded psychotropic drugs, did not violate her privacy or Eighth Amendment due process rights, even though officers who performed such tasks were all male. According to the court, the inmate was on suicide watch, which required removal of clothing to avoid self-injury, removal was done pursuant to established procedure and was videotaped, and a staffing shortage rendered it impractical to include a female officer on the removal team. (Topeka Correctional Facility, Kansas)

U.S. District Court
MEDICATION
RIGHT TO
TREATMENT
TRANSFER

Jarecke v. Hensley, 552 F.Supp.2d 261 (D.Conn. 2008). A prisoner who suffered from antisocial personality and borderline personality disorders challenged his mental health treatment and an attempt to transfer him to a correctional facility with dormitory housing, alleging violation of the Eighth Amendment. The prisoner moved for a preliminary injunction to prevent his transfer and to be prescribed lithium and assigned to a single cell. The district court denied the motion. The court found that the prisoner did not have a likelihood of success on the merits of his claim, and that the prisoner would not suffer irreparable harm without an injunction. The court noted that the prisoner's medical treatment was adequate, as lithium was generally not used to treat such disorders, and that no medical diagnosis precluded his transfer to a dormitory setting or required confinement in single cell. (Connecticut)

U.S. Appeals Court
FORCED MEDICATION
PSYCHOTROPIC
MEDICATION

Obriecht v. Raemisch, 517 F.3d 489 (7th Cir. 2008). A state prisoner filed a pro se § 1983 action against prison officials alleging that he was denied procedural due process when transferred to a state facility and when he was forced to take psychotropic medications. The district court granted summary judgment to the officials and denied motions for reconsideration. The prisoner appealed. The appeals court affirmed, finding that the prisoner failed to exhaust challenges to the transfers and forced medication. The court also found that the prisoner forfeited the argument that exhaustion should be excused because of an inadequate law library because that issue had not been raised in the district court. The court noted that a prisoner's exhaustion of administrative remedies before filing a § 1983 claim is required even if the prisoner believes his efforts in securing relief will be futile or if the administrative authority has no power to grant the requested relief. (Wisconsin Resource Center and the Wisc. Dept. of Corrections)

U.S. District Court
COMMUNICATION
FAILURE TO PROVIDE
CARE
SPECIAL HOUSING
SUICIDE

Osterback v. McDonough, 549 F.Supp.2d 1337 (M.D.Fla. 2008). Inmates sued corrections officials, alleging that conditions of close management (CM) status amounted to cruel and unusual punishment. Following the grant of the inmates' motion to certify the class, and issuance of an order entering the officials' revised offer of judgment (ROJ), the officials moved to terminate the ROJ pursuant to the Prison Litigation Reform Act (PLRA). The district court granted the motion. The court held that corrections officers were deliberately indifferent in violation of the 8th Amendment when inmates on close management (CM) status who truly were suicidal or otherwise suffered from severe psychological distress declared psychological emergencies. According to the court, the officers failed to summon mental health staff, and inmates thereafter attempted to commit suicide or otherwise harmed themselves, or, in one case, actually committed suicide. But the court found no Eighth Amendment violations with regard to mental health screening procedures, access to mental health care, the level of mental health staff, and instances in which security staff interfered with the delivery of mental health services. The court held that termination of the revised offer of judgment (ROJ), which was previously adopted by the district court as a final order and judgment, was appropriate under the Prison Litigation Reform Act (PLRA) in that isolated instances of prison staff's failure to appropriately respond to a bona fide psychological emergency of inmates in close management status did not create a current and ongoing violation of the class members' Eighth Amendment rights. (Everglades Corr'l Inst., Florida)

U.S. District Court
MEDICATION

Sauve v. Lamberti, 597 F.Supp.2d 1312 (S.D.Fla. 2008). A former prisoner brought a § 1983 action against a sheriff and correctional health services corporation, alleging that the defendants denied the prisoner access to medications while he was incarcerated. The district court denied the defendants' motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to the extent that a doctor employed by the corporation with which the county contracted for correctional health care services was aware of the prisoner's history of drug problems, mental health issues, and prior noncompliance with treatment at the time of his decision not to place the prisoner on medication. The court also found genuine issues of material fact as to whether the

decision not to place the prisoner on medication for the first 49 days of his incarceration was based on the medical judgment of the doctor. The court held that summary judgment was also precluded by genuine issues of material fact as to whether the corporation had a practice or policy that resulted in the prisoner being denied medication for 49 days during his incarceration. The court ruled that the sheriff failed to establish an entitlement to summary judgment, even though the former prisoner presented evidence only as to the private corporation with which the county contracted for correctional health care services because the county remained liable for constitutional deprivations caused by policies or customs of the corporation. (Broward County Jail, Florida, and Armor Correctional Health Services)

U.S. Appeals Court
MEDICATION
RESTRAINTS
STAFF

Shook v. Board of County Commissioners of County of El Paso, 543 F.3d 597 (10th Cir. 2008). County jail inmates brought a class action suit alleging that jail conditions for prisoners with mental health needs violated the Eighth Amendment's ban against cruel and unusual treatment. The district court denied the prisoners' motion for class certification and dismissed the suit. The appeals court reversed and remanded. On remand, the district court again denied certification, and the inmates appealed. The appeals court affirmed, finding that class certification could be denied due to unmanageability, namely the difficulty of crafting specific injunctive relief applicable to the class as a whole. The court noted that the plaintiff inmates variously complained that they were denied medications, inadequately supervised, or subjected to excessive force or excessive restraint, and the propriety of the jail's actions depended on circumstances that varied from class member to class member. (El Paso County Jail, Colorado)

U.S. District Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE
EVALUATION
MEDICATION

Swift v. Tweddell, 582 F.Supp.2d 437 (W.D.N.Y. 2008). An inmate brought a pro se § 1983 action against a sheriff, deputies, and jail employees. The district court denied the defendants' motion for summary judgment. The court found that the jail employees were not deliberately indifferent to the inmate's serious medical needs, in violation of the Eighth Amendment, in connection with a delay in prescribing the inmate's "mental health" medications. The court noted that on the day that the inmate submitted a request for mental health clinic services, the jail nurse referred the request to the county Mental Health Department (MHD) pursuant to standard practice at the jail, but because the inmate did not appear to be an emergency case and because he made no further requests for mental health services, he was not seen by a psychiatrist from MHD for more than two months. He was prescribed Prozac but did not, according to the court, suffer serious adverse effects as a result of the temporary gap between his request for mental health care and his psychiatric examination. (Steuben County Jail, New York)

U.S. District Court
FAILURE TO PROVIDE
CARE
SUICIDE

Tatsch-Corbin v. Feathers, 561 F.Supp.2d 538 (W.D.Pa. 2008). Survivors of an inmate who committed suicide sued a jail's forensic specialist under § 1983, claiming violations of the Fourteenth Amendment's prohibition against deprivations of life without due process. The district court denied the forensic specialist's motion to dismiss. The court found that the fact that the jail's forensic specialist lacked a contractual relationship with either the jail or a health care contractor retained by the county did not preclude her from being considered a "state actor," as required for imposition of liability under § 1983 in connection with the inmate's suicide. According to the court, her role was to provide mental health care to inmates, regardless of her other job responsibilities or the contractual nuances through which she came to work at the jail, and she could not have done so without the authorization of the state. The court found that the inmate's survivors alleged sufficient facts to establish that the forensic specialist should have known, or did know, that the inmate presented a suicide risk and failed to take necessary or available precautions to protect him. According to the court, alleged facts suggested that the inmate had made various threats to kill himself, which had been taken seriously enough by jail officials to warrant the request of an evaluation by a mental health professional, and he had a documented history of attempted suicide and psychiatric hospitalization, of which the specialist was allegedly aware. (Blair County Prison, Pennsylvania)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
PSYCHOTROPIC
DRUGS

U.S. v. Green, 532 F.3d 538 (6th Cir. 2008). A pretrial detainee who had been determined to be mentally incompetent to stand trial on narcotics trafficking indictments, appealed the order of the district court for involuntary administration of psychotropic medications. The appeals court affirmed, finding that an important governmental interest was at stake in the prosecution, as required to support an order for involuntary medication. (Federal Medical Center, Rochester, New York)

U.S. District Court
INVOLUNTARY
MEDICATION

U.S. v. Moruzin, 583 F.Supp.2d 535 (D.N.J. 2008). A defendant was indicted on charges of bank robbery and jury tampering. The government moved for the involuntary administration of antipsychotic medication to the defendant to render him competent to stand trial. The district court denied the motion. The court held that the administration of medication would not significantly further the state's interests, that alternatives existed to involuntary administration of the drug Haldol, and that involuntary administration of Haldol was not in the defendant's best medical interest. (Federal Medical Center, Butner, North Carolina)

2009

U.S. District Court
COMMITMENT
DUE PROCESS
SEX OFFENDERS
TRANSFER

Bailey v. Pataki, 636 F.Supp.2d 288 (S.D.N.Y. 2009). Convicted sex offenders brought an action against state officials, alleging that their involuntary psychiatric commitment deprived them of constitutional due process protections. The defendants moved to dismiss for failure to state a claim, or, in the alternative, for a stay pending resolution of certain pending state court proceedings. The district court denied the motion. The court held that the allegations of the convicted sex offenders were sufficient to state a procedural due process claim against state officials for deprivation of the offenders' liberty interests in not being confined unnecessarily for medical treatment. The offenders alleged that: (1) they were involuntarily transferred to state-run mental institutions based on the certification of doctors designated by the New York State Office of Mental Health and the New York Department of Correctional Services, instead of independent, court-appointed doctors; (2) that some were never served with a notice of petition for their involuntary commitment; (3) that notice was not provided to any of the offenders' friends and family; (4) and that they were not provided an opportunity to request a pre-commitment hearing and an opportunity to be heard. The court found that the procedural due process rights of the convicted sex offenders, to

certain pre-transfer procedural safeguards, including notice, an opportunity to be heard, and a psychiatric evaluation by court-appointed doctors, was clearly established at the time of their involuntary commitment and transfer from prison to a mental hospital, so as to preclude any claim of qualified immunity on the part of New York officials. The court noted that the offenders were certified for involuntary commitment after being examined for short periods of time lasting no more than 20 minutes, and once certified, all six offenders were transported in handcuffs and shackles where they were broadly evaluated for treatment. (New York State Office of Mental Health, New York Department of Correctional Services)

U.S. District Court
ADA-Americans with
Disabilities Act
PSYCHIATRIC CARE

Burke v. North Dakota Dept. of Correction and Rehabilitation, 620 F.Supp.2d 1035 (D.N.D. 2009). A state inmate filed a § 1983 action against prison officials alleging statutory and constitutional violations, including interference with his free exercise of religion, lack of adequate medical care, retaliation for exercising his constitutional rights, failure to protect, refusal to accommodate his disability, and cruel and unusual punishment. The district court granted summary judgment for the defendants. The court held that: (1) failure to provide Hindu worship services on Thursdays did not violate the inmate's equal protection rights; (2) the decision to reduce Hindu worship services at the facility did not violate the Free Exercise Clause; (3) restriction of the Hindu inmate's use of camphor, kumkum, incense, and a butter lamp during worship services did not violate the Free Exercise Clause; and (4) failure to find a qualified Hindu representative to assist the inmate in the study of his religion did not violate the Free Exercise Clause. The court found that the inmate's purported schizoid/sociopathic personality did not substantially limit any major life activity, and thus did not constitute a "disability" under ADA, where the inmate did not describe the nature and severity, duration, the anticipated duration, or the long-term impact of his mental impairment. The court held that the inmate failed to demonstrate that his mental impairment substantially limited his ability to care for himself. Similarly, the inmate's hepatitis C did not substantially limit any major life activity, and thus did not constitute a "disability" under ADA. (North Dakota State Penitentiary)

U.S. District Court
DELIBERATE
INDIFFERENCE
DUE PROCESS
SUICIDE

Cabral v. County of Glenn, 624 F.Supp.2d 1184 (E.D.Cal. 2009). A pretrial detainee brought a § 1983 action against a city and a police officer alleging violations of the Fourth and Fourteenth Amendments and claims under California law. The city and officer filed a motion to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee, a psychotic and suicidal individual who collided with the wall of a safety cell and broke his neck, failed to plead that a police officer, who extracted the detainee from his holding cell and used a stun gun and pepper spray on him following an incident in which the detainee rubbed water from his toilet on his body, was deliberately indifferent to the detainee's need for medical attention, as required to state due process claim under § 1983. According to the court, the detainee failed to allege that the officer knew he was suicidal and was not receiving medical care, or that the officer attempted to interfere with the detainee's receipt of such medical attention. The court found that the detainee's allegations that the officer used a stun gun, a stun-type shield and pepper spray in an attempted cell extraction while the detainee was naked, unarmed and hiding behind his toilet were sufficient to state an excessive force claim under § 1983. The court denied qualified immunity for the officer, even though the detainee had not responded to the officers' commands to come out of his cell. The court noted that the law clearly established that police officers could not use a stun gun on a detainee who did not pose a threat and who merely failed to comply with commands. (City of Willows Police Department, California)

U.S. Appeals Court
EVALUATION
SUICIDE

Cloaninger ex rel. Estate of Cloaninger v. McDevitt, 555 F.3d 324 (4th Cir. 2009). A former detainee, who had been seized by deputies for a psychological evaluation, brought a § 1983 action against deputy sheriffs and others alleging violations of the Fourth and Fourteenth Amendments. The district court awarded summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed. The court found that the deputies had probable cause to seize and detain the detainee for a psychological evaluation, after a dispatcher received a 911 call from a hospital to report that the detainee, who had called the hospital to report an adverse reaction to his prescription medication, had threatened suicide. The deputies knew that the detainee had made prior suicide threats, that police had responded to those threats, and that firearms had been found in the home. The court held that exigent circumstances existed to support the warrantless seizure of the detainee for psychological evaluation in his home. (Burke County, North Carolina)

U.S. District Court
FAILURE TO
PROVIDE CARE

Coleman v. Schwarzenegger, 922 F.Supp.2d 882 (E.D.Cal. 2009). State prisoners brought class actions against a governor and other officials, alleging unconstitutional conditions of confinement as to the provision of medical and mental health care. After granting a correctional officer association's motion to intervene as a plaintiff, the motion to convene a three-judge panel was granted, to consider plaintiffs' request for order to reduce prison population. The court held that clear and convincing evidence established that overcrowding was the primary cause of the provision of inadequate medical and mental health care; (2) deficiencies in the provision of medical and mental health care could not be resolved in the absence of a prisoner release order; (3) reduction in the California state prison population to a system-wide cap was warranted; (4) the court's order was the least intrusive means necessary to correct the violations, as required by PLRA; and (5) reduction in the California state prison population to a system-wide cap of 137.5% was warranted. (California Department of Rehabilitation and Corrections)

U.S. District Court
DELIBERATE
INDIFFERENCE
SUICIDE
SUPERVISION

Cuebas v. Davila, 618 F.Supp.2d 124 (D.Puerto Rico 2009). The mother of a man who committed suicide in a jail cell filed a § 1983 action on behalf of herself, her minor daughter, and her deceased son, claiming deprivation of constitutional rights by the arresting police officers and their supervisors, and seeking compensatory damages for pain and suffering due to the loss of her mentally ill son. The district court dismissed the case in part, and declined to dismiss in part. The court held that the mother, as sole heir of her deceased son, under Puerto Rico law, had Article III standing to bring a § 1983 suit on behalf of her son against the police officers and supervisors for alleged constitutional violations, since the mother inherited her son's cause of action. The court found that the mother's allegations that arresting officers and their superiors were deliberately indifferent to her son's risk of suicide in his jail cell following his arrest were sufficient to state a § 1983 claim that the son's due process rights were violated under the Fourteenth Amendment. The court held that the mother's allegations that the police officer in charge of

detainees was deliberately indifferent to her son's risk of suicide were factually sufficient to state a § 1983 claim that the officer violated her son's due process rights, including allegations that the officer was aware of the likelihood that the arrestee might commit suicide, and that the officer did not take obvious steps to prevent the arrestee's suicide. The mother had explained to the officers that her son was mentally ill and that he had recently attempted suicide. The son was placed in a cell after his shoes and belt had been removed. At some point during that night he committed suicide. The mother alleged that he was not properly monitored while being held in custody, as he should have been, by the officers who were aware he was suicidal. She alleged that his cell was not adequately monitored even though the police officers who arrested him and who monitored him knew that he was mentally ill and had recently attempted suicide. (Puerto Rico Police Department, Salinas Police Headquarters)

U.S. District Court
FAILURE TO PROVIDE
CARE
SUICIDE

Edwards v. District of Columbia, 616 F.Supp.2d 112 (D.D.C. 2009). The representative of the estate of a woman who committed suicide while being held in a District of Columbia jail brought an action against the District and the jail's medical services contractor in the Superior Court for the District of Columbia, alleging negligence in the provision of mental health care in ensuring that the woman was not a danger to herself. The representative also alleged that the District and contractor failed to adequately provide a medical response upon discovering the woman in the immediate moments after her suicide. The contractor removed the case to federal district court and moved to dismiss. The district court held that the representative was required to exhaust administrative remedies under the Federal Tort Claims Act (FTCA) on claims against the contractor before bringing an action under FTCA and that the court lacked subject matter jurisdiction over FTCA claims and claims against the District. (Dist. of Columbia Jail)

U.S. District Court
DELIBERATE
INDIFFERENCE
MEDICATION
PSYCHIATRIC CARE

Estate of Rice ex rel. Rice v. Correctional Medical Services, 596 F.Supp.2d 1208 (N.D.Ind. 2009). The estate of a prisoner who died while detained at a county jail, where he suffered from schizophrenia and various complications as the result of his refusal to take his medication and his self-imposed starvation, brought an action against a private hospital and a physician at the hospital. The estate alleged that the physician deprived the prisoner of his constitutional rights in violation of § 1983, and that the hospital and physician negligently failed, under state law, to provide adequate medical care and treatment to the prisoner. The district court granted summary judgment for the defendants in part. The court held that an expert's summary judgment report, in which he stated, among other things, that the treating physician was fully aware that the deceased prisoner had been refusing food, drink, and medications, and that she had no reason to believe that the same pattern would not subsequently continue back in jail, was admissible. The court also found that the expert's summary judgment report that the physician who treated the schizophrenic prisoner prior to his death showed indifference to the prisoner's serious medical condition "by turning a blind eye to the likely outcome of a return to jail" was admissible. The court noted that the expert was not offering a legal conclusion as to the treating physician's subjective knowledge. The court found that the prisoner had a serious medical need, as an element of his alleged Eighth Amendment violation. The court noted that the prisoner went to a hospital because he was not taking his medications, was not eating, had lost 50 pounds in 13 months, and was uncommunicative. Medical records indicated that the prisoner had severe mental problems, including schizophrenia, which posed a risk of serious damage to his future health. The physician who treated the prisoner acknowledged the seriousness of his condition in her medical recommendation, and ten weeks after his hospital stay, the prisoner died from malnutrition. (Elkhart County Jail, Indiana)

U.S. District Court
ADA-Americans with
Disabilities Act
MEDICATION

Flynn v. Doyle, 630 F.Supp.2d 987 (E.D.Wis. 2009). Prisoners at a state correctional institution brought a class action against a governor and other defendants, alleging that medical and mental health care provided to them at the institution violated the Eighth Amendment and Title II of Americans with Disabilities Act (ADA). The prisoners moved for a preliminary injunction and the district court granted the motion. The court found that the class of prisoners was reasonably likely to succeed at trial on the merits of its Eighth Amendment claims against a governor, institution and other defendants alleging that continued use of correctional officers to distribute medications at the institution posed a substantial risk of serious harm to members of the class. According to the court, the defendants knew of the risk but failed to take reasonable steps to abate it. (Taycheedah Correctional Institution, Wisconsin)

U.S. District Court
ADA- Americans with
Disabilities Act
EQUAL
PROTECTION

Flynn v. Doyle, 672 F.Supp.2d 858 (E.D.Wis. 2009). Female inmates filed a class action alleging that medical, dental, and mental health care provided to prisoners at a state facility violated the Eighth Amendment, Equal Protection Clause, Title II of Americans with Disabilities Act, and Rehabilitation Act. The officials moved for partial summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether there were systemic and gross deficiencies in staffing, facilities, and procedures at the state correctional facility that resulted in provision of inadequate medical care for female inmates. The court also found that summary judgment was precluded on the inmates' claim that the state violated Title II of ADA by failing to provide access to programs to inmates with mobility, visual, and hearing disabilities. The court found a genuine issue of material fact as to the effectiveness of accommodations offered to disabled inmates at a state correctional facility. The court found that the female inmates' allegation that the state provided inpatient mental health services for male inmates, but not for female inmates, was sufficient to state claim against the state under the Equal Protection Clause, despite the state's contention that the disparity was natural outgrowth of the historically small number of female inmates in the state. (Taycheedah Correctional Institution, Wisconsin)

U.S. District Court
DELIBERATE
INDIFFERENCE
INTAKE SCREENING
PRETRIAL DETENTION
SUICIDE
SUPERVISION

Francis ex rel. Estate of Francis v. Northumberland County, 636 F.Supp.2d 368 (M.D.Pa. 2009). The administrator of the estate of a detainee who committed suicide while in a county prison brought an action against the county and prison officials, asserting claims for Fifth and Fourteenth Amendment reckless indifference and Eighth Amendment cruel and unusual punishment under § 1983. The administrator also alleged wrongful death under state law. The county defendants brought third-party claims against a psychiatrist who evaluated the detainee, and the psychiatrist counter-claimed. The county defendants and psychiatrist moved separately for summary judgment. The court held that the County, which paid \$360,000 in exchange for a release of claims brought by the estate of the detainee, would be entitled to indemnity on third-party claims against the psychiatrist who evaluated the detainee if a jury determined that the psychiatrist was at fault in the detainee's suicide. The court held that summary judgment was

precluded by genuine issues of material fact as to: (1) whether the evaluating psychiatrist knew the pretrial detainee was a suicide risk and failed to take necessary and available precautions to prevent the detainee's suicide as would show deliberate indifference to the detainee's medical needs; (2) whether the evaluating psychiatrist was an employee of the county prison entitled to immunity under the Pennsylvania Political Subdivision Tort Claim Act (PSTCA) or was an independent contractor excluded from such immunity; (3) whether the evaluating psychiatrist's failure to appropriately document the pretrial detainee's medical records led to the detainee's removal from a suicide watch; (4) whether the recordation of the pretrial detainee's suicide watch level was customary, precluding summary judgment as to whether the evaluating psychiatrist had a duty to record this information; (5) whether the evaluating psychiatrist's failure to communicate the appropriate suicide watch level to county prison officials resulted in the pretrial detainee's suicide; and (6) whether the evaluating psychiatrist communicated the appropriate suicide watch level for the pretrial detainee to county prison officials and whether the psychiatrist was required to record the watch level in the detainee's medical records. The court found that the county prison had an effective suicide policy in place and thus the psychiatrist who evaluated the pretrial detainee had no viable Fourteenth Amendment inadequate medical care and failure to train counterclaims under § 1983 against the county. According to the court, while at least one individual at the prison may have failed to carry out protocols for the diagnosis and care of suicidal detainees, the policy would have been effective if properly followed as was customary at the prison. The court held that the county prison warden adequately trained subordinates with regard to protocols for the care and supervision of suicidal inmates and adequately supervised execution of these protocols, and thus the psychiatrist who evaluated the pretrial detainee had no viable counterclaim under § 1983 against the warden for failure to adequately train or supervise under the Fourteenth Amendment. (Northumberland County Prison, Pennsylvania)

U.S. District Court
PSYCHIATRIC CARE
RESTRAINTS

Gay v. Chandra, 652 F.Supp.2d 959 (S.D.Ill. 2009). A state prisoner, who suffered from antisocial and narcissistic personality disorders, brought a § 1983 action against a psychiatrist who treated him in prison, alleging that conditions of confinement to which the psychiatrist subjected him violated the Eighth Amendment. The district court granted summary judgment in favor of the psychiatrist in part, and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the cell where the prisoner was restrained naked was excessively cold, and as to whether the psychiatrist knew that the prisoner would in fact be restrained naked in excessively low temperatures. Similarly, the court found fact issues as to whether the psychiatrist's decision not to allow the prisoner to wear any clothing while he was restrained denied the prisoner a "civilized measure" of life's necessities, and as to whether the psychiatrist was deliberately indifferent to the fact that the prisoner was restrained without clothes. According to the court, summary judgment was precluded by a genuine issue of material fact as to whether the psychiatrist's denial of food to the prisoner while the prisoner was restrained for 32 hours constituted an Eighth Amendment violation. The court found that the decision of the psychiatrist to use therapeutic restraints on the prisoner did not, in and of itself, violate the Eighth Amendment; where the psychiatrist's decision to restrain the prisoner was to protect the prisoner from harming himself. The court found that the psychiatrist was not entitled to qualified immunity in the prisoner's § 1983 action alleging Eighth Amendment violations arising from his medical treatment; where a fact issue existed as to whether the psychiatrist violated the prisoner's Eighth Amendment rights, and the prisoner's right to receive medical treatment for his serious medical needs, and his right not to be punished through conditions of his confinement, was a clearly established right. (Tamms Correctional Center, Ill.)

U.S. District Court
DELAY IN CARE
DUE PROCESS

Greene v. Furman, 610 F.Supp.2d 234 (W.D.N.Y. 2009). A state inmate brought a pro se § 1983 action against corrections officials, alleging various constitutional violations arising out of disciplinary proceedings instituted after he allegedly spit at another inmate. The district court dismissed the case. The court held that an allegation that a corrections officer issued a false misbehavior report against the inmate failed to state a claim for a due process violation. The court noted that the issuance of false misbehavior reports against an inmate by corrections officers is insufficient on its own to establish a denial of due process. According to the court, the allegation that the inmate, who was being escorted to a mental health appointment when he became involved in an altercation with another inmate and was not allowed to continue to his appointment, failed to state a claim for an Eighth Amendment violation. The court found that any delay in the inmate's mental health treatment did not cause him actual harm or put his health at risk, and there was no evidence that the delay resulted from any sadistic or otherwise impermissible motive. (Southport Correctional Facility, New York)

U.S. District Court
ADA-Americans with
Disabilities Act
FAILURE TO PROVIDE
CARE

Hughes v. Colorado Dept. of Corrections, 594 F.Supp.2d 1226 (D.Colo. 2009). A state prisoner brought a § 1983 action against the Colorado Department of Corrections (CDOC), the Colorado Parole Board, and the operator of a residential community corrections facility, alleging failure to adequately respond to the prisoner's mental health needs in violation of his constitutional rights and the Americans with Disabilities Act (ADA). The district court dismissed the complaint in part and denied dismissal in part. The court held that the prisoner's § 1983 claims against the Colorado Department of Corrections (CDOC) and the Colorado Parole Board were barred by the Eleventh Amendment, where Colorado had not waived Eleventh Amendment immunity, Congress had not abrogated state sovereign immunity for § 1983 claims, and both the CDOC and Board were state agencies. The court held that the prisoner's allegations of physical injury merely stemmed directly from his alleged mental illness and constituted only common manifestations of depression and anxiety, and thus were insufficient under the Prison Litigation Reform Act (PLRA) to state a claim for money damages against the CDOC and the Board for alleged ADA violations.

According to the court, the prisoner's allegations were sufficient to plead a claim against the CDOC for discriminatorily denying the prisoner access to medical care in violation of Title II of the ADA. The prisoner alleged that the CDOC maintained a policy of assuring that inmates and parolees received required mental health treatment, that the CDOC intentionally failed to provide him mental health treatment while he was at the correctional facility, and that the CDOC denied his access to such treatment while on parole. The court noted that Title II of the ADA does not categorically bar a state parole board from making an individualized assessment of the future dangerousness of an inmate by taking into account the inmate's disability. (Sterling Corr'l Facility, Independence House, Colorado)

U.S. Appeals Court FAILURE TO PROVIDE CARE MEDICATION PRIVACY	<p><i>Hunter v. Amin</i>, 583 F.3d 486 (7th Cir. 2009). The sister of a pretrial detainee who committed suicide in a county jail brought an action on her own behalf, and as the personal representative of the estate of her deceased brother, against a jail psychiatrist, county sheriff, and the county, asserting claims under § 1983, as well as claims of medical malpractice. The district court granted summary judgment in favor of the defendants and the sister appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the county jail's policy that prevented the pretrial detainee from speaking to the jail psychiatrist without a jail officer being present did not violate the detainee's constitutional rights, so as to serve as the basis for holding the county liable for the detainee's death under § 1983. According to the court, the pretrial detainee had a constitutional right to adequate mental health treatment, but there was no evidence suggesting that the detainee could not have received adequate mental health treatment in the presence of a corrections officer. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether the jail psychiatrist committed medical malpractice by discontinuing the medication of the detainee who later committed suicide. (St. Clair County Jail, Illinois)</p>
U.S. District Court PAMII- Protection and Advocacy for Mentally Ill Individuals Act	<p><i>Indiana Protection and Advocacy Services Com'n v. Commissioner, Indiana Dept. of Correction</i>, 642 F.Supp.2d 872 (S.D.Ind. 2009). The Indiana Protection and Advocacy Services Commission (IPAS) brought an action against the Indiana Department of Correction, alleging violations of federal and state law in the conditions of custody of mentally ill prisoners. The Department moved to dismiss for lack of standing. The district court denied them motion. The court held that IPAS had an associational standing under the Protection and Advocacy of Mentally Ill Individuals Act (PAMII) to bring suit, and the action was not an intramural dispute between two state agencies that could be resolved by the governor. The court noted that mentally ill prisoners would have standing to sue on their own behalf for violations of federal and state law in the conditions of their custody, and the interests that IPAS sought to protect were not merely germane to the IPAS's purpose, they were its reason for existence. According to the court, IPAS was not a traditional state agency, was independent of the governor, was funded by the federal government under the Protection and Advocacy of Mentally Ill Individuals Act (PAMII), received no state funding and had authority independent of the state to pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in the state. (Indiana Department of Correction)</p>
U.S. District Court DELIBERATE INDIFFERENCE MEDICATION	<p><i>Mastroianni v. Reilly</i>, 602 F.Supp.2d 425 (E.D.N.Y. 2009). An inmate brought a § 1983 action against a sheriff and medical personnel at a county correctional center, alleging a violation of his Fifth, Eighth, and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants in part, and denied in part. The court held that the inmate's treatment by the jail's director of psychiatry and its mental health group did not pose any particular risk of harm or result in actual adverse consequences to the inmate, as would constitute deliberate indifference to serious medical needs in violation of the Eighth Amendment. The inmate was seen by someone in the mental health department, including the director, on a regular basis, and when he saw the director, he examined the inmate and discussed his problems. The inmate's medications were changed during the course of his treatment as a result of meeting with practitioners in the mental health department, and on one occasion the inmate complained to the director about his medication being discontinued and the director reacted appropriately and had it reinstated. (Nassau County Correctional Center, New York)</p>
U.S. District Court FAILURE TO PROVIDE CARE PSYCHIATRIC CARE	<p><i>Proctor v. Applegate</i>, 661 F.Supp.2d 743 (E.D.Mich. 2009). State prisoners brought a § 1983 action against Michigan Department of Corrections (MDOC) employees and multiple prison facilities, alleging violations of their constitutional rights. The defendants moved to dismiss on statute of limitations grounds and for failure to state a claim upon which relief could be granted. The district court granted the motion in part and denied in part. The court held that a prisoner's allegation in his complaint that an MDOC employee did not refer him for psychiatric treatment after he attempted to commit suicide sufficiently stated a § 1983 claim for an Eighth Amendment violation based on denial of medical treatment. (Michigan Department of Corrections)</p>
U.S. District Court FAILURE TO PROVIDE CARE	<p><i>Scott v. DiGuglielmo</i>, 615 F.Supp.2d 368 (E.D.Pa. 2009). A state inmate filed an action seeking a declaration that he had serious and continuing mental health condition and had not been receiving adequate treatment, and an injunction ordering prison officials to make corrections to his prison charts. The district court granted the officials' motion to dismiss in part and denied in part. The court held that the inmate had standing to seek declaratory and injunctive relief against prison officials based on his claim that he had a serious and continuing mental health condition and had not been receiving adequate treatment, where the alleged denial of proper medical and psychiatric care was continuing, and there was a substantial likelihood that his injury would be addressed by the requested relief. (State Correctional Institution at Graterford, Pennsylvania)</p>
U.S. Appeals Court COMMITMENT SEX OFFENDERS	<p><i>Serna v. Goodno</i>, 567 F.3d 944 (8th Cir. 2009). A patient of a state mental hospital, involuntarily civilly committed as a sexually dangerous person pursuant to a Minnesota sex offender program, brought a § 1983 action against a program official and against the head of the state's Department of Human Services. The patient alleged that visual body-cavity searches performed on all patients as part of a contraband investigation violated his Fourth Amendment rights. The district court granted summary judgment for the defendants, and the patient appealed. The appeals court affirmed. The court held that visual body-cavity searches performed on all patients of a state mental hospital, as part of a contraband investigation following the discovery of a cell-phone case in a common area, did not infringe upon the Fourth Amendment rights of the patient involuntarily civilly committed to the facility as a sexually dangerous person. According to the court, even though facility-wide searches may have constituted a disproportionate reaction, cell phones presented a security threat in the context of sexually violent persons, there was a history of patients' use of phones to commit crimes, and the searches were conducted in a private bathroom with no extraneous personnel present and in a professional manner with same-sex teams of two. (Minnesota Sex Offender Program, Moose Lake, Minnesota)</p>

U.S. Appeals Court FAILURE TO PROVIDE CARE PSYCHIATRIC CARE	<p><i>Vallario v. Vandehey</i>, 554 F.3d 1259 (10th Cir. 2009). County jail inmates sued a county sheriff and a county's administrator of jail operations in their official capacities, alleging disregard of risks to inmates from restraint chairs and other devices, and the denial of access to psychiatric care for indigent inmates. The district court granted the inmates' motion for class certification and the defendants petitioned for interlocutory appeal. The appeals court granted the petition and remanded the case. The court held that the district court abused its discretion by misconstruing the complaint as alleging that denial of adequate mental health treatment affected all inmates, and abused its discretion by refraining from any consideration whatsoever of the action's merits. (Garfield County Jail, Colorado)</p>
U.S. District Court FAILURE TO PROVIDE CARE SUICIDE	<p><i>Vann v. Vandebrook</i>, 596 F.Supp.2d 1238 (D.Wis. 2009). A prisoner brought a § 1983 action against a crisis intervention worker, registered nurse, and several corrections officers, alleging deliberate indifference to a serious medical need in violation of the Eighth Amendment. The prisoner moved to proceed in forma pauperis and for the appointment of counsel. The district court granted the motion to proceed in part and denied in part, and denied the motion for appointment of counsel. The court held that the prisoner stated a § 1983 claim against the intervention worker and the unknown officer where they were aware of the prisoner's suicide risk when the worker refused to place the prisoner in an observation program and the officer provided the prisoner with a razor and a nail clipper and left the prisoner unattended. The court found that the registered nurse's failure to provide treatment to the prisoner constituted deliberate indifference to the prisoner's serious medical needs, as required for the prisoner to state a § 1983 claim for violation of the Eighth Amendment, where the prisoner had sustained 133 self-inflicted wounds that were bleeding and the nurse merely inspected his wounds. According to the court, the corrections officers who performed an emergency cell extraction of the prisoner following his suicide attempt, transported him to a day room where the prison's registered nurse performed an inspection of the prisoner's wounds, thus precluding the prisoner's § 1983 claim against the officer for deliberate indifference to his serious medical needs in violation of Eighth Amendment. (Columbia Correctional Institution, Wisconsin)</p>
U.S. Appeals Court INTAKE SCREENING MEDICATION SEGREGATION	<p><i>Vaughn v. Gray</i>, 557 F.3d 904 (8th Cir. 2009). A detainee's sister brought a § 1983 action against several officers and county employees alleging they were deliberately indifferent to the detainee's serious medical needs which resulted in his death. The district court denied the defendants' motion for summary judgment based on qualified immunity and the defendants appealed. The appeals court affirmed. The court held that a genuine issue of material fact existed as to whether jail officials deliberately disregarded the medical needs and condition of the detainee. The detainee was charged with first-degree sexual assault. During the jail's intake procedure, he completed a medical intake form, indicating that he had a history of mental illness, headaches, epilepsy/seizures, ulcers, and kidney/bladder problems, but indicating that he did not have a history of heart problems or high or low blood pressure. Although the detainee had no medications with him upon his arrival at the jail, his mother later brought his medications, including an anti-depressant. He received his medication for several days until the prescription ran out. He missed several doses before a new prescription arrived. During the time he was without medication, his cellmate told jail employees that the detainee had been ingesting shampoo and engaging in other odd behavior. The detainee was moved to an isolation cell to be monitored on an hourly basis. He was observed vomiting and asked to see a nurse but he was not provided access. He was later found dead in his cell. An autopsy determined that he died of natural causes: arteriosclerotic cardiovascular disease, causing a heart attack that resulted in his death. (Greene County Jail, Arkansas)</p>
U.S. District Court DELIBERATE INDIFFERENCE FAILURE TO PROVIDE CARE MEDICATION PSYCHIATRIC CARE	<p><i>Wade v. Castillo</i>, 658 F.Supp.2d 906 (W.D.Wis. 2009). A state prisoner brought a § 1983 action against prison psychiatrists, alleging that the psychiatrists committed medical malpractice and exhibited deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The psychiatrists moved for summary judgment. The district court granted the motion in part, and denied in part. The court held that summary judgment was precluded by genuine issues of material fact existed as to whether the prisoner, who was diagnosed with a psychotic disorder, had a serious medical need at the time the prison psychiatrist discontinued the prisoner's medications, and whether the psychiatrist was aware that he was exposing the prisoner to a substantial risk of serious harm by taking him off the medications. The court held that the refusal of the prisoner's treating psychiatrist to prescribe psychotropic medication did not amount to deliberate indifference to the prisoner's serious medical need, as would violate the Eighth Amendment, where the psychiatrist did not prescribe medication because he was uncertain whether the prisoner had a psychotic disorder. The court found that summary judgment was precluded by genuine issues of material fact as to whether the prisoner's treating psychiatrist met the requisite standard of care for psychiatrists when he refused to prescribe psychiatric medication to the prisoner and in providing psychiatric care to the prisoner, and as to whether the psychiatrist's alleged negligence was a substantial factor in causing the prisoner's harm. (Green Bay Corr'l. Institution, Dodge Correctional Institution and Racine Correctional Institution, Wisconsin)</p>
U.S. District Court SUICIDE	<p><i>Wilson v. Taylor</i>, 597 F.Supp.2d 451 (D.Del. 2009). The mother of a deceased prisoner, who died in his solitary cell as a result of asphyxia due to hanging after an apparent attempt to feign suicide, brought a § 1983 action against Delaware Corrections officials. The district court denied the defendants' motion for summary judgment. The court held that fact issues precluded summary judgment on the mother's § 1983 claim, custom or policies claim, deliberate indifference claim, qualified immunity grounds, wrongful death claim, and claim for punitive damages. The court found genuine issues of material fact as to: (1) whether the prisoner's detention was valid at the time of his death; (2) whether Delaware Corrections officials failed to train and or maintain customs, policies, practices, or procedures, relating to the prisoner's repeated release inquiry; (3) whether Delaware Corrections officials' ignored the prisoner's risk of hurting himself to get the attention of guards as to his repeated release inquiries; (4) whether a correctional officer acted in good faith and without gross or wanton negligence in throwing the prisoner against a bench in his cell while holding his throat and threatening him verbally; and (5) whether Delaware Corrections officials' conduct in ignoring the prisoner's repeated release inquiries was a proximate cause of the prisoner's ultimate death. The court also found that fact issues existed as to whether Delaware Corrections officials acted outrageously and with reckless indifference to the rights of others, precluding summary judgment on the mother's § 1983 claim for punitive damages. (Delaware Correctional Center)</p>

2010

U.S. District Court
DELAY IN CARE
DUE PROCESS
PAMII- Protection and
Advocacy for Mentally
Ill Individuals Act
TRANSFER

Advocacy Center for Elderly and Disabled v. Louisiana Dept. of Health and Hospitals, 731 F.Supp.2d 583 (E.D.La. 2010). A disability advocacy organization and incompetent detainee's next friend brought an action against the Louisiana Department of Health and Hospitals and Department officials, challenging the Department's practice of subjecting incompetent criminal defendants to extended delays in parish jails before their transfer to a mental health facility. The defendants moved to dismiss. The district court denied the motion. The court held that the action fell within the Ex Parte Young exception to sovereign immunity, where the organization alleged an ongoing violation of the Fourteenth Amendment and sought prospective relief in the form of a permanent injunction requiring officials to accept custody of incompetent defendants and provide them with proper restorative treatment. The court noted that the Ex Parte Young exception to sovereign immunity holds that a suit is not barred when it is brought against state officials to enjoin the enforcement of an allegedly unconstitutional law. The court found that the disability advocacy organization had associational standing to bring the due process challenge where the organization was allied with and representative of its constituents, who had standing to sue in their own right. The federal laws under which the Advocacy Center was established include the Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("PAIMI"). (Louisiana Department of Health and Hospitals, Feliciana Forensic Facility)

U.S. District Court
DELAY IN CARE
DUE PROCESS
TRANSFER

Advocacy Center for Elderly and Disabled v. Louisiana Dept. of Health and Hospitals, 731 F.Supp.2d 603 (E.D.La. 2010). A disability advocacy organization brought an action challenging the Louisiana Department of Health and Hospitals' practice of subjecting incompetent criminal defendants to extended delays in parish jails before their transfer to a mental health facility. The organization moved for a preliminary injunction. The district court granted the motion in part and denied in part. The court held that the organization demonstrated a substantial likelihood of success on the merits of its due process claim, and demonstrated a substantial threat of irreparable injury if the injunction did not issue. The court found that the organization demonstrated that the threatened injury outweighed the damage the injunction might cause, and the organization demonstrated that the public interest would not be disserved if an injunction was issued. The organization claimed that the Louisiana Department of Health and Hospitals' practice of subjecting criminal defendants found to be incompetent to stand trial to extended delays in parish jails before their transfer to a mental health facility was not rationally related to the restoration of the defendants' competency, in violation of their due process rights, where incompetent defendants remained in parish jails because mental health facility was full, not because remaining in jail might restore their competency. The court noted that the organization presented evidence that continued incarceration in parish jails could exacerbate the incompetent defendants' mental conditions. The court held that inadequate funding could not excuse the Department's perpetuation of unconstitutional conditions of confinement. (Louisiana Department of Health and Hospitals, Feliciana Forensic Facility)

U.S. District Court
FAILURE TO PROVIDE
CARE

Antonetti v. Skolnik, 748 F.Supp.2d 1201 (D.Nev. 2010). A prisoner, proceeding pro se, brought a § 1983 action against various prison officials, alleging various constitutional claims, including violations of the First, Fifth, Sixth, Eighth and Fourteenth Amendments. The district court dismissed in part. The court held that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim that prison officials violated the Eighth Amendment by depriving him of needed medical care. The prisoner alleged that he was housed in segregation/isolation, leading to a mental health breakdown, and: (1) that he was seen by mental health professionals eight times over a five year period instead of every 90 days as required by administrative regulations; (2) that mental health professionals recommended he pursue art and music for his mental health but that prison officials denied him the materials; (3) and that the officials' actions resulted in the need to take anti-psychotic and anti-depression medications due to suffering from bouts of aggression, extreme depression, voices, paranoia, hallucinations, emotional breakdowns and distress, unreasonable fear, and systematic dehumanization. The court found that the prisoner's allegations were sufficient to state a colorable § 1983 Eighth Amendment claim for violation of his right to be free of cruel and unusual punishment where the prisoner alleged the exercise provided to him was to stand in a completely enclosed cage alone, in extreme heat or cold without water, shade, exercise equipment or urinals, and that as a result he suffered sunburns, cracked and bleeding lips and a lack of desire to exercise, resulting in a loss of physical and mental health. (High Desert State Prison, Nevada)

U.S. Appeals Court
EVALUATION
PRETRIAL DETENTION
SUICIDE
SUPERVISION
DELIBERATE
INDIFFERENCE

Clouthier v. County of Contra Costa, 591 F.3d 1232 (9th Cir. 2010). The estate of a pretrial detainee brought a § 1983 action against a county, mental health specialist, and two sheriff's deputies alleging they violated the detainee's due process rights by failing to prevent his suicide while he was confined. The district court granted summary judgment in favor of the defendants and the estate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the estate had to show that the detainee was confined under conditions posing a substantial risk of serious harm and that correction officers were deliberately indifferent to that risk.

The court held that summary judgment was precluded by a genuine issue of material fact as to whether the mental health specialist at the jail, who was on notice of the pretrial detainee's suicidal condition, was deliberately indifferent to a substantial risk of harm to the detainee when she removed the detainee from an observation log and told deputies that the detainee could be given regular clothes and bedding. According to the court, it was clearly established at the time of detention that a reasonable mental health professional would not have removed key suicide prevention measures put in place by a prior mental health staff member, and therefore the specialist was not entitled to qualified immunity. The court found that the estate failed to establish that a sheriff's deputy at the jail knew that moving the detainee to the general population in the jail posed a substantial risk of serious harm to the detainee, where the deputy only knew that the detainee had missed meals and free time, and that the detainee had been taken off an observation log. The court noted that the deputy spoke to the detainee all weekend and noted he had a positive outlook on wanting to get out of the room, and earlier that day the mental health specialist found that the detainee was not actively suicidal at the time. The court held that the estate failed to establish that another sheriff's deputy knew that the detainee was suicidal and deliberately ignored that risk, where the deputy knew only that the detainee was suicidal and needed to be on 15-minute checks and the mental health specialist told the deputy to give the

detainee his regular clothes and bedding. The court noted that nothing indicated that the deputy saw the detainee's knotted sheet. According to the court, the county did not have a longstanding custom or practice of moving pretrial detainees from an observation cell into the general population without consultation with mental health staff, or a longstanding practice of miscommunication between mental health staff and custodial staff. The court found no pattern of repeated wrongful conduct by county staff, and nothing that indicated another suicide resulted from the improper transfer of a detainee. The court found that the affidavit of the estate's expert, who opined that custodial staff and mental health staff did not work together as a team, was speculative and conclusory, and thus was insufficient to avoid summary judgment. The court noted that the factual basis for the expert's declaration was limited to a sequence of events and statements of participants surrounding the detainee's transfer to the general population in the jail, and the report did not address the key question of whether the alleged disconnect was so obvious as to have been deliberate indifference. (Contra Costa County Martinez Detention Facility, California)

U.S. District Court
PSYCHOTROPIC
DRUGS
DELIBERATE
INDIFFERENCE

Miller v. Beard, 699 F.Supp.2d 697 (E.D.Pa. 2010). An inmate brought a § 1983 suit against prison officials, a health care provider and medical personnel, alleging deliberate indifference to his serious medical needs under the Eighth and Fourteenth Amendment. The defendants moved for summary judgment. The court held that a prison nurse was not deliberately indifferent to the inmate's mental health issues, thus defeating his § 1983 claim of an Eighth Amendment violation, despite the claim that she engineered the discontinuance of his psychotropic medications by falsely accusing him of hoarding his medication. According to the court, the nurse had a reasonable subjective fear that the inmate was hoarding his medication. The court held that summary judgment was precluded by genuine issues of material fact as to whether a physician failed to provide adequate treatment for the inmate after taking the inmate off powerful psychotropic medications, and whether the abrupt discontinuance of the medications had a negative impact on the inmate's mood and behavior. The court found that the injuries the inmate suffered as a consequence of the physician's refusal to provide him with asthma, allergy, and migraine medication were not "serious," thus defeating the inmate's § 1983 claim of an Eighth Amendment violation in deliberate indifference to his serious medical needs. (State Correctional Institution at Pittsburgh, Pennsylvania)

U.S. Appeals Court
PSYCHIATRIC CARE
SEX OFFENDERS
TRANSFER
DELIBERATE
INDIFFERENCE

Nelson v. Shuffman, 603 F.3d 439 (8th Cir. 2010). A pretrial detainee resident of the Missouri Sexual Offender Treatment Center brought a § 1983 action against 13 treatment center officials, alleging violations of his constitutional rights. The district court granted summary judgment in favor of six of the 13 defendants. The remaining seven defendants appealed. The appeals court affirmed. The appeals court held that summary judgment was precluded by genuine issues of material fact as follows: (1) as to whether the officials recklessly disregarded an objectively serious risk of harm to the pretrial detainee resident by placing him with a roommate who had a history of sexually assaulting vulnerable young males; (2) as to whether the pretrial detainee had a serious medical need and whether a treatment center official deliberately disregarded the need by failing to provide the psychological treatment she prescribed; (3) as to whether officials retaliated against the detainee resident for filing an abuse and neglect charge and several grievances complaining about treatment center officials' failure to provide him necessary psychological treatment; and (4) as to whether officials' transfer of the detainee resident to an unfinished ward that only housed one resident who was confined to shackles twenty-four hours a day was punitive and violated due process by imposing a punishment that had no legitimate institutional objective. (Missouri Sexual Offender Treatment Center)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
DUE PROCESS
PSYCHIATRIC CARE
SEGREGATION

Orv v. Larkins, 610 F.3d 1032 (8th Cir. 2010). An inmate brought a § 1983 claim against prison officials alleging his rights under the Due Process Clause of the Fourteenth Amendment and the Eighth Amendment were violated when he was kept in administrative segregation for nine months. The district court dismissed the complaint as frivolous and the inmate appealed. The appeals court affirmed. The court held that the inmate's nine-month stay in administrative segregation did not constitute an atypical and significant hardship when compared to the burdens of ordinary prison life, as required to support the inmate's claim that his liberty interests under the Fourteenth Amendment were violated. The court found that prison officials who provided the inmate with anti-depressants, and later with anti-psychotic medication, during his nine-month stay in administrative segregation, were not deliberately indifferent to the inmate's worsening mental illness, as required to support the inmate's Eighth Amendment claim. (Eastern Reception, Diagnostic and Correctional Center, Missouri)

U.S. District Court
FAILURE TO PROVIDE
CARE
PSYCHIATRIC CARE

Paine v. Johnson, 689 F.Supp.2d 1027 (N.D.Ill. 2010) *affirmed in part* 678 F.3d 500. The guardian of the estate of a pretrial detainee, who allegedly suffered from bipolar disorder, brought a § 1983 action against a city and city police officers, alleging civil rights violations in connection with the detainee's arrest and subsequent release from custody without being provided access to mental health treatment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the detainee, who exhibited drastic and unnatural behavior throughout her 28-hour detention, had a serious mental health condition. The court also found a genuine issue of material fact as to whether the arresting city police officer, and other police employees, who witnessed the arrestee singing rap lyrics, taking her clothes off and dancing provocatively for different men, acting erratically, discussing the price of oil, and screaming bizarre and vulgar statements, among other things, had notice that the arrestee had a serious mental health condition that required medical attention. The court noted that a city police officer, who spoke on the telephone with the detainee's mother, and was informed by her mother that the detainee was likely bipolar and might be having an episode, had notice that the detainee had a serious mental health condition that required medical attention, precluding summary judgment.

The court also found genuine issues of material fact as to whether a city police officer, who had actual knowledge of the pretrial detainee's mental health condition based on observations of her behavior while in custody, placed the detainee in a position of heightened risk when she released the detainee from the police station and pointed her toward an area known for violent crime, without providing the detainee with food, money, or medication, and as to whether the officer's conduct "shocked the conscience." The court identified a fact issue as to whether the detainee would not have been raped and seriously injured absent a city police officers' failure to provide the detainee with

psychiatric care. The court held that city police officers were not entitled to qualified immunity from the § 1983 claim brought by the mother of the detainee, for unreasonably failing to provide the detainee with mental health care under the Fourth Amendment, as it was clearly established that pretrial detainees were entitled to mental health treatment for serious mental health conditions. On appeal (678 F.3d 500), the appeals court held that the arresting officer was entitled to qualified immunity. The district court also denied qualified immunity for the city police officer who released the detainee, where the law was clearly established that the officer could not release the detainee from custody in a manner that increased her risk of harm. (Chicago Police Department, Illinois)

U.S. District Court
DUE PROCESS
DELIBERATE
INDIFFERENCE
SPECIAL HOUSING
SUICIDE

Silvera v. Connecticut Dept. of Corrections, 726 F.Supp.2d 183 (D.Conn. 2010). The representative of a pretrial detainee's estate filed a § 1983 action alleging that state prison officials' decision to house the detainee with a convicted inmate and their failure to provide adequate mental health care caused the detainee's suicide death. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that allegations that prison medical staff ignored abundant evidence demonstrating that the pretrial detainee was an acute suicide risk were sufficient to state a claim of deliberate indifference to his serious medical needs, in violation of the Due Process Clause. The court noted that evidence included a judge's instructions to keep him on suicide watch, the detainee's prior medical records, contemporaneous complaints and behavior, and examinations by medical staff, all of whom concluded that the detainee suffered from severe mental health issues. Nonetheless, officials placed him in a cell by himself, rather than in specialized housing, with access to materials with which he could hang himself, failed to check on him regularly, and ignored signs that his mental condition had deteriorated.

The court found that a state prison supervisor was not liable under § 1983 for the pretrial detainee's suicide death, even if the supervisor had some training with regards to caring for mentally ill detainees, and his subordinates failed to properly oversee the detainee's activities. The court noted that the detainee was placed in the general prison population based on a mental health professional's recommendation, the supervisor was not aware that the detainee posed an excessive risk of suicide, and subordinates were given proper orders to keep the detainee under constant surveillance and interact with him at frequent, irregular intervals. The court described the change in the detainee's conditions of confinement prior to his suicide. "Inmates housed in the Charlie Unit—apparently unlike those in the specialized housing unit where Mr. Lyle was held from May 11 until May 15—have the ability to turn the cell's lights on and off at will. Additionally, the Charlie Unit has bunk-style beds, which are outfitted with standard-issue sheets and pillow case—both of which would play a role in Mr. Lyle's suicide. Once transferred to the Charlie Unit, Mr. Lyle was given standard DOC clothing, whereas previously he had been given only a 'suicide gown.' "

According to the court, the pretrial detainee's right to due process was not violated merely because he was forced to share a cell with a convicted prisoner, absent an allegation that the detainee suffered an injury from being housed with a convicted inmate, or that placement with the convicted inmate was intended to punish the detainee. (Garner Correctional Institute, Connecticut)

U.S. Appeals Court
ADA- Americans with
Disabilities Act
JUVENILE
SUICIDE
DELIBERATE
INDIFFERENCE

Simmons v. Navajo County, Ariz., 609 F.3d 1011 (9th Cir. 2010). Parents of a pretrial detainee who committed suicide while in custody brought a state-court action against various jail personnel, their supervisors, and their county employer, asserting claims under state tort law, § 1983, and the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants and the parents appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that there was no evidence that a prison nurse knew the pretrial detainee who subsequently committed suicide was in substantial danger of killing himself, as required to demonstrate the prison nurse was deliberately indifferent to such risk in violation of the Fourteenth Amendment. According to the court, although the nurse was aware that the detainee had previously attempted to take his own life, suffered from depression, and was at some risk of making another attempt, at the time detainee killed himself, over a month had elapsed since his suicide attempt, during which time the detainee received counseling, took antidepressants, and by all accounts, was doing better. The court found that prison nurses were not deliberately indifferent, under the Fourteenth Amendment, to the detainee who committed suicide, because they failed to ensure that the detainee had daily evaluations pursuant to the suicide prevention policy, absent evidence that they knew detainee was in a suicidal crisis. According to the court, the prison nurses' failure to retrieve the used gauze the pretrial detainee used to hang himself did not constitute deliberate indifference in violation of the Fourteenth Amendment, absent evidence that the prison nurses were aware the pretrial detainee had accumulated the gauze.

The court found that the teenage pretrial detainee waved the prison nurse away on the morning of the day he committed suicide, when the nurse tried to speak with him, because he was absorbed in watching television, did not show that the prison nurse was subjectively aware of the detainee's risk of suicide, so as to support a deliberate indifference claim against the prison nurse under the Fourteenth Amendment. (Navajo County Jail, Arizona)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
RESTRAINTS
USE OF FORCE

Thomas v. Bryant, 614 F.3d 1288 (11th Cir. 2010). Inmates incarcerated at the Florida State Prison (FSP) brought a § 1983 action against various officers and employees of the Florida Department of Corrections (DOC), alleging that the use of chemical agents on inmates with mental illness and other vulnerabilities violated the Eighth Amendment's prohibition on cruel and unusual punishment. The claims against individual correctional officers responsible for administering the agents were settled. After a five-day bench trial on the remaining claims against the DOC Secretary and the FSP warden for declaratory judgment and injunctive relief, the district court entered findings of fact and conclusions of law. The court ended final judgment and a final permanent injunction in the inmates' favor. The Secretary and warden appealed. The appeals court affirmed. The court held that, notwithstanding his untimely death, the inmate who obtained declaratory and injunctive relief could still be the "prevailing party" entitled to attorney fees for the cost of district court litigation under the Civil Rights Attorney's Fees Awards Act (42 U.S.C.A. §§ 1983, 1988.) The court found that in reaching its conclusion the district court did not clearly err in finding that an inmate was sprayed with chemical agents at times when he had no capacity to comply with officers' orders because of his mental illness, or in finding that those sprayings caused the inmate lasting psychological injuries.

According to the court, the repeated non-spontaneous use of chemical agents on an inmate with a serious mental illness constituted an extreme deprivation sufficient to satisfy the objective prong of the test for an Eighth Amendment violation. The court noted that the inmate's well-documented history of mental illness and psychotic

episodes rendered him unable to comply at the times he was sprayed, such that the policy was unnecessary and without penological justification in his specific case. The court found that the DOC's policy and practice of spraying inmates with chemical agents, as applied to an inmate who was fully secured in his seven-by-nine-foot steel cell, was not presenting a threat of immediate harm to himself or others, and was unable to understand and comply with officers' orders due to his mental illness, were extreme deprivations violating the broad and idealistic concepts of dignity, civilized standards, humanity and decency embodied in the Eighth Amendment.

The court held that the district court did not clearly err in finding that the record demonstrated that DOC officials acted with deliberate indifference to the severe risk of harm an inmate faced when officers repeatedly sprayed him with chemical agents for behaviors caused by his mental illness. The appeals court held that the district court did not abuse its discretion in concluding that injunctive relief was warranted and necessary, despite contentions that an inmate was currently incarcerated at a facility where he was not subject to DOC's chemical agents policy. The court noted that the permanent injunction against violations of the mentally ill inmate's Eighth Amendment rights from sprayings with chemical agents did not extend further than necessary to correct a constitutional violation and was not overly intrusive. According to the court, in addition to being closely tethered to the identified harm, the district court's permanent injunctive relief was narrowly drawn and plainly adhered to the requirements of Prison Litigation Reform Act (PLRA). (Florida State Prison)

U.S. District Court
EVALUATION
SEX OFFENDER

U.S. v. Broncheau, 759 F.Supp.2d 694 (E.D.N.C. 2010). Former federal prisoners who had been certified as sexually dangerous persons moved to dismiss the government's petitions for their commitment. The district court granted the motion and the government moved to stay the order. The district court denied the motion. The court held that a motion to determine mental competency was the proper way for the government to seek commitment, and the public interest was served by having a federal inmate transition from incarceration with a period of supervised release. (Adam Walsh Child Protection and Safety Act of 2006, Federal Bureau of Prisons)

U.S. District Court
INVOLUNTARY
MEDICATION

U.S. v. Burhoe, 692 F.Supp.2d 137 (D.Me. 2010). The government moved for order permitting involuntary administration of medication to render a defendant competent to stand trial on charge of possession of firearms after having been previously committed to a mental institution. The district court held that the government established an important governmental interest in the prosecution of the defendant, granting the motion. The court noted that the defendant was charged with the offense of possession of firearms after having been previously committed to a mental institution, arising out of an incident in which he allegedly fired a rifle at a state trooper and ultimately was shot by the police, and there were also state charges pending against the defendant for aggravated attempted murder and reckless conduct with a firearm, arising out of the same incident that brought about the federal charge. (Maine)

U.S. District Court
COMMITMENT
EVALUATION
SEX OFFENDERS

U.S. v. Graham, 683 F.Supp.2d 129 (D.Mass. 2010). The federal government brought a civil action seeking to commit a federal prison inmate as a sexually dangerous person pursuant to the Adam Walsh Child Protection and Safety Act. At the conclusion of a bench trial, the parties proposed findings of fact and conclusions of law. The court held that the government failed to establish by clear and convincing evidence that the inmate suffered from nonconsensual sex paraphilia as would make him sexually dangerous to others. According to the court, despite a criminal history involving three sex offenses, there was no evidence that the inmate was aroused by, fantasized about, or fixated on non-consenting partners. The court noted that the inmate's criminal history included a number of non-sexual offenses, including assault, battery, and petit larceny, which further indicated the paraphilia diagnosis was inappropriate, and the testimony and report of the government's licensed psychologist supporting a paraphilia diagnosis not only conflicted with conclusions of the court-appointed psychiatrist and psychologist, but contained a number of factual inconsistencies and evinced a reluctance to credit contradictory evidence, which pointed to a bias in finding that inmate suffered from paraphilia that detracted from a government psychologist's credibility. (Adam Walsh Child Protection and Safety Act of 2006, Federal Bureau of Prisons)

U.S. District Court
SUICIDE

Wells v. Bureau County, 723 F.Supp.2d 1061 (C.D.Ill. 2010). The estate of a 17-year-old pretrial detainee who committed suicide while in custody at a county jail brought an action against the county, county sheriff, and corrections officers, alleging claims pursuant to § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the fact that the pretrial detainee, who committed suicide while in custody at a county jail, did not need a mental health professional when he was booked at the jail after being arrested on charges of illegal consumption of alcohol by a minor and possession of drug paraphernalia, was not dispositive of whether the detainee presented a serious need when he was booked at the jail approximately two weeks later after being arrested on charges of contributing to the delinquency of a minor.

The court held that information received by booking officers after pretrial detainee's suicide, including information that the detainee had been kicked out of his father's house, that the detainee was living in a tent, that the detainee and his girlfriend had a suicide pact, and that the detainee had commented to other inmates that if he was going to prison he would "shoot himself," was irrelevant to establishing what was in the officers' minds at time they were alleged to have been deliberately indifferent to the risk that the detainee would commit suicide. According to the court, the corrections officers lacked actual knowledge of a significant likelihood that the detainee would imminently seek to take his own life, or even of facts that would promote the inference of a subjective awareness of such a substantial risk, and thus the officers did not act with deliberate indifference to that risk in violation of due process, despite any alleged negligence in assessing and observing the detainee prior to his suicide.

The court held that summary judgment was precluded by a genuine issue of material fact as to whether the county sheriff's policy that correctional officers not personally observe prisoners during the overnight shift was constitutionally inadequate. From 10 PM to 6:30 AM, detainees are locked in their cells. During the overnight period from 11 PM on June 8, 2007, to 5 AM on June 9, 2007, Officer Keefer did eleven cell checks on Cellblock 2. While standing in the guard walkway, officers are able to look into two of the four cells and observe detainees in those cells, but officers are unable to see the detainees in the other two cells in the cellblock. During her checks, Officer Keefer personally observed the detainees in two of the cells in Cellblock 2 because she could see them from the

guard walkway, but did not observe Wells in his cell because she was unable to see into his cell from the guard walkway. At 6:45 AM, when another officer let the detainees in Cellblock 2 out of their cells for breakfast, he discovered Wells hanging in his cell. (Bureau County Jail, Illinois)

2011

U.S. District Court
EVALUATION
INTAKE SCREENING

Chess v. U.S., 836 F.Supp.2d 742 (N.D.Ill. 2011). An inmate who suffered personal injuries in an assault by a fellow inmate brought an action against the federal government under the Federal Tort Claims Act (FTCA), alleging it failed to properly screen the fellow inmate upon intake and also failed to monitor him. The inmate had suffered second-degree burns when the other inmate threw a cup of scalding water onto his face and then physically assaulted him by hitting him with the cup and punching him. The parties cross-moved for summary judgment. The district court denied the plaintiff's motion, and granted the defendants' motion in part and denied in part. The court held that the government failed to comply with certain directives aimed at monitoring federal prisoners suffering from mental illness, for the purposes of its attempt to avoid liability to the federal inmate who suffered personal injuries in an assault by a fellow inmate under the discretionary function exception to the Federal Tort Claims Act (FTCA) waiver of sovereign immunity. The court found that the inmate's claims relating to a corrections officer's alleged failure to monitor inmates during lockup were not barred by the Federal Tort Claims Act (FTCA) discretionary function exception. According to the court, while there was a genuine issue of material fact as to whether Bureau of Prisons (BOP) officials complied with requirements to review the inmate's central file upon intake and to review the assaulting inmate's mental health on a monthly basis, the assaulted inmate failed to raise the issue for trial as to whether the Bureau's failure to review the assailing inmate's central file proximately caused his injury.

The court found that summary judgment was precluded by a genuine issue of material fact, as to whether, after his second placement, BOP officials knew or reasonably should have known that the inmate should have been segregated from the administrative population. The court also found genuine issues of material fact as to whether a correctional officer's alleged failure to monitor the unit at the time of the attack constituted negligence and proximately caused the attacked inmate's injuries. (Federal Bureau of Prisons, Metropolitan Correctional Center Chicago, Illinois)

U.S. District Court
FAILURE TO PROVIDE
CARE

Davis v. Correctional Medical Services, 760 F.Supp.2d 469 (D.Del. 2011). A state inmate filed a § 1983 action alleging that prison medical officials failed to provide mental health treatment, failed to follow policies and procedures to prevent officers and other inmates from harassing him, and failed to provide adequate medical treatment for his broken nose. The district court granted the officials' motions to dismiss and for summary judgment. The court held that the failure of the prison's mental health administrator to speak to the inmate or to investigate his complaint regarding his treatment and his living conditions did not violate any recognizable constitutional right, as required to sustain the inmate's § 1983 claim against the administrator. According to the court, prison medical officials were not deliberately indifferent to the inmate's fractured nose, in violation of the Eighth Amendment, where the officials took an x-ray two months after the incident, the inmate did not complain about his nasal condition for seven months, once he did, the condition was consistently monitored and evaluated on several occasions, and the inmate was approved for surgery, but he refused to undergo the procedure. (James T. Vaughn Correctional Center, Delaware)

U.S. District Court
SUICIDE
INTAKE SCREENING
PSYCHIATRIC CARE

Smith v. Atkins, 777 F.Supp.2d 955 (E.D.N.C. 2011). The mother of a schizophrenic inmate who committed suicide at a jail and the mother of the inmate's children brought a § 1983 action in state court against a county deputy sheriff, jail officials, a medical contractor, and a nurse employed by the contractor, alleging that the defendants violated the inmate's Eighth Amendment rights in failing to provide adequate medical care. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motions. The court held that the deputy sheriff who happened to be at the jail delivering a prisoner when the inmate, who had been diagnosed with schizophrenia, committed suicide, did not know that the inmate was at a substantial risk of committing suicide or intentionally disregarded such risk. The court found that the deputy was not liable under § 1983 where the deputy did not know the inmate or anything about him, or have any responsibilities associated with the inmate's custody. The court also found that jail officials were not deliberately indifferent towards the schizophrenic inmate who was awaiting transfer to a state prison, as would violate the inmate's Eighth Amendment rights, because there was no indication that the officials subjectively knew that the inmate was at a substantial risk of committing suicide and intentionally disregarded that risk. According to the court, simply because the jail inmate, who was diagnosed with schizophrenia, had previously been on a suicide watch at the jail did not put jail officials on notice that he was suicidal during his subsequent incarceration two years later. The court held that jail officials' mere failure to comply with a state standard and a jail policy requiring a four-time per hour check on any prisoner who had ever been on a suicide watch did not violate the Eighth Amendment rights of the inmate. The court found that the mother of the inmate failed to show a direct causal link between a specific deficiency in training and an alleged Eighth Amendment violation, as required to sustain the mother's § 1983 Eighth Amendment claim against jail officials based on their alleged failure to train jail employees. (Bertie-Martin Regional Jail, North Carolina)

2012

U.S. District Court
ADA- Americans with
Disabilities Act
DELIBERATE
INDIFFERENCE
DUE PROCESS
EVALUATION
SEGREGATION

Anderson v. Colorado, 887 F.Supp.2d 1133 (D.Colo. 2012). A mentally ill inmate sued a state, its Department of Corrections (DOC), the DOC's director, and a warden, asserting claims for alleged violations of due process, the Eighth Amendment bar against cruel and unusual punishment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. Following a bench trial, the district court held that: (1) denying the inmate in administrative segregation any opportunity to be outdoors and to engage in some form of outdoor exercise for period of 12 years was a serious deprivation of a human need; (2) the defendants were deliberately indifferent to the inmate's mental and physical health; (3) the inmate failed to establish that he was denied a necessary and appropriate medication in violation of ADA and the Rehabilitation Act; (4) the defendants had to assign a department psychiatrist to reevaluate the inmate's current mental health treatment needs and take steps concluded to be appropriate in the psychiatrist's

medical judgment; (5) the inmate failed to establish a violation of his rights under the Eighth Amendment, ADA, and the Rehabilitation Act due to the alleged denial of treatment provided by a multidisciplinary treatment team; (6) the inmate had a due process-protected liberty interest in progressing out of administrative segregation; and (7) the new stratified incentive system that was being implemented with respect to inmates in administrative segregation, if used fairly, was consistent with due process. (Colorado Department of Corrections, Colorado State Penitentiary)

U.S. District Court
ADA- Americans with
Disabilities Act
DELIBERATE
INDIFFERENCE
MEDICATION

Anderson v. Colorado, Dept. of Corrections, 848 F.Supp.2d 1291 (D.Colo. 2012). An inmate brought an action against a state, the Department of Corrections (DOC), the DOC's director, and a warden asserting violations of the Eighth and Fourteenth Amendments as well as violations of the Americans with Disabilities Act (ADA) and Rehabilitation Act. The inmate moved for partial summary judgment and to reopen discovery, and the defendants moved for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to whether the maximum security prison's denial of outdoor exercise to the inmate for the more than 11 years of his incarceration was sufficiently serious and whether prison officials acted intentionally or with deliberate indifference. The court also found genuine issues of material fact as to whether the inmate's lack of outdoor exercise during his 11 years of incarceration caused his muscles to grow weaker, on the grounds that the inmate could demonstrate a physical injury. The court held that summary judgment was precluded by genuine issues of material fact as to whether prison officials arbitrarily administered a demerit program that would allow the inmate to progress to higher levels and ultimately out of administrative segregation and into the general population, depriving him of a liberty interest without the due process guaranteed by the Fourteenth Amendment.

The court held that summary judgment was also precluded by genuine issues of material fact as to whether a primary reason that the inmate had not progressed out of administrative segregation and into the general population was that he was denied a prescribed non-formulary medication, such that his mental illness was improperly and inadequately treated, and whether prison officials were deliberately indifferent to the inmate's serious mental health condition when he did not receive certain medications prescribed by physicians for the treatment of his mental illness. The court also held that summary judgment was precluded by genuine issues of material fact as to whether the inmate received adequate treatment for his mental illness, with regard to his Rehabilitation Act and ADA claims against the state and prison officials. (Colorado State Penitentiary)

U.S. District Court
SEGREGATION
SUICIDE

Disability Law Center v. Massachusetts Dept. of Correction, 960 F.Supp.2d 271 (D.Mass. 2012). A nonprofit organization, which represented mentally ill prisoners, brought an action against a state's Department of Correction, alleging that the Department and its officials violated the federal constitutional rights of prisoners by subjecting them to disciplinary and other forms of segregation for prolonged periods of time. After extensive negotiations, the parties jointly moved for approval of a settlement agreement. The district court granted the motion, finding the agreement to be fair, reasonable, and adequate. The court noted that the agreement addressed the fundamental issue of prison suicides by providing a process for minimizing the possibility that inmates with serious mental illnesses would be confined in segregation, and for reviewing their mental health while in segregation. The court held that the agreement did not order any "prospective relief," or in fact any "relief" at all, thereby precluding the applicability of the requirement of the Prison Litigation Reform Act (PLRA), that prospective relief not extend further than necessary to remedy violation of a federal right. (Massachusetts Department of Correction)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
SUICIDE
SUPERVISION

Estate of Miller, ex rel. Bertram v. Tobiasz, 680 F.3d 984 (7th Cir. 2012). The minor siblings of an inmate who committed suicide brought a § 1983 action against correctional facility staff members, alleging deliberate indifference to the inmate's serious medical condition involving a long history of suicide attempts, self-harm, and mental illness. The district court granted qualified immunity to the management-level defendants and others, but denied qualified immunity to an intake nurse, psychology associate, and prison guards. The defendants who were denied qualified immunity appealed. The appeals court affirmed. The appeals court held that the inmate's siblings adequately alleged that the intake nurse and a psychology associate were subjectively aware that the inmate was a suicide risk, as required to state a claim alleging deliberate indifference to the inmate's serious medical condition. The court found that the inmate's siblings adequately alleged that prison guards were subjectively aware that the inmate was a suicide risk. According to the court, the siblings adequately alleged that the intake nurse and psychology associate failed to take reasonable steps to prevent the harm from the inmate's suicidal tendencies, and that prison guards failed to take reasonable steps to prevent the harm from the inmate's suicidal tendencies. The court held that the intake nurse, psychology associate, and prison guards were not entitled to qualified immunity.

The court noted that the guards allegedly knew or should have known of the inmate's mental illness and suicide attempts because he was adjudicated mentally ill, he had court-ordered medications he refused to take the night he died, and he had a well-documented history of suicidal behavior. The inmate was housed in a unit where inmates in need of greater supervision were placed. The guards allegedly failed to call for medical attention despite finding the inmate with no pulse and not breathing on the floor of his cell with a white cloth wrapped around his neck, and waited to assemble an entry team and then applied restraints to the inmate before removing the ligature from around his neck. (Columbia Correctional Institute, Wisconsin)

U.S. Appeals Court
SUICIDE
PRETRIAL DETENTION

Luckert v. Dodge County, 684 F.3d 808 (8th Cir. 2012). The personal representative of the estate of her deceased son, who committed suicide while detained in a county jail, filed a § 1983 action against the county and jail officials for allegedly violating due process by deliberate indifference to the detainee's medical needs. Following a jury trial, the district court entered judgment for the personal representative, awarding actual and punitive damages as well as attorney fees and costs. The jury awarded \$750,000 in compensatory damages and \$100,000 in punitive damages. The district court denied the defendants' motion for judgment as a matter of law and the defendants appealed. The appeals court reversed the denial of the defendants' motion and vacated the awards. The appeals court held that while the detainee had a constitutional right to protection from a known risk of suicide, the jail nurse and the jail director were protected by qualified immunity, and the county was not liable. According to the court, the county jail nurse's affirmative but unsuccessful measures to prevent the pretrial detainee's suicide did not constitute deliberate indifference to his risk of suicide, where the nurse assessed the detainee twice after learning from his mother that he

had recently attempted suicide, the nurse arranged for the detainee to have two appointments with the jail's psychiatrist, including an appointment on the morning of the detainee's suicide, the nurse contacted the detainee's own psychiatrist to gather information about the detainee's condition, she reviewed the detainee's medical records, and she responded in writing to each of the detainee's requests for medical care.

The court held that the county jail director's actions and omissions in managing jail's suicide intervention practices did not rise to the level of deliberate indifference to the pretrial detainee's risk of suicide, even though the director delegated to the jail nurse significant responsibility for suicide intervention before formally training her on suicide policies and procedures, and the jail's actual suicide intervention practices did not comport with the jail's written policy. The court noted that the jail had a practice under the director's management of identifying detainees at risk of committing suicide, placing them on a suicide watch, and providing on-site medical attention, and the detainee remained on suicide watch and received medical attention including on the day of his suicide. The court held that the county lacked a custom, policy, or practice that violated the pretrial detainee's due process rights and caused his suicide, precluding recovery in the § 1983 action. The court found that, even though the county had flaws in its suicide intervention practices, the county did not have a continuing, widespread, and persistent pattern of constitutional misconduct regarding prevention of suicide in the county jail. (Dodge County Jail, Fremont, Nebraska)

U.S. Appeals Court
SUICIDE
DELIBERATE
INDIFFERENCE

McCullum v. Tepe, 693 F.3d 696 (6th Cir. 2012). A deceased inmate's mother sued a prison psychiatrist under § 1983, claiming that he was deliberately indifferent to the serious medical need of the inmate, who hung himself from his bed. The district court denied the psychiatrist's motion for summary judgment and he appealed. The appeals court affirmed, finding that the psychiatrist could not invoke qualified immunity. According to the court, a physician employed by an independent non-profit organization, but working part-time for a county as a prison psychiatrist, could not invoke qualified immunity in a § 1983 suit arising out of his activities at the prison. The court found that there was no common-law tradition of immunity for a private doctor working for a public institution at the time that Congress enacted § 1983. (Butler County Prison, Community Behavioral Health, Ohio)

U.S. Appeals Court
SUICIDE
JUVENILE
MENTAL HEALTH
DELIBERATE
INDIFFERENCE
TRANSFER

Miller v. Harbaugh, 698 F.3d 956 (7th Cir. 2012). The mother of a minor who hanged himself while incarcerated at a state youth detention facility, on her own behalf and as the minor's representative, brought a § 1983 action against state officials, alleging deliberate indifference to the minor's serious mental illness. The 16-year-old youth had a history of mental illness and was known to have attempted suicide at least three times. The district court granted summary judgment for the officials. The mother appealed. The appeals court affirmed. The appeals court held that, even assuming that state supervisory officials' decision to use metal bunk beds in rooms of a youth detention facility that were occupied by residents who were mentally disturbed but did not appear to be imminently suicidal, amounted to deliberate indifference to the residents' serious medical needs, the law was not then so clearly established as to defeat the officials' defense of qualified immunity to the due process claim. The court found that a psychologist at the state youth detention facility, who had authorized the minor's transfer after learning of minor's unsuccessful participation in the facility's drug abuse program, was not deliberately indifferent to the minor's serious medical needs, in violation of due process. According to the court, even if he knew that the minor, who had mental health issues, presented a suicide risk and that the transferee facility was using metal bunk beds like that which the minor thereafter used to hang himself. The court found that the psychologist's involvement with the minor was minimal, the decision to make the transfer was made after the psychologist met with the facility's entire treatment staff, and the psychologist did not know which room at the transferee facility the minor would be given or that the facility's other suicide prevention measures would prove to be inadequate. (Illinois Youth Center, IYC Kewanee, Illinois)

U.S. District Court
INVOLUNTARY
MEDICATION
TRAINING
DELIBERATE
INDIFFERENCE
DUE PROCESS

Olaniyi v. District of Columbia, 876 F.Supp.2d 39 (D.D.C. 2012). A pretrial detainee brought an action against the District of Columbia and the United States, asserting claims under § 1983 and the Federal Tort Claims Act (FTCA), arising from his detention and a separate incident involving a traffic stop. The defendants moved for summary judgment. The district court granted the motion. The court held that past alleged deficiencies in medical services at the District of Columbia jail that were unrelated to unconstitutional forced medication of inmates could not have put the District on notice of the need for training to avoid an alleged due process violation arising from the detainee's being forcibly injected with a psychoactive drug while residing in the jail's mental health unit, and thus could not sustain a finding of deliberate indifference necessary to hold the District liable under § 1983 for an alleged due process violation. The court also held that the detainee failed to establish a pattern of similar due process violations by untrained or inadequately trained jail employees that could have put the District on notice of a need for more training with respect to forced medication of inmates, thus precluding the detainee's § 1983 due process claim against the District based on a failure to train theory. (Mental Health Unit of the District of Columbia Jail)

U.S. Appeals Court
DUE PROCESS
FAILURE TO PROVIDE
CARE
INTAKE SCREENING

Paine v. Cason, 678 F.3d 500 (7th Cir. 2012). The guardian of the estate of an arrestee, who allegedly suffered from bipolar disorder, brought a § 1983 action against a municipality and police officers, alleging civil rights violations in connection with the arrest and subsequent release from custody without being provided access to mental health treatment. The arrestee was raped at knifepoint after her release and either jumped or was pushed from a window, causing permanent brain damage. The district court denied summary judgment in part for the defendants. The defendants sought relief through interlocutory appeal. The appeals court affirmed in part, denied in part, and remanded. The appeals held that: (1) the arrestee, as a person in custody, had clearly a established right for police to provide care for her serious medical condition; (2) whether the police should have understood that the arrestee had a serious medical condition, and thus should have provided care, was a factual issue that could not be decided on interlocutory appeal; (3) causation was a factual issue not suited to resolution on interlocutory appeal of denial of qualified immunity; (4) the arrestee did not have a clearly established constitutional right for her release to be delayed pending mental-health treatment; (5) the arrestee had a clearly established due process right for the police to not create danger, without justification, by arresting her in a safe place and releasing her in a hazardous one while unable to protect herself; (6) the arresting officer was entitled to qualified immunity; (7) the watch officer was not entitled to qualified immunity; and (8) a detention aide was not entitled to qualified immunity. According to the court, a police officer who was responsible for preparing the arrestee's individual-recognition bond and collecting

possessions that were to be returned on her release, and who received a telephone call from the mother of the arrestee regarding the arrestee's bi-polar condition and did nothing in response and who did not even note the call in a log, was not entitled to qualified immunity to the civil rights claims that the police had created a danger, without justification. The court found that the detention aide who was responsible for evaluating inmates, observed the arrestee behaving in a mentally unstable way, such as smearing menstrual blood on her cell walls, and transferred another person out of the arrestee's cell because of her inappropriate behavior, and yet did nothing to alert other personnel at the stationhouse, was not entitled to qualified immunity to the civil rights claims that the police did not arrange for medical treatment of serious conditions while the arrestee's custody continued. (Eighth District Station, Second District Station, Chicago Police Department)

U.S. District Court
SUICIDE
MEDICATION
PRETRIAL DETENTION
SUPERVISION
DELIBERATE
INDIFFERENCE

Ponzini v. Monroe County, 897 F.Supp.2d 282 (M.D.Pa. 2012). Survivors of a pretrial detainee sued prison officials, medical care providers and a corrections officer under § 1983 and state tort law, claiming that they were deliberately indifferent to the serious medical needs of the detainee, who committed suicide. The detainee allegedly did not receive his medication during his confinement. The survivors noted that one of the medications, Paxil, has "a short half-life and leaves a user's system very quickly," and that its withdrawal symptoms include "worsening of underlying anxiety or depression, headache, tremor or 'shakes', gastrointestinal distress and fatigue-, all of which were allegedly present in detainee during his incarceration." The detainee had also been taking Trazadone. The survivors alleged that during the period in which the detainee was incarcerated at the facility, officers were aware that the detainee should have been monitored closely and placed on a suicide watch. The survivors asserted that, although the detainee was not on a suicide watch, the inmate housed in an adjacent cell was on such a watch. An officer was expected to pass the neighboring cell, and by virtue of its location, the detainee's cell, every fifteen minutes. The survivors alleged that the officer falsified documents demonstrating that he properly made his rounds every fifteen minutes, and that officer failure to properly maintain a suicide watch on the detainee's neighbor facilitated the detainee's own suicide. The detainee killed himself by swallowing shreds of his own t-shirt. The court held that the survivors stated a § 1983 claim under the Fourteenth Amendment against prison officials for deliberate indifference to the serious medical needs of the detainee, who committed suicide allegedly as a result of a lack of daily medication necessary to treat depression and other psychological issues. According to the court, the complaint raised the possibility that prison officials knew that the detainee suffered from a severe medical condition and did not attempt to provide appropriate, necessary care in a timely manner. The court held that the survivors also stated a § 1983 claim under the Fourteenth Amendment against the corporate medical provider for deliberate indifference. (PrimeCare Medical, Inc., and Monroe County Correctional Facility, Pennsylvania)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
DUE PROCESS
PRETRIAL DETENTION
SEGREGATION
SUICIDE

Rice ex rel. Rice v. Correctional Medical Services, 675 F.3d 650 (7th Cir. 2012). Following a pretrial detainee's death while incarcerated, his parents, representing his estate filed suit pursuant to § 1983, alleging among other things that jail officials and medical personnel had deprived the pretrial detainee of due process by exhibiting deliberate indifference to his declining mental and physical condition. The district court entered summary judgment against the estate. The estate filed a second suit reasserting the state wrongful death claims that the judge in the first suit had dismissed without prejudice after disposing of the federal claims. The district court dismissed that case on the basis of collateral estoppel, and the estate appealed both judgments. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether jail officials were deliberately indifferent to the pretrial detainee's conditions of confinement, and whether his conditions of confinement were sufficiently serious to support his Fourteenth Amendment due process claim. The court noted that whether the detainee himself created the unsanitary conditions was a fact relevant to the claim, but given detainee's mental condition, it did not foreclose the claim. The court found that the estate failed to show that the detainee's assignment to an administrative segregation unit of the jail for approximately seven months violated the detainee's due process rights, where the estate failed to identify feasible alternatives and to tender evidence supporting the contention that the detainee likely would have fared better in one of those alternative placements. The court held that jail officials did not employ excessive force, in violation of due process, to the pretrial detainee who had been fighting with his cellmate and failed to comply with a directive that he step out of his cell which he refused to leave for 18 hours, by spraying his face with pepper foam, and placing him in a restraint chair. The court held that jail officials did not have notice of a substantial risk that the mentally ill pretrial detainee might be assaulted by other inmates, as required to support the pretrial detainee's claim of deliberate indifference in violation of due process. The court noted that while jail personnel were aware that the detainee had a hygiene problem, they had no notice that he was at risk of assault because of that problem, particularly within the more secure confines of the administrative segregation unit. The court found that neither jail guards or supervisors were deliberately indifferent to the risk that the mentally ill pretrial detainee might engage in a behavior such as compulsive water drinking that would cause him to die within a matter of hours and did not consciously disregarded that risk, and therefore they were not liable for his death under § 1983. According to the court, while a factfinder might conclude that the guards exhibited a generalized recklessness with respect to the safety of the inmates housed in the administrative segregation unit by failing to conduct hourly checks of the unit, there was no evidence that the guards or supervisors were subjectively aware of the possibility that the detainee might injure himself to the point of death before anyone could intervene. (Elkhart County Jail, Indiana)

U.S. Appeals Court
SUICIDE
TRANSFER
DELIBERATE
INDIFFERENCE

Rosario v. Brawn, 670 F.3d 816 (7th Cir. 2012). The father of a detainee who committed suicide while in police custody brought a § 1983 action against police officers, alleging deliberate indifference to the detainee's risk of suicide in violation of the detainee's right to due process under Fourteenth Amendment. The district court granted summary judgment to the police officers, and the father appealed. The appeals court affirmed. The court held that the police officers did not intentionally disregard a substantial risk that the detainee would commit suicide, as required for liability on a due-process claim alleging deliberately indifferent treatment of the detainee. The detainee committed suicide while being transported to a mental health facility after exhibiting self-destructive behavior. The officers failed to discover the detainee's razor blade, which he used to commit suicide. According to the court, their overall actions toward the detainee showed protection and compassion by searching the detainee, arranging for

assessment of his mental condition, ensuring his comfort during transportation, and personally administering first aid despite his resistance. (Washington County Sheriff, Wisconsin)

U.S. District Court
INVOLUNTARY
MEDICATION
PSYCHOTROPIC
DRUGS

Santos v. Bush, 874 F.Supp.2d 408 (D.N.J. 2012). A mentally ill inmate brought an action under § 1983 against a doctor and a warden at the prison where he was formerly housed, alleging that the defendants forcibly medicated him without due process. The defendants moved for summary judgment. The district court granted the motion. The court held that the prison warden was not involved in any of the mental health evaluations the inmate received or the development of his treatment plans, nor did the warden have any direct involvement, or even actual knowledge, of the specific circumstances surrounding the involuntary administration of psychotropic medication to the inmate, as would subject her to liability under § 1983 on the inmate's due process claims. According to the court, the warden's letter to the inmate's grandmother related to issues of the inmate's unwillingness to take psychotropic medication voluntarily was insufficient to demonstrate personal involvement, or knowledge and acquiescence, by the warden in approving or otherwise deciding whether the inmate should have been involuntarily medicated, as would subject the warden to liability under § 1983. The court found that the involuntary medication administration (IMA) procedure utilized by the New Jersey Department of Corrections (DOC), and the prison's involuntary administration of psychotropic medication to the mentally ill inmate, complied with substantive due process. According to the court, the procedure was reasonably related to the state's legitimate interests in responding to the dangers posed by the mentally ill inmate, providing inmates with treatment in their medical interest, and ensuring the safety of prison staff, administrative personnel, and inmates. The court found that the prison's administration of psychotropic drugs to the mentally ill inmate under its involuntary medication administration (IMA) procedure did not violate the inmate's procedural due process rights, where: (1) the inmate was diagnosed with a serious mental illness, based on a series of well-documented delusions, paranoid beliefs, and behaviors exhibited by the inmate; (2) at least four psychiatrists evaluated the inmate at various points during his treatment; (3) four separate treatment review committees (TRC) were convened during the inmate's treatment; (4) the inmate received notice of each TRC hearing; and (5) the inmate's involuntary medication was periodically reviewed in accordance with the IMA procedure. (South Woods State Prison, New Jersey)

U.S. Appeals Court
ADA- Americans with
Disabilities Act
EVALUATION
SUICIDE
SUPERVISION

Shelton v. Arkansas Dept. of Human Services, 677 F.3d 837 (8th Cir. 2012). The administratrix of the estate of a mental health patient brought an action against various public officials and health professionals, alleging shortcomings in the way the medical professionals responded after the patient hanged herself while a patient at the facility. The district court dismissed the action. The administratrix appealed. The appeals court affirmed. The court held that the state actors' discovery of an unconscious voluntary mental health patient hanged in her room did not trigger duties related to involuntary commitment nor did it give rise to a constitutional-level duty of care. According to the court, after the state actors discovered the patient, she was no different than any unconscious patient in an emergency room, operating room, or ambulance controlled by the state actors, and, in such circumstances, the state actors owed patients state-law duties of care based upon standards for simple or professional negligence. The court found that the physician's decision to remove the mental health patient from a suicide watch was a medical-treatment decision, and therefore a claim based on that decision could not be brought pursuant to either the Americans with Disabilities Act (ADA) or the Rehabilitation Act, absent any allegation that the removal from suicide watch was influenced by anything other than the physician's judgment. (Arkansas State Hospital)

U.S. District Court
EVALUATION

Soneeya v. Spencer, 851 F.Supp.2d 228 (D.Mass. 2012). A state prisoner, a male-to-female transsexual, brought an action against the Commissioner of the Massachusetts Department of Correction (DOC), alleging violations of her Eighth Amendment rights. Following a bench trial, the district court held that the prisoner's gender identity disorder (GID) was a serious medical need and the treatment received by the prisoner was not adequate. The court found that the Commissioner was deliberately indifferent to the prisoner's serious medical need and the DOC's pattern of obstruction and delay was likely to continue, as required for the prisoner to obtain injunctive relief on her Eighth Amendment claim, where the DOC's policy for treating GID imposed a blanket prohibition on cosmetic and sex reassignment surgery without exception. The court noted that the transsexual prisoner's gender identity disorder was a "serious medical need" within the meaning of the Eighth Amendment, the prisoner's GID was diagnosed by a physician as needing treatment, and she had a history of suicide attempts and self castration while in custody. The court found that the treatment received by the transsexual prisoner was not adequate, although the DOC provided the prisoner with psychotherapy and hormone treatment, it failed to perform an individual medical evaluation aimed solely at determining appropriate treatment for her GID as a result of its blanket prohibition on cosmetic and sex reassignment surgery. (MCI-Shirley, Massachusetts)

U.S. Appeals Court
SEX OFFENDERS
DUE PROCESS
RIGHT TO
TREATMENT

Strutton v. Meade, 668 F.3d 549 (8th Cir. 2012). A civilly-committed sex offender brought a civil rights action challenging the adequacy of his treatment at the Missouri Sexual Offender Treatment Center. The district court entered judgment in favor of the defendants, and the plaintiff appealed. The appeals court affirmed. The court found that the offender had standing to bring the due process challenge to the adequacy of Missouri's four-phase treatment program for such offenders, where he demonstrated that his alleged injury of not advancing in treatment was not due solely to his own recalcitrance and could have been due to the lack of adequate treatment resources. But according to the court, the treatment received by offender did not shock the conscience, in violation of substantive due process. The court noted that although budget shortfalls and staffing shortages resulted in treatment modifications that were below standards set in place by the center's directors, temporary modifications in the treatment regimen of eliminating psychoeducational classes and increasing the size of process groups was neither arbitrary nor egregious, and the center sought to maintain essential treatment services in light of the challenges it faced. The court found that the treatment center's use of the "restriction table" and the later use of a restriction area in treating the civilly-committed sex offender did not shock the conscience, and thus did not violate offender's Fourteenth Amendment due process rights. A resident assigned to the Restriction Table, which was located near a nurses' station, was not permitted to speak to another person unless that person was also seated at the table, and was only allowed to leave the table for meals, classes, process groups, and for an hour of exercise. Residents would remain at the table from

early morning until late evening. Despite its name, residents assigned to the Restriction Table were not physically restrained and were allowed to stand, stretch, get a drink of water, or use the restroom as needed. Use of the table was discontinued and it was replaced with a "Restriction Area." According to the court, residents assigned to a restriction table or restriction area retained a comparatively free range of movement and activities, including the ability to get up and stretch, to leave to attend group sessions and meetings, to converse with other residents, to work on homework or legal issues, and to play cards. (Missouri Sexual Offender Treatment Center)

U.S. Appeals Court
INVOLUNTARY
MEDICATION
DUE PROCESS

U.S. v. Loughner, 672 F.3d 731 (9th Cir. 2012). In a prosecution for attempted assassination of a Congresswoman, murder of federal judge, murder and attempted murder of other federal employees, injuring and causing death to participants at a federally provided activity, and related weapons offenses, the district court denied the defendant's emergency motion to enjoin an involuntary medication decision, and he appealed. The appeals court affirmed. The appeals court held that: (1) procedures used to determine whether the defendant ought to be involuntarily medicated complied with due process; (2) the Bureau of Prisons (BOP) medical facility did not act arbitrarily in finding that the defendant was a danger to himself and that antipsychotic medication was in his best interest; and, (3) due process did not require the BOP to specify a medication regimen before it could involuntarily medicate the defendant. (U.S. Medical Center for Federal Prisoners in Springfield, Missouri)

U.S. Appeals Court
DUE PROCESS
EVALUATION
SENTENCE

U.S. v. Thornberg, 676 F.3d 703 (8th Cir. 2012). Following his apprehension more than six years after escaping from federal prison camp, a defendant pled not guilty, by reason of insanity, to the charge of escape from custody. The district court granted the defendant's first motion for a psychiatric evaluation, denied his second motion for a psychiatric evaluation, and sentenced him to 30 months in prison upon his conviction by a jury for escape. The defendant appealed. The appeals court affirmed. The appeals court found that although a forensic psychologist from the federal Bureau of Prisons did not review the indigent defendant's full medical history, a psychiatric evaluation determining that the defendant did not suffer from a severe mental defect was not deficient, precluding his claim of deprivation of due process by a single evaluation performed by a psychologist rather than psychiatrist, and by denial of his request for a second evaluation to assess his competency to stand trial. The court noted that the psychologist reviewed defendant's medical records dating from the time of his escape and concluded that his feelings of persecution from his family that allegedly coerced him to escape from prison were not evidence that he had delusions, as those feelings disappeared immediately after he escaped, and that his attempts to evade detection after escape could be seen as evidence of his understanding of the wrongfulness of his conduct. (Federal Prison Camp, Duluth, Minnesota)

2013

U.S. District Court
DUE PROCESS
EQUAL PROTECTION
RIGHT TO
TREATMENT

Barnes v. Ross, 926 F.Supp.2d 499 (S.D.N.Y. 2013). A mentally ill inmate brought a § 1983 action against the Commissioner of the New York Department of Corrections and Community Supervision (DOCCS) and employees of the New York Office of Mental Health asserting Eighth Amendment and equal protection claims. The mentally ill African-American inmate alleged that he and other minorities were subject to discriminatory treatment because of their race, in that white inmates were sent to the hospital for proper treatment, while African-Americans and Latino inmates were placed in observation for long periods and then were sent back to their cells, where they would harm themselves or try to commit suicide. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) requirements of class certification were not satisfied; (2) the inmate failed to plausibly allege an Eighth Amendment claim of deliberate indifference to his serious medical needs; (3) the inmate stated a claim of racial discrimination in violation of the Equal Protection Clause; (4) the inmate adequately alleged the personal involvement of an employee; but (5) the inmate did not adequately allege the personal involvement of the Commissioner. The court held that the employees were not entitled to qualified immunity because the right of a prisoner to be free from racial discrimination was clearly established, and the inmate adequately alleged that the employees intentionally discriminated against him on account of his race. (Sullivan Correctional Facility, New York)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
DUE PROCESS
EQUAL PROTECTION
RIGHT TO
TREATMENT
SUICIDE
TRAINING

Belbachir v. County of McHenry, 726 F.3d 975 (7th Cir. 2013). The administrator of the estate of a female federal detainee who committed suicide in a county jail filed suit against the county, county jail officials, and employees of the medical provider that had a contract with the county to provide medical services at the jail, alleging violation of the detainee's due process rights and Illinois tort claims. The district court granted summary judgment in favor of all county defendants. The administrator appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court found that the jail inmate who was detained by federal immigration authorities pending her removal hearing was in the same position as a lawfully arrested pretrial detainee. The court noted that a pretrial detainee was entitled, pursuant to the due process clause, to at least as much protection during her detention as convicted criminals were entitled to under the Eighth Amendment-- namely protection from harm caused by a defendant's deliberate indifference to the inmate's safety or health. The court asserted that persons who have been involuntarily committed are entitled, under the due process clause, to more considerate treatment during detention than criminals whose conditions of confinement are designed to punish.

The court found that the alleged conduct of a clinical social worker at the county jail who interviewed the detainee, in noting that the detainee suffered from a major depressive disorder, hallucinations, acute anxiety, and feelings of hopelessness, but allegedly failing to report those findings to the jail guards or any other jail staff or to recommend that the detainee be placed on a suicide watch or receive mental health treatment, amounted to deliberate indifference to the detainee's risk of suicide, in violation of the detainee's due process rights. The court held that a nurse manager employed by the medical provider was not deliberately indifferent to the detainee's risk of suicide, as would violate the detainee's due process rights, where the nurse manager treated the detainee for panic attacks and anxiety, and recommended that she be given a cellmate and transferred to a medical treatment area at the jail, both of which were done, and there was no showing that the nurse manager knew that the detainee was suicidal. According to the court, the county sheriff's and county jail director's failure to provide annual training to jail staff on how to

recognize the risk of suicide in detainees, and their failure to implement a suicide prevention policy, did not render the county liable under § 1983 for the detainee's suicide during her detention at the jail, absent a showing that such failures caused the detainee's suicide. (McHenry County Jail, Illinois)

U.S. Appeals Court
JUVENILE
RESTRAINTS
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Blackmon v. Sutton, 734 F.3d 1237 (10th Cir. 2013). A former juvenile pretrial detainee brought a § 1983 action against various members of a juvenile detention center's staff, alleging they violated the Fourteenth Amendment rights guaranteed to him as a pretrial detainee. The district court denied the defendants' motion for summary judgment based on qualified immunity. The defendants appealed. The appeals court affirmed in part, and reversed in part. The court held that the eleven-year-old pretrial detainee's right to be free from punishment altogether was clearly established at the time the staff allegedly used a chair bearing wrist, waist, chest, and ankle restraints to punish detainee, for the purposes of the juvenile detention center's staff's qualified immunity defense. According to the court, the senior correctional officer approved a decision by one of his subordinates, a fully grown man, to sit on the chest of the eleven-year-old without any penological purpose.

The court found that the detainee's Fourteenth Amendment due process rights were violated when employees allegedly failed to provide the eleven-year-old detainee with any meaningful mental health care despite his obvious need for it. The court noted that prison officials who assumed a "gate keeping" authority over the prisoner's access to medical professionals were deliberately indifferent to the detainee's medical needs when they denied or delayed access to medical care. But the court also held that the detainee's alleged right to be placed in a particular facility of his choice while awaiting trial was not clearly established at the time the director failed to transfer detainee to a nearby shelter, for purposes of the juvenile detention center director's qualified immunity defense.

The court stated: "Weeks before eleven-year-old, 4'11," 96-pound Brandon Blackmon arrived at the juvenile detention center in Sedgwick, Kansas, officials there made a new purchase: the Pro-Straint Restraining Chair, Violent Prisoner Chair Model RC-1200LX. The chair bore wrist, waist, chest, and ankle restraints. In the months that followed, the staff made liberal use of their new acquisition on the center's youngest and smallest charge. Sometimes in a legitimate effort to thwart his attempts at suicide and self-harm. But sometimes, it seems, only to punish him. And that's the nub of this lawsuit." (Juvenile Residential Facility, Sedgwick County, Kansas)

U.S. District Court
FAILURE TO PROVIDE
CARE

Coleman v. Brown, 922 F.Supp.2d 1004 (E.D.Cal. 2013). State prison inmates brought Eighth Amendment challenges to the adequacy of mental health care and medical health care provided to mentally ill inmates and the general prison population, respectively. The inmates moved to convene a three-judge panel of the district court to enter a population reduction order that was necessary to provide effective relief. The motions were granted and the cases were assigned to same panel, which ordered the state to reduce the prison population to 137.5% of its design capacity. The state moved to vacate or modify the population reduction order. The district court denied the motion. The three-judge panel of the district court held that: (1) the state's contention that prison crowding was reduced and no longer a barrier to providing inmates with care required by the Eighth Amendment did not provide the basis for a motion to vacate the order on the ground that changed circumstances made it inequitable to continue applying the order; (2) the state failed to establish that prison crowding was no longer a barrier to providing inmates with care required by the Eighth Amendment; and (3) the state failed to establish it had achieved a durable remedy to prison crowding. (Calif. Dept. of Rehabilitation and Corrections)

U.S. District Court
DELAY IN CARE
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
SEGREGATION
SUICIDE

Coleman v. Brown, 938 F.Supp.2d 955 (E.D.Cal. 2013). California state prisoners with serious mental disorders brought a class action against various prison and state officials, alleging failure to provide mental care in violation of the Eighth Amendment. After a three-judge court found that overcrowding was the primary cause of ongoing constitutional violations, and was affirmed by the United States Supreme Court, officials moved to terminate all prospective relief and vacate the judgment. The district court denied the motion, holding that: (1) there remained an ongoing violation of the Eighth Amendment in inadequate assessment, treatment, or intervention regarding prisoner suicides; (2) prisoners placed in administrative segregation units continued to face a substantial risk of harm; (3) prisoners continued to face delays in access to care; (4) prisons continued to have shortages in treatment space and access to beds; and (5) officials were deliberately indifferent in implementing policies to remedy the Eighth Amendment violations. (California Department of Corrections and Rehabilitation)

U.S. District Court
DELAY IN CARE
RIGHT TO
TREATMENT

Coleman v. Brown, 960 F.Supp.2d 1057 (E.D.Cal. 2013). California prisoners with serious mental disorders brought a class action against a Governor, alleging that due to prison overcrowding, they received inadequate mental health care, in violation of the Eighth Amendment prohibition of cruel and unusual punishment. Separately, California prisoners with serious medical conditions brought a class action asserting constitutional claims similar to those in the other action. In the case concerning mental health care, the district court found Eighth Amendment violations and appointed a special master to oversee the development and implementation of a remedial plan. In the case concerning medical care, the State stipulated to a remedial injunction, and, after the State failed to comply with that injunction, the district court appointed a receiver to oversee remedial efforts. A three judge district court panel consolidated the two cases and the panel entered a remedial order requiring the State to reduce its prison population to 137.5 percent of design capacity within two years. The Governor appealed. The United States Supreme Court affirmed the population reduction order. The district court subsequently denied the defendants' motion to vacate or modify the population reduction order, and directed the defendants to comply with the population reduction order. The defendants' moved to stay the order directing compliance pending appeal to the United States Supreme Court. The district court denied the motion, finding that: (1) the State was not likely to succeed on the merits of the prisoners' lawsuit challenging prison conditions; (2) the State would not be irreparably injured absent a stay; (3) issuance of a stay would substantially injure the prisoners; and (4) the public interest favored denying the stay. (California)

U.S. Appeals Court
EVALUATION

De'lonta v. Johnson, 708 F.3d 520 (4th Cir. 2013). A pre-operative transsexual inmate filed a § 1983 action alleging that state prison officials' continued denial of consideration for sex reassignment surgery as treatment for her gender identity disorder (GID) constituted deliberate indifference to her serious medical need in violation of the Eighth Amendment. The district court dismissed the complaint, and the inmate appealed. The appeals court reversed and

remanded. The court held that the inmate's allegation was sufficient to state a plausible Eighth Amendment claim against the officials, even though the officials had provided the inmate with hormone treatment and mental health consultations, and had allowed her to live and dress as a woman, where the standard protocol for treatment of GID indicated that sex reassignment surgery might be necessary for individuals who continued to present with severe GID after one year of hormone therapy and dressing as woman. The court noted that the officials failed to evaluate the inmate concerning her suitability for surgery, despite her repeated complaints as to the persistence of her symptoms and the inefficacy of her existing treatment. (Powhatan Correctional Center, and Buckingham Correctional Center, Virginia Department of Corrections)

U.S. Appeals Court
SUICIDE
SPECIAL HOUSING

Earl v. Racine County Jail, 718 F.3d 689 (7th Cir. 2013). An inmate brought a § 1983 action against a county jail and various jail officers, asserting claims for denial of due process and deliberate indifference to his serious medical condition. The district court granted the defendants' motion for summary judgment, and the inmate appealed. The appeals court affirmed. The appeals court held that the inmate's five days on suicide watch were neither long enough nor harsh enough to deprive him of a due-process-protected liberty interest, where: (1) the only changes to the inmate's meals were that trays upon which food was served were disposable foam rather than plastic; (2) eating utensils were quickly removed after each meal; (3) the inmate was not denied bedding but was given a mattress and a blanket; (4) the inmate was denied writing materials for only the first 48 hours; and (5) rather than being prohibited human contact, deputies were assigned to closely and personally monitor the inmate to ensure his safety. The court found that jail officers were not deliberately indifferent to the inmate's allergic reaction to suicide garments in violation of the Eighth Amendment. The court noted that after the inmate told an officer about his allergic reaction to a suicide gown, the officer called a nurse who immediately examined the inmate and gave him cream and medication, and the officers appropriately deferred to the nurse's medical decision that the inmate did not need different garments because there was no sign of rash or bumps on the inmate. (Racine County Jail, Wisconsin)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
DUE PROCESS
FAILURE TO PROVIDE
CARE
SUPERVISION

Goodman v. Kimbrough, 718 F.3d 1325 (11th Cir. 2013). The wife of a pretrial detainee who suffered from dementia and who was severely beaten by his cellmate filed a § 1983 action against jail officials in their individual capacities for alleged violation of the Due Process Clause by deliberate indifference to a substantial risk of harm to the detainee. The wife also asserted a supervisory liability claim against the sheriff in his official capacity and a state law claim for loss of support and consortium. The district court granted summary judgment for the defendants. The wife appealed. The appeals court affirmed. The court held that there was no evidence that jail officials were subjectively aware of a risk of serious harm to which the pretrial detainee was exposed from his severe beating by a cellmate, and that the officials deliberately disregarded that risk, as required to support the detainee's § 1983 claim of deliberate indifference in violation of the Due Process Clause. According to the court, the officers' failure to conduct cell checks and head counts and their deactivation of emergency call buttons constituted negligence but did not justify constitutional liability under § 1983. According to the court, jail officials' policy violations by failing to enter every cell in conducting head counts and in deactivating emergency call buttons did not constitute a custom so settled and permanent as to have the force of law. (Clayton County Jail, Georgia)

U.S. District Court
ADA- Americans with
Disabilities Act
DELIBERATE
INDIFFERENCE
MEDICATION

Hahn v. Walsh, 915 F.Supp.2d 925 (C.D.Ill. 2013). The estate of a diabetic pretrial detainee brought an action against a city, police officers, a county, the county sheriff, and a jail medical provider, alleging under § 1983 that the defendants were deliberately indifferent to the detainee's serious medical needs. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that a city police officer at the scene of the arrest who had no involvement with the diabetic detainee could not be held liable under § 1983 for being deliberately indifferent to the serious medical needs of detainee, who died from diabetic ketoacidosis after she was taken to a county jail. The court also found that city police officers who transported the detainee to the county jail, rather than a hospital, were not deliberately indifferent to the serious medical needs of the detainee, where the officers were entitled to defer to the judgment of the paramedics on the scene. According to the court, there was no evidence that the county sheriff knew of a serious risk to the health of the diabetic pretrial detainee and consciously disregarded that risk, that any prior deaths at the jail involved medical care provided to an inmate, much less that medical care involved an inmate with diabetes, or that the sheriff's decisions about certification of the jail's medical contractor had any adverse effect on the detainee, as would subject the sheriff to liability under § 1983, in his individual capacity, for his alleged deliberate indifference to the detainee's serious medical needs. The court found that the county's actions in shutting off water to the mentally ill, diabetic pretrial detainee's cell when the inmate was stuffing clothing into the cell's toilet did not violate the detainee's Fourteenth Amendment rights. According to the court, the estate's claim against the county that the detainee, who died of diabetic ketoacidosis after allegedly refusing diabetic treatment and food while incarcerated, was not properly treated for her mental illness and diabetes was not actionable under the Americans with Disabilities Act (ADA) or the Rehabilitation Act. (Champaign County Jail, Illinois)

U.S. District Court
DELIBERATE
INDIFFERENCE
EVALUATION
JUVENILE
PSYCHIATRIC CARE
PSYCHOTROPIC
DRUGS
SPECIAL HOUSING

Harrelson v. Dupnik, 970 F.Supp.2d 953 (D.Ariz. 2013). The mother of 17-year-old inmate who died while housed at a county jail brought an action in state court against the county, the county sheriff, the healthcare provider which contracted with the county to provide medical and mental health care at the jail, and employees of the provider, individually and on behalf of the inmate's estate, alleging under § 1983 that the defendants were deliberately indifferent to the inmate's serious medical needs. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that: (1) the county defendants' duty to provide medical and mental health services to an inmate was non-delegable; (2) intervening acts of the medical defendants did not absolve the county defendants of liability for alleged negligence; (3) the mother failed to state a claim for wrongful death; (4) the county was not deliberately indifferent to the inmate's rights; (5) the provider was not subject to liability; but (6) a fact issue precluded summary judgment as to an Eighth Amendment medical claim against the employees.

According to the court, the duty of the county and the county sheriff to provide medical and mental health services to the 17-year-old county jail inmate, who suffered from bipolar disorder and depression, was non-

delegable, and thus the county and sheriff were subject to vicarious liability, under Arizona law, for the alleged medical malpractice of the healthcare provider which contracted with the county to provide medical and mental health services at the jail. The court noted that there was no evidence that the legislature intended to permit the county or sheriff to delegate their duties and obligations they owed to the inmate. The court found that the intervening acts of the contract medical provider, in allegedly failing to properly diagnose and treat the inmate's medical and mental health needs, both before and after the inmate received an injection of a psychotropic medication, were not so extraordinary as to absolve the county and the county sheriff of liability for their failure to protect the inmate.

The court found that there was no evidence that the county jail's policy or custom of placing inmates in protective custody for their own protection amounted to deliberate indifference to the constitutional rights of the inmate, who died while on protective custody status. According to the court, there was no evidence that the county had actual notice of a pattern of risk of harm or injury as a result of the county jail officials' use of isolation, or an administrative segregation policy in the juvenile detention housing unit at the county jail, or that any omissions in the county's policies necessarily gave rise to the situation in which the inmate, died from a purported cardiac event. The court found that summary judgment was precluded by genuine issues of material fact as to whether the inmate's prescribing physician knew of the inmate's serious medical need for a full psychiatric assessment, and failed to timely provide that assessment, and as to whether jail medical personnel were aware that the inmate was suffering from a reaction to a psychotropic medication or unknown serious medical illness, and, if so, whether they were deliberately indifferent. (Pima County Adult Detention Complex, and Conmed Healthcare Management, Inc., Arizona)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE
DUE PROCESS
SUICIDE
SUPERVISION

LeMire v. California Dept. of Corrections and Rehabilitation, 726 F.3d 1062 (9th Cir. 2013). The estate, parents, and daughter of a mentally ill inmate who died in custody brought a § 1983 action against the California Department of Corrections and Rehabilitation (CDCR), CDCR officials, and prison staff. The plaintiffs sought to recover damages for alleged violations of the Eighth Amendment, based on the inmate's right to be free from cruel and unusual punishment, and the Fourteenth Amendment, based on the family's substantive due process right of familial association. The district court granted summary judgment to the plaintiffs. The appeals court affirmed in part, vacated in part, and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether: (1) withdrawal of all floor staff from a prison building which housed mentally ill inmates, for up to three and a half hours, created an objectively substantial risk of harm to the unsupervised inmates in the building; (2) the captain who called staff meetings, and a warden, who purportedly authorized the meetings, were aware of risks posed by withdrawing all floor officers from the building for over three hours; (3) any risk of harm could have been prevented with adequate supervision; and (4) the actions of the warden and the captain shocked the conscience.

The court also found genuine issues of material fact existed as to whether (1) floor officers who were the first prison personnel to arrive in the cell of the mentally ill inmate who apparently committed suicide were deliberately indifferent to the inmate's serious medical needs when they failed to provide cardiopulmonary resuscitation (CPR), despite being trained to administer it; (2) the officers' failure to provide medical care caused the inmate's death; and (3) the officers' actions shocked the conscience, precluding summary judgment as to the § 1983 Eighth Amendment medical claim brought by the inmate's family against officers and family's substantive due process claim against the officers. (California State Prison at Solano)

U.S. District Court
FAILURE TO PROVIDE
CARE
USE OF FORCE

Moses v. Westchester County Dept. of Corrections, 951 F.Supp.2d 448 (S.D.N.Y. 2013). The estate of a deceased prisoner brought a § 1983 action against a county, its department of corrections (DOC), and a corrections officer, alleging state and federal claims after the prisoner was beaten by the officer. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court found that the family exercised reasonable diligence in pursuing the action, as required to equitably toll the limitations period for the § 1983 action. The estate alleged that the corrections officer "kicked and stomped" on the prisoner's head, causing injuries that eventually led to his death. The officer was indicted in county court for assault and the Federal Bureau of Investigations opened an investigation into allegations that the officer had used excessive force against the prisoner. The officer was eventually convicted of reckless assault. The prisoner's death also prompted a federal investigation into conditions at the jail, and investigators found a number of instances of the use of excessive force by jail staff, a failure to provide an adequate review system, and a failure to provide adequate mental and medical health care. (Westchester Department of Corrections, New York)

U.S. District Court
ADA- Americans with
Disabilities Act
DUE PROCESS
EQUAL PROTECTION

Poche v. Gautreaux, 973 F.Supp.2d 658 (M.D.La. 2013). A pretrial detainee brought an action against a district attorney and prison officials, among others, alleging various constitutional violations pursuant to § 1983, statutory violations under the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA), as well as state law claims, all related to her alleged unlawful detention for seven months. The district attorney and prison officials moved to dismiss. The district court granted the motions in part and denied in part. The court held that the detainee sufficiently alleged an official policy or custom, as required to establish local government liability for constitutional torts, by alleging that failures of the district attorney and the prison officials to implement policies designed to prevent the constitutional deprivations alleged, and to adequately train their employees in such tasks as processing paperwork related to detention, created such obvious dangers of constitutional violations that the district attorney and the prison officials could all be reasonably said to have acted with conscious indifference. The court found that the pretrial detainee stated a procedural due process claim against the district attorney and the prison officials under § 1983 related to her alleged unlawful detention for seven months, by alleging that it was official policy and custom of the officials to skirt constitutional requirements related to procedures for: (1) establishing probable cause to detain; (2) arraignment; (3) bail; and (4) appointment of counsel, and that the officials' policy and custom resulted in a deprivation of her liberty without due process. The court held that the detainee stated an equal protection claim against the prison officials under § 1983, by alleging that the officials acted with a discriminatory animus toward her because she was mentally disabled, and that she was repeatedly and deliberately punished for, and discriminated against, on that basis. (East Baton Rouge Prison, Louisiana)

U.S. Appeals Court PSYCHIATRIC CARE	<p><i>Quigley v. Tuong Vinh Thai</i>, 707 F.3d 675 (6th Cir. 2013). The administrator of a deceased prisoner's estate brought a § 1983 action against a prison psychiatrist, alleging violations of the Eighth Amendment, as well as state claims for gross negligence. The district court denied the psychiatrist's motion for summary judgment and the psychiatrist appealed. The appeals court affirmed. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the psychiatrist violated prisoner's Eighth Amendment right; (2) whether the psychiatrist violated the prisoner's clearly established right; (3) whether the psychiatrist's treatment of the prisoner's depression was so reckless as to demonstrate a substantial lack of concern for whether an injury resulted; and (4) whether the psychiatrist's treatment of prisoner's depression was the proximate cause of prisoner's death. (Michigan Department of Corrections Guidance Center, and Correctional Medical Services, Inc.)</p>
U.S. District Court DELIBERATE INDIFFERENCE SUICIDE FAILURE TO PROVIDE CARE	<p><i>Randle v. Alexander</i>, 960 F.Supp.2d 457 (S.D.N.Y. 2013). An African-American state inmate with a history of serious mental illness brought an action against officials of the New York State Department of Corrections and Community Supervision (DOCCS), correctional officers, and mental health personnel, alleging under § 1983 that the defendants were deliberately indifferent to his serious medical needs and that he was retaliated against, in violation of his First Amendment rights, among other claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the correctional officers' alleged actions in forcing the inmate to fight a fellow inmate, and threatening to beat the inmate with a baton and engage in a joint cover-up if the two inmates did not "finish" their fight within a specified area of the prison, which ultimately resulted in the fellow inmate sustaining fatal injuries in the fight, had no legitimate penological purpose, and was far afield of the species of force employed to restore or maintain discipline. The court held that the alleged actions reflected indifference to inmate safety, if not malice toward the inmate, as supported by the inmate's § 1983 Eighth Amendment failure to protect claim. The court found that the inmate stated an Eighth Amendment inadequate medical care claim against mental health personnel. The inmate alleged that he had a history of serious mental illness, that his symptoms increased following a forced fight with a fellow inmate, that the inmate attempted suicide on three occasions, two of which required his hospitalization, that prison mental health personnel evidenced deliberate indifference to his medical needs, as they recklessly disregarded the risk the inmate faced as result of special housing unit (SHU) confinement, and that the inmate was confined to SHU despite a recommendation that he be placed in a less-restrictive location. (Green Haven Correctional Facility, Protective Custody Unit, New York State Department of Corrections)</p>
U.S. District Court ADA-Americans with Disabilities Act PSYCHIATRIC CARE	<p><i>Slevin v. Board of Com'rs for County of Dona Ana</i>, 934 F.Supp.2d 1270 (D.N.M. 2013). A detainee brought an action against a county board of commissioners, detention center director, and medical director, alleging violations of his rights with regard to his medical care. The detainee alleged that, because of his mental illness, officials at the Detention Center kept him in administrative segregation for virtually the entire 22 months of his incarceration, without humane conditions of confinement or adequate medical care, and without periodic review of his confinement, causing his physical and mental deterioration, in violation of the Americans with Disabilities Act. The jury awarded the detainee \$3 million in punitive damages against the Detention Center Director, and \$3.5 million in punitive damages against the facility medical director. The jury fixed the amount of compensatory damages at \$15.5 million, which included \$500,000 for each month that detainee was incarcerated, plus an additional \$1 million for each year since the detainee's release from custody. The defendants moved for a new trial or for reduction of the damages awards. The district court denied the motion, finding that the compensatory damages award was supported by substantial evidence and it would not be set aside on the ground that it was the product of passion or prejudices. The court also declined to set aside the punitive damages awards as excessive. (Doña Ana County Detention Center, New Mexico)</p>
U.S. Appeals Court EQUAL PROTECTION RIGHT TO TREATMENT DUE PROCESS	<p><i>Spavone v. New York State Dept. of Correctional Services</i>, 719 F.3d 127 (2nd Cir. 2013). A state prisoner brought a suit against corrections officials under § 1983 and the Americans with Disabilities Act (ADA), alleging, among other things, that the defendants' denial of his request for a medical leave to obtain additional treatment for his post-traumatic stress disorder (PTSD) violated his Fourteenth Amendment right to equal protection of the law and his Eighth and Fourteenth Amendment right to be free of cruel and unusual punishment. The prisoner had traveled to Nicaragua in the 1980s to join the Contra rebel forces and saw combat while fighting with them in that country's civil war. He also was working on the scaffolding of a building across the street from the World Trade Center on September 11, 2001, and was credited with risking his life to rescue several of his coworkers. He witnessed victims of the attack jump from the towers. The district court denied the defendants' motion for summary judgment based on qualified immunity, and the defendants appealed. The appeals court reversed and remanded. The appeals court held that the corrections officials were entitled to qualified immunity on prisoner's equal protection claim, and on the prisoner's Eighth Amendment claim. According to the court, even if the prisoner was in need of absolutely necessary medical care, neither official had reason to conclude that such care was not available to him in the prison, and thus there was a rational basis for distinguishing between leaves of absence for the treatment of mental illness as opposed to other sorts of illness for which leave was available. The court noted that there no evidence that either official thought that denying the prisoner's request for a leave of absence would cause him harm, much less harm so serious that it would be objectively unreasonable for them to believe that the policy of restricting leaves of absence for mental health treatment was consistent with prisoner's right to be free of cruel and unusual punishment. (New York State Department of Correctional Services)</p>
U.S. Appeals Court INVOLUNTARY MEDICATION PSYCHOTROPIC DRUGS	<p><i>U.S. v. Hardy</i>, 724 F.3d 280 (2nd Cir. 2013). The district court granted the motion of the United States to authorize the Bureau of Prisons to medicate a mentally ill detainee without his consent, and the detainee appealed. The appeals court affirmed, finding that there was no basis for disturbing the district court's order authorizing involuntary medication of the pretrial detainee to reduce the danger he posed to Bureau of Prisons staff. The court noted that involuntary medication of the detainee to reduce the danger he posed to staff was warranted, where the detainee suffered from schizophrenia, the consensus of the testifying psychiatrists and psychologists was that antipsychotic medication was the treatment of choice for someone with the detainee's condition. The court noted that the detainee's</p>

past conduct, which included threats of harm, attempts to bite or hit officers, repeated throwing of liquids in their faces, and attempted and actual stabbings, indicated that he posed a danger to others. (United States Bureau of Prisons, Metropolitan Corrections Center, New York City, Metropolitan Detention Center, Brooklyn, New York)

2014

- U.S. Appeals Court
SUICIDE
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE
- Cano v. Taylor*, 739 F.3d 1214 (9th Cir. 2014). A former prisoner brought a § 1983 action against prison officials, alleging deliberate indifference to his mental health needs in violation of the Eighth Amendment, and violations of his right to freely exercise his religious beliefs and to have access to the courts, in violation of the First and Fourteenth Amendments. The district court granted summary judgment to the officials on the deliberate indifference claim and dismissed the remaining counts for failure to exhaust administrative remedies pursuant to the Prison Litigation Reform Act (PLRA). The former prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the inmate's claims for injunctive and declaratory relief arising out of alleged constitutional violations that occurred while in prison were mooted by his release from prison. The court found that there was no evidence that prison mental health care providers were deliberately indifferent to the prisoner's medical needs, as required to support an Eighth Amendment deliberate indifference claim, where the prisoner was seen by mental health care employees regularly for his complaints, and evidence showed that the prisoner's suicide threats were manipulative in nature. (Arizona Department of Corrections)
- U.S. Appeals Court
FAILURE TO PROVIDE
CARE
- Carl v. Muskegon County*, 763 F.3d 592 (6th Cir. 2014). A pretrial detainee brought a § 1983 action against a psychiatrist, who served as an independent contractor to the provider of jail mental health services, claiming that the psychiatrist failed to provide necessary mental health services in violation of the detainee's Eighth and Fourteenth Amendment rights. The district court dismissed and the detainee appealed. The appeals court reversed and remanded, finding that the psychiatrist was a state actor for the purposes of inmate's § 1983 claim. (Muskegon County Jail, Michigan)
- U.S. District Court
USE OF FORCE
SPECIAL HOUSING
RESTRAINTS
SEGREGATION
SUICIDE
- Coleman v. Brown*, 28 F.Supp.3d 1068 (E.D.Cal. 2014). Nearly 20 years after mentally ill inmates prevailed on class action challenges to conditions of their confinement and a special master was appointed to implement a remedial plan, the inmates moved to enforce court orders and for affirmative relief related to the use of force, disciplinary measures, and housing and treatment in administrative segregation units (ASUs) and segregated housing units (SHUs). The district court granted the motions in part. The court held that prison officials' excessive use of force on seriously mentally ill inmates by means of pepper spray and expandable batons, pursuant to prison policies and without regard to the impact on inmates' psychiatric condition, was not yet remedied, as required by the prior judgment in favor of inmates. The court found that prison officials' changes in policies and practices of housing mentally ill inmates in administrative segregation units (ASUs) and segregated housing units (SHUs) were inadequate to remedy the systemic Eighth Amendment violations identified in the prior judgment in favor of inmates.
- According to the court, the placement of seriously mentally ill inmates in the harsh, restrictive, and non-therapeutic conditions of administrative segregation units (ASUs) for non-disciplinary reasons for more than the minimal period necessary to transfer the inmates to protective housing or a housing assignment violated the Eighth Amendment. The court noted that nearly half of the suicides in ASUs were by inmates placed there for non-disciplinary reasons, and such placement subjected inmates to significant restrictions including no contact visits, significant limits on access to both exercise yards and dayroom, eating all meals in their cells, being placed in handcuffs and restraints when moved outside their cells, and receiving mental health treatment in confined spaces described as "cages," with strip searches before and after treatment. (California Department of Corrections and Rehabilitation)
- U.S. District Court
ADA- Americans with
Disabilities Act
- Cox v. Massachusetts Dept. of Correction*, 18 F.Supp.3d 38 (D.Mass. 2014). A mentally disabled state prisoner brought an action against a state department of correction (DOC) and various officials, alleging violations of the Eighth and Fourteenth Amendments, Americans with Disabilities Act (ADA), and Massachusetts Declaration of Rights. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court found that the prisoner's grievance alleging he was improperly classified, resulting in a sexual assault, provided the DOC with sufficient notice to investigate, and therefore, the prisoner's claims under the Americans with Disabilities Act (ADA) were administratively exhausted. The prisoner alleged that the DOC did not keep him safe and that he was mentally challenged. According to the court, the prisoner's allegations that he was sexually assaulted by other inmates, that he suffered other abuses, that prison officials knew of the risk of harm to the prisoner, that his history of mental illness was well-documented, and that officials were responsible for policies, procedures, and training that led to his injury were sufficient to state a § 1983 claim against the officials for violations of the Eighth Amendment, and a claim under the Massachusetts Civil Rights Act, absent allegations of threats, intimidation, or coercion by officials. The court held that the prisoner's allegations that prison officials knew of his disability, that medical professionals encouraged staff to provide appropriate housing to prevent the prisoner from being targeted by other inmates, and that he was sexually assaulted after failure to provide appropriate housing were sufficient to state a failure to accommodate claim under the Americans with Disabilities Act (ADA). (Massachusetts Department of Correction, Old Colony Correctional Center)
- U.S. District Court
SUICIDE
DELIBERATE
INDIFFERENCE
- Goodvine v. Ankarlo*, 9 F.Supp.3d 899 (W.D.Wis. 2014). An inmate brought a § 1983 action against Wisconsin Department of Corrections (WDOC) officials and psychologists, as well as an admissions officer at a mental health facility operated by the Wisconsin Department of Health Services (DHS), alleging that the defendants failed to prevent him from engaging in acts of self-harm, in violation of the Eighth Amendment. The defendants moved for summary judgment. The court held that: (1) the psychologists were not deliberately indifferent to the inmate's need for protection against self-harm; (2) officers who interacted with the inmate during meal-tray pickup were not deliberately indifferent to his need for protection against self-harm; (3) a psychologist was not deliberately

indifferent in failing to alert security staff after the inmate advised him that he was having “cutting urges;” and, (4) an admissions coordinator was not deliberately indifferent to the inmate’s need for adequate mental health care. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the sergeant who failed to contact the prison’s psychological services unit (PSU) after the inmate told the officer that he was “feeling unsafe” and needed to go to an observation area for additional monitoring “immediately” was aware that the inmate presented a serious risk of self-harm, but failed to take reasonable measures to protect him.

According to the court, summary judgment was precluded by a genuine issue of material fact as to whether a correctional officer knew that the inmate who requested to be moved from disciplinary segregation to observation because he was suicidal was at a serious risk of self-harm, but failed to alert supervisory or psychological services unit (PSU) staff to conduct further evaluation before the inmate attempted suicide by cutting himself. Fact issues precluding summary judgment were also found by the court as to whether correctional officers who escorted mentally ill inmates to appointments with psychological services unit (PSU) and medical staff were deliberately indifferent to the mentally-ill inmate’s need for protection against self-harm when they failed to summon PSU staff or a supervisory official after the inmate, who had a history of cutting himself with sharp objects, expressed thoughts of self-harm. Summary judgment was also found to be precluded by a genuine issue of material fact as to whether a captain’s decision to retain the mentally ill inmate at the prison, rather than transport him to a hospital after the inmate had changed his mind about refusing medical treatment, was reasonable under the circumstances. (Columbia Correctional Institution, Wisconsin)

U.S. District Court
FAILURE TO PROVIDE
CARE

Graves v. Arpaio, 48 F.Supp.3d 1318 (D.Ariz. 2014). Pretrial detainees in the Maricopa County, Arizona, jail system brought a class action against the county and the county board of supervisors, seeking injunctive relief for alleged violations of their civil rights. The parties entered into consent decree which was superseded by amended judgments entered by stipulation of the parties. The defendants sought to terminate the remaining court-ordered injunctive relief regarding medical, dental, and mental health care for detainees. The district court denied the motion. The court held that: (1) termination of injunctive relief requiring the timely identification, assessment, and placement of detainees suffering from serious health conditions was not warranted; (2) termination of injunctive relief requiring the timely identification, assessment, and placement of detainees suffering from mental illness was not warranted; (3) termination of injunctive relief requiring the timely identification, segregation, and treatment of detainees with communicable diseases was not warranted; (4) termination of injunctive relief requiring that the detainees have ready access to care to meet their serious medical and mental health needs was not warranted; and (5) the detainees were the prevailing party for the purpose of awarding attorney’s fees. (Maricopa County Jail, Arizona)

U.S. District Court
PRIVACY
SUICIDE
SUPERVISION
MEDICATION
SEGREGATION
SPECIAL HOUSING

Houston v. Cotter, 7 F.Supp.3d 283 (E.D.N.Y. 2014). An inmate brought a § 1983 action against corrections officers and a county, alleging a due process violation in connection with his placement on a suicide watch while incarcerated at a county correctional facility. The parties filed cross-motions for summary judgment. The district court denied the motions, finding that summary judgment was precluded by fact issues as to whether a protected liberty interest was implicated. The inmate alleged that the county had a policy or custom permitting classification officers to keep an inmate on suicide watch as a form of punishment, after mental health personnel had deemed a continued suicide watch unnecessary. The inmate remained on suicide watch for eight days after a psychiatrist and a social worker recommended his removal from the suicide watch. The court also found a genuine dispute of material fact as to whether the inmate’s conditions of confinement while he was placed on suicide watch imposed an atypical and significant hardship on him in relation to the ordinary incidents of prison life, such that it implicated a protected liberty interest. While on suicide watch, officials took away the inmate’s clothing and required him to wear a suicide-safe garment-- a sleeveless smock made of a coarse, tear-resistant material and Velcro. He was not allowed to wear underwear, socks, or any other undergarment with the smock. He was housed in a stripped cell in the Behavioral Modification Housing Unit. The cell contained a bare mattress and a blanket made out of the same coarse material as the smock. Corrections officers situated immediately in front of the Plexiglass cell window constantly supervised the inmate. According to the county, suicide watch inmates have access to the yard, a plastic spoon, a rubberized pen, the law library, showers, razors, and medical and mental health services, but the inmate claimed that he had no showers, telephone calls, prescription medications, food, or access to the law library while in the BMHU. (Suffolk County Correctional Facility, New York)

U.S. Appeals Court
SUICIDE
MEDICATION

Johnson v. Conner, 754 F.3d 918 (11th Cir. 2014). The mother and personal representative of a mentally ill inmate who committed suicide by hanging himself with bed sheet while in custody at a county jail filed suit against corrections personnel working at the jail at the time of the suicide, as well as various county entities. The mother alleged that jailers were responsible for administering her son’s medication daily, and failed to do so, that her son had previously attempted to commit suicide with a bed sheet while incarcerated, and that the jailers failed to take appropriate precautions with her son following that suicide attempt. The district court denied immunity to the jailers and the jailers appealed. The appeals court certified questions to the Alabama Supreme Court, which the Supreme Court declined to answer. The appeals court held that the statute extending immunity to county jailers did not apply retroactively to conduct which occurred prior to its enactment. (Barbour County Jail, Alabama)

U.S. Appeals Court
SEGREGATION
SUPERVISION

Keith v. DeKalb County, Georgia, 749 F.3d 1034 (11th Cir. 2014). The administrator of the estate of a pretrial detainee who was murdered by a fellow inmate in a jail’s mental health unit brought an action against a county, the county sheriff, and correctional officers, alleging under § 1983 that the defendants violated the detainee’s substantive due process rights. The district court denied the sheriff’s motion for summary judgment based on the doctrine of qualified immunity. The sheriff appealed. The appeals court reversed. The court held that while a correctional officer on duty at the time the detainee was murdered by a fellow inmate may have acted contrary to jail policy by using a cell phone within the jail, the administrator of the detainee’s estate failed to show that the use of personal cell phones within the jail was a widespread problem or that the county sheriff was aware that officers routinely violated the policy and failed to correct the problem. The court found that the sheriff was entitled to qualified immunity on the § 1983 due process claim that he was deliberately indifferent to the safety of the detainee, in failing to segregate

mental health inmates with violent histories from those with nonviolent histories and by failing to separate mental health inmates charged with a violent crime from those charged with a nonviolent crime. According to the court, even if the sheriff violated the detainee's due process rights, it was not clearly established that he had a constitutional obligation to disregard the medical expertise of mental health contractors he hired to ensure that inmates' mental health was tended to. The court also found that the administrator of the estate of the detainee failed to show that the county sheriff was subjectively aware that the jail's policy of requiring detention officers to alert mental health staff when relocating mental health inmates to different cells within the same pod was disregarded on a widespread basis, as would have subjected the sheriff to supervisory liability under § 1983. (DeKalb County Jail, Georgia)

U.S. Appeals Court
PSYCHOTROPIC
MEDICATION

King v. Kramer, 763 F.3d 635 (7th Cir. 2014). The estate of a pretrial detainee who died while awaiting trial in a county jail brought a civil rights action against the county and the health care provider for the jail. Following reversal in part of the grant of summary judgment in favor of the county and the provider, the court entered judgment for the county and the provider on a jury verdict. The estate appealed. The appeals court reversed and remanded, finding that: (1) the county was not liable for the death of the detainee who was found dead in his jail cell after jail medical staff rapidly tapered off his psychotropic medication, absent evidence that the county had an official custom or policy in place to deprive inmates of their prescribed medications; (2) the district court could not take judicial notice of a contract between the county and the provider; and (3) the indemnification agreement between the county and the provider was inadmissible to show liability. (La Crosse Jail, Wisconsin)

U.S. District Court
ADA- Americans with
Disabilities Act

Meeks v. Schofield, 10 F.Supp.3d 774 (M.D.Tenn. 2014). A state prisoner, who allegedly suffered from paruresis, a mental anxiety disorder that made it difficult to urinate without complete privacy, brought an action against the Commissioner of the Tennessee Department of Correction, its Americans with Disabilities Act (ADA) officer, a housing unit supervisor, a grievance board chairman, and a warden, asserting § 1983 claims for First Amendment retaliation and violation of his right to privacy, and alleging violations of the ADA and Title VII. The defendants moved for summary judgment. The district court granted the motion. The court held that the prisoner failed to establish retaliation claims against the ADA officer, the housing unit supervisor, and the warden. The court found that the prisoner, who was assisting other inmates with their legal work, was not engaged in "protected conduct," as required to establish a First Amendment retaliation claim against the housing unit supervisor, where the prisoner was not authorized to help other inmates with legal work, and thus was in violation of department policy. According to the court, the state prison's decision to remove exterior bathroom doors and refusal to put at least one door back to accommodate the prisoner, who allegedly suffered from paruresis, a mental anxiety disorder that made it difficult to urinate without complete privacy, was not intentionally discriminatory and did not violate the ADA.

The court held that the transfer of the prisoner to a medical housing unit did not result in denial of access to prison programs and services available to the general population, so as to support an ADA claim of discrimination on the basis of a perceived disability. The court noted that the transfer was intended to accommodate the prisoner's complaints about bathroom doors being removed in the general housing unit, and the prisoner was allowed to continue his prison job, have access to the law library, and participate in the same activities he was allowed to participate in while he was housed with the general population. (Lois M. DeBerry Special Needs Facility, TN)

U.S. District Court
SUICIDE
SUPERVISION

Nagle v. Gusman, 61 F.Supp.3d 609 (E.D.La. 2014). Siblings of a mentally ill pretrial detainee who committed suicide brought an action against numerous employees of a parish sheriff's office, alleging a due process violation under § 1983, and asserting claims for wrongful death and negligence under state law. The siblings moved for partial summary judgment. The district court granted the motion. The court held that: (1) a deputy had a duty to take reasonable measures to protect the detainee from self-inflicted harm; (2) the deputy breached his duty by failing to observe the detainee for long periods of time; (3) the deputy's abandonment of his post was the cause of the detainee's suicide; (4) the sheriff was vicariously liable; and (5) the deputy's repeated decision to abandon his post violated the detainee's due process right to adequate protection from his known suicidal impulses. According to the court, the detainee was suffering from psychosis and was suicidal while in custody, the detainee was placed on a suicide watch, suicide watch policies and training materials of the sheriff's office explicitly required officers to continuously monitor detainees on a suicide watch and to document that they had done so, and it was during one of the deputy's extended absences that the detainee succeeded in killing himself. The officer left his post at least three times during his suicide watch shift, to help another employee distribute meals to other inmates, to take a restroom break, and to visit the nurses' station. During these absences, the detainee went unobserved for an hour and a half, fifteen minutes, and two hours respectively. No other staff took the officer's place observing the detainee during the times when the officer abandoned his post. During the officer's final absence, an inmate notified an on-duty officer that the detainee was lying on the floor of his cell, unresponsive. It was later determined that the detainee had asphyxiated after his airway became blocked by a wad of toilet paper. (Orleans Parish Sheriff's Office, House of Detention at Orleans Parish Prison, Louisiana)

U.S. Appeals Court
PRIVATE PROVIDER
FAILURE TO PROVIDE
CARE

Parsons v. Ryan, 754 F.3d 657 (9th Cir. 2014). State prisoners, and the state's authorized protection and advocacy agency, filed a class action for declaratory and injunctive relief against senior officials from the Arizona Department of Corrections (ADC), asserting Eighth Amendment claims, based on allegedly serious systemic deficiencies in conditions of confinement in isolation cells, and in the provision of privatized medical, dental, and mental health care services. The district court granted class certification and prison officials appealed. The appeals court affirmed. The court found that the prisoners were not merely aggregating many claims of individual mistreatment, and instead were alleging that ADC policies and practices of statewide and systemic application exposed all inmates in ADC custody to substantial risk of serious harm, to which the senior officials allegedly were deliberately indifferent, even if the risk might ultimately result in different future harm for different inmates. (Arizona Department of Corrections)

U.S. District Court COMMITMENT DETENTION	<i>Pierce v. Pemiscot Memorial Health Systems</i> , 25 F.Supp.3d 1198 (E.D.Mo. 2014). A mental health detainee brought a § 1983 action against a medical director and a program director employed by the company that contracted to provide psychiatric services to a county hospital, alleging violations of her due process rights and Missouri law. The parties cross-moved for summary judgment. The district court denied the motion, granted the defendants' motion in part and denied in part. The court held that summary judgment on the issue of punitive damages was precluded by genuine issue of material fact as to whether the conduct of the medical director and the program director in continuing to detain the mental health detainee was motivated by an evil motive or involved reckless indifference to the detainee's rights. The detainee brought the action to challenge her detention in an inpatient psychiatric unit following the expiration of a 96-hour detention order. She alleged that her continued detention violated her due process rights under the United States and Missouri Constitutions, governing involuntary commitment procedures. (Pemiscot Memorial Hospital, Missouri)
U.S. Appeals Court SUICIDE DELIBERATE INDIFFERENCE PRETRIAL DETENTION	<i>Pittman ex rel. Hamilton v. County of Madison, Ill.</i> , 746 F.3d 766 (7 th Cir. 2014). By and through his guardian, a pretrial detainee brought a § 1983 action against a county and various jail officials, alleging the defendants were deliberately indifferent to his risk of suicide in violation of the Fourteenth Amendment. The district court granted the defendants' motion for summary judgment and denied the detainee's motion for a new trial. The detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that a nurse and doctor were not deliberately indifferent, that there was no evidence that the sheriff or a captain knew of a substantial risk of harm for the detainee, and that the jail's suicide prevention policies and practices were not so inadequate that they violated the detainee's rights. But the appeals court also held that summary judgment was precluded by a genuine issue of material fact as to whether a deputy and a sergeant were aware of the detainee's risk of suicide, where the detainee requested to see a crisis intervention person. According to the court, when an inmate presents an officer with a request to see a crisis intervention person and the officer also is aware that the reason for the request well may be a serious psychological condition that is beyond the officer's capacity to assess definitively, the officer has an obligation under the Eighth Amendment to refer that individual to the person who, under existing prison procedures, is charged with making that definitive assessment. (Madison County Jail, Illinois)
U.S. District Court FAILURE TO PROVIDE CARE DUE PROCESS	<i>Revilla v. Glanz</i> , 7 F.Supp.3d 1207 (N.D.Okla. 2014). Four pretrial detainees or representatives of their estates brought an action against a county sheriff, asserting claims under § 1983 and the Oklahoma Constitution, relating to allegedly deficient medical care. The sheriff filed a motion to dismiss. The district court denied the motion, finding that the plaintiffs stated a § 1983 claim against the sheriff for supervisory liability in his individual capacity, and a § 1983 claim against the sheriff for liability in his individual capacity. The court noted that the Due Process Clause of the Oklahoma Constitution protects pretrial detainees against the denial of medical attention. The plaintiffs alleged: (1) that the sheriff was responsible for ensuring that pretrial detainees received appropriate medical care; (2) that he was responsible for creating, adopting, approving, ratifying, and enforcing the policies that his subordinates allegedly violated; (3) that he failed to provide prompt and adequate care in the face of known and substantial risks to each detainee's health; and (4) that he had long known of systemic deficiencies in the jail's medical care. The plaintiffs cited numerous incidents and reports, as well as inmate deaths, which they alleged provided clear notice to the sheriff of seriously deficient medical and mental health care which placed inmates at a serious risk of injury or death. One such notice included a report by the United States Department of Homeland Security's Office of Civil Rights and Civil Liberties which "found a prevailing attitude among clinic staff [at the Jail] of indifference." (Tulsa County Jail, Oklahoma)
U.S. Appeals Court SPECIAL HOUSING SUICIDE SUPERVISION	<i>Townsend v. Cooper</i> , 759 F.3d 678 (7 th Cir. 2014). An inmate suffering from a significant mental illness brought a § 1983 action against prison officials, claiming that imposition of a behavior action plan in response to the inmate's disruptive behavior and threats of suicide violated his Fourteenth Amendment due process rights, deprived him of the minimal civilized measure of life's necessities and exhibited an indifference to his serious medical needs in violation of the Eighth Amendment. The district court granted summary judgment for the prison officials and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the behavior action plan resulted in an atypical and significant hardship compared to ordinary prison life, and thus, the inmate had a liberty interest in not being placed on the plan sufficient to support his Fourteenth Amendment due process challenge against the prison officials, where the plan involved removal of the inmate's personal property from his cell, provision of a bag lunch, provision of a paper gown, and limited access to toiletries. The court found that summary judgment was precluded by genuine issues of material fact as to whether prison officials acted in disregard of a substantial risk of serious harm to the inmate, and a fact issue as to whether the behavior action plan was imposed for safety reasons or as a disciplinary measure. The court found that prison psychologists were not deliberately indifferent to the serious medical needs of the inmate when they placed the inmate on the behavior action plan, where the psychologists repeatedly visited the inmate, regularly adjusted the inmate's access to property that he could use to harm himself, and repeatedly placed the inmate on observation status to ensure his safety when he was suicidal. (Green Bay Correctional Institution, Wisconsin)
U.S. District Court EVALUATION MEDICATION	<i>Trueblood v. Washington State Dept. of Social and Health Services</i> , 73 F.Supp.3d 1311 (W.D.Wash. 2014). Pretrial detainees brought a class action against the Washington Department of Social and Health Services and two state hospitals, alleging that in-jail waiting times for court-ordered competency evaluations and restoration services violated their Fourteenth Amendment due process rights. The detainees moved for summary judgment. The district court granted the motion, finding that in-jail waiting times for court-ordered competency evaluations and restoration services violated the Fourteenth Amendment substantive due process rights of mentally incapacitated pretrial detainees. The court noted that detainees were incarcerated for many weeks, not because they were convicted, found to be dangerous, or posed a flight risk, but because Department of Social and Health Services and state hospitals did not have sufficient bed space or available staff to provide the services they were required to provide. Some detainees were held in solitary confinement due to space issues, exacerbating any mental illness, and the rate of medication compliance was lower in jail. (Washington State Department of Social and Health Services, Western State Hospital)

<p>U.S. District Court MEDICATIONS PSYCHOTROPIC DRUGS FAILURE TO PROVIDE CARE</p>	<p>and Eastern State Hospital) <i>Williams v. Board of Regents of University of New Mexico</i>, 20 F.Supp.3d 1177 (D.N.M. 2014). A mental health detainee and his mother brought an action against a county, alleging medical negligence, negligence per se, intentional and negligent infliction of emotional distress, and loss of consortium, based on conduct while the detainee was being held at a county medical center and jail. The plaintiffs alleged that the detainee was not given his psychotropic medications while detained. The county moved to dismiss. The district court granted the motion. According to the court, the New Mexico Tort Claims Act (NMTCA) did not waive the county's immunity for any of the detainee's claims. (Bernalillo County Metropolitan Detention Center, New Mexico)</p>
<p>U.S. District Court SUICIDE FAILURE TO PROVIDE CARE DELIBERATE INDIFFERENCE</p>	<p><i>Young v. Choinski</i>, 15 F.Supp.3d 172 (D.Conn. 2014). A state prisoner brought an action against prison officials and personnel under § 1983, alleging deliberate indifference to his medical and mental health needs in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the prisoner failed to establish that his medical need was objectively serious, as required to support a claim against prison officials and personnel for deliberate indifference to a serious medical need in violation of Eighth Amendment. The court noted that, although the prisoner alleged he cut his arms with a metal object causing severe bleeding, none of wounds appeared to be bleeding on a video recording of the prisoner as he was escorted from his cell to a medical unit, the prisoner did not allege that the abrasions significantly interfered with his daily activities or caused him substantial or chronic pain, and he offered no evidence that the wounds required any further treatment beyond cleaning and antibiotic ointment. The court found that the prisoner suffered from a serious mental health need, as required to support claim against prison personnel for deliberate indifference to his serious mental health needs in violation of the Eighth Amendment, where the prisoner had been diagnosed with post-traumatic stress disorder, borderline personality disorder, and antisocial personality disorder, and the prisoner's health records reflected that he had made prior attempts and threats to commit suicide.</p> <p>The court held that summary judgment was precluded by a genuine dispute of material fact as to whether a corrections officer intentionally refused to take action to summon mental health or medical personnel to evaluate and treat the prisoner after he became aware of the prisoner's suicidal thoughts, and then the officer learned that the mental health unit had closed for the evening. (Northern Correctional Institution, Somers, Connecticut)</p>
<p>U.S. District Court SUICIDE FAILURE TO PROVIDE CARE DELIBERATE INDIFFERENCE</p>	<p><i>Young v. Choinski</i>, 15 F.Supp.3d 194 (D.Conn. 2014). A prisoner, proceeding pro se, brought a § 1983 action against prison officials and personnel, alleging deliberate indifference to his serious medical and mental health needs, constituting cruel and unusual punishment in violation of the Eighth Amendment. After the district court granted the defendants' summary judgment motion in part and denied it in part, the defendants moved for reconsideration. The district court denied the motion. The court held that summary judgment was precluded by a genuine dispute of material fact as to whether a correctional officer was subjectively aware of the prisoner's serious mental health needs. The court found that the prisoner's complaint alleging deliberate indifference, failure to prevent and protect from self-harm, denial of medical care, and that a correctional officer failed to assist the prisoner with prompt medical attention was sufficient to state a claim against the officer for deliberate indifference to serious medical and mental health needs in violation of the Eighth Amendment. (Northern Correctional Institution, Somers, Connecticut)</p>
<p>2015</p>	
<p>U.S. District Court SUICIDE MEDICATION</p>	<p><i>Hernandez v. County of Monterey</i>, 110 F.Supp.3d 929 (N.D. Cal. 2015). The plaintiffs, current and recently released jail inmates seeking relief on behalf of a class, brought an action against the county, the sheriff's office, and the private company that administered jail health care facilities and services, alleging that substandard conditions constituted deliberate indifference in violation of the Eighth and Fourteenth Amendments and failure to accommodate in violation of the Americans with Disabilities Act (ADA). The plaintiffs moved for a preliminary injunction. The district court granted the motion. The court held that the plaintiffs were likely to succeed on the merits in their action, alleging that county jail conditions constituted deliberate indifference in violation of Eighth and Fourteenth Amendments and failure to accommodate in violation of ADA. According to the court, there was significant evidence that the jail's policies and practices with regard to tuberculosis (TB) screening, suicide and self-harm prevention, alcohol and drug withdrawal, and continuing medical prescriptions, were noncompliant with contemporary standards and guidelines, placing inmates at risk and constituting deliberate indifference to their serious medical needs. The court noted that there was significant evidence that inmates with disabilities were excluded from access to exercise, religious services, and other meetings that were conducted in inaccessible locations, or from sign language interpreters, in violation of ADA. The court found that the plaintiffs were likely to suffer irreparable harm, absent preliminary injunctive relief, where the jail continued to fail to provide proper tuberculosis (TB) identification, isolation, diagnosis and treatment, to eliminate potential suicide hazards for unstable mentally ill patients, to continue community medications, and to properly treat inmates withdrawing from drugs and alcohol, and inmates with disabilities would continue to suffer access exclusion and lack of sign language interpreters. (Monterey County Jail, California)</p>
<p>U.S. Appeals Court SUICIDE</p>	<p><i>Jackson v. West</i>, 787 F.3d 1345 (11th Cir. 2015). The estate of a detainee who committed suicide while in the custody of a county jail brought a § 1983 action against a county sheriff and against 10 corrections officers, alleging violation of the detainee's due process rights. The district court granted summary judgment in favor of three officers on qualified immunity grounds, but denied summary judgment on qualified immunity grounds with respect to the remaining officers. The remaining officers filed an appeal. The appeals court reversed, finding that the officers lacked a subjective knowledge of a strong risk that the detainee would attempt suicide, so that the officers did not act with deliberate indifference in failing to prevent the suicide. The court noted that the detainee had made explicit suicide threats and he was placed in the suicide prevention unit, as was proper protocol, and the detainee was released from that unit when prison medical staff later determined that he no longer presented such a risk. The court stated: "This case is troubling. The Marion County Jail tragically failed to keep Mr. James safe while he was</p>

incarcerated. Under our precedent, however, an officer is liable under § 1983 for the suicide of an inmate only if he had subjective knowledge of a serious risk that the inmate would commit suicide and he disregarded that known risk.” (Marion County Jail, Florida)

U.S. Appeals Court
DELIBERATE
INDIFFERENCE

Lee v. Willey, 789 F.3d 673 (6th Cir. 2015). A former prisoner brought a § 1983 claim against a part-time prison psychiatrist, alleging that he suffered sexual abuse by another prisoner as a result of the psychiatrist’s deliberate indifference to his health and safety in violation of the Eighth Amendment. The district court entered summary judgment in the psychiatrist’s favor. The former prisoner appealed. The appeals court affirmed, finding that the district court’s ruling that the former prisoner did not submit a substitute prison grievance letter was not clearly erroneous, and the former prisoner failed to exhaust administrative remedies prior to bringing his § 1983 claim. (Charles Egeler Reception and Guidance Center, Michigan)

U.S. Appeals Court
SUICIDE
DELIBERATE
INDIFFERENCE

Letterman v. Does, 789 F.3d 856 (8th Cir. 2015). Parents of a deceased prisoner, who died from injuries suffered while in jail, brought a § 1983 action against a prison sergeant, lieutenant, and case manager, alleging that the employees were indifferent to the prisoner’s medical needs. The prisoner had been arrested for possession of marijuana and was given a 120 “shock sentence” in confinement. He became suicidal and was transferred to a padded cell at the request of mental health personnel. He was to have been personally observed every 15 minutes by staff and procedure required the prisoner to give a verbal response each time. After a shift change, the oncoming officer decided to monitor the prisoner via closed circuit television rather than making the required in-person rounds. During the shift, the prisoner injured himself in the cell and eventually died from his injuries. The district court denied the employees’ motion for summary judgment, based on assertions of qualified immunity. The employees appealed. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether a prison sergeant, who was in charge of the unit where prisoner was kept, and a lieutenant, were deliberately indifferent to the risk of harm to the prisoner who died from injuries allegedly sustained in a padded cell. (Missouri Western Reception, Diagnostic and Correction Center)

U.S. Appeals Court
GID- Gender Identity
Disorder
TRANSEXUAL

Reid v. Griffin, 808 F.3d 1191 (8th Cir. 2015). A prisoner, who was born male but identified as female, and who had performed a self-castration, brought a § 1983 action alleging that refusal by a prison, the prison medical director, the prison doctor, and the prison health psychiatrist to provide hormone-replacement therapy for Gender Identity Disorder (GID) was deliberate indifference to the prisoner’s serious medical needs in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion. The prisoner appealed. The appeals court affirmed, finding that the defendants were not deliberately indifferent to the prisoner’s serious medical needs. According to the court, in denying the prisoner estrogen-replacement therapy, the prison medical director, prison health psychiatrist, and prison doctor were not deliberately indifferent to prisoner’s medical needs in violation of Eighth Amendment, where numerous mental-health professionals evaluated the prisoner, but none had diagnosed Gender Identity Disorder (GID) or concluded that GID treatment was appropriate, and the prisoner had several other mental health issues for which the prisoner received treatment and monitoring. (Varner Super Max Unit, Arkansas Department of Correction)

U.S. District Court
INTAKE SCREENING

Sanders v. Glanz, 138 F.Supp.3d 1248 (N.D. Okla. 2015). A pretrial detainee's guardian filed a § 1983 action against a sheriff, the jail's private healthcare providers, and a booking nurse to recover for injuries that the detainee suffered from a severe assault by fellow prisoners. The defendants filed for dismissal. The district court granted the motions in part and denied in part. The court held that the detainee, who had been assaulted by other county jail inmates, stated a plausible municipal liability claim under § 1983 against the corporation that assisted in developing the sheriff's policies with respect to medical and mental health care of inmates, where the detainee alleged that the corporation shared responsibility with the sheriff to adequately train and supervise its employees, and that the corporation's policies, practices, and customs posed substantial risks to inmates' health and safety, but failed to take reasonable steps to alleviate those risks. The court found that the detainee's allegations were sufficient to state a plausible claim against the sheriff in his individual capacity by alleging that the sheriff was responsible for creating and enforcing regulations, policies, practices, and customs at the county jail, and that pursuant to those practices, policies, and customs, the jail maintained a longstanding, constitutionally deficient system of medical and mental health care. According to the court, the sheriff knew of substantial risks created by that system but failed to take reasonable steps to alleviate the risks, but instead took intentional and active steps to conceal the dangerous conditions at the jail, and the sheriff disregarded known and obvious risks of severe harm from lack of adequate mental health assessment and treatment, classification, supervision, or protection. (David L. Moss Criminal Justice Center, Tulsa County Sheriff, Oklahoma, Correctional Healthcare Management, Inc. and, Correctional Healthcare Management of Oklahoma, Inc.)

U.S. District Court
SUICIDE

Shepard v. Hansford County, 110 F.Supp.3d 696 (N.D. Tex. 2015). A husband brought an action against a county and a county jail employee under § 1983 alleging deliberate indifference to detainee health in violation of the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment, following his wife’s suicide while in the county jail. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) the jail employee was entitled to qualified immunity; (2) summary judgment was precluded by a fact issue as to whether the jail employee violated the detainee’s rights, (3) the county had an adequate suicide risk prevention training policy, where employees were required to attend training to learn about suicide risk detection and prevention methods, and were required to read the county’s policy on conducting face-to-face suicide checks with detainees; (4) the county adequately trained employees on cell entry; but (5) a fact issue existed as to whether the county had an unwritten policy of understaffing the jail, precluding summary judgment. The court noted that it was not clearly established at the time of the suicide that an employee was required to abandon other duties to ensure that suicide watch checks were completed, and it was not clearly established that the employee was prohibited from providing a detainee with a towel in a cell with “tie-off points,” since the employee was not aware of any other suicides in that cell. According to the court, the jail cell entry policy

prohibiting jail employees from entering a cell alone did not amount to training employees to be deliberately indifferent to the needs of detainees, and was not causally related to the detainee's death, and thus the county was not liable under § 1983 for deliberate indifference to detainee health. (Hansford County Jail, Texas)

U.S. District Court
MEDICATION

Shorter v. Baca, 101 F.Supp.3d 876 (C.D. Cal. 2015). A pretrial detainee brought an action against a county, sheriff, and deputies, alleging under § 1983 that the defendants denied her medical care, subjected her to unsanitary living conditions, deprived her of food, clean clothes, and access to exercise, and conducted overly invasive searches. The detainee had been classified as mentally ill and housed in a mental health unit at the detention facility. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to what policies governed classification of pretrial detainees who were mentally ill. The court found that summary judgment was precluded by a genuine issue of material fact as to whether jail conditions imposed on the detainee, including permitting the detainee, who was incarcerated for 32 days, to shower only three times, only permitting the detainee outside of her cell for recreation on one occasion, failing to clean her cell, failing to provide the detainee with clean clothing, and depriving the detainee of food, amounted to punishment. The court found that there was no evidence that county jail employees' alleged failure to adequately treat the detainee's blood condition caused her measurable harm, where there was no indication that the alleged denial of treatment caused the detainee any physical pain, or that any mental anguish the detainee suffered was related to denial of her medication. (Century Regional Detention Facility, Los Angeles County, California)

U.S. Supreme Court
SUICIDE

Taylor v. Barkes, 135 S.Ct. 2042 (2015). The widow of a deceased inmate brought a § 1983 action against the commissioner of a state department of correction (DOC), the warden of a state correctional institution, and others, alleging that they violated the Eighth Amendment in failing to prevent the inmate's suicide. The district court denied the commissioner's and warden's motion for summary judgment based on qualified immunity. The commissioner and warden appealed. The appeals court affirmed. The U.S. Supreme Court reversed, finding that any right of an incarcerated person to proper implementation of adequate suicide prevention goals was not clearly established at the time of the inmate's death, and, thus, the commissioner and warden were qualifiedly immune from the widow's claim. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court
EVALUATION
SEGREGATION

Trueblood v. Washington State Dept. of Social and Health, 101 F.Supp.3d 1010 (W.D. Wash. 2015). Members of a class of pretrial detainees suspected of being mentally incompetent, the next friends of such pretrial detainees, and a disability rights organization brought an action seeking a permanent injunction and a declaratory judgment establishing a time frame within which due process required that the Department of Social and Health Services provide a competency evaluation and restoration of services to such detainees. After a bench trial, the district court held that: (1) the disability rights organization had standing to bring the action; (2) the next friends of the pretrial detainees had standing to bring an action; and (3) due process balancing favored the interests of the pretrial detainees, and thus seven days was the maximum justifiable period of incarceration while awaiting a competency evaluation and restoration of services. A permanent injunction was ordered. The court noted that jails could not provide an environment or type of care required for such detainees, especially as they were often held in solitary confinement without access to medication, and that confinement in jails actively damaged detainees' mental condition and each additional day of incarceration caused further deterioration of the detainees' mental health, increased the risk of suicide and victimization by other inmates. (State of Washington, Department of Social and Health Services)

U.S. District Court
SUICIDE
FAILURE TO PROVIDE
CARE

White v. Washington County, Tenn., 85 F.Supp.3d 955 (E.D.Tenn. 2015). The mother of a county jail detainee who committed suicide in custody brought an action against the county, county sheriff, and the private contractor that provided health care services to county jail inmates, alleging federal constitutional claims and state-law negligence claims. The defendants moved to dismiss. The court held that claims against the private health care provider were "health care liability claims," under Tennessee law, for which the mother was required to file a certificate of good faith and a pre-suit notice of a potential claim, where the mother asserted that the provider failed to properly assess or provide adequate care for detainee's mental health issues. (Washington County Jail, Tennessee)

2016

U.S. Appeals Court
PSYCHIATRIC CARE

Saylor v. Nebraska, 812 F.3d 637 (8th Cir. 2016). A state inmate filed a § 1983 action alleging that prison officials retaliated against him by transferring and reclassifying him, that the transfer and classification review process violated his due process rights, and that officials were deliberately indifferent to his post-traumatic stress disorder (PTSD). The district court denied the officials' motion for summary judgment, and they appealed. The appeals court reversed. The court held that the prison's medical officials were not deliberately indifferent to the inmate's post-traumatic stress disorder (PTSD), in violation of Eighth Amendment, despite the inmate's contention that treatment that occurred after his treating psychiatrist left the prison rose to the level of cruel and unusual punishment. The court noted that officials attempted to provide the inmate with another psychiatrist at the facility, ultimately found him another psychiatrist at a different facility, continued medication as they saw fit within their independent medical judgment, and gave him his requested private cell. The court found that the officials' decision to transfer the inmate to another facility and to place him in administrative segregation was not in retaliation for his complaints about his medical care, in violation of the First Amendment, where the reason for the transfer was to provide the inmate with necessary psychiatric care after his treating psychiatrist's contract with the state ended and the inmate refused to meet with the facility's other psychiatrist. The court noted that the inmate was placed in administrative segregation because he refused to share a cell within any other prisoners, and there were no other private cells. (Nebraska Department of Correctional Services, Nebraska State Penitentiary, Tecumseh State Correctional Institution)

Szubielski v. Pierce, 152 F.Supp.3d 227 (D. Del. 2016). A state prisoner, acting pro se and in forma pauperis (IFP), brought a § 1983 action against prison officials, relating to his continuing classification for solitary confinement. At the screening stage of the case, the district court held that the prisoner stated a First Amendment retaliation claim against a prison warden and an Eighth Amendment claim regarding conditions of confinement. The prisoner complained of 24-hour cell confinement, limited recreation, extreme social isolation, environmental deprivation, limited telephone calls, and limited visits. The prisoner suffered from schizophrenia, severe manic depression, and an anxiety disorder. The court found that the prisoner's allegations that the prison warden retaliated against him after a civil rights advocacy organization filed a lawsuit challenging solitary confinement of prisoners, by keeping the prisoner in solitary confinement despite a classification committee's reclassification of the prisoner for medium-security housing, stated a First Amendment retaliation claim. According to the court, the prisoner's allegations that his continued solitary confinement, which had already lasted nine years, involved extreme social isolation, inadequate medical care, limited recreation, and environmental deprivation, stated a claim the under the Eighth Amendment regarding conditions of confinement. (James T. Vaughn Correctional Center, Delaware)

SECTION 31: PERSONNEL

Detention and Corrections Caselaw Catalog *All Rights Reserved*
CRS, Inc. 925 Johnson Drive, Gettysburg PA 17325 (717) 338-9100 www.correction.org/

The following pages present summaries of court decisions which address this topic area. These summaries provide readers with highlights of each case, but are not intended to be a substitute for the review of the full case. The cases do not represent all court decisions which address this topic area, but rather offer a sampling of relevant holdings.

The decisions summarized below were current as of the date indicated on the title page of this edition of the Catalog. Prior to publication, the citation for each case was verified, and the case was researched in Shepard's Citations to determine if it had been altered upon appeal (reversed or modified). The Catalog is updated annually. An annual supplement provides replacement pages for cases in the prior edition which have changed, and adds new cases. Readers are encouraged to consult the Topic Index to identify related topics of interest. The text in the section entitled "How to Use The Catalog" at the beginning of the Catalog provides an overview which may also be helpful to some readers.

The case summaries which follow are organized by year, with the earliest case presented first. Within each year, cases are organized alphabetically by the name of the plaintiff. The left margin offers a quick reference, highlighting the *type of court* involved and identifying appropriate *subtopics* addressed by each case.

1968

U.S. District Court
RACIAL
DISCRIMINATION

Wilson v. Kelley, 294 F.Supp. 1005 (N.D. Ga. 1968), aff'd, 393 U.S. 266 (1968). Prisoners do not constitute a proper class for litigating racial discrimination in staffing. (Board of Corrections, Georgia)

1972

U.S. Supreme Court
TERMINATION
FREE SPEECH

Board of Regents v. Roth, 408 U.S. 564 (1972). Respondent brought this action claiming deprivation of his fourteenth amendment rights, alleging infringement of (1) his free speech right because the true reason for his nonretention was his criticism of the university administration, and (2) his procedural due process right because of the university's failure to advise him of the reason for its decision. **Held:** The fourteenth amendment does not require opportunity for a hearing prior to the nonrenewal of a nontenured state teacher's contract, unless he can show that the nonrenewal deprived him of an interest in "liberty" or that he had a "property" interest in continued employment, despite the lack of tenure or a formal contract. The lower courts therefore erred in granting summary judgment for the respondent on the procedural due process issue. 446 F.2d 806, reversed and remanded.

U.S. Supreme Court
TERMINATION
FREE SPEECH

Perry v. Sindermann, 408 U.S. 593 (1972). The respondent was employed in a state college system for 10 years, the last four as a junior college professor under a series of one-year written contracts. The Regents declined to renew his employment for the next year, without giving him an explanation or prior hearing. He then brought this action in the district court, alleging that the decision not to rehire him was based on his public criticism of the college administration and thus infringed on his free speech right, and that the Regents' failure to afford him a hearing violated his procedural due process right.

The district court granted summary judgment for the Regents, concluding that the professor's contract had terminated and the junior college had not adopted the tenure system. The court of appeals reversed on the grounds that, despite lack of tenure, nonrenewal of the contract would violate the fourteenth amendment if it was in fact based on his protected free speech, and that if he could show that he had an "expectancy" of re-employment, the failure to allow him an opportunity for a hearing would violate the procedural due process guarantee.

The United States Supreme Court agreed with the appeals court, **holding:**

1. Lack of a contractual or tenure right to re-employment, taken alone, did not defeat the employee's claim that the nonrenewal of his contract violated his free speech right under the first and fourteenth amendments. The district court therefore erred in foreclosing determination of the contested issue whether the decision not to renew was based on his exercise of his right of free speech. Pp. 596-598,

2. Though a subjective "expectancy" of tenure is not protected by procedural due process, the employee's allegation that the college had a *de facto* tenure policy, arising from rules and understandings officially promulgated and fostered, entitled him to an opportunity of proving the legitimacy of his claim to job tenure. Such proof would obligate the college to afford him a requested hearing where he could be informed of the grounds for his nonretention and challenge their sufficiency. Pp. 599-603.
430 F.2d 939, affirmed.

1974

U.S. District Court
SEARCH

Gettleman v. Werner, 377 F.Supp. 445 (W.D. Penn. 1974). Strip search of former corrections employee is proper when he had recently been seen passing contraband to an inmate. (State Correctional Institute, Pittsburgh, Pennsylvania)

1975

U.S. District Court
TRAINING
PAY PARITY

Alberti v. Sheriff of Harris Co., 406 F.Supp. 649 (S.D. Tex. 1975). The Court orders additional training for jail staff, orders county to budget for training and orders that jail staff receive parity with enforcement deputies in pay and hours. (Harris County Jail, Texas)

1977

U.S. District Court
TRAINING
STAFFING LEVELS
HIRING/
QUALIFICATIONS

Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. The jail must be supervised by adequately trained officers on a twenty-four hour basis. There shall be sufficient officers on duty at all times to protect detainees against assault and to permit entry into living areas on a twenty-four hour basis. Any group and individual counseling programs which may be established shall be staffed by properly trained professionals. Correctional personnel shall be selected on the basis of merit. There should be a matron on call twenty-four hours daily if women are detained in the new facility. (Platte County Jail, Missouri)

U.S. Supreme Court
HIRING/
QUALIFICATIONS
EQUAL
OPPORTUNITY
PHYSICAL
REQUIREMENTS

Dothard v. Rawlinson, 433 U.S. 321 (1977). After her application for employment as an Alabama prison guard was rejected because she failed to meet the minimum 120 pound weight requirement of a state statute (also establishing a five' two" minimum) Rawlinson, a college graduate who majored in correctional psychology, filed a charge with the Equal Employment Opportunity Commission, and ultimately brought a class action against correctional officials. Rawlinson challenged the requirements as violative of Title VII of the 1964 Civil Rights Act.

A three judge district court ruled in favor of Rawlinson on the basis of national statistics showing that the state's statute would effectively exclude over forty percent of the female population, but only one percent of the male population. The court found Rawlinson had made a prima facie case of unlawful sex discrimination, which the officials failed to rebut. The district court also rejected the officials' defense that the statute represented a bona-fide occupational qualification allowed under Title VII. Dothard appealed, and the Court affirmed in part and reversed in part.

HELD: "[T]he district court was not in error in holding that Title VII of the Civil Rights Act of 1964, as amended, prohibits application of the statutory height and weight requirements [excluding over forty percent of all women opposed to only one percent of all men] to Rawlinson and the class she represents." 433 U.S. at 322.

REASONING: a. "[T]o establish a prima facie case of discrimination, a plaintiff need only show that the facially neutral standards in question select applicants for hire in a significantly discriminatory pattern." 433 U.S. at 321. b. The state officials "produced no evidence correlating the height and weight requirements with the requisite amount of strength thought essential to good job performance. Indeed, they failed to offer any evidence of any kind in specific justification of the statutory standards." 433 U.S. at 331.

HELD: "In the particular factual circumstances of this case, however, we conclude that the district court erred in rejecting the state's contention that [the regulation establishing gender criteria for prison guard assignment]...falls within the narrow ambit of the 'bfoq' [bona-fide-occupational-qualification] exception." 433 U.S. at 334.

REASONING: a. "In a prison system where violence is the order of the day, where inmates' access to guards is facilitated by dormitory living arrangements, where every institution is understaffed, and where a substantial portion of the inmate population is composed of sex offenders mixed at random with other prisoners, there are very few visible deterrents to inmate assaults on women custodians." 433 U.S. at 336. b. "The likelihood that inmates would assault a woman because she was a woman would pose a real threat not only to the victim of the assault but also to the basic control of the penitentiary and protection of its inmates and the other security personnel. The employee's very womanhood would thus directly undermine her capacity to provide the security that is the essence of a correctional counselor's responsibility." 433 U.S. at 336.

CAUTION: As the court stated, it decided on the basis of the facts in this case. The court noted that Alabama's penitentiaries are evidently not typical and that expert testimony offered by experts for Rawlinson established that women guards could be used effectively and beneficially in a normal, relatively stable maximum-security prison. 433 U.S. at 236 N. 23. (Alabama Board of Correction)

U.S. District Court
TRAINING

Goldsby v. Carnes, 429 F.Supp. 370 (W.D. Mo. 1977). All jail staff is ordered to undergo forty hours of annual in-service training. Jail personnel shall be trained to recognize illness. (Jackson County Jail, Kansas City, Missouri)

U.S. District Court
PSYCHOLOGICAL
SCREENING

Jones v. Wittenberg, 440 F.Supp. 60 (N.D. Oh. 1977). Staff training and psychological screening of staff are ordered. (Lucas County Jail, Ohio)

1978

U.S. District Court
TERMINATION

Brown v. Benton, 452 F.Supp. 28 (W.D. Okl. 1978). Termination of a guard based solely on results of background check is reasonable. (Oklahoma Department of Corrections)

U.S. District Court
ASSIGNMENT

Finney v. Mabry, 458 F.Supp. 720 (E.D. Ark. 1978). Court orders affirmative action program of recruitment, and orders the rotation of officers assigned to administrative segregation unit. (Arkansas Department of Corrections)

1979

U.S. District Court
PROMOTION
BFOQ
ASSIGNMENT
EQUAL
OPPORTUNITY

Gunther v. Iowa State Men's Reformatory, 462 F.Supp. 952 (N.D. Iowa, 1979), aff'd, 612 F.2d 1079 (8th Cir. 1980) cert. denied, 100 S.Ct. 2942. Cynthia Gunther, a Correction Officer I (COI) at Iowa State Men's Reformatory, a medium security facility, brought an action charging the reformatory with violation of Title VII of the Civil Rights Act. Under Title VII, the plaintiff established a prima facie case of discrimination by showing that her request for promotion to Correction Officer II (COII) was denied on the basis of sex. A COII is a contact position within the prison.

Defendants had the burden of proof to show that a legitimate bona fide occupational qualification (BFOQ) exception existed under Title VII of the act. In granting the plaintiff's motion for a summary judgment, the court relied on three factors to find that no BFOQ existed: 1) the essence of the institution and its goals would not be undermined by not having men only, 2) there was no reasonable cause, that is no factual basis, to believe that all or substantially all women would be unable to perform safely and efficiently the duties of the job, and 3) the adjustments caused by hiring female COII's would not substantially impinge on the efficient and effective operation of the facility.

Specifically, the court found that administrative inconvenience in job assignments did not outweigh the federal right not to be discriminated against in employment. Thus, the prison may be required to arrange its schedule so that plaintiff has noncontact functions as a COII. (Iowa State Men's Reformatory)

U.S. Appeals Court
PAY PARITY

Ruffin v. County of Los Angeles, 607 F.2d 1276 (9th Cir. 1979), cert. denied, 445 U.S. 951 (1979). Female "deputy sheriffs" may be paid at higher rate than male "correctional officers." (Los Angeles County, California)

1980

U.S. Supreme Court
TERMINATION
DUE PROCESS

Owen v. City of Independence, Mo., 100 S.Ct. 1398 (1980), reh'g denied, 100 S.Ct. 2979. Following an investigation of alleged mismanagement of the police department's property room, and other irregularities in the department, the Independence, Mo. City Council moved that reports of the investigation be turned over to the news media and to the prosecutor for presentation to a grand jury. Additionally, the city manager was instructed to take appropriate action against persons involved. Accordingly, under powers granted him by the city's charter, the city manager dismissed Owen, the chief of police. Owen was given no reason for his dismissal, only written notice that his employment as chief of police was terminated.

Owen brought suit in the U.S. District Court for the Western District of Missouri under 42 U.S.C. Section 1983 against the city, the city manager, and the City Council in their official capacities. Alleging that his dismissal without notice of reasons and without a hearing violated his substantive and procedural due process rights, Owen sought declaratory and injunctive relief. The District Court entered judgment for the defendants. The Eighth Circuit Court of Appeals affirmed, holding that although the defendants had violated Owen's fourteenth amendment rights, all the defendants were entitled to qualified immunity from liability based on the good faith of the city officials. Owen petitioned the Supreme Court for a writ of certiorari, and the Court reversed the lower court decision.

HELD: "We hold...that the municipality may not assert the good faith of the officers or agents as a defense to liability under section 1983." 100 S.Ct. at 1409.

RATIONALE: A. The terms of Section 1983 create a species of tort liability that on its face admits of no immunities.... No mention is made of any privileges, immunities, or defenses that may be asserted. The act imposes liability upon every person and Monell held that these words were intended to encompass municipal corporations as well as natural persons. This expansive sweep of section 1983's language is confirmed by its legislative history. 100 S.Ct. at 1407-1408.

B. In discussing earlier decisions where the personal liability of various types of government officials was considered (such as the qualified immunity for prison officials and officers), Procunier v. Navarette, 434 U.S. 555 (1978), the Court stated: "Where the

immunity claimed by the defendant was well established as common law at the time Section 1983 was enacted and where its rationale was compatible with the purposes of the Civil Rights Act, we have construed the statute to incorporate that immunity. But there is not tradition of immunity for municipal corporations, and neither history nor public policy support a construction of Section 1983 that would justify immunity accorded the city... 100 S.Ct. at 1409.

C. The principle of sovereign immunity from which a municipality's immunity for governmental functions is derived cannot serve as the basis for a good-faith immunity, as the city claims. Sovereign immunity insulates a municipality from unconsented suits altogether, the presence or absence of good faith is immaterial. Also the municipality's governmental immunity is abrogated by the enactment of a statute such as Section 1983 making it amenable to suit. 100 S.Ct. at 1413-1414. Also, the common-law immunity for discretionary governmental functions, which served only the purpose of preventing courts from substituting their own judgment on matters within the lawful discretion of a municipality, cannot serve as the basis for a Section 1983 good faith immunity, since a municipality has no discretion to violate the federal Constitution. 100 S.Ct. at 1415.

D. Strong public policy considerations are present. The purpose of Section 1983 is to provide protection to people wronged by abuse of governmental authority. In view of the qualified immunity enjoyed by most government officials, many victims of municipal wrongdoings would be left without a remedy if the municipality was allowed to assert good faith as a defense.

Concerns which may have justified qualified immunity for government officials [such as the injustice of subjecting an official to liability, particularly in the absence of bad faith, or the danger that such liability would deter the official's willingness to execute his office effectively] are less compelling when the liability of a municipality is at issue: "[K]nowledge that a municipality will be liable for all of its injurious conduct, whether committed in good faith or not, should create an incentive for officials who may harbor doubts about the lawfulness of the intended actions to err on the side of protecting citizens' constitutional rights." 100 S.Ct. at 1416.

In Summary the Court viewed its decision, together with prior decisions in the area, as properly allocating the costs of official misconduct: "...among the three principals in the scenario of the Section 1983 cause of action: the victim of the constitutional deprivation; the officer whose conduct caused the injury; and the public, as represented by the municipal entity.

The innocent individual who is harmed by an abuse of governmental authority is assured that he will be compensated for his injury. The offending official, so long as he conducts himself in good faith, may go about his business secure in the knowledge that a qualified immunity will protect him from personal liability for damages that are more appropriately chargeable to the populace as a whole. And the public will be forced to bear only the costs of injury inflicted by the 'execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy.'" (quoting Monell V. New York City Dept. of Social Service, 436 U.S. at 694). (City of Independence, Missouri)

1981

U.S. District Court
RETENTION
PSYCHOLOGICAL
SCREENING

Brandon v. Allen, 516 F.Supp. 1355 (1981). A Civil Rights Act suit was brought against a police officer and the Director of the Police Department seeking damages because of assault and battery committed on the plaintiffs by the officer. Default judgment was taken against the officer. The district court held that since the city police director should have known of officer's dangerous propensities the director was liable in his official capacity. For one to be held liable under Civil Rights Act of 1871 he must act under color of law and in doing so he must play an affirmative part in deprivation of the constitutional rights of another. Although the police officer was technically off duty at the time of the alleged assault and battery, he acted under "color of law" within the meaning of Civil Rights Act of 1871 because off-duty officers were authorized to be armed and were required to act if they observed commission of a crime.

Since the city police director should have known of officer's dangerous propensities the director was liable in his official capacity for violation of plaintiffs' civil rights when they were attacked by the officer, in that the director failed to take proper action to become informed of the officer's dangerous propensities. The officer's reputation for maladaptive behavior was widespread among fellow officers and although at least one officer personally informed police precinct supervisors of the fellow officer's morbid tendencies, no investigation and action were undertaken.

Police officers are vested by the law with great responsibility and must be held to high standards of official conduct. Officials of the police department must become informed of the presence in the department of officers who pose a threat of danger to the safety of the community. When knowledge of a particular officer's dangerous propensities is widespread among the ranks of police officers, the department officials ought to be held liable for the officer's infringement of another's civil rights. 42 U.S.C.A. Section 1983.

U.S. Appeals Court
PROMOTION
POLYGRAPH

Brown v. State of Tennessee, 693 F.2d 600 (6th Cir. 1982). Promotion may be denied for refusal to submit to a polygraph test. The Sixth Circuit Court of Appeals held that an employee's refusal to take a polygraph test in the course of his employment is a legitimate reason to discipline or terminate an employee as long as the law of the state permits polygraph testing and no disparate treatment results based on race, sex, national origin or religion. Brown was employed by the Tennessee State Department of Human Services and his duties included administering the food stamp program in Shelby County, Tennessee. When hired, Brown was routinely placed on a six month probation. His probation period was extended for three months due to a high error rate in his work. At the end of his nine months probation, Brown was demoted as a result of a poor performance evaluation.

During Brown's employment with the Department of Human Services, a burglary occurred in his office and a number of state records were stolen. Brown, along with several other agency employees, was asked to submit to a polygraph examination. Brown refused.

Some time later the Department of Human Services was consolidated with another agency and job positions were reorganized. As a result of the reorganization, a number of employees were promoted. Brown was not promoted, and he later learned that a female employee with his same job description had been promoted. Her job performance evaluations were similar or less satisfactory than his. Brown then filed suit alleging that sex discrimination was the reason that he was not promoted. The court found that Brown had been discriminated against on the basis of sex in that the female employee promoted was no more qualified than was Brown. The state appealed the decision of the lower court, and the decision was reversed.

Citing Texas Department of Community Affairs v. Burdine, 101 S.Ct. 1089 (1981), the Sixth Circuit found that the fact that a female employee had been promoted with similar qualifications was not sufficient to find for Brown. The court noted that the state set forth a valid reason for denying Brown's promotion. In Burdine, the U.S. Supreme Court stated that an employer can defend a case of discrimination by "articulating lawful reasons for his actions" through the use of admissible evidence. In the Brown case, this requirement was fulfilled when the state introduced evidence showing that although Brown could legitimately refuse to take the polygraph test, the state could discipline or terminate him for his refusal to do so. The discipline was denying Brown his promotion. In addition, the state had also shown that a female employee had been terminated for refusing to take the polygraph testing. Therefore, no disparate treatment could be shown. (Shelby County, Tennessee)

U.S. Appeals Court
EQUAL
OPPORTUNITY
ASSIGNMENT
BFOQ

Hardin v. Stynchcomb, 691 F.2d 1364 (11th Cir. 1982). Sheriff's department violates Title VII by failing to hire a female deputy. Denied employment as a deputy sheriff because it would have allegedly violated privacy of male jail inmates, a woman brought suit under Title VII of the Civil Rights Act of 1964. The federal district court held that although there had been discrimination, it was justified, because there was a bona fide occupational qualification (bfoq), reasoning that allowing female deputies to work in the male section of the jail would have violated the privacy rights of the male inmates. On appeal the 11th Circuit Court of Appeals reversed, holding that such discrimination was illegal under Title VII.

Four men who applied for positions as deputies had scored lower than the female plaintiff on the examination. The plaintiff filed a charge of employment discrimination with the EEOC and later brought a class action suit against the Fulton County sheriff's department. (Fulton County Sheriff's Department, Georgia)

U.S. Appeals Court
HIRING/
QUALIFICATIONS
SUPERVISION

Hirst v. Gertzen, 676 F.2d 1252 (9th Cir. 1982). The Ninth Circuit Court of Appeals sent back a Montana Civil rights case to the lower court based on allegations by the plaintiff concerning negligent hiring and failure to supervise a deputy sheriff. In 1975, Clayton Hirst, a Native American, was found dead in his jail cell in Cutbank, Montana, hanged by his belt. His family brought suit alleging that he had been electrocuted and then made to appear as though he had committed suicide or that he actually did commit suicide as a direct result of the negligence of the defendant city and county and their officials in negligently hiring and failing to supervise jail personnel.

The district court divided the trial into two parts. In the first portion, the jury determined that the victim's cause of death was suicide rather than electrocution. The second half dealt with the liability of the defendants, and the district court dismissed on all counts, finding no liability. The court of appeals remanded the case on two theories: (1) that the county and city and their officials had a duty under state law to exercise care in hiring and supervising correctional officers and (2) that the negligent hiring and failure to supervise resulted in a deprivation of constitutional rights under federal law. Under this theory, the court noted that the plaintiffs had alleged gross negligence, but even simple negligence (any failure to fulfill duties which should have reasonably been expected to be done) would be sufficient to find that the defendants were liable. (Glacier County Jail, Montana)

State Appeals Court
HIRING/
QUALIFICATIONS
TRAINING
SUPERVISION

Layton v. Quinn, 328 N.W.2d 95 (Ct. App. Mich. 1982). Judgment for county is reversed in light of failure to comply with court orders. The plaintiff, administratrix of the estate of the decedent inmate who committed suicide in the Wayne County Jail, alleged wrongful death and sought to recover damages. The inmate attempted suicide on the first day in jail, threatened to take his life three days later and was transferred to a disciplinary cell which was the farthest from the guard station. After two days in the cell he committed suicide. Prior to his incarceration, the Wayne County Circuit Court had issued orders to county officials concerning the admission, custody, care and treatment of inmates in the jail. The trial court granted accelerated judgment for the county defendants who claimed governmental immunity. This was reversed by the appeals court, citing the prior court orders which were so explicit that failing to comply must be deemed outside the protection of governmental immunity.

The original complaint alleged that the wrongful death was the result of negligence in the defendant's hiring, training and supervision of jail personnel. (Wayne County Jail, Michigan)

1983

State Appeals Court
WORKING
CONDITIONS
STAFFING LEVELS
ASSIGNMENT

Delaware County Prison v. Com. Unemp. Comp. Bd., 455 A.2d 790 (Penn. App. 1983). Guard quits job because of hazardous working conditions; she is awarded unemployment benefits. The Unemployment Compensation Board ordered the Delaware County Prison to pay a former guard unemployment benefits on the basis that she had quit her job because of hazardous working conditions caused by inadequate staffing. The court agreed that the evidence supported the board's finding that voluntary termination was a result of necessitous and compelling reasons. The board determined that the guard had been left alone several times to oversee a large number of inmates, some not in cells. This duty normally required two or three correctional officers.

Although forced overtime seemed to have been prison policy, the plaintiff was required to work considerably more hours than her fellow workers. Because she attempted to perform her duties despite the conditions before she quit, and was willing to stay if the conditions had been corrected as promised, the guard was awarded benefits pursuant to Section 402(b) of the Unemployment Compensation Law. (Delaware County Prison, Pennsylvania)

State Appeals Court
TERMINATION

Department of Corrections v. Dixon, 436 So.2d 320 (Fla. App. 1983). Florida District Court of Appeal upholds dismissal of guard. The court determined that a guard who had been injured in a car accident was unable to perform his duties which included standing for long periods, climbing stairs and extensive walking. The guard had been reinstated with back pay by the Career Service Commissioner. The court found that the Department of Corrections had shown the inability of the guard to perform his duties after the off-duty car accident. (River Junction Correctional Institution, Florida)

U.S. District Court
PAY PARITY
EQUAL PAY ACT

Jurich v. Mahoning County, 31 Fair Emp. Prac. 1275 (BNA)(N.D. Oh. 1983). Matrons are to receive the same salary as jailers. In a suit filed against Mahoning County, Ohio, a matron alleged that her job as a matron-dispatcher was substantially equal to that of jailer and claimed that the county was in violation of Equal Pay Act, 29 U.S.C. section 206.

The federal court found that the job of jailer and matron-dispatcher were substantially equal, in that both required supervising, admitting, and searching prisoners. The court found that the lower number of female prisoners supervised by matron-dispatchers did not change the equality of the positions.

As the positions were found to be substantially equal under the requirements of the Equal Pay Act, and the county paid matron-dispatchers less than jailers, the court found discriminatory intent, in violation of Title VII of the Civil Rights Act of 1964. (Mahoning County, Ohio)

State Appeals Court
MANDATORY
RETIREMENT
BFOQ
PHYSICAL
REQUIREMENTS

Morgan v. Dept. of Offender Rehab., 305 S.E.2d 130 (Ga. App. 1983). Guards may be required to retire at age sixty-five. A correctional official challenged his involuntary retirement upon reaching the age of sixty-five. The appellate court affirmed such mandatory retirement for guards involved in frequent and direct contact with inmates since it was rationally related to state interests. An employer may discharge an employee on the basis of age when age is a "bona fide occupational qualification" (BFOQ) reasonably necessary to the normal operation of the particular business. Because physical stamina and ability generally declines with age, mandatory retirement at age sixty-five served to remove those whose fitness for supervision had presumptively diminished. (Georgia Department of Rehabilitation)

U.S. Appeals Court
AGE
DISCRIMINATION
HIRING/
QUALIFICATIONS

Ramirez v. Puerto Rico Fire Service, 715 F.2d 694 (1st Cir. 1983). States are not immune from age discrimination suits. This action was filed by an applicant for a position with the Puerto Rico Fire Service, who had successfully passed all tests and had qualified for the position. The fire service refused to hire him because of his age. The Plaintiff filed the action under the Age Discrimination in Employment Act seeking back wages, injunctive relief and liquidated damages. The case was dismissed on the

trial level on a motion by the defendants claiming that the eleventh amendment precludes suits against state governments. The First Circuit Court of Appeals reversed, holding that the eleventh amendment does not provide immunity from age discrimination suits and remanded the matter for further proceedings. (Puerto Rico Fire Service)

1984

U.S. Appeals Court
HIRING\
QUALIFICATIONS
PROMOTION
ASSIGNMENT
EQUAL
OPPORTUNITY
BFOQ

Garrett v. Okaloosa County, 734 F.2d 621 (11th Cir. 1984). Female officers win suit against Florida county; receive a total of \$15,000. Four women sued Okaloosa County after they were denied consideration for vacant correctional officer positions.

The women were employed by the county as matron/dispatchers and had been trained and certified as correctional officers by the state of Florida. They were told that they would not be considered for any correctional officer vacancies at the jail because of a state regulation regarding female officers in male areas of the jail.

The women were eventually assigned as correctional officers two years later, after the state revised the regulation, but received less pay than their male counterparts.

The United States Court of Appeals found the county's argument defective because the regulation in question did not prohibit female correctional officers from supervising male inmates. The regulation required an officer of the opposite sex to be accompanied by an officer of the same sex.

Further, the court found that even if the regulation had prohibited the use of female officers, the mere fact that a state regulation might be discriminatory does not create a "bona fide occupational qualification" for a jurisdiction which follows the regulation. To prove a BFOQ exists the employer must show that sex is a qualification "reasonably necessary to the normal operation of that particular business or enterprise."

At trial, evidence showed that other Florida counties were using female officers long before the state changed the regulation. As a result of the court ruling, county officials were required to pay a total of \$15,000 to the female officers. (Okaloosa County, Florida)

State Court
SUPERVISION

Kemp v. Waldron, 479 N.Y.S.2d 440 (Sup. Ct. 1984). State court finds that sheriff and subordinate could be liable for negligent supervision- prisoner sues as a result of assault by another prisoner. A New York court determined that the sheriff had a statutory duty to protect prisoners from harm while in his custody, and that he has discretion with regard to prisoner segregation.

The court referred determination of whether discretion was abused to a jury, along with a determination of the adequacy of supervision.

The county defendants were dismissed from the suit when the court found that they were not responsible for the sheriff's actions. However, the sheriff could be held liable along with the subordinate officer who failed to provide supervision. (Schenectady County Jail, New York)

U.S. Appeals Court
SEARCH

Security and Law Enforcement Employees v. Carey, 737 F.2d 187 (2nd Cir. 1984). Warrantless strip search of guard not violation if there is a "reasonable suspicion." A Federal Appeals Court has ruled that a prison guard has a diminished expectation of privacy while on the job, but that random searches without cause are not permissible. (Wallkill Correctional Facility, New York)

1985

U.S. Appeals Court
HIRING\
QUALIFICATIONS
DISCRIMINATION

Aguilera v. Cook County Police and Corrections Merit Board, 760 F.2d 844 (7th Cir. 1985), cert. denied, 106 S.Ct. 237 (1985). Appeals court rules high school diploma is a reasonable requirement for corrections officers. The plaintiff, a Hispanic, claimed that the county violated his civil rights by denying him employment as a corrections officer because he did not have a high school diploma. The federal district court granted summary judgment for the county; on appeal, the Seventh Circuit agreed with the lower court finding.

Noting that the ruling did impact disproportionately against Hispanic people, the court was convinced that a diploma was an appropriate and necessary credential which was related to the demands of the job. The county argued, in part, that requisite ten week pre-service training for officers involved courses taught by college personnel. (Cook County Police and Corrections Merit Board)

U.S. District Court
PAY PARITY
EQUAL
OPPORTUNITY

Brewster v. Pike, 608 F.Supp. 1163 (W.D. Vir. 1985). Female corrections officer entitled to equal pay; compensation board members liable. Joyce Brewster was an employee of the Wyeth County Sheriff's Department since 1968 and served as a full-time corrections officer since 1974. She filed suit against the state of Virginia because she was denied credit for two years service as a full-time deputy, even though the sheriff had certified that she had devoted more than fifty percent of her time to corrections duties (as required by Virginia statutes). The state compensation board refused to believe the certification in light of the low number of females which were

housed. The federal district court found that, in fact, she committed a substantially higher proportion of time to corrections duties, ordered her to be paid as a deputy sheriff (retroactive) and to accrue seniority since 1975 (when the certification was made). Attorney fees in the amount of \$18,800 were awarded. (Wyeth County Sheriff's Department, Virginia)

State Appeals Court
TERMINATION

Dept. of Corrections v. Helton, 477 So.2d 14 (Fla. App. 1 Dist. 1985). When the Florida Department of Corrections dismissed a nurse for neglecting her duties, the Career Service Commission reduced it to a suspension without pay for four months. A state appellate court let the commission's ruling stand, over objections from a dissenting judge. He said the nurse should have been terminated because the offenses she committed were serious, in view that they occurred in a prison setting. She left syringes on a desk, which could be found and used as weapons by inmates. Secondly, she neglected to examine an inmate's head wounds, and she worked under the influence of medication without seeking authorization to do so. He said it was a gross abuse of discretion in ordering her continued employment against the wishes of prison officials. (Department of Corrections, Florida)

State Appeals Court
DISCIPLINE
DUE PROCESS

DeVonish v. Scully, 496 N.Y.S.2d 485 (A.D. 2 Dept. 1985). A corrections officer was found guilty of harassing a female officer, refusing to show his I.D. card after ordered to do so by another corrections officer, and threatening that officer. The court found no violation in preventing the guard from attending the superintendent's proceeding during testimony of two inmate witnesses, since the restriction was necessary for security reasons, and the employee was allowed to listen to tape recordings of what the witnesses said. (New York)

U.S. District Court
DISCRIMINATION
BFOQ

Edwards v. Dept. of Corrections, 615 F.Supp. 804 (D. Ala. 1985). An employment discrimination action was brought by a man who was not appointed shift commander at a women's prison. Following a nonjury trial, the district court held that: (1) failure to promote the man to position of shift commander could not be justified on the ground that he would not have been promoted even in the absence of a discriminatory motive; (2) sex was not a bona fide occupational qualification for the position; and (3) the man was entitled to back pay and, if the position were open, reinstatement to the position of shift commander.

The employer, who admitted denying the man promotion to shift commander at the women's prison because of his sex but argued that he would still not have been promoted even if there were no discriminatory motive, bore the burden of establishing what it would have done absent a discriminatory motive.

The failure to promote the man, who had occupied the position of acting shift commander at the women's prison for nearly one year without any apparent difficulty, to the position of shift commander could not be justified on the ground that being female was a bona fide occupational qualification for that position. (Julia Tutwiler Prison for Women, Alabama)

U.S. Appeals Court
HARASSMENT

Hayes v. Vessey, 777 F.2d 1149 (6th Cir. 1985). Although a corrections officer was perhaps incompetent and held animosity toward a teacher because she was a woman, he was not liable for failing to protect her from being raped while he was on lunch break, ruled the Sixth Circuit Court of Appeals.

The teacher claimed discrimination and denial of equal protection because the guard had not ticketed the rapist earlier in the day when discovered on the grounds without authorization. She claimed he set the tone for extremely lax security which caused her to be raped. He was not liable on such a theory because as a subordinate employee he had no authority to set a security policy, nor was he responsible for not ticketing the rapist earlier because such action was too remote from causation.

Another teacher allowed the rapist to regain entry during lunch by unlocking the gate in violation of school rules. Finally, even if the guard had been at his station during the fifteen minute attack, he would not have been able to hear the woman's cries for help. His station was located at the end of the hall, and her room was soundproof. The court reversed a jury's judgment against the officer for \$200,000 in compensatory damages and \$100,000 in punitive damages.

Also at issue was whether the teacher could collect from other prison officials for negligence in ignoring high levels of sexual tension, condoning an attitude of indifference toward danger to female employees, failing to require adequate security for female employees, assigning her to work in a remote area more dangerous than areas assigned to male teachers, and defeating automatic locking systems which led to the unauthorized entry of the rapist. The Court found no liability for the random act and ruled that the plaintiff's remedy in worker's compensation precluded suit. She received compensation disability benefits which contained special provisions for prison employees injured by inmates, provisions not applicable to other employees. (State Prison at Jackson, Michigan)

State Appeals Court
DISCRIMINATION

Ind. Dept. of Correction v. Ind. Civ. Rights, 486 N.E.2d 612 (Ind. App. 1 Dist. 1985). After remand, 464 N.E.2d 29, the Department of Corrections (DOC) appealed from judgment of the circuit court affirming a finding of Civil Rights Commission that the DOC unlawfully discriminated against a female applicant on the basis of her sex and ordered that DOC offer her the director of education position when the next vacancy occurred. The court of appeals held that: (1) the trial court's findings and conclusions were adequate; (2) the conclusion that the DOC intentionally discriminated against the applicant was supported by sufficient evidence; (3) the commission was entitled to conclude that DOC had failed to establish that sex was a bona fide occupational qualification based on security concerns and inmates' privacy rights; and (4) the Commission's remedial order did not exceed its authority.

The conclusion that the Department of Corrections intentionally discriminated against the female applicant for the positions of director and assistant director of education at the maximum security institution was supported by sufficient evidence, where the plaintiff presented substantial evidence that her qualifications were equal to or exceeded those of two successful male applicants, that the DOC had never hired a woman for a full-time position in the institution's education program and that the DOC was predisposed to discriminate against women seeking positions at the institution.

The Civil Rights Commission's finding that an employer had failed to establish the existence of a valid defense of a bona fide occupational qualification would be reversed only if the evidence was uncontradicted and led unerringly to a conclusion different from that reached by fact finder.

The Civil Rights Commission had authority to order the maximum security institution to consider proposed modifications in its physical plant as a remedy for sex-based employment discrimination. (Department of Corrections, Indiana)

U.S. Supreme Court
RETIREMENT
BFOQ

Johnson v. Mayor and City Council of Baltimore, 105 S.Ct. 2717 (1985). Mandatory retirement plan for fire fighters and law enforcement officers rejected by Supreme Court. City officials adopted a mandatory retirement requirement based on the federal fire fighter and law enforcement retirement statute (5 U.S.C. Section 835b), arguing that it represented a reasonable federal standard which could be applied to local employees. The city argued that the federal statute established a "bona fide occupational qualification" (BFOQ) and was thereby exempt from the federal Age Discrimination in Employment Act (29 U.S.C Section 621). The Supreme Court held that to establish a BFOQ exemption the employer must demonstrate that early retirement is necessary to the normal operation of business; permitting the city to rely on the federal statute would have the effect of extending the federal statute beyond its scope and negating the intent of Congress when it passed the ADEA. (City of Baltimore, Maryland)

U.S. Appeals Court
DISCRIMINATION
PROMOTION
ASSIGNMENT

Jones v. Hutto, 763 F.2d 979 (8th Cir. 1985). Court finds prison officials discriminated against black employees. Use of subjective criteria for determining who will be promoted resulted in discrimination against black employees, according to the Eighth Circuit Court of Appeals. Considering personality traits (listening and learning skills, maturity, trust, dependability), prison officials placed proportionally more white employees in higher level jobs. Although not all blacks were discriminated against, the defendants were held liable for the discrimination which did occur. (Arkansas Department of Corrections)

U.S. District Court
DISCRIMINATION

Jones v. Mississippi Dept. of Corrections, 615 F.Supp. 456 (D.C. Miss. 1985). Two black prison guards brought a civil rights action claiming racial discrimination in the employment promotion practices. The district court held that: (1) the first guard's allegations were insufficient to establish a prima facie case of disparate treatment; (2) evidence with respect to the second guard was sufficient to establish a prima facie case of disparate impact under Title VII; and (3) evidence was insufficient to establish that an oral examination process for promotion of prison guards was job related for purposes of rebutting a prima facie case.

In a disparate treatment case involving allegations of discrimination in promotion practices, Title VII plaintiff must show the following: that he belongs to a group protected by the statute; he was qualified for the position to which he sought promotion; he was not promoted; and after his nonpromotion, the employer continued to seek applicants not in the plaintiff's protected class or promoted those having comparable or lesser qualifications, not in the plaintiff's protected class.

The employer does not bear the burden of persuading the court that he was actually motivated by proffered reasons for allegedly discriminatory employment decision. Rather, the employer need only raise genuine issue of fact as to whether there was illegal discrimination involved in the plaintiff's discharge.

A black prison guard's allegations that he was denied promotion from sergeant to lieutenant, and that a white prison guard who was less qualified was promoted instead were insufficient to establish a prima facie case of disparate treatment, in light of the evidence that the plaintiff lacked the requisite one year and six-month experience as a sergeant necessary to qualify for promotion to lieutenant.

A black prison guard who brought unsuccessful action alleging discrimination in promotion employment practices was not required to pay defendants' attorneys' fees and expenses pursuant to 42 U.S.C.A. Section 1988, where the action was not frivolously brought. Besides providing evidence of business necessity of examination process, and thereby validating it, the employer may attack the plaintiff's case based on allegation of disparate impact in the employment practice by showing that statistical proof is unacceptable. (Department of Corrections, Mississippi)

State Appeals Court
TERMINATION

Kearney v. Coughlin, 488 N.Y.S.2d 300 (A.D. 3 Dept. 1985). Court upholds dismissal of superintendent for inability to deal with subordinates. During his probationary period, a deputy superintendent was found to be "abrasive and tactless" in his treatment of subordinates, although he performed his job well in other areas. He was dismissed because his position required leadership skills. The appeals court affirmed the dismissal. (Arthur Kill Correctional Facility, New York)

State Appeals Court
TERMINATION

Malone v. Dept. of Corr., La. Training Inst., 468 So.2d 839 (La.App. 1st Cir. 1985). A former correctional officer at an institution for girls appealed from an opinion of the State Civil Service Commission ordering his termination. The court of appeals held that: (1) the Civil Service Commission was not clearly wrong in ordering the officer's termination for failure to obey orders, and (2) termination, rather than suspension, was properly ordered. A correctional security officer's admission to the superintendent at the institution for girls and to the officer's superior that he tore up a statement he had written concerning an earlier unusual occurrence was sufficient to support the officer's termination, even though the superintendent neither saw nor heard the incident of tearing up the statement, as required by disciplinary rules. The correctional security officer was not being twice disciplined for the same offense when he was terminated for insubordination, even though he was earlier denied a merit increase for the same offense, in that denial of a merit increase is not considered a disciplinary action. (Louisiana Training Institute for Girls)

State Appeals Court
DISCIPLINE

Matter of Stowman, 491 A.2d 1275 (N.J. App. 1985). Officer not entitled to sworn testimony of witnesses. Charged with a violation of administrative regulations (safety and security), a corrections lieutenant was served with a notice of a minor disciplinary action. He was suspended for five days. The appeals court found that the short suspension did not reach constitutional dimensions, and that New Jersey law provides for a hearing by the Civil Service Commission only when a classified employee is suspended for more than five days. (Leesburg State Prison, New Jersey)

U.S. District Court
ASSIGNMENT
DISCRIMINATION
HARASSMENT

Snell v. Suffolk County, 611 F.Supp. 521 (D.C. N.Y. 1985), 782 F.2d 1094 (2nd Cir. 1986). Court finds that black and hispanic workers were subjected to racial harassment by co-workers. Sixteen correctional officers who were either Black or Hispanic sued the sheriff and the county for allegedly failing to stop verbal abuse and racial harassment from co-workers. A federal district court judge found the county liable for failure to correct a racially hostile work atmosphere. The district court jury found for each of three plaintiffs who had been publicly humiliated, awarding a total of \$11,500. The district court judge concluded that the employees had been "subjected to vicious, frequent and reprehensible instances of racial harassment" that deprived them of their Title VII rights to a working environment which is free from racial harassment. The judge ordered the warden to appear before all correction officers and "declare that the county will not tolerate any correction officer's action discriminating against another correction officer because of his or her minority status." The judge also instructed the Warden to forbid the use of racial epithets, the posting or distribution of derogatory bulletins, mimicking officers in stereotypical fashion, and the use of racial, ethnic or religious slurs and humor. The district court ordered the warden to tell employees that such behavior would result in prompt and severe discipline. The Appeals Court affirmed. (Suffolk County Sheriff Department/Jail, Massachusetts)

1986

State Appeals Court
NEGOTIATION
STRIKES

Capitol City Lodge v. Ingham County, 399 N.W.2d 463 (Mich. App. 1986). During a labor dispute with jail officers, a county moved to exclude jail security officers from required arbitration between the county and the police union. The Michigan Employment Relations Commission denied the motion, and the county appealed. The appeals court found no evidence that the strike would pose a threat to the community and also held that county jail security officers were not included in the same law that provided for compulsory, binding interest arbitration of labor disputes in public police and fire departments. (Ingham County Jail, Michigan)

State Appeals Court
DISABILITY

Comm. Dept. of Corrections v. Powell, 347 S.E.2d 532 (Va. App. 1986). The Commonwealth Department of Corrections in Virginia appealed the decision of the Industrial Commission that awarded a corrections officer a permanent disability rating of fifty percent over injuries to his arm which had been stabbed by an inmate. The

department argued that the rating used by a physician should have considered the officer's ability to use his arm in any type of employment, not just his ability to use it under stressful or vigorous conditions.

The Court of Appeals of Virginia ruled that rating the arm under stressful conditions was the proper test, given that the guard could at any time be faced with the need to protect himself against assaulting inmates during a crisis. Also, a state statute did not mandate that the loss of an arm be measured in terms of an anatomical loss. The commission awarded the guard a permanent disability rating of fifty percent based on a doctor's findings that the guard had reached his maximum improvement stage and "was not going to get any better." The commission applied this evidence over the evidence of two doctors hired by the department whose findings were not as favorable to the guard. (Department of Corrections, Virginia)

State Court
ASSIGNMENT
SCHEDULE

Dept. of Corr. v. Corr. Officer, 514 A.2d 405 (1986). Correctional officer supervisors filed a number of grievances requesting overtime for the two and one-half hours per week which they had been working in excess of thirty-seven and one-half hours. The State Personnel Commission determined that the supervisors were entitled to such additional compensation from the date the grievances were filed to the date they executed a new contract plus thirty days of retrospective relief. The Superior Court, New Castle County, affirmed the basic decision but reversed the commission as to the thirty day retrospective relief, and the Department of Correction appealed. The Supreme Court held that once the union local was decertified, correctional officer supervisors were no longer "represented by an exclusive bargaining representative," and therefore merit system rules governed their work hours from the time of the local union's decertification until the supervisors elected a new union and executed a new contract. (Department of Corrections, Delaware)

U.S. Appeals Court
TERMINATION
DUE PROCESS
PROBATION

Dorr v. County of Butte, 795 F.2d 875 (9th Cir. 1986). A probationary regular employee of a county sheriff's department served at the will of the appointing authority. He had no reasonable expectation of continued employment. The power of the appointing authority to determine, on a purely subjective basis, whether a probationary employee had performed satisfactorily undercut any expectation of continued employment that might otherwise have risen. Thus, it was immaterial for due process purposes whether the employee's "probationary rejection" after his arrest was in reality a "disciplinary dismissal." (Butte County Sheriff's Department, California)

U.S. District Court
ASSIGNMENT
STAFFING LEVELS

Duran v. Anaya, 642 F.Supp. 510 (D.N.M. 1986). State prisoners sought a preliminary injunction to halt layoffs of staff and filling of staff vacancies. The District Court held that New Mexico prison inmates were entitled to a preliminary injunction prohibiting implementation of proposed staff reductions with respect to medical care, mental health care, and security where there was no evidence that staffing reductions of the magnitude contemplated would permit the maintenance of minimal constitutional standards in those areas. However, the court would not prohibit staff reductions other than those relating to medical care, mental health care and security where there was no evidence that any such proposed reductions would adversely affect the minimal constitutional rights of prisoners. A prisoner has a right to be reasonably protected from constant threats of violence and sexual assaults from other inmates, and failure to provide an adequate level of security staffing, which may significantly reduce the risk of such violence and assaults, constitutes deliberate indifference to legitimate safety needs of prisoners. The state has a constitutional obligation to make available to prisoners a level of medical care that is reasonably designed to meet routine and emergency health care needs of prisoners, including medical treatment for inmates' physical ills, dental care and psychological or psychiatric care. Gross deficiencies in staffing establishes deliberate indifference to prisoners' health needs. A lack of financing is not a defense to a failure to satisfy minimum constitutional standards in prisons. (Department of Corrections, New Mexico)

State Appeals Court
TERMINATION

Fields v. State Dept. of Corrections, 498 So.2d 174 (La. App. 1 Cir. 1986). A correctional officer who had been employed nearly ten years with the Louisiana State Penitentiary was terminated because he left his post without permission after twelve hours on duty to inquire as to why his replacement was late. He was scheduled to work from 4:45 a.m. to 4:45 p.m. When his relief guard didn't show up at 4:50 p.m., he left his post and went across to a connecting dormitory to use the telephone to call as to the whereabouts of his replacement. The court ruled that the single incidence of misconduct of the guard with permanent status was significant enough to warrant dismissal because it endangered the safety of the public and/or the inmates themselves. Even though testimony showed that it was common practice for guards to use the nearby telephone, it was not officially approved to leave a post without permission. (State Penitentiary, Louisiana)

U.S. Appeals Court
FREE SPEECH

Fiorillo v. U.S. Dept. of Justice, Bureau of Prisons, 795 F.2d 1544 (Fed. Cir. 1986). A correctional officer's statements to the press, suggesting that a female inmate and a female employee had been sexually attacked five years previously, did not qualify as a

protected first amendment speech. Although portions of the officer's speech related to items about which the public was concerned in years past, the news was stale, and the officer's disclosures were made for personal reasons and not to inform the public of matters of general concern. Accordingly, prison authorities could consider these statements in deciding to demote the officer. The court concluded that the guard's statements to the press concerning a lawsuit which he had instituted because he was being denied promotion for having expressed criticism about prison conditions were made on behalf of the guard, and not "on behalf of the institution," so that he did not violate the rule prohibiting dissemination of material to the press on behalf of the institution. (Federal Correctional Institute at Terminal Island, California)

U.S. Appeals Court
DISCIPLINE

Fugate v. Phoenix Civil Service Board, 791 F.2d 736 (9th Cir. 1986). Appeals court upholds city police department policy concerning officer conduct and determines that officers did not have a constitutionally protected right of privacy to engage in sexual relations with prostitutes while on duty. Two married vice officers were discharged in 1978 after an investigation revealed that they had been intimately involved with prostitutes while on duty, that one prostitute was accepting city money from an officer as a paid informant, and that both relationships were carried on openly and publicly. The officers were discharged for violating a police department order which prohibited "conduct unbecoming an officer and contrary to the general orders of the police department." The officers appealed to the Phoenix Civil Service Board, which reinstated them but did not order back pay for the period of their suspension. The officers filed an action for back pay and injunctive relief in federal district court, asserting violations of their constitutional rights. The district court entered summary judgment for the city, and on second appeal the higher court concurred with the dismissal. While acknowledging that the city's policy was vague, the court found that it was intended to protect the legitimate interests of the police department, and that while the Constitution does not expressly guarantee the right of privacy, it is considered one of the "liberty" interests protect by the due process clause. (City of Phoenix Police Department, Arizona)

U.S. Appeals Court
DISCRIMINATION

Galvan v. Bexar County, Texas, 785 F.2d 1298 (5th Cir. 1986). Jail guard victim of age discrimination. The plaintiff was hired by the county as a detention guard in 1968. He was not a high school graduate and did not possess a GED certificate. When new requirements were passed by the Texas Commission on Law Enforcement Standards and Education, the sheriff was notified in January, 1978, that a GED certificate would be required, but the plaintiff was not notified until after the certification date had passed. After attempting to study for the GED exam, he submitted a letter of resignation stating that he believed he was qualified for his duties but could not pass the test. The commission later passed a "grandfather clause" which would have exempted the plaintiff from the requirement, but the sheriff refused to reinstate him upon request. The lower court found that the county had discriminated against the plaintiff in violation of the Age Discrimination in Employment Act of 1967. On appeal, the U.S. Court of Appeals for the Fifth Circuit affirmed the lower court finding. (Bexar County Jail, Texas)

State Court
SEARCH
DRUG TEST

King v. McMickens, 501 N.Y.S.2d 679 (A.D. 1 Dept. 1986). The refusal of a corrections officer suspected of illegal drug activities to provide a sample for an urinalysis upon order of the Department of Corrections investigators was established by sufficient evidence. Dismissing a corrections officer for refusing to submit a sample for a drug urinalysis did not violate the fourth amendment rights of the officer. The officer's reasonable expectation of privacy as private citizen yielded to compelling governmental interests in insuring capable corrections officers when he became such an officer. Probable cause was not required to order a corrections officer to submit a sample for a drug urinalysis. The dismissal of a corrections officer for refusal to submit a sample for a drug urinalysis was not an excessive penalty, was not shocking to sense of fairness and was not disproportionate to the offense. (New York DOC)

State Court
TERMINATION

Musser v. County of Centre, 515 A.2d 1027 (Pa. Cmwlth. 1986). A corrections officers' unauthorized shackling and cuffing of an inmate, forced application of ointment to inmate's penis and testicles and forcible insertion of two inch spout into inmate's anus was conduct justifying the officers' discharge, and the arbitrator's determination that there was no cause for discharge did not draw its essence from the terms of a collective bargaining agreement. (Centre County Prison, Pennsylvania)

State Court
TERMINATION

Neb. Dept. of Correctional Serv. v. Carroll, 383 N.W.2d 740 (Neb. 1986). The Supreme Court of Nebraska affirmed the appellate court's ruling that the district court lacked authority to grant attorney's fees for expenses incurred at proceedings before the State Personnel Board and Equal Opportunity Commission. The attorney filed for attorney's fees after representing a Nebraska Department of Corrections employee in his suit alleging his dismissal was racially motivated. The commission ordered him reinstated

with back pay, and the department appealed. The court could award the employee's attorney his fees and costs incurred for securing dismissal of the appeal. (Department of Correctional Services, Nebraska)

State Appeals Court
SEARCHES

People v. Whitfield, 488 N.E.2d 1087 (Ill. App. 5 Dist. 1986). A state appeals court found that the practice of searching a guard's car and his clothing were legal actions because the guard was on department premises and he had signed a waiver of his constitutional rights in regard to such a search as a condition of his employment. There were also signs posted in the prison parking lot warning of such searches. The search did not exceed the scope of consent, since only his clothing was searched and the guard had given consent to have his car searched. (Menard Correctional Center)

State Court
TRAINING

State Correctional Inst. v. Nelson, 503 A.2d 116 (Pa. Cmwlth. 1986). Prison officials were not at fault for a female trainee's lack of notice that she had only two chances to pass a handgun test. Her voluntary absence from class on the day the instructor orally informed trainees of the qualifications was the reason she did not receive the information, ruled the Commonwealth Court of Pennsylvania.

The applicant underwent probationary training for one month, completing all training requirements except the handgun qualifying test, which she failed to pass. The test was introduced just prior to her employment. About a month after failing the first test, she took another test, which she again failed. She was the only member of her class who failed the two tests. The court upheld her dismissal, finding no discrimination in that oral notice was given at class, and that she missed hearing about the qualifications due to her absence. (State Correctional Institution at Graterford, Bureau of Correction, Pennsylvania)

U.S. Appeals Court
DISCRIMINATION

Thorne v. City of El Segundo, 802 F.2d 1131 (9th Cir. 1986). City officials are immune from liability in this sex discrimination case because the law on unregulated, unrestrained employer inquiries into personal sexual matters was not clearly defined at the time, says the 9th U.S. Circuit Court of Appeals. Deborah Thorne filed suit against the City of El Segundo, Calif., when the city refused to hire her as a police officer based on results of polygraph testing about her past sexual activities. Thorne alleged the city discriminated against her in the application process and violated her constitutional right of privacy. Although the trial court found Thorne had been discriminated against, she was awarded only \$812 back pay from the date of refusal until the date she voluntarily resigned her position as clerk typist. Thorne appealed this award, and the appeals court determined the back pay should, in fact, have been continued until the date of the judgment.

The appellate court also concluded the city officials should not be found liable for their actions, because the constitutional right to privacy and free association, which was allegedly violated by conducting a broad, unregulated inquiry into her off duty sexual activities, was not a "clearly established statutory or constitutional right of which a reasonable person would have known." Although Thorne's case did establish this right, the court held the officials, at the time they questioned Thorne, could not be expected to "predict the future course of constitutional law."

Ruling the city officials immune from liability, the court remanded the case to the trial court for determination of the appropriate back pay. (El Segundo Police Department)

U.S. Appeals Court
WORKING
CONDITIONS

Walker v. Rowe, 791 F.2d 507 (7th Cir. 1986), U.S. cert. denied in 107 S.Ct 597. Appeals court rules that due process clause does not assure safe working conditions for public employees and reverses lower court awards. On July 22, 1978, inmates of the Pontiac Correctional Center, a maximum security prison, were being returned to their cells after exercise in the courtyard. The prisoners killed three guards, injured others, and set fire to part of the prison. Three of the injured guards and the estates of the three deceased guards filed suit against the Director of the Illinois Department of Corrections, and the Assistant Warden of Operations at Pontiac, alleging that they deprived them of their constitutional right to a safe working environment.

A federal district court jury returned verdicts against the defendants totalling \$706,845, and the district court added \$145,792 in attorney's fees and costs. These recoveries were in addition to workers' compensation awards (\$250,000 death benefits and burial expenses for each of the three deceased guards) and other benefits afforded by state law.

The United States Court of Appeals for the Seventh Circuit ruled: "Because we conclude that the constitution is not a code of occupational safety, we reverse the judgment." The court explained that "due process" does not mean "due care"- the constitution is designed to protect people from the state, not to ensure that the state provide safety or comfort. A special relationship must exist before the state can be held liable for harm to a person. If the state had forced the men to be officers at the correctional center, it would be required not to be indifferent to their working conditions. But the guards enlisted voluntarily and were free to quit at any time. According to the court, "...the state must protect those it throws into the snake pits, but the state need not guarantee that volunteer snake charmers will not be bitten."

The plaintiffs had argued that the corrections officials had control of several conditions which contributed to the attacks, including: failure to maintain metal detectors in operating condition; failure to conduct enough shakedown of inmate cells to find weapons; failure to "lock down" the prison although the officials knew or should have known that it was tense; failure to immediately issue shotguns to the tactical squad and order it to quell the disturbance. Although the court noted that the defendants had some level of control over these issues, their actions did not amount to constitutional violations.

Additional allegations which the court concluded were not directly within the control of the defendants included: design of the prison which created "dead spots" from guard towers; high staff turnover, vacancies and lack of sufficient staff; overcrowded conditions in the facility; the existence of prisoner gangs; the new phone system which had defects and was hard to use; the door and cage in the North Cell House were old and flimsy; and guards did not receive enough training in controlling the riots, and training which was provided was poor. (Pontiac Correctional Center, Illinois)

U.S. Appeals Court
WORKING
CONDITIONS

Washington v. District of Columbia, 802 F.2d 1478 (D.C.Cir. 1986). Reckless failure of state officials to remedy unsafe prison conditions did not deprive a correctional officer of his constitutional rights, according to a recent U.S. Court of Appeals decision. Preston Washington was attacked and severely injured by a prisoner while employed as a correctional officer at the Lorton Reformatory. Washington sought \$20 million damages alleging reformatory officials had been warned of unsafe conditions at Lorton and were under court order to correct them. By failing to take remedial action the officials violated his constitutional rights, he argued.

The court noted, however, that not all injuries inflicted by persons acting under color of state law violate constitutional rights. While Washington had a liberty interest in "personal security," the officials sued had no constitutional duty to protect his security. Washington argued that prison guards have the same constitutional rights as prisoners. The court disagreed, distinguishing that prisoners are in custody involuntarily and prison officers work voluntarily. Therefore, the state had no constitutional obligation to protect Washington from the hazards inherent in that occupation. (Lorton Reformatory, District of Columbia)

1987

U.S. Appeals Court
DISCRIMINATION
WORKING
CONDITIONS
ASSIGNMENT
SCHEDULE

E.E.O.C. v. Ithaca Industries, Inc., 829 F.2d 519 (4th Cir. 1987), cert. denied, 109 S.Ct. 306. An action alleging discrimination on the basis of religion was brought against a former employer by a former employee. When the federal district court entered a judgment for the employer, the former employee appealed. The appeals court held that the discharge of the employee for refusal to work on Sunday was not discriminatory when the employer demonstrated that it attempted to reasonably accommodate the employee's observance of Sunday. The employer established that it attempted to reasonably accommodate the employee's observance of Sunday religious practices and the employee's absolute refusal to compromise in any way on Sunday work issue precluded the employer from making a reasonable accommodation. The discrimination against some employees in order for others to observe their sabbath is not required by a statute prohibiting discrimination in employment on the basis of religion and requiring reasonable accommodation. The term "reasonable accommodation," as stated by the court, suggests a bilateral cooperation in the search for an acceptable reconciliation of the needs of the employee's religion and the exigencies of the employee's business. The employee made no good faith attempt to satisfy his needs through compromise. Thus, nothing the employer could do, except unconditionally surrender to the employee's demands would suffice. (Ithaca Industries, Inc.)

U.S. Appeals Court
DISCIPLINE
DUE PROCESS

Garraghty v. Jordan, 830 F.2d 1295 (4th Cir. 1987). A federal appeals court upheld the suspension of the Warden of the Nottoway Correctional Center for insubordination. After refusing to drive from the prison to Richmond, Virginia (one and one-half hours away) to discuss a problem with the Regional Administrator for the Virginia Department of Corrections, the Warden was ordered to report to the Administrator's office on the next regular business day. After being asked to explain why he had refused to come immediately to Richmond, the Warden stated that he had to attend to personal business at the time and that his shift had ended just prior to the conversation with the Administrator. The Administrator told the Warden that he found his explanation for his conduct insufficient to excuse him and that his conduct constituted insubordination, advising him he was suspended for five days without pay. While it was true that the Warden had a property interest in his employment and was thus entitled to notice of the charges against him and a meaningful opportunity to respond to those charges, his rights had been preserved, said the Court, which stated that he had received "all the hearing he was entitled to." The court concluded that, before he was suspended, the Warden was given an opportunity to be heard and to "present his side of the story." The court found that the orderly administration of the

Corrections Department would become too disruptive by further formalizing the suspension process and escalating its adversary nature. The deprivation caused by short term suspension does not warrant pre-deprivation proceedings before a neutral party. (Nottoway Correctional Center, Virginia)

U.S. Appeals Court
SEARCHES

McDonell v. Hunter, 809 F.2d 1320 (8th Cir. 1987). A class action suit was brought by departmental employees under 42 U.S.C. Section 1983 regarding the legality of guard searches for contraband conducted by Iowa Department of Corrections prison officials. The district court's order was modified in part and affirmed with specific standards for various kinds of searches set forth by the appeals court. The department claimed that the searches are necessary to control and provide institutional security by monitoring the existence of contraband it was stated that the employees' forth amendment right against unreasonable searches was balanced with the need for prison security. The appeals court set forth the following guidelines: (1) searches of employee vehicles parked within the institution's confines may be conducted without cause and randomly as long as the choice of vehicles that are searched is systematic and they are done with uniformity; (2) vehicles parked outside the confines can only be searched based on a reasonable suspicion unless it is shown that inmates have unsupervised access to them, in which case the vehicles can be searched without cause and at random; (3) employees who have regular contact with prisoners on a day to day basis in medium or maximum security prisons may be subject to urinalysis testing which is performed uniformly or by a systematic random selection (urinalysis testing outside the random procedure must be based on reasonable suspicion "based on specific objective facts and reasonable inferences drawn from those facts in light of experience that the employee has used a controlled substance within the twenty-four hour period prior to the required test."); (4) strip body cavity searches require the reasonable suspicion standard that demands individualized suspicion specifically directed to the person targeted for the search. Finally, the court found that employees cannot be forced to waive their constitutional rights as a condition of employment--"Advance consent of future unreasonable searches is not a reasonable condition of employment." The state may only use a consent form which is in conformity with the above criteria. (Iowa Department of Corrections)

State Appeals Court
HARASSMENT
TERMINATION
DISCIPLINE

Oare v. Coughlin, 520 N.Y.S.2d 658 (A.D. 3 Dept. 1987). A state appeals court rejected a defendant's argument that, given his lengthy term of employment (22 years) and unblemished record, dismissal was too severe a punishment for sexually harassing female employees under his supervision. The defendant was a deputy superintendent who supervised 30 clerical people, 27 of whom were female. He was found guilty of sexually harassing the female employees by a lower court, although he denied these actions or attempted to portray them as innocent events. (Elmira Correctional Facility, New York)

State Supreme Court
PROMOTION
HIRING/
QUALIFICATIONS

Pulaski County Civil Service Com'n. v. Davis, 730 S.W.2d 220 (Ark. 1987). Employees of a sheriff's department filed a lawsuit against a county Civil Service Commission challenging the rules which required a high school degree or college hours as a requirement for promotion. The state supreme court found that the use of educational standards as a prerequisite for promotion eligibility violated the governing statute which provided that promotion be based solely on an open competitive examination. (Pulaski County Sheriff Department, Arkansas)

State Appeals Court
DUE PROCESS
TERMINATION

Said v. Lacky, 731 S.W. 2d 7 (Ky. App. 1987). A new deputy jailer had signed an agreement to accept temporary employment that he could be terminated at any time without notice. However, when he was terminated, he demanded a hearing and filed a lawsuit alleging wrongful discharge. The court found the agreement violated statutory law because a jail manual provided for "due process" when an employee was being terminated and, although this procedure had not been formally adopted, there were other instances when this procedure had been followed and this made it an established procedure. Thus, the employee was entitled to rights under the county administrative code as well as rights to written notice and a hearing. (Campbell County Jail, Kentucky)

U.S. District Court
PROMOTION
DISCRIMINATION

Shaw v. Neb. Dept. of Correctional Services, 666 F.Supp. 1330 (D.Neb. 1987). A female employee of the Nebraska Department of Correctional Services brought action against the Department and two of its administrators for violation of her Fourteenth Amendment equal protection rights. The district court held that: (1) the female employee established she was discriminated against on the basis of sex when she was denied a promotion in violation of both Title VII and equal protection clause for the Fourteenth Amendment, and (2) the employee was entitled to award of back pay, front pay, general compensatory damages, interest and taxable court costs. (Lincoln Post Care Center, Nebraska)

Court of Appeals
DUE PROCESS
TERMINATION
WORKING
CONDITIONS

Sienkiewicz v. Santa Cruz County, 240 Cal.Rptr. 451 (Cal.App. 6 Dist. 1987). A detention officer petitioned for writ of mandate and sought damages for dismissal. The superior court denied the officer's petition, and he appealed. The appeals court, affirming, found that the officer was accorded due process by having an administrative hearing even though it occurred following his enforced leave of absence by the sheriff. The officer's suspension and dismissal was supported by evidence that he was psychologically unfit to perform the regular duty involving inmate contact, and the Civil Service Commission had the authority to terminate the officer from his employment. In suspending the detention officer based on psychological trauma suffered as a result of facial injury, the sheriff was entitled to rely on a letter written by the detention officer's attorney describing his medical condition and was not required to obtain additional medical information before suspending him. Under the California Fair Employment and Housing Act, a public employer may require an employee to meet physical or mental standards reasonably related to duties required by the job and the health and safety of the employee or others. The detention officer was assigned light duty at first, while his injuries to his face and jaw, suffered from an off-the-job motorcycle accident, were healing. Once restored to duty, he told his watch commander he had reservations about assuming full duty because he feared being hit in the face. (Santa Cruz County Detention Facility, California)

U.S. Appeals Court
BFOQ
EQUAL
OPPORTUNITY
HIRING/
QUALIFICATIONS

U.S. v. Gregory, 818 F.2d 1114 (4th Cir. 1987), cert. denied, 108 S.Ct. 143. An action was instigated by four female applicants for positions with the Sheriff's Department when they complained that they were denied jobs because of their gender. The county sheriff failed to establish that gender was bona fide occupational qualification for correctional officers by failing to demonstrate why the county could not accommodate, through reasonable modification of the facility and the job functions, female correctional officers in order to minimize the clash between the privacy interests of the inmates and the safety of the prison employees on the one hand and the non-discrimination requirement of Title VII on the other. The case was remanded to the trial court for further proceedings. (Patrick County Jail)

1988

U.S. District Court
DRUG TESTING

American Federation of Gov. Emp. Council 33 v. Meese, 688 F.Supp. 547 (N.D.Cal. 1988). Prison employees' unions brought action against the Federal Bureau of Prisons, challenging the proposed program of mandatory drug testing. The district court issued a preliminary injunction. The program would have required all employees of the Federal Bureau of Prisons to have a urine test on two hours notice, even if there was no reasonable suspicion of drug use, wrongdoing, or negligence. According to the court, such a program would violate the Fourth Amendment. Arguments by prison officials that safety or security concerns justified the adoption of a lower standard than "reasonable suspicion" were not supported by the court, which found that Bureau of Prisons had presented no evidence indicating that drug-related safety problems exist or have existed--"The record contains not one instance of any safety problem resulting from employee drug use. Nor had the government shown any reason to anticipate that such problems are imminent." Although the Bureau cited thirteen instances in 1987 in which employees were involved in bringing drugs into institutions, the court ruled there was no evidence that those employees were drug users; therefore, less intrusive procedures could be used to control such activities. The court also prohibited the use of drug screening for employees involved in on-the-job accidents or unsafe activities, without individual reasonable suspicion. (Pleasanton Federal Correctional Institution, California)

U.S. Appeals Court
NEGOTIATION
WORKING
CONDITIONS
CLOTHING

American Fed. of Gov. Emp., Local 2441 v. FLRA, 864 F.2d 178 (D.C. Cir. 1988). An unfair labor practice charge was filed against the Bureau of Prisons for its refusal to negotiate with the union over its proposed changes in uniform for guards at that particular prison. The Federal Labor Relations Authority held for the Bureau, and the union petitioned for review. The appeals court denied the petition, and found that the Bureau was not required to bargain over the proposed imposition of a requirement that guards wear neckties and blazers on the job. In determining whether a federal agency has a duty to bargain with labor organization over the adoption of a particular policy, the Federal Labor Relations Authority determines if the proposed policy bears a direct and integral relationship to the agency's mission and, if so, whether the union's counter proposal would directly interfere with a mission-related purpose of the agency's new practice; if it would, the agency has no duty to bargain.

The Bureau of Prison's proposal to require guards to wear blazers and neckties bore a "direct and integral relationship" to the prison's mission, for the purpose of determining whether the Bureau was required to negotiate with the union over the proposal; the Bureau claimed a connection between the improved image of guards and the increased degree of cooperation from the inmates and the public, and there was evidence to support such an assertion. The counter proposals advanced by the prison guards' union directly

interfered with the purpose behind the Bureau of Prison's proposal that guards all wear neckties and blazers, for the purpose of determining whether the Bureau was required to negotiate with the union over its proposal; the union proposed to eliminate proposed requirements. (Federal Correctional Institute, Morgantown, West Virginia)

State Appeals Court
DISCIPLINE
TERMINATION

Anaya v. New Mexico State Personnel Bd., 762 P.2d 909 (N.M.App. 1988). The New Mexico Personnel Board affirmed the Corrections Department's dismissal of two guards and the suspension of others after two inmates escaped, and the guards petitioned for review. The district court affirmed the Board's decision, and the guards appealed. The appeals court, affirming the lower court decision, found that the hearing officer could reasonably have found that the Department had a reasonable basis to conclude that the escape occurred on a certain date when the guards were negligent in counting inmates, there was substantial evidence to support a disciplinary action against the guards where evidence included interview statements made during the investigation of the escape and reports compiled by the state police and the penitentiary, and the imposition of harsher discipline on some guards than on other guards involved in the same incident was appropriate where some guards had previous unsatisfactory work evaluations. (Penitentiary of New Mexico)

U.S. Appeals Court
PROMOTION
DISCRIMINATION

Berl v. Westchester County, 849 F.2d 712 (2nd Cir. 1988). A county policy of promoting correction officer from a separate list of male and female officers violated Title VII. Two male correction officers who had been on a civil service eligibility list for promotion to sergeant but had not been promoted alleged sex discrimination. They were denied promotion based on interviews of the promotion board which cited their deficient or undeveloped leadership qualities. According to the lower court, under state law, correction officers did not possess a vested right to a sergeant appointment simply because they were among the top three candidates on the eligibility list. However, on appeal, the court ruled that the county violated Section 1983 and Title VII because there was no evidence that the officers were unqualified. (Westchester Correctional Facility, Valhalla, New York)

U.S. Appeals Court
AGE
DISCRIMINATION
TERMINATION

Cooper v. Asplundh Tree Expert Co., 836 F.2d 1544 (10th Cir. 1988). According to a federal appeals court, an employee alleging age discrimination need not show that age was the sole reason he was fired, only that age "made a difference" in the employer's decision. In this non-corrections case, the plaintiff, who was employed as a foreman with Asplundh Tree Expert Company for almost 20 years, was discharged at age forty-nine and replaced by a thirty-three year old. He contended that he was fired even though his work was satisfactory. The company countered that the plaintiff had violated company rules by buying food during working hours, wearing spikes while climbing live trees and failing to have his crew wear hard hats on the job. The court found that the company did not uniformly enforce these rules, however. In fact, the man who replaced the plaintiff testified that he wore spikes on live trees for safety reasons. Further, a remark by a supervisor that he claimed was joke was taken serious by other employees, leading them to believe that "guys forty years old are too old to work here." Even though the company had raised non-discriminatory reasons for firing the plaintiff, the court concluded that age was a "determinative factor" in the company's action and ruled that the plaintiff was entitled to relief. (Asplundh Tree Expert Company)

U.S. Appeals Court
HARASSMENT
DISCRIMINATION

Eastwood v. Dept. of Corrections of State of Okl., 846 F.2d 627 (10th Cir. 1988). A federal appeals court ruled that a Department of Corrections investigator who asked irrelevant questions concerning the sexual history of a female employee who had charged a fellow employee with sexual assault was not entitled to qualified immunity. When the female employee reported the sexual assault incident, the departmental investigator allegedly told her that she would not be harassed or fired if she revealed everything about the assault. She filed a lawsuit claiming that she was threatened with termination if she did not sign a statement promising to forget the incident if the other employee resigned. The lawsuit also claimed that the investigator forced her to reveal facts about her sexual history. Furthermore, the investigator and several other Department of Corrections employees created an offensive work environment by harassing her with additional questions about her sexual history, "publishing offensive and insulting drawings" within the Department of Corrections facility, and repeatedly making insulting remarks, which led up to her resignation when she could no longer tolerate the abuse. The court found that under 42 U.S.C. Section 1983, these allegations were sufficient to state a claim. Since the unlawfulness of such questions were clearly established by prior case law establishing a right of privacy, citing Thorne v. City of El Segundo, 726 F.2d 459 (9th Cir. 1983), cert denied, 469 U.S. 979 (1984), ("unbounded, standardless inquiry" in personal life of applicant for police job violated right to privacy). An individual's interest in avoiding disclosure of personal matters and interest in being independent when making certain kinds of personal decisions are two kinds of privacy interests protected by the penumbra of the Bill of Rights. (Oklahoma Department of Corrections)

U.S. District Court
SEARCHES

Kennedy v. Hardiman, 684 F.Supp. 540 (N.D. Ill. 1988). A county corrections official received a phone call from a man purporting to be an FBI agent informing him that a correctional officer would be transporting heroin into the facility on that date. When the officer arrived, a body cavity search was conducted by three investigators who found no heroin. The correctional officer sued corrections officials alleging violation of his fourth amendment rights. The federal district court held that there was nothing improper in the plaintiff naming several defendants in their official capacities, as this was an entirely appropriate way to allege municipal liability and there was no reason to limit the plaintiff to a single official capacity defendant. The court also denied summary judgment for the defendants, ruling that jury must decide if the search was based on reasonable suspicion. Since the law regarding strip searches was clearly established and an anonymous tip would not provide "reasonable suspicion," prison officials were not be entitled to qualified immunity for the strip search. (Cook County Dept. of Corrections, Illinois)

Supreme Court
ATTORNEY

Mathis v. State, 531 N.Y.S.2d 680 (Sup. 1988). A prison guard who was a defendant in an inmate's federal civil rights and assault and battery action brought a proceeding for judgment annulling the determination of the Attorney General that the guard was not entitled under Public Officers Law to defense paid for by the state. The State Supreme Court, granting the petition in part, found that it was improper for the Attorney General to determine that the prison guard was not entitled to a defense, and the Attorney General was precluded from representing the guard due to a conflict of interest. It was found by the court that it was improper for the Attorney General to deny such a defense based on his determination that the officer was acting outside the scope of his employment. The facts presented were conflicting, with an arbitrator holding that the inmate probably struck the first blow. (Fishkill Correctional Facility, New York)

U.S. Appeals Court
DISCRIMINATION
FREE SPEECH
TERMINATION

Matulin v. Village of Lodi, 862 F.2d 609 (6th Cir. 1988). A female police officer brought an action against the village and village officials of Lodi following her discharge. The U.S. District Court entered a judgment in favor of the officer, and the defendants appealed. The appeals court, affirming in part and reversing in part, found that the statements made in a newspaper article by the officer concerning sex and handicap discrimination in the village police department involved a legitimate matter of public interest and were protected by the first amendment. The evidence was sufficient to establish that the officer's statements were a substantial factor in the decision to terminate the officer's employment. An award of \$75,000 in compensatory damages was not excessive; but under Ohio law, the officer did not have a protected property interest in completing a probationary term in the office. (Village of Lodi Police Department, Ohio)

State Appeals Court
HARASSMENT
PRIVACY
WORKING
CONDITIONS

Mendez v. Superior Court (Peery), 253 Cal.Rptr. 731 (Cal.App. 5 Dist. 1988). An employee of a sheriff's office sued a deputy and the county for intentional and negligent assault and battery and intentional and negligent infliction of emotional distress in connection with a deputy's alleged sexual assault upon an employee. The county filed a motion requesting the discovery of the employee's sexual history with others at the sheriff's department, and the deputy filed a motion requesting discovery of the employee's sexual conduct with persons other than the deputy. The superior court denied the defendants' motions, and the defendants filed petitions for writs of mandate. Following its issuance of an order to show cause, the court of appeals, discharged the order, and denied the petition, finding that the fact that the employee's alleged emotional distress did not justify the defendants' requested discovery of the employee's sexual privacy. The discovery was not justified by the claim that the employee's alleged consensual sexual conduct with other employees might have some bearing on the applicability of the exclusive remedy doctrine of the workers' compensation system. The defendants' claim that the employee's sexual history bears upon her credibility did not justify the discovery. (Merced County Sheriff's Department, California)

State Supreme Court
TERMINATION

Monie v. State Personnel Bd., 424 N.W.2d 874 (Neb. 1988). The director of the Department of Correctional Services terminated a service technician at a correctional center following an incident in which he kicked, shoved and threw a beverage over an inmate. After the state personnel board affirmed the termination, the technician sought review. The district court reversed the termination order and ordered reinstatement of the technician with back pay. Further appeal was taken by the defendants. The supreme court, reversing and remanding with directions, found the decision to terminate the employment of the technician was made in good faith and for good cause and the agency followed proper procedures under the state rules, regulations and relevant statutes. (Omaha Correctional Center, Nebraska)

U.S. Appeals Court
FREE SPEECH
DISCIPLINE
TERMINATION

Page v. DeLaune, 837 F.2d 233 (5th Cir. 1988). An instructor-counselor in a state operated ex-offender program was fired after her supervisor overheard her telling another employee that she wished to talk to a higher authority about problems with the program and DeLaune. This conversation came just days after a staff meeting at which the higher authority announced an "open door" policy and invited observations or complaints about the ex-offender program. The fired instructor sued her supervisor and others contending that she had been fired for exercising her First Amendment right of free speech. The federal appeals court found that this was clearly a personnel matter internal to the program, not a matter of public concern--and therefore fell far short of turning this into a matter of public concern covered by the First Amendment. (Texas A & M University)

U.S. Appeals Court
HIRING/
QUALIFICATIONS
PSYCHOLOGICAL
SCREENING
RETENTION

Parker v. Williams, 855 F.2d 763 (11th Cir. 1988). A former prisoner in a county jail who was kidnapped and raped by a former chief jailer brought a Section 1983 action against the former chief jailer, the county sheriff, the county itself, and individual county commissioners. Claims were also asserted under Alabama tort law. The United States District Court entered judgment on a jury verdict awarding the plaintiff compensatory damages of \$100,000, and punitive damages of \$100,000 against the sheriff and the county. The defendants appealed. The Court of Appeals certified the question to the Supreme Court of Alabama and received a response, 519 So.2d 442. Thereafter, the Court of Appeals initially held that: (1) the sheriff was immune from the state law tort claims; (2) the evidence supported the jury finding that the sheriff acted pursuant to an inadequate employment policy and the policy could fairly be ascribed to the county; (3) the sheriff was not entitled to qualified immunity; and (4) the county could not be held liable for punitive damages. On rehearing, however, the appeals court vacated judgments against the sheriff and the county. 862 F.2d 1471. According to the court, under Alabama law, the county was not vicariously liable for tort claims asserted against the sheriff arising from the chief jailer's kidnapping and rape of a county prisoner, since there was no employer-employee relationship between the county and the sheriff. The sheriff's gross negligence in hiring a chief jailer who kidnapped and raped a county prisoner supported county liability in a section 1983 action and the jury finding of specific gross negligence evidenced a more general finding that the sheriff's negligent act was traceable to a policy or custom of the county. Based on the theory that the sheriff created an official policy or custom of not performing reasonable background checks of potential jailers or on theory that he was grossly negligent in hiring or in training the chief jailer when he knew or should have known that the jailer was a convicted sex offender with various psychiatric problems, there would have been no reasonable grounds, based on established principles of law, for the sheriff to believe that hiring as the chief jailer, a convicted sex offender with a history of mental problems was a permissible action. (Macon County Jail, Alabama)

U.S. District Court
DRUG TESTING
TRAINING

Poole v. Stephens, 688 F.Supp. 149 (D. N.J. 1988). A federal district held that a state corrections officer training academy did not violate the constitutional rights of corrections officer recruits by requiring mandatory random drug testing. The recruits, the court said, were aware of the peculiar circumstances and demands of the occupation for which they were training and thus had reduced legitimate expectations of privacy. The court also found no violation of equal protection because the department of corrections required random drug testing of recruits but only tested corrections officers upon reasonable individualized suspicion. (New Jersey Department of Corrections)

U.S. District Court
DISCRIMINATION
HIRING/
QUALIFICATIONS
BFOQ

Rasul v. District of Columbia, 680 F.Supp. 436 (D.D.C. 1988). A Muslim minister whose application for a job as prison chaplain had been rejected based on religious affiliation brought a Title VII action against the District of Columbia Department of Corrections and one of its officers. Both sides moved for summary judgment. The district court held that: (1) the Department of Corrections' policy of hiring prison chaplains on a denominational basis was on its face a violation of Title VII, and (2) the Department failed to demonstrate that Protestant religious affiliation was "bona fide occupational qualification" for a position as prison chaplain. To establish a prima facie case of religious discrimination under Title VII, the job applicant must demonstrate: that he belongs to a protected class; that he applied and was qualified for the position for which defendant sought applicants; that the application was nevertheless rejected; and that the position remained open and defendants continued to seek applications. The Department of Corrections failed to demonstrate that Protestant religious affiliation was "bona fide occupational qualification" for the position as prison chaplain, so that the Department violated Title VII when it rejected Muslim imam's job application solely on the basis of religious affiliation, where many of the chaplain's duties were purely administrative in nature, and the chaplain was not expected to preside over all of the religious services that he organized. The Department had recently begun to hire chaplains on a nondenominational basis and failed to demonstrate that a new policy had any adverse effect on the inmates' religious life. (Lorton Reformatory, District of Columbia)

U.S. Appeals Court
RACIAL
DISCRIMINATION
SEX
DISCRIMINATION
DISCIPLINE

Sewell v. Jefferson County Fiscal Court, 863 F.2d 461 (6th Cir. 1988), cert. denied, 110 S.Ct. 75. A white female sergeant in a county corrections department brought an action against county corrections department officials alleging racial and sexual discrimination. The U.S. District Court entered judgment for the defendants, and appeal was taken. The appeals court, affirming the decision, found that the trial court's finding that the corrections department officials had articulated a legitimate nondiscriminatory reason for the white female sergeant's demotions were not clearly erroneous. The actions of the white female endangered the safety of the other officers and the inmates, while those of a black male, the employee with whom her disciplinary actions had been compared, had not. The demoted corrections department sergeant was barred from a recovery under the deprivation to the civil rights statute for deprivation of property without due process, where the employee failed to demonstrate that remedies provided to her under state law were inadequate to rectify any errors. (Jefferson County Corrections Department, Kentucky)

U.S. District Court
DISCRIMINATION
EQUAL
PROTECTION
LIBERTY
INTEREST
TERMINATION

Todd v. Navarro, 698 F.Supp. 871 (S.D.Fla. 1988). A discharged deputy sheriff brought action against the sheriff, 13 individual employees of the sheriff's office, and other persons acting in concert with the named defendants, alleging that she was fired solely because she was a lesbian in violation of her right to equal protection of the law. The district court granted the motion to dismiss, finding that homosexuals are not a suspect class accorded strict scrutiny under the equal protection clause. In the absence of authority showing the plaintiff was a member of a protected class or that her dismissal was not rationally related to a legitimate end, the defendants were entitled to judgment as a matter of law with respect to her equal protection claims. The action against the sheriff and commander failed to state a claim. Dismissal did not deprive the plaintiff of any protected liberty or property interest. Interest in reputation alone is not sufficient liberty interest in warrant an action in federal court on the ground of deprivation of liberty interest without due process of law. The fired deputy's lawsuit also claimed that two other employees entered a conspiracy with other employees to spread false statements about her throughout the department and also the fact that she was a lesbian. Her equal protection claim was based on the allegation that she was fired solely because she was a lesbian. The defendant sheriff and other defendant employees retorted that she was fired because of specific instances of misconduct, malingering and excessive absenteeism. (Broward County Jail, Florida)

U.S. Appeals Court
BFOQ
DISCRIMINATION
HIRING/
QUALIFICATIONS

Torres v. Wis. Dept. of Health & Social Services, 838 F.2d 944 (7th Cir. 1988), cert. denied, 109 S.Ct. 1133, 109 S.Ct. 1537. Male correctional officers at a women's maximum security prison brought a sex discrimination suit. The federal appeals court held that: (1) the prison officials did not offer a distinct security justification for the claimed bona fide occupational qualification; (2) the privacy interests of the inmates were protected by existing procedures at the prison and, thus, did not justify the plan; and (3) that theory that having female guards in the living units would promote the rehabilitation of female inmates was not supported by sufficient facts to meet the burden of bona fide occupational qualification exception. A policy that designated specific positions at a women's maximum security prison as available only to women was "continuing violation" for purposes of determining whether male correctional officers filed timely EEOC charges after demotions and continued to exclude all male correctional officers from positions covered by plan. To establish bona fide occupational qualification defense, defendant clearly may not justify a refusal to hire members of one sex merely by pointing to stereotypes about differences between women and men. Wisconsin prison officials had no distinct security justification to require that only women be hired for specific positions at a women's maximum security prison for purposes of determining whether they established bona fide occupational qualification defense. Wisconsin prison officials did not meet their burden of proving existence of serious conflict between privacy interests of the female inmates and employment rights of male correctional officers for purposes of determining whether officials had bona fide occupational qualification defense to charge that male correctional officer were demoted pursuant to a policy that designated specific positions at a women's maximum security prison as available only to women; prison was operated in a manner that was very sensitive to privacy interests of its inmates and afforded them a good deal of privacy from correctional officers of both sexes. (Taycheedah Correctional Institution, Wisconsin)

U.S. Appeals Court
BFOQ
EQUAL
OPPORTUNITY
SEX
DISCRIMINATION

Torres v. Wisc. Dept. of Health & Social Services, 859 F.2d 1523 (7th Cir. 1988), cert. denied, 109 S.Ct. 1133. Male correctional officers at a women's maximum security prison brought a sex discrimination suit. The U.S. District Court found that prison officials failed to establish that sex was a valid bona fide occupational qualification (BFOQ), and appeal was taken. The court of appeals affirmed. After granting a rehearing en banc, the court of appeals, reversing and remanding, found that the prison officials were asked to meet an unrealistic, and therefore unfair, burden when they were required to produce objective evidence, either from empirical studies or otherwise, displaying a validity of their theory that the

rehabilitation of the inmates in the women's maximum security facility would be enhanced by employing only female correctional officials in certain positions. In view of the absence of empirical studies, efforts of the officials should have been evaluated on the basis of totality of the circumstances as contained in the entire record, to determine whether they established a BFOQ defense. (Taycheedah Correctional Institution, Wisconsin)

U.S. District Court
HIRING/
QUALIFICATIONS
PROMOTION
RACIAL
DISCRIMINATION
WORKING
CONDITIONS
EQUAL
OPPORTUNITY
DISCIPLINE

Yarber v. Indiana State Prison, 713 F.Supp. 271 (N.D. Ind. 1988). A prison guard brought a civil rights action. The district court found that three of four claims were within the scope of EEOC charges, and the prison guard could use statistics to support his claims concerning discrimination in employee disciplinary procedures. The guard's claim concerning the racially discriminatory work environment was reasonably related to his EEOC charge that the prison hired black employees to meet the state hiring goals but then attempted to "get rid" of them as quickly and as often as possible. The guard's claim regarding racially motivated harassment and poor treatment was reasonably related to EEOC charges concerning racially motivated disciplinary measures. The guard's allegation of retaliatory transfer in work assignments was reasonably related to EEOC charges of racially motivated disciplinary matters and racially discriminatory work environment. The guard's claim concerning the denial of promotion was not reasonably related to EEOC charges of discriminatory work environment and racially motivated harassment and treatment. (Indiana State Prison)

1989

U.S. District Court
DRUG TESTING

American Federation of Govt. Em. Council 33 v. Thornburgh, 720 F.Supp. 154 (N.D. Calif. 1989). Action was brought challenging the plan for mandatory, random testing of all employees of the Federal Bureau of Prisons. The district court issued a preliminary injunction. On petition for reconsideration, the district court found that the plan for mandatory, random testing of all Bureau employees regardless of job function could not be justified. According to the court, the mandatory, random testing of all employees of the Federal Bureau of Prisons was not justified by objective evidence nor targeted at the employees' performance of specific job functions and thus was invalid. The court noted that the plan in question was not supported by objective evidence, as in Skinner v. Railway Labor Executives Ass'n, 109 S.Ct. 1402 (1989) (demonstrated causal link between drug use and past train accidents) nor targeted at employees who perform specific job functions justifying the high level of governmental intrusion, as in National Treasury Employees Union v. Von Raab, 109 S.Ct. 1384 (1989) (employees involved in interdiction of drugs or carrying firearms). (Pleasanton Federal Correctional Institution, California)

U.S. Appeals Court
TERMINATION
SEARCH

Brennan v. Hendrigan, 888 F.2d 189 (1st Cir. 1989). A discharged correctional officer brought a civil rights action against correctional officials and state troopers involved in an investigation that led to his discharge. The U.S. District Court granted the defendants' motion for summary judgment, and the officer appealed. The court of appeals affirmed the decision, finding that the officials and state troopers were entitled to qualified immunity with respect to the officer's fourth amendment claims, and the officer did not have a viable liberty interest claim. According to the court, officials acted reasonably in detaining the officer, searching him, and seizing the fruits of that search during the course of the investigation into allegations that the officer had engaged in illegal transactions with inmates. Troopers did not become involved in the investigation until the officer had been detained and searched and the fruits of that search seized, and thereafter merely asked the officer to sign a *Miranda* form, questioned him about transactions, and sent him home on request that he return to the state police barracks for further questioning on the following day. The public employer's failure to afford a name-clearing hearing for the discharged employee is cognizable under Section 1983 as a deprivation of liberty interest only if the discharge is grounded on charges which stigmatize the employee and only if the employer creates and disseminates a false and defamatory impression about the employee in connection with his discharge; moreover, the stigmatization must occur in the course of the discharge. (Middlesex County House of Correction, Billerica, Massachusetts)

U.S. Appeals Court
WORKING
CONDITIONS

de Jesus Benavides v. Santos, 883 F.2d 385 (5th Cir. 1989). Jail detention officers who were injured during the course of an attempted escape by jail inmates filed a federal civil rights action against the jail officials. The officers were unarmed and on duty when they were attacked. They claimed that the sheriff was aware of a persistent pattern of contraband smuggling in the jail, that the Drug Enforcement Administration (DEA) had specifically warned the sheriff that a jailbreak was "imminent," and that the sheriff acted "callously and in utter disregard" for institutional security in failing to respond to these problems. They also complained that the commissioners and the judge had failed to provide sufficient funds to the jail to ensure its safe operation. The

U.S. District Court dismissed the suit, and the plaintiffs appealed. The appeals court found that the local jail detention officers who were injured by jail inmates that were attempting to escape did not have a Section 1983 action against the government officials in charge of the jail for reckless or grossly negligent failure to prevent, adequately guard against, or protect those injured from an attempted escape and accompanying inmate violence, stating, "The issue presented is whether those who, in the course of their duties as local jail detention officers, are injured by jail inmates attempting to escape, have a second 1983 claim against the government officials in charge of the jail where the injury would not have occurred but for those officials' callous indifference or grossly negligent failure to prevent, or to adequately guard against, or to protect those injured from, the attempted escape and accompanying inmate violence." The claim fell squarely within traditional state tort law and did not give a rise to a constitutional claim. (Webb County Jail, Texas)

State Appeals Court
TERMINATION

Dept. of Corrections v. Local No. 246, 554 A.2d 319 (D.C. App. 1989). The Department of Corrections fired a correctional officer for off-duty misconduct. The officer filed a timely grievance pursuant to the collective bargaining agreement and a hearing was held before an arbitrator. The arbitrator ruled in favor of the officer. The Department sought review by the Public Employee Relations Board, but the PERB declined to review the arbitrator's decision. After the Department refused to reinstate the officer, the union brought action to enforce the arbitration award. The superior court granted the union's motion for summary judgment, and the Department appealed. The appeals court, affirming the decision, found that the officer's off-duty conduct of agreeing to split the cost of a bag of heroin with a former inmate and assaulting the former inmate when the deal fell through and a subsequent misdemeanor conviction based on the assault did not entitle the Department to dismiss the officer. The officer could only be dismissed for "cause," and the officer's conduct was not one of the twenty-one types of "cause" listed in the act. The Department of Corrections' failure to give a correctional officer written notice of an insubordination charge before the arbitration hearing on the officer's dismissal violated the officer's statutory rights and at least arguably affected the officer's constitutional right to due process of law. (District of Columbia Jail)

U.S. Appeals Court
FREE SPEECH
TERMINATION

Frazier v. King, 873 F.2d 820 (5th Cir. 1989), cert. denied, 110 S.Ct. 502. After being stymied in her attempts to correct nursing practice violations first by her supervisor and later by the warden, the plaintiff contacted the Louisiana State Board of Nursing. She reported that inmates were being denied medical care and that nurses were changing doctors' orders, completing prescription forms and making medical diagnosis. In making her charges to the board, she forwarded copies of inmate records to them.

After learning of her actions, the warden called her into his office and accused her of making malicious, derogatory and slanderous statements. Shortly thereafter, she was fired on the grounds that she made malicious statements and that she had violated department rules when she had copied confidential inmate records without the inmates' consent. The nurse then brought a suit against numerous state officials under the federal civil rights statute for violations of her rights under the first and fourteenth amendments and under state law for claims of retaliatory discharge and infliction of emotional, physical, and mental injuries. The U.S. District Court entered judgment from which the defendants appealed. The appeals court found that the discharged nurse was not barred from bringing a federal civil rights suit seeking lost wages, compensatory and punitive damages and attorney's fees following the Louisiana Civil Service Commission determination that she was entitled to reinstatement with back pay, under federal law or Louisiana principles of res judicata. The nurse's speech involved a matter of public concern, disruption from the nurse's "whistle-blowing" was minimal interest when weighed against the exposure of unethical medical practices affecting hundreds of inmates, and the warden's warning that the nurse would lose her job if she filed a complaint with the State Board of Nursing was sufficient evidence that her speech motivated the decision to fire her. The court also found that the state officials were not shielded by an eleventh amendment grant of sovereign immunity or by qualified immunity. (Wade Correctional Center, Louisiana)

U.S. Appeals Court
DISCRIMINATION
SCHEDULE
DISCIPLINE

Jenkins v. State of La., Thru Dept. of Corrections, 874 F.2d 992 (5th Cir. 1989), cert. denied, 110 S.Ct. 871. A former correctional center employee brought an action against a former employer under Title VII for religious and racial discrimination. The U.S. District Court entered judgment for the former employer, and the former employee appealed. The appeals court affirmed the prior decision finding that the determination that the former employee was not disciplined for failing to comply with an employment requirement that conflicted with religious beliefs was not clearly erroneous, in the Title VII action wherein the employee claimed that he was disciplined for failing to work on Saturdays and wherein the employer claimed that the employee was disciplined for falsifying medical excuse slips. The court also found that the former employee failed to prove claims of racial discrimination and discriminatory discharge was not clearly erroneous. Under Title VII, an employer engages in unfair employment practice by discriminating against an employee because of the employee's religious practices or

beliefs unless the employer cannot "reasonably accommodate" the employee's needs without "undue hardship" on the employer's business. An employer may not use the employee's conduct in other respects as pretext for discrimination prohibited by Title VII. "Constructive discharge" occurs, for Title VII purposes, when the employer deliberately makes the employee's working conditions so intolerable that the employee is forced into involuntary resignation. Although the black employee presented testimony that white employees were reprimanded rather than discharged for breaking various rules, including transferring a prisoner to the wrong dormitory, striking an inmate, and failing to deliver a prisoner to a designated area, the prison officials were not obliged to consider these infractions as serious as falsifying sickness reports, and the black employee provided no evidence that others had been guilty of falsifying medical excuses. (Hunt Correctional Center, St. Gabriel, Louisiana)

U.S. District Court
STAFFING LEVELS
WORKING
CONDITIONS

Smith v. Dodrill, 718 F.Supp. 1293 (N.D. W.Va. 1989). Prison guards injured during a prison takeover riot brought a civil rights action against the Commissioner of West Virginia Department of Corrections. The Commissioner moved for dismissal of action. The district court granted the motion and found that the guards, who alleged that the Commissioner failed to provide adequate facilities and personnel to properly provide for their security, safety and care, failed to establish deprivation of a federal right, and therefore failed to state a cause of action under the federal civil rights statute against the Commissioner for injuries sustained during the riot. While the due process clause forbids the state itself from depriving individuals of life, liberty, and property without due process of law, its language cannot fairly be read to impose affirmative obligation on the state to ensure that those interests do not come to harm through other means. The guards were not in custody nor compelled to be guards, but instead enlisted for service. A West Virginia statute imposing a duty upon employers to maintain places of employment in reasonably safe condition did not create a contractual property interest for the employee which would allow the employee to bring a federal civil rights action against the employer for violation of that duty. (West Virginia State Penitentiary, Moundsville)

State Appeals Court
DISCRIMINATION
HARASSMENT
WORKING
CONDITIONS

State v. Human Rights Com'n., 534 N.E.2d 161 (Ill.App. 4 Dist. 1989). The Illinois Human Rights Commission determined that a state employee had been subjected to sexual harassment by her immediate supervisor in the state corrections department and that she was discharged in retaliation for opposing his sexual harassment, and the employer appealed. The appellate court, affirming the decision, found that evidence supported a determination that the supervisor's use of gender specific sexual terms in reference to the employee and others constituted conduct of a sexual nature which was harassing. The evidence sustained a finding that the employee was discharged in retaliation for opposing sexual harassment. An award of lost benefits in addition to back pay was not an abuse of discretion. The supervisor's use of gender specific sexual terms in reference to the state employee, her daughter and other women constituted conduct of a sexual nature interfering with the employee's work performance which created an intimidating, hostile or offensive working environment in violation of sexual harassment provisions of the Human Rights Act, given the context in which comments were made, the nature and frequency of comments and the supervisor's failure to desist despite repeated requests from the employee to do so. The employee was ordered reinstated and awarded \$81,465.27 in back pay, \$23,131.50 for lost benefits, \$2,160 for medical expenses and \$18,068.75 for attorney fees. (Illinois Department of Corrections)

U.S. Appeals Court
HIRING/
QUALIFICATIONS
TERMINATION

Terry v. Cook, 866 F.2d 373 (11th Cir. 1989). County sheriff's department employees who were discharged from their positions upon the election of a new sheriff brought a civil rights action against the sheriff and the county. The U.S. District Court dismissed the claim, and appeal was taken. The appeals court, affirming in part, reversing in part and remanding, found that the sheriff had absolute authority to decline to reinstate those deputy sheriffs who did not support him in the election campaign, and the assertion by the clerks, investigators, dispatchers, jailers and process servers in the sheriff's office that the new sheriff replaced all the employees who had opposed his election stated a claim for the violation of the sheriff's department employees' civil rights. Under Alabama law, loyalty to an individual sheriff and goals and policies he seeks to implement through his office is an appropriate requirement for the effective performance of a deputy sheriff; thus, the sheriff had absolute authority without violating the first amendment to decline to reinstate the deputy sheriffs who did not support him in the election campaign. The court noted that public employment may not be conditioned upon requirements that violated constitutionally protected interests. But they held that a public employee's protection is not absolute. The court must balance "the interest of the employee, as a citizen, in commenting upon matters of public concern and the interest of the state, as the employer, in promoting the efficiency of the public services it performs through its employees." Because of the variety of situations in which critical statements may be the basis for discharge of a public employee, there is no general standard for determining in whose favor the balance is struck, said the court. (Lawrence Co., Ala.)

U.S. Appeals Court
BFOQ
HIRING
QUALIFICATIONS
SEX
DISCRIMINATION

U.S. v. Gregory, 871 F.2d 1239 (4th Cir. 1989), cert. denied, 110 S.Ct. 720. The government brought an action against a sheriff alleging discriminatory employment practices against women. The U.S. District Court dismissed. Appeal and cross appeal were taken. The appeals court, affirmed in part, reversed in part, and remanded. On remand, the district court determined that the government failed to carry its burden of proof, and the government appealed. The court of appeals, reversing and remanding, found that the district court was clearly erroneous in refusing to consider the sheriff's admissions and the government's statistical evidence of discriminatory hiring practices regarding his policy of not hiring women for deputy positions in the Title VII action. After a full trial without a jury, the court dismissed the complaint, ruling that the deputy sheriff position in Patrick County are not covered under Title VII because they fall within the "personal staff" exemption. United States v. Gregory, 582 F.Supp. 1319 (W.D.Va. 1984). On remand, the court found that the positions of road deputy, investigator, and shift supervisor fell within the "personal staff" exemption, as originally concluded, and also found that with respect to the fourth deputy position, that of a corrections officer, maleness was a BFOQ. On appeal, the Fourth Circuit once again reversed, finding that the "personal exemption" did not apply and that the defendant had failed to prove that a female corrections officer could not be accommodated by reasonably rearranging job responsibilities within the jail. (Patrick County Jail, Virginia)

U.S. Appeals Court
FREE SPEECH

Zook v. Brown, 865 F.2d 887 (7th Cir. 1989). A deputy filed a suit alleging that his constitutional rights had been violated when he was disciplined for endorsing a particular ambulance service during a public debate over ambulance services in the county. The district court rendered a judgment for the defendants, and the deputy appealed. The appeals court, affirmed in part and remanded in part. On remand, the district court determined that one county sheriff's department standard was unconstitutionally applied, and the deputy and county appealed. The appeals court, affirming the decision, found that the standard regarding advertisements by officers was constitutional on its face and as applied to the deputy; the standard regarding public speaking by officers on behalf of the department was unconstitutional as applied to the deputy; the county was liable in damages for the unconstitutional application of the standard; and the deputy was entitled to attorney fees. A county sheriff's department standard prohibiting officers from engaging in testimonials or advertisements without prior approval of the sheriff was not unconstitutional on its face; the officers' rights to speak on public issues was not commensurate with the speech rights enjoyed by the general public, the sheriff's department had a valid concern in maintaining impartiality, the standard did not totally preclude the officers from speaking on matters of public concern, and the standard was couched in terms sufficiently unambiguous to render discriminatory enforcement unlikely. (Champaign County Sheriff's Department, Illinois)

1990

State Supreme Court
TERMINATION

Allman v. Koehler, 554 N.Y.S.2d 842 (A.D. 1990). A city correction officer sought a review of his dismissal by the corrections commissioner. The State Supreme Court transferred the Article 78 proceeding. The Supreme Court, Appellate Division, affirming as modified, found that even though evidence supported a finding that the officer used excessive force against an inmate in going to the aid of a fellow officer who was struggling with the inmate, the dismissal was disproportionate to the offense and "shocking" to one's conscience." (New York Department of Corrections)

U.S. Appeals Court
TERMINATION
DUE PROCESS

Brewer v. Parkman, 918 F.2d 1336 (8th Cir. 1990). A terminated deputy sheriff brought a civil rights action alleging that he was terminated in violation of his due process and First Amendment rights. The U.S. District Court found that the deputy was terminated without a hearing in violation of his due process rights, ordered that a hearing be conducted and awarded the deputy back pay from the date of his termination. Appeal was taken. The court of appeals, affirming the decision, found that the deputy had a property interest in employment protected by the due process clause. It was also found that the deputy did not waive his right to a pretermination hearing as a letter was written by his attorney inquiring about a date for a hearing. The district court could award back pay as the award of back pay and/or granting a hearing to a deputy sheriff who was terminated in violation of due process, was equitable in nature; the court did not attempt to compensate the deputy for violation of his due process rights, but rather attempted to restore the deputy to the position in which he would have been absent a violation of his rights. (St. Francis County, Arkansas)

U.S. District Court
HIRING/
QUALIFICATIONS
RACIAL
DISCRIMINATION

Cadwell v. NYC Dept. of Corr., 750 F.Supp. 140 (S.D.N.Y. 1990). A black male who was denied a position as a correction officer brought a Title VII action. The district court found that the black male had no Title VII claim. The majority of the people who received the position were minorities and the male produced no evidence that would demonstrate that he was treated less favorably than other candidates in circumstances from which a racially discriminatory motive could reasonably be inferred. (New York City Department of Correction)

U.S. District Court
OFFICER ON
PRISONER
ASSAULT
USE OF FORCE
DETENTION

Cawthon v. City of Greenville, 745 F.Supp. 377 (N.D. Miss. 1990). Plaintiffs brought a suit against a city under Section 1983, alleging their constitutional rights were violated pursuant to municipal policy when they were assaulted by a desk sergeant after they were brought to the station to be booked on various misdemeanor charges. On the defendant's motion for summary judgment, the U.S. District Court found that the city could not be held liable under Section 1983 for the desk sergeant's assault on the arrestees, based on the assertion that the city knew of the sergeant's alleged propensity for violence, yet failed to take sufficient steps to protect the public, absent evidence of deliberate indifference on the part of the city. Through the police chief, the city consistently implemented reasonable safeguards to respond to each new bit of information it received about the sergeant, and although the chief underestimated the sergeant's irascibility, his error did not rise to a level of deliberate indifference. The police chief's failure to deliver a more adequate reprimand to the desk sergeant on a prior occasion could not be construed as a conscious policy decision, custom or practice which could be the basis of municipal liability. It was also found that the failure of witnessing officers to intervene to prevent the desk sergeant's use of excessive force against arrestees, and the police chief's later failure to issue reprimands for that passivity did not establish a police department practice of abusing or tolerating excessive force against the general public, sufficient to constitute a municipal custom, for purposes of Section 1983 liability. Though the officers did not physically confront the desk sergeant, who was a superior officer, one officer shouted his disapproval of the desk sergeant's actions and several others immediately went to the radio room to summon the lieutenant. (Greenville Jail, Mississippi)

U.S. District Court
EQUAL PROTECTION
SEX
DISCRIMINATION

Csizmadia v. Fauver, 746 F.Supp. 483 (D. N.J. 1990). Male prisoners challenged a policy of allowing female guards to patrol housing units where they might see naked prisoners, and the guards challenged the prison policy of designating certain positions as "male only" or "female only." Upon consolidation of the actions, the federal district court found that the inmates had no clearly established privacy or free exercise right in not being viewed naked or in states of undress by opposite-sex corrections officers at the time they filed the Section 1983 action against corrections officers and officials, thus officials were entitled to qualified immunity against the inmates' claims for damages. It was also found that the corrections officers did not have a clearly established right to serve in all staff positions involving opposite-sex inmates at the time they filed the suit complaining of the corrections department's gender-based restrictions, and thus the department officials were entitled to qualified immunity against the officers' claims for damages. (New Jersey Department of Corrections)

State Supreme Court
DRUG TESTING

Department of Corrections v. Colbert, 391 S.E.2d 759 (Ga. 1990). A state prison fire chief whose employment was terminated when he tested positive for marijuana during a random drug test filed a petition for administrative review. Following administrative affirmance of the decision to terminate, the superior court entered a judgment determining that the drug testing policy was unconstitutionally overbroad in that it applied to every employee, and the Department of Corrections appealed. The State Supreme Court found that the state's interest in preventing illegal drug use by state prison employees outweighs the privacy rights of those employees, and thus a random drug testing policy applicable to all prison employees was not unconstitutionally overbroad. The very nature of a prison, the court said, coupled with "the pervasiveness of drugs in the criminal community" and a past history of staff members bringing in illegal drugs "demands strict regulation." (Georgia State Prison)

U.S. Appeals Court
DISCRIMINATION
PROMOTION
TERMINATION

Gilty v. Village of Oak Park, 919 F.2d 1247 (7th Cir. 1990). A black police officer who was not promoted to sergeant, and who was later discharged, brought a civil rights action against the village. The U.S. District Court granted the village's motion for summary judgment, and the officer appealed. The court of appeals, affirming the decision, found that in view of the fact that the officer misrepresented his academic credentials in seeking the promotion, the officer did not have a viable claim for disparate treatment or disparate impact in connection with the promotion decision or for the retaliatory discharge in connection with the discharge decision. (Village of Oak Park Police Department, Illinois)

U.S. Appeals Court
DISCIPLINE
HARASSMENT

Hirschfeld v. New Mexico Corrections Dept., 916 F.2d 572 (10th Cir. 1990). A correctional department employee brought an action against the department alleging sexual harassment and constructive discharge. The U.S. District Court entered judgment for the defendants, and appeal was taken. The court of appeals found that the department was not liable for an officer's sexual harassment of the employee. The officer was not acting within the scope of his employment in his actions toward the typist, the department took remedial action upon learning of the officer's misconduct, and there was no evidence that the officer had any supervisory authority over the typist's position or that he invoked authority over subordinate guards in order to facilitate his harassment of the typist. In addition, it was found that the corrections department employee was not constructively discharged where a reasonable person would not have found the employee's situation so

intolerable as to warrant immediate resignation. Although expert testimony linking the employee's depressed state to the harassment was uncontroverted, the court's determination that such evidence was not credible was not clearly erroneous. (Central New Mexico Correctional Facility)

U.S. Appeals Court
DEMOTION
LIBERTY INTEREST
PROBATION
SUSPENSION

Hopkins v. Stice, 916 F.2d 1029 (5th Cir. 1990). A demoted Texas Department of Corrections employee brought an action against the department and a supervisor, alleging that his suspension, demotion, and probation deprived him of a property interest in his position and that the release of related information to the news media deprived him of a liberty interest in his reputation. The U.S. District Court dismissed the claims against the department and supervisor in his official capacity, entered judgment on jury verdict for the employee, and set aside the nominal damages and future lost earnings awards. Cross appeals were taken. The court of appeals found that the employee failed to overcome the supervisor's qualified immunity defense on the property interest claim. Public officials are immune from liability unless their conduct violated clearly established constitutional or statutory norm, which question is not necessarily answered by certainty of legal rule. The official enjoys qualified immunity if a reasonable official would be left uncertain of the application of the standard to the facts confronting him. It was also found that the employee failed to show a causal connection between the supervisor's conduct and injury to the employee's liberty interest. The employee produced no evidence that the supervisor published or caused the publication of the information leading to the investigation of the employee, precluding recovery on the employee's Section 1983 claim that release of the information deprived him of a liberty interest in his reputation; the supervisor had no authority over the person who improperly released the employee's name and recommended disciplinary action to the news media, and there was no evidence that the supervisor had any role in denying the employee a name-clearing hearing. (Texas Department of Corrections)

U.S. Appeals Court
DRUG TESTING

Molinelli v. Tucker, 901 F.2d 13 (2nd Cir. 1990). A prison guard who was required to undergo urinalysis testing brought a civil rights action against prison officials. The U.S. District Court denied the officials' motion to dismiss on grounds of qualified immunity, and the officials appealed. The appeals court, reversing and remanding, found that law was not "clearly established" at the time of the 1986 urinalysis that the urine testing was a search under the fourth amendment, entitling the prison officials to qualified immunity. (Sing Sing Correctional Facility, New York)

U.S. District Court
TERMINATION
SEX
DISCRIMINATION
WORKING
CONDITIONS

Porras v. Montefiore Medical Center, 742 F.Supp. 120 (S.D.N.Y. 1990). A former unit chief for a mental health services hospital provided at a state prison filed an action against her former employer and supervisor. On the defendant's motion for summary judgment, the U.S. District Court found that the plaintiff failed to establish her disparate treatment and hostile work environment sex discrimination claims. There was no evidence indicating how her treatment differed from similarly situated males or that any managerial levels employees who had work records comparable to those of the plaintiff remained employed by the prison without being yelled at by her supervisor, and the plaintiff was replaced by a woman. (Montefiore-Rikers Island, New York)

U.S. District Court
SEARCHES

Scoby v. Neal, 734 F.Supp. 837 (C.D.Ill. 1990). Employees at the department of corrections brought an action seeking declaratory judgment and injunctive relief from a prison rule allowing the strip search of employees. The district court, granting the motion for summary judgment, found that the strip search rule contained no probable cause or reasonable suspicion requirement and, thus, violated the fourth amendment. An administrative directive which authorized body searches upon probable cause did not contain similar limiting language for strip searches. The state's alteration of an unconstitutional strip search policy for prison employees did not correct the defect of the lack of probable cause requirement, and, thus, the eleventh amendment did not prohibit declaratory relief. (Danville Correctional Center, Illinois)

State Appeals Court
DRUG TESTING
PRIVACY

Seelig v. Koehler, 554 N.Y.S.2d 201 (A.D. 1 Dept. 1990). An Article 78 proceeding was brought seeking a judgment enjoining implementation of a corrections department directive authorizing additional mandatory random drug tests for probationary corrections officers. The petition was dismissed by the state supreme court, and appeal was taken. The supreme court, appellate division, affirming the decision, found that two additional random, unannounced, drug tests of all probationary correction officers were supported by substantial governmental interest and did not constitute unreasonable searches and seizures or a violation of the right of privacy, though samples were obtained under direct observation, in that the membership in a paramilitary force such as the Corrections Department diminishes the individual's privacy expectations and since, even with advance notice, over two percent of the probationers had tested positive for drug use in recent years. The court found no additional privacy interest implicated by the direct observation of officers, since they were already required to submit to other drug tests requiring a urine sample under direct supervision. (New York Corrections Department)

U.S. District Court
RACIAL
DISCRIMINATION
SEX DISCRIMINATION

Sims v. Montgomery County Com'n., 766 F.Supp. 1052 (M.D. Ala. 1990). Two groups of officers in a county sheriff's department filed class action lawsuits alleging that the department illegally discriminated against them on the basis of their sex and race. The district court found that the sheriff's department policy permitting only female correctional officers to be assigned to the county jail wing where female inmates were housed violated Title VII and a consent decree. The policy severely restricted the employment opportunities for female officers by restricting their ability to gain experience in other aspects of jail management and by restricting their ability to work more desirable shifts, and was not justified by inmate privacy concerns, which could have been effectively resolved through nondiscriminatory measures like those used for male inmates, particularly in light of evidence indicating that the true motive behind the policy was a concern that male officers could not control themselves with female inmates. In addition, the policies and conduct of the county sheriff's department employees, including conduct of the sheriff and jail administrator, supported a finding that sexual harassment permeated all ranks of the department and was so pervasive and severe as to render working conditions in the department psychologically intolerable for female officers. It was also found that the African American employees established class claims that racial harassment in the sheriff's department had created a hostile working environment. The African American employees also established class claims that the county sheriff's department officials engaged in a pattern and practice of intentional discrimination on the basis of race. Evidence firmly established a pattern of practice of discrimination against black officers in the areas of discipline, promotions, transfers and job assignments, and there was evidence reflecting that racial bias was widespread and deep rooted and that it routinely affected the decisions of the many administrators and supervisors, including the sheriff and high level commanders in the enforcement division. The sheriff's department failed to establish an affirmative defense to liability for racial harassment claims due to the victims' failure to take advantage of available avenues for relief. Evidence reflected that the sheriff's department did not view provisions of the county employee handbook and personnel regulations prohibiting racial harassment as applying to the department, the department clearly did not have procedures calculated to encourage victims of harassment to come forward, most white officers in the department did not know what conduct constituted racial harassment in violation of law or perceive that conduct as a serious infraction, and the county administrator and personnel board did not have authority to resolve discrimination complaints by the sheriff's department employees. (Montgomery County Sheriff's Department, Alabama)

1991

U.S. District Court
HARASSMENT

Corrente v. State of R.I., Dept. of Corrections, 759 F.Supp. 73 (D.R.I. 1991). Correctional officers brought a civil rights action against the Governor of Rhode Island, the Director of the Department of Corrections, union officials and union members alleging that they were harassed and subjected to threats after reporting an assault on an inmate by fellow correctional officers and identifying the officers responsible for the assault. The defendants moved to dismiss. The U.S. District Court found that the correctional officers failed to state a Section 1983 cause of action against the Governor based on the alleged harassment as the correctional officers' assertion that the governor knew of and acquiesced in the harassment was purely conclusory and failed to state exactly what was reported to the governor and what he actually knew of the harassment. It was also found that the correctional officers failed to state a cause of action for civil rights conspiracy against union officials and members as the complaint did not contain any allegations that the defendants were motivated by the intent to deprive the victims of equal protection of the law or that the defendants conspired to injure the plaintiffs on account of their attendance or testimony in the court. The correctional officers did, however, state a Section 1983 cause of action against the Director of the Rhode Island Department of Corrections by alleging that the Director not only knew of the harassment of the correctional officers for their reporting the assault, but failed to act to cure the incidents of harassment when he had an obligation to do so. (Rhode Island Adult Correctional Institution)

U.S. District Court
DISCRIMINATION
TRANSFERS
RACIAL
DISCRIMINATION

Fiorenzo v. Nolan, 755 F.Supp. 801 (N.D. Ill. 1991). White officers who were members of the sheriff's police department filed suit, claiming that their constitutional rights were violated by their lateral transfers. The sheriff and chief moved for summary judgment. The district court found that no evidence showed that the county sheriff had delegated to the chief of the sheriff's police department final, policy-making authority that would have permitted holding the county liable for alleged constitutional violations that occurred when the chief laterally transferred four white police officers who were replaced by black officers. There was also no evidence that the county sheriff's police department had a de facto policy of racial or political discrimination that would have permitted holding the chief of the department liable in his official capacity for the alleged constitutional violations as a single transfer decision involving only four officers could not amount to custom or usage. (Cook County Sheriff's Police Department, Illinois)

U.S. Appeals Court
DRUG TESTING

Ford v. Dowd, 931 F.2d 1286 (8th Cir. 1991). A police officer brought a civil rights action against the police chief and the city, alleging the urinalysis to which he was required to submit was unreasonable. The U.S. District Court granted summary judgment for the defendants, and the officer appealed. The court of appeals found that the police chief could not require the officer to submit to drug testing based on an unsubstantiated rumor that the officer associated with drug dealers where there was no specific allegation that the officer used drugs. In the absence of uniform or systematic random selection of employees subject to drug testing, the government may enforce drug testing of public employees where the employees are chosen only on the basis of a reasonable suspicion. (Pagedale Police Department, Missouri)

U.S. District Court
DEMOTION
RACIAL
DISCRIMINATION
TERMINATION

Hicks v. St. Mary's Honor Center, 756 F.Supp. 1244 (E.D. Mo. 1991), reversed, 970 F.2d 470, affirmed, 113 S.Ct. 954. A former prison guard shift supervisor sued the prison and former superintendent, alleging Title VII and Section 1983 violations. The district court found that Title VII was not violated through the demotion and subsequent termination of the supervisor as prison officials set forth legitimate, nondiscriminatory reasons including the fact that unsupervised employees had abandoned their posts under his supervision, and there was a record of numerous violations of prison regulations within a short period of time. The appeals court reversed the lower court, finding that the black employee met his burden of showing that the reasons given for his demotion and discharge were mere pretexts for discrimination. (St. Mary's Honor Center, Missouri Department of Corrections and Human Resources)

U.S. District Court
SEIZURE
WITHHOLDING
CORRESPONDENCE

Knight v. Lombardi, 952 F.2d 177 (8th Cir. 1991). A state inmate brought a suit against corrections officials for violation of his First and Fourteenth Amendment rights in connection with seizure of certain mail addressed to him. The U.S. District Court dismissed the suit, and the inmate appealed. The court of appeals, affirming the lower court decision, found that investigative and security interests justified interception of the inmate's mail from a particular addressor as part of an investigation into the possibility that the inmate was having an affair with a female prison guard, and the interception did not violate the inmate's First Amendment rights. The guard would be violating prison rules by having an affair with and corresponding with the inmate, and the prison authorities were concerned that the guard might use her knowledge of prison security to help the inmate escape. It was also found that the inmate did not state a viable procedural due process claim in connection with an allegation regarding the lack of notice of seizure of certain mail addressed to him, even though he alleged that notice was required by internal prison regulations. Although the failure to promptly notify the inmate of the seizure was arguably in violation of procedural due process, there was no allegation or evidence of injury flowing from that violation, and undisputed facts showed that the inmate failed to avail himself of available prison procedures to review the propriety of withholding the mail. (Missouri State Penitentiary)

U.S. District Court
SEARCHES

Profitt v. District of Columbia, 790 F.Supp. 304 (D. D.C. 1991). A jail guard brought a Section 1983 action against the District of Columbia, claiming damages arising out of a strip search and visual bodily cavity search performed by prison officials to determine whether she was smuggling drugs into the jail. The U.S. District Court found that the search was reasonable; an anonymous telephone call had provided officials with the guard's name, place of employment, shift she would work that night and a specific quantity of cocaine she would be transporting. In any event the officials performing the search had qualified immunity as it was not clearly established at the time of the searches that reasonable suspicion was necessary. The guard did not state a cause of action for common-law claims of intentional infliction of emotional distress, assault and battery, or false imprisonment. The legal authority which the jail officials had to conduct the search was a valid defense, and the searches were conducted reasonably and in accordance with applicable regulations and could not be characterized as wanton, outrageous in the extreme, or calculated to cause serious mental distress. (Dist. of Columbia Dept. of Corr.)

U.S. Appeals Court
DUE PROCESS
TERMINATION
SEX
DISCRIMINATION

Reed v. Shepard, 939 F.2d 484 (7th Cir. 1991). A discharged female civilian jailer brought an action against the sheriff and sheriff's department alleging a violation of Section 1983 and Title VII. The U.S. District Court directed the verdict for the defendants, and the discharged jailer appealed. The court of appeals found that the jailer's termination from the sheriff's department without notice and a hearing did not violate her right to due process under the Fourteenth Amendment. The jailer was an at-will employee and neither the fact that she was issued and wore a uniform of a sheriff's deputy or received the county sheriff's rules and regulations manual made her a deputy entitled to notice and a hearing before termination. The court also found that the discharge of the jailer was not improperly based on sex; the testimony of other civilian jailers showed that "disparate treatment" of which the female complained was based upon a person's position with the sheriff's department (civilian jailer versus deputy sheriff) as opposed to sex. (Vanderburgh County Sheriff's Department)

U.S. Appeals Court
TERMINATION

Upton v. Thompson, 930 F.2d 1209 (7th Cir. 1991), cert. denied, 112 S.Ct. 1262. In separate cases, former deputy sheriffs sued sheriffs, claiming that their discharges were impermissibly motivated by their political party affiliations, thus infringing on their First Amendment rights. Two U.S. District Courts denied summary judgments to the sheriffs on grounds of qualified immunity, and the sheriffs appealed. After consolidation, the court of appeals found that the sheriffs were entitled to qualified immunity, since it was not clearly established at the time of the firings that the deputies were protected from patronage firings under prevailing doctrines. (Kankakee Co. and Carroll Co., Illinois)

U.S. District Court
HIRING/
QUALIFICATIONS
RACIAL
DISCRIMINATION

Washington v. Lake County, Ill., 762 F.Supp. 199 (N.D. Ill. 1991). A former sheriff's department jailer brought an action against the county, the department, and his superior in his individual capacity alleging a racially discriminatory discharge. On the defendant's motion for summary judgment, the U.S. District Court found that the jailer was not entitled to relief under Title VII on his claim, where the employer, following discharge, discovered that the jailer had misrepresented his criminal record on his employment application. The jailer's subjective intent in filling out his application form did not detract from an undisputed fact that an answer he gave to a conviction question was objectively false, and it strained credulity to believe that knowledge of his prior convictions would not have affected the hiring decision. (Lake County Sheriff's Department, Illinois)

U.S. Appeals Court
DISCRIMINATION
PROMOTION

Wilson v. Bailey, 934 F.2d 301 (11th Cir. 1991). White male deputy sheriffs who were denied promotions brought a reverse discrimination action. The U.S. District Court entered judgment for the defendants and the plaintiffs appealed. The court of appeals, affirming the decision, found that it was not illegitimate for the sheriff to consider race or gender in making promotions from a certified list of eligible candidates where race and gender were not dispositive factors and the decision to promote was made pursuant to an affirmative action plan. (Jefferson County Sheriff's Department, Alabama)

U.S. District Court
TERMINATION

Zicarelli v. Leake, 767 F.Supp. 1450 (N.D. Ill. 1991). A prison guard brought a civil rights action alleging violations of his First Amendment rights after he was fired for testifying on behalf of the defense in an Illinois death penalty hearing. The district court found that the prison guard's testimony at the death penalty hearing was a matter of public concern, and the Department of Corrections failed to show any disruption or impairment of functioning of its officer that outweighed the prison guard's First Amendment right to testify. Furthermore, even if the guard had violated a department policy, the department did not show any relationship between the guard's action and the purpose of the policy prohibiting testimony at trials involving inmates. (Cook County Department of Corrections)

1992

U.S. District Court
DRUG TESTING

American Fed. of Gov. Employees v. Barr, 794 F.Supp. 1466 (N.D. Cal. 1992). A union brought an action to enjoin an allegedly unconstitutional drug testing program for Federal Bureau of Prisons employees. On the defendants' motion for summary judgment, the district court found that the Bureau could conduct a random urinalysis only of employees in primary law enforcement positions with access to firearms, licensed physicians and dentists with regular patient contact, and employees in primary law enforcement positions in regular direct contact with inmates. According to the court, the Bureau may constitutionally test those employees in primary law enforcement positions who apparently cause accidents or engage in hazardous practices involving personal injury that requires prompt medical treatment or resulting in more than \$2,000 in damages. However, the testing following any accident involving personal injury regardless of extent would leave too much discretion to local officials. In addition, the standard allowing testing where the same employee has had more than one accident or unsafe practice during any twelve month period was incurably vague. Reasonable suspicion of off-duty drug use or impairment could serve as grounds for testing only of the same employees as are subject to random testing; other employees could be tested on reasonable suspicion of on-duty drug use or impairment. (The United States Department of Justice for Employees of the Federal Bureau of Prisons)

U.S. Appeals Court
TRAINING
HIRING/
QUALIFICATIONS

Benavides v. County of Wilson, 955 F.2d 968 (5th Cir. 1992). A former jail inmate and his spouse sued the county and the sheriff, seeking compensation for injuries sustained while the inmate was in the county jail. The U.S. District Court entered judgment for the sheriff and the county, and appeal was taken. The court of appeals, affirming the decision, found that the county jail inmate who was injured in a fall in his cell and was subsequently allowed to lie paralyzed for 18 hours without medical assistance being summoned, did not establish that the county and the sheriff had adopted a policy of improperly training jail personnel. The county and the sheriff had established compliance

with state requirements for jailer personnel and the inmate had not shown, beyond conclusory statements of an alleged expert, that the standards were inadequate. It was also found that the inmate did not establish a triable case that the sheriff and county had established a deliberately indifferent policy of screening employees, even though two of his jailers had been treated for suicidal depression and alcoholism; the sheriff had been furnished with letters from their doctors indicating their fitness to return to work, and they had satisfactory work records. The spouse of the inmate did not have action under Texas law for intentional infliction of emotional harm; it was necessary to establish direct emotional shock from seeing the husband in a paralyzed state, without prior warning, and the wife had been told what happened by authorities prior to first seeing her husband. (Wilson County Jail, Texas)

U.S. District Court
TERMINATION

Blair v. Graham Correctional Center, 782 F.Supp. 411 (C.D. Ill. 1992), affirmed, 4 F.3d 996. A prison employee brought an action under Title VII alleging that his employer and his union had discriminated against him on the basis of his religion which required him not to work from Friday sundown to Saturday sundown, when he was discharged for excessive absenteeism after refusing to work on Saturdays. According to the court, the prison's attempts to work with the prison workers' union and other agencies to have the employee reassigned was a reasonable attempt to accommodate the employee's religious beliefs, and neither the employer nor union were liable under Title VII for failing to give the employee a schedule which would accommodate his religious beliefs when, under terms of the collective bargaining agreement, the employee was not entitled to such a schedule. (Graham Correctional Center, Hillsboro, Illinois)

U.S. District Court
ASSIGNMENT
EQUAL PROTECTION

Canedy v. Boardman, 801 F.Supp. 254 (W.D. Wis. 1992), reversed, 16 F.3d 183. A male prison inmate brought a Section 1983 civil rights suit alleging that a female prison guard's participation in a strip search and daily observations of male inmates violated the inmate's Fourth Amendment right to personal privacy. The district court found that the female prison guard's observation of male inmates during a strip search and in various stages of undress did not violate the male inmates' right of personal privacy. The institution had a responsibility to maintain security and to accommodate the rights of female employees to equal employment opportunities. The appeals court reversed the decision and ruled that the inmate was entitled to a reasonable accommodation to prevent unnecessary observations of his naked body by female guards. (Columbia Correctional Institution, Portage, Wisconsin)

U.S. District Court
FREE SPEECH
PROPERTY INTEREST
TERMINATION

Heideman v. Wirsing, 840 F.Supp. 1285 (W.D. Wis. 1992). A former deputy sheriff brought a civil rights action against a sheriff and county arising from his termination, alleging that he was fired in violation of his First Amendment right to express his political views, and alleging claims under Wisconsin law. The defendants moved for summary judgment and a dismissal of the claims. The district court found that the deputy sheriff did not have a Section 1983 First Amendment claim against the sheriff. However, a fact issue as to whether the deputy sheriff had a right under the employment agreement not to be fired for his political views so as to give him a property interest in his employment precluded summary judgment for the county on the due process claim. The former deputy sheriff also stated a cause of action under Wisconsin law against the county for breach of contract arising from the termination of his employment. The deputy sheriff alleged that he had a right under the employment agreement not to be fired for his political views. (Prince County, Wisconsin)

U.S. Appeals Court
ASSIGNMENT
FAILURE TO
PROTECT
PROTECTION FROM
HARM

L.W. v. Grubbs, 974 F.2d 119 (9th Cir. 1992). A registered nurse at a medium security custodial institution for young male offenders brought a Section 1983 action against her supervisors arising out of a situation in which she was raped and terrorized by an inmate. The U.S. District Court dismissed the action, and the nurse appealed. The appeals court, reversing and remanding, found that the nurse could maintain a Section 1983 claim against her supervisors on the basis that they created a dangerous situation. The supervisors assigned the nurse to work with the inmate despite knowing of his history of violence against women, that he was likely to assault a female if left alone with her, and that the nurse would be alone with the inmate. (Oregon)

U.S. District Court
BACK PAY
SEX
DISCRIMINATION

Schaefer v. Tannian, 793 F.Supp. 146 (E.D. Mich. 1992). Female officers and applicants found to be victims of a police department's adjudicated discrimination in hiring, assignment, promotion and compensation moved for an award of back pay. The district court found that the female officers and applicants were entitled to an award of back pay, despite the department's asserted good faith, previously awarded relief including retroactive seniority, passage of time from the initial complaint and the alleged resulting difficulty in calculating a back pay award, and alleged adverse effects to officers who might be laid off and to taxpayers. The court ruled that the back pay award was necessary to make plaintiffs whole. (Detroit Police Department, Michigan)

U.S. Appeals Court
SEARCHES

Scoby v. Neal, 981 F.2d 286 (7th Cir. 1992). Correctional officers brought an action seeking declaratory judgment and injunctive relief from a prison rule allowing strip searches of employees. The U.S. District Court granted summary judgment for the defendants as to damages on qualified immunity grounds, and later issued another order, purportedly granting injunctive and declaratory relief finding the strip search rule which contained no probable cause or reasonable suspicion requirement to be unconstitutional. The prison officials appealed and the plaintiffs cross-appealed. On remand, the district court found that injunctive relief had become moot and that the defendants were entitled to qualified immunity as to liability for damages, and the officers appealed. The appeals court, affirming the decision, found that the supervisory officers of the corrections center were entitled to qualified immunity as to claims by correction officers that their Fourth and Fourteenth Amendment rights were violated when they were subjected to strip searches, conducted in an effort to suppress narcotics being smuggled into prison. There was no clearly established right for correctional officers to be free of warrantless body cavity searches as of March 1987, when the incidents occurred. (Danville Correctional Center, Danville, Illinois)

U.S. Appeals Court
DEMOTION
FREE SPEECH

Stough v. Gallagher, 967 F.2d 1523 (11th Cir. 1992). A deputy sheriff brought a civil rights action against a sheriff following his demotion. The U.S. District Court denied the sheriff's motion for summary judgment based on qualified immunity, and the sheriff appealed. The court of appeals, affirming in part and reversing in part, found that the sheriff's demotion of a deputy for having campaigned for the sheriff's opponent violated clearly established First Amendment law in 1988, so that the sheriff was not entitled to qualified immunity. However, deputy sheriffs are not employees and both their selection and retention is under the absolute control of the sheriff under Florida law, so that deputy sheriffs have no property interest in their positions or any particular rank. (Orange County Sheriff's Office, Florida)

U.S. Appeals Court
RACIAL
DISCRIMINATION
TERMINATION

Washington v. Lake County, Ill., 969 F.2d 250 (7th Cir. 1992). An African-American county employee who was fired brought an action against the county, the sheriff's department, and his superior alleging racially discriminatory discharge. The U.S. District Court granted summary judgment for the defendants, and the discharged employee appealed. The court of appeals, affirming the decision, found that the employee, who had lied about prior convictions on his employment application and was later fired before the lie had been discovered, could not recover under Title VII. The county produced evidence showing that knowledge of the employee's convictions would have led to his immediate discharge and the employee produced no affirmative evidence that he would not have been fired if treated in a race-neutral fashion. (Lake County Sheriff's Department, Illinois)

1993

U.S. Appeals Court
FAIR LABOR
STANDARDS ACT
GRIEVANCE

Albright v. U.S., 10 F.3d 790 (Fed. Cir. 1993). Federal prison guards sued to recover overtime pay under the Fair Labor Standards Act (FLSA) and overtime, night differential, Sunday premium, and holiday pay under the Federal Employees Pay Act (FEPA). The Claims Court granted in part and denied in part the government's motion to dismiss for lack of subject matter jurisdiction, and the guards appealed. The appeals court found that the provisions of the Civil Service Reform Act (CSRA) which mandated that, in absence of a specific exclusion, contractual grievance procedures would be the exclusive means of settling employee grievances, applied retroactively to government employees whose claims accrued, but were not administratively pending, before the CSRA's effective date. (Federal Bureau of Prisons)

U.S. District Court
ATTORNEY
PROPERTY INTEREST

Hall v. California Dept. of Corrections, 835 F.Supp. 522 (N.D.Cal. 1993). A correctional officer whose request for legal representation in a civil action against him by a prison inmate had been denied brought a Section 1983 action against the Department of Corrections and officials, and the defendants moved to dismiss. The district court found that the officer had a constitutionally protected property interest in legal representation in a civil suit based on an act occurring within the scope of the employee's duties. However, procedural due process did not require a predeprivation hearing before the public employee was denied the constitutionally protected property interest resulting from a statutory right to legal representation. Postdeprivation procedures that allowed state employees to seek full compensation for property loss suffered provided sufficient due process to adequately protect employees' constitutional interests. (Correctional Training Facility, Soledad, California)

U.S. Appeals Court
PROMOTION
RACIAL
DISCRIMINATION

Hayes v. North State Law Enforcement Officers Ass'n., 10 F.3d 207 (4th Cir. 1993). Nonminority police officers sued a city contending that its race-based promotion policy for police sergeants violated the equal protection clause. The U.S. District Court granted partial summary judgment for the police officers after concluding that the department's promotion practices violated the equal protection clause, and enjoined the city from using

race-based criterion for its employment decisions. The city appealed. The appeals court, affirming in part, vacating in part, and remanding, found that the opinion of the chief of police that effective law enforcement required racial diversity justifying a race-based promotion policy was not, alone, sufficient to support promotion of police sergeants based on race. In addition, reports prepared in response to the urban riots in the city of Detroit in the 1960's were not sufficient to support the city's claim about the need for diversity in effective law enforcement. It was also found that the city's race-based promotion policy was not narrowly tailored to accomplish the asserted purpose of achieving effective law enforcement through diversity. However, an injunction issued by the district court enjoining all use of racially-based criteria by the city in its employment decisions was broader than necessary to give police officers who were denied a promotion because they were nonminority officers complete relief. The district court was required to issue an injunction properly tailored to only the wrong found in the case, which was the use of racial preferences as criteria for promotions to the rank of police sergeant. (Charlotte Police Department, North Carolina)

U.S. Appeals Court
EQUAL
OPPORTUNITY

Jordan v. Gardner, 986 F.2d 1521 (9th Cir. 1993). Female inmates brought an action challenging the constitutionality of prison regulations permitting cross-gender clothed body searches. After granting rehearing en banc, the court of appeals found that the prison policy requiring male guards to conduct random, nonemergency, suspicionless clothed body searches of female prisoners was cruel and unusual punishment that violated the Eighth Amendment. It was noted that the policy inflicted "pain" for Eighth Amendment purposes, where many female inmates had been sexually abused prior to their incarceration, so that unwanted intimate touching by men was likely to cause psychological trauma. In addition, the cross-gender clothed body searches were "unnecessary" for Eighth Amendment purposes, where prison security was not dependent upon such searches, and the searches did not ensure equal employment opportunities for male guards. The determination that the searches violated the inmates' Eighth Amendment rights warranted a permanent injunction that prohibited nonemergency, suspicionless clothed body searches by male guards. (Washington Corrections Center for Women)

U.S. Appeals Court
RACIAL
DISCRIMINATION
TERMINATION

Smith v. Arkansas Dept. of Correction, 995 F.2d 869 (8th Cir. 1993). A black prison guard brought a Title VII action against his former employer following his discharge. The U.S. District Court entered summary judgment in favor of the employer, and the guard appealed. The appeals court, affirming the decision, found that evidence was insufficient to establish that the discharge of the guard was racially motivated. Evidence showed that the guard was discharged on grounds that he had falsified written information and physically and verbally abused an inmate. (Arkansas Department of Correction)

U.S. District Court
SEX
DISCRIMINATION
HARASSMENT

Stafford v. State, 835 F.Supp. 1136 (W.D.Mo. 1993). A corrections officer brought an action against the State of Missouri and employees of the Missouri Department of Corrections, claiming sex discrimination and sexual harassment. After a jury returned a verdict for the corrections officer on Section 1983 claims against two supervisors, various motions were filed. The district court found that one supervisor was entitled to judgment as matter of law, and that evidence supported the finding that another supervisor engaged in sexual harassment of the corrections officer. The supervisor made the corrections officer's working conditions intolerable on the two days a week they worked together, thereby creating a sexually hostile atmosphere in violation of the Fourteenth Amendment. The court also found that evidence did not support a finding that the corrections officer was constructively discharged by the supervisor's sexual harassment. The supervisor's conduct was sporadic and, at most, distasteful. The corrections officer and supervisor ceased working together several months before the corrections officer's resignation, and the corrections officer testified that she was not subjected to any harassment or discrimination at her new position. The court found that the state was liable under Title VII for sexual harassment committed by the supervisor. (Missouri Department of Corrections)

U.S. District Court
PRIVACY
SUPERVISION

Thompson v. City of Arlington, Tex., 838 F.Supp. 1137 (N.D. Tex. 1993). A police officer sued a city police department and individual employees of the city alleging that their requirement that she disclose mental health records violated her civil rights. The city required her to disclose records as they were created in her treatment, following a suicide attempt, as a condition for considering her for reinstatement to full duty. The defendants moved to dismiss. The district court found that the privacy interests of the police officer in her mental health records were outweighed by the public interest of the city police department in having full information in their hands as to whether the officer was mentally capable of performing her job. The scope of information sought by the city police department was not constitutionally too great. The court found that the individual defendants were protected by the doctrine of qualified immunity; however, the allegations stated a claim against the city under Title VII and the Texas Commission on Human Rights Act. (Arlington Police Department, Arlington, Texas)

U.S. District Court
HARASSMENT
RACIAL
DISCRIMINATION
RETALIATION
SEX
DISCRIMINATION

Anthony v. County of Sacramento Sheriff's Dept., 845 F.Supp. 1396 (E.D. Cal. 1994). A black female deputy sheriff brought a Section 1983 action against a county, county sheriff's department, supervisors, co-workers, and a civilian jail employee, alleging sexual and racial harassment and retaliation for her defense of black inmate rights. The defendants moved to dismiss. The district court found the deputy sheriff sufficiently alleged an action under color of law as required to state a cause of action under Section 1983 arising from retaliation for her defense of black inmate rights. The job of a deputy sheriff includes the responsibility for the well-being of inmates. The defendants allegedly abused the position and responsibility given to them by the state in retaliating for a speech protesting the improper treatment of the inmates. In addition, the deputy sheriff sufficiently alleged an action under color of law as required to state a cause of action under Section 1983 arising from racial and sexual harassment by the defendants. The complaint depicted the work environment made racially and sexually hostile by related attacks on the plaintiff personally, on the abilities of black law enforcement personnel generally, and on black inmates. The alleged pattern of harassment directly involved discriminatory assertion of law enforcement authority. (Sacramento County Sheriff's Department, California)

U.S. District Court
DISCRIMINATION
DUE PROCESS
TERMINATION

Baum v. Webb, 863 F.Supp. 918 (E.D. Ark. 1994). Employees of a sheriff's office who were terminated after the newly elected sheriff took office brought action against the sheriff alleging that their First Amendment rights had been violated. The district court found that the sheriff could not consider political activities of employees in making employment decisions notwithstanding the fact that the employees were hired by the former sheriff whose term expired on the day before the sheriff took office. In addition, the employees who alleged only that the termination violated the employee handbook did not state a claim for which relief could be granted under the federal civil rights statute. The court found that the sheriff met the burden of establishing that the employees in the criminal investigation division and the patrol division would have been terminated even had procedural due process been observed. However, the sheriff impermissibly considered the political activity of a jail matron as the motivating factor in the decision to terminate her. As a result, the matron's First Amendment rights were violated. (Independence County Sheriff's Office, Arkansas)

U.S. Appeals Court
DISCRIMINATION
SCHEDULE
TERMINATION

Beadle v. Hillsborough County Sheriff's Dept., 29 F.3d 589 (11th Cir. 1994). A former employee of a county jail brought a suit against the sheriff's department, contending that the department violated Title VII by failing to accommodate his Seventh Day Adventist religious belief which precluded his working from sundown Friday to sundown Saturday, and by ultimately discharging him because of his refusal to work during that period. The U.S. District Court entered judgment in favor of the sheriff's department and the plaintiff appealed. The court of appeals, affirming the decision, found that the department's neutral rotating shift system and its authorization of shift swaps within the system represented reasonable accommodation to the plaintiff's religious beliefs, and his discharge from employment for refusing to work on his Sabbath did not violate Title VII. (Hillsborough Co. Sheriff's Dept., FL)

U.S. District Court
FREE SPEECH
TERMINATION

Cooper v. Smith, 855 F.Supp. 1276 (S.D. Ga. 1994). A former deputy sheriff brought an action against a sheriff, claiming that the sheriff's decision not to renew the deputy's commission was motivated by the deputy's criticism of the sheriff. On the sheriff's motion for summary judgment, the district court found that the deputy's conversations with the State Bureau of Investigation and portions of his letter to the acting chief deputy of the sheriff's department were related to matters of public concern. The court found that the deputy's First Amendment interests in speech concerning alleged corruption in the sheriff's department outweighed the interest of the state. However, the deputy failed to state an equal protection claim where the deputy had not proven that any other employees were similarly situated to him. (Camden County Sheriff Department, Georgia)

U.S. Appeals Court
DISCRIMINATION
FREE SPEECH
TERMINATION

Garcia v. Reeves County, Tex., 32 F.3d 200 (5th Cir. 1994). Former employees of a sheriff's office sued the newly elected sheriff under Section 1983 alleging that their terminations violated due process and the First Amendment. On the sheriff's motion for summary judgment, the U.S. District Court denied the motion and the sheriff appealed. The appeals court found that under Texas law, the county commissioners court had no authority to modify the sheriff's department employees' at-will status by adopting a county personnel manual requiring just cause for discharge, and thus, the manual did not give terminated employees a cognizable property interest in continued employment that would serve to deprive the sheriff of qualified immunity in the action. Also, proof of a hotly contested political race and subsequent firings of the sheriff's office employees did not establish that the employees were fired because of their political affiliation in violation of the First Amendment. However, the court found that a genuine issue of material fact as to whether one employee of the sheriff's office was fired due to her political affiliation precluded summary judgment in favor of the sheriff. (Reeves Co. Sheriff's Office, Texas)

U.S. District Court
DRUG TESTING
PRIVACY

Hansen v. California Dept. of Corrections, 868 F.Supp. 271 (N.D. Cal. 1994). An employee of the California Department of Corrections brought a suit seeking a temporary restraining order to prevent a member of the staff from observing her as she produced a urine sample pursuant to an agreed upon drug test. The district court found that the

department could not require that visual observation take place, absent a showing of a specific reason to fear that the employee would tamper with the sample. The court noted that visual observation of an employee undergoing a urine test is only appropriate when deemed to be necessary in order to ensure reliability of a sample. (California Department of Corrections)

U.S. District Court
FREE SPEECH AND
ASSOCIATION
EQUAL PROTECTION
TERMINATION
RETALIATION
PROPERTY INTEREST
DISCRIMINATION

Hughes v. Bedsole, 913 F.Supp. 420 (E.D.N.C. 1994). A former shift supervisor at a county jail filed suit against the county sheriff's department and others following her termination, alleging sex discrimination, violation of her free speech rights, and other claims. The court ruled that the plaintiff's termination was not in retaliation for her exercise of free speech that occurred when she allegedly complained to the county chaplain and sheriff about understaffing at the jail. The court found that her complaints did not involve matters of public concern, but rather that she was "simply grouching" about the conditions of her own employment. The plaintiff alleged a male staff member was not terminated for a similar incident (allowing jail doors to be unlocked); the court found that evidence failed to establish with certainty that the male employee was responsible for the unlocked doors, and that an equal protection violation did not occur. The court found that the sheriff's failure to demote the shift supervisor to road patrol, rather than terminating her, did not constitute handicap discrimination in violation of the Federal Vocational Rehabilitation Act because the employee alleged she was capable of performing both duties. The court also found the supervisor did not have a property interest in her job sufficient to support a due process claim, and that the supervisor was not subjected to sex discrimination. (Cumberland County, North Carolina)

U.S. Appeals Court
DEMOTION
FREE SPEECH
TERMINATION

Kolman v. Sheahan, 31 F.3d 429 (7th Cir. 1994). Employees of a county sheriff's department brought an action against the sheriff, alleging they were demoted or terminated because of their political affiliation. The U.S. District Court granted the sheriff's motion to dismiss and for summary judgment, and the employees appealed. The appeals court found that the allegations of the sheriff's department employees that they were terminated or demoted from positions in the department's electronic monitoring unit when the sheriff who belonged to a different political party was elected, were sufficient to state a First Amendment political patronage claim. However, a state statute prohibiting termination or demotion of deputy sheriffs without a hearing before the county merit board did not apply to the employees. (Cook County Sheriff's Department, Illinois)

U.S. District Court
FREE SPEECH
PROBATION
TERMINATION

Lawrenz v. James, 852 F.Supp. 986 (M.D.Fla. 1994), affirmed, 46 F.3d 70. A discharged correctional officer brought a civil rights action against a superintendent of a correctional facility and the Secretary of the State Department of Corrections for violating his First Amendment rights of free speech and association. On the defendants' motion for summary judgment, the district court found that the superintendent of the correctional facility was entitled to qualified immunity for his decision to terminate the probationary correctional officer for wearing a "White Power" t-shirt with a swastika and firing a rifle in the air at an outdoor barbecue on Martin Luther King Day. The superintendent was acting within the scope of his discretionary authority when he made the decision to terminate the officer, and there was no clearly established law that the superintendent violated in terminating the officer. In addition, the correctional officer's wearing of the t-shirt and discussing with his peers his perception of racial discrimination at the correctional facility were not matters of public concern, entitled to First Amendment protection. His beliefs relating to the swastika and the strength of white people were purely matters of personal interest, and his speech was never publicly aired. The incident received media attention only after the officer was arrested for firing the rifle. The court also found that the superintendent's interest in the effective operation of the correctional facility superseded the officer's First Amendment interests. (Charlotte Correction Institution, Florida)

U.S. Appeals Court
DEMOTION
FREE SPEECH

Mitchell v. Thompson, 18 F.3d 425 (7th Cir. 1994) U.S. cert. denied 115 S.Ct. 191. A demoted deputy brought an action against a county sheriff and the sheriff's chief deputy, alleging that he was demoted for refusing to support the sheriff's bid for reelection, in violation of various constitutional and statutory guarantees. The U.S. District Court denied the defendants' motion to dismiss, and the defendants appealed. The appeals court, reversing and remanding with instructions, found that the defendants were entitled to qualified immunity from the deputy's claims. At the time of the deputy's demotion, law was not clearly established as to whether a sheriff could demote a deputy for political purposes. (Kankakee County, Illinois)

U.S. Appeals Court
DISCRIMINATION
TERMINATION

Moyo v. Gomez, 40 F.3d 982 (9th Cir. 1994), cert. denied, 115 S.Ct. 732. A black prison guard sued the Department of Corrections under Title VII alleging that he was fired for protesting against and refusing to cooperate with discrimination against black inmates. The U.S. District Court dismissed the action for failure to state a claim and the guard appealed. The appeals court, reversing and remanding, found that the prison guard could have stated a retaliation claim if he could show that he was discharged for refusing to discriminate against black inmates. In addition, the prison guard could have stated a retaliation claim if he could show that he was discharged for acting on the reasonable belief that a violation of Title VII had occurred. The prison guard should have been allowed to amend his Title VII complaint to state a claim for discrimination with regard to the terms and conditions of his employment. (California Medical Facility)

U.S. Appeals Court
SCHEDULE

Rumsey v. N.Y. State Dept. of Corr. Services, 19 F.3d 83 (2nd Cir. 1994) U.S. cert. denied 115 S.Ct. 202. Correctional employees brought an action against the New York State Department of Correctional Services challenging rescheduling of employees' pass days to coincide with their military reservist obligations. The U.S. District Court entered judgment in favor of the employees and awarded damages. On cross appeals, the court of appeals affirmed in part, reversed in part and remanded. The appeals court found that the alteration of pass days to correspond with military reservist obligations violated the seniority provisions of the collective bargaining agreement. However, the alteration of pass days did not deprive the employees of "incident or advantage of employment," in violation of the Veterans' Reemployment Rights Act. The employees were not entitled to recover pay for days on which they used accrued personal leave or sick time rather than notifying the Department of their military duties. In addition, even if employees had stated a substantial equal protection claim, which they did not, enforcement provisions of the Veterans' Reemployment Rights Act supplanted any Section 1983 claim, precluding an award of attorney fees under Section 1988. (New York State Department of Correctional Services)

U.S. Appeals Court
FREE SPEECH
TERMINATION

Zorzi v. County of Putnam, 30 F.3d 885 (7th Cir. 1994). A former dispatcher in a sheriff's office sued a county and a former and current sheriff, alleging that her termination and refusal to rehire her violated her rights of political association and due process, and her right to seek redress in courts. The U.S. District Court denied the former sheriff's and county's motions for summary judgment based on qualified immunity, and entered a preliminary injunction ordering the dispatcher reinstated. The defendants appealed. The appeals court found that the dispatcher's lawsuit, alleging that the sheriff fired her for her political support of the state's attorney involved matters of public concern, as required to warrant First Amendment protection against retaliation by a public employer, and as required for a preliminary injunction ordering the dispatcher's reinstatement when the county refused to rehire her because of the pending lawsuit. Political speech, the fact that a public employer would fire an employee for political speech or support of a candidate, and the sheriff's underlying dispute with the state's attorney, were all matters of public concern. (Putnam County Sheriff's Department, Illinois)

1995

U.S. District Court
BFOQ
SEX DISCRIMINATION

Carl v. Angelone, 883 F.Supp. 1433 (D. Nev. 1995). Male and female correctional officers brought an action against the Director of the Nevada Department of Prisons alleging that the director intentionally discriminated against them on the basis of their gender by transferring male officers out of, and female officers to, women's correctional facilities. The director moved for summary judgment. The district court found that the director could not base a claim of qualified immunity on a bona fide occupational qualification (BFOQ) defense. BFOQ is an affirmative defense to liability, and allowing the defendant to base a qualified immunity defense on BFOQ would in essence reverse the burden of proof, requiring the plaintiff to demonstrate that the defendant could not have reasonably believed a BFOQ defense applied. Where discrimination is on the basis of gender, the employer bears the burden of proving that a job qualification or function justifying discrimination is reasonably necessary to the essence of the defendant's particular business. The employer must prove that gender is a legitimate proxy for a qualification or a function because there is a substantial basis for believing that all or nearly all employees of the affected gender lack the qualification or ability to perform that function or it is impossible or highly impractical for an employer to insure by individual testing that its employees will have the necessary qualifications for the job. Issues of fact precluded summary judgment based on a BFOQ defense. (Nevada Department of Prisons)

U.S. Appeals Court
PRIVACY
PSYCHOLOGICAL
SCREENING
DUE PROCESS

Flynn v. Sandahl, 58 F.3d 283 (7th Cir. 1995). A corrections officer brought a § 1983 action seeking an injunction to prevent a warden from ordering him to submit to a psychological examination. The district court granted summary judgment for the warden based on qualified immunity. The appeals court affirmed, finding that the warden did not deny the officer due process by failing to provide him with a hearing in which he could challenge the necessity of the examination. The court also found that even if the warden's order violated the officer's right to privacy, the officer's right would give way to considerations of public interest. The warden had informed the officer of the complaints that were the basis for the examination and the officer refused the warden's offer to meet to discuss the complaints. The officer's coworkers had complained that the officer had threatened them with physical harm. The court noted that corrections officers must be able to depend on one another to carry out their duties and to protect each other. (Shawnee Correctional Center, Illinois)

U.S. Appeals Court
DRUG TESTING

Garrison v. Department of Justice, 72 F.3d 1566 (Fed. Cir. 1995). An employee of the Federal Bureau of Prisons was removed from his job after refusing to provide a urine sample for a drug test. Bureau officials had learned about alleged recent drug use from the employee's brother during a routine background check. The brother had stated that he had seen the employee buy and use marijuana recently and gave specific information about the frequency and location of his drug use and purchase transactions. The district court reviewed the Bureau's decision to remove the employee and found that the Bureau had no reason to question the reliability of the information on which they based their decision to require the employee to submit to a drug test. The court found that the employee's removal, following warnings that his refusal could result in removal, was warranted. (Federal Bureau of Prisons, Kansas City)

U.S. Appeals Court
FREE SPEECH
SEX DISCRIMINATION
TERMINATION

Hughes v. Bedsole, 48 F.3d 1377 (4th Cir. 1995). A former shift supervisor at a county jail brought an action against the county sheriff's department alleging sex discrimination and violation of her free speech rights. The U.S. District Court entered summary judgment for the department and she appealed. The appeals court, affirming the decision, found that the supervisor's expressions of concern about understaffing and improper training were not the substantial or motivating factor behind her discharge for purposes of her claim that she was unconstitutionally discharged for exercising her free speech rights. Her employer asserted that she was discharged because of two security violations involving an unlocked door that had occurred during her shift. (Cumberland County Jail, North Carolina)

U.S. Appeals Court
FREE SPEECH

Keeney v. Heath, 57 F.3d 579 (7th Cir. 1995). A guard at a county jail filed a § 1983 action alleging violation of her Fourteenth Amendment right to marry. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that even though the inmate whom the guard had married had been transferred to a different facility, a regulation which forbids employees from becoming socially involved with inmates in or out of jail did not violate the guard's constitutional rights. The court noted that the regulation was justified by the fear that if the guard became romantically involved with the inmate after his transfer to another facility she might become a facilitator of unlawful communication between him and others. The court also noted the officials' concern that allowing staff to become socially involved with inmates would provide an enhanced incentive for inmates to "romance" guards, and would raise serious problems with inmate morale. (Tippecanoe County Jail, Indiana)

U.S. District Court
DISABILITY
PHYSICAL
REQUIREMENTS
TERMINATION

McDonald v. State of KS, Dept. of Corrections, 880 F.Supp. 1416 (D.Kan. 1995). A former correctional officer sued a state, the Department of Corrections, and its representatives, for disability discrimination and negligent and intentional infliction of emotional distress. On the defendants' motion for summary judgment, the district court found that the former correctional officer failed to meet the burden of proving that the requested accommodation for his heart and other medical problems was reasonable. He requested that he rotate among positions in which he would have little contact with inmates, no occasion to respond in situations of physical emergency, and no need to stand, walk, lift, bend, squat or climb stairs. There was no existing rotation and no individual positions were vacant. The court also found that, under Kansas law, the former correctional officer could not recover for tort of outrage or intentional infliction of emotional distress, as there was no conduct that could be regarded as extreme and outrageous. The warden had made extraordinary efforts to help him save his job while meeting legitimate correctional and security needs of the facility, and the former correctional officer neither alleged nor proved that he suffered extreme and severe emotional distress. Also, under Kansas law, the former correctional officer could not recover for negligent infliction of emotional distress, where he alleged no negligent conduct. (Lansing Correctional Facility, Kansas)

U.S. District Court
AGE DISCRIMINATION
TERMINATION

Montgomery v. Brookshire, 880 F.Supp. 483 (W.D. Tex. 1995). A terminated deputy brought an Age Discrimination in Employment (ADEA) claim against a county. The district court found that the county's stated reason for discharge of the deputy sheriff, i.e., that the deputy was insubordinate when he said the sheriff's department could "go to hell," was not pretextual. The deputy did not dispute that he made the statement. (Ector County Sheriff Department, Texas)

U.S. Appeals Court
RETALIATION
HARASSMENT

Spicer v. Com. of Va. Dept. of Corrections, 66 F.3d 705 (4th Cir. 1995). A female employee of an all male prison sued corrections officials alleging sexual harassment and retaliation. The district court granted injunctive relief on a hostile environment claim and awarded attorney's fees. The appeals court vacated and remanded with instruction, finding that the prison acted immediately and effectively to eliminate the offensive conduct and that the employment action taken against the employee would have been taken even without any retaliatory motive. The court noted that the record indicated that the employee was removed from a work committee because of philosophical differences with the warden about the committee, because of staff and inmate complaints, and because she chaired work committee meetings when she was not authorized to do so. The employee had complained about alleged remarks made to her by fellow employees, and alleged retaliation by her employer in response to her filing of a sexual harassment complaint with the Equal Employment Opportunity Commission. (Buckingham Correctional Center, Virginia)

U.S. Appeals Court
CLOTHING
FREE SPEECH

Troster v. Pennsylvania State Dept. of Corrections, 65 F.3d 1086 (3rd Cir. 1995). A state corrections officer brought a suit alleging violation of his First Amendment rights as the result of a regulation which required him to wear an American flag patch on his uniform. The district court denied a preliminary injunction and the appeals court affirmed, finding that the officer's refusal to wear the flag patch was not constitutionally protected as a means of symbolic protest. According to the court, a compelled speech analysis--rather than a symbolic protest analysis--was the proper vehicle for his constitutional challenge because the message the officer wished to communicate was simply opposition to the regulation on compelled expression grounds, and his preferred method of communicating his message was to violate the regulation. (State Correctional Institute at Greensburg, Pennsylvania)

U.S. Appeals Court
TERMINATION
FREE SPEECH

Andersen v. McCotter, 100 F.3d 723 (10th Cir. 1996). An intern with the Utah Department of Corrections sought injunctive relief against the Department and monetary relief against various corrections officials claiming she was fired in retaliation for exercising her First Amendment free speech rights. The district court granted summary judgment for the defendants, but the appeals court reversed and remanded. The appeals court held that the intern, even as an unpaid government volunteer, was entitled to First Amendment protection and that the defendants were not entitled to qualified immunity. The court found that whether the plaintiff's interest in voicing criticism of proposed changes in the Department's sex offender policy outweighed the Department's interest in enforcing its code of conduct required remand to the district court. The plaintiff was a university student who was receiving college credit and being paid for 20 hours of work per week as an intern with the state Board of Pardons. The plaintiff was working at a community corrections center when the Department announced proposed changes in its sex offender treatment program. During an interview with a television station the plaintiff criticized the proposed changes, expressing her concern that the changes could result in the premature release of potentially dangerous sex offenders into the community. The court noted that she confined her comments to expressing her own opinion and did not disclose any confidential information. The day after the interview she was informed by the Department that she was being terminated because she had said "something negative about the Department." (Bonneville Community Corrections Center, Utah)

U.S. District Court
42 U.S.C.A. Sec. 1983
FREE SPEECH
REGULATIONS

Blanken v. Ohio Dept. of Rehabilitation & Correction, 944 F.Supp. 1359 (S.D. Ohio 1996). A prison food service coordinator sued corrections officials claiming that a grooming policy which required short hair violated the Religious Freedom Restoration Act (RFRA) and the free exercise clause. The inmate practiced Native American Spirituality and was a member of the Hokshichankiya Society; he identified four essential tenants of his Native American Spirituality: the Sweat Lodge, the Sacred Pipe, the Vision Quest, and the growth of hair. The district court granted summary judgment in favor of the defendants, finding that although the employee had made a prima facie showing that his sincerely-held religious beliefs were substantially burdened, the corrections department's compelling interest in safety, discipline and esprit de corps justified the regulation. The court held that the regulation was the least restrictive means of furthering the department's compelling interest in safety and discipline. The court found that alternative means, such as allowing male staff to pin up long hair or tuck it into a collar--as female staff were allowed to do--would not achieve the department's goals. (Orient Correctional Institution, Ohio)

U.S. District Court
ADA-Americans with
Disabilities Act
DISCRIMINATION
DISABILITY

Burke v. Comm. of Virginia, 938 F.Supp. 320 (E.D. Va. 1996). A former employee of the Virginia Department of Corrections sued the department alleging employment discrimination in violation of the Americans with Disabilities Act (ADA). The district court granted the defendant's motion for summary judgment. The court held that the employee, who could not perform as a correctional officer because he suffered from attention deficit and hyperactivity disorder and developmental expressive and receptive language disorder was not "disabled" within the meaning of ADA. The Department had provided him with comparable, alternative positions to the correctional officer position, defeating any claim of impaired life activity. The plaintiff also failed to name a single accommodation that would allow him to perform the duties of a correctional officer adequately, according to the court. The court found that even if the employee had a disability under ADA, he could not adequately perform the essential functions of the correctional officer position. The court also found that individual defendants were not proper parties in an ADA suit absent evidence that they made personnel decisions of a nondelegable nature with respect to the plaintiff's employment. The court described the four requisite elements that the plaintiff must establish to make a prima facie case: (1) that the plaintiff was a member of a protected class under the statute; (2) that he was discharged; (3) at the time of his discharge he was performing his job at a level that met his employer's legitimate expectations; and (4) that the discharge occurred under circumstances that would support a reasonable inference of discrimination. The plaintiff had been hired as a correctional officer and was sent to a corrections academy to obtain certification. The plaintiff did not receive passing grades, despite being re-tested twice, and he was ultimately not certified. After the Department concluded that the plaintiff's limitations disqualified him from being a correctional officer, they offered him the position of "Motor Vehicle Operator B" which provided the same salary as the correctional officer position. The plaintiff refused that job and was ultimately given another position within the Department but resigned less than a year later. (Virginia Department of Corrections)

U.S. District Court
RACIAL DISCRIMINATION
DISCIPLINE
TERMINATION
TITLE VII

Eldridge v. Morrison, 970 F.Supp. 928 (M.D. Ala. 1996). An employee brought an action against a corrections department and officials alleging violation of Title VII, § 1983 and other statutes. The district court held that the employee failed to establish a prima facie Title VII claim of race discrimination based on his suspension and termination. The court also held that the employee failed to establish a prima facie Title VII claim of retaliation. The black employee alleged racial discrimination because he received a five-day suspension for violating a correctional facility rule while a white employee received only a reprimand for violating the same rule. The court found that the two employees were not similarly situated because the black employee had previously been disciplined 13 times while the white employee had been disciplined only twice. (Staton Correctional Institution, Alabama)

U.S. District Court
RETALIATION
HARASSMENT

Fleming v. South Carolina Dept. of Corrections, 952 F.Supp. 283 (D.S.C. 1996). An employee sued her employer, a state corrections department, alleging retaliation in violation of Title VII. The district court denied the employer's motion for summary judgment, finding that the employee's refusal to submit to a supervisor's sexual advances was a protected opposition of an unlawful employment practice, and that a genuine issue of material fact existed regarding whether transfers and a lower performance evaluation were causally related to the protected activity. The court held that summary judgment was precluded by the existence of genuine issues of material fact regarding the deliberateness of the employer's actions, the intolerability of the working conditions, and whether the employer retaliated in the form of creating a hostile work environment. The court found that a reasonable person could have found that alleged harassment was hostile and abusive where evidence was presented that the correctional officer was repeatedly transferred and was left on her post without relief. The court noted that officers had to rely on co-workers and supervisors to protect their safety and well-being. (Ferry Correctional Institution, South Carolina)

U.S. District Court
DRUG TESTING
PRIVACY

Hansen v. California Dept. of Corrections, 920 F.Supp. 1480 (N.D.Cal. 1996). A female correctional officer who was subjected to direct observation of her urination during drug testing brought suit against corrections officials, seeking damages under § 1983 for unlawful search and violation of her right to privacy. The district court found that some defendants were entitled to qualified immunity as it was not clearly established at the time of the testing that direct observation under the presented circumstances violated constitutional norms. The court found that supervising officers were not absolutely immune from damages under California law as they did not exercise discretion, and that the immunity of the other defendants could not be determined on summary judgment. The court found that direct observation of the procedure violated the officer's right to privacy guaranteed by the California Constitution, absent reasonable, individualized and articulable suspicion of the intent to tamper with the sample. (CTF-Soledad, California)

U.S. District Court
UNION

Israel v. Abate, 949 F.Supp. 1035 (S.D.N.Y. 1996). A corrections officer union and its President sought declaratory judgment to enjoin the Department of Correction (DOC), city officials and the city from prohibiting union members from posting and distributing union fliers at a control building of a correctional facility. The district court granted summary judgment for the defendants, finding that the content of the fliers, which encouraged union members to vote for the continued employment of union officials and warning of the implications of defeat, was not a matter of public concern and therefore was not entitled to First Amendment protection. According to the court, the primary purpose of the fliers was to further internal union interests and did not address the impact of the vote on the DOC or the general public, expenditures of tax money, breaches of public trust, or the integrity of DOC officials. The court ruled that the DOC reasonably restricted the hand distribution of the fliers in the control building--a non-public forum. The court noted that even if the control building was a forum, the restriction was necessary to serve a compelling state interest, and that the union had numerous other fora to disseminate their message, which had been used by the union in the past. The court found that the officials were entitled to qualified immunity. (Rikers Island Complex, New York City)

U.S. Appeals Court
TERMINATION
DUE PROCESS

Jackson v. Long, 102 F.3d 722 (4th Cir. 1996). Jailers who had been discharged brought a § 1983 action against a sheriff in his individual and official capacity. The district court denied the sheriff's motion for summary judgement based on qualified immunity and the sheriff appealed. The appeals court reversed and remanded with instructions. The appeals court held that the jailers did not have a protected property right in continued public employment because North Carolina statutes granted sheriffs the exclusive power over employment decisions. Therefore, firing the jailers without a hearing was not denial of due process despite a statute and county policy that provided sheriff's employees with procedural protections and created a personnel advisory board which could make recommendations to the sheriff. The appeals court also found that the sheriff was entitled to qualified immunity from the jailers' § 1983 action alleging that they were deprived of liberty interest in their reputations. The appeals court found that the jailers' failed to state a § 1983 claim against the sheriff in his official capacity. The sheriff had received a complaint from a female inmate that she had been raped by a jailer. The sheriff conducted a brief investigation and then referred the matter to the North Carolina Bureau of Investigation. While the criminal investigation was continuing the sheriff dismissed both the accused jailer and the matron on duty on the floor where the incident allegedly occurred, and issued a press release announcing his action. Criminal charges against the jailer were eventually dropped and the matron was never criminally charged. (Buncombe County, North Carolina)

U.S. Appeals Court
WORKING
CONDITIONS
PROTECTION FROM
HARM

Liebson v. New Mexico Corrections Dept., 73 F.3d 274 (10th Cir. 1996). A librarian who was assaulted by a prison inmate while she was working at a prison brought a civil rights action against prison officials. The librarian alleged that the officials, who had changed the hours during which a guard was in the library, failed to protect her. The district court denied the officials' motion for summary judgment and they appealed. The appeals court reversed the case and remanded it, ruling that prison officials were not liable under either the special relationship theory or the danger creation theory. The court found that even if the librarian alleged an actual due process claim, those rights were not so clearly established that reasonable officials would have understood that their conduct violated those rights at the time of the

assault. The court also ruled that there was no special relationship between prison officials and the librarian which would trigger an affirmative duty on the part of the officials to protect the librarian from assault by inmates; the librarian's presence in the prison library, both before and after the guard was removed, was completely voluntary and she was free to come and go each day of her employment. (New Mexico State Penitentiary)

U.S. District Court
TERMINATION
PROPERTY INTEREST

Penland v. Long, 922 F.Supp. 1085 (W.D.N.C. 1996). A discharged jailer and shift supervisor brought a civil rights action against the sheriff who discharged them. The district court denied summary judgment to the sheriff, finding that the plaintiffs had a property interest in their protected employment and that the rights allegedly violated by the sheriff were clearly established at the time. The court cited a statute which created a personnel advisory board for the sheriff's department to determine facts and make recommendations to the sheriff in cases of employee suspension or dismissal. The court found that the sheriff implicated the plaintiffs' liberty interests when he made a statement that allegations of a sexual assault had been made by an inmate, that the jailer and supervisor had been dismissed, and that the matter was under investigation. According to the court, these statements implied that the assault occurred and that the jailer and shift supervisor were involved. The court found that a jury could find that the sheriff acted with reckless disregard for the truth by discharging the plaintiffs while the state was conducting its investigation, and before it was learned that the inmate who had made the allegations had a history of treatment for a mental disorder and a history of making false allegations of sexual abuse. (Buncombe County Jail, North Carolina)

U.S. District Court
TRAINING
TERMINATION

Ryder v. Freeman, 918 F.Supp. 157 (W.D.N.C. 1996). An employee of a correctional facility operated by the North Carolina Department of Corrections filed suit against correctional officials, alleging that a component of the state's required training program violated her constitutional rights. The employee asserted that a training program which required employees to be sprayed by chemical mace denied her the right to be free from bodily harm. The district court dismissed the case, finding that the training requirement had a rational basis and did not shock the conscience so as to require the strict scrutiny of a substantive due process claim. State officials argued that they required officers to be sprayed with mace so that they would be deterred from using mace unless absolutely necessary, and to teach them how to react with more sensitivity to an inmate who had been sprayed with mace. Under the corrections department policy, the officer would have been terminated from employment if she refused to participate in the required training. (North Carolina Department of Corrections)

U.S. Appeals Court
FREE SPEECH

Shimer v. Washington, 100 F.3d 506 (7th Cir. 1996). An inmate brought a suit challenging a corrections policy which prohibited correctional employees from writing directly to the state Prisoner Review Board on behalf of prisoners who had filed petitions for clemency. The district court granted summary judgment for the defendants but the appeals court reversed and remanded. The appeals court found that the inmate's third-party standing did not preclude his challenge, and that concerns about whether legitimate penological concerns outweighed the potential chilling effect of the policy of guards' protected speech precluded summary judgment. The inmate alleged that prison guards would have written letters to the Board, but for the policy, and the court found that he showed that the policy could hinder the flow of information and that he suffered an injury in fact. (Illinois Department of Corrections)

U.S. Appeals Court
DISCRIMINATION
RACIAL
DISCRIMINATION
HIRING/
QUALIFICATIONS

Wittmer v. Peters, 87 F.3d 916 (7th Cir. 1996). White correctional officers who unsuccessfully applied for lieutenants' positions in boot camps for young offenders sued officials alleging that preferring black correctional officers for the positions violated their equal protection rights. The district court found no discrimination and the appeals court affirmed. The appeals court found that the preference that administrators of a county boot camp gave to a black male applicant on the ground of his race did not violate equal protection. The court noted that a black lieutenant was needed because black inmates were believed unlikely to play the correctional games if some blacks were in authority in the camp; 70% of the inmates were black but only 6% of the staff members were black. (Greene County, Illinois)

1997

U.S. District Court
PROMOTION
RACIAL
DISCRIMINATION
TITLE VII

Beckett v. Dept. of Corrections of Delaware, 981 F.Supp. 319 (D.Del. 1997). An African-American correctional sergeant who was denied promotion brought an action against a corrections department and officials claiming race discrimination in violation of § 1983 and Title VII of the Civil Rights Act of 1964. The court found that the sergeant failed to make a sufficient showing of racial discrimination on the part of the warden to impose Title VII liability on the department, but held that summary judgment for the defendants was precluded on the Title VII and § 1983 claim that officials had acted with racial animus. The court found that genuine issues of material fact as to whether corrections officials had manipulated the partially subjective promotion process to the disadvantage of the sergeant precluded summary judgment on the sergeant's equal protection claim. (Sussex Correctional Institution, Delaware)

U.S. Supreme Court
HIRING/
QUALIFICATIONS

Board of County Com'rs. of Bryan County, Okls. v. Brown, 117 S.Ct. 1382 (1997). Respondent Jill Brown brought a claim for damages against petitioner Bryan County under 42 U.S.C. Sec. 1983. She alleged that a county police officer used excessive force

in arresting her, and that the county itself was liable for her injuries based on its sheriff's hiring and training decisions. She prevailed on her claims against the county following a jury trial, and the Court of Appeals for the Fifth Circuit affirmed the judgment against the county on the basis of the hiring claim alone. The United States Supreme Court held that the Court of Appeals' decision "cannot be squared with our recognition that, in enacting Sec. 1983, Congress did not intend to impose liability on a municipality unless deliberate action attributable to the municipality itself is the 'moving force' behind the plaintiff's deprivation of federal rights." (Bryan County, Oklahoma)

U.S. District Court
DISCIPLINE
FREE SPEECH

Button v. Kibby-Brown, 970 F.Supp. 649 (C.D.Ill. 1997). A prison chaplain brought a § 1983 action claiming officials retaliated against him for exercising his First Amendment rights. The chaplain had gone outside of the chain of command to discuss a concern with a corrections department deputy director, angering his Warden and Assistant Warden. The chaplain was disciplined with a written reprimand for discussing and disclosing matters of a sensitive and personal nature with inmates, after allegedly telling a group of inmates that he might be fired for "going to bat for" another inmate. The district court dismissed the claim, but the appeals court reversed the dismissal. On remand, the district court held that the chaplain's conversation with the deputy director following denial of his request to tutor an inmate was not a matter of public concern and was thus not protected by the First Amendment. The court noted that in spite of the chaplain's attempt to turn the conversation into one involving a breach of contract and unfair treatment of an inmate, the chaplain spoke more like a disgruntled employee whose statements were primarily of personal interest. (Jacksonville Correctional Center, Illinois)

U.S. District Court
WORKING
CONDITIONS
PROTECTION
FROM HARM

Cerka v. Salt Lake County, 988 F.Supp. 1420 (D.Utah 1997). A county jail employee filed negligence and due process claims against a sheriff and county alleging that she was exposed to a contaminated ventilation system. The district court dismissed the case, finding that the employee had no life, liberty or property interest in a safe and healthful workplace. The employee began to experience respiratory problems while employed as a nurse at the Salt Lake County Metro Jail, and collapsed at work six months later. The employee claimed that her collapse was the result of a severe and permanent brain injury caused by a jail ventilation system contaminated with sewer leakages. The court held that the employee's claim was barred by the exclusivity provision of the Utah Workers' Compensation Act, which it found to be the employee's sole remedy for her claims. The court noted that employees were notified that workers in the jail could be exposed to a contaminated ventilation system. (Salt Lake County Metro Jail, Utah)

U.S. District Court
FREE SPEECH
PROPERTY INTEREST
RETALIATION
TERMINATION

Connor v. Clinton County Prison, 963 F.Supp. 442 (M.D.Pa. 1997). A former county prison employee brought an action against a county prison and prison officials alleging violation of provisions of the Pennsylvania whistleblower law resulting from her termination. The district court granted summary judgment in favor of the defendants. The court held that an employee who did not have an employment contract and was not covered by a collective bargaining agreement was an at-will employee and had no property interest in her position. The court found that the employee's private log of workplace activities, including a claim that her supervisor requested that she prepare work release for an inmate that did not have proper documentation, was not speech on a matter of public concern for the purposes of her claim that the public employer violated her free speech rights by terminating her after a supervisor read the log. The employee's allegations that she was terminated for documenting that a prison warden had violated the prison's internal policy was not a report of wrongdoing that implicated the Pennsylvania whistleblower law, where there was no indication that the employee intended to make the issue one for public debate. The plaintiff had worked as a secretary/records clerk. (Clinton County Prison, Pennsylvania)

U.S. Appeals Court
RACIAL DISRIM-
INATION
TITLE VII
TERMINATION
FREE SPEECH

Day v. Johnson, 119 F.3d 650 (8th Cir. 1997). Jail employees sued a sheriff and sheriff's department for race discrimination in violation of Title VII and for retaliation in violation of § 1983 for speaking out about jail conditions. The district court ruled for the employees and ordered the sheriff to place them in captain-level positions. The sheriff appealed and the appeals court reversed and dissolved the injunction. The appeals court held that evidence was insufficient to show that the sheriff's stated reason for the terminations--poor performance--was a cover up for racial discrimination. The court noted that the jail's problems were thoroughly aired in media reports that the employees never challenged, and the sheriff made his own first-hand observations from visiting the jail several times and interviewing employees. The appeals court also held that the head of the jail intake area spoke to the district court about jail conditions on orders from his superior and as the sheriff's department's public information officer, not as a concerned citizen, and thus his speech was not protected by the First Amendment. (Pulaski County Jail, Arkansas)

U.S. District Court
TERMINATION

Harter v. Vernon, 980 F.Supp. 162 (M.D.N.C. 1997). Two former deputy sheriffs sued a county and a sheriff alleging that their employment was terminated in retaliation for their failure to work on the sheriff's reelection campaign. The district court granted summary judgment in favor of the defendants. The court found that the fact that the deputy sheriffs were neutral during the campaign did not preclude their dismissal under the Elrod-Brant exception

to the First Amendment's prohibition of political termination. According to the court, the deputy sheriff whose position required him to engage in law enforcement activities as a road deputy was a policymaker who could lawfully be terminated for political reasons, as was the deputy sheriff who was a sworn law enforcement officer working in a communications center. The court noted that if sheriffs may require loyalty of their deputies, then they must have some discretion to determine what constitutes disloyalty. (Rockingham County, Virginia)

U.S. Appeals Court
DISCIPLINE
EQUAL PROTECTION
RACIAL
DISCRIMINATION

Holifield v. Reno, 115 F.3d 1555 (11th Cir. 1997). A black doctor sued his former employer for employment discrimination and retaliation in violation of Title VII. The district court granted summary judgment for the employer and the appeals court affirmed. The court held that evidence was insufficient to support a discrimination claim. The court found that peer reviews, performance appraisals, and the testimony of supervisors, colleagues and medical staff were fatal to the retaliation claim because it showed that the work for which the doctor was responsible was not properly performed. The court found that a non-minority doctor who was transferred for allegedly poor performance was not treated more favorably for the purposes of a Title VII analysis because the employer presented legitimate non-discriminatory reasons for transferring and later terminating the black doctor. (Federal Correctional Institution, Marianna, Florida)

U.S. District Court
DISCIPLINE
DUE PROCESS
TERMINATION
LIBERTY INTEREST

Jefferies v. Wyandotte County Bd. of County Com'rs, 979 F.Supp. 1372 (D.Kan. 1997). A former deputy sheriff brought a § 1983 action against a county board and a municipality alleging constitutional violations arising out of his discharge. The district court granted summary judgment for the defendants in part, finding that the county personnel policy guide--which listed various employment infractions and corresponding penalties and which had a disclaimer stating that the guide does not create a contract between the county and the employee--was insufficient to show an implied-in-fact employment contract between the county and a deputy under Kansas law. The court held that the county was not liable for any violation of the deputy sheriff's liberty interest in his continued employment arising out of actions of the sheriff. However, the court found that a genuine issue of material fact precluded summary judgment as to whether an employer's policy created an implied-in-fact employment contract under Kansas law. The court also found that summary judgment was precluded on the deputy sheriff's First Amendment claim, whether political association was an appropriate qualification for a deputy sheriff and whether the deputy sheriff's discharge was politically motivated. The court found that the former employee failed to show a due process violation arising out of his pretermination hearing despite his claims that he did not receive advance notice of the hearing and that he was not given the opportunity to respond to charges. (Wyandotte County Sheriff's Department, Kansas)

U.S. District Court
SUSPENSION
RETALIATION
DISCRIMINATION

Macklin v. Huffman, 976 F.Supp. 1090 (W.D.Mich. 1997). A state employee brought a § 1983 action in state court against corrections officials alleging that they retaliated against him for filing discrimination complaints. The case was removed to federal court where the district court granted summary judgment for the defendants and remanded the case to the state court. The district court held that the employee was not entitled to a hearing prior to being suspended pending investigation of his alleged sexual misconduct. The court reasoned that his loss of pay was temporary, his lost income was relatively insubstantial, the allegations against him came from an independent source, and the state had an interest in preserving the integrity of its investigation and the safety and security of the employee, his accuser and others. The case was remanded to state court because the Eleventh Amendment barred his § 1983 claim against a state official. A female prisoner had told prison officials that she observed the plaintiff participating in a sexual activity with another prisoner. The employee was suspended for 15 days while the charge was investigated by the police and corrections officials. Following the investigations the employee was reinstated with back pay. (Camp Branch, Michigan Department of Corrections)

U.S. District Court
DISCIPLINE
FREE SPEECH
EQUAL PROTECTION

Mascetta v. Miranda, 957 F.Supp. 1346 (S.D.N.Y. 1997). A county corrections officer brought a § 1983 action against the county, warden and other supervisory officials, alleging that he was subjected to retaliation in violation of his rights under the First, Fourth, and Fourteenth Amendments, and New York state law. The district court denied the defendants' motion for summary judgment, finding that the officer's alleged statement concerning lax prison security rose to the level of public concern, so as to be protected by the First Amendment. The court held that the county corrections department's interest in the functioning of its institutions and in disciplining one of its officers did not outweigh the officer's freedom of speech. The court found that the officer's allegations that his property was taken from his locker when the warden and supervisors broke into his locker while he was under suspension, established seizure, precluding summary judgment for the defendants. Also, the court held that summary judgment was precluded on the officer's equal protection claim alleging selective prosecution, based on the officer's allegations that other officers involved in the same incident were neither investigated nor subjected to disciplinary charges. The officer alleged that the defendants retaliated against him for voicing his opinion on two separate issues, and that they conspired to frame him and fabricate false disciplinary charges against him in order to coerce him into resigning. The officer had criticized a fellow employee for allegedly violating security procedures, and had criticized an assistant warden for "pressuring"

him into buying a defective automobile from the assistant warden's wife. (Westchester County Department of Correction, New York)

U.S. Appeals Court
TERMINATION
DUE PROCESS

Merritt v. Reed, 120 F.3d 124 (8th Cir. 1997). A former prison employee brought a § 1983 action against a warden and personnel officer alleging violation of his due process rights when they terminated him from employment as a correctional officer without giving him an opportunity to respond to charges, thereby affecting his good name within the employment community. The district court denied the defendants' motion for summary judgment and they appealed. The appeals court reversed, finding that the employee failed to show that the defendants made the reasons for his termination public, as required to support his claim that they violated his liberty interest in his good name. The court found that neither the warden nor the personnel officer informed any prospective employers of the reasons for the plaintiff's termination, and that any publication of the reasons occurred at the hands of a third party. The plaintiff was discharged from employment for providing false information on his job questionnaire; he had stated on his application that he could perform the job functions of correctional officer, but later informed an instructor at the training academy that he could not run, jog, or jump pursuant to his doctor's orders. (Varner Unit, Arkansas Department of Correction)

U.S. District Court
SEXUAL HARASS-
MENT
HOSTILE WORK
ENVIRONMENT

Saunders v. Hunter, 980 F.Supp. 1236 (M.D.Fla. 1997). A female corrections officer brought a suit against a county sheriff, her supervisors and her co-workers asserting violation of § 1983 and state law. The district court found that the co-workers did not act under "color of law" in sexually harassing the officer, but that the officer had sufficiently alleged that the supervisors had acted under color of law in creating a hostile work environment. The court also found that neither the sheriff nor the supervisor were entitled to qualified immunity with regard to the officer's § 1983 claims, and that the officer's allegations were sufficient to state a § 1983 claim against the sheriff in his official and individual capacities. The officer alleged that a supervisor hosed her down while other male officers held her, that supervisors failed to take action on her sexual harassment complaint, that a supervisor had given her a lower evaluation based on her harassment complaint, that a supervisor had commented that he would do anything to prevent the officer from attending a law enforcement academy, that a supervisor had refused to provide back-up for the officer and that the investigation into her harassment complaint created a hostile work environment. (Collier County, Florida)

U.S. District Court
DISCIPLINE
LEGAL SERVICES

Smylis v. City of New York, 983 F.Supp. 478 (S.D.N.Y. 1997). An assistant warden brought a § 1983 action against a city to recover for the city's failure to provide a defense and indemnity in a suit by inmates. The district court dismissed the action. The assistant deputy warden had pleaded guilty to departmental charges in connection with two incidents involving the use of force against inmates and was disciplined. The two incidents resulted in § 1983 actions by the inmates, and the city declined to represent the assistant warden. The court commented that "this has not stopped plaintiff from invoking the very civil rights laws under which he has been sued by inmates against the Corporation Counsel in an effort to make a federal case out of this straightforward issue of New York municipal law." (New York City)

U.S. Appeals Court
FAILURE TO PROTECT
PROTECTION FROM
HARM

Wallace v. Adkins, 115 F.3d 427 (7th Cir. 1997). A state prison officer sued prison officials under § 1983, alleging they failed to protect him. The district court granted summary judgment to the officials and the officer appealed. The district court affirmed, finding that prison guards who are ordered to stay at their posts are not in the kind of custodial setting required to create a special relationship based on an alleged affirmative duty of the state to ensure the safety of its employees for the purposes of the Fourteenth Amendment. The court also held that the officer failed to show that the officials affirmatively placed him in a position of danger that he would not have otherwise faced for the purposes of a due process claim. The court began its decision by stating "...the job of a prison guard is not an easy one, as this case illustrates." The officer was assigned to duty in a cellhouse where a particularly violent inmate was housed. The inmate had specifically threatened to kill the officer several years earlier. The inmate attacked the officer, stabbing him 13 times. The officer claimed that prison officials failed to take preventive measures that would have protected him. The court concluded that there was no doubt that the officer was in danger from the inmate on the morning of the attack, and that the officials knew of the danger, but according to the court "...these are the risks of the guard's job." (Indiana State Prison)

U.S. District Court
TERMINATION
FREE SPEECH

Weicherding v. Riegel, 981 F.Supp. 1143 (C.D.Ill. 1997). A former state correctional officer who had been terminated for his association with the Ku Klux Klan (KKK) brought an action against corrections officials alleging that his termination violated the First Amendment. The district court granted summary judgment in favor of the officials, finding that they were entitled to qualified immunity from the officer's First Amendment claims. The district court found that the officer's associational activities, including holding KKK rallies at his house and the distribution of KKK literature involved a matter of public concern for First Amendment purposes, but that it was not clearly established at that time that the officer's associational interests outweighed the correctional facility's interests in promoting racial harmony in the facility. (Graham Correctional Center, Illinois)

U.S. District Court
RACIAL
DISCRIMINATION
RETALIATION

Wilson-Simmons v. Lake County Sheriff's Dept., 982 F.Supp. 496 (N.D.Ohio 1997). A corrections officer sued a sheriff's department alleging race discrimination and retaliation. The district court granted summary judgment for the defendants, finding that the officer failed to establish a prima facie case of race discrimination. The officer alleged that other correction officers were using the jail's electronic mail system (e-mail) to make racial slurs against her. Although she complained to a supervisor, she refused to provide any information about the e-mail so that he could investigate. The officer submitted a written request asking to review the e-mails of five corrections officers for a month. The Sheriff's Department did not refuse the request but notified her that the cost of the request amounted to over \$2,500 to reconstruct the e-mails. The officer was asked to narrow her request or to provide additional information, but she refused. The court found that the officer suffered no adverse employment action for the purposes of a race discrimination claim, based on either the existence of allegedly racist e-mail or the employer's response to the officer's complaints. The court also found that the loss of the officer's overtime sheet did not constitute an adverse employment action for the purposes of her retaliation claim because she was not deprived of any pay earned and although she suffered a slight delay in receiving overtime, there was no suggestion that the event constituted anything other than a clerical oversight. The court held that the assignment of the officer to maximum security inmates did not constitute an adverse employment action because the assignment was a routine part of her duties and other officers were assigned to maximum security inmates more often than she was. (Lake County Jail, Ohio)

1998

U.S. District Court
TERMINATION
FREE SPEECH

Anderson v. McCotter, 3 F.Supp.2d 1223 (D.Utah 1998). A student intern at a half-way house for sex offenders brought suit against state corrections officials claiming that she was terminated in violation of her First Amendment rights for giving a television interview that was critical of a proposed policy change at the facility. The district court granted summary judgment for the defendants but the appeals court reversed and remanded. On remand, the district court entered judgment for the defendants. The district court held that the intern's free speech rights were overcome by the state's interest in maintaining the security and efficiency of its sex-offender treatment and rehabilitation facility. The court noted that even if the decision to fire the intern violated the First Amendment, officials were entitled to qualified immunity because the intern was a volunteer and the law was not clearly established concerning discharge of volunteers in retaliation for speaking on matters of public concern. The court found that the intern's television interview addressed a matter of public concern. (Bonneville Community Correctional Center, Utah)

U.S. District Court
SUPERVISION
HIRING/QUALIFICATIONS

Bednar v. County of Schuylkill, 29 F.Supp.2d 250 (E.D.Pa. 1998). A county prison inmate brought a § 1983 suit against a prison physician and others alleging deliberate indifference to his serious medical needs, negligent hiring, negligent supervision and medical negligence. The district court granted summary judgment in favor of the defendants. The court held that the physician's failure to diagnose the inmate's hip fracture and failure to order an x-ray was not deliberate indifference to the inmate's serious medical needs, where there was no evidence that the doctor recognized the inmate's need for an x-ray and refused to order it, or that the doctor possessed the requisite mental intent to sustain a deliberate indifference claim. The court held that the county was not liable to the inmate for failing to adequately screen him before hiring him, even though the physician had five previous medical malpractice actions filed against him, and had his staff privileges suspended at one hospital based upon "chart delinquency." The court noted that the previous actions had been settled or dismissed, the physician was licensed to practice medicine in the state, and he had experience as an emergency room physician as well as a prison physician in two state correctional facilities. The court also held that the county prison warden was not liable to the inmate for failing to supervise the doctor, even though the warden failed to provide the doctor with a copy of the prison's written policies regarding medical treatment, and the warden had knowledge of four accident reports concerning the inmate. (Schuylkill County Prison, Pennsylvania)

U.S. Appeals Court
GRIEVANCE
FREE SPEECH
DEMOTION

Campbell v. Arkansas Dept. of Correction, 155 F.3d 950 (8th Cir. 1998). A prison warden brought a § 1983 action against a state correction department claiming violation of his free speech and due process rights. The district court entered judgment upon jury verdict against the officials and ordered reinstatement or front pay. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that the warden's activities in speaking out about corruption and the lack of security in a prison, which resulted in a large amount of media attention, addressed matters of public concern and were protected under the First Amendment. The appeals court found that evidence supported the jury's finding that the decision to demote and transfer the warden was motivated by his protected speech. The court denied the officials qualified immunity because it was clearly established that prison security and operations were matters of public concern and that the warden had a right to bring security problems to light. (Tucker Maximum Security Unit, Arkansas Department of Correction)

U.S. Appeals Court
EQUAL PROTECTION
TRAINING

Fournier v. Reardon, 160 F.3d 754 (1st Cir. 1998). A corrections officer brought a § 1983 action alleging that county officials violated his rights in connection with his being placed under "house arrest" by being handcuffed during a training course. The district court

denied the defendants' motion to dismiss, but the appeals court reversed, finding that the officer was not "seized" within the meaning of the Fourth Amendment, and the officer's due process rights were not violated. A drill instructor allegedly handcuffed the officer's hands behind his back and informed him that he was being placed under "house arrest" for entering the instructor's office without asking permission. The officer could have objected, but did not. The court found that any possible negative consequences for his continuing employment that might have resulted from an objection were not relevant to whether a violation of his right to be free from seizure occurred. The court held that the corrections officer did not have a constitutional right under the due process clause to safe conditions during his basic training course. The court also found that the possibility that the drill instructor would not have placed a non-recruit under "house arrest" was not a basis for an equal protection claim by the corrections officer. (Essex Co. Sher. Dept., Mass.)

U.S. District Court
ASSIGNMENT
DUE PROCESS
SUSPENSION

Hummel v. McCotter, 28 F.Supp.2d 1322 (D.Utah 1998). A former employee of a state department of corrections brought a § 1983 action against DOC supervisors, a probation officer, and an assistant state attorney general based on their conduct in connection with his prosecution for criminal child abuse and his subsequent dismissal from the DOC. The district court granted summary judgment for the defendants. The court found that the employee's suspension without pay and his reassignment did not violate procedural due process. The court held that the probation officer had judicial branch immunity from § 1983 actions. The employee had been reassigned from his post as a hospital guard to a tower guard, following his conviction for misdemeanor child abuse. The employee alleged that the reassignment was a demotion, but the court found that the state had a legitimate interest in removing a convicted child abuser from a publicly-prominent position. (Utah Department of Corrections)

U.S. District Court
SUPERVISION
TRAINING
HIRING/QUALIFI-
CATIONS

Kesler v. King, 29 F.Supp.2d 356 (S.D.Tex. 1998). Former inmates from Missouri who had served time in a privately-operated unit leased from a county in Texas brought a § 1983 action. The district court found that the county sheriff, his chief deputy, and a county official in charge of the detention center's emergency response team were not entitled to qualified immunity from claims alleging the use of excessive force, failure to train or supervise staff, or failure to screen job applicants. The suit addressed staff actions that had become nationally-publicized through a videotape that depicted staff use of force, including the use of stun guns and dogs. The court held that triable issues existed regarding whether the sheriff's conduct was extreme and outrageous. A private firm, Capital Correctional Resources, Inc. (CCRI) leased 512 of the detention center's 1,163 beds at a cost of \$10/bed per day plus expenses. In 1996 CCRI entered into a contract to house low- to medium-security inmates from Missouri. The terms of CCRI's contract with the county included the following provisions: all CCRI hiring and training decisions and policies are subject to the sheriff's review and approval; the county and the sheriff are obligated to provide CCRI with all information necessary for the screening of applicants; the county and sheriff are obligated to certify all jailers prior to their assuming duties; and the sheriff is required to monitor CCRI's operations. CCRI hired, with the support of the sheriff, a warden for the privately-operated portion of the facility. The sheriff subsequently asked CCRI to hire two individuals, one as a lieutenant and one as a sergeant, each of whom had been previously convicted and had served sentences for a 1983 beating of a department of corrections inmate, and they were hired by CCRI. The court held that a defendant's conduct of allowing a canine unit dog to bite five inmates without provocation during a shakedown was not objectively reasonable and the defendant was not entitled to qualified immunity from liability. The court also denied qualified immunity for another defendant who failed to intercede to protect the inmates from excessive force used by officers, failing to stop an officer from allowing a dog to bite inmates, and failing to remove an officer who was using his stun gun on inmates. (Brazoria County Detention Center, Texas, and Capital Correctional Resources, Inc.)

U.S. District Court
PROTECTION FROM
HARM
TERMINATION

Kohl v. Smythe, 25 F.Supp.2d 1124 (D.Hawai'i 1998). A former state prison employee alleged First and Fourteenth Amendment violations in a § 1983 suit. The district court granted summary judgment in favor of the defendants, finding that the employee's complaint did not state a claim that he had a constitutionally protected liberty interest in a continuing position. The court held that prison officials were not liable for any violation of the Fourteenth Amendment by failing to provide the employee with a personal security guard. The employee, a recreation specialist, alleged that he was terminated in retaliation for his repeated complaints regarding the lack of his safety at the prison, which the court found did not substantially involve matters of public concern. The court also held that failure to comply with the Occupational Safety and Health Act (OSHA) does not, in and of itself, create a private cause of action. (Halawa Corr. Facility. Hawai'i)

U.S. District Court
FREE SPEECH
TERMINATION

Mills v. Meadows, 1 F.Supp.2d 548 (D.Md. 1998). A former captain in a county sheriff's department sued the current sheriff and others alleging discharge in retaliation for his political affiliation. The district court granted summary judgment for the sheriff, ruling that because the captain held a policymaking position within the department, he could be discharged by the new sheriff due to his political affiliation. The court held that the public's interest in the efficient fulfillment of the responsibilities of the sheriff's office outweighed the former captain's freedom of speech interest. The captain was one of the top half dozen or so officers in the 230 member department and played a significant part in the implementation of the sheriff's policies. (Harford County, Maryland)

- U.S. District Court
DISCIPLINE
- Smylis v. City of New York, 25 F.Supp.2d 461 (S.D.N.Y. 1998). An assistant warden who was disciplined after he pleaded guilty to administrative charges, sued a city and others claiming his guilty plea was coerced in violation of due process and the state's civil service law. The district court held that the plea was voluntary and he was therefore not deprived of a property interest without due process of law. The warden was threatened with criminal prosecution and loss of his job if he did not plead guilty, but he was advised by counsel. The warden was involved with two incidents of use of force against inmates. (Bronx House of Detention for Men, New York City)
- U.S. Appeals Court
ADA-Americans with
Disabilities Act
DISCIPLINE
DISCRIMINATION
HOSTILE WORK
ENVIRONMENT
TRANSFERS
GRIEVANCE
- Wallin v. Minnesota Dept. of Corrections, 153 F.3d 681 (8th Cir. 1998). A corrections officer sued a state corrections department, corrections officials, and co-workers, alleging violations of the Americans with Disabilities Act (ADA) and deprivation of due process. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. According to the court, the officer failed to show that his discharge occurred under circumstances giving to the inference of disability discrimination. The court found that the officer could not maintain an ADA claim for a hostile work environment. Although a co-worker called that officer called that officer an "alcoholic fucker," the correctional facility promptly investigated the remark and reprimanded the co-worker. On three occasions another co-worker suggested to the officer that seeing a psychologist was a good method to obtain vacation time. The officer also found cartoons of psychiatrists beds had been drawn on his calendar. The appeals court held that the correctional facility did not violate ADA when it failed to transfer the officer. The officer asked to be transferred to escape harassment by co-workers, but made no connection between his transfer requests and his disability. The officer suffered from alcoholism and depression and contended that similarly-situated employees were disciplined differently than he was. The court noted that the officer's misconduct was more egregious than that of the other employees he cited. (Minnesota Correctional Facility at Stillwater)
- U.S. Appeals Court
TERMINATION
FREE SPEECH
- Weicherding v. Riegel, 160 F.3d 1139 (7th Cir. 1998). A former prison sergeant brought an action against a warden and others alleging that his termination for engaging in white supremacist activity violated his free speech rights. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court held that prison officials' interests in safety outweighed the former sergeant's interest in engaging in protected speech. The sergeant appeared on a local newscast in which he stated that a white supremacist rally would be held on his property and was identified as a prison guard. (Graham Correctional Center, Illinois)
- U.S. Appeals Court
DISCRIMINATION
FREE SPEECH
TERMINATION
CONTRACTORS
- Zinn v. McKune, 143 F.3d 1353 (10th Cir. 1998). A nurse who was employed by a private corporation that had contracted with a state corrections department to provide medical services sued corrections officials alleging discrimination, retaliation, violation of Title VII and violations of § 1983 and the Kansas law protection whistleblowers. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court held that the nurse was not an employee of the corrections department for the purpose of Title VII, where she received compensation from the medical corporation rather than the department, and was supervised and evaluated by the corporation. The appeals court found that the nurse failed to show the existence of a causal connection between her whistle-blowing and any retaliation against her. (Prison Health Services, Osawatomie Correctional Facility, Kansas)
- 1999
- U.S. District Court
WORKING CONDITIONS
- Abarca v. Chevron U.S.A. Inc., 75 F.Supp.2d 566 (E.D.Tex. 1999). Prison employees and prison inmates, more than 1,000 total, sued the owner and operator of a pipeline and contractors who sold, installed and maintained the pipeline's valves, alleging assault, negligence, gross negligence, strict products liability, and cruel and unusual punishment arising out of a pipeline leak near the prison. The plaintiffs were forcibly exposed to gas when they were unable to be evacuated and the inmates were confined to their cells. The district court found that there was no federal question for which federal jurisdiction existed, dismissing the case. (Texas Department of Corrections, Liberty County, Texas)
- U.S. Appeals Court
INVESTIGATION
- Ahlers v. Schebil, 188 F.3d 365 (6th Cir. 1999). A corrections officer who was arrested for alleged sexual misconduct with a female detainee brought a § 1983 action against investigating correctional officers and a state investigator, seeking damages. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the detainee's accusation of sexual assault was sufficient, standing alone, to establish probable cause for the officer's arrest. The court noted that sheriff department records confirmed the window of time in which the alleged assault could have occurred. (Washtenaw County Jail, Michigan)
- U.S. District Court
FREE SPEECH
TERMINATION
RETALIATION
- Allen v. Iranon, 99 F.Supp.2d 1216 (D.Hawaii 1999). A jail physician brought an action under § 1983 claiming that corrections officials had engaged in an illegal conspiracy to retaliate against him for exercising his First Amendment right to speak out about inmate abuse. The district entered judgment for the physician, finding that the officials had engaged in an illegal conspiracy

and that he had been constructively discharged. According to the court, the physician was inappropriately locked out on three separate occasions and was the subject of several internal affairs investigations and was inappropriately passed over for a better-paying position. The court awarded lost wages in the amount of \$91,000, \$10,000 for emotional distress and humiliation, and \$10,000 for loss of reputation, but declined to award punitive damages. (Halawa Correctional Facility, Hawaii)

U.S. Appeals Court
RACIAL DISCRIM.
HARASSMENT
HOSTILE WORK
ENVIRONMENT
RETALIATION

Allen v. Michigan Dept. of Corrections, 165 F.3d 405 (6th Cir. 1999). An African-American employee brought a Title VII action against a state corrections department alleging race discrimination, harassment and retaliation. The federal district court granted summary judgment in favor of the department and the employee appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the employee failed to establish a prima facie race discrimination case based on department promotion practices. But the appeals court held that supervisors' alleged actions, including subjecting the employee to derogatory racial insults, created a hostile work environment. The supervisors' alleged actions included subjecting the employee to derogatory racial insults, not allowing him to serve as an acting sergeant while allowing a less experienced white employee to do so, failing to discipline a white co-employee allegedly caught removing the lock from the employee's locker with bolt cutters, constantly observing him closely, and leaving a note signed "KKK" demanding that he withdraw his bid for promotion. (Jackson Correctional Facility, Michigan Department of Corrections)

U.S. Appeals Court
ADA-Americans with
Disabilities Act
HIRING/QUALIFIC.
PSYCHOLOGICAL
SCREENING

Barnes v. Broward County Sheriff's Office, 190 F.3d 1274 (11th Cir. 1999). An applicant for the position of detention deputy brought an action against a county sheriff's office under the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA). The district court entered summary judgment in favor of the applicant on his claim that pre-employment psychological testing violated ADA and permanently enjoined the county from continuing such a practice. The district court entered summary judgment in favor of the sheriff's office on the remaining claims and denied the applicant's request for attorney fees. The applicant appealed the attorney fee decision and the appeals court affirmed, finding that the applicant was not entitled to attorney fees absent evidence that the discontinuation of psychological testing affected his relationship with the county at the time the judgment was rendered, or that he directly benefited from the injunction. (Broward County Sheriff's Officer, Florida)

U.S. Appeals Court
TERMINATION
DUE PROCESS
DISABILITY

Duncan v. Wisconsin Dept. of Health & Family Serv., 166 F.3d 930 (7th Cir. 1999). An employee who had been terminated from his position as a youth counselor at a state correctional facility sued state officials in their individual and official capacities, under the Rehabilitation Act, the Americans with Disabilities Act (ADA) and § 1983. The district court entered summary judgment in favor of the officials on the individual capacity claims, and judgment as a matter of law in favor of the state and officials as to the remaining claims. The appeals court affirmed, finding that evidence that the agency regarded the employee as disabled was insufficient for submission to the jury. The appeals court also held that the employee received all the process he was due prior to his suspension without pay and his termination. According to the court, a tenured state employee is entitled under the due process clause to an oral or written notice of charges against him or her, an explanation of the state's evidence, and an opportunity to present his or her side of the story--as long as the state also gives the employee a right to a full post-termination hearing. The employee had alleged that the state agency had concluded that he had an impairment that would have disqualified him from a broad range of jobs, not just from his job as a youth counselor at a correctional facility, and therefore the agency regarded him as disabled. The court held that the fact that the agency transferred him to another unit indicated that the agency thought he could work successfully in a slightly different environment. (Ethan Allen School, Wisconsin Department of Health and Family Services)

U.S. Appeals Court
TERMINATION
RETALIATION

Graning v. Sherburne County, 172 F.3d 611 (8th Cir. 1999). A former employee sued a county and a sheriff alleging that her termination violated her due process and political association rights, and that their posting of a notice about her termination constituted defamation. The district court entered summary judgment for the county and sheriff and the appeals court affirmed. The appeals court held that the termination was not causally connected to the employee's support of the sheriff's electoral opponent and therefore did not violate her political affiliation rights. The court also found that the posting of a notice about the termination did not defame her. The notice stated that she had been dismissed because she breached confidentiality. She had acknowledged that she disclosed the contents of a memo involving departmental business to her husband, and that she was aware that all department business was considered confidential. (Sherburne County, Minnesota)

U.S. Appeals Court
TERMINATION
FREE SPEECH

Jantzen v. Hawkins, 188 F.3d 1247 (10th Cir. 1999). A candidate who was terminated from his position as deputy sheriff upon announcing he would run against the incumbent sheriff brought an action against the sheriff and county commissioners challenging his termination. He was joined in the action by deputy sheriffs and a jailer who were terminated after supporting the candidate. The district court granted summary judgment for the defendants but the appeals court affirmed in part, reversed in part and remanded. The appeals court found that political affiliation and/or beliefs were not the substantial or motivating factors in the candidate's

termination. The appeals court found that fact issues existed as to whether the termination of the deputies violated the First Amendment, precluding summary judgment. According to the appeals court, the county board of commissioners was not liable for any First Amendment violation that occurred when the sheriff terminated the jailer and deputies who had supported the candidate. (Sheriff and Board of County Commissioners, Canadian County, Oklahoma)

U.S. Appeals Court
SEX DISCRIMINATION
TITLE VII
RETALIATION
EQUAL PROTECTION

Maniccia v. Brown, 171 F.3d 1364 (11th Cir. 1999). A female deputy sheriff employee sued her county sheriff-employer alleging disparate treatment and retaliation in violation of Title VII and the Florida Civil Rights Act. The district court granted summary judgment for the sheriff and the appeals court affirmed. The appeals court held that the alleged misconduct of male employees was not sufficiently similar to the misconduct for which she was disciplined to support a claim of disparate treatment. The court noted that the female employee had committed four policy violations, including misuse of confidential information, while the male employees each committed only a single incident of misconduct of a less serious nature. The court also found that the fact that the employee was reassigned 15 months after filing a sexual harassment grievance against her supervisor, and was terminated 21 months after filing the grievance, failed to establish a retaliation claim under Title VII. The female employee had been reassigned from road patrol to work in the jail as a corrections officer. (Santa Rosa County, Florida)

U.S. District Court
FREE SPEECH
TERMINATION

Massey v. Helman, 35 F.Supp.2d 1110 (C.D.Ill. 1999). A prison physician who claimed he was wrongfully dismissed from his federal prison position in violation of his First Amendment rights brought suit against a federal prison and prison officials. The district court dismissed the case, ruling that the physician was required to bring his claim through the procedures set forth in the Civil Service Reform Act (CSRA). The physician had alleged that he was discharged in furtherance of the unconstitutional policy of depriving inmates of their Eighth Amendment right to medical care. (Federal Correctional Center, Pekin, Illinois)

U.S. Appeals Court
TERMINATION

Massey v. Helman, 196 F.3d 727 (7th Cir. 1999). A physician sued prison officials claiming he was terminated from employment for asserting claims on behalf of his inmate-patients. The district court dismissed the action and the appeals court affirmed. The appeals court held that the physician who was allegedly terminated for openly opposing the medical treatment of certain prisoners lacked standing to assert claims on behalf of the prisoners. (Federal Correctional Institution, Pekin, Illinois)

U.S. District Court
ADA-Americans with
Disabilities Act
DISABILITY
HARASSMENT
RETALIATION
TERMINATION

Mistretta v. Volusia County Dept. of Corrections, 61 F.Supp.2d 1255 (M.D.Fla. 1999). A former county employee who suffered from panic disorder brought an action against corrections officials and a county. The district court granted summary judgment for the defendants. The court held that a supervisor's verbal reprimands of the employee were not adverse employment actions nor was the employee subjected to severe and pervasive disability-based harassment. According to the court, although county officials might have been aware that the employee suffered from emotional problems and stress, there was no evidence that the county knew that the employee had limitations from a recognized mental disorder that needed treatment and reasonable accommodation in order for him to perform on a daily basis. The court held that alleged "punishment" workloads and workstations assigned to the employee were also assigned to non-disabled co-workers as well. (Volusia County Department of Corrections, Florida)

U.S. Appeals Court
ADA-Americans with
Disabilities Act
DISCRIMINATION
WORKING
CONDITIONS
DISABILITY

Muller v. Costello, 187 F.3d 298 (2nd Cir. 1999). A state corrections officer who suffered from asthma which was aggravated by second-hand smoke brought an action against the state alleging discrimination and retaliation in violation of the Americans with Disabilities Act (ADA). A district court jury entered a verdict in favor of the officer on both the discrimination and retaliation claims. The appeals court affirmed to the extent supported by the retaliation claim. The appeals court found that evidence that the officer was foreclosed from a class of jobs was insufficient for submission to the jury on the officer's ADA claim. But the appeals court upheld the jury's verdict which awarded damages and the district court's equitable awards of reinstatement and back pay, in their entirety. The jury awarded a total of \$420,300 which it subdivided into \$135,000 for the officer to receive additional education to find different employment and \$285,000 for pain and suffering and mental anguish. The officer had been diagnosed with "severe bronchitis with a strong asthmatic component" and his doctor recommended that the officer have "no exposure to tobacco smoke while at work." The officer's correctional facility had a policy that allowed smoking in housing units and the officer was assigned to a housing unit after his diagnosis. The officer filed numerous grievances with the department regarding the lack of health and safe working conditions at the facility. (Midstate Correctional Facility, New York)

U.S. District Court
TERMINATION

O'Connell v. County of Northampton, 79 F.Supp.2d 529 (E.D.Pa. 1999). A former warden of a county prison brought an action claiming that certain county defendants violated his civil rights and that all defendants defamed him in violation of Pennsylvania state law. The district court granted summary judgment to the defendants, finding that the warden's resignation was voluntary and therefore precluded his claim that the county defendants deprived him of a liberty interest in having his name free of the stigma attached to the accusations of his alleged sexual harassment. The court noted that even if the warden had been effectively discharged based on accusations of his alleged sexual harassment of a correctional officer, his failure to seek a "name-clearing" hearing would bar

his claim that the county defendants deprived him of a due process liberty interest. (Northampton County Prison, Pennsylvania)

U.S. District Court
TERMINATION
FREE SPEECH
UNION

Orr v. Trumbull County, 77 F.Supp.2d 853 (N.D.Ohio 1999). A former county corrections officer brought a § 1983 action against a county and a sheriff alleging that he was discharged, in violation of his right to free speech and association, in retaliation for his statements concerning the sheriff department's hiring practices and his association with union members. The district court granted summary judgment for the defendants, finding that the officer's associational activities and his statement about hiring practices did not touch upon a matter of public concern and were not protected by the First Amendment. (Trumbull County Sheriff's Department, Ohio)

U.S. District Court
RACIAL DISCRIM.
DISCIPLINE
RETALIATION

Pollard v. Montgomery County, 66 F.Supp.2d 1218 (M.D.Ala. 1999). A black correctional officer brought a retaliation and discrimination action against a county alleging that his ten-day suspension, the increase in disciplinary actions against him, his assignment to a control booth post, the denial of his request to use a week's accrued vacation time, and the requirement that he produce a doctor's note to use any of his sick leave, were in retaliation for having filed an EEOC complaint. The district court granted summary judgment for the county finding that the county presented legitimate, non-discriminatory reasons for its actions. (Montgomery County, Alabama)

U.S. District Court
TITLE VII
SEXUAL HARASS.
DISABILITY
ADA-Americans with
Disabilities Act

Powell v. Morris, 37 F.Supp.2d 1011 (S.D.Ohio 1999). A former secretary at a medium security prison brought an action against a state corrections department and various officials and staff, alleging violation of the Americans with Disabilities Act (ADA) and Title VII sexual harassment. The district court held that the secretary failed to establish a case of discrimination or retaliation under ADA. According to the court, although depression may qualify as a disability under ADA, there was no evidence that the secretary's depression and anxiety substantially limited her ability to work. The court also held that the defendants could not be held liable under Title VII for the sexually offensive conduct of inmates, where the prison maintained policies reasonably calculated to minimize sexual harassment by inmates and to protect the safety of its employees. But the court denied summary judgment on the Title VII claims based on the conduct of supervisors. The court ordered more proceedings to determine if the prison exercised reasonable care to prevent or correct sexually harassing behavior on the part of its supervisors, and whether the secretary unreasonably failed to take advantage of preventive or corrective opportunities that were provided by the prison. (London Corr'l Institution, Ohio)

U.S. Appeals Court
TERMINATION
DISCRIMINATION
RETALIATION

Pulliam v. Tallapoosa County Jail, 185 F.3d 1182 (11th Cir. 1999). A former correctional officer at a county jail filed a suit claiming that the jail retaliated against him, in violation of Title VII and § 1983, by terminating his employment because he had filed a charge against the jail with the Equal Employment Opportunity Commission (EEOC). The district court entered judgment in favor of the jail and the appeals court affirmed. The officer's EEOC complaint had alleged discrimination on the basis of race and disability, and unlawful retaliation for his protected complaints of discrimination. (Tallapoosa County Jail, Alabama)

U.S. Appeals Court
RACIAL
DISCRIMINATION
TERMINATION
HOSTILE WORK
ENVIRONMENT
RETALIATION
TITLE VII

Richardson v. New York State Dept. of Corr. Ser., 180 F.3d 426 (2nd Cir. 1999). A former employee brought an action against a state corrections department asserting hostile work environment, racial harassment and retaliation claims under Title VII. The district court entered summary judgment in favor of the department. The appeals court affirmed in part, vacated in part, and remanded. The appeals court found that fact issues existed as to whether the alleged incidents that occurred at one correctional facility--including a co-worker's use of the word "nigger"--created a hostile work environment, and whether the department was liable for the alleged harassment by co-workers and supervisors. The appeals court found that the employee established a prima facie case of retaliation based on the alleged harassment by co-workers. The employee alleged that she found manure in her parking space, hair in her food, and scratches on her car, and that several of these incidents occurred shortly after deposition notices were served. (Auburn Correctional Facility, New York)

U.S. Appeals Court
DEMOTION
PROBATION
FREE SPEECH

Ross v. Clayton County, GA., 173 F.3d 1305 (11th Cir. 1999). A county correctional officer brought a § 1983 action against a county, warden and other individuals alleging that his demotion for associating with his probationer brother violated his procedural due process and First Amendment rights. The district court granted summary judgment for the defendants on remand from the appeals court. The appeals court affirmed, finding that the officer did not have a protected property interest in his rank as sergeant and his demotion did not violate his free association rights. The appeals court held that the county's interests in enforcing a rule prohibiting employees from associating without permission with known inmates, active probationers or parolees were well-founded, given the county's special need in the law enforcement context to employ persons who acted with good judgment and to avoid potential conflicts of interest. The court noted that the flexibility that was created by the rule's exception for those who obtained permission enhanced the rule's reasonableness. (Clayton County, Georgia)

U.S. District Court
TERMINATION
DISCRIMINATION

Rucci v. Thoubboron, 68 F.Supp.2d 311 (S.D.N.Y. 1999). A former corrections officer brought a § 1983 action against a county and superior officers alleging gender discrimination and violations of the free speech and search and seizure clauses. The district court held that assigning the female plaintiff to work a night shift in a female unit at a correctional facility did not constitute

gender discrimination. The court also held that the defendants had probable cause to arrest the plaintiff for tampering with public records. The court also found that the investigation of the plaintiff for an incident in which a touch-screen monitor shattered while she was alone in a control room was not motivated by the plaintiff's gender. (Putnam County Sheriff's Department, New York)

U.S. Appeals Court
TERMINATION
DUE PROCESS

Schacht v. Wisconsin Dept. of Corrections, 175 F.3d 497 (7th Cir. 1999). A former prison officer brought a § 1983 action in state court against the Wisconsin Department of Corrections and individual co-workers. The case was removed to federal district court where the official capacity claims were dismissed and summary judgment was granted against the former officer on all other claims. The appeals court affirmed, finding that the officer, who was terminated on charges of theft of state property and failure to provide complete and accurate information during an investigation, failed to establish that his due process rights had been violated. According to the court, the officer had a pre-termination interview at which prison officials gave him notice of the charges and asked him if he would like to respond, and he had adequate post-termination administrative remedies he could have pursued under state law. The officer was employed by the department for eleven years before he was terminated. (Oakhill Correctional Center, Wisconsin)

U.S. Appeals Court
DISCIPLINE

U.S. v. Walsh, 194 F.3d 37 (2nd Cir. 1999). A corrections officer who was convicted of violating an inmate's constitutional rights appealed his conviction on three counts of violating 18 U.S.C. § 42, which makes it a criminal act to willfully deprive a person of rights protected by the Constitution or laws of the United States while acting under the color of law. The appeals court affirmed, finding that the officer's acts constituted punishment and rose to the level of a constitutional violation. The corrections officer was found to have stepped on an inmate's penis and to have perpetrated other assaults on inmates. The officer, who was six feet two inches tall and weighed over 300 pounds, instructed an inmate to kneel and put his penis on a horizontal bar of his cell, and then stood with his full weight on the penis for a few seconds. The court concluded that the officer was acting under the color of state law, noting that the officer was "on duty and in full uniform, was acting within his authority to supervise and care for inmates under his watch when the assaults occurred." (Orleans County Jail, New York)

U.S. Appeals Court
PROTECTION FROM
HARM

White v. Lemacks, 183 F.3d 1253 (11th Cir. 1999). A nurse and the administrator for another nurse's estate brought a § 1983 action alleging substantive due process violations against a sheriff, deputy sheriff, and county, based on an incident in which the nurses were attacked and beaten by a county jail inmate while they worked in the jail infirmary. The district court dismissed the case and the appeals court affirmed. According to the appeals court, the fact that a government employee would risk losing her job if she did not submit to unsafe job conditions does not convert a voluntary employment relationship into a custodial relationship, and therefore does not entitle to employee to substantive due process protection from workplace hazards, including harm caused by third parties. The nurses worked for Prison Health Services, Inc, which was under contract to provide medical services to the county jail. As a condition of their job, and while performing their nursing duties at the jail, they were required to be in close contact with inmates, and their freedom of movement and ability to flee or otherwise protect themselves were limited. The nurses were attacked and brutally beaten by an inmate who also subdued a deputy who had been assigned to protect the nurses. (Clayton County Jail, Georgia)

2000

U.S. Appeals Court
FREE SPEECH

Andersen v. McCotter, 205 F.3d 1214 (10th Cir. 2000). A student intern at a halfway house for sex offenders was terminated for giving a television interview that was critical of a proposed policy change at the facility. The intern brought a civil suit alleging her termination violated her First Amendment rights. The district court granted summary judgment for the defendants but the appeals court reversed and remanded. On remand the district court found for the defendants and the intern again appealed. The appeals court affirmed the dismissal of the case, finding that the corrections department's interest in efficient and safe operation of the facility outweighed the intern's interest in speaking on a matter of public concern. According to the court, the intern's speech had a detrimental impact on her relationships with her superiors and impeded her ability to perform her duties, and her speech posed a real threat to the effectiveness of the sex offender treatment program and to the safety of the halfway house staff and the public. The intern had been critical of the department's plan to privatize the treatment program. (Utah Department of Corrections, Bonneville Community Corrections Center)

U.S. Appeals Court
PROMOTION
RACIAL
DISCRIMINATION

Elwell v. Dobucki, 224 F.3d 638 (7th Cir. 2000). An applicant brought a § 1983 action alleging that a state correctional facility violated his equal protection rights by denying him the position of lieutenant because he was white. The district court entered summary judgment for the defendant and the appeals court affirmed. The appeals court held that the defendant warden was entitled to qualified immunity because it was not clearly established in 1992 that his alleged action would violate the applicant's equal protection rights. The warden allegedly departed from his usual policy of preferring in-house candidates in order to increase the number of African-American lieutenants in the facility. (Graham Correctional Facility, Illinois)

<p>U.S. Appeals Court FREE SPEECH DISCIPLINE</p>	<p><u>Flores v. San Diego County</u>, 206 F.3d 845 (9th Cir. 2000). A corrections deputy sued a county sheriff and others under § 1983 alleging violations of his rights to free speech and due process. The district court dismissed the claim and the appeals court affirmed. The appeals court held that the deputy could not maintain a First Amendment claim based on his alleged fear of future disciplinary action based on his speech. The deputy had taken his personal firearm to a local business for servicing and became involved with a dispute involving the servicing of the weapon. A representative of the business said he knew the sheriff and would call him and complain of his conduct. The deputy responded by saying he would inform the deputy sheriffs association that the business was providing poor service. A complaint was filed against the deputy alleging that he misused his position. The deputy received a three-day suspension for "conduct unbecoming." (San Diego County Sheriff's Department, California)</p>
<p>U.S. District Court SEXUAL HARASSMENT HOSTILE WORK ENVIRONMENT TITLE VII SEX DISCRIMINATION</p>	<p><u>Gonzalez v. New York State Dept. of Correct. Ser.</u>, 122 F.Supp.2d 335 (N.D.N.Y. 2000). An Hispanic female corrections officer brought an action against a state corrections agency alleging race and sex discrimination under § 1983, Title VII and state law. The district court dismissed the § 1983 claims, finding them barred by the Eleventh Amendment. But the court found that the officer's Title VII claims were timely and that a white male co-worker's alleged ongoing pattern of harassment and discrimination, which occurred on a daily basis, was sufficiently pervasive to constitute a hostile work environment in violation of Title VII. The co-worker's actions allegedly included continual use of foul language, sending sexually explicit magazines and books to the female officer's home, refusing to assist the officer in potentially dangerous situations, and intentionally bumping into the officer on at least two occasions. According to the plaintiff, the white male co-worker used raced-based derogatory terms such as "nigger" and "spic" in her presence, and referred to women as "bitches." The court found that the state department's failure to take action for over one year to stop the male co-worker's harassment, or to permit her to change her position, despite numerous complaints, was sufficient to render the department liable under Title VII for creating a hostile work environment. (Fishkill Correctional Facility, New York)</p>
<p>U.S. Appeals Court TERMINATION FREE SPEECH</p>	<p><u>Hale v. Mann</u>, 219 F.3d 61 (2nd Cir. 2000). A former director of a state juvenile detention facility sued the state alleging his termination violated the Family Medical Leave Act and his First Amendment rights. The district court entered judgment in favor of the state and the appeals court affirmed in part, vacated in part and remanded. The appeals court held that a genuine issue of material fact existed as to whether the director engaged in protected speech by forwarding to a state corrections commission an investigative report about a riot that was prepared by a facility staff member that was critical of the state. (State of New York Office of Children and Family Services)</p>
<p>U.S. District Court TERMINATION</p>	<p><u>Harford v. County of Broome</u>, 102 F.Supp.2d 85 (N.D.N.Y. 2000). A former county corrections officer brought an action against a county and a village under § 1983 as a result of disciplinary actions. The district court granted summary judgment for the defendants. The district court held that termination of the officer for violating a rule by failing to inform his agency that he had been charged with criminal misconduct did not violate due process. According to the court, the requirement was reasonably related to the county's objective of maintaining the integrity of the corrections agency. (Broome County Jail, New York)</p>
<p>U.S. Appeals Court TITLE VII TERMINATION ADA- Americans with Disabilities Act</p>	<p><u>Hoskins v. Oakland County Sheriff's Dept.</u>, 227 F.3d 719 (6th Cir. 2000). A female former deputy sheriff, who had been discharged after an injury rendered her unable to restrain inmates, brought an action against the sheriff's department alleging disability discrimination in violation of the Americans with Disabilities Act (ADA) and gender discrimination in violation of Title VII. The district court entered summary judgment in favor of the department. The appeals court affirmed, finding that restraining inmates was an essential function of the deputy's position and that allowing the deputy to rely on the assistance of others in restraining inmates was not a reasonable accommodation. The appeals court also found that reassigning the deputy to an intake position was not a reasonable accommodation, nor was assigning the deputy permanently to a position which was normally assigned to deputies on a rotating basis. The appeals court held that the female deputy was not similarly situated to male deputies who were accommodated by the county and therefore failed to establish a prima facie Title VII claim. The court noted that the male deputies were accommodated temporarily while they had restrictions from their doctors, unlike the female deputy who was permanently restricted from performing an essential job function. (Oakland County Jail, Michigan)</p>
<p>U.S. Appeals Court RETALIATION</p>	<p><u>Hudson v. Norris</u>, 227 F.3d 1047 (8th Cir. 2000). An employee of a state corrections department sued department officials under § 1983 and a state civil rights act alleging that the officials retaliated against him for giving testimony in a lawsuit between a former coworker and the department. The district court denied summary judgment to the officials in their personal capacities on the First Amendment claim and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the employee provided sufficient evidence of a causal link between his testimony and the adverse employment actions he suffered, as required to make a case of unlawful retaliation under the First Amendment. The court also found that a reasonable finder of fact could conclude that a deputy director, prison warden, assistant warden, and internal affairs investigator unlawfully retaliated against the employee and were not entitled to qualified immunity on either the First Amendment claim or the free speech</p>

claim under the state civil rights act. The court found that the reasons given by the officials for taking adverse actions against the employee shortly after his testimony were false, and that the employee's work record had been exemplary. (Arkansas Department of Correction)

U.S. Appeals Court
FREE SPEECH
RETALIATION

Jeffes v. Barnes, 208 F.3d 49 (2nd Cir. 2000). Corrections officers who publicly criticized alleged assaults of county jail inmates by other officers, and who assisted in a federal investigation, brought a § 1983 action against the county, sheriff and other county officials asserting First Amendment claims based on alleged retaliation. The district court granted summary judgment in favor of the defendants as to official capacity claims and claims against the county. The officers appealed and the appeals court vacated and remanded. The appeals court held that material issues of fact as to whether the alleged retaliation was caused at least indirectly by the sheriff precluded summary judgment. (Schenectady County Jail, New York)

U.S. Appeals Court
TERMINATION
FREE SPEECH

Knight v. Vernon, 214 F.3d 544 (4th Cir. 2000). A former jailer brought a § 1983 action against a sheriff and county for violation of her free speech and due process rights. The district court granted summary judgment for the defendants and the jailer appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that the jailer's political allegiance to the sheriff was not an appropriate requirement for performance of her job as a jailer and that fact issues precluded summary judgment on her political firing claim. According to the court, the First Amendment protected the jailer from discharge for failing to support the sheriff in a primary election because the jailer's duties were routine, circumscribed and ministerial and the jailer did not engage in law enforcement activities on behalf of the sheriff and was not entrusted with broad discretion. (Rockingham County Jail, North Carolina)

U.S. District Court
TERMINATION
FREE SPEECH

Kujawski v. Board of Com'rs of Bartholomew Cty, 104 F.Supp.2d 1027 (S.D.Ind. 2000). A former employee brought a § 1983 action against a county and its community corrections department alleging wrongful termination in retaliation for exercise of his First Amendment rights. The district court entered summary judgment for the defendants but the appeals court reversed and remanded. On remand the district court denied summary judgment for the defendants, finding that the retaliatory discharge of the community corrections officer violated the First Amendment. The court found that the statement of the officer at a work-sponsored social function held during normal working hours, that was attended by persons employed outside of the department, was a statement of public concern. The officer had commented on a department policy not to confiscate guns found while arresting offenders sentenced to home detention. The court noted that there was no animosity between the officer and his supervisor before the incident. (Bartholomew County Community Corrections Department, South Dakota)

U.S. District Court
TERMINATION
RACIAL
DISCRIMINATION
RETALIATION

Lewis v. Delaware County, 109 F.Supp.2d 406 (E.D.Pa. 2000). A prison guard sued county officials alleging violation of federal and state law in connection with sanctions and ultimately dismissal following his accusations that a fellow guard engaged in brutality. The district court denied summary judgment for the defendants on the allegations of retaliatory action in violation of the guard's First Amendment rights, racial discrimination and state law. The guard alleged that he was dismissed on racial grounds for complaining about the alleged brutality of a white guard. The guard had reported two violent incidents to the FBI, triggering an extensive investigation into the county prison. The court found that a State Prison Board of Inspectors did not have sufficient supervisory authority over the operation of the county prison to have any liability. (Delaware County Prison, Pennsylvania)

U.S. Appeals Court
TERMINATION
RACIAL DISCRIMINATION

Perry v. McGinnis, 209 F.3d 597 (6th Cir. 2000). An African-American employee who had been employed as a hearing officer for a state corrections department brought an action alleging that he was terminated due to his race. The district court dismissed the case and the employee appealed. The appeals court reversed and remanded, finding that the employee's decisions made in inmate disciplinary hearings constituted protected "expression" under the First Amendment and involved matters of public concern. The appeals court held that the employee's complaint of racially disparate treatment, made by way of an internal grievance, was a matter of public concern for First Amendment purposes. (Michigan Department of Corrections)

U.S. Appeals Court
DISCRIMINATION
RACIAL
DISCRIMINATION

Ramirez v. Department of Corrections, Colo., 222 F.3d 1238 (10th Cir. 2000). Hispanic employees of a state corrections department brought § 1983 claims for discrimination. The district court denied the defendants' motion to dismiss. The appeals court affirmed and remanded, finding that the employees stated a claim that officials engaged in racial and national origin discrimination in violation of the employees' equal protection rights. The employees had alleged that state corrections officials treated them differently than similarly-situated non-Hispanic employees, made false accusations against them in an effort to have them disciplined, upheld unjustified reductions in performance evaluations, regularly denied supervisory positions, and denied them the ability to function as lead-workers. (Colorado Department of Corrections)

U.S. Appeals Court
TERMINATION
ADA- Americans with
Disabilities Act

Renaud v. Wyoming Dept. of Family Services, 203 F.3d 723 (10th Cir. 2000). The terminated superintendent of a state juvenile corrections facility brought an action against the state for breach of contract and violations of the Americans with Disabilities Act (ADA). Following a jury trial the district court entered judgment for the state. The appeals court affirmed, finding that the superintendent could be terminated at will and that the district court did not abuse its discretion in

refusing to instruct the jury that alcoholism was a disability in all cases for the purposes of ADA. (Wyoming Boys School)

- U.S. Appeals Court
RACIAL
DISCRIMINATION
HARASSMENT
HOSTILE WORK
ENVIRONMENT
RETALIATION
TITLE VII
- Ross v. Douglas County, Nebraska, 234 F.3d 391 (8th Cir. 2000). A black former correctional officer brought an action against a county under Title VII for disparate treatment, hostile work environment and retaliation. The district court entered judgment on jury verdict in favor of the officer and the county appealed. The appeals court affirmed, finding that a black supervisor's constant use of racial epithets toward the plaintiff created a hostile work environment and that testimony that a warden's actions were for the purposes of retaliation was sufficient. The plaintiff had been permanently assigned to an extremely stressful position after he filed his employment discrimination charge. The court noted that even though the plaintiff alleged only a few specific incidences of racial harassment, this did not preclude the finding that the supervisor's harassment was sufficiently severe to support the plaintiff's claim of a hostile work environment. Because evidence showed that the plaintiff was forced to take a lower-paying job, without health benefits for his family, and suffered financial strain that included repossession of two automobiles, the appeals court found that the award of \$100,000 for emotional distress and mental anguish was not excessive. (Douglas County Correctional Facility, Nebraska)
- U.S. District Court
HIRING/
QUALIFICATIONS
SEX
DISCRIMINATION
- Rucker v. City of Kettering, 84 F.Supp.2d 917 (S.D.Ohio 2000). A female applicant for a civilian jailer position asserted claims under § 1983 and a state law prohibiting gender discrimination in employment. The district court denied the applicant's motion for a preliminary injunction. The district court held that the city jail, which housed only male inmates, was required to follow state standards and regulations that required certain tasks be performed by officers who were of the same sex as inmates. (City of Kettering, Ohio)
- U.S. Appeals Court
FREE SPEECH
TERMINATION
- Sowards v. Loudon County, 203 F.3d 426 (6th Cir. 2000). A former jailer brought a § 1983 action against a county and sheriff alleging she was terminated for exercising her First Amendment rights of political and intimate association. The district court entered summary judgment in favor of the defendants and the jailer appealed. The appeals court reversed and remanded, finding that the jailer engaged in a protected right of political association when she supported her husband's campaign for the office of sheriff, and that the jailer met her initial burden of establishing she was engaged in the protected conduct of intimate association. The appeals court found that the exception under which a public employee may be dismissed on the basis of political affiliation did not apply to the jailer and that the sheriff was not qualifiedly immune from the jailer's claims. (Loudon County Sheriff's Department, Tennessee)
- U.S. Appeals Court
DISCRIMINATION
PROMOTION
- Thomas v. Texas Dept. of Criminal Justice, 220 F.3d 389 (5th Cir. 2000). A Black female lieutenant brought an action against a state corrections department under Title VII for race and gender discrimination and retaliation. The district court entered judgment in favor of the lieutenant and the state appealed. The appeals court affirmed in part and reversed in part and remanded. The appeals court upheld the findings that failure to promote and retaliation were based on race and gender discrimination, but found that the inclusion of the charge of race discrimination in housing was an abuse of discretion by the district court. (Texas Department of Criminal Justice)
- U.S. Appeals Court
SEXUAL HARASSMENT
RETALIATION
- White v. New Hampshire Dept. of Corrections, 221 F.3d 254 (1st Cir. 2000). A female former correctional officer brought a Title VII action against a state corrections department alleging direct sexual harassment, hostile work environment and retaliation. Following a jury trial the federal district court entered judgment in favor of the department. The appeals court affirmed. The officer had alleged that sexual conversations and jokes were common in the workplace and that she was warned that she should not enter the supply room because she was female. (N. H. State Prison)
- 2001
- U.S. District Court
DISCRIMINATION
TITLE VII
DISCIPLINE
- Allen v. Ohio Dept. of Rehabilitation and Corr., 128 F.Supp.2d 483 (S.D.Ohio 2001). An African-American probationary correctional officer brought an employment discrimination action against a state department of corrections and its officials under Title VII, § 1983 and § 1981. The district court held that monetary claims against the officials in their official capacities under § 1983 were barred by the Eleventh Amendment, and the department's disciplinary actions against the officer were not sufficiently adverse to support claims under Title VII and § 1981. The court found that the officer was not denied due process as the result of a one-day suspension for violation of a work rule, where the deprivation was de minimis and was reduced through internal grievance procedures, and he was granted a hearing at which he was represented by a union officer. The department had created an action plan following complaints about the officer's behavior, extended the officer's probationary period by 90 days, and issued a one-day suspension. (Franklin Pre-Release Ctr., Ohio)
- U.S. Appeals Court
FREE SPEECH
RELIGION
DISCIPLINE
- Altman v. Minnesota Dept. of Corrections, 251 F.3d 1199 (8th Cir. 2001). Employees at a state correctional facility brought an action against the state department of corrections alleging that reprimands they received for reading their Bibles during a mandatory training program violated their constitutional rights. The district court dismissed some claims but granted relief on the employees' free exercise and freedom of conscience claims. The appeals court reversed and remanded, finding that the employees' conduct constituted speech on a matter of public interest.

The court found that the manner in which the department dealt with issues of gays and lesbians in the workplace, the subject of the 75 minute training session, was a matter of political and social concern to the general public. But the court found that the department did not impose a significant burden on the employees' exercise of religion by requiring them to attend the training session, where the employees were assured by the department that they were not being told what to believe. The court found that summary judgment was precluded by a genuine issue of material fact as to the department's motive in issuing written reprimands to the employees. (Minn. Corr'l Facil., Shakopee)

U.S. District Court
FREE SPEECH
RETALIATION

Bailor v. Taylor, 170 F.Supp.2d 466 (D.Del. 2001). A former internal affairs investigator for a state corrections department brought an action against corrections officials, alleging they had retaliated against him for exercising his First Amendment right to free speech and that he was constructively discharged by the officials' retaliatory conduct. The district court held that the investigator's speech regarding wrongdoing by corrections officers was entitled to First Amendment protection and that summary judgment for the officials was precluded by fact questions regarding the alleged retaliation and the circumstances of the investigator's termination. Officials had criticized the investigator's report following an inmate riot, telling him that it contained unsupported conclusions and was vague, and directing him to revise it. The investigator protested the order to revise the report but eventually did so because he feared for his job. The investigator eventually resigned from his position after allegedly being subjected to retaliatory actions. (Delaware Department of Corrections)

U.S. Supreme Court
DISABILITY
ADA- Americans with
Disabilities Act

Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356 (2001). A security officer for an Alabama state youth detention facility, and a nurse for an Alabama state university hospital brought separate lawsuits seeking monetary damages against their state employers under Title I of the Americans With Disabilities Act (ADA). The cases were consolidated on appeal. The federal appeals court upheld the right of the employees to pursue such claims, finding that Congress had validly abrogated the Eleventh Amendment immunity of the states from suits for damages when it enacted ADA. The U.S. Supreme Court reversed, finding that Congress exceeded its constitutional authority when it attempted to allow private individuals to seek money damages against the states for violations of ADA. The Court ruled that Congress failed to identify a "history and pattern of irrational employment discrimination by the States against the disabled." The Court stated that it would be "entirely rational and therefore constitutional for a state employer to conserve scarce financial resources by hiring employees who are able to use existing facilities," rather than having to make reasonable accommodations for disabled employees who are not able to easily use such facilities. (Alabama)

U.S. District Court
ADA- Americans with
Disabilities Act
DISCRIMINATION
FREE SPEECH
RETALIATION
EQUAL PROTECTION

Greco v. County of Nassau, 146 F.Supp.2d 232 (E.D.N.Y. 2001). A county corrections officer brought state and federal claims against county officials, alleging employment discrimination based on a perceived disability, retaliation, constitutional violations, and slander. The district court granted summary judgment for the defendants. The court held that the officer failed to state a prima facie case of discrimination based on disability, because the employer clearly perceived the officer as being able to perform a broad range of tasks, as shown by the variety of assignments the officer had received. The court found that the officer's "abysmal" attendance record at work was a legitimate non-retaliatory reason for giving the officer a poor performance evaluation. The officer had testified before a county legislature regarding overtime pay. (Nassau County Sheriff's Dept., New York)

U.S. Appeals Court
SEARCHES
PRIVACY

Leverette v. Bell, 247 F.3d 160 (4th Cir. 2001). An employee of a state correctional institution brought a § 1983 action against an associate warden, alleging that a visual body cavity search of her person violated her Fourth Amendment right against unreasonable search and seizures. The district court denied summary judgment in favor of the associate warden and she appealed. The appeals court reversed and remanded, finding that the associate warden was acting within the scope of her authority and that the search was reasonable under the Fourth Amendment. The court noted that the search was conducted pursuant to a particularized and individualized tip that the employee would be bringing contraband into the prison in a tampon on a specific occasion, that the inmate-informant who had provided that information had relayed accurate drug-related tips in the past, and the search itself was conducted by female officials, in a private setting. (Wateree River Correctional Institution, South Carolina)

U.S. Appeals Court
EQUAL PROTECTION
TERMINATION

Oest v. Illinois Dept. of Corrections, 240 F.3d 605 (7th Cir. 2001). A former correctional officer brought a suit against a state corrections department, alleging retaliation and discrimination against her on the basis of gender. The district court granted summary judgment for the department and the appeals court affirmed. The appeals court held that the former officer failed to establish that she was treated differently than similarly-situated male officers with regard to her disciplinary suspension and her eventual termination. The court also found that the former officer failed to prove a causal connection between her EEOC complaint and her termination, given that more than one year passed between the filing of her complaint and her discharge. (Hanna City Work Camp, Ill. Dept. of Corr.)

U.S. Appeals Court
PROTECTION FROM
HARM

Nicholas v. Wallenstein, 266 F.3d 1083 (9th Cir. 2001). County jail employees who had participated in the restraint and removal of a prisoner who was suffering from a cocaine overdose brought a state court action under § 1983 based on the public identification of them as the persons who had

participated in the cell extraction. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the employees did not show that the facility commander had acted with deliberate indifference to known or obvious dangers when he disclosed their identities to an angry group of the prisoner's family and friends while the prisoner was near death. The employees had struggled with the inmate and handcuffed him and used pepper spray to control him. When they put him on a restraint board he stopped breathing and had no pulse. He was revived and taken to a hospital where he later died. (King County Jail, Washington)

U.S. District Court
TITLE VII
HARASSMENT
HOSTILE WORK
ENVIRONMENT

Sharafeldin v. Maryland, Dept. of Public Safety, 131 F.Supp.2d 730 (D.Md. 2001). A former chaplain at a state prison, an African-American of Islamic faith and Sudanese origin, sued a state corrections department alleging hostile work environment and constructive discharge in violation of Title VII. The district court granted summary judgment in favor of the corrections department, finding that numerous alleged incidents of harassment towards the chaplain involving his co-workers and his supervisors were not sufficient to establish constructive discharge under Title VII, even though the incidents caused the chaplain to suffer from Post Traumatic Stress Disorder. The court also found that a dispute and physical contact between the chaplain and his superiors did not violate Title VII where there was no evidence that the incident was motivated by the chaplain's race, religion or national origin. The court noted that not all verbal or physical harassment violates Title VII, and that discriminatory harassment by a co-worker is not actionable under Title VII. (Maryland Correctional Training Center, Hagerstown)

U.S. Appeals Court
RETALIATION
TRANSFERS
SEXUAL HARASSMENT
TITLE VII

Strouss v. Michigan Dept. of Corrections, 250 F.3d 336 (6th Cir. 2001). A nurse brought an action alleging that a state corrections department and state officials violated Title VII and her due process and equal protection rights by retaliating against her for complaining of sexual harassment. The district court granted summary judgment in favor of the defendants and the nurse appealed. The appeals court affirmed. The appeals court found that although the lateral transfer of the nurse to a state correctional facility where various inmates had allegedly made threats to her life was an "adverse employment action," the transfer was not causally connected to her opposition to a doctor's sexual comments or her complaints of a male supervisor's sexual harassment. The nurse had filed two EEOC complaints relating to her complaints. (State Prison of Southern Michigan)

U.S. Appeals Court
RETALIATION
TRANSFERS
RACE
DISCRIMINATION
AGE DISCRIMINATION
TITLE VII

Stutler v. Illinois Dept. of Corrections, 263 F.3d 698 (7th Cir. 2001). A state corrections employee brought a § 1983 action against her supervisor and her employer, alleging retaliation, and race and sex discrimination. The district court granted summary judgment in favor of the employer and supervisor, and the employee appealed. The appeals court affirmed, finding that the employee's lateral transfer to another department was not an "adverse employment action" because there was no evidence that the transfer decreased the employee's benefits or responsibilities in any way. The court held that the transfer was not retaliatory because it was done to relieve tension between the employee and her supervisor, which had resulted from a breakdown of their friendship. The court also found that the supervisor's conduct-- sending an e-mail to her boss characterizing the employee's conduct as bizarre, telling the employee that she had to go, telling the employee that she would have to move to an unfinished reception area to work, asking the employee to return her key to the supervisor's office, and telling the employee that she could not forgive her for filing a lawsuit-- did not rise to the level of "adverse employment actions" for the purpose of a retaliation claim under Title VII. (Illinois Department of Corrections)

U.S. Appeals Court
SEARCHES

Virgili v. Gilbert, 272 F.3d 391 (6th Cir. 2001). An employee at a state correctional facility brought suit under § 1983 against fellow employees and a state patrol officer, who had performed a strip search of the employee, alleging that her rights under the Fourth and Fourteenth Amendment had been violated. The district court granted summary judgment in favor of the defendants on the basis of qualified immunity and the appeals court affirmed. The appeals court held that it was not clearly established at the time of the challenged search that that search was in violation of the employee's Fourth Amendment right, or implicated a liberty interest protected by the due process clause. The employee had been strip searched at the correctional facility at which she worked without "reasonable suspicion" of illegal activity. (Mansfield Correctional Institution, Ohio)

U.S. Appeals Court
FREE SPEECH
TERMINATION

Weeks v. Bayer, 246 F.3d 1231 (9th Cir. 2001). A former employee of a state corrections department sued the director and the department alleging that his termination violated his First Amendment free speech rights. The district court granted summary judgment in favor of the director and the employee appealed. The appeals court affirmed, finding that the employee's statement in response to an inquiry by a representative of another state agency did not involve a matter of public concern and thus was not protected by the First Amendment. The employee had told the representative of another state agency that the department's inmate substance abuse and rehabilitation programs were at risk of discontinuation due to delays by the director of the corrections department in insuring and allotting funds for the programs. (Nevada Dept. of Prisons)

U.S. Appeals Court
TITLE VII
SEXUAL HARASSMENT
RETALIATION

Weston v. Pennsylvania, 251 F.3d 420 (3rd Cir. 2001). A male culinary service officer brought an action against the Pennsylvania Department of Corrections and a female coworker, alleging hostile work environment, sexual harassment, and retaliation in violation of Title VII and a state human relations law. The district court dismissed the hostile work environment claim and granted

summary judgment for the department on the retaliation claim. The appeals court affirmed in part, and reversed and remanded in part. The appeals court held that the allegations in the officer's complaint stated a claim for hostile work environment. The court permitted the officer to amend his complaint. The court found that two written reprimands that were placed in the officer's personnel file were not adverse employment actions under Title VII because the officer was not demoted in title, did not have his work schedule changed, was not reassigned, did not have his hours or work changed or altered in any way, and was not denied any pay raise or promotion as the result of the reprimands. (State Correctional Institution at Graterford, Pennsylvania)

U.S. District Court
HIRING/
QUALIFICATIONS
DISCRIMINATION

Winkelman v. Magne, 173 F.Supp.2d 821 (C.D.Ill. 2001). An applicant for employment with a state correctional facility filed a § 1983 action against employees responsible for interviewing candidates, alleging violation of his First Amendment rights. The district court granted summary judgment to the officials, finding that the applicant failed to tender any evidence of political affiliation discrimination. The court noted that politics, political affiliations, political beliefs, political activities, and political support were never mentioned or discussed at any time during the interview process. (Graham Correctional Facility, Illinois)

2002

U.S. Appeals Court
RETALIATION
FREE SPEECH

Allen v. Iranon, 283 F.3d 1070 (9th Cir. 2002). A prison physician brought a § 1983 action against corrections officials alleging retaliation for his public comments about inmate abuse. The district court entered judgment for the physician and the officials appealed. The appeals court affirmed, finding that evidence was sufficient to support the physician's retaliation claims. The physician had made public statements about inadequate inmate treatment to the news media and to the state legislature. He was subjected to two "lockouts," multiple Internal Affairs investigations, and he was passed over for a full-time permanent position in favor of a candidate who ranked lower after interviews and testing. (Halawa Correctional Facility, Hawaii)

U.S. District Court
WORKING
CONDITIONS

Barstow v. Shea, 196 F.Supp.2d 141 (D.Conn. 2002). A nurse brought a suit against her supervisor at a locked nursing facility located in a correctional center. The nurse alleged that the supervisor prevented her from leaving work, despite her desire to seek medical treatment for an illness. The district court granted summary judgment, in part, in favor of the nurse. The court held that the supervisor was not entitled to qualified immunity for allegedly unreasonably seizing the nurse and for allegedly arbitrarily subjecting the nurse to differential treatment by requiring the nurse to have a coworker complete a medical incident report regarding her medical condition. The court found that the supervisor could be held liable for false imprisonment under state law, for directing a correctional officer not to unlock a door to permit the nurse to leave the facility due to a claimed illness. (Osborn Correctional Center, Connecticut)

U.S. Appeals Court
FREE SPEECH

Bass v. Richards, 308 F.3d 1081 (10th Cir. 2002). A reserve deputy brought a § 1983 action against a sheriff and others, alleging he was stripped of his reserve commission because he supported the sheriff's opponent in an election, in violation of his First Amendment speech and association rights. The district court denied the defendants' motion for summary judgment on qualified immunity and they appealed. The appeals court affirmed in part, and dismissed the appeal in part. The appeals court held that it was clearly established that depriving the reserve deputy of his commission for exercising his speech and associational rights could have violated the First Amendment. The court held that the deputy's statements supporting the sheriff's opponent, although made in private, involved a matter of public concern. (Archuleta County, Colorado)

U.S. Appeals Court
DISCRIMINATION
FREE SPEECH
TERMINATION

Briscoe-King v. Terhune, 43 Fed.Appx. 45 (9th Cir. 2002) [unpublished]. A former state corrections employee brought a § 1983 action against her former supervisors, alleging she had been fired in retaliation for making protected statements. The district court denied summary judgment for the defendants and the appeals court affirmed. The appeals court found that the employee's complaints about racial discrimination and reports of alleged misuse of state vehicles were matters of public concern, and that her interest in expressing herself outweighed the corrections department's interest in preventing workplace disruption. (California Department of Corrections)

U.S. District Court
DISCIPLINE
TERMINATION
SEXUAL HARASSMENT
TITLE VII

Church v. Maryland, 180 F.Supp.2d 708 (D.Md. 2002). A female former correctional officer brought an employment discrimination action against her former state employer and a male co-worker, alleging that she was subjected a hostile work environment, sexual harassment and retaliation. The district court granted summary judgment in favor of the defendants. The court held that the employer exercised reasonable care to prevent and remedy alleged sexual harassment and took adequate, prompt remedial action to correct the alleged co-worker harassment. The court found that the officer's insubordination, failure to produce required documentation, and conduct that evidenced blatant disregard for the operational needs of the employer, were legitimate, non-retaliatory reasons for placing the officer on unpaid leave and eventually terminating her. (Maryland Department of Public Safety and Correctional Services)

U.S. District Court
DISCRIMINATION
HIRING/QUALIFI-
CATIONS

Coffey v. Cox, 218 F.Supp.2d 997 (C.D.Ill. 2002). An applicant who was not chosen for a position with a state correctional facility brought a § 1983 action against state employees, alleging political affiliation discrimination. The district court granted summary judgment for the defendants, finding that the decision not to offer the position to the applicant was based on legitimate, non-political

reasons. The court noted that other candidates had scored higher on interview questions, and that none of the applicants had been questioned about politics, political support, political affiliation, or political activities at any time during the application or interview process. (Logan Correctional Facility, Illinois)

U.S. Appeals Court
TERMINATION
PLRA-Prison Litigation
Reform Act

Coley v. Grant County, 36 Fed.Appx. 242 (9th Cir. 2002). A corrections officer who suffered from a hearing impairment and who had been terminated sued a county, alleging wrongful termination under the Americans with Disabilities Act (ADA) and related statutes. The district court dismissed the case and the appeals court affirmed. The appeals court held that the county had valid non-pretextual reasons for terminating the officer, based on poor performance and non-hearing-related safety concerns. The court held that the county was not obligated to make any reasonable accommodations for the officer's hearing impairment because the officer did not request it, and his disability did not prevent him from asking for an accommodation. (Grant County Jail, Oregon)

U.S. District Court
INVESTIGATION
TERMINATION

Cooper v. Sedgwick County, Kansas, 206 F.Supp.2d 1126 (D.Kan. 2002). A former employee of a county sheriff's department sued a county, county sheriff, and several of the sheriff's subordinates alleging violations of her constitutional rights in connection with an investigation into unlawful smuggling of cigarettes into a county jail. The district court held that the employee stated a § 1983 malicious prosecution claim against the sheriff and two other alleged supervisory employees. One of the supervisory employees was a detective who allegedly coerced a false statement from an inmate in an affidavit of probable cause and knowingly omitted information. The court found that the employee stated a claim against the sheriff and another employee who allegedly participated in the investigation, directed it, and encouraged arresting the employee without probable cause. The court also found that the employee could state a § 1983 claim for damage to her liberty interest in her reputation, and that the employee stated a § 1983 claim of municipal liability against the county. The employee had been involved in a "peaceful protest" designed to call attention to jail employees' working conditions such as low wages and staff shortages. Less than a month after the protest the employee was investigated for unlawful smuggling of cigarettes into the facility and was eventually terminated. (Sedgwick County Jail, Kansas)

U.S. Appeals Court
TERMINATION
FREE SPEECH

Fiesel v. Cherry, 294 F.3d 664 (5th Cir. 2002). A former state corrections officer sued corrections officials, alleging they violated his free speech rights by terminating him in retaliation for an incident in which the former officer accompanied a co-employee to an internal affairs department interview and advised the co-employee. The district court entered summary judgment in favor of the officials and the appeals court affirmed. The appeals court held that the officer's speech was not a matter of public concern because it was made solely on behalf of a co-employee, and in the context of his encounter with investigators. (Goree Unit, Texas Dept. of Criminal Justice- Instit'l Division)

U.S. District Court
FREE SPEECH
TERMINATION
RETALIATION

Getz v. Board of County Com'rs, 194 F.Supp.2d 1154 (D.Kan. 2002). A former nurse at a county jail who had reported nursing practice violations brought an action against the county and county employees, alleging violation of her First Amendment free speech rights, Due Process rights, § 1983, and retaliatory termination for whistle-blowing in violation of the Kansas Whistleblower Act. The district court held that the nurse's statements to the president of the state nurses' association were matters of public concern, and that the county health department's interest in maintaining a harmonious workplace did not outweigh the nurse's rights to air her concerns regarding nursing practice violations. The district court denied, in part, summary judgment in favor of the defendants. (Shawnee County Jail, Kansas)

U.S. Appeals Court
TITLE VII
HOSTILE WORK
ENVIRONMENT
DISCRIMINATION
SEXUAL HARASSMENT

Gorski v. New Hampshire Dept. of Corrections, 290 F.3d 466 (1st Cir. 2002). A former state corrections department employee brought a Title VII action alleging that she was constructively discharged as a result of sexual harassment and a hostile work environment. The district court granted summary judgment in favor of the department and dismissed the action. The appeals court vacated the dismissal of the hostile work environment claim and affirmed summary judgment in favor of the department on the sex discrimination claim. The appeals court held that the employee stated a hostile work environment claim under Title VII with her allegations that her supervisors discriminated against her on the basis of her gender and of her pregnancy by making derogatory comments about her pregnancy that gave rise to a sexually hostile work environment. The court noted that the employee cited seven separate examples of what she alleged were hostile and abusive comments. (New Hampshire Department of Corrections)

U.S. Appeals Court
FREE SPEECH

Heggen v. Lee, 284 F.3d 675 (6th Cir. 2002). Four county deputy sheriffs sued a sheriff alleging that he refused to reappoint them in retaliation for their support of his opponent in an election. The district court denied summary judgment for the sheriff and he appealed. The appeals court affirmed, finding that the deputies did not fall into the policy-making exception and could not be dismissed because of their political affiliation. The court noted that this principle was clearly established at the time that the sheriff refused to reappoint the deputies. (Hopkins County, Kentucky)

U.S. Appeals Court
TITLE VII
CONTRACTORS

Hunt v. State of Missouri, Dept. of Corrections, 297 F.3d 735 (8th Cir. 2002). Female nurses who had been assigned by a temporary staffing agency to provide nursing services to state prisons, brought claims against the corrections department under Title VII. The district court entered

judgment in favor of the nurses on the retaliation claims and awarded them attorney fees. The nurses appealed and the appeals court affirmed the district court decision. The appeals court held that the nurses were employees of the department, not independent contractors, and thus had standing to sue under Title VII, noting that the existence of a contract referring to a party as an independent contractor does not end the inquiry into whether the individual employee is protected by Title VII. According to the court, a person may have two or more employers for the same work, for the purposes of conferring standing to sue under Title VII. The court noted that the nurses did not work independently and were constantly under the supervision and scrutiny of corrections officials and employees, and although they were paid directly by the temporary staffing agencies, the nurses did no other work for the agency other than the prison work. The appeals court found that the nurses were constructively discharged, where their complaints about their treatment on the job were answered with threats to their well-being, threats of termination, efforts to obstruct their work, additional unnecessary and unreasonable job requirements, and general harassment. The court held that the award of \$136,967 in attorney fees was warranted, even though the nurses did not prevail on their sexual harassment claims. (Jefferson City Correctional Center, Missouri)

U.S. District Court
TITLE VII
GENDER DISCRIMINATION
RETALIATION

Kulikowski v. Board of County Com'rs. of County, 231 F.Supp.2d 1053 (D.Colo. 2002). A white male former county employee brought an action against a county and supervisors alleging sex discrimination and retaliation in violation of Title VII, denial of equal protection, and retaliation for exercising his free speech rights. The district court held that genuine issues of material fact precluded summary judgment on the Title VII retaliation and gender discrimination claims, and that the employee established a prima facie case of reverse discrimination. The court found that the employee's poor work performance might have been a pretext for retaliation against the employee. The employee, who had worked for the county community corrections department for 18 years, had repeatedly questioned the management and make-up of a local domestic violence program, noting that the program's board was composed entirely of females. The employee had suggested that the program might be violating the county's funding regulations. (Boulder County Community Corrections, CO)

U.S. Appeals Court
SEXUAL HARASSMENT
TITLE VII
RETALIATION

Longstreet v. Illinois Dept. of Corrections, 276 F.3d 379 (7th Cir. 2002). A female correctional center employee brought a Title VII action against a state corrections department and the center's warden, alleging sexual harassment and retaliation. The district court granted summary judgment for the defendants and the employee appealed. The appeals court affirmed, finding that the department's response of reassigning a male employee after the plaintiff complained of a sexual harassment incident was not obviously unreasonable. According to the plaintiff, a male employee offered her money to perform sexual acts. The court did not find evidence of retaliation. (Joliet Corr'l Ctr., Ill.)

U.S. Appeals Court
TERMINATION
FREE SPEECH

Marcum v. McWhorter, 308 F.3d 635 (6th Cir. 2002). A former deputy sheriff sued a sheriff, alleging that his First and Fourteenth Amendment rights were violated when he was fired for carrying on an intimate relationship with, and cohabitating with a married woman. The district court granted summary judgment in favor of the sheriff and the appeals court affirmed. The appeals court held that the deputy's adulterous affair was not constitutionally protected, noting that the right to engage in an intimate sexual relationship with the spouse of another could not be said to be deeply rooted in the nation's history and tradition. (Pulaski County, Kentucky)

U.S. District Court
SEX
DISCRIMINATION
TITLE VII
UNION
RETALIATION

Martin v. New York Dept. of Correctional Services, 224 F.Supp.3d 434 (N.D.N.Y. 2002). A male employee of a state corrections department, who was a homosexual, sued the department, employee union, and coworkers. The employee alleged sexual discrimination, retaliation, violation of equal protection and breach of duty of fair representation. The employee described an incident in which two coworkers handcuffed him to the arsenal window during a shift change so that most of the officers leaving the facility could see that he was handcuffed to the window. The district court granted summary judgment in favor of the defendants. The court held that Title VII prohibits sexual harassment between men and women as well as same-sex sexual harassment, but for the purposes of Title VII "sex" means gender, and harassment on the basis of sexual orientation is not actionable. The court found that the employee failed to demonstrate that the harassment he endured was based on his non-conformity with gender norms instead of his orientation. The court held that the union fulfilled its duty of fair representation with respect to the grievances filed by the employee, and that the alleged conduct of shop stewards who refused to draft and file grievances could not be imputed to the union council. (Coxsackie Correctional Facility, New York)

U.S. Appeals Court
FREE SPEECH
TERMINATION
RETALIATION

Martinez v. Texas Dept. of Criminal Justice, 300 F.3d 567 (5th Cir. 2002). A former corrections officer brought a state court action against a corrections department, alleging that her termination violated the Texas Whistleblower Act and the First Amendment. After removal to federal court, the district court denied the defendants' motion for summary judgment. The appeals court reversed and remanded, finding that the defendants were entitled to qualified immunity. The appeals court held that although officer's speech in reporting an alleged major use-of-force incident implicated a matter of public concern, and that her speech motivated the decision to terminate her, the defendants showed that the officer would have been terminated regardless of her protected conduct. According to the court, the department had sufficient evidence to terminate the officer for improper sexual activity with an inmate. (Dolph Briscoe Unit, Texas Department of Criminal Justice)

<p>U.S. Appeals Court SEXUAL HARASSMENT RETALIATION TITLE VII</p>	<p><u>Miller v. New Hampshire Dept. of Corrections</u>, 296 F.3d 18 (1st Cir. 2002). A state corrections department employee brought an action against the department, alleging that his superiors retaliated against him for engaging in protected conduct, in violation of Title VII, after he supported one of his subordinates in her sexual harassment claim. The district court granted summary judgment for the department and the appeals court affirmed. The court held that the alleged retaliatory acts that occurred within Title VII's 300-day limitation period, including denial of the employee's application for another position, were either not discriminatory or were too trivial to amount to constructive discharge. (New Hampshire State Prison)</p>
<p>U.S. District Court DISCRIMINATION ASSOCIATION</p>	<p><u>Moreland v. Miami-Dade County</u>, 255 F.Supp.2d 1304 (S.D.Fla. 2002). A former corrections officer sued the county in state court, asserting claims for alleged race discrimination in violation of state and federal laws, equal protection and due process violations, and state law claims for negligent race discrimination, negligent supervision of employees, and retaliation in violation of state law. The federal district court granted summary judgment in favor of the county, in part. The court held that the county offered legitimate, nondiscriminatory reason for the officer's demotion. The court found that the former county corrections officer failed to show that, based on her race, a county manager disciplined her more severely than non-African American employees who violated a rule proscribing employees from associating with inmates and former inmates. The correctional officer had been dating a former county jail inmate. (Miami-Dade County Corrections Department, MDCC Jail, Florida)</p>
<p>U.S. Appeals Court HIRING/ QUALIFICATIONS</p>	<p><u>Morris v. Crawford County</u>, 299 F.3d 919 (8th Cir. 2002). A county detention center detainee brought § 1983 and state law battery claims against a sheriff, county, and deputies. The district court granted summary judgment for the defendants, in part, and the remaining claims were voluntarily dismissed. The appeals court affirmed, finding that there was not a strong causal connection between a deputy sheriff's background and the specific constitutional violation alleged by the detainee. The detainee had been arrested and charged with driving while intoxicated and disorderly conduct. After arriving at a county detention center, he refused to take a breathalyzer test and began to yell and bang on his cell door. Four deputies responded, and according to the detainee, they repeatedly assaulted him as they dragged him to another cell. One deputy allegedly used excessive force on the detainee by utilizing a "knee drop" on him, which severed the detainee's intestine. The court noted that the only violent act in the deputy's record was an incident in which he slapped an inmate, although ex parte protective orders were obtained against the deputy by both his ex-wife and girlfriend. The appeals court held that the sheriff and the county were not liable under § 1983 on the theory of deliberate indifference in hiring the deputy. (Crawford County Detention Center, Arkansas)</p>
<p>U.S. District Court TITLE VII RACIAL DISCRIMINATION PROMOTION</p>	<p><u>Mustafa v. State of Nebraska Dept. of Correctional</u>, 196 F.Supp.2d 945 (D.Neb. 2002). An employee brought Title VII and civil rights claims against a corrections department, corrections officials, and members of an interview board. The employee alleged that he was subjected to discrimination by the board's decision not to recommend him for a case manager position. The district court denied the defendants' motion for summary judgment, in part, finding that the employee established a prima facie case of employment discrimination under Title VII for failure to promote. The employee, an African-American, applied for one of eight open positions and was permitted to interview, but was not selected for a position even though several nonprotected persons received positions. (Nebraska Department of Correctional Services)</p>
<p>U.S. Appeals Court TITLE VII RETALIATION</p>	<p><u>Petersen v. Utah Dept. of Corrections</u>, 301 F.3d 1182 (10th Cir. 2002). A former employee sued a state corrections department under Title VII, and corrections officials under § 1983, alleging she was subjected to retaliation for opposing discriminatory treatment of a Native American co-worker. The district court entered summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the department's motives for adverse actions against the employee were not her opposition to alleged discriminatory treatment, since the employee had not communicated her beliefs to anyone at the time of the alleged adverse action. The court held that the Department's unsuccessful attempt to transfer the employee was not an adverse action upon which a Title VII claim could be based, nor was the employee's claim that she was "out of the information loop." The employee alleged that a Deputy Warden referred to a Native American employee as a "lazy Indian," asked the employee if the natives were restless, and let out "war whoops" when the employee did not respond. (Central Utah Correctional Facility)</p>
<p>U.S. Appeals Court PROTECTION FROM HARM SEXUAL HARASSMENT</p>	<p><u>Sperle v. Michigan Dept. of Corrections</u>, 297 F.3d 483 (6th Cir. 2002). The husband of a woman who was murdered while working in a prison sued officials for failing to prevent her murder and for allowing a sexually hostile work environment to exist at the prison. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the prison officials did not act with deliberate indifference, that the husband failed to establish a fact issue in his wife's sexual harassment claim, and that the husband failed to prove that the prison, through any direct act, specifically intended to injure his wife. A prisoner murdered the plaintiff's wife when she was working at her job in the prison store. The court noted that even if prison officials could have made working conditions safer for the wife by providing personal protection devices to employees, adding extra security officers, or insuring greater supervision of the prisoner, they did not act in a manner that shocked the conscience of the court or that indicated any intent to injure her. (Huron Valley Men's Facility, Michigan)</p>

U.S. District Court
FREE SPEECH
TERMINATION

Via v. Taylor, 224 F.Supp.2d 753 (D.Del. 2002). A former correctional officer brought an action against corrections officials alleging that she was wrongfully terminated because of her off-duty relationship with a paroled former inmate. The district court held that the corrections department code of conduct that prohibited off-duty personal contact with offenders was not substantially related to the state's interest in the orderly function of prisons and concerns about being discredited in the public eye. The court found no evidence that the officer's relationship with a former inmate had any impact on staff or inmates. The court noted that the code did not prohibit relationships between prison employees and persons outside the prison system who knew inmates who were under the employees' supervision, and that the officer's job performance was not negatively impacted by her association with the former inmate. The court held that the conduct code was void because of it was vague and overly broad, and violated the officer's off-duty rights to personal association and privacy. The code read, in part: "Trafficking with incarcerated offenders is prohibited. No staff person shall have any personal contact with an offender, incarcerated or non-incarcerated, beyond that contact necessary for the proper supervision and treatment of the offender... Any sexual contact with offenders is strictly prohibited." According to the court, the code was open for discriminatory enforcement, failed to clearly set forth the prohibited conduct, appeared to create a safe harbor for employees who reported relationships that allegedly infringed, and failed to notify officers of possible disciplinary measures to which they might be subjected if they violated the code. The court found that the officials were entitled to qualified immunity because these rights were not clearly established at the time the officer was discharged. (Sussex Corr. Inst., Delaware)

2003

U.S. Appeals Court
FREE SPEECH
ASSOCIATION
WORK RULES

Akers v. McGinnis, 352 F.3d 1030 (6th Cir. 2003). Current and former employees of a corrections department sued department administrators, challenging the constitutionality of a department rule that barred all employees from any nonwork-related contact with prisoners, parolees, probationers (offenders), their relatives and visitors. Some of the employees sought reinstatement after they had been discharged for violating the rule. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the actual and hypothetical associations with which the work rule allegedly interfered did not touch on matters of public concern. The court found that the rule did not violate the employees' freedom of expressive association rights, nor did it directly or substantially interfere with employees' intimate association rights. The court noted that the department had a legitimate interest in preventing fraternization between its employees and offenders and their families, and that the rule was a rational means for advancing that interest. (Michigan Department of Corrections)

U.S. District Court
HARASSMENT
FREE SPEECH
HOSTILE WORK
ENVIRONMENT

Baron v. Hickey, 242 F.Supp.2d 66 (D.Mass. 2003). A county corrections officer who was allegedly harassed by coworkers after reporting the misconduct of a fellow officer, brought an action against a sheriff and a county sheriff's department. The district court held that the alleged supervisory tolerance of harassment was a "matter of public concern" for the purposes of a First Amendment retaliation claim. The court found triable issues of fact regarding whether the officer's resignation was voluntary and if the department had a custom or policy of condoning a "code of silence." The officer had reported a coworker's misconduct for playing cards with an inmate. The officer's coworkers allegedly began to harass him on a daily basis, calling him names, taping defamatory posters to his locker, making threatening phone calls, smearing feces on his car, and slashing his tires. (Suffolk County House of Correction, Massachusetts)

U.S. Appeals Court
FREE SPEECH
TERMINATION

Catletti Ex Rel. Estate of Catletti v. Rampe, 334 F.3d 225 (2nd Cir. 2003). The widow of a former county employee brought a § 1983 action, alleging that the employee was fired in violation of the First Amendment for testifying truthfully in favor of former employees in an action against the county. The district court denied qualified immunity for the defendants and they appealed. The appeals court affirmed, finding that the former employee's testimony was protected by the First Amendment, as a matter of public concern, and that the right of the employee to speak on issues of public concern without retaliation was clearly established at the time the employee was fired. The employee had provided testimony about problems with the jail's mental health services, in a trial that examined whether other county employees had been wrongfully terminated for their public criticism of the county jail's mental health services. (Orange County Jail, New York)

U.S. Appeals Court
UNION
FREE SPEECH

Cobb v. Pozzi, 352 F.3d 79 (2nd Cir. 2003). County corrections officers brought a § 1983 action alleging that they were disciplined in retaliation for their association with their union, in violation of the First Amendment. Following a jury trial, the district court entered judgment for the officers and the defendants appealed. The appeals court reversed in part, vacated in part, and remanded. The appeals court held that the officers had demonstrated that the associational activity at issue touched on a matter of public concern for the purposes of a First Amendment claim, but failed to show that the activity (union membership) was a substantial or motivating factor in the officers' discipline. (Westchester County Department of Corrections, New York)

U.S. District Court
SEXUAL
HARASSMENT
TITLE VII
HOSTILE WORK
ENVIRONMENT

Dennis v. Nevada, 282 F.Supp.2d 1177 (D.Nev. 2003). A state corrections officer sued a state under Title VII and § 1983, alleging she was sexually harassed by her supervisor. The district court granted summary judgment in favor of the state. According to the court, the officer established a prima facie case of discrimination, but the state established an affirmative defense with its non-

harassment policy, and its procedure to address harassment problems. The court noted that the officer established that a reasonable person in her position could find that her working environment was abusive and hostile, and that the hostile working environment reasonably interfered with her work performance in violation of Title VII. The officer alleged that while she was assigned to a control room with her supervisor, he made physical contact with her, such as touching her hands, ears, hair and face, and sat unnecessarily close to her. She alleged that the supervisor frequently attempted to convince her to begin a dating relationship with him, and made two attempts to kiss her while she was on the job. (Northern Nevada Correctional Center)

U.S. District Court
FREE SPEECH
TERMINATION
TITLE VII

Dennison v. Pennsylvania Dept. of Corrections, 268 F.Supp.2d 387 (M.D.Pa. 2003). A discharged employee sued a state corrections department and co-workers, asserting claims that included violation of Title VII, state human relations laws, wrongful discharge, and violation of a state whistleblower law. The district court granted summary judgment in part, and denied it in part. The court held that the employee's termination for distributing confidential inmate records to non-authorized persons did not violate his free speech rights. The court held that summary judgment was precluded by factual issues concerning his retaliation claim based on his verbal protestations of alleged discrimination, his § 1983 conspiracy claim, his Title VII claims based on reports of his employer's discrimination practices, and his whistleblower claims. The court held that speech concerning racial discrimination in the state's parole determinations was a matter of public concern. The employee had disseminated confidential prison records in an effort to address the alleged discrimination. The court found that the employee's interests did not outweigh the department's interest in keeping inmate psychological records confidential. (Pennsylvania Department of Corrections, State Correctional Institution- Mahanoy)

U.S. District Court
STAFFING LEVELS
WORKING
CONDITIONS

Fraternal Order of Police v. Williams, 263 F.Supp.2d 45 (D.D.C. 2003). The union that represented correctional employees sued the District of Columbia to force a change in staffing patterns at a jail. The district court dismissed the action, finding that the District's alleged failure to provide correctional officers with a safe working environment did not violate their substantive due process rights under the Fifth Amendment. The union was concerned about overcrowding and a reduction in the jail work force. (Central Detention Facility, District of Columbia)

U.S. District Court
FREE SPEECH
DISABILITY

Kriegal v. State Of Rhode Island, Dept. Of Corrs., 266 F.Supp.2d 288 (D.R.I. 2003). A state employee who was a former probation counselor brought a state court action alleging First Amendment violations, and violation of state fair employment, handicap, and civil rights laws. The case was removed to federal court, where the district court granted summary judgment, in part, for the defendants. The court held that even if the employee demonstrated that the statements he made on the radio about the corrections department were of public interest, he failed to demonstrate that his discharge was motivated by his protected speech, as required for a retaliation claim. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the accommodation requested by the counselor who had vision problems, to refrain from coverage of courtrooms which required rapid eye movement, was reasonable and whether the state's denial was unreasonable. The counselor had started as a juvenile counselor, sustained an injury with an inmate and spent ten years on workers' compensation. (Rhode Island Department of Corrections, Adult Probation and Parole)

U.S. District Court
DISABILITY
HOSTILE WORK
ENVIRONMENT

McCall v. Board of Com'rs of County of Shawnee, KS, 291 F.Supp.2d 1216 (D.Kan. 2003). A female former county corrections officer brought an employment discrimination action in state court, alleging violations of Title VII, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The case was removed to federal district court, where the county defendants were granted summary judgment. The former officer had complained of various forms of harassment directed at her during her employment but made no allegations concerning harassment involving others. The court held that the former officer was not subjected to a sexually hostile work environment, where her allegations were not gender-based. The court held that the county board of commissioners' refusal to honor a doctor's order that she not work more than eight hours a day, and her retroactive termination, were not sufficiently pervasive or severe to alter the terms, conditions, or privileges of her employment. (Shawnee County Department of Corrections, Kansas)

U.S. District Court
TERMINATION
DUE PROCESS
PROBATION

McClain v. Northwest Comm. Corr. Ctr., 268 F.Supp.2d 941 (N.D.Ohio 2003). A probationary employee of a community corrections center brought a wrongful termination action. The district court held that the employee was entitled to minimal due process of notice and an opportunity to be heard, before termination of her employment. The court noted that the employee could be terminated without cause because she was an at-will employee who was still in her probationary period. The employee had attended a meeting which critiqued her work but she was not told prior to the meeting that her conduct was at issue, or that it could lead to her termination. She was later given an ultimatum to either quit or be fired but was not told why the ultimatum had been issued. (Northwest Community Corrections Center, Ohio)

U.S. District Court
SEARCHES
PRIVACY

Pierce v. Ohio Dept. of Rehabilitation and Corr., 284 F.Supp.2d 811 (N.D.Ohio 2003). Correctional officers brought a § 1983 action against a corrections department, challenging personnel strip search policies and alleging breach of a settlement agreement in a prior case. The district court dismissed the action. The court found that some of the officers had standing to bring the action, but

that the officers' union lacked standing to pursue damages for its members' injuries, although it retained standing to seek declaratory relief. The court held that the imposition of a reasonable suspicion standard for the strip searches balanced the officers' Fourth Amendment interests with the government's interest in keeping contraband out of prisons. Under the reasonable suspicion standard, strip searches of prison employees must be articulable, particularized, and individualized, and officials must base strip searches on specific, objective facts and rational inferences based on those facts in light of their experience. The court ruled that the searches did not violate Equal Protection rights or the Due Process Clause. The court held that the searches violated the Fourth Amendment, where officers were chosen at random for searches, but that correctional officials were entitled to qualified immunity. The court noted that employees' legitimate expectations of privacy were diminished in a prison setting, and that employees were on notice that they were subject to searches. (Ohio Department of Rehabilitation and Corrections)

U.S. District Court
UNION
CONTRACT

Rhode Island Broth. Of Officers v. Rhode Island, 264 F.Supp.2d 87 (D.R.I. 2003). A state corrections officers' union sued a state and officials, challenging a statute that amended the method of compensating officers who amassed education credits, from a percentage of pay to a flat rate. The district court entered summary judgment in favor of the state. The court held that the change in the compensation formula did not violate the takings clause, and that the statute did not constitute a contract breach. The court noted that the state gave corrections employees sufficient notice of termination of the collective bargaining agreement, when the legislature considered and passed the statute that changed the method of compensation. (Rhode Island Department of Corrections)

U.S. District Court
TERMINATION
FREE SPEECH

Shepard v. Wapello County, Iowa, 250 F.Supp.2d 1112 (S.D.Iowa, 2003). A former county corrections officer sued a county and a sheriff, alleging wrongful termination as the result of his complaints of illegal conduct by a fellow officer, and of fiscal mismanagement in connection with the denial of overtime pay. The district court denied summary judgment for the defendants. The court held that summary judgment was precluded by fact issues as to whether the termination violated state public policy, violated a state whistleblower statute, and was retaliation for assertion of his First Amendment rights. (Wapello County, Iowa)

2004

U.S. District Court
FREE SPEECH
DISCIPLINE
RELIGION

Akridge v. Wilkinson, 351 F.Supp.2d 750 (S.D.Ohio 2004). A prison chaplain brought a civil rights action against prison officials for their alleged retaliation against him for exercising his free speech rights. The district court granted summary judgment in favor of the defendants. The court held that the chaplain's statements regarding the immorality of homosexuality, which he had made to justify his decision to prohibit a homosexual inmate from serving as the director of a choir, did not address matters of public concern as required to support a First Amendment retaliation claim. The court found that prison officials, who imposed a fine of two days on the chaplain for his insubordination in refusing to comply with an order to appoint the inmate director of the choir, disciplined the chaplain for his insubordinate actions, not for his statements about homosexuality that were made in support of his actions. The chaplain asserted that permitting a homosexual inmate to have a leadership role in the prison choir would potentially encourage inmates to violate prison rules against sexual behavior. According to the court, the chaplain offered no precedent sufficient to convince prison officials that his religious beliefs and opinions would outweigh the state's interest in preventing discrimination against inmates. (Madison Correctional Institution, Ohio)

U.S. District Court
SEARCHES

Allegheny County Prison Emp. v. County of Allegh., 315 F.Supp.2d 728 (W.D.Pa. 2004). Employees at a county jail brought a suit challenging its employee search policy, which involved random pat-down searches by same sex employees of all areas of the searched employee's body, including the abdomen and groin, as well as the removal of outer clothing, shoes and belts. The employees moved for a preliminary injunction. The district court denied the motion, finding that the employees failed to demonstrate the likelihood of success on their Fourth Amendment or equal protection claims. The court noted that the county had a strong government interest in controlling the flow of contraband into prisons, and that employees had a diminished expectation of privacy because they worked in a correctional facility. The search policy was uniformly applied to all employees and visitors who had contact with inmates. (Allegheny County Prison, Pennsylvania)

U.S. Appeals Court
UNION
FREE SPEECH

Cobb v. Pozzi, 363 F.3d 89 (2nd Cir. 2004). County corrections officers brought an action under § 1983, alleging that the county, corrections commissioner, and corrections chief of operations disciplined them in retaliation for their association with a union. Following a jury trial, the district court entered judgment for the corrections officers and the defendants appealed. The appeals court reversed in part, vacated in part and remanded. The court held that the instruction that an arbitrator's findings were binding on the jury was improper and that the erroneous jury instruction was not harmless. The officers had been disciplined in connection with the county's policy that required officers to work mandatory "forced overtime." (Westchester County Department of Corrections, New York)

U.S. Appeals Court
FREE SPEECH
RETALIATION

Cygan v. Wisconsin Dept. of Corrections, 388 F.3d 1092 (7th Cir. 2004). A former correctional officer at a maximum security prison filed a § 1983 action alleging they violated her constitutional rights by terminating her in retaliation for exercising her First Amendment rights. The district court

TERMINATION

granted summary judgment in favor of the defendants and the officer appealed. The appeals court affirmed. The court held that the officer raised a matter of public concern when she expressed disagreement with the decision to start a second-shift meal with fewer than ten officers, because it touched on issues of internal prison security, even though she could accurately be characterized as a disgruntled employee and her speech may have been partly motivated by her dissatisfaction with the prison. But the court found that the potential disruptiveness of the officer's speech during that meal outweighed whatever First Amendment value the speech might have had. The court noted that the officer had complained in a loud, profane and unprofessional manner and in the presence of staff and inmates, endangering both groups by exposing them to opportunistic acts of violence and undermining the authority of her supervising officer in the presence of other officers and inmates. (Green Bay Correctional Institution, Wisconsin)

U.S. District Court
SEXUAL HARASSMENT
HOSTILE WORK ENVIRONMENT

Dawson v. County of Westchester, 351 F.Supp.2d 176 (S.D.N.Y. 2004). Female correctional officers brought an action against a county and personnel of a county department of corrections, alleging hostile work environment claims and state law claims. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the county defendants' response to the officers' allegations of a hostile work environment was reasonable and prompt. The court found that a sergeant was the female officers' supervisor for purposes of holding the county vicariously liable for the sergeant's actions which created a hostile work environment, even though the sergeant had no authority to hire, fire, transfer or take other tangible employment actions against the officers. The court noted that the sergeant was next in the chain of command, the officers reported to him, and he had the power to enable or materially augment the ability to create a hostile work environment. The court found that the officers provided sufficient evidence to demonstrate intentional harassment by male co-workers and a supervisor, based on sex, in violation of equal protection. The officers alleged that they were subjects of two inmate letters containing a drawing and sexually explicit language, that they showed the male sergeant who failed to report the letter to a higher authority and failed to conduct any credible investigations about its authorship and circulation. They also alleged that the male sergeant engaged in inappropriate conversations with supervisors and officers about the contents and targets of the defamatory letters. (Westchester County Department of Corrections, New York)

U.S. Appeals Court
INVESTIGATION

Escalera v. Lunn, 354 F.3d 198 (2nd Cir. 2004). A county corrections officer who had been arrested for official misconduct brought a § 1983 claim, alleging false arrest and malicious prosecution in connection with an investigation that officials conducted on him. The district court denied summary judgment for the defendants and they appealed. The appeals court reversed and remanded with instructions. The court held that a police detective, police sergeant, commissioner of corrections, and county were entitled to qualified immunity. The court found that "arguable probable cause" exists if either it was objectively reasonable for an officer to believe that probable cause existed, or if officers of reasonable competence could disagree on whether the probable cause test was met. (Westchester County Correctional Facility, New York)

U.S. District Court
HIRING/QUALIFICATIONS

Estevez-Yalcin v. Children's Village, 331 F.Supp.2d 170 (S.D.N.Y. 2004). A parent brought an action alleging that her children had been sexually abused by a volunteer at a county juvenile treatment rehabilitation center. The district court granted summary judgment in favor of the defendants. The court held that the county did not negligently hire the volunteer or negligently retain or supervise the volunteer. According to the court, the failure of the county to conduct a background check on the volunteer before hiring him did not amount to negligent hiring, absent evidence that a routine background check would have revealed that the volunteer had a propensity to harm children. (The Children's Village, Westchester County Health Care Corporation, New York)

U.S. Appeals Court
BFOQ - Bona Fide Occupational Qualification
SEX DISCRIMINATION

Everson v. Michigan Dept. of Corrections, 391 F.3d 737 (6th Cir. 2004). Male and female corrections officers brought a class action against a state corrections agency, alleging gender discrimination in staffing positions within female prison housing units. The district court granted judgment in favor of the officers and the state appealed. The appeals court reversed and remanded, finding that female gender was a bona fide occupational qualification (BFOQ). The court held that female gender was a BFOQ under Title VII for correctional officer and residential unit officer positions in housing units at a female prison, since the exclusion of males from such positions was reasonably necessary to the normal operation of facilities. According to the court, the BFOQ materially advanced the security of the prison, safety of inmates, and protection of privacy rights of inmates, and reasonable alternatives to the plan were not identified. (Michigan Department of Corrections)

U.S. Appeals Court
WORKING CONDITIONS
STAFFING LEVELS

Fraternal Order of Police v. Williams, 375 F.3d 1141 (D.C.Cir. 2004). A correctional officers union brought a § 1983 action against the District of Columbia and District officials after several hundred officers were laid off at the same time that the number of inmates housed in the District's jail was increased. The district court dismissed the action for lack of subject matter jurisdiction and the union appealed. The appeals court affirmed. The appeals court held that the district court did have subject matter jurisdiction of the union's § 1983 claim, but that the officials' action did not amount to an executive abuse of power that shocked the conscience, as required to support a substantive due process claim. According to the court, the union failed to demonstrate that an assault by an

inmate on a staff member was a foreseeable risk of its members' employment. (Central Detention Facility, District of Columbia)

U.S. District Court
TERMINATION

Higgins v. Jefferson County, Ky., 344 F.Supp.2d 1004 (W.D.Ky. 2004). A former county corrections officer sued a county, alleging wrongful termination. The district court dismissed the case with prejudice. The court held that the officer received adequate pre-termination due process when he met with a supervisor and union representative, excessive court charges were read in his presence and he was given a brief opportunity to speak on his behalf. The court noted that the excessive force was displayed on a videotape and there was a need for the government to remove the officer quickly, and that the officer had extensive post-termination process available to correct any wrongful termination. (Jefferson County Corrections Department, Kentucky)

U.S. District Court
DISCIPLINE
FREE SPEECH
ASSOCIATION

Piscottano v. Murphy, 317 F.Supp.2d 97 (D.Conn. 2004). State corrections officers filed a § 1983 action alleging that prison officials disciplined them in violation of their First and Fourteenth Amendment rights for associating with a motorcycle group, the Outlaws Motorcycle Club. The district court denied the officers' motion for injunctive relief, finding that their First Amendment right to freedom of association had not been violated, and that the directive under which the disciplinary actions were taken was not impermissibly overbroad. The court also held that the officers failed to establish serious questions as to the merits of their claim that the disciplinary actions violated their equal protection rights. According to the court, riding motorcycles, going to parties and bonding with friends did not involve matters of public concern, where the purpose of the officers' association with the gang was entirely social in nature, the gang had a national reputation for violence and crime, and the state had serious problems with gang violence in prisons. (Connecticut Department of Corrections)

U.S. District Court
TITLE VII
RETALIATION
HOSTILE WORK
ENVIRONMENT

Reckard v. County of Westchester, 351 F.Supp.2d 157 (S.D.N.Y. 2004). A county correctional officer filed complaints alleging race and gender discrimination under Title VII and improper retaliation. The district court granted summary judgment in favor of the defendants, finding that the County's failure to assign the female correctional officer to perform tasks she desired, such as booking and female search, was not an "adverse action" that could form the basis of a Title VII retaliation claim, and that the officer's subjective dissatisfaction with her assignments was insufficient. The court also held that a sergeant's order that the female correctional officer work overtime on one occasion, when she allegedly had medical restrictions that precluded her from working an extended shift, could not be reasonably construed as an "adverse employment action" for the purposes of her Title VII retaliation claim. The court noted that the collective bargaining agreement permitted the county to order the officer to work overtime shifts, a single overtime shift was not a materially adverse change in her working conditions, and she did not allege that the extra shift had any detrimental impact on her health. (Westchester County Department of Corrections, New York)

U.S. Appeals Court
UNION

Rhode Island Broth., Correct. Offic. v. Rhode Isl., 357 F.3d 42 (1st Cir. 2004). A union representing state corrections officers sued state officials, challenging the amendment to an incentive pay statute that changed the method of compensating officers who amassed education credits, from a percentage of pay to a flat rate. The district court dismissed the case for failure to state a claim, and the appeals court affirmed. The appeals court found that the obligation to maintain the status quo under a collective bargaining agreement, that mirrored the percentage pay terms of the original statute, did not serve as an alternative basis for an impairment of contract claim. (Rhode Island Brotherhood of Correctional Officers, Rhode Island Department of Corrections)

U.S. District Court
FREE SPEECH
UNION

Richards v. State of Connecticut Dept. of Corrs., 349 F.Supp.2d 278 (D.Conn. 2004). A state corrections officer brought a suit alleging violations of his free speech, due process and equal protection rights. The district court entered summary judgment in favor of the defendants. The court held that the alleged failure to make a union steward available to the officer was not a substantive due process violation. The court found that the investigation into an alleged incident of workplace violence, even if inappropriate, was not an adverse employment action upon which the officer could base a free speech claim. The court held that a major's alleged conduct, including yelling expletives at the officer while the officer was sick in a bathroom, were unprofessional and unnecessary but did not shock the conscience and thus did not violate the officer's substantive due process rights. (Osborne Correctional Institute, Connecticut)

U.S. District Court
TERMINATION
FREE SPEECH
POLITICAL AFFIL-
IATION

Snyder v. Blagojevich, 332 F.Supp.2d 1132 (N.D.Ill. 2004). An assistant warden brought an action under § 1983 alleging that state officials violated his constitutional rights when they dismissed him from his job. The district court granted summary judgment in favor of the defendants. The court held that the termination did not violate the assistant warden's First Amendment rights by determining that membership in the same political party as the Governor was essential to his job. The court found that political affiliation is an appropriate consideration where an employee acts as a governmental spokesperson, and affiliation can be considered in making employment decisions in which an employee is vested with substantial discretionary authority in the implementation of the policy goals of elected officials. The court noted that the position description for an assistant

warden involved some discretionary responsibility for policy implementation and significant interaction with the public. (Taylorville Correctional Center, Illinois)

U.S. Appeals Court
FREE SPEECH
RETALIATION
SCHEDULE

Spiegla v. Hull, 371 F.3d 928 (7th Cir. 2004). A state prison employee sued prison officials under § 1983 alleging that they changed her shift schedule and post assignment in retaliation for her exercise of her free speech rights. The district court entered summary judgment for the officials and the employee appealed. The appeals court reversed and remanded, finding that the employee's speech concerning alleged official misconduct was made as a private citizen on a matter of public concern, and she demonstrated that her comments were the substantial or motivating factor in her transfer and shift change. The employee's comments addressed her direct observations of prison officials engaged in an activity that was consistent with contraband trafficking, in violation of state law, at a facility that had a history of problems with contraband. The court noted that her transfer came only four days after her comments, after seven years of uninterrupted assignment to a post on the prison gates, and that another prison official admitted he was angry with the employee for her comments. (Westville Correctional Facility, Indiana)

2005

U.S. Appeals Court
TERMINATION
FREE SPEECH
HOSTILE WORK
ENVIRONMENT

Baron v. Suffolk County Sheriff's Dept., 402 F.3d 225 (1st Cir. 2005). A county corrections officer who was allegedly harassed by his coworkers after reporting the misconduct of fellow officers, brought an action alleging violations of § 1983 and state law. The district court granted summary judgment for the defendants in part, and denied it in part. A jury found in favor of the officer and awarded \$500,000 in damages. The defendants appealed. The appeals court affirmed. The court held that the alleged supervisory tolerance of the harassment by coworkers was a matter of inherent public concern, and this was supported by a series of newspaper articles that chronicled mismanagement at the department. The court found that a jury could reasonably have found an unofficial custom in the sheriff's office of retaliation against officers who breached the code of silence. According to the court, the jury award of \$500,000 damages had an evidentiary basis, where the officer had testified as to the stress and anguish brought on by the extreme harassment. The officer was shunned at roll call and referred to as a "rat," posters that mocked him were displayed throughout the facility, including one that accused him of being a child molester. The officer also received harassing phone calls at work and once left work to find that his car had been defaced with feces and his tires had been slashed. (Suffolk Co. House of Correction, Massachusetts)

U.S. Appeals Court
DISCIPLINE
EQUAL PROTECTION

Bizzarro v. Miranda, 394 F.3d 82 (2nd Cir. 2005). Corrections officers brought a suit against a county and corrections officials, alleging violation of their Fourteenth Amendment rights. The officers were subjected to disciplinary charges and one officer was removed from a privileged work assignment after he refused to assist in an internal investigation. The district court denied summary judgment for the defendants and they appealed. The appeals court reversed and remanded, finding that the officers failed to establish an equal protection claim against corrections officials because there was no showing that the officials intentionally treated them differently from other similarly-situated officers. The court noted that the officers were disciplined for refusing to assist in the investigation and to deter other officers from similarly refusing to assist in investigations. (Westchester County Department of Corrections, New York)

U.S. District Court
RACIAL DISCRIMINATION
TERMINATION
TITLE VII

Burke-Fowler v. Orange County, Florida, 390 F.Supp.2d 1208 (M.D.Fla. 2005). A former correctional officer brought an action against a county alleging that her termination was racially discriminatory, in violation of Title VII and § 1981, and based on her marital status, in violation of state law. The district court granted summary judgment in favor of the county. The court held that the officer failed to establish that her discharge for developing an intimate romantic relationship with, and later marrying, an inmate was the result of racial discrimination. The court noted that white officers who had close relationships with inmates were not as severely disciplined, but one officer did not know his partner's criminal history, and the other officer had already been dating the woman before she was arrested. The plaintiff in this case developed a relationship with an inmate while he was under her authority. (Orange County Corrections Department, Florida)

U.S. District Court
SEXUAL HARASSMENT
TITLE VII
HOSTILE WORK
ENVIRONMENT

Dunbar v. County of Saratoga, 358 F.Supp.2d 115 (N.D.N.Y. 2005). A female correctional officer at a county jail brought an action alleging sexual harassment in violation of Title VII and § 1983. The district court granted summary judgment for the defendants, in part, and denied in part. The court held that summary judgment was precluded on the officer's hostile environment sexual harassment claim. The officer alleged that co-workers made unwelcome sexual advances, directed graphic sexual comments and jokes at her, left sexual notes on her car, called her at home several times, and made obscene and offensive gestures toward her. The court held that the officer failed to establish that she was constructively discharged because of her gender in violation of Title VII, absent evidence that the defendants intentionally created an intolerable work atmosphere that forced the officer to quit voluntarily. The court found that the sheriff was entitled to qualified immunity under § 1983 from the officer's claims of sexual harassment, where the sheriff never sexually harassed the officer, never observed her alleged sexual harassment, never took any adverse employment action against her, and was never personally aware of allegations of sexual

harassment. (Saratoga County Sheriff's Department, New York)

U.S. District Court
TERMINATION
RACIAL DISCRIMINATION
EQUAL PROTECTION
DUE PROCESS

Fairman v. Konteh, 361 F.Supp.2d 704 (N.D. Ohio 2005). A former state corrections officer brought a § 1983 action against a warden, a fellow officer and a disciplinary hearing officer, alleging he was discharged on the basis of race in violation of his constitutional rights. The district court granted the defendants' motion to dismiss in part, and denied in part. The court held that the former officer stated a claim under § 1983 for violations of his equal protection rights by alleging that certain decisions regarding the hearing officer that was chosen to serve at his pre-termination hearing were made because of his race. The officer was terminated. The former officer allegedly made a racist comment about the hearing officer that was subsequently appointed and the court held that he sufficiently pleaded a due process claim based on disqualifying bias. (Ohio Department of Rehabilitation and Correction, Toledo Correctional Institution)

U.S. District Court
SEARCHES

Fraternal Order of Police/Dept. v. Washington, 394 F.Supp.2d 7 (D.D.C. 2005). A police labor committee and correctional officers in leadership positions with the committee sued a corrections department, challenging the constitutionality of searches of their lockers and automobiles during a shakedown of the detention facility. The district court granted summary judgment in favor of the defendants. The court held that the checkpoint seizure of correctional officers' cars at the entrance to a jail's parking lot were not unconstitutional, where the officers were requested to sign consent forms to have their vehicles searched or to park elsewhere. The court noted that the jail was a maximum-security facility and keeping contraband out of the jail was an imperative, and the purpose of the checkpoint was to afford an opportunity to inform officers of the activity, present consent forms, and search the vehicles of who consented. The court held that the searches of cars were not unconstitutional under the Fourth Amendment where the officers consented to the searches by signing consent forms that stated in clear and unambiguous language that the officers could deny the search at any time. According to the court, searches of correctional officers' lockers were not unreasonable under the Fourth Amendment, where the searches were conducted in the early morning hours by correctional officers of the same gender as the officers whose lockers were being searched, and the lockers were provided by the corrections department for the convenience of correctional officers. The court noted that the assigned officer and Director of the department had keys to each locker, and that locker assignments could be changed without notice by the Director. Prison regulations clearly stated that a condition of employment was that all personnel submit to a search of their person, or automobile, or place of assignment on government property, when such a search was required by department officials. (Central Detention Facility, District of Columbia)

U.S. Appeals Court
RETIREMENT
BENEFITS

Germano v. Winnebago County, Ill., 403 F.3d 926 (7th Cir. 2005). A retired county sheriff's deputy brought a § 1983 class action against a county, alleging that the county's act of setting up a separate employee benefit plan for retired deputies which charged higher premiums than for active deputies, constituted a due process violation. The district court granted summary judgment in favor of the county and the retired deputy appealed. The appeals court affirmed, finding that the deputy had a protected liberty interest under a state statute but that the county's action was a random and unauthorized act, and was therefore not a due process violation. The court noted that a state statute expressly provided that continued group coverage be provided to retirees at the same premium rate as active deputies. (Winnebago County Sheriff's Department, Illinois)

U.S. District Court
PROMOTION
RACIAL DISCRIMINATION

Johnson v. Connecticut Dept. of Corrections, 392 F.Supp.2d 326 (D.Conn. 2005). An African-American Christian pastor formerly employed by a state corrections department brought an employment discrimination action in state court and under Title VII and § 1981 against his former employer. The action was removed to federal court, where the court granted summary judgment in favor of the department in part, and denied it in part. The court held that the employee did not show that his failure to be promoted to a supervisory position that was given to a white candidate occurred under circumstances giving an inference of race discrimination. (Conn. Dept. Corrections)

U.S. Appeals Court
POLITICAL AFFILIATION
TERMINATION

Kiddy-Brown v. Blagojevich, 408 F.3d 346 (7th Cir. 2005). The former warden of a state prison brought a § 1983 action against several state officials alleging that her rights under the First and Fourteenth Amendment had been violated. The district court denied the defendants' motion for judgment on the pleadings and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the former warden's allegations concerning patronage, if true, would demonstrate a violation of her First Amendment rights. The court found that it was clearly established at the time of the warden's dismissal that the First Amendment prohibits a state official from dismissing, on political grounds, an employee who was not charged with policymaking duties. The warden alleged that she was told that she was being terminated because of her affiliation with the Republican administration. (Illinois Department of Corrections, Decatur Correctional Center)

U.S. District Court
FREE SPEECH
TERMINATION
LEGAL SERVICES

Mangiafico v. Blumenthal, 358 F.Supp.2d 6 (D.Conn. 2005). A correctional officer brought a civil rights damages suit against a state attorney general and former and current commissioners of corrections, arising from the attorney general's decision not to defend the officer in a prisoner's civil action. The district court held that the attorney general was entitled to absolute immunity

from a § 1983 claim that was based on his decision not to defend the officer. The court found that the officer stated a First Amendment retaliation claim against the commissioners. The officer alleged that they engaged in a coordinated effort to make him the scapegoat for an excessive force case and that he was transferred to another institution after he filed a lawsuit claiming he was denied representation. The transfer allegedly subjected the officer to diminished career and promotional opportunities and financial losses. (Northern Correctional Institution, Connecticut)

U.S. Appeals Court
HOSTILE WORK
ENVIRONMENT
TITLE VII

Moser v. Indiana Dept. of Corrections, 406 F.3d 895 (7th Cir. 2005). A female state corrections department employee sued the department, alleging sex discrimination, hostile work environment, and retaliation under Title VII. The district court granted summary judgment for the defendants and the employee appealed. The appeals court affirmed. The court held that the employee failed to establish that she was unfairly disciplined on the basis of her gender, in violation of Title VII, because she failed to establish that she was performing her job according to the department's expectations. The employee did not deny the incidents that formed the basis for the disciplinary action, including the use of profanity, talking about alcohol, and contacting another co-worker's physician. The court found that a "handful" of sexual comments that a male co-worker made to the employee, which were in the context of jokes as opposed to serious or threatening comments, did not rise to the level of a hostile work environment under Title VII. According to the court, the employee failed to establish a causal connection between her sexual harassment complaints about a male co-worker and her reassignment to another position. (Summit Farm Work Release, Ind.)

U.S. District Court
SUPERVISION
QUALIFICATIONS

Perez v. Oakland County, 380 F.Supp.2d 830 (E.D.Mich. 2005). The father and personal representative of the estate of an inmate brought a suit under § 1983, alleging that the defendants violated the inmate's Eighth Amendment rights by failing to provide appropriate mental health treatment or monitoring when the inmate was being held in the county jail, leading to the inmate's suicide. The district court held that the county did not act with deliberate indifference in allowing the inmate caseworker, who allegedly lacked sufficient medical background or expertise, to make decisions affecting the health care needs of the inmate. The court noted that the challenged practice was widespread, with the "vast majority" of county jails allowing employees who were not psychiatrists, but who had been trained in suicide detection and prevention, to make determinations whether inmates were suicidal or potentially suicidal. The court held that the caseworker was entitled to qualified immunity because it was not established at the time of the inmate's suicide that the caseworker's actions of making determinations concerning the inmate's cell assignments, without first consulting the inmate's physician or psychiatrist, would violate the inmate's Eighth Amendment rights. According to the court, the jail psychiatrist did not disregard a known and serious medical need, where evidence demonstrated that even though the psychiatrist knew that the inmate was not taking his medication, he determined through his own direct evaluation that the inmate was suicidal. The court found that allegations that the sheriff failed to ensure that the county's deputies enforced and followed the law could not sustain a § 1983 claim absent evidence that the sheriff himself engaged in active unconstitutional behavior by directly participating, encouraging, authorizing, or acquiescing in the allegedly offending conduct of the sheriff's deputy. (Oakland County Jail, Michigan)

U.S. District Court
DUE PROCESS
POLITICAL AFFIL-
IATION
TERMINATION

Ramos-Martinez v. Negron-Fernandez, 393 F.Supp.2d 118 (D.Puerto Rico 2005). A former employee of a juvenile institutions department brought an action alleging that his termination violated due process and his First Amendment rights. The district court granted summary judgment in favor of the employer in part, and denied it in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the employer possessed knowledge of the employee's political affiliation and as to the reason for the discharge. The court found that the employee's discharge did not violate his due process rights even though the recommendation of a hearing examiner, that discharge was not justified, was not followed. The court noted that applicable administrative law allowed the agency administrator to make a final determination and the employee received timely notice of his right to appeal as required by law. (Juvenile Institutions Administration, Puerto Rico)

U.S. District Court
RETALIATION
WORKING CONDI-
TIONS

Redding v. Florida, Dept. of Juvenile Justice, 401 F.Supp.2d 1255 (N.D.Fla. 2005). A female former juvenile detention facility supervisor sued a state juvenile justice department claiming she was subjected to an abusive environment in retaliation for a good faith claim of gender discrimination. After complaining of gender discrimination, the employee was moved to a less desirable shift, assigned undesirable duties, provided with insufficient staff, denied permission to wear an unobtrusive heart monitor for one month, and was generally treated disrespectfully. After a jury entered a verdict in her favor the department sought judgment in its favor as a matter of law. The district court denied the motion, finding that the conduct of the employee's supervisor was sufficient to support an abusive environment claim. (Leon County Detention Center, Florida)

U.S. Appeals Court
POLITICAL AFFIL-
IATION
TERMINATION

Riley v. Blagojevich, 425 F.3d 357 (7th Cir. 2005). Assistant wardens of two state prisons, who were fired by a governor because they were not of his political party, brought separate § 1983 actions alleging that their terminations violated their right of free speech. The wardens lost their cases in the district court and they appealed. The appeals court affirmed in part and reversed in

part. The court held that their positions fell within the *Elrod-Branti* policy-making exception to the general prohibition on termination of government employees because of their political affiliation. (Illinois)

U.S. District Court
TITLE VII
HOSTILE WORK
ENVIRONMENT
RACIAL DISCRIMINATION
RETALIATION

Sasser v. Alabama Dept. of Corrections, 373 F.Supp.2d 1276 (M.D.Ala. 2005). A Caucasian state corrections employee brought an action against his employer alleging race discrimination, hostile work environment, and retaliation under Title VII, and claims for due process, equal protection and free speech under § 1983. The district court awarded summary judgment in favor of the employer. The employee had been suspended and reassigned to another unit after he made a racial slur to an inmate and assigned inmates to day labor based on their race. The court held that the employee was not similarly situated to an African-American co-worker who stated openly that she did not like “white people” or to an African-American co-worker who had breached security and also called the employee a “redneck,” where there was no evidence that the co-workers had similar positions and responsibilities. The court found that the alleged retaliatory acts against the employee which included African-American co-workers referring to him as a racist, an African-American co-worker refusing to let the employee take his urine sample, and the issuance of a written warning, did not amount to adverse employment actions where the employee was not subjected to any changes in the terms and conditions of his employment. The court noted that the alleged retaliatory acts were also not frequent or severe enough to create a racially hostile work environment under Title VII. The court ruled that the employee’s § 1983 claims against the department alleging violations of his rights under the First and Fourteenth Amendments, and against a warden in his official capacity, were barred by the Eleventh Amendment. (Work Release Center, Alabama Department of Corrections)

U.S. District Court
DISABILITY
RETALIATION
TERMINATION

Shape v. Barnes County, N.D., 396 F.Supp.2d 1067 (D.N.D. 2005). A county employee who was demoted from a position of Chief Correctional Officer and then terminated shortly after he filed a grievance sued a county and sheriff alleging discrimination, retaliation, and free speech and due process violations. The district court held that the employee failed to prove that he was “disabled” by his attention deficit disorder for the purposes of a state human rights claim, absent evidence that his claimed disorder substantially limited his ability to perform either a class of jobs or a broad range of jobs. The court found that the employee established a prima facie case for retaliatory discharge under a state whistleblower statute and that genuine issues of material fact existed as to whether the county’s proffered non-retaliatory reasons for his discharge were pretextual. The court also found issues of material fact as to whether the employee’s grievance was a substantial factor in the termination decision, and whether the employee was provided with an impartial grievance committee. (Barnes County Jail, North Dakota)

U.S. District Court
FREE SPEECH
RETALIATION

Vantassel v. Brooks, 355 F.Supp.2d 788 (W.D.Pa. 2005). A former correctional employee brought a § 1983 action against corrections officials, alleging he was discharged in retaliation for exercising his free speech rights. The district court held that the employee’s criticisms of a superintendent’s expenditures on her state-owned residence involved matters of public concern for the purposes of the employee’s retaliation claims. The court noted that the employee complained of the superintendent’s excessive spending and misappropriation of funds to co-workers and to the superintendent herself. The court denied summary judgment for the defendants, finding genuine issues of material fact as to whether the employee would have been discharged if he had not criticized the superintendent’s spending on her residence. (State Correctional Institution, Cambridge Springs, Pennsylvania)

2006

U.S. District Court
TERMINATION
ADA- Americans with
Disabilities Act

Almond v. Westchester County Dept. of Corrections, 425 F.Supp.2d 394 (S.D.N.Y. 2006). A probationary corrections officer who was terminated after she displayed hysterical behavior and underwent a psychiatric evaluation following training in disturbance control and use of a baton, brought an action against a county Department of Corrections (DOC) alleging wrongful discharge in violation of Americans with Disabilities Act (ADA) and New York State Human Rights Law (NYSHRL). The employer moved for summary judgment and the district court granted the motion. The court held that the officer failed to establish a prima facie case of disability discrimination under ADA, on the theory that the employer perceived her to be either a drug addict or mentally ill, where she did not prove that the employer perceived her to be drug addict despite her statement that she had overmedicated herself, her admission to taking some sort of drug on the day of the subject incident, and her superior's order that a drug test be administered, and assuming that the employer perceived her to be mentally ill. The court concluded that she did not show that the employer believed she was impaired from working or from performing some other major life activity. The employer alleged that the plaintiff complained that the exercises were “too hard,” and asserted that she had been exhibiting nervous and erratic behavior throughout the day, crying and complaining that the training was too tough. The court declined to exercise supplemental jurisdiction over the officer's remaining claim under NYSHRL, instead dismissing it without prejudice. (Department of Corrections for Westchester County, New York)

U.S. District Court
FREE SPEECH
RETALIATION
PROPERTY INTEREST

Barry v. Luzerne County, 447 F.Supp.2d 438 (M.D.Pa. 2006). A county correctional officer brought an action against a county and officials, stemming from his suspension and demotion after publication of articles about a county prison escape. The officer had spoken with a newspaper about the escapes. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that summary judgment was precluded by fact issues as to whether the officer engaged in protected speech, whether the officials were entitled to qualified immunity, and whether the officer suffered an adverse action. The court found that the county was subject to municipal liability, where the prison board was the authorized policymaker of the county for purposes of making policy decisions regarding the county prison, and the board had the authority to bind the county to its decision regarding the officer's employment. The court held that the officer lacked a protected interest in his employment. (Luzerne Co. Corr'l Facil., Pennsylvania)

U.S. Appeals Court
TERMINATION
TITLE VII
FREE SPEECH
RACIAL DISCRIMINATION

Burke-Fowler v. Orange County, Fla., 447 F.3d 1319 (11th Cir. 2006). A former correctional officer brought an action against a county alleging that her termination was racially discriminatory, in violation of Title VII and § 1981, and was based on her marital status in violation of state law. The district court granted the county's motion for summary judgment and the officer appealed. The appeals court affirmed, finding that the African-American officer failed to establish that her discharge for developing an intimate romantic relationship with, and later marrying, an inmate, in violation of a prison's anti-fraternization policy, was the result of racial discrimination and that the county did not discriminate against the officer simply because she was married, in violation of the Florida Civil Rights Act. The court noted that even though white officers who had close relationships with inmates were not as severely disciplined, one white officer developed the relationship with a former inmate without the knowledge of her partner's criminal history, another white officer had established his relationship with an inmate prior to her arrest, and two other white officers had relationships that were not romantic, while the African-American officer's relationship with an inmate commenced with her full awareness of his status as an inmate and she pursued the relationship shortly after he left her direct authority. (Orange County Corrections Department, Florida)

U.S. District Court
ASSOCIATION

Clark v. Alston, 442 F.Supp.2d 395 (E.D.Mich. 2006). An applicant for a probation officer position filed a § 1983 claim against a judge, alleging he violated her First Amendment right to freedom of intimate association when he withdrew her offer of employment after learning she was married to a former inmate. The district court granted summary judgment to the judge, finding that it was not an undue intrusion into the applicant's marital relationship for the judge to deny her employment with the court after learning she was married to a former inmate. According to the court, the marriage itself was not a substantial motivating factor in the judge's denial of employment, where the primary reason was the judge's concern that the applicant had not been completely truthful at her first interview, that she had some hesitancy to permit him to review an investigative file by himself, and that she might not have had a good working relationship with her supervisor. The court noted that while there was no evidence that her relationship with the inmate while she was employed at a prison was of a sexual nature, the fact that their marriage took place approximately one month after she terminated her employment strongly suggested that some type of "personal" relationship had to exist while she was employed there, and the judge's concern about such a relationship would be a legitimate business reason for denying employment. (74th District Court Probation Department, and Standish Correctional Facility, Michigan)

U.S. Appeals Court
TITLE VII
DEMOTION
RACIAL DISCRIMINATION

Davis v. Wisconsin Dept. of Corrections, 445 F.3d 971 (7th Cir. 2006). A state corrections employee brought an action against the agency and supervisors under Title VII and § 1983, alleging that he was demoted because of his race. The district court entered judgment upon jury verdict in favor of the employee, and defendants appealed. The appeals court affirmed, finding that evidence was sufficient to support the jury's verdict in favor of the employee. The court noted that although there was no direct evidence that the agency and supervisors were motivated by racial bias when they demoted the employee after he was found to have harassed a co-worker, an agency memo drafted and approved by the supervisors indicated that the employee's violation was a category B violation. Two white employees received far less severe penalties for category B violations, and testimony that the supervisors thought the employee's violation was more serious than category B came from the supervisors rather than from disinterested witnesses and was not supported by documentary evidence. (Jackson Correctional Institution, Wisconsin)

U.S. Appeals Court
TITLE VII
HOSTILE WORK
ENVIRONMENT
FAILURE TO PROTECT

Erickson v. Wisconsin Dept. of Corrections, 469 F.3d 600 (7th Cir. 2006). A female civilian employee of a state department of corrections brought an action against her employer under Title VII and § 1983, claiming hostile work environment after she was raped by a prisoner at an all-male minimum security prison that was housed in same building as her office. The district court denied the employer's motion for judgment as matter of law after a jury returned a verdict in favor of the employee. The employer appealed. The appeals court affirmed. The appeals court held that whether the employer was negligent in addressing the risk that the female employee might be harassed by a male prisoner was for the jury. The district court concluded that "the evidence was sufficient to support the jury's verdict that [WDC's] agents knew of a significant risk of serious harassment, were in a position to take remedial action and failed to act to prevent the sexual

harassment from occurring.” The employee that she had previously found the prisoner in her office after hours staring at her in a way that made her very uncomfortable. (Wisconsin Correctional Center System, and Oregon Correctional Center)

U.S. District Court
FREE SPEECH
HARASSMENT

Farley v. Andrews, 430 F.Supp.2d 786 (N.D. Ill. 2006). County jail officers sued sheriffs and individual officers claiming they were harassed for exercising their First Amendment right to speak out against the abuse of inmates. The district court granted summary judgment for the defendants in part, and denied in part, finding that: (1) the plaintiff officers’ speech was about a matter of public concern, protected by First Amendment; (2) there were fact issues whether the sued defendants were aware of the First Amendment activity; (3) there were fact issues whether the speech was a motivating factor in the sheriff office investigators’ delays in investigating mistreatment claims; (4) there were fact issues regarding the sheriff’s § 1983 liability; and (5) there was no civil conspiracy. The plaintiff officers alleged that fellow officers were beating prisoners. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
TITLE VII
WORKING
CONDITIONS
FREE SPEECH
HOSTILE WORK
ENVIRONMENT

Freitag v. Ayers, 468 F.3D 528 (9th Cir. 2006). A female former corrections officer brought an action against a state department of corrections and department officials, alleging hostile work environment claims based on the officials’ alleged failure to stop male prisoners’ sexual harassment of the female officer and retaliation in violation of Title VII and the First Amendment. The district court entered a jury verdict in favor of the officer and the defendants appealed. The appeals court affirmed in part and reversed in part. The court held that the department of corrections could be held liable under Title VII for failure to implement policies to protect its female corrections officers from sexual harassment by male prisoners, and that substantial evidence supported the determination that the officer was subjected to a hostile work environment. According to the court, testimony and exhibits established that the officer witnessed prisoners’ masturbating in an exhibitionist manner, oftentimes while they directed verbal taunts and crude remarks at her, and such incidents were severe. The court found that substantial evidence supported the determination that the department of corrections failed to take prompt, corrective, and reasonable action to address inmate sexual misconduct and that officials were aware of the officer’s complaints about the ongoing sexual harassment and her complaints about the department’s failure to adequately address the harassment, as required to establish a Title VII retaliation claim. The court found that the officials took an adverse action against officer as a result of her complaints, as required to establish a First Amendment retaliation claim, and that the officer’s communications with a state senator and the state office of the inspector general constituted protected speech. (Calif. Dept. of Corr. and Rehabilitation, Pelican Bay State Prison)

U.S. District Court
TERMINATION
DUE PROCESS
RETALIATION

Henderson v. New York, 423 F.Supp.2d 129 (S.D.N.Y. 2006). A terminated state corrections officer sued a lieutenant and commissioner, asserting race discrimination and other claims. The lieutenant and commissioner moved for summary judgment and the motions were granted. The district court held that: (1) the lieutenant’s alleged pre-termination actions, if proven, were not adverse employment actions; (2) the officer’s termination was not causally related to his deposition testimony, and thus did not constitute retaliation; (3) the commissioner did not retaliate against the officer; (4) the officer received procedural due process prior to his termination; (5) the officer’s termination did not constitute a substantive due process violation; and (6) the lieutenant’s alleged actions, if proven, did not violate the officer’s substantive due process rights. (Taconic Correctional Facility, Beacon Correctional Facility, New York)

U.S. Appeals Court
WORKING
CONDITIONS

Kaucher v. County of Bucks, 455 F.3d 418 (3rd Cir. 2006). A corrections officer filed suit under § 1983 against a county and several county employees responsible for the operation of a correctional facility, alleging violation of his substantive due process rights, contending he contracted a Methicilin Resistant Staphylococcus Aureus (MRSA) infection as a result of the defendants’ conscience-shocking behavior in creating unsanitary and dangerous conditions at the facility. The district court granted the defendants’ motion for summary judgment, and the officer appealed. The appeals court affirmed. The court held that: (1) the alleged inadequate remedial and preventative measures to stop the spread of MRSA within the correctional facility did not rise to a level of deliberate indifference that could be characterized as conscience shocking, and (2) the facility’s alleged failure to act affirmatively to improve conditions at the jail and alleged failure to act affirmatively to educate and warn inmates and corrections officers about MRSA infections and to train them in infection prevention were not the cause of the corrections officer’s infection. The court noted that the state corrections department found the jail to be substantially in compliance with state standards, giving the defendants reason to believe their measures were adequate, only two of 170 corrections officers tested positive for colonization of the infection, and the facility had in place policies and procedures to ensure sanitary conditions in the jail, including requirements that cells be regularly cleaned with an all-purpose detergent and that showers be disinfected with a bleach and water solution. The court also noted that the officer chose to remain employed at the jail, in a position that obliged him to work amidst MRSA infections and from the outset of his employment, he was aware of the safety risks associated with working in a prison, and he was on notice of the jail’s standard operating procedures, which described proper methods of handling inmates with communicable diseases. (Bucks County Correctional Facility, Pennsylvania)

U.S. District Court
FREE SPEECH
DISCIPLINE

Matrisciano v. Walker, 417 F.Supp.2d 1014 (C.D.Ill. 2006). A public employee who was formerly the deputy director of a state corrections department sued the department, claiming that his First Amendment rights were violated when he was reassigned and then locked out of his new position after he appeared before the parole board advocating parole for a gang member convicted of murder. The department moved for summary judgment and the district court granted the motion. The court held that the employee was a “policymaker” who could be punished for his appearance, without the need for balancing his interest in free speech against the government’s need for efficient operations. According to the court, the employee supervised assistant wardens who were found by the court of appeals to be policymakers, and was active in the review of proposed policies. The court noted that the factors to be considered in determining whether a public employee can be punished for exercise of his First Amendment free speech rights, include: (1) whether the employee’s statement would create problems in maintaining discipline by immediate supervisors or harmony among co-workers; (2) whether the employment relationship is one in which personal loyalty and confidence are necessary; (3) whether the speech impeded the employee’s ability to perform his daily responsibilities; (4) the time, place, and manner of speech; (5) the context in which the underlying dispute arose; (6) whether the matter was one on which debate was vital to informed decisionmaking; and (7) whether the speaker should be regarded as a member of the general public. (Illinois Department of Corrections)

U.S. Appeals Court
FLSA- Fair Labor
Standards Act

McGavock v. City of Water Valley, Miss., 452 F.3d 423 (5th Cir. 2006). Municipal firefighters filed a Fair Labor Standards Act (FLSA) overtime action against a city. The district court granted partial summary judgment to the defendants. The district court held that because of their non-exempt work as dispatchers, the plaintiffs were not employees engaged in fire protection activity and therefore were not subject to the exemption. The firefighters and the city appealed. The appeals court reversed and remanded. The appeals court held that the firefighters were employees “engaged in fire protection activities” and were thereby exempt from coverage of the overtime provisions of FLSA even though they spent more than 20% of their time engaged in nonexempt activities. (City of Water Valley, Mississippi)

U.S. Appeals Court
HARASSMENT
HOSTILE WORK
ENVIRONMENT
RACIAL DISCRIMINATION

Patterson v. Balsamico, 440 F.3d 104 (2nd Cir. 2006). An African-American former employee of a county sheriff’s department brought an action against another corrections officer, alleging the existence of a racially discriminatory hostile work environment and the intentional infliction of emotional distress. After a jury trial, the district court awarded the former employee nominal damages on the hostile work environment claim, \$100,000 on the emotional distress claim, and \$20,000 in punitive damages. The court denied the corrections officer’s motion for a new trial and awarded the former employee attorney fees. The parties appealed. The court of appeals affirmed in part, and vacated and remanded in part. The appeals court held that the district court did not abuse its discretion when, pursuant to New York law, it declined to reduce compensatory damages of \$100,000 awarded to the plaintiff on his claim for intentional infliction of emotional distress, arising from an assault in which the officer and others sprayed the plaintiff with mace, covered him with shaving cream, and taunted him with racial slurs. The court noted that the plaintiff had testified as to his humiliation, embarrassment, and loss of self-confidence, as well as to his sleeplessness, headaches, stomach pains, and burning in his eyes from the use of mace. The appeals court found that the punitive damages award of \$20,000 did not exceed the maximum permissible amount considering that this was a thoroughly reprehensible incident, particularly in light of its racial motivation, and that the punitive damages award represented a relatively small fraction of \$100,000 compensatory damages awarded on the emotional distress claim. The court noted that the officer against whom the award was made should have appreciated the gravity of the racially motivated assault on a fellow officer and should have understood that such conduct could have adverse economic consequences. But the appeals court concluded that the \$20,000 damage award was excessive in light of the personal finances of the defendant corrections officer, who earned an annual salary of approximately \$37,632, was married and had two children. The court found that an award of no more than \$10,000 would provide sufficient punishment and deter future conduct. The court remanded the case for a new trial on punitive damages, unless the plaintiff agreed to remit the portion of the punitive damages award that exceeded \$10,000. The plaintiff alleged that he had been subjected to a racially discriminatory hostile work environment and that his employment had been terminated because of his race. He alleged that he heard fellow employees use racial slurs and make disparaging remarks about African-Americans on approximately 12 occasions during his first three months of employment. (Oneida County Correctional Facility, New York)

U.S. Appeals Court
SEXUAL
HARASSMENT
TITLE II
HOSTILE WORK
ENVIRONMENT
RETALIATION

Randolph v. Ohio Dept. of Youth Services, 453 F.3d 724 (6th Cir. 2006). A female former employee at a state juvenile facility brought an action against her state employer, alleging sex discrimination, hostile-work-environment, sexual harassment, and retaliation in violation of Title II. The district court granted summary judgment in favor of the employer and the female former employee appealed. The appeals court reversed and remanded. The court held: (1) the employee did not fail to exhaust her administrative remedies; (2) the employee’s testimony was sufficient to demonstrate that the alleged harassment was based on gender; (3) the employee engaged in a protected activity; (4) the employer knew that the female employee was engaged in a protected

activity; (5) the employee suffered an “adverse employment action”; and (6) the employee demonstrated a causal connection. The former employee testified that she was subjected to daily threats, derogatory comments, verbal harassment, foul language, and several serious physical assaults to which members of the opposite sex were not exposed, and that the alleged conduct caused her to become suicidal and necessitated hospitalization and counseling. The employee reported to her supervisors that she was choked, that she was verbally harassed, and that she was subjected to sexual assault. It was undisputed that the employee complained to the supervisors several times about the verbal harassment and the physical assault. The female employee was placed on administrative leave shortly after she reported to the supervisor that she was sexually assaulted, she was terminated several months later, and after she reported the incidents, she was also subjected to rumors and investigations concerning her alleged inappropriate behavior. The employee was later reinstated with 70 percent back pay. (Circleville Youth Center, Ohio)

U.S. Appeals Court
DEMOTION
POLITICAL AFFIL-
IATION
DUE PROCESS

Rodriguez-Marin v Rivera-Gonzalez, 438 F.3d 72 (1st Cir. 2006). Employees of Puerto Rico's corrections administration filed suit under § 1983 against the administration alleging political discrimination, claiming that they were demoted in violation of their First Amendment and due process rights. The district court entered a verdict for the employees, awarding compensatory and punitive damages, and the defendants appealed. The court of appeals affirmed, finding that evidence was sufficient to support the jury finding that the employees were demoted based on their political affiliation. The court noted that the employees were long-standing, competent employees and that both were demoted without being given any notice or opportunity to defend their demotions, and that important documents were missing from their personnel files. According to the court, punitive damages of \$120,000 to \$195,000 assessed against the chief legal advisor of the new political administration were not excessive because the demotions jeopardized the employees' livelihood. As a result of their demotions, one employee's salary was reduced by 60 percent and the other's was reduced by 43 percent. Both employees suffered harm to their professional careers, were unable to meet their financial obligations because of their reduced salaries, and suffered emotional distress for which they sought medical attention. The court noted that “discrimination based on political-party affiliation is rampant in government employment in Puerto Rico.” (Administration of Corrections, Puerto Rico)

U.S. District Court
PROMOTION
EQUAL PROTECTION
DISCRIMINATION

Rogers v. Haley, 421 F.Supp.2d 1361 (M.D.Ala. 2006). A Caucasian state corrections sergeant sued his superiors, claiming that he was denied promotions due to his race in violation of his equal protection rights. The defendants moved for summary judgment and the district court granted the motion in part and denied it in part. The court held that the equal protection rights of the sergeant were not violated when a Black officer was selected over him for promotion to lieutenant, despite the claim that the recruitment policies of the department encouraged blacks to apply for the position, decreasing the prospects of whites to receive the appointment. The court noted that the Black applicant interviewed very well, showed an outstanding grasp of the elements of the position, and had local experience. The court held that summary judgment was precluded as to the Equal Protection Clause claim alleging purposeful discrimination. The court found that a warden's affidavit, admitting that he would have recommended the White male correctional officer for promotion to lieutenant but for his belief that a “no-bypass rule” required him to promote any black or female employee from the promotional register, precluded summary judgment for the defendant. At the time of the events giving rise to this litigation, the department and all other state agencies were subject to a 1970 injunction which provided that: “Defendants shall not appoint or offer a position to a lower-ranking white applicant on a certificate in preference to a higher-ranking available Negro applicant, unless the defendants have first contacted and interviewed the higher-ranking Negro applicant and have determined that the Negro applicant cannot perform the functions of the position, is otherwise unfit for it, or is unavailable. In every instance where a determination is made that the Negro applicant is unfit or unavailable, documentary evidence shall be maintained by the defendants that will sustain that finding.” This provision is now called the “no-bypass rule.” (Alabama Department of Corrections)

U.S. District Court
TITLE VII
DISCRIMINATION
PROMOTION

Rogers v. Haley, 436 F.Supp.2d 1256 (M.D.Ala. 2006). A white male correctional officer sued the Alabama Department of Corrections (ADOC) and several ADOC supervisors and other employees in their official capacities, claiming he was denied promotion because of his race and gender, seeking relief under Title VII and the Fourteenth Amendment, as enforced through § 1983. The district court entered summary judgment for the defendants on the race discrimination claims in an earlier decision, and addressed the gender discrimination claim in this decision. The district court refused to credit a retired ADOC warden's testimony that he would have recommended the plaintiff for a lieutenant position but for an outstanding court order and an ADOC regulation he understood to restrict appointment of males over females on the same certification regardless of their qualifications, finding that the warden's sole reason for wanting to recommend the plaintiff was his belief that women should not be correctional officers in male prisons. The court held that the ADOC and individual defendants established, by clear and convincing evidence, that the female candidate who was selected was more qualified than the plaintiff, and their proffered reason was not a pretext for gender discrimination. (Ala. Dept. of Corr., Elmore Corr'l. Facility)

<p>U.S. District Court TITLE VII DISCRIMINATION FREE SPEECH ADEA- Age Discrimination in Employment Act</p>	<p><i>Salas v. Wisconsin Dept. of Corrections</i>, 429 F.Supp.2d 1056 (W.D.Wis. 2006). An Hispanic probation and parole agent who was terminated purportedly because of his failure to supervise an offender, and for his alleged falsification of documents relating to that offender, sued state corrections officials, alleging they discriminated and retaliated against him in violation of his rights under Title VII, § 1983 and the Age Discrimination in Employment Act (ADEA). The district court dismissed all ADEA, and Title VII discrimination and retaliation claims against the officials in their individual capacities. The defendants moved for summary judgment on the remaining claims. The district held that: (1) the employee failed to state § 1983 claim against the department of corrections; (2) the employee failed to produce evidence that three pre-disciplinary hearings he received were shams; (3) the employee failed to provide admissible evidence that he was treated differently from similarly-situated non-Hispanic coworkers or that the decision to terminate his employment was motivated by animosity toward him because of his national origin; and (4) the employee's speech was not a substantial and motivating factor in his termination. The court noted that the parole agent's protected speech, in the form of testimony before an Equal Employment Opportunity Commission (EEOC) on behalf of a coworker who had filed a race discrimination complaint, was not shown to be a substantial and motivating factor in the agent's termination as required for his First Amendment retaliation claim, where his superiors were unaware of the role he planned to play in the EEOC investigation. (Wisc. Dept. of Corrections)</p>
<p>U.S. Appeals Court RELIGION FREE SPEECH DISCRIMINATION</p>	<p><i>Shrum v. City of Coweta, Okla.</i>, 449 F.3d 1132 (10th Cir. 2006). A law enforcement officer/clergyman who resigned from a police department after the police chief allegedly rearranged his work schedule so it would conflict with his duties as a minister filed a § 1983 action against the city, police chief and city manager alleging violations of his constitutional rights to freedom of association, free exercise of religion, and substantive due process. The chief appealed a partial denial by the district court of his motion for summary judgment on the basis of qualified immunity. The appeals court affirmed in part, reversed in part, and remanded. The court held that the police chief was not entitled to qualified immunity on the officer's claim of interference with free exercise of his religion, finding that the mere refusal of the chief and police department to accommodate the officer's religious scheduling needs, without more, would not establish a constitutional violation. The officer alleged he was moved to the day shift because of the chief's knowledge of his religious commitment, claiming that the transfer decision was not neutral but rather was motivated by the officer's religious commitments. The officer apparently successfully juggled his two responsibilities for eight years, but his relationship with the management of the police department soured and his schedule was changed. Forced to choose between his police and his ministerial responsibilities, he resigned from the department and sued. (City of Coweta, Oklahoma)</p>
<p>U.S. Appeals Court TERMINATION RETALIATION FMLA- Family Medical Leave Act</p>	<p><i>Toeller v. Wisconsin Dept. of Corrections</i>, 461 F.3d 871 (7th Cir. 2006). A terminated state corrections department employee sued the department, alleging interference with his rights and termination of his employment in retaliation for his attempt to assert his rights under the Family Medical Leave Act (FMLA). The district court denied the department's motion to dismiss and the department appealed. The appeals court reversed and remanded. The court held that Congress did not effect valid abrogation of state sovereign immunity in enacting FMLA's "self-care" provision, at least for non-pregnancy self-care leaves. The court noted that, unlike the FMLA family-leave provision, the self-care provision was not adopted to combat longstanding sex discrimination, and thus the suit against a state agency under that provision could not rest on the enforcement clause of the Fourteenth Amendment. (Wisconsin Department of Corrections)</p>
<p>U.S. Appeals Court PROSECUTION</p>	<p><i>U.S. v. LaVallee</i>, 439 F.3d 670 (10th Cir. 2006). Former prison officers who were convicted in district court of conspiracy and deprivation of inmates' constitutional rights, appealed their convictions. The appeals court affirmed. The court held that the defendants were not denied their due process right to a fair trial when a former prison supervisory attorney allegedly assisted the prosecutor. The court found that the de minimus injuries suffered by inmates when they were attacked by the defendants were sufficient to support a conviction. According to the court, a two-level downward sentencing departure based on the defendants' susceptibility to abuse in prison was not abuse of the court's discretion. The court noted that the government began investigating allegations of the widespread abuse of prisoners and the falsification of records to cover up that abuse at the prison in 1997. As a result of the investigation, eight Bureau of Prisons ("BOP") correctional officers were indicted and two were charged. Three officers pleaded guilty and cooperated with the government by testifying at trial. (U.S. Penitentiary, Florence, Colorado)</p>
<p>U.S. District Court HARASSMENT RACIAL DISCRIMINATION RETALIATION</p>	<p><i>Vaden v. Lantz</i>, 459 F.Supp.2d 149 (D.Conn. 2006). An African-American employed by a state Department of Corrections brought an action against a corrections department and several corrections officials, alleging that he was subjected to racial slurs, physical harassment, racially disparate evaluation and discipline, and retaliation. Employer filed a motion for a more definite statement. The district court denied the motion and held that: (1) allegations of direct involvement by all individual defendants sufficiently placed each defendant on notice as to the conduct leading to the plaintiff's equal protection and due process claims, and (2) allegations of direct involvement and separate allegations pointing to individual defendants as having known of the discriminatory and retaliatory acts of others sufficiently delineated to which defendant employee attributed</p>

alleged unconstitutional conduct, thus placing each defendant on notice as to the particular equal rights and due process claims against him or her. (Gates Correctional Institution, York Correctional Institution, Connecticut)

U.S. Appeals Court
RETALIATION

Witte v. Wisconsin Dept. of Corrections, 434 F.3d 1031 (7th Cir. 2006). A physician, as a public employee, brought a civil rights action against a state corrections department alleging retaliation for his exercise of his constitutional rights and violation of the state whistle-blower statute. The district court granted summary judgment in favor of the defendants and the physician appealed. The appeals court affirmed, finding that the physician had not been deprived of his due process rights by the manner that the employer handled his numerous disciplinary proceedings. The physician had written several letters to correctional officials expressing concerns about the management of the correctional facility. (Racine Correctional Institution, Wisconsin)

2007

U.S. Appeals Court
WORKING CONDITIONS

Adair v. U.S., 497 F.3d 1244 (Fed. Cir. 2007). Current and former federal prison employees brought an action against the government for back pay, hazard pay, environmental hazard pay, and contributions to thrift savings accounts due to their exposure to second-hand cigarette smoke at their workplace. The U.S. Court of Federal Claims granted the government's motion to dismiss. The employees appealed. The appeals court affirmed on an alternative ground. The appeals court held that the employees' exposure to second-hand cigarette smoke was not an unusual physical hardship or unusual hazard, given that the exposure was an expected condition of employment usually involved in carrying out the duties of their positions, especially when those duties involved the caretaking or monitoring of inmates and second-hand smoke, as part of the ambient air, was commonly encountered indoors and outdoors where people worked or played. The court found that the employees' exposure to second-hand smoke was not an unusually severe working condition or an unusually severe hazard within the plain meaning of the statute mandating additional compensation for federal employees whose duties involved such severe conditions. The court held that at the time the statute was enacted, second-hand smoke was not considered unusually severe. (Federal Correctional Institution, Jesup, Georgia)

U.S. District Court
HOSTILE WORK
ENVIRONMENT
SEXUAL HARASSMENT
TITLE VII

Akines v. Shelby County Government, 512 F.Supp.2d 1138 (W.D. Tenn. 2007). Female correctional officers brought Title VII, § 1983 and a Tennessee Whistleblower Act suit alleging hostile work environment arising from a county's indifference to sexual harassment of the officers by county jail inmates. The district court granted summary judgment to the county on the claims of certain officers. The county renewed its motion with respect to the remaining officers and the court granted it. The court held that the county's taking of appropriate disciplinary steps in response to reports of inmate harassment precluded a finding that it had fostered a hostile work environment in violation of Title VII. According to the court, the county was not deliberately indifferent to the rights of the female officers or a moving force behind the harassment, as required for a violation of § 1983. The court noted that the presence of one incident in which the institution apparently did not respond to a female correctional officer's filing of a disciplinary complaint against one inmate for alleged sexual harassment was insufficient to establish a hostile work environment in violation of Title VII, where the institution responded by disciplining inmates in connection with other reported incidents. (Shelby County Correctional Center, Tennessee)

U.S. District Court
SEXUAL HARASSMENT
RETALIATION
TERMINATION
EQUAL PROTECTION

Briggs v. Waters, 484 F.Supp.2d 466 (E.D.Va. 2007). A former employee of a county sheriff's office sued a former county sheriff and others, claiming that she was subjected to quid pro quo sexual harassment and was fired in retaliation for spurning the sheriff's advances. The defendants moved for summary judgment. The appeals court denied the motions. The court held that the female employee showed that the conduct of the male sheriff was unwelcome, as required for a Title VII action and a § 1983 suit alleging equal protection violations based on sexual harassment, when she initially offered an excuse when asked to accompany him on business trip and did not respond to a follow-up e-mail, and by shrugging away when the sheriff hugged her. The court found that summary judgment was precluded by a material issue of fact as to whether the request by the sheriff that the employee accompany him on a trip was request for a date or, given the past conduct of the sheriff, was a request for sex. The court also found that summary judgment was precluded by material issues of fact as to whether the sheriff's termination of the employee, who had been convicted of obstructing justice in an unrelated matter and was appealing the decision, was a pretext for termination based on her rebuff of his sexual advances. The court held that the employee established a prima facie case of disparate discipline, in violation of Title VII and her equal protection rights, through showing that she was terminated following her conviction for obstructing justice, while two male officers convicted of drunken driving were not terminated. (City of Portsmouth Jail, Virginia)

U.S. District Court
TITLE VII
RETALIATION
RACIAL DISCRIMINATION
SEXUAL HARASSMENT

Cobb v. Marshall, 481 F.Supp.2d 1248 (M.D.Ala. 2007). An older black female correctional officer sued a sheriff under Title VII, Fourteenth Amendment equal protection as enforced by § 1983, and state law for hostile work environment sexual harassment, retaliation, and race discrimination. The sheriff moved to dismiss for failure to state a claim. The district court granted the motion in part and denied the motion in part. The court held that the Title VII claims would not be dismissed on the basis of failure to name the sheriff in the Equal Employment Opportunity Commission (EEOC) charge, but that the officer could not bring Title VII claims against the sheriff in his individual capacity. The court found that the officer stated Title VII claims for retaliation and race discrimination, where she alleged that she filed an EEOC charge and provided favorable testimony in support of a coworker's claim "against the department," that as a result of those activities she was subjected to various forms of retaliation, including denial of her request for leave, all in violation of Title VII, and pleaded that she was disciplined more harshly than other similarly-situated Caucasian employees and was denied certain benefits which other similarly-situated Caucasian employees received. (Montgomery County Sheriff's Department, Alabama)

<p>U.S. District Court TERMINATION FREE SPEECH RETALIATION</p>	<p><i>Curran v. Cousins</i>, 482 F.Supp.2d 36 (D.Mass. 2007). A corrections officer sued a sheriff's department, claiming termination in retaliation for exercise of his First Amendment free speech rights. The parties moved and cross moved for judgment on the pleadings. The district court entered judgment in favor of the sheriff. The court held that the officer made a statement of public concern when he posted an Internet statement critical of the department, but the sheriff's interest in the efficient discharge of his public responsibility outweighed the employee's interest in urging fellow employees to oppose the sheriff, allowing the termination of the officer. The court noted that posting a statement on the Internet gave the statement a public character, and the statement did articulate a claim that the sheriff rewarded political allegiance rather than merit in the operation of department, which is a public issue. The statement was posted on an employees' union Internet website, and compared the department to Nazi Germany, and exhorted corrections personnel to disobey department orders, as German officers had defied Hitler at end of the Second World War. (Essex County, Massachusetts)</p>
<p>U.S. Appeals Court FREE SPEECH RETALIATION TERMINATION</p>	<p><i>Curran v. Cousins</i>, 509 F.3d 36 (1st Cir. 2007). A corrections officer sued a sheriff's department, claiming termination in retaliation for exercise of his First Amendment free speech rights. The district court granted the department's motion for judgment on the pleadings and the officer appealed. The appeals court affirmed. The court held that the officer's speech, consisting of statements that the sheriff's political/union rivals were unfairly disciplined and harassed, was on matters of public concern, but the department had adequate justification for terminating the officer based on his statements on a union website. The officer made statements on the website comparing the sheriff to Hitler, those who followed sheriff's instructions to Hitler's generals, and officers to Jews who were marched into death chambers. (Essex County Sheriff's Department, Massachusetts)</p>
<p>U.S. District Court POLITICAL AFFILIATION</p>	<p><i>Gullick v. Ott</i>, 517 F.Supp.2d 1063 (W.D.Wis. 2007). A plaintiff filed a § 1983 action alleging that a deputy sheriff detained him and issued a citation because of his support for a candidate opposed by the deputy in a sheriff's race, in violation of the First Amendment. The deputy moved for summary judgment. The district court denied the motion. The court held that the plaintiff did not have to demonstrate an absence of probable cause in order to establish a First Amendment retaliation claim. The court found that summary judgment was precluded by fact issues as to whether the deputy sheriff had probable cause to detain the plaintiff and issue him a citation, and whether the deputy's actions were motivated by the plaintiff's support for the candidate. The court found that the plaintiff suffered sufficient injury to support a retaliation claim and that the deputy was not entitled to qualified immunity because it was clearly established at the time of the incident that law enforcement officers could not retaliate against citizens for exercising their First Amendment rights. The court opened its decision by stating "The facts of this case sound like they came straight from a bad movie on cable TV..." (Columbia County, Wisconsin)</p>
<p>U.S. District Court HOSTILE WORK ENVIRONMENT RACIAL DISCRIMINATION TRAINING</p>	<p><i>Hawkins v. County of Oneida</i>, N.Y., 497 F.Supp.2d 362 (N.D.N.Y. 2007). An African-American corrections officer sued a county, county sheriff's department, sheriff, undersheriff, and other officers, alleging racially discriminatory employment actions and a racially hostile work environment in violation of Title VII, state human rights law, Equal Protection Clause, and federal civil right statutes. The officer also alleged a conspiracy to violate his civil rights, neglect to prevent civil rights violations, breach of contract, intentional infliction of emotional distress, wrongful termination, negligence, and gross negligence. The defendants moved for summary judgment. The district court granted the motion in part, and denied in part. The court held that the officer did not show that the stated reasons of the county and sheriff's department for not providing him with tower and weapons training (that probationary employees were not eligible for such training) and for not providing him with emergency response team training (that no academy for such training was held during officer's employment), were a pretext for race discrimination, and thus failed to establish that the alleged failure to train violated Title VII and state human rights law.</p> <p>The court held that summary judgment was precluded by material issues of fact existed as to: (1) whether the extension of the officer's probationary period following an incident in which the officer allegedly acted disrespectfully toward a deputy after being stopped for speeding; (2) whether the reason proffered for termination of the officer--that he allowed an inmate to perform his security tours--was a pretext for race discrimination; (3) whether the officer was subjected to discriminatory intimidation, ridicule, and insult that was so severe or pervasive as to alter the conditions of his employment and create an abusive working environment; (4) whether racial animus motivated the undersheriff in making decisions to extend the probationary period of the officer and to terminate his employment; (5) whether a sergeant who was present when a deputy allegedly made racist and racially charged remarks directed towards the officer and whether the lieutenant to whom the officer reported racist and racially charged remarks and treatment was personally involved in the discriminatory conduct; (6) whether there was a persistent or widespread custom of race discrimination within the sheriff's department and whether actions of the undersheriff in extending the probationary period of, and then terminating, the officer constituted official policy. (Oneida County Sheriff's Department, New York)</p>
<p>U.S. District Court HIRING/ QUALIFICATIONS RETENTION</p>	<p><i>Heckenlaible v. Virginia Peninsula Regional Jail Authority</i>, 491 F.Supp.2d 544 (E.D.Va. 2007). An inmate brought an action against a correctional officer and regional jail authority, seeking to recover monetary relief for injuries suffered as a result of an allegedly nonconsensual sexual encounter between her and the officer. The jail authority moved for summary judgment. The district court granted the motion in part, and denied in part. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officer, whose duties required him to observe inmates in the shower, was acting within the scope of his employment when he allegedly sexually assaulted the inmate after he observed her showering and during a "cell search" thereafter. The court held that the inmate's deposition testimony that she was the victim of a sexual assault by the correctional officer was sufficient to preclude summary judgment in favor of the jail authority on her intentional infliction of emotional distress claim. The court found that absent evidence indicating that the correctional officer was known by anyone to have a propensity to commit sexual assault at the time he was hired, or evidence indicating that some testing would have revealed that the officer would pose a danger to inmates, the</p>

jail authority was not liable under Virginia law on the inmate's negligent hiring claim. The court also found that since the jail authority never received any complaints from inmates about the officer, and swiftly investigated the matter and took appropriate action upon learning that a sexual encounter had occurred, it was not liable for negligent retention. (Virginia Peninsula Regional Jail)

U.S. District Court
FREE SPEECH
TERMINATION

Jennings v. County of Washtenaw, 475 F.Supp.2d 692 (E.D.Mich. 2007). An employee sued a county and a supervisor under § 1983, alleging that she was discharged for exercising her free speech rights. The defendants moved for summary judgment and the district court granted the motion. The court held that the employee did not speak as citizen in reporting a co-worker's alleged safety violation of allowing juvenile center detainee to take shower on the midnight shift when only three employees were present, and, thus, the employee's speech was not protected by First Amendment, in that she was acting as public employee carrying out her professional responsibilities. The court also found that the employee did not speak on matter of public concern. (Washtenaw County Juvenile Detention Center, Wisconsin)

U.S. District Court
RACIAL DISCRIMINATION
OVERTIME
FLSA- Fair Labor Standards Act

Jeter v. Montgomery County, 480 F.Supp.2d 1293 (M.D.Ala. 2007). An African-American employee brought a state court action against a county, alleging denial of earned wages, retaliation, and race discrimination. The action was removed to federal court, where the employee moved for leave to amend her complaint, and the county moved for dismissal. The district court granted the motions in part and denied in part. The court held that amendment of her complaint to add a claim alleging violation of the Fair Labor Standards Act (FLSA) wage requirements would not be futile, where the amendment claimed that the county failed to pay her overtime for work she did in excess of 40 hours per week. The employee asserted that after she complained about her lack of overtime pay, her home detention verification program was canceled, her workload increased, and she was told by superiors that she was not "team player." The court also held that amendment of her complaint to add a claim alleging an equal protection violation due to race-based discrimination in pay would not be futile, where she was also claiming that she was treated differently, based on her race, from a similarly situated white employee. (Montgomery County Youth Facility, Alabama)

U.S. District Court
PROMOTION
RELIGION

Milwaukee Deputy Sheriffs Ass'n v. Clarke, 513 F.Supp.2d 1014 (E.D.Wisc. 2007). A union and county sheriff's deputies brought a § 1983 action against a county sheriff, sheriff's captain and county alleging that the defendants violated the Establishment and Free Exercise Clauses of the Constitution. The plaintiffs were seeking an injunction barring the defendants from permitting any further presentations given by a religious group. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that inviting the religious organization to speak within the sheriff's department was an unconstitutional endorsement of religion. The court found that an organization of law enforcement officers, which assisted officers in dealing with stress through Bible study, encouragement and support, was a religious organization for the purposes of the sheriff's deputies' Establishment Clause action. The court noted that even though the organization did not bar non-Christians from joining, members of an evangelical church created the organization at meetings held at a church. The organization's literature contained numerous references to Christ and the name of the organization was "Fellowship of Christian Centurions." Speakers had instructed deputies that civil government was "God's idea" and that they were "ministers of God". A presenter had quoted books of the Bible and the organization made available copies of a book about Christian faith. The sheriff had invited the organization to make a presentation at a department leadership conference which previously had included only secular speakers. The department subsequently asked the organization to make similar presentations at department roll calls. The department required attendance of deputies and did not advise them that they could skip the organization's presentations. Before the leadership conference the sheriff had spoken of promotion criteria and distributed written material recommending that deputies surround themselves with people of faith. The court found that a sheriff's captain could be held liable under § 1983 for the department's Establishment Clause violation in endorsing the message of a religious organization composed of law enforcement officers because the captain took an affirmative role in setting up the organization's presentations and failed to take any action to alleviate the appearance of government endorsement of religion. However, the court held that evidence was insufficient to establish that the county sheriff had made Christianity a prerequisite for promotion in violation of Free Exercise Clause. The sheriff had distributed religious material prior to the leadership conference when he was speaking about promotion criteria. (Milwaukee County Sheriff's Department, Wisconsin)

U.S. District Court
FLSA- Fair Labor Standards Act
OVERTIME
SUPERVISION

Mullins v. City of New York, 523 F.Supp.2d 339 (S.D.N.Y. 2007). Police sergeants brought an action against a city and its police department to recover overtime compensation to which they were allegedly entitled under the Fair Labor Standards Act (FLSA), but for which they had not been paid. The sergeants moved for partial summary judgment on the issue of the defendants' liability. The district court granted summary judgment for the defendants in part and denied in part. The court held that the sergeants were exempt from FLSA as executives for the period governed by the "short test." According to the court, the primary duty of the police sergeants was management and therefore they were exempt from FLSA overtime pay requirements as executives for the period governed by the "short test." The court noted that although the sergeants spent most of their shifts working alongside their subordinates and performing many of the same law enforcement tasks, they were responsible for ensuring that their subordinates performed their assignments, and they were personally subject to discipline for failure to do so. The court denied summary judgment in part because of genuine issues of material fact as to whether the police sergeants had the authority to hire or fire other employees, or whether their suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees were given particular weight. (New York City Police Department)

U.S. District Court
FLSA- Fair Labor
Standards Act
OVERTIME

Murphy v. Town of Natick, 516 F.Supp.2d 153 (D.Mass. 2007). Police officers filed a complaint against a Massachusetts town, its police department, and the chief of police, on behalf of themselves and 54 other current and former patrol and superior officers employed by the town. The officers alleged willful violations of the Fair Labor Standards Act (FLSA), specifically, that the town failed to pay all the overtime they were due for hours worked in excess of 40 per week. The district court held that the town was required to include all wage augmentments in the calculation of the regular rate with the exception of an in-service training differential, and that the officers were to be paid FLSA overtime for performing town details. The court found that sergeants and lieutenants fell within the executive exemption to the FLSA overtime requirement, but that detectives did not. (Natick Police Department, Massachusetts)

U.S. Appeals Court
TITLE VII
PROMOTION
TERMINATION

Perez v. Illinois, 488 F.3d 773 (7th Cir. 2007). A Hispanic corrections employee sued a state under Title VII, alleging that he was terminated and, after reinstatement, denied promotion because of his national origin. The district court entered summary judgment in favor of the state. The employee appealed. The appeals court affirmed, finding that the employee was not similarly situated to a suspended co-worker, and the state's proffered reason for not promoting the employee was not pretextual. The court held that the employee, who was terminated for violating rules prohibiting conduct unbecoming an employee and unprofessional conduct, was not similarly situated, for purposes of a prima facie Title VII case, to a co-worker who was suspended for five days for violating the same rules, where the employee was a captain but the co-worker was lieutenant, and the employee was punished for sexual harassment over a two-year period, while the co-worker was punished for a single incident of consensual kissing and embracing a subordinate employee while on duty. According to the court, the state's proffered reason for not promoting the employee to shift commander-- that he scored the lowest on an examination given to 12 applicants for the job-- was not a pretext for a national origin discrimination, inasmuch as the test scores had a factual basis, and, even if the correctional captain lied about his knowledge of an unrelated investigational interview and a test administrator was unfamiliar with the test scoring method, such facts did not alter the quality of the answers that the employee gave. (Illinois Department of Corrections)

U.S. Appeals Court
BFOQ- Bona Fide
Occupational
Qualifications
SEX DISCRIMINATION
RETALIATION

Piercy v. Maketa, 480 F.3d 1192 (10th Cir. 2007). A female former employee with a county sheriff's office brought suit against the sheriff's office, sheriff, and board of county commissioners alleging sex discrimination and retaliation in violation of Title VII. The employee alleged that her supervisors began an investigation of her violation of personnel policies after she notified her superiors at the county sheriff's office that she planned to pursue formal discrimination charges. She was fired after the investigation was completed. The court found that her allegations were sufficient to establish the causation element of a prima facie claim of retaliation for filing a complaint with the Equal Employment Opportunity Commission (EEOC) under Title VII. Civil Rights Act of 1964. The district court granted the defendants' motions for summary judgment, and the former employee appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the employee's failure to obey orders, departure from the truth, and violation of uniform requirements by wearing a tongue ring constituted a legitimate, nondiscriminatory reason for her discharge. According to the court, the reason offered by the sheriff was not a pretext for retaliation in violation of Title VII. The court noted that the decision to recommend dismissal of the employee was made only after completion of the internal affairs investigation and nothing suggested the under-sheriff acted in bad faith in ordering the termination of employee or that the sheriff acted in bad faith in sustaining the dismissal. The appeals court held that the sheriff's office policy of not allowing female deputies to take jobs at a maximum-security facility housing only male inmates was facially discriminatory under Title VII. According to the court, differences in duties between a mixed gender jail and a maximum security facility which housed only male inmates were sufficiently substantial that any transfer of the employee from the former to the latter would not have been purely lateral, so that denying a transfer to the female employee would be an adverse employment action supportive of a sex discrimination claim under Title VII. The court held that the sheriff's office shift-bidding policies, that required certain numbers of female and male officers to be available at jail, were a mere inconvenience and did not constitute an adverse employment action, as required for former employee's sex discrimination claim under Title VII. In her motion for summary judgment, the employee asserted that the policy preventing women from taking jobs at the Metro facility discriminated on its face and thus only a "bona fide occupational qualification" [BFOQ] under 42 U.S.C. § 2000e-2(e) could justify such facial discrimination. Officials suggested two reasons for the policy that restricted the employee from bidding for a shift at Metro: (1) at the time, there were not enough female officers available to staff the female ward at CJC; and (2) privacy and safety considerations required sufficient female staff at CJC. The appeals court found that while these reasons *may* be adequate to support EPSO's policy as a bona fide occupational qualification that permits discrimination under 42 U.S.C. § 2000e-2(e), the district court did not address this question. The appeals court remanded the case to the district court with instructions to make a decision on this question. (El Paso County Sheriff's Office, Colorado)

U.S. District Court
DUE PROCESS
SEX DISCRIMINATION
CONTRACT
UNION

Pina v. Lantz, 495 F.Supp.2d 290 (D.Conn. 2007). Ten current and former correctional employees brought suit against a Commissioner of Correction and other administrators for alleged violations of their due process rights and Title VII when they were terminated from their temporary positions and not hired for newly created positions. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The employees formerly held temporary positions as Correctional Officer First Class or Correctional Sergeant and were denied appointment to the newly created position of Parole Officer I, on the basis that they either did not have sufficient experience for the position or they did not score sufficiently high on interviews. They were returned to their former jobs when their temporary positions were abolished. The court held that this did not violate substantive due process, as the executive action did not shock the conscience. The court found that the employees did not have a property interest protected by due process in positions at a higher class that were classified by the Department of Correction (DOC) as temporary or durational, rather than permanent. The court noted that job postings advertised positions as temporary, and state law and DOC policies provided that temporary assignments to a higher class were not permanent. The court held that the employees did not have a protected

property interest in those positions pursuant to a collective bargaining agreement that recognized that durational employees were not guaranteed continued employment.

The court held that the DOC was not required to give the employees a pre-deprivation hearing to protect any property interest in their temporary positions at a higher rank, where the employees did not make any request for a hearing despite being notified of the pending abolition of their temporary positions. The court noted that providing correctional employees with advance notification of the termination of their temporary positions at higher rank and an opportunity for a pre-termination hearing, in conjunction with a process by which employees could file post-deprivation grievances, satisfied the procedural due process requirements attaching to any property interest they had in their positions.

The court found that summary judgment on a gender-based disparate treatment equal protection claim and Title VII claim was precluded by a genuine issue of material fact as to whether a correctional employee's gender and a member of the interview committee's alleged track record of discrimination against female employees played a role in denying her a position as a parole officer. (Connecticut Department of Correction)

U.S. Appeals Court
ASSOCIATION
DISCIPLINE
FREE SPEECH
RETALIATION

Piscottano v. Murphy, 511 F.3d 247 (2nd Cir. 2007). Correctional employees brought a § 1983 action against state officials alleging that discipline imposed on them for associating with a motorcycle club violated their First Amendment and due process rights to freedom of expressive association and freedom of intimate association. The employees asserted a “void-for-vagueness” challenge to the regulation under which they were disciplined. The district court entered summary judgment for the state officials and the employees appealed. The appeals court affirmed. The court held that the conduct of three employees constituted expressive activity on a matter of public concern but the discipline of the three employees did not violate their freedom of expressive association. The court found that the regulation prohibiting correctional officers from engaging in behavior that could reflect negatively on the corrections department was not void for vagueness as applied to the three employees. The court noted that the motorcycle club was not an organization that spoke out on matters of public concern. According to the court, the state correctional employees' approval or endorsement of the club necessarily would constitute expressive conduct on a matter of public concern where the employee testified that what the club was “all about” riding motorcycles, having parties and having fun. According to the court, in a public employee's action alleging retaliation for exercising speech rights, evidence that harms or disruptions have in fact occurred are not necessary for the employer to justify an adverse employment action. The court found that the employer need only make a reasonable determination that the employee's speech creates the potential for such harms. (Connecticut Department of Correction)

U.S. Appeals Court
MILITARY SERVICE
TERMINATION

Pittman v. Department of Justice, 486 F.3d 1276 (Fed Cir. 2007). An employee sought review of a decision of the Merit Systems Protection Board (MSPB) denying his request for relief under the Uniformed Services Employment and Reemployment Rights Act (USERRA), alleging that the Federal Bureau of Prisons failed to reemploy him following his military service and improperly removed him from his position. The court affirmed in part, vacated in part, and remanded. The court found that the statute prohibiting discrimination on the basis of military service requires an employee making a claim under the statute to bear the initial burden of showing by a preponderance of evidence that the employee's military service was a substantial or motivating factor in the adverse employment action. If this requirement is met, the employer then has the opportunity to come forward with evidence to show, by a preponderance of evidence, that the employer would have taken the adverse action anyway, for a valid reason. Prior to his military activation, the employee's performance at the agency was more than satisfactory and had warranted a number of performance-based awards. While serving in Iraq he was stationed at the Whitehorse detention facility, and he was found guilty at a court-martial proceeding of one count of dereliction of duty under the Uniform Code of Military Justice and one count of assault. A two-page summary of these convictions identified the underlying conduct as the failure to safeguard the physical health, welfare, and treatment of Iraqi prisoners and the unlawful striking of unknown Iraqi prisoners. He was reduced in rank from sergeant to private and sentenced to sixty days of hard labor without confinement. He nevertheless continued to remain a member of the Marine Corps Reserve and was released from active duty status under honorable circumstances. After his return from Iraq, he returned to active duty at the agency and worked one shift. After that shift, he was confronted about the conduct underlying the court-martial convictions. At the agency's request, he signed an affidavit acknowledging the convictions but declaring them to be unsupported by evidence. He was issued a notice of proposed removal and he responded to the charges orally and in writing and alleged that the agency's proposed action violated USERRA. He also submitted a supporting affidavit from his commanding officer that described the mitigating circumstances surrounding his conduct in Iraq and a letter of recommendation from the sheriff of Rockland County, New York. (Metropolitan Detention Center in Brooklyn, New York)

U.S. District Court
SEX DISCRIMINATION
SEXUAL HARASSMENT
TITLE VII

Reed v. Cedar County, 474 F.Supp.2d 1045 (N.D.Iowa 2007). A female county employee, the jail administrator, filed a complaint against a county and its sheriff, in his individual and official capacities, alleging she was subjected to sex discrimination and sexual harassment in violation of Title VII and the Iowa Civil Rights Act (ICRA), and battery in violation of Iowa common law. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that the jail administrator's placement on paid administrative leave was not a “tangible employment action” where the jail administrator had continued to receive her full salary, raises and benefits. The court found that the county's anti-sexual harassment policies, along with its reporting procedure and county-wide employee mandatory training program, were sufficient to show that the county exercised reasonable care to prevent sexual harassment. The jail administrator received a copy of county's sexual harassment policy when she commenced employment and a copy of an updated policy, she understood each policy and knew she could complain about harassment by bypassing the sheriff and reporting directly to either the Board of Supervisors or County Attorney, and was not only trained to use the policy but was herself the trainer at times for other employees. But the court found that summary judgment was precluded by genuine issues of material fact, as to whether the county took prompt, corrective action once they learned about the sheriff's sexually harassing behavior. The court noted that, in accordance with the county's revised policy, the

jail administrator brought the problem to the attention of her department head, the chief deputy, who failed to take action on at least five occasions over a two-year period. (Cedar County Sheriff, Iowa)

U.S. Appeals Court
FREE SPEECH
EQUAL PROTECTION
DISCRIMINATION
DUE PROCESS
TITLE VII

Salas v. Wisconsin Dept. of Corrections, 493 F.3d 913 (7th Cir. 2007). A Hispanic former employee sued a state corrections department, alleging that he was terminated for discriminatory and retaliatory motives in violation of Title VII and § 1983, and asserting due process, equal protection, and First Amendment claims. The district court granted the summary judgment in favor of the department and the employee appealed. The appeals court affirmed. The court held that the employee's termination was not caused by his protected speech of testifying at a co-worker's Title VII investigation. According to the court, the employee failed to identify similarly situated non-Hispanic employees that were treated more favorably for his § 1983 equal protection claim. The court found that the employee was not deprived of procedural due process. The court noted that although the employee did not identify the Hispanic nation from which he originated, his allegation that he was Hispanic sufficiently identified his national origin to demonstrate that he was member of protected class, in his suit alleging national origin discrimination in violation of Title VII of the Civil Rights Act of 1964. (Wisconsin Department of Corrections)

U.S. District Court
RACIAL
DISCRIMINATION
RETALIATION
TITLE VII
WORK RULES

Simmons v. The G.E.O. Group, Inc., 528 F.Supp.2d 583 (E.D.N.C. 2007). An African-American employee at a private correctional detention facility sued his employer, claiming race discrimination under Title VII. The employer moved for summary judgment. The district court granted the motion. The court held that the employee, who was disciplined in connection with his guilty plea to driving while intoxicated (DWI) and failure to inform the facility of the charges until later confronted, was not similarly situated to a Caucasian coworker who had been charged with a misdemeanor offense of failing to obey a traffic officer. According to the court, the employee's complaint concerning the employer's smoking policy was not a protected activity under Title VII and could not form the basis for a retaliation claim. (G.E.O. Group, Inc., Rivers Correctional Institution, North Carolina)

U.S. District Court
HOSTILE WORK
ENVIRONMENT
SEX DISCRIMINATION

Singleton v. City of New York, 496 F.Supp.2d 390 (S.D.N.Y. 2007). A male employee brought an action against a city under Title VII and state law, alleging that the city subjected him to a hostile work environment because of his gender. After a jury returned a verdict awarding the employee \$1,000,000 in damages, the city moved for judgment as a matter of law or, in the alternative, for a new trial or remittitur. The court reduced the jury award to \$300,000, finding that the jury award was unreasonable, given that harassment by the employee's female supervisor, both on and off the job, created a workplace atmosphere in which the employee felt pervasive fear and led to the dissolution of his relationship with the mother of his child, and his consequent separation from both. (New York City Department of Corrections, Rikers Island)

U.S. Appeals Court
RETALIATION
FREE SPEECH

Spiegla v. Hull, 481 F.3d 961 (7th Cir. 2007). A state prison employee sued prison officials under § 1983, alleging that they changed her shift schedule and assignment in retaliation for exercise of her free speech rights. The initial grant of summary judgment in favor of the officials was reversed by the court of appeals. On remand, the district court entered judgment on a jury verdict award of \$210,000 for the employee. The defendants appealed. The appeals court vacated and remanded, finding that the officer who reported a possible breach of prison security, did so as part of her official responsibilities to keep the prison secure, and thus did not engage in "citizen" speech that was protected from First Amendment retaliation. The court noted that public employees who are speaking pursuant to their official duties are speaking as employees, not citizens, and thus are not protected by the First Amendment from retaliation, regardless of the content of their speech. According to the court, the fact that the officer's statements highlighted potential misconduct by prison officers did not change the fact that she was speaking pursuant to her official responsibilities, not as citizen. (Westville Correctional Facility, Indiana)

U.S. Appeals Court
PROMOTION
PROPERTY INTEREST
DUE PROCESS
EQUAL PROTECTION

Teigen v. Renfrow, 511 F.3d 1072 (10th Cir. 2007). Employees of the Colorado Department of Corrections (DOC) brought a § 1983 action against DOC officials alleging that the officials engaged in a policy of blacklisting employees who maintained administrative appeals of state personnel actions, in violation of the Due Process and Equal Protection Clauses. The district court dismissed the action and the employees appealed. The appeals court affirmed. The court held that although the employees had a protected property interest under Colorado law in their continued employment, they were not deprived of a protected property interest by the DOC officials' alleged policy of blacklisting. The court found that the right to be fairly considered for promotions was not a due process property right and that the policy of denying promotions to employees because they maintained administrative appeals did not violate the Equal Protection Clause. (Territorial Correctional Facility, Colorado Department of Corrections)

U.S. Appeals Court
BFOQ- Bona Fide
Occupational
Qualifications
SEX DISCRIMINATION

Tipler v. Douglas County, Neb., 482 F.3d 1023 (8th Cir. 2007). A female correctional officer brought a gender discrimination action against a county jail employer, alleging violation of § 1983 and Title VII. The district court granted summary judgment in favor of the employer and the correctional officer appealed. The appeals court affirmed, finding that reassignment of female officer to a different shift, pursuant to county jail's gender-based staffing policy, did not violate Title VII. The court also held that the reassignment did not violate the equal protection clause. The appeals court noted that where the employer is a prison [jail], a bona fide occupational qualification analysis (BFOQ) under Title VII is unnecessary if the policy requiring female-only supervision of female inmates is reasonable, and if such a policy imposes only a minimal restriction on the employee. According to the court, when the state [county] makes a classification based on gender, under the equal protection clause the state must show at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives. The court held that the jail's reassignment of the female correctional officer to a different shift did not violate the equal protection clause because the reassignment was substantially related to important governmental objectives, including compliance with state law, and proper jail administration. (Douglas County Correctional Center, Nebraska)

U.S. Appeals Court
HOLIDAYS
MILITARY SERVICE

Tully v. Department of Justice, 481 F.3d 1367 (Fed.Cir. 2007). A federal Bureau of Prisons (BOP) employee sought review of a decision of the Merit Systems Protection Board, which held that the BOP did not owe him payment for 27 holidays which occurred while he was on leave without pay to serve on active duty in the U.S. Army. The court of appeals held that the BOP was not required, under the Uniformed Services Employment and Reemployment Rights Act (USERRA) to pay the employee for the 27 holidays which occurred while he was on a two-and-one-half year leave of absence without pay to serve on active duty in the U.S. Army, even though during employee's leave the BOP provided holiday pay to employees who took paid leaves of absence to attend judicial proceedings as jurors or witnesses. According to the court, the typically brief duration of an absence for court duty and the employee's two-and-one-half year absence for active service were not comparable leaves of absence. (Federal Bureau of Prisons, D.C.)

U.S. District Court
PHYSICAL REQUIRE-
MENTS
DISABILITY
ADA- Americans With
Disabilities Act

Van v. Miami-Dade County, 509 F.Supp.2d 1295 (S.D.Fla. 2007). A county correctional officer suffering from diabetes sued a county, seeking damages for discrimination pursuant to the Americans with Disabilities Act (ADA) and the Florida Civil Rights Act (FCRA). The county moved for summary judgment, and the employee moved for partial summary judgment. The district court granted summary judgment in favor of the defendant. The court held that the officer who was suffering from diabetes was neither disabled nor regarded as disabled, thus defeating his discrimination claims under the Americans with Disabilities Act (ADA) and the Florida Civil Rights Act (FCRA), even though he was regarded as unable to fill the position of correctional officer while he had a glucose level of 8.0% or higher. At a required physical examination, the examining physician concluded that the officer's diabetes was not under control and that he would not be allowed to perform the safety-sensitive duties of a correctional officer and would be placed on restricted duty. The physician told the officer that he would be released to full duty as soon as he was able to provide a He-Alc test result showing that his sugar level was 8.0% or less. According to the court, the position of "correctional officer" was a single, particular job, which could not constitute a substantial limitation of the major life activity of working, and the county did not view the employee's impairment of uncontrolled diabetes as a substantial limitation on his ability to work in a broad class of positions. According to the court, the Americans with Disabilities Act (ADA) did not require a county to create a long-term or permanent restricted duty position for an allegedly disabled corrections officer suffering from diabetes, and thus, the county was not required to alter its policy of six months' restricted duty followed by compulsory leave in order to reasonably accommodate the employee. (Miami-Dade County Dept. of Correction and Rehabilitation)

U.S. District Court
RETALIATION
FREE SPEECH

Wesolowski v. Bockelman, 506 F.Supp.2d 118 (N.D.N.Y. 2007). A sheriff's department employee and his wife sued a sheriff, county, and jail officials, claiming that he was retaliated against, in violation of the First Amendment, for filing a report describing an inmate's alleged beating by a corrections officer, and that his wife was not hired by the department as retaliation for the report. The defendants moved for summary judgment and the district court granted the motion. The court held that the filing of the report was within the employee's job responsibilities, and thus, the First Amendment did not protect him from discipline for such conduct. (Ulster County Jail, New York)

2008

U.S. District Court
SUPERVISION

Adams v. Bouchard, 591 F.Supp.2d 1191 (W.D.Okla. 2008). A jail inmate brought a § 1983 action against sheriff's deputies and a sheriff, alleging the deputies assaulted him, used excessive force, and that the sheriff failed to properly supervise the deputies. The defendants moved for summary judgment and qualified immunity. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the inmate properly exhausted administrative remedies prior to bringing the federal action. The court found that the inmate's efforts towards exhausting his § 1983 excessive force claim against sheriff's deputies were insufficient to satisfy the exhaustion requirement under the Prison Litigation Reform Act (PLRA) as to his claim that the sheriff failed to supervise the deputies. The court held that summary judgment was precluded by genuine issues of material fact as to whether the force used by the sheriff's deputies against the inmate was necessary. According to the court, the sheriff's deputies were not entitled to qualified immunity from the inmate's Eighth Amendment excessive force claim because it was clearly established at the time of the alleged excessive force that prison officials could not maliciously and sadistically inflict injury for the very purpose of causing harm. (Oklahoma County Detention Center, Oklahoma)

U.S. District Court
DISCIPLINE
DISCRIMINATION
HOSTILE WORK
ENVIRONMENT
PROMOTION
RETALIATION
TERMINATION
TITLE VII

Admire v. Strain, 566 F.Supp.2d 492 (E.D.La. 2008). A former deputy sheriff brought an action against county officials under Title VII and § 1983, alleging discriminatory failure to promote, disparate treatment with respect to promotion, disparate treatment with respect to disciplinary action, discriminatory termination, retaliation for engaging in protected activities, and a discriminatory hostile work environment. The district court granted the officials' motion for summary judgment in part and denied in part. The court held that a county jail warden's alleged statement that "women don't belong in law enforcement" did not constitute direct evidence of gender discrimination sufficient to establish the female deputy sheriff's claims under Title VII for discriminatory failure to promote, even if the statement was proximate in time to the denial of a promotion, where the deputy was already in law enforcement when the warden made the statement. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the county jail warden's failure to promote the female deputy sheriff was motivated by gender discrimination. According to the court, the county's failure to promote the female deputy sheriff to corporal on the ground that candidates selected for promotion received higher scores on a test, or to promote her to sergeant on the ground that the successful candidate had more experience, was already a corporal, and had no disciplinary marks on his record were not a pretext for gender discrimination, in violation of Title VII, where there was no direct evidence of discrimination, and six of ten employees promoted to corporal were female, and two of four employees promoted to sergeant were female. The court found that the female deputy sheriff who was denied promotion to corporal on the ground that she had an adverse disciplinary action within six months of seeking promotion, was not similarly situated to a male sergeant who was appointed

lieutenant within six months of an adverse disciplinary action, and thus the deputy failed to establish disparate treatment claim under Title VII, even though the county had no written policy against promoting deputies within six months of disciplinary actions, where the county applied different standards to promotions up to the rank of sergeant and appointments to lieutenant and above. (St. Tammany Parish Sheriff Office, Louisiana)

U.S. District Court
HOSTILE WORK
ENVIRONMENT
PROMOTION
TITLE VII

Anderson v. Nassau County Dept. of Corrections, 558 F.Supp.2d 283 (E.D.N.Y. 2008). A female county correctional employee, a sergeant, brought a Title VII action against a county department, lieutenant, undersheriff, and sheriff, alleging she was passed over for promotion to the rank of lieutenant in violation of § 1983, Title VII, and the New York State Human Rights Law (NYSHRL). The district court held that summary judgment for the defendants on the hostile work environment claims was precluded by a triable issue of fact as to whether the employee's treatment was severe and pervasive. The court also found triable issues of fact as to how many promotions were made after the employee became eligible for the rank of lieutenant, the reasons for failure to promote her, and the defendants' intent in selecting the persons who were promoted. (Nassau County Sheriff's Department, New York)

U.S. Appeals Court
DUE PROCESS
RETALIATION
SEXUAL HARASSMENT
TERMINATION

Argyropoulos v. City of Alton, 539 F.3d 724 (7th Cir. 2008). A former city employee who had worked as a jailer brought a Title VII action against the city and former coworkers alleging sexual harassment and retaliation, and brought a § 1983 claim alleging that the city's failure to provide a pre-termination hearing denied her of due process. The district court granted summary judgment for the defendants and the employee appealed. The appeals court affirmed. The court held that the city's admission that the employee's surreptitious recording of a meeting was a significant factor in her dismissal did not amount to direct evidence of retaliation. The court found that a seven week interval between the employee's sexual harassment complaint and her subsequent arrest and termination, without more, did not amount to direct evidence of retaliation. According to the court, the employee did not show that she was performing her duties satisfactorily. The court's opinion began with the assertion that the employee's "turbulent tenure as a jailor...lasted just ten months..." (Alton Police Department, Illinois)

U.S. District Court
FREE SPEECH
OVERTIME
RETALIATION
STAFFING LEVELS
UNION

Balas v. Taylor, 567 F.Supp.2d 654 (D.Del. 2008). The executrix of the estate of a state department of corrections (DOC) employee, who committed suicide, brought a § 1983 action against the DOC and the employee's supervisors, alleging that the employee's suicide was proximately caused by the defendants' retaliation in violation of the First and Fourteenth Amendments. The court held that resignation from a special emergency unit by the employee was "symbolic speech" protected by the First Amendment, supporting the First Amendment retaliation claim brought by the executrix of the employee's estate. The court noted that, at the time of the resignation, the DOC and a labor union were in the middle of contract negotiations, and the extent to which the prisons were understaffed and the imposition of mandatory and voluntary overtime were major issues in the dispute. According to the court, the resignation of the employee along with other members of the emergency unit was meant to communicate their lack of support for overtime to prison management, and the employee's resignation from the unit was not pursuant to his suit and yet elected amounted to a refusal to perform his duties. The court held that summary judgment was precluded by genuine issues of material fact as to whether the employee's resignation was a substantial or motivating factor in the alleged retaliatory actions taken against the employee, which included poor performance reviews, and whether the same alleged adverse actions would have taken place in the absence of the protected conduct. The court found that the employee's supervisor was not entitled to qualified immunity for his alleged conduct of giving the employee a mediocre performance evaluation with falsified criticism and taking other retaliatory action against the employee, because of the employee's protected activities of supporting his labor union, refusing to cross a picket line, and resigning from a special prison emergency unit. According to the court, the alleged conduct was retaliatory, and a reasonable official in the supervisor's position could not have believed that his actions were constitutionally permissible, as clearly established law prohibited retaliation for union membership and activity, and exercise of First Amendment rights. (Correction Emergency Response Team, Sussex Correctional Institute, Delaware)

U.S. Appeals Court
RETALIATION
SEXUAL HARASSMENT
TITLE VII

Barker v. Missouri Dept. of Corrections, 513 F.3d 831 (8th Cir. 2008). An employee sued the Missouri Department of Corrections (MDOC) under Title VII alleging that it retaliated against him for aiding a co-worker to report sexual harassment. The district court entered summary judgment for the MDOC and the employee appealed. The appeals court affirmed. The court held that an alleged remark by the manager of a prison's special needs unit could not support an objectively reasonable belief that the remark constituted sexual harassment, and thus, the employee failed to establish a prima facie case of retaliation. The alleged remark to the male co-worker implied that women were better suited for work in the unit because they were more nurturing. (Potosi Correctional Center, Missouri)

U.S. District Court
DISCRIMINATION
POLITICAL AFFILIATION
UNION

Bergeron v. Cabral, 535 F.Supp.2d 204 (D.Mass. 2008). Corrections officers filed a § 1983 action alleging that a sheriff's revocation of their commissions as deputy sheriffs shortly after her election constituted retaliation and political discrimination in violation of their First Amendment rights. The sheriff moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the revocation was of sufficient consequence to constitute an "adverse employment action." The court held that summary judgment was precluded by fact issues as to whether the sheriff's decision to revoke the officers' commissions as deputy sheriffs was motivated by their dissemination of letters and a press release during a political campaign, which would indicate that the sheriff engaged in political discrimination. The court noted that the commission was discretionary, unremunerated and was not a requirement for service as a corrections officer. The commission had no bearing on the officers' work hours, vacation days, or job assignments, but its revocation resulted in the diminution of the officers' status, and deprived them of the opportunity to supplement their income by working private details. The court found that the sheriff's interest in maintaining order and discipline among her officers outweighed any legitimate interest of the corrections officers in promoting their union's bargaining position by publishing allegations of the sheriff's malfeasance during an election campaign, and therefore the sheriff's alleged retaliation against union officers did not violate the First Amendment. (Suffolk County Sheriff, Massachusetts)

U.S. Appeals Court
RETALIATION
SEXUAL HARASSMENT
TITLE VII

Brannum v. Missouri Dept. of Corrections, 518 F.3d 542 (8th Cir. 2008). A female Missouri Department of Corrections (MDOC) correctional officer filed a Title VII retaliation claim against the MDOC. The district court granted summary judgment for the MDOC and the employee appealed. The appeals court affirmed. The court held that the female officer did not engage in a “protected activity,” as required to establish a prima facie case of retaliation, when she assisted a new male officer in reporting a functional unit manager’s allegedly sexually harassing comment. According to the court, even if the female officer was actually attempting to object to what she perceived as disparate treatment of an officer on account of his gender, she could not have reasonably believed she was opposing the disparate treatment as he was not subject to any “adverse employment action.” The female employee alleged that the manager commented that “women are better by and large as they do a better job than men anyway and are more patient and nurturing.” (Potosi Correctional Center, Missouri)

U.S. District Court
FREE SPEECH
HARASSMENT
HOSTILE WORK
ENVIRONMENT
RACIAL
DISCRIMINATION

Brown v. New York State Dept. of Correctional Services, 583 F.Supp.2d 404 (W.D.N.Y. 2008). A correctional officer brought an action against the New York State Department of Correctional Services (DOCS) and several other institutional and individual defendants, alleging race discrimination and harassment in violation of Title VII, § 1981, § 1983, and the New York State Human Rights Law (NYSHRL). The district court granted summary judgment for the defendants in part and denied in part. The court held that: (1) the officer satisfied the personal involvement requirement for stating a § 1981 hostile work environment claim against his co-workers; (2) the alleged harassment by his co-workers was not done under color of law for the purposes of a § 1983 claim; (3) the officer’s complaints to supervisors about alleged discrimination and harassment based on his race did not constitute speech protected under § 1983 and did not relate to matters of public concern; (4) the officer’s state law claims against individual state officials and employees were barred by the election-of-remedies provision in NYSHRL; (5) genuine issues of material fact existed as to whether the actions and statements of his co-workers created a hostile work environment under Title VII; (6) genuine issues of material fact existed as to whether the DOCS took appropriate steps to put an end to the alleged harassment; and (7) genuine issues of material fact existed as to whether his co-workers and supervisors acted with retaliatory animus. (Elmira Corr’l. Facility, N.Y.)

U.S. Appeals Court
OVERTIME
WORK RULES

Carlsen v. U.S., 521 F.3d 1371 (Fed Cir. 2008). Federal employees of the Bureau of Prisons brought an action against United States under the Federal Employees Pay Act (FEPA) alleging that they were entitled to be paid for overtime that they had worked. The United States Court of Federal Claims granted judgment for the United States and the employees appealed. The appeals court affirmed. The court held that the occasional or irregular overtime work allegedly performed by the Bureau of Prisons employees who worked in a secure environment was not subject to compensation under FEPA unless the overtime was directed or approved in writing by a person authorized to approve such overtime. The court noted that the employees worked in a setting in which they were required to follow all orders, written or oral. The court found that documents such as agency manuals, standards of conduct and training documents which emphasized that employees were required to follow orders of their superiors, when considered together with verbal directives that had the effect of requiring employees to work outside their scheduled shifts, did not constitute express written directives or orders to the employees to work overtime. According to the court, documents such as emails of employees’ performance standards and emails from a warden’s secretary and announcements of times and places of meetings that the employees were expected to attend did not constitute sufficient written orders to the employees to work overtime. The court ruled that the time that employees spent waiting in a key line did not constitute overtime work. However, the court found that “post orders” that defined employees’ duties for each shift by inherently requiring the presence of two employees, one of whom was off-duty, in order to exchange information and equipment at change of shifts, did constitute written orders to work overtime, but the tasks for which an employee was entitled to overtime credit, which amounted to less than ten minutes per day, were de minimis. (Federal Bureau of Prisons)

U.S. District Court
ADA- Americans with
Disabilities Act
EQUAL PROTECTION
SEX DISCRIMINATION

Cole v. Taber, 587 F.Supp.2d 856 (W.D.Tenn. 2008). A female correctional officer brought a suit against a county and county officials and supervisors, alleging violations of the Americans with Disabilities Act (ADA), Title VII, equal protection, and the First Amendment. The county moved for summary judgment and the district court granted the motion. The court held that the officer, who could not perform 90% of the essential functions of her job was not otherwise a qualified individual under ADA. The court held that the officer’s equal protection rights were not violated and that her speech did not concern matters of public concern for the purpose of her First Amendment retaliation claim. The officer admitted that she could not perform 90% of the essential functions of her job due to ruptured tendons and a degenerative joint disease that made it difficult for her to walk. According to the court, male county correctional officers who received temporary assignments to light duty work to accommodate illnesses that were not job-related were not similarly situated to the female correctional officer who was denied permanent assignment to light-duty jobs to accommodate her foot injuries, as required to establish a prima facie case of sex discrimination based on alleged differing treatment afforded to female and male officers regarding permanent accommodations. (Shelby County Div. of Corr., Tennessee)

U.S. Appeals Court
DISCIPLINE
RETALIATION
SEXUAL HARASSMENT
TITLE VII

Culton v. Missouri Dept. of Corrections, 515 F.3d 828 (8th Cir. 2008). A state employee filed a Title VII action alleging that an agency retaliated against him for confronting a supervisor about the supervisor’s unwanted sexual advances toward a subordinate employee. The district court entered summary judgment in the agency’s favor and employee appealed. The appeals court affirmed. The court held that the employee failed to establish the causation branch of his claim that his transfer to a lower status position was in retaliation for his confrontation with the supervisor. According to the court, the decision maker decided on the transfer before learning of the employee’s sexual harassment allegation, and the employee did not dispute the factual accuracy of anything reported by the supervisor. The court held that the agency’s decision to dock the employee’s pay for taking unauthorized sick leave was not a pretext for retaliation against the employee, despite the employee’s contention that the agency failed to follow its policy when docking his pay. The court noted that the employee did not offer any evidence showing that the agency treated him differently than similarly situated employees. (Missouri Department of Corrections)

U.S. Appeals Court
ADA- Americans with
Disabilities Act
BFOQ-Bona Fide Occupa-
tional Qualifications
DUE PROCESS
QUALIFICATIONS

Dargis v. Sheahan, 526 F.3d 981 (7th Cir. 2008). A county corrections officer, who was placed on leave without pay after he returned to work following a stroke, brought an action against the county sheriff's department, county sheriff, and others, alleging violation of his due process rights, and violation of the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the officer on the due process claims, granted summary judgment in favor of defendants on the ADA claims, and dismissed the state law claims. The officer appealed. The appeals court affirmed. The court held that the officer, who had suffered a stroke, failed to establish an ADA discrimination claim because he could no longer perform the essential functions of the position of corrections officer. The court noted that the officer's physician advised that he could no longer have contact with inmates, could have no physical contact, no physical activity other than sitting in a chair with brief episodes of standing and walking, no lifting, kneeling, stooping, or running, and must have a work environment with adequate heat and air conditioning. The sheriff's office had stated that correctional officers are primarily responsible for maintaining vigil, standing watch over inmates, counting inmates, breaking up fights among inmates, inspecting for contraband, escorting inmates outside their cells, searching inmates and visitors, and searching for escaped inmates. Although there are some positions requiring less inmate contact than others, the sheriff's office asserted that all officers, regardless of the position to which they were assigned, must be able to respond to emergencies such as riots or escapes, and must be able to rotate through various positions as needed. This requirement, often occurring due to unforeseeable events, meant that the Sheriff's Office was unable to guarantee that any assignment would shield an officer from all inmate contact. (Cook County Sheriff's Office of Corrections, Illinois)

U.S. Appeals Court
FREE SPEECH
RETALIATION
UNION

Davignon v. Hodgson, 524 F.3d 91 (1st Cir. 2008). County corrections officers brought a § 1983 First Amendment retaliation action against a sheriff in his individual and official capacities, alleging that disciplinary actions taken by the sheriff had been motivated by the officers' union activities. The officers also asserted state-law civil rights and tort claims. The district court entered judgment on a jury verdict against the sheriff on the § 1983 claims against him in his official capacity, and against the sheriff on some state-law claims. The sheriff appealed. The appeals court affirmed. The court held that the officers' private speech to coworkers concerning a planned picket, whose stated purpose was to allow union members to publicly express criticism of management and to alert the public to the behavior of the sheriff was on a matter of public concern. According to the court, there was no evidence of actual or potential disruption from the officers' brief statements to coworkers concerning a planned picket by the union, and conversely there was ample evidence that the officers had been suspended because of their pro-union activity rather than for reasons of disruption of public safety. The court held that the attorney fee award to the officers' attorneys of approximately \$172,000 was not excessive, even though the back-wages damages award was only approximately \$18,000. According to the court, the award under a civil rights attorney fee statute did not necessarily have to be proportionate to the amount of damages. The court also held that the officers' lack of success on one of their claims did not preclude the fee award because the officers were successful on the claim that had propelled the litigation. (Bristol County Sheriff's Office, Massachusetts)

U.S. Appeals Court
DISCRIMINATION
TITLE VII
WORKING CONDITIONS
WORK RULES

Diaz-Romero v. Mukasey, 514 F.3d 115 (1st Cir. 2008). A former Public Health Service (PHS) officer brought an action against various government defendants claiming damages arising from alleged employment discrimination while working for the federal Bureau of Prisons (BOP). The officer sought both compensatory and punitive damages for the alleged Title VII, constitutional, and tort violations. The government moved to dismiss and the district court granted the motion. The officer appealed. The appeals court affirmed. The court held that the officer's injuries arising from alleged employment discrimination were incident to his service and thus his claims under the Federal Tort Claims Act (FTCA) were barred by the Feres doctrine. The court noted that the incidents that allegedly caused the officer's injuries, i.e., his supervisors' application of BOP regulations to him, occurred while he was actively serving in his PHS assigned post with the BOP, and his supervisors were acting in cooperation with the PHS in that the PHS placed the officer with the BOP. (Metropolitan Det. Center, Guaynabo, Puerto Rico)

U.S. District Court
ADA- Americans with
Disabilities Act
DISCRIMINATION
RETALIATION
WORKING CONDITIONS

DuBerry v. District of Columbia, 582 F.Supp.2d 27 (D.D.C. 2008). A former employee brought an action against the D.C. Department of Corrections, alleging that the department discriminated against him on the basis of his disability in violation of the Americans with Disabilities Act (ADA), Title VII, § 1983, § 1981, and the D.C. Human Rights Act. The district court granted summary judgment to the parties in part and denied in part. The court held that the employee sufficiently exhausted his ADA claims and that there was sufficient evidence to allow a reasonable jury to conclude that the department discriminated and retaliated against the employee. The court also found that evidence was sufficient to allow a reasonable jury to conclude that the department's proffered reasons for termination and refusal to rehire were pretextual. The court held that the department did not violate Title VII, § 1983 or § 1981. The former employee had been diagnosed with diabetes and his condition required him to eat meals at designated times and prevented him from skipping meals. He was transferred to the third shift and he requested an accommodation because he believed working that shift would be incompatible with the diabetes treatment regimen prescribed by his physician. The Department denied his accommodation request and transferred him to the third shift. He was eventually transferred to the first shift after using 208 hours of sick leave during his first three months on the third shift. When he was later denied a promotion, he filed an EEOC complaint. (District of Columbia Department of Corrections)

U.S. Appeals Court
ASSIGNMENT
SEX DISCRIMINATION
SCHEDULE

Duckworth v. St. Louis Metropolitan Police Dept., 491 F.3d 401 (8th Cir. 2008). Female police officers who filed a grievance over their assignment on a rotating basis to night watch, then were permanently placed on night watch, allegedly in retaliation for the grievance, alleged gender discrimination under § 1983, Title VII, and the Missouri Human Rights Act (MHRA). The district court denied qualified immunity to the officers' police superiors, and they appealed. The appeals court reversed and remanded. The court stated that although there was direct evidence of gender discrimination in the officers' reassignments, and the proffered justifications for the reassignment were not exceedingly persuasive, reasonable police administrators could believe that assigning the female officers to night watch was lawful, and qualified immunity should have been granted by the district court. (St. Louis Metropolitan Police Department, Missouri)

<p>U.S. District Court FLSA-Fair Labor Standards Act OVERTIME</p>	<p><i>Fraternal Order of Police Barkley Lod. v. Fletcher</i>, 618 F.Supp.2d 712, (W.D.Ky. 2008). A police union, union local, and current and past corrections officers at the Kentucky State Penitentiary filed a complaint alleging violations of the Fair Labor Standards Act (FLSA), the Portal to Portal Act (PPA) and mandatory career retention programs provisions under state statutes. The action was brought against a former Kentucky Governor, the Department of Corrections Commissioner, and three wardens, all in their individual and official capacities. The district court granted the defendants' motion to dismiss in part and denied in part. The court held that state officials and public employees can be liable as "employers" under FLSA. The plaintiffs alleged that the defendants exempted and continued to deny overtime compensation to them in violation of FLSA. (Kentucky State Penitentiary)</p>
<p>U.S. District Court PRIVACY SEARCHES TERMINATION</p>	<p><i>Garcia Rodriguez v. Laboy</i>, 598 F.Supp.2d 186 (D.Puerto Rico 2008). Employees of a correctional facility brought a § 1983 action alleging Fourth and Fourteenth Amendment violations against canine unit officers of the Puerto Rico Correction Department, individually and in their official capacities. The employees challenged the officers' alleged public strip searches involving narcotics dogs and body cavity searches. The court granted two officers' motion to dismiss. The employees challenged searches that required them to make a line where narcotics dogs would sniff them. If the dogs alerted to the presence of narcotics, the employees would be subject to a strip search. However, the employees had to sign release forms before the strip search, and were forced to do so without time to read the forms and under the threat of losing their jobs. Then, the employees were required to undress and subject themselves to a body cavity search. The searches took place in areas to which the public, other employees, and inmates had access to, where they were able to witness the process. The court noted that when conducting these types of searches, officers of the Canine Unit violated several of the internal regulations of the Unit. The regulations required the officers to take every person searched before a supervisor, write a memorandum about each search, and ensure that the area of inspection was not contaminated prior to that particular search. Also, the search had to be limited to a physical search. The court noted that the officers of the Canine Unit searched over thirty employees, but never found any controlled substances. (Correction Department of the Commonwealth of Puerto Rico, Correctional Complexes of Guayama 500 and Las Cucharas)</p>
<p>U.S. Appeals Court ADA- Americans with Disabilities Act FMLA- Family and Medical Leave Act RA- Rehabilitation Act</p>	<p><i>Haybarger v. Lawrence County Adult Probation and Parole</i>, 551 F.3d 193 (3rd Cir. 2008). A former state employee brought an action against his employer and others, alleging violations of the Rehabilitation Act (RA), the Americans with Disabilities Act (ADA), and the Family and Medical Leave Act (FMLA). The district court dismissed all but the employee's RA claims, and the defendants appealed. The appeals court affirmed, finding that receipt of federal funds by a subunit of a Pennsylvania judicial district waived Eleventh Amendment immunity under the Rehabilitation Act (RA) for claims against the employer. The court noted that an Eleventh Amendment immunity waiver under the Rehabilitation Act applies to all of the operations of a state department regardless of whether the particular activities are federally assisted. (Lawrence Co. Adult Prob. and Parole Dept., Pennsylvania)</p>
<p>U.S. Appeals Court BFOQ-Bona Fide Occupational Qualification OVERTIME RETALIATION SCHEDULE STAFFING LEVELS TITLE VII</p>	<p><i>Henry v. Milwaukee County</i>, 539 F.3d 573 (7th Cir. 2008). Female corrections officers brought a Title VII action against a county, challenging a staffing policy that reduced the number of shifts available to them at a juvenile detention center, and alleging other incidents of discrimination as well as retaliation. Following a bench trial, the district court entered judgment for the county. The officers appealed. The appeals court affirmed in part, reversed and remanded in part. The court held that a sex-based classification, requiring that each unit in the juvenile detention center be staffed by at least one officer of the same sex as the detainees in the unit, was not reasonably necessary for the rehabilitation, security, or privacy functions of the facility, with respect to the third shift when only one officer was present on each unit. According to the court, the classification was therefore not a bona fide occupational qualification (BFOQ), so as to be exempt from Title VII. The court noted that no staff-on-inmate sexual assaults had occurred, the county had not investigated alternatives to same-sex staffing, juvenile privacy concerns were not limited to the third shift, and the effectiveness of role-modeling programs did not require the presence of a same-sex staff member at all times. The court found that the reduction in overtime hours available to female officers resulting from the policy was an adverse employment action within the meaning of Title VII, in that overtime pay had been a significant and expected component of the female officers' compensation, and the policy had the greatest effect on the third shift, which provided the majority of overtime work and a pay premium.</p> <p>The court held that the incidents alleged by the female officers, such as being told not to wear sweaters or to eat in front of the juveniles, unspecified "intimidation" and door slamming by the head of a shift, missing or marked up time-cards, occasional early morning phone calls, and not being assigned to work together on same the shift or in easier pods, if proven, did not rise to the level of an adverse action under the anti-retaliation provision of Title VII. (Milwaukee County Juvenile Detention Center, Wisconsin)</p>
<p>U.S. Appeals Court RETALIATION SEX DISCRIMINATION TITLE VII</p>	<p><i>Hervey v. County of Koochiching</i>, 527 F.3d 711 (8th Cir. 2008). A female jail administrator brought an action under Title VII and the Minnesota Human Rights Act (MHRA), alleging that her employer and her supervisors discriminated against her on the basis of her gender and retaliated against her for participation in a protected activity. The plaintiff also alleged that her employer was liable for violations of the Minnesota Government Data Practices Act (MGDPA). The district court granted summary judgment in favor of the defendants, and the plaintiff appealed. The appeals court affirmed and remanded with directions to modify the final judgment so as to dismiss the MGDPA claim without prejudice, so that it may be considered, if at all, by the courts of Minnesota. The court held that the female jail administrator failed to demonstrate that her supervisors took away many of her major responsibilities and twice suspended her without pay because of her gender, in violation of Title VII and the Minnesota Human Rights Act (MHRA). The court noted that although the supervisors allegedly changed the management structure of the sheriff's office without approval of county board, nothing about this change in management structure supported the inference that subsequent action taken by a new management team were based on gender. The court found that the administrator failed to establish that similarly situated male employees were not punished as severely for their misconduct as she was, and that this differential treatment constituted a submissible case of discrimination based on sex under Title VII or the Minnesota Human Rights Act (MHRA). The court noted that the administrator's alleged misconduct in recently lying to a supervisor about leaving a voicemail on his</p>

telephone when she was going to be absent from work was not similar to the acts of misconduct that she cited in support of her sex discrimination claim, one of which involved a supervisor allegedly lying on his application to become a licensed police officer some 25 years earlier, and the others of which involved alleged off-duty misconduct or misconduct that was not shown to have been reported to supervisors.

The court held that the administrator failed to show that her alleged harassment by her supervisors was based on sex, as required to establish her claim of hostile work environment under Title VII and the Minnesota Human Rights Act (MHRA). According to the court, although the administrator claimed that supervisors created a hostile work environment by, among other things, constantly criticizing her, requiring her to report to the under-sheriff, and yelling at her on several occasions, she did not produce any evidence that she was the target of harassment because of her sex and that the offensive behavior was not merely non-actionable, vulgar behavior.

The court held that the record did not support a reasonable inference that the administrator's supervisors retaliated against her, in violation of Title VII and the Minnesota Human Rights Act (MHRA), for filing a claim with the state human rights department. The court noted that the administrator's conduct in filing a claim was protected, but the administrator was accused of insubordination before she notified her employer of her protected activity. (Koochiching County Jail, Minnesota)

U.S. Appeals Court
DISCIPLINE
FREE SPEECH
RETALIATION

Houskins v. Sheahan, 549 F.3d 480 (7th Cir. 2008). A social worker employed by a county corrections department brought a § 1983 First Amendment action against a sheriff, alleging that she had been disciplined in retaliation for reporting an assault by a corrections officer. The district court entered judgment on a jury verdict for the social worker, denied the sheriff's renewed motion for judgment as a matter of law, and denied the officer's motion to throw out the jury verdict. The sheriff and officer appealed. The appeals court affirmed in part and reversed in part. The court held that the social worker's internal complaint to the department's internal affairs division, alleging that she had been assaulted by a corrections officer in a parking lot, was speech made pursuant to the social worker's official duties, not speech made as a citizen. According to the court, the report fulfilled the social worker's responsibility as a department employee to report incidents of misconduct immediately to her supervisor. The court found that a police report filed by the social worker, alleging that she had been assaulted by a corrections officer in a parking lot, was not speech addressing matters of public concern, as required to support the social worker's § 1983 First Amendment retaliation claim against the sheriff. According to the court, the police report amounted to a personal grievance against the officer, and statements in the report were tied to a personal dispute and were not intended to bring to light any wrongdoing by the sheriff. The court noted that its finding that the county employee's speech about an alleged assault by a fellow employee was not protected, and that she had suffered no First Amendment injury from the alleged retaliation that followed the speech, precluded recovery on the employee's § 1983 Monell claim against the county and the sheriff. The court held that the district court did not abuse its discretion by a denying motion to sever the accompanying state-law assault and battery claim against the fellow employee, and instead giving limiting instructions. The court also found that the district court did not abuse its discretion by denying a motion reduce the \$50,000 punitive damages award in the civil assault and battery action, even though the jury may have been confused as to how to assess damages given the fact that the plaintiff had asked the jury for \$5,000 in damages. The altercation occurred in a staff parking lot after a dispute about parking spaces. (Cook County Department of Corrections, Illinois)

U.S. District Court
PROMOTION
RACIAL
DISCRIMINATION

Jo v. District of Columbia, 582 F.Supp.2d 51 (D.D.C. 2008). A lieutenant with the District of Columbia Department of Corrections commenced a § 1983 action against the District, three District employees, and others, alleging that he was denied a promotion to the rank of captain because of his South Korean descent. The defendants moved for summary judgment. The district court granted the motion, finding that the District demonstrated a legitimate, nondiscriminatory reason for its decision not to promote the lieutenant and that the decision was not pretextual. The court also found that the lieutenant failed to demonstrate the existence of any policy. The court noted that the use of the lieutenant's picture on a recruitment poster that contained the phrase "Professional Dedicated to Duty" did not give rise to an inference of discrimination, on account of the lieutenant's South Korean descent. According to the court, there was no evidence that the persons selected for depiction in the poster were the most qualified lieutenants in the Department, and other individuals depicted in the poster were not even supervisory employees. (D.C. Department of Corrections)

U.S. District Court
PROMOTION
RETALIATION
UNION

Justice v. Danberg, 571 F.Supp.2d 602 (D.Del. 2008). An employee of the Delaware Department of Corrections (DOC) brought an action pursuant to § 1983 against the DOC and its commissioner and director of human resources, alleging a denial of promotion in retaliation for his involvement in union activities, in violation of the First Amendment. The district court held that the employee was acting as a citizen when participating in union activities, the employee's participation in union negotiations was of considerable concern to the community, and the employee's interest in participating in union negotiations outweighed the DOC's interest in the efficiency of its public service operations. The court held that summary judgment was precluded by fact issues as to whether the employee's participation in union activities was the substantial motivating factor in the DOC's failure to promote him and as to whether the employee's union activity was a motivating factor in the loss of his application for promotion. (Delaware Department of Correction, Morris Community Correctional Center)

U.S. District Court
CONTRACT
DISCRIMINATION
RETALIATION
TERMINATION

Marcelus v. Corrections Corp. of America/Correctional Treatment Facility, 540 F.Supp.2d 231(D.D.C. 2008). A former employee of a private correctional facility brought an action against a former employer alleging discrimination, retaliation and breach of contract in connection with his termination. The former employee claimed that he was fired in retaliation for complaining about discrimination and filing incident reports against co-workers and supervisors. The former employer filed a motion to dismiss the claims for retaliation and breach of contract, which the district court granted. The court held that the former employee's retaliation claim was not like or reasonably related to the allegations in his Equal Employment Opportunity Commission (EEOC) charge, and thus the claim was barred for failure to exhaust administrative remedies. The court also declined to excuse the former employee's failure to exhaust a grievance procedure under the collective bargaining agreement (CBA), prior to

bringing a breach-of-contract claim, even though the former employee was allegedly unaware that he had further recourse because he was never provided with an employee handbook or a copy of the CBA. (Correctional Corporation of America/Correctional Treatment Facility)

U.S. Appeals Court
HOSTILE WORK
ENVIRONMENT
RACIAL
DISCRIMINATION
RETALIATION
TITLE VII

McCann v. Tillman, 526 F.3d 1370 (11th Cir. 2008). An employee, a correctional officer, brought suit against an employer alleging she was subject to race discrimination and retaliation under § 1981 and § 1983, with respect to matters of employment discipline, compensation, a lowering of service rating, failure to promote, and failure to reassign or transfer. The employee also alleged that she was subject to a hostile work environment. The district court granted the employer's motion for summary judgment on all claims. The officer appealed. The appeals court affirmed. The court held that the employee was not similarly situated to white employees who were allegedly treated more favorably, as required for a race discrimination claim under Title VII. Neither of the employee's comparators committed similar or more serious offenses as those committed by the employee, including violating a uniform directive, or abusing the indicia or privileges of their office. The court found that the employer's policy that employees who were suspended could not recover for their unpaid leave by working overtime upon their return to work was a legitimate, nondiscriminatory reason under Title VII for restricting the employee from working overtime. According to the court, the employer's reasons for giving the employee an unsatisfactory service rating were not a pretext for unlawful retaliation under Title VII. The employer cited the employee's chronic tardiness, her manner of requesting leave by calling in, and her suspension. The court also held that the alleged instances of racially derogatory language, extending over a period of more than two years, were too sporadic and isolated to establish that the employer's conduct was so objectively severe or pervasive as to constitute a hostile work environment under Title VII. (Mobile County Jail, Alabama)

U.S. District Court
AGE DISCRIMINATION
EQUAL PROTECTION
PHYSICAL
REQUIREMENTS

Petzak v. Nevada ex rel. Department of Corrections, 579 F.Supp.2d 1330 (D.Nev. 2008). A 74-year-old correctional officer brought a § 1983 action against his supervisor, alleging that statutory stress electrocardiogram (EKG) testing for officers over the age of 40 violated equal protection. The district court granted summary judgment for the supervisor in part and denied in part. The court held that the differential treatment of correctional officers violated equal protection, but the supervisor was entitled to qualified immunity from damages. According to the court, the differential treatment of correctional officers over and under the age of forty, under Nevada's statutory electrocardiogram (EKG) testing requirements, was not rationally related to a legitimate government interest, and thus, violated equal protection. The court noted that while the state had an interest in requiring injured employees to submit to physicals and to be physically fit for duty, there was no evidence why officers had to undergo a stress EKG test only after reaching 40 years of age. (Nevada Department of Corrections)

U.S. District Court
ASSOCIATION
DUE PROCESS

Poirier v. Massachusetts Dept. of Correction, 532 F.Supp.2d 275 (D.Mass. 2008). A former prison guard sued the Massachusetts Department of Corrections (DOC) and its commissioner under § 1983, claiming that a regulation prohibiting her from associating with present or former inmates violated her First Amendment associational rights and her Fourteenth Amendment due process rights. The defendants moved to dismiss and the district court granted the motion. The court held that there was a legitimate reason for imposing the regulation, precluding a Constitutional challenge, and that the commissioner had qualified immunity. According to the court, the right of a female prison guard to have an intimate association with a former inmate was not a "fundamental" right which could not be interfered with for other than a compelling state interest, but was rather a right that could be impeded when there was a rational and legitimate reason for doing so. The court noted that one reason for the regulation was that guards could be used as a possible conduit for unsanctioned contact between former and present inmates. (Massachusetts Department of Correction)

U.S. District Court
FREE SPEECH
RETALIATION
TERMINATION

Redd v. Dougherty, 578 F.Supp.2d 1042 (N.D.Ill. 2008). A correctional officer who was discharged from the Cook County Department of Corrections (DOC) for "failing to cooperate in an ongoing criminal investigation" and for "providing the State's Attorney with false statements in said investigation," filed an action against a Chicago police detective, Assistant State's Attorney (ASA), the county's personnel director, the sheriff, unknown and unnamed county employees, the City of Chicago, and the County, raising claims under § 1983 for alleged deprivations of her constitutional rights and related claims. The court held that the officer who claimed she was discharged in retaliation for protected speech adequately alleged she was speaking in her capacity as a private citizen, where she alleged she witnessed an altercation outside a private residence, gave a statement to the police about what she saw, and was thereafter pressured by the police to change her statement. (Cook County Department of Corrections, Illinois)

U.S. District Court
ADA-Americans with
Disabilities Act
BFOQ-Bona Fide
Occupational Requirement
RETALIATION
TERMINATION

Shepherd v. City of New York, 577 F.Supp.2d 669 (S.D.N.Y. 2008). A New York City Department of Correction (DOC) employee, a correction officer, brought a pro se action against the DOC and the City of New York, alleging they discriminated and retaliated against her in violation of the Americans with Disabilities Act (ADA). The district court granted summary judgment for the DOC and the city. The court held that the employee failed to establish a prima facie case of discrimination, as she did not meet the burden of proving she could perform the essential functions of her position as Captain with or without reasonable accommodation. The court found that the employee failed to state a claim for discriminatory termination. The court noted that the tasks of a Captain's position required an individual to be "focused, attentive, alert, and vigilant," all of which were attributes that were either impaired or lacking as the result of her depression and/or medication she was taking in order to treat that condition. The court also noted that her attendance record evinced her inability to report to work, and her inability to perform the essential functions required of a Captain also implicated safety concerns. (New York City Department of Corrections, New York)

U.S. District Court
ADA-Americans with
Disabilities Act
BFOQ-Bona Fide
Occupational
Requirements
DISCRIMINATION
QUALIFICATIONS
RA- Rehabilitation Act

Taylor v. Hampton Roads Regional Jail Authority, 550 F.Supp.2d 614 (E.D.Va. 2008). An applicant who was rejected for a position as a corrections officer sued an employer, claiming it discriminated against her on the basis of her disability when it did not hire her, and seeking monetary and injunctive relief pursuant to the Americans with Disabilities Act (ADA) of 1990 and the Rehabilitation Act. The district court denied the employer's motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to whether the one-handed applicant was disabled, whether she could perform each essential function of the position, whether the proposed accommodations were unreasonable, whether she would pose a direct threat to herself or her fellow employees, and whether her disability was a motivating factor in the decision not to hire. (Hampton Roads Regional Jail Authority, Virginia)

U.S. Appeals Court
FREE SPEECH
RETALIATION
TERMINATION

Trigillo v. Snyder, 547 F.3d 826 (7th Cir. 2008). A former employee brought a § 1983 action against a Department of Corrections (DOC), alleging that she was fired in retaliation for filing reports of misconduct. The DOC moved for summary judgment and the district court granted the motion. The employee appealed. The appeals court affirmed. The court held that the filing of reports was not protected speech, and the termination was not retaliatory. The court noted that the employee, who was responsible for advising DOC officials about legal and regulatory issues regarding procurement, did not speak as a citizen and thus her speech was not protected by the First Amendment when, pursuant to her official duties, she filed a report with the Illinois Attorney General and the director of Department of Central Management Services (CMS) which flagged potential misconduct within DOC. According to the court, the filing of such a report was a means to fulfill the employee's employment obligations. The court held that termination of the employee was not in retaliation for her alleged action in reporting to the FBI that a contract approved before she became employed by the DOC may have been issued because someone rigged the bidding process, absent competent evidence that the decision-maker who did not renew the employee's term of employment knew or thought that the employee was the person who had called the FBI. (Illinois Department of Corrections)

U.S. Appeals Court
PROSECUTION

U.S. v. Moore, 525 F.3d 1033 (11th Cir. 2008). Two male correctional officers at a federal correctional institution were charged with a variety of misconduct arising from their inappropriate sexual contact with female inmates and their distribution of contraband to inmates. Both defendants were found guilty of conspiracy to accept an illegal gratuity. One was also found guilty of witness tampering and the other of bribery. The district court sentenced the defendants to twelve months of incarceration, followed by a three-year term of supervised release, and ordered them to pay a fine. The defendants appealed. The appeals court affirmed. The court held that there was sufficient evidence that the officers' conduct constituted an "official act" to support their conviction for conspiracy to accept an illegal gratuity. According to the appeals court, the district court did not commit a plain error by instructing the jury that sex was a "thing of value" under the bribery statute. The court also held that there was sufficient evidence to uphold the officer's witness tampering conviction. The court noted that the government offered evidence of five instances which satisfied the official act requirement, where officers switched unit assignments, one officer permitted an inmate to telephone another officer to request contraband, one officer telephoned another officer on an inmate's behalf, one officer permitted an inmate to leave her unit to meet with another officer, and one officer gave another officer the key to staff offices to meet with an inmate in the middle of the night. The district court had instructed the jury that "contraband" was defined as "anything whatsoever not approved by the warden", despite the defendant's claim that a broad federal regulatory definition of "contraband" should have been used. (Federal Correctional Institute in Tallahassee, Florida)

U.S. District Court
CONTRACT
DISCIPLINE
TERMINATION

Washington v. District of Columbia, 538 F.Supp.2d 269 (D.D.C. 2008). Former employees brought a civil rights action against the District of Columbia Department of Corrections (DOC) and its director alleging violation of their due process rights, defamation, and intentional infliction of emotional distress. The district court granted the DOC's motion to dismiss. The court held that the employees had to exhaust their grievance arbitration according to the terms of the collective bargaining agreement (CBA), or through review by the Office of Employee Appeals (OEA) according to the terms of the Comprehensive Merit Protection Act (CMPA), before bringing suit. The court found that the allegedly defamatory statements made by the director of the DOC regarding the culpability of former employees for a jail escape sufficiently related to a "personnel" issue to require administrative exhaustion under the employee grievance provisions of the CMPA. Two employees had been terminated in response to the escape of two prisoners. The court opened its opinion by stating "This case concerns a prison break, mass personnel terminations, mass personnel reinstatements and the various efforts undertaken by the defendant (the District of Columbia) and the plaintiffs (D.C. Jail security officers) to enlist this court in a tug-of-war over the right of the D.C. Department of Corrections ("DOC") to subject its employees to a second round of disciplinary review and firings after an administrative appeals board found the preliminary round deficient." Two days after two inmates escaped, the DOC Director issued written notification to twelve D.C. Jail employees, including the plaintiffs, placing them on paid administrative leave pending further investigation of the escape. At a press briefing the Director announced the summary firings of the plaintiffs for dereliction of duty. (District of Columbia Jail)

2009

U.S. Appeals Court
DUE PROCESS
PROPERTY INTEREST

Akande v. Grounds, 555 F.3d 586 (7th Cir. 2009). A former employee of a state corrections agency brought an action against the agency and agency officials, alleging that they deprived him of a property interest in his employment in violation of the due process clause. The district court granted summary judgment in favor of the defendants and the employee appealed. The appeals court affirmed. The court held that the employee of the Illinois Department of Corrections was not deprived of a due process property interest in his employment by a supervisor's decision to alter the employee's job duties. The court noted that the employee remained at the same position and received the same salary, and that the Illinois Personnel Code defined the employee's protected property right as the right not to be removed, discharged, demoted, or suspended for more than 30 days without cause, but none of those events occurred. (Illinois Department of Corrections, Robinson Correctional Center)

U.S. District Court
INVESTIGATION
TERMINATION

Boyd v. Nichols, 616 F.Supp.2d 1331 (M.D.Ga. 2009). A female, who had been housed in a jail for violation of her probation, brought an action against a former jailer, county, and former sheriff, under § 1983 and state law, relating to the sexual assault of the inmate by the jailer. The county and sheriff moved for summary judgment and the district court granted the motions. The court held that the sheriff was not “deliberately indifferent” to a substantial risk of serious harm to the inmate under the Eighth Amendment or the Georgia constitution in failing to protect the inmate from sexual assaults by a jailer, absent evidence that the sheriff had knowledge or indication that the jailer was a threat or danger to inmates, or that male guards, if left alone with female inmates, posed a risk to the inmates' health and safety. The court noted that the sheriff's actions in calling for an investigation and terminating the jailer's employment upon learning of the jailer's actions was not an “indifferent and objectively unreasonable response” to the inmate's claims, and thus, there was no violation of the inmate's rights. The court found that the sheriff's failure to train deputies and jailers in proper procedures for escorting and handling female inmates did not support supervisory liability on the § 1983 claim of the inmate, where the sheriff had no knowledge of any prior sexual assaults at the jail or any problems with jailers improperly escorting and handling female inmates, and the jailer who committed the assault had been trained previously on how to interact with inmates and knew it was improper to have intimate contact with inmates. During the time period in question, the county did not have a policy prohibiting a male jailer from escorting a female inmate within the Jail. The court held that the county and sheriff had sovereign immunity from the state law claims of the inmate, absent evidence that such immunity had been waived by an act of the General Assembly. (Berrien County Jail, Georgia)

U.S. District Court
HARASSMENT
SEXUAL HARASSMENT
SUPERVISION
TITLE VII

Brown v. Corr. Corp. of Am., 603 F.Supp.2d 73 (D.D.C. 2009). A former female correctional officer sued the District of Columbia, a private corrections contractor, and the director of the Department of Corrections (DOC) in his official capacity, asserting claims under Title VII and § 1983 alleging that her supervisor sexually harassed and raped her. The district court dismissed the case in part and denied dismissal in part. The court found that the Title VII claim and the § 1983 claim against the director were redundant of the claims against the District. The court held that the former female correctional officer's allegations were sufficient for a municipal liability claim under § 1983 against the District of Columbia, including allegations that the District adopted a custom of permitting sexual harassment to occur in correctional facilities by failing to take corrective action in response to her numerous sexual harassment complaints against the supervisor. The officer also alleged that the District allowed the supervisor to continue his incessant and relentless harassment and that ultimately the District's inaction led to her sexual assault by her harasser. The officer alleged that the District knew the sexual assault occurred at the correctional facility because sexual harassment was a standard operating procedure at the facility. The officer asserted that she suffered harm due to the District's willful blindness and failure to implement and effectuate appropriate policies to remedy and/or prevent sexual harassment and rape.

The court held that the issue of whether the District of Columbia and the private prison contractor were the correctional officer's joint employers, as required for the officer's Title VII claim against District, could not be resolved by a motion to dismiss. According to the court, there was a factual dispute as to whether the District possessed sufficient control over the contractor's employees to be considered a joint employer of officer. (District of Columbia, Corrections Corporation of America Correctional Treatment Facility)

U.S. Appeals Court
FREE SPEECH
RETALIATION

Cabral v. U.S. Dept. of Justice, 587 F.3d 13 (1st Cir. 2009). A nurse practitioner working as a contractor in a county house of correction brought an action against a county sheriff claiming that she was barred from entering the house of correction, in violation of her free speech rights, for informing the Federal Bureau of Investigation (FBI) of alleged prisoner abuse. The county sheriff brought an Administrative Procedure Act (APA) proceeding against the United States Department of Justice, seeking discovery of relevant documents. The district court denied the requested discovery and the sheriff appealed. A jury found in favor of the contractor in the underlying free speech case and the district court denied the defendants' motions for a new trial. The appeals from the two judgments were consolidated. The appeals court affirmed. The court held that the sheriff's request for information concerning a meeting between the nurse and the Federal Bureau of Investigation (FBI) would directly and adversely impact the FBI investigations into prisoner abuse in the house of correction and violate the Privacy Act, so as to warrant denial of such requests. The court held that evidence was sufficient to support the jury's determination that the county sheriff barred the nurse practitioner from a county house of correction with a conscious indifference to her free speech rights, as was necessary to support an award of punitive damages in the nurse's § 1983 action. The court found that the award of \$250,000 in punitive damages to the nurse was not excessive, where the sheriff's conduct was reprehensible and the award could have been greater. (Suffolk County House of Correction, Massachusetts)

U.S. District Court
EQUAL PROTECTION
HOSTILE WORK
ENVIRONMENT
OVERTIME
TITLE VII

Cantu v. Michigan Dept. of Corrections, 653 F.Supp.2d 726 (E.D.Mich. 2009). An employee, a Michigan Department of Corrections (MDOC) officer who was of Caucasian and Hispanic descent, brought an action against MDOC, a correctional facility, a facility warden, and several other corrections officers, alleging violations of Title VII, Michigan law and § 1983, as well as claims of conspiracy and gross negligence. The defendants moved for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the alleged hostile work environment and disparate treatment of the MDOC employee of Caucasian and Hispanic descent were attributable to his race and national origin; (2) whether the Department promptly investigated complaints of the employee regarding his alleged harassment by African-American co-workers, and as to whether an appropriate action was taken in response to any investigation conducted; and (3) whether the employee experienced an adverse action when he was unable to receive anticipated overtime as the result of administrative leave, which was allegedly precipitated by the employer's actions. The court held that the prison warden was not entitled to qualified immunity from the § 1983 equal protection claim brought against the employee, where the employee's factual allegations in support of his equal protection claims against the warden regarding his treatment subsequent to his assault by an African-American co-worker, the employee's stress leave, and the warden's possible failure to respond to the employee's complaints of continued harassment stated violations of well-established rights at the time of those events. (Ryan Correctional Facility, Michigan)

<p>U.S. Appeals Court TERMINATION UNION</p>	<p><i>Civil Service Employees Ass'n, Local 1000, AFSCME v. N.L.R.B.</i>, 569 F.3d 88 (2nd Cir. 2009). A union representing correctional officers at a county correctional facility petitioned for review of a National Labor Relations Board (NLRB) decision that upheld an employer's termination of non-union employees for having picketed a health clinic. The appeals court granted the petition and vacated the NLRB decision. The appeals court held that the peaceful picketing of the health clinic by county correctional facility employees, in their individual capacity, for the purpose of collective bargaining but without the requisite notice from a union under the NLRA, did not deprive the employees of their status as employees protected by the NLRA or constitute unprotected conduct, as would have exposed the employees to discharge. The employees sought to organize and represent the employees of a health clinic that was operated by Correctional Medical Services, Inc. (CMS). The union had requested that CMS recognize it as the collective-bargaining representative of all clinic employees except physicians, supervisors and one clerical worker, but CMS rejected the request. (Albany County Correctional Facility, New York)</p>
<p>U.S. Appeals Court ADEA-Age Discrimination In Employment Act POLITICAL AFFILIATION RETALIATION TERMINATION TRANSFER</p>	<p><i>Cox v. DeSoto County, Miss.</i>, 564 F.3d 745 (5th Cir. 2009). A county employee brought an action against her county employer, alleging that as result of her age, in violation of the Age Discrimination in Employment Act (ADEA), and in retaliation for her refusal to campaign actively for reelection of the county sheriff, in violation of the First Amendment, she was reassigned to the jail and later terminated. The district court granted summary judgment as to the termination claims, and entered judgment, upon jury verdict, in favor of the employer on the First Amendment claim, and in favor of employee on the age discrimination claim in connection with her reassignment. The employee appealed the grant of summary judgment. The appeals court affirmed in part, reversed in part, and remanded. The court held that the decision of the Mississippi Employment Security Commission (MESC), that the employee was not eligible for unemployment compensation benefits because she was discharged for work-related misconduct, did not collaterally prohibit the employee from claiming that she was terminated in retaliation for bringing an ADEA wrongful transfer claim, given the detailed administrative remedy provided by ADEA for such claims. (DeSoto County Sheriff, Mississippi)</p>
<p>U.S. District Court FREE SPEECH RETALIATION STAFFING LEVELS TERMINATION</p>	<p><i>Deweese v. Haste</i>, 620 F.Supp.2d 625 (M.D.Pa. 2009). A former deputy warden brought an action against a county, a county prison warden, a county commissioner, and members of the county's prison salary board, alleging that his position was eliminated in retaliation for his exercise of his First Amendment rights. The defendants moved for summary judgment and the district court granted the motion. The court held that the speech activities of the deputy warden, who provided information to the county district attorney regarding the prison's food services contract and reported misappropriation of inmate funds to a county commissioner, were conducted pursuant to his employment with the prison, precluding his First Amendment retaliation claims. The court noted that the employee handbook required the deputy warden to report any corrupt or unethical behavior or violations of rules or law. According to the court, the county prison board's proffered legitimate, non-retaliatory reason for eliminating the deputy warden's position--that the county was seeking to cut employment-related expenses and the position had been deemed expendable--was insufficient to show that the budget cuts were not for cause. The court held that the county commissioner was entitled to legislative immunity on the former deputy warden's First Amendment retaliation claim where the commissioner's actions of recommending and voting for elimination of the deputy warden's position, as part of an effort to reduce the county's budget, was squarely within the sphere of his legislative work. (Dauphin County Prison, Pennsylvania)</p>
<p>U.S. District Court DUE PROCESS EQUAL PROTECTION TRAINING</p>	<p><i>Edwards v. Washington</i>, 661 F.Supp.2d 13 (D.D.C. 2009). A trainee at the District of Columbia Department of Corrections brought a pro se action against the Department's director, alleging due process and equal protection claims arising from personal injuries she sustained during an employment qualification training exercise. The district court dismissed the action. The court held that the trainee waived her right to bring any claims in negligence against the Department by voluntarily signing a liability release form. The court noted that the prospective liability release form was unambiguous and clear in releasing the Department from liability. (District of Columbia Department of Corrections ("DCDC")).</p>
<p>U.S. Appeals Court FREE SPEECH HARASSMENT RETALIATION</p>	<p><i>Fairley v. Andrews</i>, 578 F.3d 518 (7th Cir. 2009). Former guards at a county jail brought a § 1983 action against various jail officials and others, alleging conspiracy to cover up inmate abuse and violation of their First Amendment rights. Following a grant of summary judgment in favor of certain defendants, the district court entered summary judgment in favor of the remaining defendants. The guards appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the guards' reports about alleged inmate abuse at the jail perpetrated by other guards was not protected speech under the First Amendment, and thus, could not be the basis of a First Amendment retaliation claim. The court noted that a county jail policy required guards to report misconduct by their colleagues, and even if an unwritten policy prohibited such reports of misconduct, it did not offend the 1st Amendment. The court found that the coworkers who allegedly bullied and made threats against the guards in order to deter the guards from testifying in favor of an inmate violated the guards' free speech rights under the First Amendment, and the guards could recover under § 1983 for such a violation. (Cook County Jail, Illinois)</p>
<p>U.S. Appeals Court ADA- Americans with Disabilities Act PHYSICAL REQUIREMENTS TRAINING</p>	<p><i>Hennagir v. Utah Dept. of Corrections</i>, 587 F.3d 1255 (10th Cir. 2009). An employee who was part of the medical staff for a state department of corrections (DOC), brought an action against her DOC employer, alleging disability discrimination and retaliation in violation of the Americans with Disabilities Act (ADA), in connection with the DOC's refusal to allow the employee to continue in her position without completing the required physical safety training. The district court granted summary judgment in favor of the employer. The employee appealed. The appeals court affirmed. The court held that completion of the required physical safety training was an "essential job function" for the employee, and that allowing the employee to continue with her identical job duties, by eliminating the essential job function of completion of the required physical safety training, was not a "reasonable accommodation." The court held that completion of the required physical safety training was an "essential job function" for the employee within the meaning of the Americans with Disabilities Act (ADA). The court noted that the DOC required all personnel who had contact with inmates to complete the training, the employee had</p>

regular contact with inmates as part of her job, and although the employee claimed that she never had to use the safety training techniques during her eight years of employment at the prison, the potential consequences of an inmate attack against any staff were incredibly severe. (Utah Dept. of Corrections, Central Utah Corr'l Facility)

U.S. District Court
EQUAL PROTECTION
RELIGION
RETALIATION

McCullum v. California, 610 F.Supp.2d 1053 (N.D.Cal. 2009). A volunteer Wiccan chaplain for inmates incarcerated by the California Department of Corrections and Rehabilitation (CDCR) filed suit alleging disparate treatment from volunteers of other faiths and retaliation for his complaints about the CDCR's treatment of Wiccans. The district court granted the defendants' motion for summary judgment. The court held that equal protection was not denied to the volunteer Wiccan chaplain who alleged he was not being permitted to see inmates at times and in locations when and where other chaplains were permitted, and that being denied access to chapel time for religious instruction and benefits extended to other administrative volunteer chaplains including access to telephone and computer, and being subjected to more rigorous security scrutiny. According to the court, there was no evidence that other voluntary clergy did not encounter the same difficulties or as to inmates that were denied access to his services. The court found that the CDCR did not retaliate against the volunteer Wiccan chaplain for protected speech complaining against the mistreatment of Wiccans by "denigrating" him while addressing a group of Protestant chaplains or by refusing to hire him as community partnership manager at a women's facility and a state prison. The court noted that the claimed denigration, even if true, did not result in the loss of a valuable government benefit, and that the decision not to hire him was based on the superior qualifications of those ultimately hired rather than on his religion. (California Corrections Institution)

U.S. Appeals Court
ASSOCIATION
DUE PROCESS
TERMINATION

Poirier v. Massachusetts Dept. of Correction, 558 F.3d 92 (1st Cir. 2009). A discharged prison guard sued the Massachusetts Department of Corrections (DOC) and its commissioner under § 1983, claiming that a regulation prohibiting her from associating with present or former inmates violated her First Amendment associational rights and her Fourteenth Amendment due process rights. The district court dismissed the case and the prison guard appealed. The appeals court affirmed. The court held that the First Amendment associational and Fourteenth Amendment due process rights of the prison guard were not violated when she was discharged for violating a DOC regulation prohibiting non-approved association with a former inmate. The court found that the DOC's legitimate interest in preserving prison security was reasonably advanced by prohibiting a guard-former prisoner relationship, and that the DOC's interest outweighed the degree of intrusion into the guard's private life imposed by the regulation. The court held that the Massachusetts Department of Corrections (DOC) was entitled to sovereign immunity, and that the Commissioner of the DOC had qualified immunity from liability in the § 1983 claim because it was not clearly established that enforcement of the regulation would be an unlawful act. (Massachusetts Department of Corrections)

U.S. District Court
FREE SPEECH
RETALIATION
TERMINATION

Shumpert v. Johnson, 621 F.Supp.2d 387 (N.D.Miss. 2009). A sheriff's department employee who had been terminated brought a suit against a county sheriff alleging that she was terminated for discussing an alleged jail assault with an attorney in violation of her First Amendment rights. The district court entered judgment on a jury verdict for the employee, awarding \$34,000 to the employee. The defendant moved for judgment as a matter of law or, alternatively, a motion for a new trial. The district court denied the motion. The court held that the sheriff was aware that the employee had a discussion with an attorney about an assault and terminated the employee due to the conversation, as required for the employee's First Amendment retaliation claim. According to the court, there was a plausible inference that the sheriff had a motive to terminate the employee based on her conversation with the attorney, as required for the employee's First Amendment retaliation claim. The court found that the sheriff did not provide a legitimate explanation for terminating the employee, as required for the employee's First Amendment retaliation claim. (Lee County Jail, Mississippi)

U.S. Appeals Court
FMLA-Family Medical
Leave Act
RETALIATION
TERMINATION

Simpson v. Office of Chief Judge of Circuit Court of Will County, 559 F.3d 706 (7th Cir. 2009). A former employee sued an employer alleging that the employer denied her request for a leave of absence and later terminated her employment in violation of the Family and Medical Leave Act (FMLA). The district court granted the employer's motion for summary judgment. The employee appealed. The appeals court affirmed. The court held that the employee's poor work performance constituted a legitimate, non-pretextual reason for her termination. The court found that there was no evidence that the employee was similarly situated to an employee who was treated more favorably and who did not take FMLA leave, for the purposes of her retaliation claim. (Will County, Illinois)

U.S. District Court
ADEA-Age Discrimination
In Employment Act
DISCRIMINATION
HARASSMENT
UNION

Slater v. Susquehanna County, 613 F.Supp.2d 653 (M.D.Pa. 2009). A former prison employee brought action against her employer, employee union, union representative, city, and others, alleging violations of § 1983, the federal civil conspiracy statute, the Age Discrimination in Employment Act (ADEA), Title VII, and state law. The union and its representative moved for dismissal or for summary judgment. The plaintiff alleged that she and other female correctional officers over the age of fifty have been harassed by supervisors and other officers, including a group of co-workers called the "Secret Sisters," who were aided and abetted by prison wardens and a union official. The court granted the union's motion for summary judgment, finding that the union and its representative were not acting under the color of state law, for purposes of a § 1983 claim. According to the court, the Age Discrimination in Employment Act (ADEA) does not provide for individual liability. The court found that the union representative could not be held liable for age and gender discrimination against a prison employee under the Pennsylvania Human Relations Act. The court held that the employee's allegations that she was harassed by supervisors and co-workers during the course of her employment, that the employee union collectively allowed the harassment to continue and indeed encouraged the treatment, and that the union believed the employee passed information regarding a prisoner's death to the deceased's attorney and, in response, began manufacturing reasons to discipline and ultimately terminate her, did not give rise to an intentional infliction of emotional distress claim under Pennsylvania law. (Susquehanna County Correctional Facility, Pennsylvania)

U.S. District Court
FREE SPEECH
RETALIATION
SEXUAL HARASSMENT
TITLE VII

Smith-Thompson v. District of Columbia, 657 F.Supp.2d 123 (D.D.C. 2009). A female correctional officer stationed at a District of Columbia jail brought an action in District of Columbia court alleging that officials permitted her to be sexually harassed by a fellow officer and retaliated against her in violation of Title VII. The officer alleged that the District was liable for intentional infliction of emotional distress. The court held that the officer sufficiently pleaded a prima facie case of retaliation under Title VII, even though she failed to specify in her complaint the precise dates of her involvement in the protected activity of lodging a complaint with the Office of the Special Inspector, her assistance in the Special Inspector's investigation, and her contact with the Office of Human Rights (DCOHR). According to the court, the officer's allegations suggested that the District of Columbia Department of Corrections placed her on unpaid leave shortly after she engaged in the protected activity. (District of Columbia Jail)

U.S. Appeals Court
HOSTILE WORK
ENVIRONMENT
SEXUAL HARASSMENT

Sutherland v. Missouri Dept. of Corrections, 580 F.3d 748 (8TH Cir. 2009). A state corrections employee sued her employer for sexual harassment and retaliation in violation of Title VII. The district court granted the Department summary judgment and the employee appealed. The appeals court affirmed. The appeals court held that the employee's harassment was not sufficiently severe or pervasive for a hostile work environment claim, and the employee was not subjected to materially adverse retaliatory actions. The court noted that the employee alleged only one incident of a co-worker's offensive touching, but other harassment did not involve the co-worker or physical contact. (Missouri Department of Corrections)

U.S. Appeals Court
DISCIPLINE
RACIAL
DISCRIMINATION
SEX DISCRIMINATION
TERMINATION

Wimbley v. Cashion, 588 F.3d 959, (8th Cir. 2009). An African-American female correctional officer brought a § 1983 claim against a warden, alleging race and sex discrimination. The district court denied the warden's motion for summary judgment on the grounds of qualified immunity. The warden appealed and the appeals court affirmed. The court held that a White male correctional officer who was not terminated for discharging pepper spray at an inmate was similarly situated to the African-American female correctional officer who was terminated after she discharged pepper spray, supporting the female officer's prima facie § 1983 race and sex discrimination claims against the warden. The court noted that both officers were involved in similar pepper-spray conduct, but were disciplined differently. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the warden's proffered reason for terminating the female corrections officer, that she did so in violation of department of corrections policy to intimidate inmates, was a pretext for race and sex discrimination. (Arkansas Department of Correction, Delta Regional Unit)

2010

U.S. District Court
ASSIGNMENT
BFOQ- Bona Fide
Occupational Qualification
TITLE VII
TERMINATION
SEX DISCRIMINATION

Ambat v. City and County of San Francisco, 693 F.Supp.2d 1130 (N.D.Cal. 2010). Sheriff's deputies brought an action against a city and county, alleging various claims including retaliation, and that a gender based staffing policy violated Title VII and California's Fair Employment and Housing Act (FEHA). Cross-motions for summary judgment were filed. The district court granted summary judgment for the defendants in part, and denied in part. The court held that the sheriff's department policy that only female deputies would be assigned to female-only housing units was implemented to protect the interests that amount to the essence of the Sheriff's business, including safety and privacy, as required to establish a bona fide occupational qualification as a defense to the deputies' claims of employment discrimination under Title VII and California's Fair Employment and Housing Act (FEHA). The court noted that the policy was implemented to prevent sexual misconduct and inappropriate relationships between male deputies and female inmates, to alleviate male deputies' fears of false accusations of misconduct resulting in a reluctance to supervise female inmates closely, which created opportunities for smuggling and use of contraband, and to prevent female inmates from being required to dress and undress in front of male deputies. The court found that the sheriff was entitled to deference in his policy judgment to implement the department policy that only female deputies would be assigned to female-only housing units and in determining whether the policy was reasonably necessary to achieve issues of safety and privacy and to ensure normal operation of the jails, as required to establish a bona fide occupational qualification as a defense to the deputies' claims of employment discrimination under Title VII and California's Fair Employment and Housing Act (FEHA). The court noted that, despite not conducting formal studies or seeking consultation, the policy was based upon the sheriff's experience and observations over thirty years as sheriff and conversations with senior officials and jail commanders over several months. The court noted that suggested non-discriminatory alternatives to the sheriff's department policy, including cameras and additional training, were not feasible alternatives that furthered the objectives of safety, security and privacy. Installation of cameras in the units was cost-prohibitive and did not address privacy concerns or the fact that misconduct took place outside of the units, additional training would not eliminate sexual abuse since deputies already knew it was forbidden, and there was no effective testing or screening method to identify deputies who might engage in sexual misconduct. The court found that the fact that the deputy made statements to the National Academy of Arbitrators, alleging that the sheriff was influenced by financial contributions and nepotism and that the sheriff's general counsel had engaged in sex tourism was a legitimate, non-retaliatory reason to terminate the deputy under Title VII and the California Fair Employment and Housing Act. (San Francisco Sheriff's Department, California)

U.S. Appeals Court
HOSTILE WORK
ENVIRONMENT
SEXUAL HARASSMENT
TITLE VII

Beckford v. Department of Corrections, 605 F.3d 951 (11th Cir. 2010). Female employees at a state correctional institution filed a state court action under Title VII alleging that the state Department of corrections failed to remedy a sexually hostile work environment created by male inmates. After removal to federal court, the district court entered judgment in the employees' favor, and the department appealed. The appeals court affirmed. The court held that the department of corrections was not entitled to a blanket exemption from liability under Title VII arising from its failure to remedy a sexually hostile work environment created by male inmates whenever female employees were present, even if its employees did not participate in or encourage the harassment. According to the court, the exhibitionist masturbation and gender-specific verbal harassment by male inmates in the state correctional institution in the presence of female employees was sex-based and highly offensive conduct that could

be used to establish a Title VII claim against the department of corrections for failing to remedy a sexually hostile work environment. (Florida Department of Corrections, Martin Correctional Institution)

U.S. District Court
FMLA- Family Medical
Leave Act
PROMOTION
RETALIATION

Bosse v. Baltimore County, 692 F.Supp.2d 574 (D.Md. 2010). A correctional officer in the Baltimore County Department of Corrections sued the county, the director of the department, and his supervisor, alleging interference and retaliation under the Family and Medical Leave Act (FMLA). The court held that summary judgment was precluded by genuine issues of material fact, as to the willfulness of the alleged violations. The court found that a jury reasonably could find that the defendants recklessly disregarded the fact that the bulk of the officer's leave time was FMLA leave and allowed his FMLA leave time to impact his performance negatively, and that they thereby interfered with the officer's FMLA rights by discouraging him from using FMLA leave in the future. The court also held that summary judgment was precluded by genuine issues of material fact, as to whether the county and individual defendants interfered with, restrained or denied the correctional officer's exercise of his FMLA rights and whether he suffered prejudice in the form of wages he allegedly would not have lost had his FMLA requests been granted. According to the court, summary judgment was also precluded by a genuine issue of material fact, as to whether the county did not promote the correctional officer because of the extent of his absences, the majority of which were for FMLA leave. The court noted that non-promotion was an adverse action, and the officer showed that the county's decisions not to promote him were in temporal proximity to at least some of his absences. Summary judgment was also precluded by a genuine issue of material fact as to whether the county's proffered legitimate reasons for not promoting the correctional officer were a pretext to retaliate against him for conduct protected under the FMLA. According to the court, the officer did not have to prove that he was better qualified than those promoted. He offered evidence that those promoted had better attendance than he and that his unscheduled leave, which included FMLA leave, garnered attention and negative remarks on his otherwise positive performance evaluations. (Baltimore County Department of Corrections, Maryland)

U.S. Appeals Court
BFOQ- Bona Fide
Occupational Qualification
DISCRIMINATION
TITLE VII
EQUAL OPPORTUNITY

Breiner v. Nevada Dept. of Corrections, 610 F.3d 1202 (9th Cir. 2010). Male correctional officers brought suit, challenging an employment policy of the Nevada Department of Corrections (NDOC) of hiring only female correctional lieutenants at a women's prison. The district court granted summary judgment for the Department and the officers appeals. The appeals court reversed and remanded. The court held that a male correctional officer who had previously applied for correctional lieutenant positions, but allegedly was deterred from applying for lieutenant positions at women's prisons by his knowledge that his application would be futile because of the prison's policy of hiring only women for that position, had standing to pursue a Title VII claim. According to the court, denial of single opportunity to a man for promotion to correctional lieutenant at the women's prison was not "de minimis," and could violate Title VII, despite the existence of promotional opportunities for men across the system as a whole. The court found that gender was not a bona fide occupational qualification (BFOQ) that would justify the facially discriminatory policy of hiring only female correctional lieutenants at the women's prison, where there was no factual basis for concluding that all male correctional lieutenants would tolerate sexual abuse by their subordinates, that all men in a correctional lieutenant role would themselves sexually abuse inmates, or that women, by virtue of their gender, could better understand the behavior of female inmates. (Nevada Department of Corrections)

U.S. District Court
ADEA- Age Discrimination
in Employment Act
AGE DISCRIMINATION
EQUAL PROTECTION

Cook v. Illinois Dept. of Corrections, 736 F.Supp.2d 1190 (S.D.Ill. 2010). A former employee brought an action against the Illinois Department of Corrections (IDOC), alleging age discrimination in violation of the Age Discrimination in Employment Act (ADEA) and Illinois Human Rights Act (IHRA). The employer filed a motion for summary judgment. The district court denied the motion. The district court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the employee was discriminated against because of her age; (2) whether the employee was performing legitimate business expectations; (3) whether the employee suffered an adverse employment action; (4) whether coworkers were similarly situated; (5) whether the employee was not promoted due to her age; and (5) whether the employee was constructively discharged. (Illinois Department of Corrections, Centralia Correctional Center)

U.S. District Court
RACIAL
DISCRIMINATION
RETALIATION
SEX DISCRIMINATION
TERMINATION
TITLE VII
TRANSFER

Cortes v. City of New York, 700 F.Supp.2d 474 (S.D.N.Y. 2010). A former city corrections officer brought an action against his former city employer, alleging retaliation and discrimination based on gender and race, in violation of Title VII, § 1981, the First and Fourteenth Amendments, and the New York State Human Rights Law (SHRL). The defendant moved for judgment on the pleadings. The district court granted the motion in part and denied in part. The court held that the officer's participation as a witness in support of his coworker's Equal Employment Opportunity Commission (EEOC) complaint was "protected activity," for the purpose of his Title VII retaliation claim, and that the officer's transfer to an undesirable facility and his termination constituted "adverse employment actions." The court found that the officer established a causal connection necessary to support his Title VII retaliation claim, and that his allegations stated gender and race discrimination claims, and a hostile work environment claim. According to the court, the officer's assertions constituted speech on matter of public concern, for the purpose of his First Amendment retaliation claim. (New York City Department of Correction)

U.S. Appeals Court
DISCRIMINATION
RELIGION
TITLE VII

E.E.O.C. v. GEO Group, Inc., 616 F.3d 265 (3rd Cir. 2010). The Equal Employment Opportunity Commission (EEOC) brought an action on behalf of a group of female Muslim employees against their employer, a private company that was contracted to run a prison, alleging that the employer violated Title VII's prohibitions on religious discrimination when it failed to accommodate the employees by providing them an exemption to the prison's dress policy which precluded them from wearing Muslim head coverings-- called khimars--at work. The district court granted the employer's motion for summary judgment and denied the EEOC's cross-motion for summary judgment. The EEOC appealed. The appeals court affirmed. The court held that the employer's refusal to allow employees to wear khimars at work did not violate Title VII. According to the court, the employer, a private company, was not required under Title VII to provide to female Muslim employees an exemption to the prison's dress policy, as such a religious accommodation would have caused a safety or security risk and resulted

in undue hardship to the employer. The court noted that khimars, like hats, could have been used to smuggle contraband into and around the prison, khimars could have been used to conceal the identity of the wearer, creating problems of misidentification, khimars could have been used against prison employees in an attack, and accommodating the employees would have necessarily required additional time and resources of prison officials. (GEO Group, Inc., George W. Hill Correctional Facility, Delaware County, Pennsylvania)

U.S. District Court
FREE SPEECH
PROMOTION
RETALIATION
UNION

Justice v. Machtinger, 733 F.Supp.2d 495 (D.Del. 2010). A correctional officer brought a § 1983 action against a human resources director alleging his First Amendment freedom of speech rights were violated by denial of a promotion in retaliation for union activities. The director moved for summary judgment. The district court granted the motion. The court held that the human resources director was entitled to qualified immunity. According to the court, there was no evidence that the human resources director was personally involved in the misplacement of the officer's application, or had a motive other than his position to retaliate against the officer. The officer alleged that the DOC's human resources director violated his First Amendment free speech rights by intentionally misplacing his application for promotion in retaliation for the officer's union activities. In a prior court decision, the court found that the officer's participation in union negotiations was of considerable concern to the community and that his interest in participating in union negotiations outweighed the DOC's interest in the efficiency of its public service operations. (Delaware Department of Correction)

U.S. Appeals Court
SEXUAL HARASSMENT
TITLE VII

King v. McMillan, 594 F.3d 301 (4th Cir. 2010). A female former deputy sued her employer sheriff in his official capacity, under Title VII, for sexual harassment and in his individual capacity, under state law, for battery. The sheriff left office and the incoming sheriff was substituted in the action. A jury returned verdicts for the deputy on both claims, and the district court entered judgment for the deputy, awarded compensatory and punitive damages, and granted the sheriff's post-trial motion to reduce the compensatory damages award. Both sheriffs appealed. The appeals court affirmed. The court held that substitution was appropriate for the claim under Title VII. The court held that, under Virginia law, the punitive damages award of \$100,000 imposed for the sheriff's battery of the female deputy by unwanted touching was not excessive. The court also found that the compensatory damages award of \$50,000, reduced by the district court from \$175,000, was not excessive. (City of Roanoke, Virginia)

U.S. District Court
HOSTILE WORK
ENVIRONMENT
RETALIATION
SEXUAL HARASSMENT
TITLE VII

Morales v. GEO Group, Inc., 824 F.Supp.2d 836 (S.D.Ind. 2010). A former employee brought a Title VII action against a private correctional facility manager, her former employer, alleging sexual harassment, retaliation, and constructive discharge. The employer moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the sexually charged comments made by the female employee's supervisors and co-workers over a nine-month period were sufficiently severe or pervasive to create a hostile work environment. The court also found that summary judgment was precluded by genuine issues of material fact as to whether the female employee engaged in a protected activity by complaining about sexual harassment and whether she suffered an adverse employment action by being required to attend a meeting with her alleged harassers, and whether a reasonable person would have felt compelled to resign under the circumstances presented to the female employee. She had been assigned to a new unit after complaining about sexual harassment but was never given any training or a password to log on to her computer. (Geo Group, Inc., and Indiana Department of Corrections, New Castle Correctional Facility)

U.S. District Court
DISCIPLINE
HIRING/QUALIFICATIONS
SUPERVISION

Sexton v. Kenton County Detention Center, 702 F.Supp.2d 784 (E.D.Ky. 2010). Two female detainees brought a § 1983 action against a county detention center and officials, alleging deliberate indifference with respect to hiring and supervision of a deputy who sexually assaulted them while they awaited arraignment. The defendants moved for summary judgment. The district court granted the motion. The court held that the detainees failed to establish deliberate indifference with respect to the center's hiring of the deputy. The court noted that none of the deputy's prior misdemeanor offenses, including his driving infractions and domestic assault, demonstrated a propensity to commit rape. The court found that the detainees failed to demonstrate a causal link between the center's alleged policy of not terminating employees with excessive absenteeism and the deputy's conduct. The court noted that "...Absent evidence of prior complaints of sexual assault, the mere fact that a male guard supervises a female inmate does not lead to the conclusion that the inmate is at a great risk of being sexually assaulted by the guard."

According to the court, the detainees failed to establish that the county detention center was deliberately indifferent to their constitutional rights by not effectively monitoring surveillance equipment, and thus they could not recover in their § 1983 action against the center, where there was no evidence that the center had a policy or custom of ineffective surveillance. The detainees argued that only one person monitored the 89 cameras that were used throughout the Detention Center and that they were mainly monitored only for ingress and egress of secured doors. They asserted that the county should have had cameras in the video arraignment room for the inmates' protection. The court noted that state jail regulations do not require constant monitoring of video surveillance cameras or dictate where the cameras are to be placed inside a detention facility. (Kenton County Detention Center, Kentucky)

U.S. Appeals Court
SEARCHES
TERMINATION

True v. Nebraska, 612 F.3d 676 (8th Cir. 2010). A former correctional facility employee brought a § 1983 action against the Nebraska Department of Correctional Services (DCS) and correctional officials, alleging violations of his First, Fourth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants and the employee appealed. The appeals court reversed in part, affirmed in part, and remanded. The appeals court held that the former employee had standing to bring the § 1983 action against the Department and correctional officials, where the employee lost his job due to enforcement of a department policy of randomly searching employee vehicles, and the employee sought reinstatement, lost pay and an injunction prohibiting enforcement of the policy. The court held that summary judgment was precluded by a genuine issue of material fact as to the circumstances of inmate access to the correctional facility parking lot. The employee was terminated because he refused to permit a search of his vehicle. The court held that the Department's policy of random, suspicionless searches of only employees' vehicles, rather than including visitors' vehicles, was rationally related

to a legitimate state interest of institutional security, contraband interdiction and administrative efficiency. The court noted that employees' vehicles were at the facility daily, making it easier to smuggle contraband. (Lincoln Correctional Center, Nebraska)

2011

U.S. Appeals Court
DISCIPLINE
DUE PROCESS
SUSPENSION

Association for Los Angeles Deputy Sheriffs v. County of Los Angeles, 648 F.3d 986 (9th Cir. 2011). Current or former deputy sheriffs who had been charged with felonies, suspended, reinstated after suspension, and then discharged, brought § 1983 claims based on Fourteenth Amendment due process violations against the county, its board of supervisors, civil service commissioners, and sheriff. The deputies were joined by their union. The defendants moved to dismiss for failure to state a claim. The district court granted the motion and the former deputies appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that: (1) due process required that the deputies receive post-suspension hearings in addition to the limited procedures they received before their suspensions; (2) all four deputies adequately stated Monell claims against the county; (3) civil service commissioners were entitled to qualified immunity from the claims of the deputies who did not receive post-suspension hearings, although those claims could go forward against the sheriff and county supervisors; and (4) all individual defendants were entitled to qualified immunity from the § 1983 claims of the two deputies who received post-suspension hearings, as their right to a more substantial hearing was not clearly established at the time of the violations. (Los Angeles County, California)

U.S. Appeals Court
DEMOTION
FREE SPEECH
INVESTIGATION
PROMOTION
RETALIATION
TRANSFERS

Bardzik v. County of Orange, 635 F.3d 1138 (9th Cir. 2011). A sheriff's lieutenant brought a § 1983 action against a county, sheriff, and others alleging that the defendants retaliated against him for his support of the sheriff's opponent in an election challenge, in violation of his First Amendment rights. The defendants moved for summary judgment. The district court denied the motion and the sheriff appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the sheriff was entitled to qualified immunity for his allegedly retaliatory demotion of the lieutenant from a policymaking position, but the sheriff was not entitled to qualified immunity for his alleged retaliation against the lieutenant while the lieutenant was not in a policymaking position. The court noted that when the lieutenant was the Reserve Division Commander, the lieutenant had broad responsibility, influence on programs, frequent contact with elected officials, technical competence, and power to control others, and that the lieutenant impeded the sheriff's agenda. In his subsequent role with the court operations unit, the lieutenant was not a policymaker. The lieutenant alleged that the sheriff retaliated against him by transferring him from the prestigious position of Reserve Division Commander to an undesirable post at Court Operations, and that the sheriff continued punishing him even after he was transferred by denying him a pay raise and taking the unprecedented step of directing that the lieutenant's rating on his annual evaluation be reduced from "exceeds expectations" to "meets expectations." The lieutenant was also denied the opportunity to interview for Chief of Police positions in 2006 and 2007, even though all lieutenants were allowed to interview even if they were considered unqualified. The court noted that two internal investigations were initiated against the lieutenant, which were ultimately dismissed as unfounded. (Orange County Sheriff's Department, California)

U.S. Appeals Court
SEARCHES

Braun v. Maynard, 652 F.3d 557 (4th Cir. 2011). Prison employees brought a § 1983 action against prison officials, alleging that a search using a portable ion scanning machine violated their Fourth Amendment rights. The district court granted the officials' motion to dismiss and the employees appealed. The appeals court affirmed. The court held that it was not clearly established that the use of an ion scanning machine to detect drugs and other chemicals could not create reasonable suspicion to justify a strip search, and therefore, prison officials were entitled to qualified immunity from the § 1983 action by prison employees alleging that a strip search following a positive scan violated the Fourth Amendment. The court found that it was not clearly established that the Fourth Amendment was violated by strip searches of prison employees conducted in a restroom with a same-sex prison officer following a positive test from an ion scanning machine that could detect drugs and other chemicals, and therefore, officers and officials were entitled to qualified immunity in the employee's § 1983 action. (Maryland Correctional Training Center)

U.S. District Court
FREE SPEECH
POLITICAL AFFILIATION
SUSPENSION

Corbin v. Gillen, 839 F.Supp.2d 376 (D.Mass. 2011). A correctional officer employed by a county sheriff's department brought a § 1983 action against the department's superintendent and assistant superintendent, alleging that the defendants violated his right to free speech by disciplining him for disparaging remarks he made to a county selectman. The officer's statements to the county selectman were made during a jail tour, during which the officer derided the current sheriff and criticized the sheriff's department. The defendants moved for summary judgment. The district court allowed the motion. The court held that the officer's statements were made in performance of his official duties, the officer's speech did not penetrate the realm of public concern, and the temporal proximity between the officer's displaying of a bumper sticker on his car and his suspension without pay was insufficient to establish a First Amendment political affiliation claim. (Plymouth County Sheriff's Department, Massachusetts)

U.S. Appeals Court
HOSTILE WORK
ENVIRONMENT
RACIAL
DISCRIMINATION

Ellis v. CCA of Tennessee LLC, 650 F.3d 640 (7th Cir. 2011). African-American former employees, who were nurses working in the health care unit of a privately run jail, sued their employer, claiming they were subjected to racial discrimination and a hostile work environment in violation of Title VII, and that they were constructively terminated in violation of a state whistleblower law. The district court granted summary judgment for the employer, and the employees appealed. The appeals court affirmed. The court held that the former employees were not subjected to a hostile work environment under Title VII or § 1981, despite their claims of derogatory references to "monkeys," confederate flag garb, skin-color comments, and disparate discipline and treatment based on race. (Marion County Jail II, Indiana, operated by Corrections Corporation of America)

U.S. District Court
STAFFING LEVELS
UNION

Federal Bureau of Prisons v. Federal Labor Relations Authority, 654 F.3d 91 (D.C. Cir. 2011). The Federal Bureau of Prisons (BOP) brought a Petition for Review from a final order of the Federal Labor Relations Authority (FLRA), holding that the BOP had a duty to bargain over its implementation of a “mission critical” standard for staffing at federal correctional institutions. The district court granted the petition, vacated and remanded. The appeals court held that the BOP was not required to bargain with the union before deciding that certain positions designated as non-critical were to be performed by relief officers and only as needed. The court noted that the collective bargaining agreement gave the agency the exclusive, non-negotiable right to assign work, but provided that the agency could bargain with a representative of its employees over procedures it would use when it exercised that authority. (American Federation of Government Employees, Council of Prison Locals No. 33, District of Columbia)

U.S. Appeals Court
DUE PROCESS
FAILURE TO PROTECT
STAFFING LEVELS
WORKING
CONDITIONS

Fields v. Abbott, 652 F.3d 886 (8th Cir. 2011). A female jailer brought a § 1983 action against a county, sheriff, county commissioners, and several other defendants, alleging violations of her substantive due process rights. The district court denied the sheriff's and commissioners' motion for summary judgment on the basis of qualified immunity and the defendants appealed. The appeals court reversed and remanded, finding that the defendants' failure to act was not deliberate indifference as to the safety of the jailer. According to the court, the sheriff's and county commissioners' awareness of potentially dangerous conditions in the jail, including that the jail was understaffed and that the drunk tank had an interior-mounted door handle, and failure to take action regarding those conditions, which resulted in the jailer being attacked and taken hostage by two inmates, was not deliberate indifference as to the safety of the jailer, as would violate the jailer's Fourteenth Amendment substantive due process rights on a state created danger theory. The court found that the defendants' failure to act was at most gross negligence, rather than deliberate indifference, and the jailer was aware of the conditions as she had been injured previously due to the handle and staffing issue, such that she could take these issues into account in interacting with inmates. (Miller County Jail, Missouri)

U.S. Appeals Court
FREE SPEECH
MARRIAGE
DEMOTION
TERMINATION
TRANSFER

Gaspers v. Ohio Dept. of Youth Services, 648 F.3d 400 (6th Cir. 2011). Married employees filed a § 1983 action asserting claims for retaliation and deprivation of the right to freedom of intimate association in violation of the First Amendment, against the Ohio Department of Youth Services and a juvenile facility. They alleged that the husband was terminated without just cause and the wife was transferred following publication of newspaper article about the employers' purported nepotism regarding husband-and-wife employees. The district court dismissed all claims against the employers and against the public officials in their official capacities, but denied qualified immunity in part to certain public officials. Those public officials appealed. The appeals court affirmed. The appeals court held that the husband's claim that he was terminated by the state agency and the wife's claim that she was demoted and transferred on the basis of their protected marital relationship constituted an undue intrusion by the state in that relationship, and therefore the married employees of the same state agency satisfied the adverse-action prong of their First Amendment retaliation claims against the public officials based on freedom of association. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the husband would have been fired in the absence of his protected marital relationship, and whether the wife would have been demoted and transferred in the absence of her protected marital association. According to the court, married employees' rights of intimate association were clearly established by the Supreme Court long before the husband was terminated and the wife was demoted and transferred, and, therefore, it was objectively reasonable to require public officials seeking qualified immunity on the married employees' First Amendment retaliation claim to be aware of and to observe that constitutional right. (Ohio Department of Youth Services, Ohio River Valley Juvenile Correctional Facility)

U.S. District Court
FREE SPEECH
RETALIATION
TERMINATION

Halkett v. Correctional Medical Services, Inc., 763 F.Supp.2d 205 (D.Me. 2011). An employee, a prison counselor, brought an action in state court against an employer alleging violations of the Maine Whistleblower Protection Act (MWPA) and the Maine Human Rights Act (MHRA). Following removal to federal court, the employer moved for summary judgment. The district court denied the motion. The court held that the prison counselor had a reasonable belief that his employer, the prison's medical provider, had improperly handled inmate treatment notes in violation of Maine law, and there was sufficient proximity between his complaints to the provider about misfiled and missing mental health care notes and his termination, so as to establish a prima facie case of violation of the Maine Whistleblower Protection Act (MWPA). The court held that summary judgment was precluded by genuine issues of material fact as to whether the prison medical provider's proffered reason for terminating the prison counselor--that he had violated policies regarding telephone contact by prisoners with those on the outside--was a pretext for what the counselor asserted was the actual reason for his termination, the counselor's many complaints to the provider about its lax and, in his view, unlawful procedures concerning inmate treatment records.(Correctional Medical Services, Inc., Downeast Correctional Facility, Maine)

U.S. Appeals Court
ASSOCIATION
FREE SPEECH
RETALIATION
WORKING
CONDITIONS

Hernandez v. Cook County Sheriff's Office, 634 F.3d 906 (7th Cir. 2011). County corrections officers who were investigated in connection with a jailbreak brought an action against the county sheriff's office and its officials, alleging, among other things, that the defendants retaliated against them in violation of their rights to free political association and free speech under the First Amendment. The district court denied the defendants' motion for summary judgment and the defendants appealed. The appeals court reversed and remanded. The court held that: (1) the defendants did not waive their qualified immunity argument as to the officers' First Amendment retaliation claims; (2) the officers' workplace safety complaints were not protected by the First Amendment; but (3) the appeals court would not decide the issue of whether the defendants were entitled to qualified immunity from First Amendment political retaliation claims because the district court had decided the matter was waived and had never reached a conclusion on that issue. The event that precipitated this case was a jailbreak at the Abnormal Behavior Observation (ABO) unit of the Cook County jail. An inmate had overpowered a jail officer after temporarily blinding him by throwing a cleaning solution in his face. The inmate then released seven other inmates from their cells. The inmates shut off the lights and set a diversionary fire, and the first inmate put on the officer's uni-

form. In the confusion, the disguised inmate convinced other jail officers to open certain internal doors, after which the inmates beat several officers. Using keys obtained from the subdued officers, six inmates managed to escape from the facility. They were soon recaptured and Sheriff's Office authorities immediately suspected that the inmates had help from within the Sheriff's Office. The plaintiffs in this case included six former officers of the Special Operations Response Team (SORT), and four other officers. The inmate who began the escape process identified three officers as having advance knowledge of the jailbreak and additional officers were then implicated. The inmate asserted that one of the officers had approached him multiple times with a proposition to stage a jailbreak to draw adverse attention to the leading Cook County Sheriff candidate, in advance of a pending election. The officers claimed that in the days following the jailbreak, investigators detained them under guard for up to 24 hours and denied them food, water and sleep. Several claimed that they were discouraged from contacting a union steward or an attorney. All of the plaintiffs were brought up on administrative charges. (Cook County Sheriff's Office, Illinois)

U.S. District Court
DISCRIMINATION
HOSTILE WORK
ENVIRONMENT
TITLE VII

Hunter v. County of Albany, 834 F.Supp.2d 86 (N.D.N.Y. 2011). A former county corrections officer who was a Native American brought an action against the county, asserting claims of unlawful discrimination and harassment in violation of Title VII of the Civil Rights Act of 1964 and New York State Human Rights Law. The county moved for summary judgment. The district court granted the motion. The court held that the officer did not suffer an adverse employment action, as required to establish a prima facie Title VII discrimination claim, as a result of a lone instance of being ordered to perform an irregular task by his supervisor. The court held that a supervisor's reference to the Native American county corrections officer and his co-workers as "cunts," and an inmate escape video portraying the officer and co-workers as "Keystone Cops," did not give rise to an inference of discriminatory intent as required to establish a prima facie Title VII discrimination claim, where the incidents at issue did not single the officer out on the basis of race or nationality, but portrayed the officer and co-workers in same light. The court concluded that the alleged misconduct suffered by the officer was not sufficiently continuous and concerted or severe and pervasive as to alter the officer's employment conditions and to create an abusive working environment, as required to support a Title VII hostile work environment claim. (Albany County, N.Y.)

U.S. District Court
EQUAL PROTECTION
LIBERTY INTEREST
SEX DISCRIMINATION
SEXUAL HARASSMENT

Konah v. District of Columbia, 815 F.Supp.2d 61 (D.D.C. 2011). A Liberian female formerly employed by a private health care corporation that contracted with the District of Columbia to provide medical treatment to inmates in a particular penitentiary, whose employment was terminated after she reported alleged harassment and assault and battery by inmates, sued the District and a correctional officer, claiming they violated the Fourth and Fifth Amendments, Title VII, the District of Columbia Human Rights Act (DCHRA), and common laws. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the employee adequately pled a claim that a correctional officer's failure to promptly open a "sally port" to allow her to escape inmates in their undergarments who allegedly surrounded her, jeered at her, used sexually explicit language, and grabbed her on the buttocks was an "unreasonable seizure of her person" in violation of the Fourth Amendment. The court found that the employee adequately pled a claim of discrimination on the basis of gender in violation of equal protection against the correctional officer, noting that her allegations that the officer and the District of Columbia "failed to remedy sexually offensive conduct by inmates," which included "gender specific abusive language" and "sexual assaults." The court also held that the employee adequately pled a due process claim against the correctional officer who deliberately refused to open the "sally port" because the officer prevented her exit and deprived her of her liberty. The court found that the correctional officer was not entitled to dismissal, on the basis of qualified immunity, of § 1983 claims brought by the employee where it was clearly established that the Fourth Amendment prohibited the detention of individuals without any cause, that the correctional officer's discrimination on the basis of sex violated the Fifth Amendment, and that the government could not deprive an individual of her liberty by detaining her without due process. (Unity Health Care, Inc., and the District of Columbia, Central Detention Facility)

U.S. District Court
ADA- Americans with
Disabilities Act
TRAINING
PROPERTY INTEREST

Robert v. Carter, 819 F.Supp.2d 832 (S.D.Ind. 2011). A former civil deputy process server brought an action against a sheriff, county, its council, and its board of commissioners, alleging that the defendants failed to grant him a medical exemption from stun gun training or to provide him with a reasonable accommodation, in violation of Americans with Disabilities Act (ADA). The deputy also alleged that the defendants terminated him in violation of his procedural and substantive due process rights. The defendants moved for summary judgment and the district court granted the motion. The court held that stun gun training was essential to the deputy's position and that an exemption from training was unwarranted. According to the court, the defendants had no obligation to consider the deputy's non-back-related ailments in determining a reasonable accommodation, and the deputy had no property interest in continued employment. (Hamilton County Sheriff's Department, Indiana)

U.S. District Court
TERMINATION
FREE SPEECH
RETALIATION
DUE PROCESS

Smith v. Michigan Dept. of Corrections, 765 F.Supp.2d 973 (E.D.Mich. 2011). A Michigan Department of Corrections (MDOC) employee, a prison guard who was fired from his job and subsequently reinstated, brought an action against the MDOC and MDOC officials. The guard alleged, among other things, that the defendants denied him certain pre-termination procedures in violation of the Fifth and Fourteenth Amendments, and that the defendants retaliated against him in violation of Title VII. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) the employee stated a procedural due process claim; (2) the employee's filing of an internal complaint with the MDOC's Equal Employment Opportunity (EEO) office was protected conduct; (3) the employee stated a First Amendment retaliation claim; and (4) the defendants were not entitled to immunity from tortious interference and conspiracy claims under Michigan's Governmental Tort Liability Act. (Parnall Correctional Facility, Michigan)

U.S. District Court PHYSICAL REQUIREMENTS BFOQ- Bona Fide Occupational Qualification SEX DISCRIMINATION TITLE VII	<p><i>U.S. v. Massachusetts</i>, 781 F.Supp.2d 1 (D.Mass. 2011.) The United States of America brought an action against the Commonwealth of Massachusetts, seeking an order enjoining the Commonwealth from administering a physical abilities test in the selection of correctional officers due to its alleged disparate impact on women in violation of Title VII. Both parties moved for summary judgment. The district court granted the motions in part and denied in part. The court held that the Commonwealth's use of the test unintentionally imposed a disparate impact on women, and an issue of material fact existed as to whether the test was job related and consistent with a business necessity. The court noted that in two out of three years in which the test was conducted, the disparity between male and female pass rates well exceeded two-to-three standard deviations, the range considered statistically significant in the context of disparate impact. (Massachusetts Department of Corrections)</p>
U.S. District Court DISCIPLINE EQUAL PROTECTION PROMOTION QUALIFICATIONS SEX DISCRIMINATION TITLE VII BFOQ- Bona Fide Occupational Qualification	<p><i>White v. Department of Correctional Services</i>, 814 F.Supp.2d 374 (S.D.N.Y. 2011). A female correction officer brought an action against New York State, the New York State Department of Correctional Services (DOCS), and supervisory officers, alleging violations of Title VII and § 1983. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether reasonable alternatives existed to the prison's gender-based hiring policy under which the officer in charge (OIC) position was posted for male corrections officers only, in light of the fact that the urine testing and strip frisks of male prisoners comprised only a small part of the OIC's job duties and that female officers had worked the OIC position in the past. The court also found that summary judgment was precluded by genuine issues of material fact as to whether the notice of discipline against the female corrections officer, which threatened severe consequences such as dismissal from service and loss of accrued annual leave, as well as a counseling memoranda and negative comment in the officer's performance evaluation, were sufficient to dissuade a reasonable worker from making or supporting a charge of sex discrimination.</p> <p>According to the court, summary judgment was precluded by genuine issues of material fact as to whether the proffered reason for a notice of discipline and counseling memoranda against the female corrections officer, that she had violated Department of Correctional Services (DOCS) policies by leaving her post and entering an area in which she was not allowed, were a pretext for retaliation for the officer's having filed sex discrimination complaints with a state agency and her union. The court found that genuine issues of material fact as to whether a supervisory officer and the prison's superintendent were personally involved in the male-only designation of the officer in charge (OIC) position precluded summary judgment on the female corrections officer's § 1983 claim alleging her right to equal protection was violated when these officials discriminated against her because of her gender by denying her the OIC position, on the grounds that the female officer had not established the officials' supervisory liability. (Lincoln Correctional Facility, New York)</p>
U.S. District Court ADA-Americans with Disabilities Act DUE PROCESS FREE SPEECH RETALIATION	<p><i>Zembiec v. County of Monroe</i>, 766 F.Supp.2d 484 (W.D.N.Y. 2011). A deputy sheriff jailor brought an action under the Americans with Disabilities Act (ADA), § 1983, and § 1985 against a county, sheriff's department, sheriff and undersheriff, seeking damages for alleged violations of his rights. The defendants moved for judgment on the pleadings. The district court granted the motion. The district court held that the deputy's medical records were not published on jail computers in retaliation for his speech on matters of public concern, and that the publication was not sufficiently shocking to violate substantive due process. The court noted that there was no allegation that the officials were involved with the posting. The court found that procedural due process was not violated by the fact the deputy was forced to use up his sick leave because he was denied disability payments. According to the court, the deputy failed to state a valid civil rights conspiracy claim and failed to state a claim against the sheriff for inadequate training and supervision or against the county on the theory of municipal liability. The court noted that the deputy sheriff jailor's complaints about alleged corruption and misconduct within the county sheriff's department sufficiently alleged he engaged in speech about matters of public concern protected by First Amendment, for the purposes of his retaliation claim. (Monroe County Jail, New York)</p>
2012	
U.S. District Court DRUG TESTING	<p><i>Allen v. Schiff</i>, 908 F.Supp.2d 451 (S.D.N.Y. 2012). A former county corrections officer brought a civil rights action against a county sheriff and a county for constitutional violations allegedly arising out of the administration of a mandatory, random drug test. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact regarding the reasonableness of the drug testing program, which required the county corrections officer--who had not refused or failed a prior drug test-- to provide a urine sample while being directly observed from the front. According to the court, the sheriff had final policymaking authority on the manner in which testing was administered to department employees, such that the county could be liable under § 1983 to the extent that this testing violated the Fourth Amendment. The sheriff had spearheaded the change in the mandatory, random drug testing policy for corrections officers employed by the county sheriff's department, and he directed the entity performing the tests to directly observe the collection of urine samples from corrections officers. (Sullivan County Sheriff's Department and Jail, New York)</p>
U.S. District Court PROSECUTION DISCIPLINE	<p><i>Amobi v. District of Columbia Government</i>, 882 F.Supp.2d 78 (D.D.C. 2012). A corrections officer brought an action against other officers, a prison director, and the District of Columbia, alleging false arrest and malicious prosecution. The defendants moved for summary judgment. The district court granted the motion. The court held that the officer could not assert false arrest and malicious prosecution claims against other corrections officers for reporting his restraint of a transgender inmate, which resulted in criminal charges against the officer, even though the assault charges were eventually dropped against the officer upon the inmate's admission that he had provoked the officer. The court noted that the reporting officers described what they observed and provided probable cause for the arrest and prosecution. (District of Columbia Jail)</p>

U.S. Appeals Court
FREE SPEECH
RETALIATION
EQUAL OPPORTUNITY
TERMINATION

Brooks v. Arthur, 685 F.3d 367 (4th Cir. 2012). Terminated employees of the Virginia Department of Corrections brought a § 1983 action against two supervisors, in their individual capacities, alleging retaliation. The district court granted the supervisors' motion to dismiss and the employees appealed. The appeals court affirmed. The court found that one correction officer's speech could not be fairly characterized as constituting speech on a matter of public concern, as required for protection under the First Amendment. According to the court, the officer's concern had not been expressed in terms of a breakdown in effective prison management, but rather had been focused on his personal displeasure with his supervisors, the complaint had been made in the context of the Equal Employment Opportunity (EEO) process, and the officer did not seek anything other than improvement of his own situation. The court held that another correction officer's termination after his involvement in another employee's Equal Employment Opportunity (EEO) complaint that was intended solely to address the other employee's personal grievances, and not any matters of public concern, did not give rise to a claim under the First Amendment free speech clause. (Virginia Department of Corrections, Rustburg Correctional Unit # 9)

U.S. District Court
UNION

Corrections U.S.A. v. McNany, 892 F.Supp.2d 626 (M.D.Pa. 2012). A national association of correctional officers brought a diversity action against a state association of correctional officers and the association's officers, alleging interference with an existing contract, interference with a business relationship, and interference with prospective relations. The defendants moved for summary judgment. The district court granted the motion. The district court held that: (1) there was no evidence that the actions of the state association's executives interfered with the relationship between the national association and its members; (2) the state association president's letter to members regarding the decision to withdraw its organizational membership in the national association did not breach a privilege; (3) there was no evidence that the state association acted with the specific purpose of harming the national association or that the alleged interference and harm were ever carried out intentionally; and (4) no prospective contractual relations existed between the national association and individual correctional officers in Pennsylvania. The court noted that under Pennsylvania law, the president of the state association of correctional officers was acting in his official capacity by sending a letter to the association's members notifying them of the executive board's decision to withdraw its organizational membership in a national association of correctional officers, and thus, the president was not a third party to the contract between the state association and the national association for purposes of the action by the national association for interference with a contract. According to the court, the president's letter constituted the type of work the state association's president was intended to perform, fell substantially and clearly within the authorized time and space limit of the president's employment, and helped actuate, at least in part, the executive board's new policy. (Pennsylvania State Corrections Officers Association, Corrections U.S.A.)

U.S. Appeals Court
EQUAL PROTECTION
HOSTILE WORK
ENVIRONMENT
SEXUAL HARASSMENT

Crutcher-Sanchez v. County of Dakota, 687 F.3d 979 (8th Cir. 2012). A female former county correctional officer filed suit, pursuant to §§ 1983 and 1985, against her employer, a sheriff, a supervisor, and a co-worker who was later promoted to supervisor, claiming that the sheriff and supervisor created or fostered a sexually hostile work environment, and that the supervisor and co-worker conspired to deprive the employee of equal protection. The district court denied the defendants summary judgment on qualified immunity grounds and the defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that: (1) the supervisor was not entitled to qualified immunity from the hostile work environment sexual harassment claim; (2) the employee was not the victim of a civil rights conspiracy; and (3) the sheriff did not subject the employee to a sexually hostile work environment. The court found that the supervisor's harassing conduct started shortly after the employee began working at the jail and included the supervisor looking the employee "up and down" during work, driving to a parking lot of her second job while repeatedly calling her on the telephone, subjecting her to constant sexual attention, and asking her to not tell anyone about their sexual relationship. The court found that the supervisor's unwelcome sexual harassment directed toward the female officer was sufficiently severe or pervasive to alter the conditions of her employment and create a hostile work environment in violation of the Fourteenth Amendment, where the supervisor took advantage of employee when she was intoxicated and vulnerable, the employee felt harassed by the supervisor's leering, the employee was subject to sexual attention by the supervisor during nearly her entire employment with the county, and the employee was fired for ending her sexual relationship with the supervisor. The court held that the supervisor was not entitled to qualified immunity from the female correctional officer's § 1983 claim since it was clearly established at the time of the harassment that the supervisor's attempt to have sex with a subordinate violated the subordinate's civil rights. According to the court, the sheriff's offer of a box of chocolates to the female correctional officer, and asking her out several times, was not sufficiently severe or pervasive conduct to create a sexually hostile work environment, as required to support the officer's § 1983 claim for sexual harassment in violation of Fourteenth Amendment equal protection, since the sheriff's inappropriate acts were not so intimidating, offensive, or hostile as to poison the work environment. (Dakota County Jail, Nebraska)

U.S. District Court
ADA- Americans with
Disabilities Act
HARASSMENT
HOSTILE WORK
ENVIRONMENT
SEXUAL HARASSMENT
SUPERVISION
TITLE VII

Davis v. Vermont, Dept. of Corrections, 868 F.Supp.2d 313 (D.Vt. 2012). A former employee of the Vermont Department of Corrections (DOC), who worked as a prison guard, brought an action against his former employer, alleging, among other things, that he was retaliated against in violation of the Americans with Disabilities Act (ADA) and that he was sexually harassed on the basis of his sex in violation of Title VII and the Vermont Fair Employment Practices Act (VFPEA). The employer moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that: (1) as a matter of first impression, the employer was immune from the employee's ADA retaliation claim; (2) the employee stated a Title VII hostile work environment claim based on harassing conduct that suggested the employee failed to conform to gender stereotypes; (3) the employee sufficiently stated that he was disabled under the Rehabilitation Act; (4) the employer failed to show that any perceived impairment of the employee was both transitory and minor, as a defense to the Rehabilitation Act claim; (5) the alleged incidents were sufficiently severe to alter the conditions of the employee's employment, as supported by the hostile work environment claims; (6) the alleged harassment by co-workers and inmates could be imputed to the employee's supervisors for purposes of holding the employer vicari-

ously liable; and (7) there was a causal connection between the employee's protected activity and the adverse employment actions, as supported a prima facie case of retaliation. The court found that although images sent to the male DOC employee in e-mails by his supervisors and co-workers referring to genitalia may have been tinged with offensive sexual connotations, the images did not constitute discrimination because of sex, as would support the employee's Title VII sexual harassment claim, where no inference could be drawn that the conduct was due to general hostility to the presence of males in the workplace or that it was due to the disparate treatment of members of the opposite sex. According to the court, allegations in the employee's second amended complaint that a supervisor sent him an e-mail stating "way to milk it, buddy," referring to the time the employee took off due to a work-related testicular injury, and that a male inmate stated, "good luck making kids with that package," sufficiently stated a Title VII hostile work environment claim based on harassing conduct that suggested the employee failed to conform to gender stereotypes. The court held that the alleged incidents in which supervisors of the employee, a prison guard who sustained a work-related testicular injury, sent the employee two e-mails on consecutive days containing explicit references to his genital pain, the e-mails were circulated to other staff, and were hung in a mail room where employees, both male and female, could see them, the employee received a threatening note in his mailbox after he returned from hernia surgery that stated "how's your nuts/kill yourself/your done," and the employee was copied on an e-mail containing a cartoon drawing of someone with gun to his head with the caption "Kill Yourself," were sufficiently severe to alter the conditions of the employee's employment, as supported his hostile work environment claims based on disability discrimination under the Rehabilitation Act and the Vermont Fair Employment Practices Act (VFPEA). (Vermont Department of Corrections)

U.S. Appeals Court
 EQUAL PROTECTION
 HOSTILE WORK
 ENVIRONMENT
 PROMOTION
 SEXUAL HARASSMENT

Duncan v. County of Dakota, Neb., 687 F.3d 955 (8th Cir. 2012). A female former county employee brought a § 1983 action against a county, a supervisor, and others, alleging hostile-work-environment, sexual harassment, and constructive discharge in violation of the Equal Protection Clause of the Fourteenth Amendment. The district court denied the supervisor's motion for summary judgment, and he appealed. The appeals court reversed and remanded, finding that the supervisor's alleged conduct was not so objectively severe, extreme, or intimidating as to alter the term, condition, or privilege of the employee's employment. The supervisor allegedly engaged in sexual favoritism and traded preferential treatment for sexual favors. According to the court, the supervisor's alleged conduct had not been physically threatening or humiliating to the officer, the supervisor had not denied the officer any benefits or opportunities, and any promotion for which the officer had been available had not gone to any employee who had had a sexual relationship with the supervisor. (Dakota County Jail, Nebraska)

U.S. District Court
 ADA- Americans with
 Disabilities Act
 ADEA- Age Discrim. in
 Employment Act
 FMLA- Family Medical
 Leave Act
 RACIAL DISCRIM.
 TITLE VII
 TRANSFERS

Fields v. Department of Public Safety, 911 F.Supp.2d 373 (M.D.La. 2012). A Black female employee brought an action against a state and its department of public safety (DPS), alleging violations of Title VII, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and the Family and Medical Leave Act (FMLA). The state moved to dismiss. The district court granted the motion in part and denied in part. The court held that the employee's allegations that she was denied a request for transfer while a white employee was granted a transfer were sufficient to state a disparate treatment claim in violation of Title VII against the state department of public safety. The court noted that the Family and Medical Leave Act (FMLA) does not provide for recovery of punitive damages. (Elayn Hunt Correctional Center, Louisiana)

U.S. District Court
 DISCRIMINATION
 FREE SPEECH
 PROMOTION
 QUALIFICATIONS
 RELIGION
 RETALIATION
 TERMINATION
 TITLE VII

Finnie v. Lee County, Miss., 907 F.Supp.2d 750 (N.D.Miss. 2012). A female Pentecostal juvenile detention officer brought an action against a county and a sheriff, alleging that her termination violated her First Amendment rights of free speech and free exercise of religion and that it was religious and gender discrimination and retaliation under Title VII. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) the county's pants-only uniform policy did not violate the Free Exercise Clause; (2) the officer was not replaced by someone outside her protected class as a female; (3) the uniform policy was not sex discrimination or sex stereotyping; (4) requiring the county to offer the officer an exemption to the uniform policy would subject the county to undue hardship; and, (5) the officer did not show that the county's proffered reason for her termination was a pretext for discrimination. According to the court, requiring the county employer to offer the Pentecostal female juvenile detention officer an exemption to its "no skirts" policy as a religious accommodation would subject the county to undue hardship, and thus, policy was not religious discrimination under Title VII. The court noted that there were legitimate safety concerns presented from female officers wearing skirts, including impairment of an officer's ability to perform defense-tactic maneuvers because of the likelihood that an assailant could pin the material of the skirt to the floor with his knees, preventing the officer from moving her body to perform maneuvers, and the female officer, who lacked a GED certificate at the time she worked for the county, was not qualified for vacant positions which would allow her to wear skirt. But the court found that summary judgment was precluded by an issue of material fact as to whether the county's proffered reason for terminating the officer was a pretext for retaliation, where less than one month passed between the filing of a charge and the officer's termination. (Lee County Juvenile Detention Center, Mississippi)

U.S. Appeals Court
 PROBATION
 RACIAL
 DISCRIMINATION
 TERMINATION

Harris v. Warrick County Sheriff's Dept., 666 F.3d 444 (7th Cir. 2012). An African American former deputy sheriff sued a sheriff's department under a federal civil right statutes, alleging that he was terminated from his probationary employment due to his race. The district court granted summary judgment for the department and the former deputy appealed. The appeals court affirmed. The appeals court held that: (1) coworkers' use of racially tinged nicknames and workplace exposure to excerpts from a movie apparently perceived as treating racism as acceptable did not establish that the former deputy was terminated due to his race, and (2) the department's different treatment of white deputy sheriffs who had performance problems during their probationary employment did not establish that former deputy was terminated due to his race. (Warrick County Sheriff, Indiana)

U.S. District Court
EQUAL PROTECTION
FREE SPEECH
LIBERTY INTEREST
DISCIPLINE
SEX DISCRIMINATION

Kinney v. Anglin, 889 F.Supp.2d 1101 (C.D.Ill. 2012). A female employee, and instructor at a state correctional facility, brought an action against facility officials and supervisors, alleging a due process violation, an equal protection violation on the basis of gender, and retaliation in violation of the First Amendment. Following the grant, in part, of the defendants' motion to dismiss, the defendants moved for summary judgment. The district granted the motion in part and denied in part. The court held that the instructor did not have a liberty interest in working at the facility and there was no evidence that the instructor suffered a tangible loss of other employment opportunities as the result of her public disclosure. According to the court, the instructor's complaint regarding misappropriation of funds to her supervisors was made pursuant to her official duties, while her complaint to a state agency regarding concerns of governmental waste by her supervisors was made as a citizen on a matter of public concern. The court found that the terminated female construction trade instructor demonstrated that she was similarly situated to a male contractual employee at the facility, as required to support a prima facie case of discrimination in her § 1983 action alleging violation of her equal protection rights based on gender. According to the court, although the male employee was given a stop order for fraternization, whereas the female instructor was given a stop order for allegedly encouraging false allegations of sexual harassment, such distinction was not material, as the conduct of both employees violated the facility's rules, and if true, would have been appropriate grounds for the entry of a stop order. (Danville Correctional Center, Illinois)

U.S. Appeals Court
DEMOTION
FREE SPEECH
TRANSFER

Mosholder v. Barnhardt, 679 F.3d 443 (6th Cir. 2012). A corrections officer at a state correctional facility sued corrections officials, asserting a First Amendment retaliation claim regarding her transfer from a school officer position to a general corrections officer position. Following the defendants' removal of the action from state court, the district court granted summary judgment against the officer, and she appealed. The appeals court reversed and remanded. The court held that a letter by the corrections officer to elected officials, which was critical of a rap music competition for youthful offenders at a school where she worked, primarily addressed a matter of public concern, for purposes of determining whether it was protected by the First Amendment, regardless of her personal motivation, including her own desire to see different policies enacted. The court noted that the letter lodged complaints about the administration of a public safety facility that, in her view, promoted behavior that could offend victims and their families, and also potentially put prisoners and staff immediately, and the general public eventually, at risk. (Thumb Correctional Facility, Michigan)

U.S. District Court
CONTRACT
DUE PROCESS
UNION

New York State Correctional Officers & Police Benev. Ass'n, Inc. v. New York, 911 F.Supp.2d 111 (N.D.N.Y. 2012). A state employees union representing correctional officers and police officers, and its president, on behalf of themselves and all others similarly situated, brought an action against the State of New York and various public officials, alleging that defendants unilaterally increased the percentage of contributions that plaintiffs were required to pay for health insurance benefits in retirement, and, thereby, violated the Contracts Clause and Due Process Clause, impaired the plaintiffs' contractual rights under the terms of their collective bargaining agreement (CBA), and violated state law. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the request of state employees union and its president, for an order declaring unconstitutional the law increasing the percentage of contributions that plaintiffs were required to pay for health insurance benefits in retirement, was prospective, and therefore not barred by the Eleventh Amendment. According to the court, the union and its president sufficiently brought a state law contractual impairment claim against state officials, by alleging that the state officials' implementation of reduced contribution rates to plaintiffs' health insurance benefits in retirement was not authorized by state law. The court held that the union and its president sufficiently alleged in its § 1983 action that state officials' implementation of reduced contribution rates to plaintiffs' health insurance benefits in retirement was beyond the scope of the officials' authority as public officials, as required to defeat the state officials' motion to dismiss based on legislative immunity. The court also found that the union and its president pled sufficient facts suggesting that the state defendants' actions violated the parties' collective bargaining agreement (CBA), past state practices, and representations made by the state, and were not reasonable and necessary to meet a stated legitimate public purpose, as required to state a Contracts Clause claim against state defendants. (New York State Correctional Officers & Police Benevolent Association, Inc.)

U.S. District Court
CONTRACT
DUE PROCESS
UNION

Roberts v. New York, 911 F.Supp.2d 149 (N.D.N.Y. 2012). Retired state employees brought an action against the state of New York, state departments, and state officials, alleging that the defendants unilaterally increased the percentage of contributions that retired employees were required to pay for health insurance benefits in retirement and violated the Contracts Clause and Due Process Clause of the United States Constitution, impaired the retired employees' contractual rights under terms of their collective bargaining agreement (CBA), and violated state law. The retirees sought injunctive relief, declaratory judgments and monetary damages. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The district court held that: (1) claims against the state of New York and state departments were barred by the Eleventh Amendment; (2) the allegations stated a claim against state officials for violation of the Contracts Clause; and (3) the allegations stated a Fourteenth Amendment due process claim against state officials. According to the court, the retired state employees' allegations that state officials did not issue a declaration or any other kind of finding stating that it was necessary to raise the contribution rates, that raising the contribution rate was not part of a state budget, that the only "rationale" or "purpose" asserted by the officials was that it was necessary to implement negotiated agreement between the State and the bargaining unit, that a substantial impairment on the retirees' rights defeated the significant public purpose, and that the unilateral implementation of the reduced contribution rates violated the collective bargaining agreement (CBA) and was an abuse of power, were sufficient to suggest that the officials' actions were not reasonable and necessary, as required to sustain their claim against state officials for violation of the Contract Clause. (Council 37, American Federation of State, County and Municipal Employees, New York)

U.S. Appeals Court
FAILURE TO PROTECT
PROSECUTION

U.S. v. Wilson, 686 F.3d 868 (8th Cir.2012). Following the denial, in part, of his motion to suppress evidence, the defendant, the chief administrator of a county jail, was convicted, by a jury in the United States District Court of four counts of deprivation of rights and two counts of making false statements, arising out of injuries caused to

four inmates. He appealed. The appeals court affirmed. The appeals court held that the district court did not err in applying the physical-restraint enhancement where the defendant violated his victims' constitutional rights while they were prisoners locked up in enclosed areas in a county jail, and the jury found that he purposefully moved two of them from cells where they were safe so that they would be assaulted in a cell holding violent inmates. The court noted that not only did the administrator, in moving the two prisoners, insinuate that the other inmates should assault them, but he rewarded the assaulting inmates with cigarettes after each of the incidents. The district court sentenced the administrator to 120 months' imprisonment on each of the § 242 counts, and 60 months' imprisonment on each of the § 1001 counts, with all terms to be served concurrently. (Washington Co. Jail, Mo.)

U.S. District Court
RACIAL
DISCRIMINATION
RETALIATION

Washington v. California City Correction Center, 871 F.Supp.2d 1010 (E.D.Cal. 2012). A discharged African-American employee, who worked as corrections officer, brought an action against her former employer alleging, among other things, that she was discriminated against on basis of her race in violation of California Fair Employment and Housing Act (FEHA), and wrongfully terminated in violation of public policy. The employer moved for summary judgment. The district court granted the motion in part and denied in part. The court found genuine issues of material fact as to whether the discharged African-American corrections officer exhausted her administrative remedies with respect to her claim that her employer failed to prevent racial discrimination, and as to whether actionable discrimination occurred, precluding summary judgment as to the employee's failure to prevent discrimination cause of action under the California Fair Employment and Housing Act (FEHA). The court held that the African-American corrections officer's allegations in her administrative complaint that her employer subjected her to a wrongful investigation of inappropriate behavior because of her race, and that the employer retaliated against her by wrongfully investigating her behavior after she complained to the employer about her supervisor's racially motivated discrimination, were sufficient to encompass claims of retaliation under the California Fair Employment and Housing Act (FEHA), for administrative exhaustion purposes. (California City Correction Center, CCA of Tennessee)

U.S. Appeals Court
HOSTILE WORK
ENVIRONMENT
SEX DISCRIMINATION
SEXUAL HARASSMENT

Williams v. Herron, 687 F.3d 971 (8th Cir. 2012). A female correctional officer brought a § 1983 action against a county and a former chief deputy sheriff, who were her employers, alleging gender discrimination in violation of her Fourteenth Amendment rights. The district court entered an order denying the sheriff's motion for summary judgment and the sheriff appealed. The appeals court affirmed, finding that the sheriff's sexual harassment was sufficiently severe and pervasive to alter the conditions of the officer's employment, and the officer had a clearly established right to be free from a hostile work environment. The court found that the female correctional officer's conduct in informing the chief deputy sheriff that she was uncomfortable continuing their sexual relationship was sufficient to demonstrate that the sheriff's continued actions in grabbing and hugging her were unwelcome, as required to prevail on her hostile-work-environment claim for sexual harassment under the Fourteenth Amendment. The court noted that the chief deputy sheriff had previously used sexual coercion to entice other female employees, and once an officer began viewing the sheriff's conduct as unwelcome, her employment status became jeopardized. (Dakota County Jail, Nebraska)

2013

U.S. District Court
FREE SPEECH
RETALIATION
TERMINATION

Caruso v. City of New York, 973 F.Supp.2d 430 (S.D.N.Y. 2013). A former Inspector General at the New York City Department of Investigation (DOI), who was responsible for the Department of Correction (DOC) brought an action pursuant to § 1983 and state law alleging that he was terminated by his former employer in retaliation for his truthful testimony before a grand jury investigating whether the then-Commissioner of the DOC had attempted to influence criminal and administrative investigations of a corporation, and had received undisclosed benefits from the corporation in the form of an apartment renovation. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by fact issue as to whether the defendants would have made the decision to terminate the plaintiff in the absence of his grand jury testimony. (New York City Department of Correction)

U.S. District Court
ASSOCIATION
FREE SPEECH
MARRIAGE
WORK RULES

Corso v. Fischer, 983 F.Supp.2d 320 (S.D.N.Y. 2013). A correctional officer brought an action against the Commissioner of the New York Department of Corrections and Community Supervision's (DOCCS), alleging DOCCS's work rule prohibiting personal association of DOCCS employees with current and former inmates and their associates was overbroad, in violation of the First Amendment. The parties cross-moved for summary judgment. The district court granted the officer's motion. The court held that the work rule was facially overbroad in violation of the First Amendment, where DOCCS had enforced the rule against the officer and denied her the right to associate with her former husband and the father of her grandchild.

The court found that the rule was not narrowly tailored to further the State's compelling interest in maintaining safe and orderly administration of its prisons, as applied to constitutionally protected close familial relationships, and thus, did not withstand strict scrutiny on the First Amendment overbreadth claim. The court noted that the rule provided no temporal or geographical limitation with respect to the former inmate's incarceration, nor did its prohibition account for variations in the seriousness of that person's offense or his or her prison disciplinary history. The court found that the rule was substantially overbroad, in violation of the First Amendment, as applied to close familial relationships, where the rule would prevent a DOCCS employee from visiting, or even corresponding with an incarcerated spouse if the couple had no children or if their children did not maintain a relationship with the incarcerated parent, and the rule prohibited employees from ever reestablishing contact with a spouse, child, sibling, or parent when that person was released and became a "former inmate." (New York State Department of Corrections and Community Supervision)

<p>U.S. District Court DEMOTION POLITICAL AFFILIATION PROMOTION RETALIATION SEX DISCRIMINATION TITLE VII TRANSFERS</p>	<p><i>Ezell v. Darr</i>, 951 F.Supp.2d 1316 (M.D.Ga. 2013). Female county deputy sheriffs brought an action against a sheriff and a city consolidated government, alleging under § 1983 that the sheriff retaliated against them for their political support of a former sheriff's reelection bid, and that they were denied promotion and demoted because of their gender. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that under Georgia law, loyalty to an individual sheriff and the goals and policies he sought to implement through his office was an appropriate requirement for the effective performance of a deputy sheriff, and thus the sheriff did not violate the First Amendment by transferring deputies who did not support him in an election. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the sheriff's proffered legitimate, non-discriminatory reason for promoting a male deputy to the position of captain of jail administration, rather than the female deputies--namely, that the male deputy had relevant experience and that he was the only candidate who had been working in that area for years under a captain the sheriff was seeking to replace-- was a pretext for gender discrimination in violation of Title VII and § 1983. The court also found a genuine issue of material fact as to whether the male county sheriff's proffered legitimate, non-discriminatory reason for denying a female deputy comp time, namely, that the deputy had been exempt from accruing comp time for 20 years, was a pretext for gender discrimination. The court held that the newly-elected male sheriff's proffered legitimate, non-discriminatory reason for transferring the female deputy from the position of jail commander to a clerk of the Recorder's Court-- that the sheriff was dissatisfied with the way jail had been operating under the deputy and he felt that members of the deputy's staff were unprofessional-- was not a pretext for gender discrimination. (Muscogee County Sheriff, Muscogee County Jail, Georgia)</p>
<p>U.S. District Court ADA-Americans with Disabilities Act PHYSICAL REQUIREMENTS RACIAL DISCRIMINATION PSYCHOLOGICAL SCREENING RETALIATION</p>	<p><i>Franklin v. City of Slidell</i>, 936 F.Supp.2d 691 (E.D.La. 2013). An African-American formerly employed by a city as a senior corrections officer in a police department filed a pro se race and disability discrimination and retaliation suit against a city, six city employees, and a doctor who performed a psychological evaluation on the employee and found that he was not fit for duty as a law enforcement officer. The former employee alleged they violated the Americans with Disabilities Act (ADA) and regulations. The district court granted the doctor's motion to dismiss for failure to state a claim. The city and the employees moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The district court held that the officer adequately pleaded that he was disabled within the meaning of ADA, and that the officer's ADA claim stemming from being required to undergo medical and psychological fitness for duty examinations before returning to work from sick leave would not be dismissed for failure to exhaust administrative remedies, for the officer's failure to plead he was a "qualified individual with a disability," or on account of a business necessity exception. (Slidell Police Department, Louisiana)</p>
<p>U.S. Appeals Court DEMOTION FREE SPEECH RETALIATION</p>	<p><i>Haverda v. Hays County</i>, 723 F.3d 586 (5th Cir. 2013). A corrections officer brought an action against a county, the sheriff's office, and the sheriff, alleging retaliation in violation of the First Amendment. The district court granted summary judgment for the defendants. The officer appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by genuine issues of fact as to: (1) whether the corrections officer's protected speech motivated his demotion; (2) whether the corrections officer would have been demoted in the absence of his protected speech; and (3) whether the corrections officer's First Amendment speech rights were violated by his demotion. The court held that the officer's writing of a letter to the editor was speech made as a citizen, rather than in his role as a public employee, and therefore, the letter was protected by the First Amendment, for purposes of his retaliation claims. The court noted that the officer wrote the letter during an election campaign, the letter expressed support for the incumbent and criticized his political opponent, the officer did not receive compensation for the letter, the letter was public, and it was not part of the officer's duties to speak to the media or write letters to the editor. (Hays County Sheriff's Office and Jail, Texas)</p>
<p>U.S. Appeals Court DISCIPLINE PROSECUTION</p>	<p><i>Keith v. Koerner</i>, 707 F.3d 1185 (10th Cir. 2013). A female former prison inmate who was impregnated as a result of her vocational-training instructor's unlawful sexual acts brought a § 1983 action against a former warden and other Kansas Department of Corrections employees. The defendants moved to dismiss. The district court granted the motion in part, but denied qualified immunity for the former warden, who appealed. The appeals court affirmed. The court held that the former prison inmate adequately alleged that the former warden violated a clearly established constitutional right, precluding qualified immunity for the warden in the § 1983 action alleging that the warden was deliberately indifferent to sexual abuse by the vocational-training instructor. According to the court, the inmate alleged that the warden had knowledge of the abuse but failed to properly investigate or terminate staff when abuse allegations were substantiated, and that the prison's structural policy problems contributed to abuse by failing to address known problems with the vocational program or to use cameras to monitor inmates and staff. (Topeka Correctional Facility, Kansas)</p>
<p>U.S. District Court CONTRACTORS HARASSMENT HOSTILE WORK ENVIRONMENT TERMINATION TITLE VII</p>	<p><i>Konah v. District of Columbia</i>, 915 F.Supp.2d 7 (D.D.C. 2013). A Liberian female formerly employed as a Licensed Practical Nurse (LPN) by a private health care corporation that contracted with the District of Columbia to provide medical treatment to inmates in a penitentiary, whose employment was terminated after she reported alleged harassment and assault and battery by inmates while administering medication to them, sued the District and a correctional officer, claiming they violated the Fourth and Fifth Amendments, Title VII, the District of Columbia Human Rights Act (DCHRA), and common laws. The district court partially granted the defendants' motion to dismiss for failure to state a claim. The employer and correctional officer moved for summary judgment, and the District of Columbia moved for judgment on the pleadings. The district court granted the motions in part. The court held that under District of Columbia law, the correctional officer did not assault, batter, or intentionally inflict emotional distress on the nurse absent evidence he delayed opening the front gate to a corridor outside the unit, in response to the LPN's request so she could get away from inmates making lewd and sexually threatening comments, with the intention that she suffer assault, battery or emotional distress. According to the court, the reason for his delay was that there were inmates in the sally port who would have been able to escape confinement if he opened gate. The court found that the private health care corporation was not liable for a hostile work envi-</p>

ronment allegedly created for the LPN when on one occasion inmates made lewd and sexually threatening comments toward her and one grabbed her buttocks while she was administering medication to them. The court found that the corporation took reasonable and appropriate corrective steps to prevent harassment and to ensure that the environment for its nurses at the detention facility would be a safe and non-hostile job situation in a jail requiring direct contact with inmates could be, and the LPN knew of escort policy and a sick call room policy and was apparently in violation of those policies when the incident in question took place. But the court found that the District of Columbia was not entitled to judgment on the pleadings with regard to the LPN's allegations that the District did not sufficiently train its employees in the Department of Corrections to ensure that nurses employed by the private health care corporation which was contracted to provide medical care for inmates at the detention facility were not subjected to constant gender-based lewd and nasty catcalls or acts by inmates. The court held that the LPN's allegations were sufficiently clear and detailed to make out a § 1983 cause of action based on *Monell* liability for a policy or custom, and importantly, the LPN had alleged sufficient facts to state a claim that District officials knew of the problem and that their failure to address it was deliberately indifferent. (Unity Health Care, Inc., Central Detention Facility, District of Columbia)

U.S. District Court
CONTRACTORS
DUE PROCESS
EQUAL PROTECTION
SEXUAL HARASSMENT

Konah v. District of Columbia, 971 F.Supp.2d 74 (D.D.C. 2013). A licensed practical nurse (LPN), formerly employed by a private health care corporation that contracted with the District of Columbia to provide medical care to inmates, brought a § 1983 action against the District, alleging that its failure to train correctional employees to adequately respond to inmates' sexual abuse of staff violated her right to equal protection under the Fifth Amendment's Due Process Clause. The District moved for summary judgment. The district court granted the motion. The court held that: (1) the alleged inadequate training of correctional officers was not the cause of the LPN's sexual harassment; (2) evidence did not show that the District was deliberately indifferent to the risk of sexual harassment; and (3) even if the District was on notice of the risk to nurses, its response did not show deliberate indifference. The court found that the precipitating cause of the sexual harassment of the nurse by inmates while distributing medications at the jail was the LPN's decision to violate longstanding jail policy and deviate from her standard practice of waiting for a correctional officer to escort her before entering the jail's housing unit. The court noted that the District collaborated with the LPN's employer to institute a policy directing nurses to distribute medications from sick-call rooms, and responded when the LPN was sexually harassed by inmates by ordering an immediate medical evaluation, a meeting with the warden, and offering criminal prosecution of the inmate. (D.C. Central Detention Facility, District of Columbia)

U.S. District Court
HOSTILE WORK
ENVIRONMENT
RETALIATION
SEX DISCRIMINATION
SEXUAL HARASSMENT
TITLE VII
ASSIGNMENT
EQUAL PROTECTION

Meadors v. Ulster County, 984 F.Supp.2d 83 (N.D.N.Y. 2013). Female county corrections officers brought an action under § 1983, Title VII, and the New York State Human Rights Law (NYSHRL) against a county, a sheriff, a jail superintendent, and a deputy jail superintendent, alleging sex discrimination, hostile work environment, sexual harassment, retaliation, and negligent infliction of emotional distress. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the female corrections officers' work environment was hostile and abusive; (2) whether the county had a good faith complaint procedure; and (3) whether the county treated a female corrections officer differently than similarly-situated male officers with regard to discipline, for matters that occurred outside the workplace.

The court held that county officials did not retaliate against a female corrections officer, in violation of Title VII, for filing a discrimination charge with the Equal Employment Opportunity Commission (EEOC), even though her supervisor revoked her shift change, another supervisor assigned her to an undesirable unit, and she was not selected for a desirable intake position. The court also found that county jail officials' reassignment of a female corrections officer to a different position after she verbally complained about a co-worker's sexual harassment, even if it was a less desirable position, did not constitute a materially "adverse employment action" required to support her Title VII retaliation claim. According to the court, county jail officials' rescission of a female corrections officer's request for light duty assignments during her pregnancy, her reassignment to work in male housing units, and her receipt of a written discipline report for noting her reassignment, did not constitute materially "adverse employment actions" required to support her Title VII retaliation claim. (Ulster County Jail, New York)

U.S. District Court
AGE DISCRIMINATION
RACIAL
DISCRIMINATION
TERMINATION
TITLE VII

Morris v. Carter Global Lee, Inc., 997 F.Supp.2d 27 (D.D.C. 2013). An African-American employee brought an action against his former employer, a contractor for the District of Columbia Department of Corrections, in the Superior Court of the District of Columbia, alleging wrongful termination and violation of his civil rights under the Fourteenth Amendment, Title VII, § 1981, and other various statutes. The employer removed the action to federal court and moved to dismiss. The federal district court granted the motion in part and denied in part. The court held that the employee stated a claim against his former employer under § 1981, even though the employee's complaint contained no mention of his race or racial discrimination in the termination of his employment contract, where the defendant attached to his amended complaint his charge of discrimination filed with the District of Columbia Office of Human Rights, and made a presentation to the Equal Employment Opportunity Commission (EEOC). The employee alleged, "I was terminated for alleged gross misconduct," and "I believe I have been discriminated against because of my race (Black American) and age (54), in violation of Title VII." (District of Columbia Jail, Carter Goble Lee [CGL] Contractors)

U.S. District Court
DISCRIMINATION
DUE PROCESS
EQUAL PROTECTION
RETALIATION
SEX DISCRIMINATION
TITLE VII

Rother v. NYS Dept. of Corrections and Community Supervision, 970 F.Supp.2d 78 (N.D.N.Y. 2013). A female corrections officer brought an action against a state department of corrections, correctional facility, supervisors and coworkers, alleging sex discrimination and retaliation under Title VII, denial of equal protection pursuant to § 1983, denial of due process under the Fourteenth Amendment, First Amendment retaliation, conspiracy under § 1985, and various state claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The officer alleged that a coworker told the officer, in front of inmates, coworkers, and the officer's subordinates, that she had received an administrative-sergeant position by performing sexual favors and that she was a "bitch and a backstabber," "a stupid cunt," and a "whining bitch" who "sucked." She alleged that she was

subjected to discriminatory coworker shunning and tire-slashing threats, assignment denials, performance criticisms, discipline, vigilant monitoring, and denial of overtime and leave pay denials. The appeals court held that, through the description of the emotional and psychological toll of her treatment, the officer subjectively perceived her work environment to be abusive.

The court found that the officer's complaint alleged the "materially adverse action" element of a Title VII retaliation claim against a correctional facility and the state department of corrections by alleging that she endured unmerited criticism and discipline, failure to remedy a coworker's mistreatment, repeated coworker shunning and threats of tire slashing, video-camera monitoring, denial of vacation pay, and delay in filling out workers' compensation paperwork. The court also held that the officer's complaint stated a § 1983 claim against the state department of corrections and the correctional facility for violation of the Equal Protection Clause, where her complaint alleged that no male employee was subjected to the treatment of which she complained, and that the officer was criticized and disciplined repeatedly for proper and innocuous conduct while a male coworker received no criticism or discipline for his patently improper and inappropriate verbal tirade, which included explicitly sexist language. According to the court, the state's commissioner of corrections, by virtue of his supervisory position, had both a direct connection to the alleged gender discrimination against the female corrections officer, and the authority to reinstate and transfer the officer, supporting her § 1983 equal protection claim against the commissioner in his official capacity seeking injunctive or declaratory relief. (Coxsackie Correctional Facility, N.Y. State Department of Corrections and Community Supervision)

U.S. Appeals Court
DISCRIMINATION
FREE SPEECH
RETALIATION

Singer v. Ferro, 711 F.3d 334 (2nd Cir. 2013). A corporal and corrections officers brought a § 1983 action against a sergeant, captain, sheriff, and various other officials, alleging retaliation in violation of their First Amendment speech and association rights. The district court granted summary judgment to the defendants. The plaintiffs appealed. The appeals court affirmed. The court held that an advertisement parody was not protected by the First Amendment. According to the court, the allegedly corrupt practices of certain officials at a corrections facility in favoring certain individuals for promotions and the granting of days off, purportedly referred to by the corporal in creating a parody advertisement with facility officials placed in or on bottles of alcohol with a caption reading "Absolut Corruption" were not matters of public concern, and therefore, the parody was not protected by the First Amendment. The court noted that the parody was comprehensible only to others who worked at the facility, and the corporal only shared it with five other employees. (Ulster County Sheriff's Office and Jail, New York)

U.S. District Court
CONTRACTORS
DISCRIMINATION
EQUAL PROTECTION
HOSTILE WORK
ENVIRONMENT
RETALIATION
SEX DISCRIMINATION
SUPERVISION
TITLE VII

Stoner v. Arkansas Dep. of Correction, 983 F.Supp.2d 1074 (E.D.Ark. 2013). A nurse employed by a company which contracted with the Arkansas Department of Correction (ADC) to provide on-site medical services to ADC inmates brought an action against ADC, a warden, and the company under Title VII and the Arkansas Civil Rights Act for gender discrimination and retaliation. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that the ADC was the prison nurse's employer for purposes of the nurse's Title VII gender discrimination and retaliation claims against ADC and a warden. According to the court, although the nurse was hired by a company which contracted with ADC to provide on-site medical services to inmates, ADC trained company employees on sexual harassment policies and reporting requirements, the warden held company employees accountable to the same standards as ADC employees, and the warden had the ability to ban the nurse from the prison complex, effectively terminating her employment.

The court held that the warden employed by ADC was subject to personal liability with respect to the female former prison nurse's claims for gender discrimination under § 1983 and the Arkansas Civil Rights Act (ACRA), where the nurse's right to be free from gender discrimination was secured by the Equal Protection Clause, and her right to be free from retaliation based on protected speech was secured by the First Amendment, and the warden, as a prison authority, was acting under the color of state law.

According to the court, the alleged harassment of the nurse by the prison warden was not part of the same employment practice as a correctional officer's prior alleged harassment of the nurse, and thus the warden's alleged harassment did not constitute a continuing violation for the purposes of the nurse's Title VII hostile work environment claim. The court noted that the alleged conduct was committed by different actors, and the harassment seemed to have been motivated by different animus, specifically, the officer's harassment was based on sex, while the warden's harassment was based on retaliation.

The court held that ADC took prompt and effective remedial action after learning of the male correctional officer's alleged sexual harassment of the female nurse, and thus ADC could not be held liable under Title VII for the alleged hostile work environment created by the officer's conduct, nor could the company be held liable as a third-party for such alleged conduct. (Correctional Medical Services, and Arkansas Department of Correction, McPherson Unit)

U.S. Appeals Court
UNION
WORKING CONDITIONS

U.S. Dept. of Justice Federal Bureau of Prisons Federal Correctional Complex Coleman, Fla. v. Federal Labor Relations Authority 737 F.3d 779 (D.C.Cir. 2013). The Federal Bureau of Prisons (BOP) petitioned for review, and the BOP and the Federal Labor Relations Authority (FLRA) cross-applied for enforcement of FLRA's order stating that the BOP was required to bargain with a labor union over proposals relating to the BOP's use of metal detectors at a high security prison. The BOP moved to dismiss on the grounds of mootness. The appeals court denied the motion, granted a motion to vacate in part, and granted a motion to enforce, and remanded. The court held that the decision to use the federal prison's compound metal detectors to screen only those inmates suspected of carrying contraband did not render moot the FLRA decision stating that the BOP was required to bargain with the employee union over proposals relating to safety issues arising out of the prison's use of metal detectors, absent a showing that there was no reasonable expectation that the union's safety concerns would not recur. The court found that the FLRA's determination that the BOP was required, under the Federal Service Labor-Management Relations Act (FSLMRA), to bargain with the labor union over a proposal that prison management have inmates turn in all watches that did not clear the compound metal detector, treat such watches as contraband, and assure that watches sold in the prison store would not set off the metal detectors, in order to avoid bottlenecks of inmates at the entrance to the compound/detector area, was eminently reasonable and supported by the record.

According to the court, the proposal was sufficiently tailored to target employees likely to be harmed by the installation of outdoor metal detectors, was intended to reduce nuisance alarms triggered by prohibited watches, thereby moving inmates through the compound-detector bottlenecks more quickly, and would not excessively interfere with the BOP's management rights. The court found that the FLRA determination that the labor union's proposal requiring construction of a block and mortar officer's station near one of the prison's two metal detectors was non-negotiable as a whole under FSLMRA. (Federal Bureau of Prisons Federal Correctional Complex Coleman, Florida)

U.S. Appeals Court
DISCIPLINE
FREE SPEECH
RETALIATION
SUSPENSION
WORK RULES

Volkman v. Ryker, 736 F.3d 1084 (7th Cir. 2013). An employee at a correctional center brought a § 1983 action against various officials alleging retaliation in violation of the First Amendment arising from the issuance of a written reprimand and suspension following his comments to a state attorney regarding the criminal prosecution of a co-worker. The district court entered summary judgment in favor of the defendants. The employee appealed. The appeals court affirmed. The appeals court held that the employee failed to show that a reasonable official would have known that to restrict or punish his speech regarding a co-worker's punishment was unconstitutional at the time of his discipline, as required for the employee to defeat a supervisors' claims of qualified immunity from the employee's § 1983 claim of retaliation in violation of his First Amendment speech rights. According to the court, the Illinois Department of Corrections' interests in suppressing the speech of a supervisor at a correctional facility regarding a co-worker's discipline outweighed the supervisor's interests in making the speech, and, thus, the supervisor's First Amendment speech rights were not violated when he was disciplined for such speech. The court noted that supervisors were tasked with enforcing rules and regulations, and when the supervisor criticized a disciplinary decision it undermined respect for the chain-of-command, and there was value in maintaining order and respect in the paramilitary context of a correctional center. (Lawrence Correctional Center, Illinois)

U.S. District Court
CONTRACTORS
SEARCHES

Vollette v. Watson, 937 F.Supp.2d 706 (E.D.Va. 2013). Former food service and medical care contractors who worked at a city jail brought an action against a sheriff, who oversaw the jail, and sheriff's deputies, alleging under § 1983 that their being required to undergo strip searches at the jail violated their Fourth Amendment rights, and that they were retaliated against, in violation of the First Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to what triggered the strip searches of contractors who worked at city jail, the nature of such searches, and the factual predicate for revocation of the contractors' security clearances. According to the court, at the time the contractors were strip searched, it was clearly established, for qualified immunity purposes in the contractors' § 1983 Fourth Amendment unlawful search action against the sheriff and sheriff's deputies, that prison employees did not forfeit all privacy rights when they accepted employment, and thus, that prison authorities were required to have reasonable and individualized suspicion that employees were hiding contraband on their person before performing a "visual body cavity search." The court also found that summary judgment as to the contractors' claims for false imprisonment and battery was precluded by genuine issues of material fact as to what triggered the strip searches. (Aramark and Correct Care Solutions, Contractors, Portsmouth City Jail, Virginia)

U.S. District Court
CONTRACTORS
FREE SPEECH
RETALIATION
SEARCHES

Vollette v. Watson, 978 F.Supp.2d 572 (E.D.Va. 2013). Employees of private contractors providing services to inmates housed at a jail brought a § 1983 action against a sheriff and deputy sheriffs, alleging that they were subjected to unlawful strip and visual body cavity searches at the jail. The next business day after the suit was filed, the sheriff issued a blanket order revoking the security clearances of the contractor's employees who were still working at the jail. The district court denied the employees' motion for a preliminary injunction ordering the sheriff to reinstate their security clearances at the jail pending the outcome of the litigation. The district court also partially granted and partially denied the defendants' summary judgment motion. A jury decided the constitutionality of the strip searches. This left the First Amendment retaliation claim by six of the nine plaintiffs. The district court entered summary judgment for the plaintiffs on the retaliation claim. The court held that: (1) the contractor's employees suffered irreparable injury from the sheriff's revocation of their security clearances for which there was no adequate remedy at law; (2) the balance of hardships plainly weighed in favor of a permanent injunction; (3) the public interest would be enhanced by the entry of a permanent injunction; and (4) the plaintiffs demonstrated violation of their First Amendment rights, and the sheriff had to reinstate their security clearances and update any relevant internal jail records to reflect the same. The court noted that the sheriff's candid statements that he felt betrayed by the federal lawsuits filed by the employees who were subjected to strip searches for contraband, and that the suits "pushed [him] over the edge" were an admission that the adverse employment action of revoking the employees' security clearances was taken against them in response to their exercise of their First Amendment constitutional rights to free speech and to petition the government for redress of grievances. (Portsmouth City Jail, Virginia)

U.S. Appeals Court
SUPERVISION
TRAINING

Wilson v. Montano, 715 F.3d 847 (10th Cir. 2013). An arrestee brought a § 1983 action against a county sheriff, several deputies, and the warden of the county's detention center, alleging that he was unlawfully detained, and that his right to a prompt probable cause determination was violated. The district court denied the defendants' motion to dismiss. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded in part. The detainee had been held for 11 days without a hearing and without charges being filed. The appeals court held that the defendants were not entitled to qualified immunity from the claim that they violated the arrestee's right to a prompt post-arrest probable cause determination, where the Fourth Amendment right to a prompt probable cause determination was clearly established at the time. The court held that the arrestee sufficiently alleged that the arresting sheriff's deputy was personally involved in the deprivation of his Fourth Amendment right to a prompt probable cause hearing, as required to support his § 1983 claim against the deputy. The arrestee alleged that he was arrested without a warrant, and that the deputy wrote out a criminal complaint but failed to file it in any court with jurisdiction to hear a misdemeanor charge until after he was released from the county's detention facility, despite having a clear duty under New Mexico law to ensure that the arrestee received a prompt probable

cause determination. According to the court, under New Mexico law, the warden of the county's detention facility and the county sheriff were responsible for policies or customs that operated and were enforced by their subordinates, and for any failure to adequately train their subordinates. The court noted that statutes charged both the warden and the sheriff with responsibility to supervise subordinates in diligently filing a criminal complaint or information and ensuring that arrestees received a prompt probable cause hearing.

The court found that the arrestee sufficiently alleged that the warden promulgated policies that caused the arrestee's prolonged detention without a probable cause hearing, and that the warden acted with the requisite mental state, as required to support his § 1983 claim against the warden, regardless of whether the arrestee ever had direct contact with the warden. The arrestee alleged that the warden did not require filing of written criminal complaints, resulting in the detainees' being held without receiving a probable cause hearing, and that the warden acted with deliberate indifference to routine constitutional violations at the facility.

The court held that the arrestee sufficiently alleged that the county sheriff established a policy or custom that led to the arrestee's prolonged detention without a probable cause hearing, and that the sheriff acted with the requisite mental state, as required to support his § 1983 claim against the sheriff, by alleging that: (1) the sheriff allowed deputies to arrest people and wait before filing charges, thus resulting in the arrest and detention of citizens with charges never being filed; (2) the sheriff was deliberately indifferent to ongoing constitutional violations occurring under his supervision and due to his failure to adequately train his employees; (3) routine warrantless arrest and incarceration of citizens without charges being filed amounted to a policy or custom; and (4) such policy was the significant moving force behind the arrestee's illegal detention. (Valencia County Sheriff's Office, Valencia County Detention Center, New Mexico)

U.S. District Court
DISCRIMINATION
DISABILITY
CONTRACT NEGOTIA-
TION
PHYSICAL REQUIRE-
MENTS
TERMINATION

Yeager v. Corrections Corp. of America, 944 F.Supp.2d 913 (E.D.Cal. 2013). A former correctional employee brought an action against his private corrections employer, alleging failure to engage in a good faith interactive process, disability discrimination in violation of the California Fair Employment and Housing Act (FEHA), and FEHA retaliation. The employer moved for summary judgment and summary adjudication. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded in the employee's failure to engage in a good faith interactive process claim, by a genuine issue of material fact as to whether, under California law, there were reasonable accommodations available to the employee who sought them, due to a knee injury. The court also held that summary judgment was precluded on the employee's disability claim, due to genuine issues of material fact as to whether the employer's proffered reason for terminating the employee, that the employee did not pass a background check, was a pretext for disability discrimination. (Corrections Corporation of America, California City Correctional Center, California)

2014

U.S. Appeals Court
SEX DISCRIMINATION
BFOQ- Bona Fide
Occupational
Qualification
SUPERVISION

Ambat v. City and County of San Francisco, 757 F.3d 1017 (9th Cir. 2014). Current and former sheriff's deputies brought an action against a city and county, alleging various claims including retaliation and that a policy prohibiting male deputies from supervising female inmates in housing units of jails operated by the county violated Title VII and California's Fair Employment and Housing Act (FEHA). The district court granted the defendants' motion on gender discrimination claims and denied the plaintiffs' motion for reconsideration. The plaintiffs appealed. The appeals court affirmed in part, reversed in part, and vacated in part, and dismissed the appeal in part. The court held that the county was not entitled to summary judgment based on a bona fide occupational qualification (BFOQ) defense, in light of fact issues as to whether a reasoned decision-making process, based on available information and experience, led to the sheriff's adoption of the policy such that the policy would be entitled to deference. The court also found fact issues as to whether the policy of excluding male deputies because of their sex was a legitimate proxy for reasonably necessary job qualifications. The court noted that the primary justification for the policy was to protect the safety of female inmates by reducing the possibility of sexual harassment and abuse by male deputies, a secondary justification was that employing male deputies in female housing pods posed a threat to jail security because of a threat of manipulation, a tertiary justification was protecting the privacy interests of female inmates, and the final justification was promoting female inmates' rehabilitation. (San Francisco Sheriff's Department, California)

U.S. Appeals Court
SEX DISCRIMINATION
AGE DISCRIMINATION
RETALIATION
FMLA- Family Medical
Leave Act

Doucette v. Morrison County, Minn., 763 F.3d 978 (8th Cir. 2014). A female former county employee who had served as an Assistant Jail Administrator brought an action in a state court against the county, alleging that her discharge constituted discrimination based on her sex and age, in violation of the Minnesota Human Rights Act (MHRA), that it was reprisal for filing a discrimination complaint, and that she was retaliated against for taking leave under the Family and Medical Leave Act (FMLA). Following removal to the federal courts, the district court granted in part and denied in part the county's motion for summary judgment. The employee appealed the grant of summary judgment on her MHRA claims. The appeals court affirmed. The court held that: (1) the county proffered a legitimate, nondiscriminatory reason for the employee's termination, namely, that the employee repeatedly made billing errors after being reminded of the importance of accuracy and receiving accommodations for her workload; (2) male employees were not similarly situated, for purposes of establishing pretext; (3) an alleged statement by the employee's supervisor was not direct evidence of sex-plus-age discrimination; and (4) evidence of a uniform break policy did not support the employee's sex-plus-age discrimination claim. (Morrison County, Minnesota)

U.S. Appeals Court
DISCRIMINATION
HARASSMENT
HOSTILE WORK
ENVIRONMENT
SUPERVISION

Ellis v. Houston, 742 F.3d 307 (8th Cir. 2014). African American corrections officers brought an action under § 1981 and § 1983 against prison administrators and supervisors, alleging race based harassment and retaliation, and disparate treatment. The district court granted summary judgment in favor of the defendants. The plaintiffs appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that: (1) the officers had a subjective belief that the discrimination and harassment they experienced was severe and pervasive; (2) the officers established a broad pattern of harassment, and thus specific individual acts had to be viewed as illustrative; (3) the acts, comments, and inaction by a supervisor were purposeful and objectively actionable; (4) the of-

ficers suffered materially adverse consequences after they filed an official complaint, as required for a retaliation claim; (5) supervisors who permitted and participated in racially derisive remarks, and then assigned inferior work assignments, were not entitled to qualified immunity. The court noted that the officers experienced anxiety, dread, and panic attacks, they felt like they were being treated more like inmates than fellow officers, they initially enjoyed going to work but subsequently found their job to be depressing and anxiety-producing due to discrimination and harassment, they felt personally at risk because they no longer trusted that their fellow officers would come to their aid in a dangerous situation, and one officer's hair started to fall out from the stress he suffered. The officers had alleged that they experienced racist remarks on a near daily basis, that supervisors had been present and laughing without objection to statements made by others, and each officer became aware of offensive remarks even if each individual did not hear it first-hand. Supervisors allegedly acted to intensify the pattern of harassment of African American corrections officers after they filed an official complaint of a racially hostile environment, subsequently assigning them inferior or less desirable jobs, "papering" their files with reports on trivial or invented misconduct, and singling them out for additional work details and consistently forcing them to take unpopular details. The court held that these were materially adverse employment actions sufficient to support the officer's prima facie case of retaliation under § 1981.

The court found that a reasonable prison supervisor would have understood that permitting and participating in racially derisive remarks, and then assigning inferior work assignments for reporting such conduct, would have violated the rights of the African American corrections officers, and thus the supervisors who did permit and participate in racially derisive remarks, and then assigned inferior work assignments, were not entitled to qualified immunity to the officers' hostile work environment and retaliation claims under § 1981 and § 1983. (Nebraska State Penitentiary)

U.S. District Court
DISCRIMINATION
RETALIATION
SEX DISCRIMINATION

Gethers v. Harrison, 27 F.Supp.3d 644 (E.D.N.C. 2014). A female employee of a county detention center brought Title VII gender discrimination and retaliation claims against her employer after she was terminated for allegedly being untruthful regarding a situation in which she was present while a male detainee on suicide watch used the shower. The county moved for summary judgment. The district court granted the motion, finding that the employee failed to demonstrate that she was meeting job expectations or that she was engaged in a protected activity. The employee had been demoted for violating a detention center policy by being present while a male detainee on suicide watch showered naked despite the presence of two male officers, and for extracting the detainee from his cell by herself, creating a risk of danger. The court noted that the male detention officers who assisted male detainees on a suicide watch to shower were not similarly situated to the female detention officer who was also present, under the detention center's policy prohibiting officers of the opposite sex from being present while a detainee showered; the court noted that the proper comparison would be a male officer remaining in a shower area while a female prisoner showered, and there was no indication that such male officer would not also be punished. (Wake County Sheriff's Office, Detention Center, North Carolina)

U.S. District Court
FMLA- Family Medical
Leave Act
LIGHT DUTY
INJURY
WORKERS COMPEN-
SATION

Gillman v. Okaloosa County Florida, 58 F.Supp.3d 1305 (N.D. Fla. 2014). A former county employee who had worked as a correctional officer and who had injured her hand and taken leave, brought an action against the county, alleging interference and retaliation under the Family and Medical Leave Act (FMLA). The employee had sustained an on-the-job injury when her right hand became lodged in a hydraulic door. She was transported to a hospital where she was treated for a crush injury to her right thumb. As a result of her injury, she was unable to perform many of the basic functions of her job, including tasks that required hand and finger manipulation. The county moved for summary judgment and the district court granted the motion. The court held that: (1) the county had no obligation under FMLA to place the employee in a light-duty position so that she could take FMLA leave intermittently, where the employee was not medically capable of performing her regular job duties; (2) the county's proffered reason for terminating the employee was not a pretext for FMLA retaliation; (3) the county's proffered reasons for refusing to place the employee in a light-duty position were not a pretext for FMLA retaliation; and (4) there was no causal connection between the employee's termination and her workers' compensation claim. The court noted that the county had no policy allowing for light duty, and the no designated light duty job existed for the employee's position, and that no light duty job was available when the employee requested it. (Okaloosa County Jail, Florida)

U.S. Appeals Court
FREE SPEECH
TERMINATION

Hurst v. Lee County, Miss., 764 F.3d 480 (5th Cir. 2014). A former corrections officer with a county sheriff's department brought an action against the county, alleging that termination of the officer's employment, based on the officer's violation of a department's media policy through unauthorized release of information to a newspaper reporter regarding the arrest of a state university's football player, violated his First Amendment right to free speech. The district court granted judgment as a matter of law to the county. The officer appealed. The appeals court affirmed. The court found that statements that the corrections officer made to a newspaper reporter were ordinarily within the scope of the officer's duties, and thus, the officer's speech was not protected by the First Amendment. (Lee County Jail, Mississippi)

U.S. District Court
WORKERS
COMPENSATION
HARASSMENT

Nesvold v. Roland, 37 F.Supp.3d 1022 (W.D.Wis. 2014). The jail administrator for a county sheriff's office brought an action against his supervisor, the county sheriff, alleging assault within the assault exception to the exclusive remedy provision of Wisconsin's Worker's Compensation Act. The sheriff moved to dismiss. The district court denied the motion. The court held that the administrator's claims that the sheriff yelled at him, threatened to harm him physically, rushed at him, pointed a finger in his face, intended to restrain him physically, and that the administrator suffered nausea and emotional distress as a result, were sufficient to allege a physical assault, as required to state a claim under the assault exception to the exclusive remedy provision of Wisconsin's Worker's Compensation Act. (Burnett County, Wisconsin)

- U.S. District Court
HARASSMENT
FREE SPEECH
HOSTILE WORK EN-
VIRONMENT
RETALIATION
- Aspinall v. Thomas*, 118 F.Supp.3d 664 (M.D. Pa. 2015). A former county correctional officer brought a § 1983 action against correctional officers, a deputy warden, and a warden, alleging that the officers' harassment constituted retaliation in violation of the free speech clause of the First Amendment. The officers, deputy warden, and warden moved to dismiss. The district court denied the motion. The court held that: (1) the officer's speech, regarding the alleged mistreatment and hostile work environment he suffered as the result of other officers' harassment, implicated a matter of public concern, as required to support the officer's First Amendment retaliation claim; (2) the officer's interest in commenting on a matter of public concern outweighed the government's interest in promoting workplace efficiency and avoiding workplace disruption, and thus the officer's speech was constitutionally protected as required to support a First Amendment retaliation claim; (3) the officer's factual allegations sufficiently established a causal relationship between protected speech and subsequent harassment by other officers, as required to state a First Amendment retaliation claim; and (4) the officer alleged sufficient facts to support a § 1983 claim against the deputy warden and the warden under the theory of supervisory liability for their alleged knowledge and acquiescence of other officers' alleged First Amendment retaliation, where the officer informed them of other officers' harassment and alleged retaliatory conduct, and they did not take any action. The court found that the defendants failed to demonstrate that the officer's First Amendment free speech rights were not clearly established at the time, as required for the officers, deputy warden, and warden to be entitled to qualified immunity. The court noted that the officer alleged an escalation in harassment after he lodged complaints about the harassment, and alleged that another officer subjected him to a barrage of insults and offensive statements after learning of the complaints. (Wayne County Correctional Facility, Pennsylvania)
- U.S. Appeals Court
FLSA- Fair Labor
Standards Act
BENEFITS
OVERTIME
- Babcock v. Butler County*, 806 F.3d 153 (3d Cir. 2015). A corrections officer brought a class action against a county, alleging that the county failed to properly compensate her and others similarly situated for overtime during mealtimes in violation of the Fair Labor Standards Act (FLSA). The district court dismissed the action. The corrections officer appealed. The appeals court affirmed. The court held that the officer received a predominant benefit of a 15 minute unpaid mealtime and was thus not entitled to receive compensation for it under the FLSA. The court noted that the predominant benefit test, which asks whether a law enforcement employee is primarily engaged in work-related duties during meal periods, is the appropriate standard for determining whether law enforcement employees' meal breaks are compensable time under FLSA. The court noted that during the 15 minute period, officers were not entitled to leave the prison without permission from the warden or deputy warden and were required to remain in uniform, in close proximity to emergency response equipment, and were on call to respond to emergencies. The officers' collective bargaining agreement (CBA), though silent on the compensability of the 15 minute period, provided officers with the benefit of a partially-compensated mealtime and mandatory overtime pay if the mealtime was interrupted by work. (Butler County Prison, Pennsylvania)
- U.S. District Court
CONTRACTOR
- Barouch v. United States Department of Justice*, 87 F.Supp.3d 10 (D.C.D.C. 2015). A prisoner who was convicted of bribing a public official and conspiracy to commit bribery moved for acquittal. The district court denied the motion, finding that evidence was sufficient to establish that the prisoner induced a prison official to assist in smuggling contraband. According to the court, the prisoner found a lucrative business opportunity in the institution's ban on tobacco and cell phones. He paid a prison nurse to smuggle this contraband into the prison and to look the other way when it came to reporting his illegal possessions to other prison authorities. The prisoner and nurse were eventually caught and prosecuted. Following a two-day jury trial, the prisoner was convicted. (Federal Bureau of Prisons, United States Penitentiary–Lee County, Virginia)
- U.S. Appeals Court
ADA- Americans with
Disabilities Act
RACE DISCRIMI-
NATION
GENDER DISCRIMI-
NATION
TITLE VII
- Carothers v. County of Cook*, 808 F.3d 1140 (7th Cir. 2015). A former government employee, an African-American woman, brought an action against a county and the Office of Transitional Administrator, an agency that oversees the operation of a county juvenile detention center (JDC), alleging disability discrimination in violation of the Americans with Disabilities Act (ADA), as well as race discrimination, sex discrimination, and retaliation in violation of Title VII. The defendants moved for summary judgment. The district court granted the motion. The former employee appealed. The appeals court affirmed. The court held that: (1) the employee was not disabled within the meaning of ADA; (2) evidence supported the determination that the employee's anxiety disorder did not prevent her from working with all children; (3) under the direct evidence theory, circumstantial evidence did not point to race discrimination; (4) the employee did not satisfy the legitimate expectations of her employer; (5) a Caucasian male comparator was not similarly situated, as required to establish race discrimination; and (6) the employee was not similarly situated to two male comparators, as required to establish sex discrimination. The court noted that in the two months preceding the employee's discharge, she refused to follow instructions regarding submitting required paperwork for her disability application, she did not schedule an appointment to return to work, the employee ignored reasonable requests to submit or re-submit missing documentation, and at time of her discharge she had exceeded the allowed number of unexcused absences by more than ten days. (Cook County Juvenile Detention Center, Illinois)
- U.S. District Court
TITLE VII
RETALIATION
SEARCHES
DISCRIMINATION
- Davis v. NYS Dept. of Corrections Attica Correctional Facility*, 110 F.Supp.3d 458 (W.D.N.Y. 2015). An African-American correctional employee, who was employed as a substance abuse counselor, brought an action against her former employer, alleging unlawful retaliation in violation of Title VII and state law. The district court granted the employer's motion for summary judgment. The court held that the employee did not engage in a protected activity, as required to establish retaliation under Title VII, when she complained that she believed she had been assigned a disproportionate number of minority and/or behaviorally difficult inmates. According to the court, the employee could not have reasonably believed that assignment of inmates constituted unlawful discrimination, given that the inmates were assigned based on release date, and the waiting list from which inmates were assigned did not identify race. According to the court, the alleged search of the employee's office following her complaints of being assigned a disproportionate number of minority and/or behaviorally difficult inmates, was not a

materially adverse employment action. The court noted that searches at facility were routine due because the facility was a maximum security prison, areas were searched randomly, and all individuals were subject to visual inspection of bags. (Attica Correctional Facility, New York)

U.S. Appeals Court
UNION
CONTRACT

Doe v. Cook County, Illinois, 798 F.3d 558 (7th Cir. 2015). Detainees at a county juvenile detention center brought a class action against the center and the county, alleging that some employees at the center violated their constitutional rights by abusing their charges. The facility administrator, who was appointed to run the detention center as part of a settlement between the parties, proposed to terminate the employment of 225 direct-care employees and require them to apply to fill the new positions. The union for the employees intervened to oppose the administrator's plan, arguing that the proposal violated Illinois employment law by overriding the collective bargaining and arbitration statutes. The district court authorized the administrator to implement the plan. The union appealed. The appeals court reversed and remanded. The appeals court held that the district court's approval of the administrator's plan was not a simple enforcement of the order appointing the administrator, and thus the district court was required pursuant to the Prison Litigation Reform Act (PLRA) to make findings that the relief requested by the administrator was narrowly drawn, extended no further than necessary to correct the violation of a federal right, and was the least intrusive means. (Cook County Juvenile Temporary Detention Center, Illinois)

U.S. District Court
RETIREMENT

Duberry v. District of Columbia, 106 F.Supp.3d 245 (D.D.C. 2015). Retired correctional officers brought an action for injunctive and declaratory relief to compel the District of Columbia Department of Corrections (DOC), their former employing agency, to classify them as "retired law enforcement officers" under the federal the Law Enforcement Officers Safety Act (LEOSA) so that the officers could obtain current firearm certification required for them to carry concealed firearms across state lines. The District of Columbia moved to dismiss. The district court granted the motion, finding that the LEOSA did not confer a right enforceable under § 1983 for officers that would compel the DOC to classify them as "retired law enforcement officers." (District of Columbia Department of Corrections)

U.S. District Court
ADA- Americans with
Disabilities Act
FMLA- Family Medical
Leave Act
LIGHT DUTY
DISCRIMINATION

Gibson v. Milwaukee County, 95 F.Supp.3d 1061 (E.D. Wis. 2015). Two county corrections officers, one who experienced severe migraine headaches, and one who had an autoimmune disorder, brought an action against a county alleging failure to accommodate them in violation of the Americans with Disabilities Act (ADA), as well as interference and retaliation in violation of the Family Medical Leave Act (FMLA). The county moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the employee who could not work more than eight hours per day due to severe migraine headaches was not qualified for a temporary position of lieutenant in the county sheriff's department, and thus the county employer's rescinding of the employee's temporary appointment to a lieutenant position did not violate ADA. The court noted that an essential function of the position required employees to be able to work more than eight hours per day to handle emergent situations or to cover for sick employees.

The court held that summary judgment was precluded by genuine disputes of material fact as to whether the county employer discouraged employees from taking FMLA leave, and whether the decision to rescind the county employee's temporary promotion was due to his taking of FMLA leave.

The court found that the employer's refusal to move the correctional facility employee with temporary work restrictions, caused by her autoimmune condition, to light-duty assignments that did not require interaction with inmates, was a failure to accommodate, in violation of the ADA, notwithstanding that the employee's condition was not caused by her employment. According to the court, the county was prohibited under ADA from granting or denying an accommodation based on whether the employee's disability was associated with an on-the-job injury. (Milwaukee County Sheriff's Department, County Jail, Wisconsin)

U.S. District Court
TITLE VII
SEX DISCRIMINATION
MILITARY SERVICE
TERMINATION
PROBATION

Gipson v. Cochran, 90 F.Supp.3d 1285 (S.D.Ala. 2015). A former employee of a county sheriff's department, a female, who was also a member of the United States Air Force Reserve, brought an action against the sheriff alleging sex discrimination in violation of Title VII, and alleging violation of the Uniformed Services Employment and Reemployment Rights Act (USERRA). The sheriff allegedly extended the employee's probationary period to account for absences due to military training, and subsequently terminated her employment. The sheriff moved for summary judgment. The district court granted the motion in part and denied in part. The court held the extension of the employee's probationary period, and the termination of her employment, did not violate USERRA. The court held that summary judgment was precluded by a fact issues as to whether the decision to terminate was based on sex. (Mobile County Sheriff's Department, Alabama)

U.S. District Court
BENEFITS
CONTRACTORS

Gorman v. Rensselaer County, 98 F.Supp.3d 498 (N.D.N.Y. 2015). An employee in a county sheriff's department brought a § 1983 action against the county, sheriff, master sergeant, and the company which provided psychological evaluations for public safety agencies. The district court dismissed the action finding that under New York law, the employee did not a state claim for negligent misrepresentation against the company, whose psychologist performed an independent medical examination of the employee in connection with his applications for benefits while on medical leave. The court also held that the company was not a state actor for the purposes of the employee's § 1983 action. The court noted that although the company was contracted by the sheriff to perform an independent medical exam of the employee, the mere fact that a private actor was paid by state funds, or was hired by a state actor, was insufficient to establish a state action, and the employee's allegations that the company conspired or acted in concert with the county were wholly conclusory. (Rensselaer County Sheriff's Office, New York)

U.S. Appeals Court
MARRIAGE

Riker v. Lemmon, 798 F.3d 546 (7th Cir. 2015). A female former prison worker brought an action against prison officials, alleging that the officials denied her request to marry an inmate in violation of her fundamental rights. The district court granted the officials' motion for summary judgment and the worker appealed. The appeals court reversed and remanded, finding that summary judgment was precluded by a genuine issue of material fact as to

whether the prison’s decision to deny the worker’s request to marry an inmate was reasonably related to its legitimate penological interests. The worker had been an employee of Aramark Correctional Services, Inc. that operated and managed food services in the prison. She became involved with an inmate worker who was under her supervision. She quit her job after being discovered in a romantic relationship with the inmate. She was denied visiting privileges after she left her job. The former worker alleged that prohibiting her marriage to the inmate was an exaggerated response to the prison’s security objectives and that the prohibition was unnecessary for the maintenance of a safe and orderly institution. She emphasized that she only sought “a single visit to the institution, of a short duration, for the limited purpose of marrying her fiancé.” (Wabash Valley Correctional Facility, Indiana)

U.S. District Court
TITLE VII
SEXUAL HARASSMENT
WORKING CONDITIONS

Sanchez v. California, 90 F.Supp.3d 1036 (E.D.Cal. 2015). A female employee of the California Department of Corrections and Rehabilitation brought an action against her employer alleging violations of Title VII and the California Employment and Housing Act (FEHA), and against a coworker under § 1983, for alleged sexual harassment by the coworker. The parties consented to the jurisdiction of a magistrate judge and the defendants moved for summary judgment. The magistrate granted the motion in part and denied in part. The court held that summary judgment was precluded by a fact issues as to whether the employer permitted conditions at work that allowed the employee to be harassed, and whether the employee established that the alleged adverse action was causally related to the complaints. (California Department of Corrections and Rehabilitation, California State Prison–Corcoran)

U.S. Appeals Court
EQUAL EMPLOYMENT

Story v. Foote, 782 F.3d 968 (8th Cir. 2015). An inmate brought a § 1983 action against four corrections officers for violation of his Fourth Amendment rights arising from a visual body-cavity search that allegedly took place in view of a female officer and other inmates, during which the officer allegedly called the inmate a derogatory name. The district court dismissed the case and the inmate appealed. The appeals court affirmed. The court held that the visual body-cavity inspection search after the inmate returned to the correctional facility from outside the institution did not violate a clearly established right, as would preclude the qualified immunity defense, and the manner in which the search was conducted did not violate a clearly established right. According to the court, such a search was not unreasonable considering the serious security dangers inherent at a correctional institution and the institution’s strong interest in preventing and deterring the smuggling of contraband into the prison.

The court noted that the manner in which the search was conducted did not violate the inmate’s rights. The inmate alleged that a female officer observed the search on a video screen in a master control room, that the search was conducted in the presence of other inmates, and that the officer called him a “monkey” during the search. According to the court, there was a rational connection between the sex-neutral visual surveillance of inmates and the goal of prison security. The court found that the staffing adjustments that would have been necessary to prevent the female officer from viewing the search would have interfered with the female officer’s equal employment opportunities and burdened the prison. The court noted that the inmate did not allege that a more private, equally secure, and cost-effective means of conducting the search was available away from other inmates, and a single use of a term with potential racial overtones was not unconstitutional race discrimination. (Williams Correctional Facility, Arkansas)

□

U.S. Appeals Court
SEX DISCRIMINATION
BFOQ- Bona Fide
Occupational Qualification
TITLE VII

Teamsters Local Union No. 117 v. Washington Dept. of Corrections, 789 F.3d 979 (9th Cir. 2015). A union representing prison guards filed a Title VII complaint challenging the Washington Department of Corrections (WDOC) practice of designating certain positions as female-only in response to alleged sexual misconduct by male correctional officers and female inmates. The district court granted summary judgment to the WDOC and the union appealed. The appeals court affirmed, finding that WDOC’s policy rationales were reasonably necessary to the essence of prison administration, and gender was an objective, verifiable qualification for posts designated as female-only, which appropriately considered reasonable alternatives. Male correctional officers asserted they had suffered types of harm from the WDOC policy, most importantly lost overtime. The court noted that a facially discriminatory employment practice, such as a sex-based hiring practice, may pass legal muster if sex is a bona fide occupational qualification (BFOQ). According to the court, a Title VII bona fide occupational qualification (BFOQ) defense is written narrowly and has been read narrowly by the Supreme Court and applies to special situations where employment discrimination is based upon objective, verifiable requirements that concern job-related skills and aptitudes.

The appeals court decision began by stating: “For years, Washington faced problems common to a number of states in their women’s prisons: sexual abuse and misconduct by prison guards, breaches of inmate privacy, and security gaps. A primary driver, according to prison authorities, was the lack of female correctional officers to oversee female offenders and administer sensitive tasks, such as observing inmates showering and dressing and performing the pat (or “pat-down”) and strip searches that are stitched into the fabric of day-to-day prison life. After long wrestling with this gender gap, the state undertook a comprehensive assessment and ultimately designated a limited number of female-only correctional positions—specifically, 110 positions to patrol housing units, prison grounds, and work sites.”

The court was apparently surprised by one of the union’s experts. “Amazingly, one of the Union’s experts offered the following view: Female inmates cannot be shielded from the world in which we live. If they are to reintegrate into society, they have to be taught how to deal with abusive staff, male or female. They have to be taught what constitutes a healthy interaction and what does not. They cannot learn those skills if they are sheltered from contact with males in a position of authority. Sexual abuse is present in all areas of our society: in schools, (at all levels), business, government, military and families. Just as females have to be taught how to deal with those abuses in the larger society, female inmates must be taught as part of the rehabilitation process how to deal with all abusive staff: males and females, custody staff and civilian staff.” The court continued: “To state something so obvious we never imagined it would need to be written: we reject any suggestion that female prisoners would benefit from being subjected to abusive prison guards as ‘part of the rehabilitation process’ so that they may better ‘reintegrate into society.’” (Washington Department of Corrections)

U.S. Appeals Court
GENDER DISCRIMI-
NATION
POLITICAL AFFILIA-
TION
PROMOTION

U.S. v. Rose, 802 F.3d 114 (1st Cir. 2015). A female deputy sheriff brought an action against a sheriff and a city-county consolidated government, alleging under § 1983 that the sheriff retaliated against her for her political support of the former sheriff's reelection bid, and that she was denied promotion and demoted based on gender. The district court granted summary judgment in favor of the defendants, in part, and denied the defendants' motion for summary judgment, in part. The deputy appealed. The appeals court affirmed. The court held that political loyalty was an appropriate requirement for the effective job performance of a deputy sheriff, and the sheriff's proffered nondiscriminatory reason for transferring the female deputy and replacing her with a male deputy was not a pretext for gender discrimination. The sheriff asserted that he transferred the female sheriff's deputy from her position as supervisor of the jail and serving in the sheriff's command staff, and replacing her with male a deputy, because he was unsatisfied with ineffective lines of communication and other problems within the jail and wanted new management as part of his jail reorganization plan. (Columbus Consolidated Government, Muscogee County Jail, Georgia)

U.S. District Court
ADA- Americans with
Disabilities Act
RETALIATION
CONTRACTORS

Velez-Ramirez v. Puerto Rico, 98 F.Supp.3d 388 (D.P.R. 2015). An independent contractor brought an action against the Commonwealth of Puerto Rico, the Puerto Rico Department of Corrections and Rehabilitation (DOCR), the company that managed the provision of healthcare services for DOCR, and the company's secretary, alleging that failure to renew her professional services contract violated the Americans with Disabilities Act (ADA), the Rehabilitation Act, and Puerto Rico law. The defendants moved for summary judgment. The district court granted the motion. The court held that the plaintiff was not qualified to work as a training and professional development coordinator, and the DOCR's failure to renew the plaintiff's contract was not a pretext for retaliating against her for seeking a reasonable accommodation for her diabetic retinopathy. (Bayamón Correctional Complex, Correctional Health Services Corporation, Puerto Rico)

2016

U.S. Appeals Court
TITLE VII
HARASSMENT
SEXUAL HARASSMENT
EQUAL OPPORTUNITY
HOSTILE WORK EN-
VIRONMENT

Arizona ex rel. Horne v. Geo Group, Inc., 816 F.3d 1189 (9th Cir. 2016). The Arizona Civil Rights Division brought a state-court action, and the Equal Employment Opportunity Commission (EEOC) brought a federal action, on behalf of a class of female employees who were working for a private company that operated correctional facilities. The plaintiffs alleged that the employer violated Title VII and Arizona Civil Rights Act (ACRA) protections against discrimination, harassment, and retaliation. One employee alleged that a male sergeant grabbed her crotch and pinched her vagina while she was at work. She filed an incident report with her employer but contended that the employer did not remedy the harassment. Five additional female correctional officers who witnessed or complained of sexual harassment were identified by state Civil Right Division. Even more female employees who were subjected to sexual harassment were identified when the Division interviewed current and former employees. The actions were consolidated in federal court and the district court granted the employer's motion for partial summary judgment. The Civil Rights Division and EEOC appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by fact issues on the claim of hostile work environment asserted on behalf of a particular employee. (GEO Group Inc., operating the Arizona State Prison, Florence West Facility, and the Central Arizona Correctional Facility ("CACF"))