DETENTION AND CORRECTIONS CASELAW CATALOG

26th Edition
2015-2016

Volume Six: *Sec. 39-50*

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SECTION 39: SAFETY AND SECURITY

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.

1964

U.S. District Court
JEWELRY

Banks v. Havener, 234 F.Supp. 27 (E.D. Vir. 1964). An inmate is allowed to wear a religious medal even though jewelry has been banned from prisoners in other cases for security reasons. (Youth Center, Lorton, Virginia)

1967

U.S. District Court
RELIGIOUS GROUPS

Lee v. Crouse, 284 F.Supp. 541 (D. Kan. 1967), aff'd, 396 F.2d 952 (10th Cir. 1968). The size of groups at religious services may be restricted. (Lansing, Kansas)

1968

U.S. District Court
RELIGIOUS SERVICES

Konigsberg v. Ciccone, 285 F.Supp. 585 (W.D. Mo. 1968), aff'd, 417 F.2d 161 (8th Cir. 1969), cert. denied, 397 U.S. 963 (1969). The right to attend religious services can be prohibited in such cases only when it can be shown that institutional security is threatened. (Medical Center For Federal Prisoners, Springfield, Missouri)

U.S. Appeals Court
SAFETY
REGULATIONS
DISCRETION

Long v. Parker, 390 F.2d 816 (3rd Cir. 1968). Correctional personnel, not the courts, are responsible for promulgating regulations for the safety of the prison population and public as well as for the maintenance and proper functioning of the institution. Correctional officers must be granted wide discretion in the exercise of such authority. (United States Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
SEGREGATION

Wilson v. Kelley, 294 F.Supp. 1005 (N.D. Ga. 1968), aff'd, 393 U.S. 266 (1968). State statutes requiring the segregation of races in county jails are unconstitutional, and although prison authorities may take racial tensions into account in maintaining order and security, such consideration should be made after a danger to security, discipline, and good order has become apparent, and not before. (Georgia)

1969

U.S. Appeals Court
RELIGION

Walker v. Blackwell, 411 F.2d 23 (5th Cir. 1969). Services must be permitted equally for all religions, although the time and frequency may be controlled. Security concerns justified refusal of Muslims' request to have a meal after sunset. (Atlanta, Georgia)

1971

U.S. Appeals Court
HAIR LENGTH
FACIAL HAIR

Blake v. Pryse, 444 F.2d 218 (8th Cir. 1971). Regulations covering hair length and facial hair have been held not to raise constitutional issues. Administrators can justify such regulations to achieve purposes of identification, hygiene, discipline and prevention of concealment of contraband. (Federal Correctional Institute, Sandstone, Minnesota)

U.S. District Court
MEDIA ACCESS
DISTURBANCE

Burnham v. Oswald, 333 F.Supp. 1128 (W.D. N.Y., 1971). Newsmen brought suit seeking an order permitting press interviews of inmates in certain state correctional facilities. The district court held that guidelines applied by corrections officials which resulted in forbidding interviews of inmates after a riot took place was not an infringement of newsmen's first amendment rights. A federal court will not substitute its judgment as to restrictions required for safety and security of an institution for that of prison administrators unless a violation of constitutional rights is clear. (Attica Correctional Facility, New York)

U.S. District Court
LOCKS

Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Oh. 1971), aff'd, 456 F.2d 854 (6th Cir. 1972). Cell-locking system must be placed in good working order. (Lucas Co., OH)

U.S. District Court
HAIR
JEWELRY

Seale v. Mason, 326 F.Supp. 1375 (D. Conn. 1971). Arguments for hair restriction are based on health reasons and the need for identification of inmates. Where a prison regulation limited the jewelry women prisoners might wear to a wristwatch, earrings, a ring and a necklace with a religious medal on it, the court held no infringement of any constitutional right existed. (Montville Correctional Center, Connecticut)

1972

U.S. District Court
LOCKS

Baker v. Hamilton, 345 F.Supp. 345 (W.D. Ky. 1972). Broken locks contribute to a finding of cruel and unusual punishment as to juveniles. (Jefferson County Jail, Kentucky)

U.S. Appeals Court
SEGREGATION

Christman v. Skinner, 468 F.2d 723 (2d Cir. 1972). Putting detainee in "isolation for three days did not constitute punishment, but only maintenance of order and discipline," thus no minimal due process was necessary. (Monroe County Jail, New York)

U.S. District Court
PRETRIAL
DETAINEES

Collins v. Schoonfield, 344 F.Supp. 257 (D. Md. 1972). A detainee can be deprived of constitutional rights "only to the extent such denial is required to insure that he appears at trial and to restrain him from endangering or disrupting the security of the institution in which he is detained, or to deter him, if his conduct has already caused such danger or disruption, from repeating such conduct. Inmates may not be punished for conduct if innocuous or trivial nature under vague and uncertain standards and regulations because such conduct may offend the sensibilities of individual corrections officers where such conduct poses no threat to the security and order of the institution. (Baltimore City Jail, Maryland)

U.S. District Court
ACCESS TO
ATTORNEY

Elie v. Henderson, 340 F.Supp. 958 (E.D. La. 1972). Banning of lawyers who seem intent on "instigating trouble" is approved. Attorneys do not have a right to visit inmates who have not sought their advice. (Louisiana State Penitentiary)

U.S. Appeals Court
RELIGIOUS SERVICES

LaReau v. MacDougall, 473 F.2d 974 (2nd Cir. 1972), cert denied, 414 U.S. 878. Prisoners with a history of disruptive activity may be denied attendance at religious services. (Connecticut Correctional Institute, Somers)

1973

U.S. Appeals Court
RELIGIOUS SERVICES
CONTACT VISITS

Fallis v. United States, 476 F.2d 619 (5th Cir. 1973). Security and visiting rules are sufficient grounds for refusing to allow Mormon "Family Home Evening" contact visits. (Atlanta Federal Penitentiary, Georgia)

1974

U.S. Supreme Court
MEDIA ACCESS

Pell v. Procunier, 417 U.S. 817 (1974). Pell, a journalist, together with two other journalists and four California State Prison inmates, sought injunctive and declaratory relief in a 42 U.S.C. Section 1983 action challenging a California Department of Corrections rule promulgated by Procunier, Director of the Department. The rule provided that press and other media interviews with specific individual inmates would not be permitted. The U.S. District Court for the Southern Division of California granted the requested relief, holding that the rule unconstitutionally infringed their first and fourteenth amendment freedoms. The court dismissed the journalists' claims on the ground that other sources of information were available to them. The prison officials and journalists appealed directly to the U.S. Supreme Court.

HELD: "[S]ince [the rule prohibiting media interviews with specific individual inmates] does not deny the press access to sources of information available to members of the general public, we hold that it does not abridge the protection that the first and fourteenth amendments guarantee." 417 U.S. at 835.

REASONING:

a. "[L]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system [Cite omitted]." 417 U.S. at 822.

b. "[A] prison inmate retains those first amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrective system. Thus, challenges to prison restrictions that are asserted to inhibit first amendment interests must be analyzed in terms of the legitimate policies and goals of the corrections system, to whose custody and care the prisoner has been committed in accordance with due process of law." 417 U.S. at 822.

c. "It is in light of these legitimate penal objectives [deterrence, rehabilitation, and security] that a court must assess challenges to prison regulations based on asserted constitutional rights of prisoners." 417 U.S. at 823.

d. "When the question involves the entry of people into the prisons for face-to-face communication with inmates, it is obvious that institutional considerations such as security and related administrative problems, as well as the accepted and legitimate policy objectives of the corrections system itself, require that some limitation be placed on such visitations." 417 U.S. at 826.

e. "In the judgment of the state corrections officials, this visitation policy will permit inmates to have personal contact with those persons who will aid in their rehabilitation, while keeping visitations at a manageable level that will not compromise institutional security. Such considerations are peculiarly within the province and professional expertise of corrections officials and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment."

f. "[W]hen the issue involves a regulation limiting one of several means of communication by an inmate, the institutional objectives furthered by that regulation, and the measure of judicial deference owed to corrections officials in their attempt to serve those interests are relevant in judging the validity of the regulation." 417 U.S. at 827.

g. "[N]ewsmen have no constitutional right of access to prisons or their inmates beyond that afforded the general public." 417 U.S. at 834.

h. "The right to speak and publish does not carry with it the unrestrained right to gather information." 417 U.S. at 834 at 9, Citing Zemel v. Rusk, 381 U.S. AT 16-17.

NOTE: Important to the Court's holding that the rule did not violate the inmates' rights was its finding that adequate alternatives (mail and visitation) existed to provide inmates with access to the outside world. (Department of Corrections, California)

1975

U.S. District Court
STAFFING

Alberti v. Sheriff of Harris Co., 406 F.Supp. 649 (S.D. Tex. 1975). Sufficient jail staff shall be hired to provide one jailer for every twenty inmates. The number of jail guards must be increased when additional guards are required for the safekeeping of prisoners and the security of the jail. (Harris County Jail, Texas)

U.S. District Court
"LOCK-IN"

Rhem v. Malcolm, 396 F.Supp. 1195 (S.D. N.Y. 1975), aff'd, 527 F.2d 1041 (2nd Cir. 1975). Institution allowed to lock in inmates, consistent with least restrictive alternative theory, during following times: 1) Post-breakfast lock-in to provide services for inmates going to court. 2) Lock-in of one side of cell block while other side is eating. 3) Night time lock-in. Using proper classification procedures, the institution may impose a more restrictive lock-in schedule for inmates determined to be security risks. (Manhattan House of Detention, New York)

1976

U.S. District Court
SEARCHES

Bell v. Manson, 427 F.Supp. 450 (D. Conn. 1976). Strip and rectal searching after court appearances is upheld. (Community Correctional Center, Bridgeport)

U.S. District Court
VISITS
PRETRIAL
DETAINEES

Wolfish v. Levi, 406 F.Supp. 1243 (S.D. N.Y. 1976). Restrictions on visitation of pretrial inmates must be justified by compelling necessity. Prison officials have the ultimate burden of proof on this issue. Due process requires that the least restraint necessary to assure institutional security and administrative manageability be employed. (Metropolitan Correctional Facility, New York)

1977

U.S. District Court
CONTRABAND

Goldsby v. Carnes, 429 F.Supp. 370 (W.D. Mo. 1977). All living units should be checked for contraband at least once a month. (Jackson County Jail, Missouri)

1978

U.S. District Court
SEGREGATION

Bono v. Saxbe, 450 F.Supp. 934 (E.D. Ill., 1978). Prisoners confined in the control unit of the Marion Federal Penitentiary brought an action challenging the conditions of their confinement. The district court held that: (1) prisoners did not have a fundamental liberty interest in remaining in the general prison population but did have an interest protected by due process as a result of the prison's own rules; (2) placement of prisoners in the control unit, which was done for preventative and not punitive reasons, could not be based on the crime for which the prisoner was convicted or on the possibility of escape since every inmate in the Marion institution was a potential candidate for escape; (3) prisoners placed in the control unit were entitled to written notice of hearing, written reason, impartial decision making, and immediate and later periodic review; (4) prisoners were entitled to be told what affirmative actions they could take to expedite their release from the control unit, and (5) conditions of confinement in the control unit were not cruel and unusual punishment except for the use of closed-front cells. (Federal Penitentiary, Marion, Illinois)

U.S. District Court
FIRE SAFETY

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
MEDIA ACCESS

Houchins v. KQED, Inc., 438 U.S. 1 (1978). This is a 42 U.S.C. Section 1983 action brought by KQED Broadcasting Company against Houchins, the sheriff of Alameda County, Colorado, claiming deprivation of first amendment rights. KQED was refused permission to inspect and photograph areas of a county jail where an inmate suicide had taken place. Shortly after the initiation of this action, the sheriff conducted monthly tours, open to the public, of certain areas of the jail. KQED maintained this was inadequate because once the tours were full media representatives might not have access, and photographic and sound equipment were not allowed on the tours.

The U.S. district court granted a preliminary injunction enjoining Houchins from denying KQED and responsible representatives of the news media access to the jail, and from prohibiting the use of photographic and sound equipment. On interlocutory appeal, the circuit court of appeals affirmed the district court's order, concluding the media had a first amendment and fourteenth amendment right of access to prisons and jails. Houchins sought certiorari from the U.S. Supreme Court. (Reversed and Remanded).

HELD: Neither the First Amendment nor the Fourteenth Amendment mandates a right of access to government information or sources of information within the government's control. Under...[the]...holdings in Pell v. Procunier...[Cite Omitted]...and Saxbe v. Washington Post...[Cite Omitted]..., until the political branches decree otherwise...the media have no special right of access to the Alameda County Jail different from or greater than that accorded the public generally. 438 U.S. at 15, 16. (Alameda County Jail, Colorado)

1979

U.S. Supreme Court
SECURITY
RESTRICTIONS
SEARCHES
VISITS
CELL CAPACITY

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 confided 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
SEGREGATION

Brown v. Neagle, 486 F.Supp. 364 (S.D. W.V. 1979). Placement in administrative detention as an escape risk on the basis of escapes from other institutions by acquaintances of the plaintiff is irrational. Return to general population and credit for the good time which would have been earned in general population is ordered. The plaintiff is to be treated as any other inmate. (Federal Correctional Institution, Alderson, West Virginia)

U.S. Appeals Court
VISITS
CROWDING
MAIL
CLASSIFICATION
PROTECTION

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 the following areas.

VISITATION. The Court noted that convicted criminals do not have a constitutional right to visitation except for legal counsel, whereas pretrial detainees rights are limited in that they must yield, where necessary, to the needs of institutional security. In the Fifth Circuit, the courts have held that a pretrial detainee also does not have constitutional right to contact visitation. At the jail, visitation was officially limited to a brief period on Sundays, although jail officials often allowed visitation at other than regular hours. However, there had been a serious smuggling problem at the jail. When the officials ordered that visitors be searched before being allowed visitation to prevent smuggling, the inmates rioted, causing $30,000 damage. The appellate court upheld the lower court's ruling that the existing visitation regulations were constitutionally adequate. The court specifically pointed out that depriving inmates of contact visitation was unconstitutional.

OVERCROWDING. Although there had been a serious overcrowding problem at the jail, the construction of the new jail eliminated any further problem. The court ruled, however, that overcrowding at the old jail was prohibited.

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.

CLASSIFICATION. The court noted that the Constitution does not require that a classification plan be put into effect, although a court may order such a plan to protect inmates from homosexual attacks, violence and contagious diseases. The court ruled that the policies in existence under the Mississippi Code were adequate to protect the inmate.

SECURITY. While noting that an inmate is to be protected from assaults from other inmates, the court also stated that relief could be provided only where there was a showing of deliberate indifference to the inmates' security and protection. Here, there was no such showing, and the court refused to issue injunctive relief. (Jackson County Jail, Pascagoula, Mississippi)

1980

U.S. District Court
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
SEGREGATION

Bukhari v. Hutto, 487 F.Supp. 1162 (E.D. Vir. 1980). While placement in segregation based upon the political beliefs of an individual would violate the first amendment, placement in segregation of an individual who is a member of an organization advocating escape, who although a model prisoner, has already escaped once, and whose closest associates have recently escaped from other institutions is a reasonable security measure. Such placement in segregation does not require a Wolff type hearing, either before or after, but the individual does have a due process base right to have any erroneous information in the file which is considered in making the decision. (Virginia Correctional Center for Women, Goodland)

U.S. District Court
PROTECTION
SEPARATION

Campbell v. Bergeron, 486 F.Supp. 1246 (M.D. La. 1980), aff'd, 654 F.2d 719 (5th Cir., 1981). Jail inmates have a right of personal safety when incarcerated. However, there is nothing inherent in a failure to separate sentenced and pretrial inmates which violates this right. (West Baton Rouge Parish Jail, Louisiana)

U.S. District Court
TELEPHONE CALLS

Rodriguez v. Blaedow, 497 F.Supp. 558 (E.D. Wisc. 1980). Security considerations permit the institution to monitor all telephone calls and justify a requirement that all calls be made in English. (Correctional Institution, Waupun, Wisconsin)

U.S. District Court
SEARCHES

Sims v. Brierton, 500 F.Supp. 813 (N.D. Ill. 1980). Requiring inmates to submit to a body cavity search in order to consult with an attorney or to have a deposition taken violates the right of access to the courts. There are no security considerations demonstrated in this context which would support such a requirement. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
HATS

St. Claire v. Cuyler, 634 F.2d 109 (3rd Cir. 1980). Rejecting the lower court's reasoning, the Third Circuit Court of Appeals has upheld regulations of the Graterford, Pennsylvania prison, preventing inmates from wearing hats even for religious purposes and from attending religious services while in segregation. The lower court ruled against the prison, holding that while the prison officials imposing the rules were seeking to protect substantial security interests, they had not chosen the "least restrictive alternative" for doing so. Prison officials argued that hats would provide an additional place for the concealment of weapons or contraband. They also stated that some prison cliques use head gear as a means of identification. According to the prison officials, group identification can cause security problems if separate groups exhibit hostility toward each other. The ban on attendance at religious services by prisoners in segregation was based upon the prison's inability to mobilize the manpower to move the prisoners to and from services. The appeals court first noted that convicted prisoners do not forfeit all their constitutional protections. The court stated, however, that first amendment freedoms may be curtailed when prison officials reasonably believe that exercise of such freedoms would be likely to result in disruption to the prisoner's order and stability. The court then held that the showing of a substantial security interest, without more, was sufficient to shift the burden of proof to the plaintiff. Were the plaintiff to then prevail, it would be necessary to show that the prison's security concerns were unreasonable or its response exaggerated. The court found that no such showing was made here and thus reversed the lower court. The district court's "least restrictive alternative requirement," the higher court said, is not necessary. (Pennsylvania Prison, Graterford, Pennsylvania)

U.S. Appeals Court
USE OF FORCE

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)

1981

U.S. District Court
BOOKS
CONTRABAND

Howard v. Cronk, 526 F.Supp. 1227 (S.D. N.Y. 1981). The prisoner's constitutional right to visit with his legal counsel was not violated by the prison policy of not allowing prisoners to bring books into a legal visit. That rule was reasonable in light of the security problem posed by books as a vehicle for smuggling contraband into the prison, and it could not be said that the policy unjustifiably obstructed the prisoner's access to his attorney. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
SECURITY
PRACTICES

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. Appeals Court
CLOTHES
FIRE SAFETY

Olgin v. Darnell, 664 F.2d 107 (1981). The restrictions and conditions placed on a pretrial detainee, particularly the removal of all his clothes but his underwear for one day, were not arbitrary and purposeless. Those steps were unreasonably related to the legitimate governmental objective of calming participants in the stabbing of a fellow prisoner, restoring order and protecting inmates from a fire hazard created by the pretrial detainee. (Midland County Jail, Texas)

U.S. Appeals Court
SEARCHES- CELL

Olsen v. Klecker, 642 F.2d 1115 (8th Cir. 1981). Conducting unannounced cell searches without any cause is a valid security procedure. (North Dakota State Penitentiary)

1982

U.S. Appeals Court
RELIGIOUS SERVICES

Rogers v. Scurr, 676 F.2d 1211 (8th Cir. 1982). Court finds that Muslim inmates' rights are not violated. Several muslim inmates of the Iowa State Penitentiary filed suit alleging that their religious freedom had been curtailed because they were denied entrance to the prayer chapel for a short time and later refused to leave a restricted area where they had started praying. They also challenged prison regulations allowing prayer caps and robes to be worn only in the chapel.

The lower court found no constitutional violation, but ordered changes in prison regulations in regard to religious practices. The court of appeals for the 8th Circuit, agreeing that no violations had occurred, also vacated all orders of the lower court, stating that the lower court had erred in ordering the changes where no constitutional violations had been found and noted that prison administrators should be accorded liberal discretions in running the prison. The appeals court found that all regulations were reasonably related to safety and security needs of the prison and that was evident from the record that prison administrators had exercised good faith in trying to accommodate the needs of the Muslim inmates' religious beliefs. (Iowa State Penitentiary)

U.S. Appeals Court
USE OF FORCE

Smith v. Iron County, 692 F.2d 685 (10th Cir. 1982). Use of mace on pretrial detainee is found reasonable. The court found that the use of mace did not violate any constitutional rights in this case. The plaintiff, awaiting disposition on a burglary charge, was found on the floor under his bunk making banging noises. The jailer warned the inmate that he would use mace if he was not given the object making the noise. Because the jailer was the only person on duty in the facility in Cedar City, Utah, and because he had reason to believe that a heavy metal object (six pound drain cover) might have been used to harm anyone near the inmate, the use of mace was reasonable. The court also noted that the jailer could not enter the cell without risking the escape of the plaintiff and his cell mate. (Iron County Jail, Utah)

1983

U.S. Appeals Court
RELIGIOUS ARTICLES

Childs v. Duckworth, 705 F.2d 915 (7th Cir. 1983). Denial of religious articles to practice satanic beliefs is proper. The Fifth Judicial Circuit Court of Appeals has ruled that denial of an inmate's request to practice his alleged Satanic religion was justified in the interest of prison security. Prison officials had found that the inmate was insincere in his professed belief since he never provided the information required to start an organization, never obtained a sponsor, and was secretive about his group's rituals. Without such information, the practice of the so-called religion presented a potential threat to institutional security since prison authorities had no way of knowing what would occur at the Satanic services. Prison officials properly denied the prisoner a podium from which to propagate his individual beliefs, candles and incense which were a fire hazard, and a crystal ball which could be used to physically harm someone. In addition, prison officials and the district court decided Satanism was not a religion, but rather a "nebulous, philosophic concept." (Indiana State Prison)

U.S. District Court
RELIGION

Karriem v. Barry, 32 Crim. L. Rptr. 2429 (D. D.C. 1983). Procedures for admitting a minister to an institution are upheld. The district court upheld institutional procedures which require a minister who desires to work in the institution to execute a form: disclosing his superior, if any; agreeing to obey any orders from his superior; agreeing to keep his superiors informed of his activities; and agreeing to refrain from any political activities, finding that the procedures do not violate either the free exercise or establishment clauses of the first amendment. (District of Columbia Jail)

U.S. District Court
VISITS

Keenum v. Amboyer, 558 F.Supp. 1321 (E.D. Mich. 1983). Short-term denial of visiting does not violate inmate rights. A federal district court has determined that an inmate at the Macomb County Jail suffered no violation of constitutional rights when authorities prevented a certain individual from visiting him for three weeks. The restriction was imposed after officials received a telephone call warning that the individual was going to assist the inmate in an escape attempt. The court noted that in the three week period the inmate received other visitors, and he was able to communicate with the restricted individual through correspondence. (Macomb County Jail, Michigan)

U.S. Appeals Court
SEARCHES
WINDOWS

Rutherford v. Pitchess, 710 F.2d 572 (9th Cir. 1983), rev'd, 104 S.Ct. 3227 (1984). Pretrial detainees class action suit brings changes. A class action suit was filed against the Los Angeles County central jail by pretrial detainees. The federal district court ordered twelve changes after a trial. Three of the changes were appealed by county officials.

The Ninth Circuit Court of Appeals decided that: low risk detainees were to be allowed one contact visit per week; detainees would be allowed to be present during searches of their cells; and the replacement of transparent windows by concrete enclosures was justified. Subsequently the United States Supreme Court reversed on the first two issues. (Los Angeles County Central Jail)

1985

State Appeals Court
SECURITY PRACTICES

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)

U.S. District Court
RELIGIOUS ARTICLES

Dettmer v. Landon, 617 F.Supp. 592 (D.C. Va. 1985). Since an inmate's practicing of a religion that was popular in northern Europe in the tenth and eleventh century was found to be a legitimate religion, prison officials were ordered to provide him with ceremonial materials. Against their objections, officials were ordered to supply the inmate with: 1) Sulfur, sea salt or uniodized salt; 2) Quartz clock with alarm; 3) Candles; 4) Incense; 5) A white robe without a hood. The prison has general custody of the items to be made available to the inmate at designated times. A robe without a hood was ordered because of the officials' assertion that the hood could promote an escape attempt. Prisoners who practiced more conventional religions such as Catholicism and Hinduism were allowed access to candles, incense and robes.
The plaintiff's religion, referred to as the Church of Wicca (more commonly called witchcraft) is practiced by an estimated 10,000 to 50,000 people in the United States. (Powhatan Correctional Center, State Farm, Virginia)

U.S. Appeals Court
SAFETY
FIRE

Hoptowit v. Spellman, 753 F.2d 779 (9th Cir. 1985). Inmates brought an action challenging conditions of confinement in a state prison system. On remand, 682 F.2d 1237, the United States District Court entered judgment finding conditions in violation of the eighth amendment and ordered relief; the state appealed. The court of appeals held that: (1) the change of administration, resulting in defendants named in the action either leaving office or changing positions, did not warrant reopening the record on remand; (2) inadequate lighting, vermin infestation, substandard fire prevention, and safety hazards in the prison violated minimum requirements of the eighth amendment; and (3) the order for relief was overbroad in requiring provision of adequate food and clothing where there were no findings of inadequate food and clothing.

The prisoners have a right not to be subjected to an unreasonable threat of injury or death by fire and need not wait until actual casualties occur in order to obtain relief from such conditions. Substandard fire prevention at the state prison which endangered inmates' lives violated the eighth amendment.

Persons involuntarily confined by the state have a constitutional right to safe conditions of confinement. Safety hazards found throughout the state prison's occupational areas, which were exacerbated by prison's inadequate lighting and which seriously threatened the safety and security of the inmates, created unconstitutional infliction of pain. (State Penitentiary, Washington)

U.S. District Court
FIRE SAFETY
STAFFING

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.

For security reasons and for the safety of a correctional officer, he is not permitted to carry a key to the exterior doors in the housing units if he is working alone. The inmates claim this and staff shortages would prevent them from evacuating in case of a fire. The court found no violation, since the correctional officer does carry keys to exit doors that empty into adjoining units. A door in the laundry room that was supposed to be one hour fire resistant according to code, did not amount to a constitutional violation. Finally, the court found no violation in the unannounced entry into the dorms by female correctional officers, who occasionally see unclothed inmates.
(Federal Correctional Institution at Danbury, Connecticut)

U.S. Appeals Court
KEYS

Riley v. Jeffes, 777 F.2d 143 (3rd Cir. 1985). A Federal Appeals Court held that a Pennsylvania inmate may sue prison officials because he is in fear of attack. James Riley alleged in his suit that some inmates were given cell keys for most of the day

and left unsupervised. He contended that the keys sometimes were used to open other inmates' cells, and that on one occasion his cell was opened, and he was robbed. He also contended that this key practice allowed other inmates easy access to his cell while he was asleep. As a result, he had lived in fear of robberies, assaults, threats, homosexual activities, fights and stabbings for the past six months. The court found that these allegations, if true, required Riley to live day in and day out with a real and persistent fear of personal injury and that prison officials were totally indifferent to his safety. The court held that an inmate's right to be protected from constant threat of violence and sexual assault from other inmates does not require that he wait until he actually is assaulted before obtaining relief. It is only necessary that inmates show a pervasive risk of harm from other prisoners, in order to prevail. (State Correctional Institution at Huntingdon, Pennsylvania)

State Supreme Court
USE OF FORCE

State v. Thornton, 38 CrL 2173 (Mont Sup. Ct. 10/31/85). Montana Supreme Court holds that physical restraint is not a necessary element in arrest and detention. A truck driver was told that he was under arrest by a police officer and secured his release by threatening the officer with violence. He was charged with escape and appealed to the Montana Supreme Court. The court upheld the charge, noting that "official detention" was defined as detention by a peace officer pursuant to arrest. The court noted that an arrest requires the existence of three elements: (1) authority to arrest, (2) assertion of that authority with intention to effect an arrest, and (3) restraint of the arrestee. The court explained that:

> ...the view that a physical restraint is a necessary element of an arrest is largely discredited in recent cases. We agree with this position. Furthermore, we assert that the standard for an arrest when there is not a physical restraint of the defendant is whether a reasonable person, innocent of any crime, would have felt free to walk away under the circumstances. This standard drops any technical requirements for an arrest and the concept of restraint, and instead looks upon all the facts and circumstances of each case.

As a result, the court ruled that a law enforcement officer need not exert actual physical restraint over an individual in order to arrest him for purposes of a state law prohibiting escape from official detention.

1986

U.S. Appeals Court
STAFFING

Alberti v. Klevenhagen, 790 F.2d 1220 (5th Cir. 1986). Appeals court upholds remedial measures of district court, finding levels of violence and sexual assault violated inmates' eighth amendment rights and ordering increased staffing. In a case initiated in 1972, the United States Court of Appeals for the Fifth Circuit agreed with the sweeping corrective measures ordered by a federal district court. The original class action suit was brought under 42 U.S.C. Section 1983, alleging that the facilities and operations of the Harris County detention system violated inmate constitutional and statutory rights. In February, 1975, a consent judgment was entered in the district court, calling for upgrading of existing facilities, construction of a new central jail, and committing the county to provide sufficient and adequately trained guards and other staff to assure the security of inmates. In December, 1975, the county's compliance with the consent judgment was challenged. Following hearings, a broad remedial order was issued. The court ordered adequate training and pay increases for jail personnel and ordered that staffing be increased to provide one jailer for every twenty inmates. In 1978 the court reluctantly approved plans for a new central jail. The plaintiffs had argued against the planned use of multiple occupancy cells, and the court expressly conditioned occupancy of the new facility on the provision of adequate staff. In 1982 and 1983 the district court held hearings to determine if adequate staffing was provided for the newly-opened detention facility. The court ordered the county to prepare a plan which complied with Texas Commission on Jail Standards (TCJS) requirements of one officer to forty-five inmates, eventually approving such a plan. When the county failed to meet a June, 1983, deadline for full staffing, the plaintiffs filed a motion for contempt. The county was granted TCJS approval in October for an alternative poststaffing plan, which provided less staff than the previous "one to forty-five" plan. After extensive hearings in 1984, and the presentation of evidence and testimony on violence in the facilities, the court ordered the implementation of a staffing plan which was similar to one proposed by the plaintiffs' experts, calling for approximately the same number of staff as the original "one to forty-five" plan, but incorporating a different assignment scheme. On appeal, the county argued that the evidence presented in the 1984 hearings was not sufficient to support the district court finding of constitutional violations, and that the new staffing plan ordered by the court exceeded what should be required to remedy any such violations. The appeals court affirmed all aspects of the district court corrective orders, stating that "....it is more regrettable that after thirteen years conditions in the jails are still in contravention of constitutional standards. Despite the efforts of the parties and the court, inmates continue to be beaten, raped, abused, and assaulted. The district court has acted properly in fashioning new relief for an old malady." (Harris County Detention Facilities, Texas)

State Court
CONTRABAND

Dennison v. Osp, 715 P.2d 88 (Ore. 1986). An inmate petitioned for a judicial review of a finding of the superintendent of the state penitentiary that he had knowingly engaged in conduct which constituted a substantial step toward manufacturing a weapon. The court of appeals, 770 Or.App. 194, 712 P.2d 186, affirmed, and petition for review was allowed in part. The Supreme Court held that the inmate did not violate the administrative rule in question by drawing blueprints of handguns, absent evidence that necessary products or materials were accessible or available for the manufacturer of the weapon within the penitentiary. (State Penitentiary, Oregon)

U.S. District Court
STAFFING

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
SECURITY PRACTICES

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. District Court
CROWDING
STAFF

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 systematically deficient conditions constituted cruel and unusual punishment justifying equitable relief.

Overcrowding and systematically 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.

The classification of inmates is essential for the prison security. One critical function of classification is the efficient identification of violent, aggressive inmates and those in need of psychiatric care, so that they can be separated from the rest of the population. See, e.g., **Palmigiano v. Garrahy**, 443 F.Supp. 956 (D.R.I.1977). The classification system at Occoquan appears to be dangerously overtaxed by the crush of inmates in need of classification. Idleness among inmates results in a variety of problems, including heightened tension, frustration, and violence. The lack of adequate programs can also have an adverse impact on inmates' chances for parole. There was no disagreement among the expert penologists that inmates should be engaged in some productive enterprise, properly supervised. Nonetheless, enforced idleness presents a major problem at Occoquan. The correctional officers do not supervise properly the sleeping areas of the dormitories. Correctional officers do not make patrols on a frequent and regular basis, nor are officers stationed in the rear of each dormitory so as to facilitate supervision of the living area when inmates are present. (Lorton Correctional Complex, D. C.)

U.S. District Court
SEARCHES
TRANSFER

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. District Court
FIRE SAFETY

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) evidence was sufficient to support a finding that jail fire safety conditions did not violate inmate's constitutional rights; and (4) administering insulin to a diabetic inmate three times daily rather than four times daily did not violate the inmate's rights.

Evidence that a fire in the jail which resulted in an inmate's hospitalization was started by another inmate and was not immediately reported was sufficient to support a finding that jail fire safety conditions did not violate the inmate's constitutional rights. (Camp County Jail, Texas)

U.S. District Court
CROWDING
PROTECTION

Morales Feliciano v. Romero Bercelo, 672 F.Supp. 591 (D. P.R. 1986). According to a federal court, prison overcrowding, inmate idleness, and the threat of violence among inmates, combined with the continuous frustrations of reasonable expectation produced by administrative incompetence, resulted in an ascertainable psychological deterioration in the Puerto Rican prison population. The psychological deterioration inflicted on inmates in the prison system was an unnecessary and wanton infliction of pain in violation of prisoners' Eighth Amendment protections against cruel and unusual punishment. Insofar as the Puerto Rican prison administration was under a statutory duty to provide rehabilitative programs through which inmates could earn time credits towards early release, unavailability of any form of useful work, study or even recreation, where none of the physical conditions of confinement met constitutional standards, combined with continuous frustrations of reasonable expectations produced by administrative incompetence, inflicted serious psychological harm on inmates, which was independently cognizable under the Eighth Amendment. When inmates' opportunities to study or work within prison were taken away by irregularities in the classification system or the prison administration's inability to provide a safe environment, inmates were deprived of liberty interest implicating a statutorily created expectation that imprisonment could be shortened by work and study. Inmates of Puerto Rican jails were denied due process as a result of inefficient, inexperienced, and often incompetent social-penal counseling system, which had a severe negative impact on inmates' opportunities to establish eligibility for parole and to actually be heard in a timely manner by a parole board. Commingling of pretrial detainees with convicted prisoners, in conjunction with finding that conditions which prevailed in all institutions at which pretrial detainees were housed violated the Eighth Amendment rights of convicted inmates, was a sufficient basis for holding that pretrial detainees were being punished prior to conviction and that, therefore, they were deprived of liberty without due process of law. (Commonwealth of Puerto Rico)

U.S. Appeals Court
SAFETY

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.

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 shakedowns 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. Supreme Court
USE OF FORCE

Whitley v. Albers, 106 S.Ct (1986). Supreme Court rules that use of lethal force to quell a prison disturbance does not violate constitutional rights. During a disturbance at the Oregon State Penitentiary a correctional officer was taken hostage and placed in a cell on the upper tier of a two tier cellblock. Attempting to free the hostage, prison officials devised a plan which called for a manager to enter the cellblock unarmed, followed by officers armed with shotguns. The officers were instructed to fire a warning shot, and to shoot low at any inmate who attempted to climb the cellblock stairs. After firing a warning shot, an officer shot a prisoner in the knee when he started up the stairs. The prisoner filed suit against prison officials alleging violation of his eighth and fourteenth amendment rights. The federal district court ruled for the defendants, finding their "use of deadly force was justified under the unique circumstances of this case." The U.S. Court of Appeals for the Ninth Circuit reversed the lower court decision. The U.S. Supreme Court reversed the appeals court decision, finding the use of force to be justified in this case. The Court ruled that the infliction of pain in the course of a prison security measure is only an eighth amendment violation if it is "inflicted unnecessarily and wantonly." The Supreme Court found that the "deliberate indifference" standard for evaluating eighth amendment claims which was established in Estelle v. Gamble, 429 U.S. 427 (1976), is not sufficiently broad enough to be used to analyze deadly force claims associated with riot situations. Wantonness must consider if the force was applied as part of a good faith effort to maintain or restore discipline, or if it was applied maliciously or sadistically for the purpose of causing harm, as well as efforts made to temper the severity of the forceful response. (Oregon State Penitentiary)

1987

3. Appeals Court
RELIGIOUS ARTICLES

Allen v. Toombs, 827 F.2d 563 (9th Cir. 1987). On appeal, the lower court decision that upheld prison regulations was affirmed. Prison inmates of a Native American religion failed to establish that a state prison policy prohibiting inmate spiritual leaders from conducting a "Pipe Ceremony" for prisoners in segregation when no outside "Pipe Bearer" was available refused inmates access to ceremony in violation of their First Amendment rights. Inmates had presented no evidence that any inmate in segregation had been denied access to the ceremony because of the policy. According to the court, the use of an axe, red hot stones and a pitchfork was reason enough for prison officials to deny segregated inmates from attending a Native American "Sweat Lodge" ritual. The Court found that the "Sweat Lodge" Ceremony posed a high security risk for the prison community if inmates from segregation were allowed to attend. In addition, the Court found that there was no evidence that inmates from the segregation unit had been denied attendance of the "Pipe Ceremony." The prison can require that the "Pipe Bearer" be an outside person rather than an inmate. (Oregon State Penitentiary)

U.S. Appeals Court
SEGREGATION

Bailey v. Shillinger, 828 F.2d 651 (10th Cir. 1987). After his voluntary transfer to a prison in another state, a Wyoming state prisoner who was serving a sentence for first degree murder murdered another prisoner and was returned to the Wyoming State Prison. The warden assigned him to a maximum security unit without a formal hearing. The prisoner filed a civil rights lawsuit against the warden, alleging his due process rights had been violated. He also charged that he was subjected to cruel and unusual punishment by being deprived of exercise and fresh air. The appeals court concluded that, because of the danger the inmate presented to other inmates and staff,

the court concluded the warden was correct in assigning the inmate to maximum security. As to the cruel and unusual treatment charge, the court concluded that the one hour per day of exercise and fresh air was "restrictive" but did not violate the Eighth Amendment. (Wyoming State Prison)

U.S. District Court
USE OF FORCE

Blair-El v. Tinsman, 666 F.Supp. 1218 (S.D.Ill. 1987). Use of mace which was sprayed on an inmate was upheld by the court because it was used to restore prison security and that it did not constitute cruel and unusual punishment. After the chemical was sprayed, the inmate was offered medical treatment which he refused. (Menard Correctional Center, Illinois)

U.S. Appeals Court
RELIGIOUS GROUPS

Butler-Bay v. Frey, 811 F.2d 449 (8th Cir. 1987). Inmates filed a civil rights action alleging that they had been denied the free exercise of their religion. The appeals court found in favor of prison officials when it agreed that prison rules preventing inmates of the Moorish Science Temple of America from wearing fezes were reasonable because the headwear could be used to conceal contraband. The court also upheld the prison's requirements that a guard be present at meetings and that minutes and membership lists should be provided to prison officials. The court found that the practices and regulations were not discriminatory, and did not violate the inmates' constitutional rights. (Missouri Eastern Correctional Center)

U.S. District Court
USE OF FORCE

Collins v. Ward, 652 F. Supp. 500 (S.D.N.Y. 1987). Prison officers subdued a violent inmate who was armed with bottles and scissors with tear gas. Two inmates who were nearby filed a claim for using the tear gas without regard for their health and safety. The district court ruled that prison officials were reasonable in their use of tear gas because an effort had been made to open windows and ventilate the area where the chemical was to be thrown. The court found that using tear gas to regain control and free inmates was proper under emergency circumstances. According to the court, the fact that alternative methods, other than tear gas, were available to subdue riotous prisoners did not mean that use of tear gas constituted cruel and unusual punishment when prison officials otherwise acted in good faith and employed special precautions to minimize harmful effects of tear gas upon innocent bystanders. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
RELIGION

Felix v. Rolan, 833 F.2d 517 (5th Cir. 1987). Religious freedom is not violated when it is required that a prisoner sign both a committed name and legal Muslim name when entering the library. The inmate plaintiff argued that he had his legal name changed for religious reasons and that use of the prior name was offensive to him. He also complained that he was denied the supplies he needed to file this and other lawsuits by the library supervisor. The appeals court found the complaint about lack of supplies unwarranted when evidence showed that the inmate had requested 100 sheets of paper a week, but was only granted 75. The court also found, since it aided in the identification of prisoners, that the required use of the inmates' committed name was a reasonable regulation adopted in the interests of order, security and administrative efficiency. (Ellis Unit of the Texas Department of Corrections)

U.S. District Court
LOCK-IN

Gabel v. Estelle, 677 F.Supp. 514 (S.D. Tex. 1987). Inmates suffered no denial of their constitutional rights when, as indicated in their civil rights lawsuit, they were furnished peanut butter sandwiches as the sole nourishment during a lockdown. Prison officials responded to a non-violent work strike of over 150 inmates by locking all striking inmates in their cells without notice or hearing. The court found that the lock-down was imposed upon all striking inmates without partiality and was the kind of action prison officials were entitled to take in response to a confrontation with an inmate. In addition, the court also found no constitutional violation on the mere basis of the inmates' "distaste" for peanut butter. It added that "the strike itself may have been the cause of the limited fare." (Wynne Unit, Texas Department of Corrections)

U.S. Appeals Court
STAFFING

Galloway v. State of Louisiana, 817 F.2d 1154 (5th Cir. 1987). A federal court order issued to correct eighth amendment violations for the benefit of the prisoners required at least three men to be assigned to each prison disciplinary unit. This alone could not serve as a basis for liability in a federal civil rights action for injuries sustained by a corrections officer. The officer could not recover due to his being the only guard working the particular disciplinary unit at the time of his injury because the order did not create constitutional rights, such as would entitle the officer to do so. (Washington Correctional Institute, Louisiana)

U.S. Appeals Court
RELIGIOUS GROUPS
RELIGIOUS SERVICES

Hadi v. Horn, 830 F.2d 779 (7th Cir. 1987). Muslim inmates' free exercise rights under the first amendment were not violated when prison officials cancelled Muslim religious services due to the fact that a Muslim chaplain was unable to be present. The inmates claimed that, when a Muslim chaplain was unable to attend, a Muslim inmate should be permitted to conduct services under the supervision of a non-Muslim chaplain. Prison officials felt that conflicts might arise because inmates lacked the

requisite religious expertise to resolve issues that arose during religious meetings and they also indicated that security could be jeopardized by granting inmates positions of authority as religious leaders over other inmates. The officials also expressed concern that services led by inmates might be used for gang meetings and for dissemination of views interfering with order in the prison. (Pontiac Correctional Center)

U.S. Appeals Court
SEARCHES

Hay v. Waldron, 834 F.2d 481 (5th Cir. 1987). Administrative segregation inmates were subjected to body cavity strip searches each time they entered or left their cell. The policy required the inmate to fully disrobe in his cell and to reveal for visual inspection the various parts of his person where a weapon or contraband might be concealed. An inmate who was held in administrative segregation challenged this policy, filing a federal civil rights lawsuit. The appeals court found that this policy was constitutional and reasonably related to legitimate security objectives. The court held that strip searches must merely be reasonably related to legitimate security interests, and therefore rejected the inmate's endorsement of a "least restrictive means" or probable cause" standard for the constitutionality of strip searches. However, the appeals court ruled that the magistrate's finding that the prison had not discriminatorily applied its strip-search policy against the inmate and his witnesses for bringing a civil rights action against prison officials was premature and ordered further hearing on this matter. (Texas Department of Corrections)

U.S. Appeals Court
RELIGIOUS ARTICLES
VISITS

Higgins v. Burroughs, 834 F.2d 76 (3rd Cir. 1987). The United States Supreme Court recently vacated an order of the U.S. Court of Appeals for the Third Circuit. **Higgins v. Burroughs**, 816 F.2d 119 (3rd Cir.), **vacated**, 108 S.Ct. 54 (1987). The lower court had ruled that a state prison regulation prohibiting the wearing of rosary beads into a visiting area violated inmates' First Amendment religious freedom and was not a valid security measure, In light of **O'Lone v. Estate of Shabazz**, 107 S.Ct. 2400 (1987), in which the court said that prison regulations which are alleged to impinge upon constitutional rights are valid if "it is reasonably related to legitimate penological interests," the Supreme Court asked that the decision be reconsidered. On remand, the Third Circuit expressed its view that this standard should create "no difference in result," but remanded the case to the trial court for further proceedings. (Graterford State Correctional Institute, Pennsylvania)

U.S. Appeals Court
USE OF FORCE
DISTURBANCE

Holloway v. Lockhart, 813 F.2d 874 (8th Cir. 1987). A federal appeals court disagreed with a lower court and ruled that an inmate could bring a federal suit for being forced to inhale tear gas sprayed by guards to subdue fellow inmates. The inmate claimed that he, along with about 20 other inmates, was injured while they were sleeping when guards sprayed a barrage of the chemical at disruptive inmates. This caused the fellow inmates to be forced to inhale the substance causing them to choke, pass out, suffer temporary blindness and breathing problems. (Maximum Security Unit, Tucker, Arkansas)

U.S. District Court
PROTECTION
STAFFING

Hossie v. U.S., 682 F.Supp. 23 (M.D. Pa. 1987). A federal prisoner failed to prove that prison overcrowding or an insufficient number of guards proximately caused the injuries the prisoner sustained as a result of an altercation with fellow inmates. To support the prisoner's expert's conclusion that one more guard would have prevented the assault would have required the placement of a guard at the shower/bathroom at all times. This situation would make the government an insurer of a prisoner's safety, a standard that was not required. (United States Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
CONTRABAND

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. The court noted that claims that hardcover books provided a security problem, in that they could be used to conceal contraband, had to be rejected because, as the court noted, there were no specific instances of such problems cited and contraband could be concealed in clothing or other items which inmates were allowed to receive. The court also ruled that the jail must notify inmates when books are received and rejected. The court felt this could be done by duplicating a notice that is sent to the books' senders indicating the rejection, and sending a copy to the inmates. 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
MAIL
PUBLICATIONS

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 were then told 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)

U.S. Appeals Court
USE OF FORCE

Pressly v. Gregory, 831 F.2d 514 (4th Cir. 1987). According to a federal court, a medical examination and a photograph taken of an inmate the day after an alleged assault were sufficient evidence to support the officers' version of the incident. The inmate plaintiff was being transferred from one prison to another when he resisted efforts to be handcuffed. He alleged that five officers fell on him "en masse" and beat him although he was offering only passive resistance. The court found that there was a need for the application of force since the inmate even admitted that it was applied against him only after he refused to cooperate and resisted efforts to be handcuffed. While the court noted that force justified at its inception may still cross the boundary of constitutionality if the level of coercion actually applied dramatically exceeds the amount needed to accomplish legitimate goals and causes unnecessary injury, it ruled here that the force inflicted by the officers here was not of such an impermissible degree. While the inmate alleged his injuries caused pain for weeks following the incident, a medical examination and a photograph of appellate taken the next day revealed no indication of any physical injury. (Mecklenburg County Jail, Boydton, Virginia)

U.S. District Court
HAIR LENGTH

Reed v. Faulkner, 653 F.Supp. 965 (N.D. Ind. 1987). An inmate who claimed to belong to a religion called Rastafarian which is a Jamaican sect that have their homeland in Africa, requested to wear his hair long. When an expert witness revealed that wearing long hair was more a matter of choice, rather than a mandate of the religion, the court also noted that the inmate did not wear his beard long which also was a practice of his religion. The court found reason to doubt the inmate's sincerity. Further, aside from the question of sincerity, the court found the prison rules were supported by a security concern because long hair can hide contraband. Also, health and sanitation concerns of lice and infection can be a problem in prisons, as well as the danger of long hair getting caught in machinery and cell doors. (Indiana State Prison)

State Appeals Court
SEARCHES-
CELL
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.

U.S. District Court
FACIAL HAIR

Ross v. Coughlin, 669 F.Supp. 1235 (S.D.N.Y. 1987). An orthodox Jewish inmate stated a claim against New York prison officials for violating his First Amendment right to freely exercise his religion by forcing him to cut his facial hair, according to a federal district court. The beard trimming regulation being challenged was not reasonably related to governmental interests in identifying and controlling contraband, inmate identification, or prison security. However, the court found that the inmate did not have a claim in connection with his being forced to shave his hair and beard for an initial identification photograph. (Downstate Correctional Facility, New York)

U.S. Appeals Court
SEGREGATION

Tyler v. Black, 811 F.2d 424 (8th Cir. 1987), cert. denied, 109 S.Ct. 1760. On appeal, a federal court held that: (1) the mass transfer of inmate to a segregation unit during a period of prison unrest did not violate due process, but (2) double celling of inmates in small cells with solid "boxcar" type doors was cruel and unusual punishment in violation of Eighth Amendment. The mass transfer of inmates to a segregation unit during a period of prison unrest did not violate due process, where inmates were given posttransfer hearings, the warden perceived move as a necessary emergency security measure, no punitive purpose was involved, and the transfers were purely temporary administrative segregations. However, double celling of inmates in segregation unit in small cells with solid "boxcar" type doors was cruel and unusual punishment in violation of the Eighth Amendment; inmates with history of assaultive behavior were placed in closed cells for up to 23 hours a day for a period of several months. (Missouri State Penitentiary, Special Management Facility)

U.S. District Court
TELEPHONE

U.S. v. Montgomery, 675 F.Supp. 164 (S.D.N.Y. 1987), cert. denied, 109 S.Ct. 846. The interception and taping of a telephone call made by a pretrial detainee from a correctional center did not violate Title III or the Fourth Amendment. The detainee's

use of the telephone after ample notice of the interception system amounted to implied consent to the monitoring under Title III. Moreover, the monitoring of the conversation was a reasonable seizure, given the ample notice to the detainee of the monitoring. Monitoring and taping of pretrial detainee's telephone conversations did not violate his Fifth Amendment right to be free of restrictions amounting to punishment. The detention center's taping and monitoring system was related to legitimate governmental objective of institutional security, and could not be regarded as punishment in violation of Fifth Amendment. (Metropolitan Correctional Center, New York)

1988

U.S. District Court
STAFFING
CROWDING

Albro v. Onondaga County, N.Y., 677 F.Supp. 697 (N.D.N.Y. 1988). The alleged offender is afforded protection by a due process clause instead of the Eighth Amendment, which prevents holding a detainee under conditions that would be equal to punishment. A violation of due process was found to exist when crowded conditions were found at a pretrial detention facility, causing many detainees to sleep on cots in the walkways and creating a hazard to both detainees and staff. There was no operational compensation for overcrowding conditions such as adequate exercise time, vocational training, or free time in the dayroom or other open space. Detainees frequently spent only a free hour on a walkway or in "passive" recreation and were confined to their cells at least 23 hours a day. The court found correctional staff insufficient to safely respond to duties. Further, the court also concluded that inmates "have ready access to weapons through the dismantling of their cots." The capacity of the facility was capped by the court. Daily fines were levied on the county as an appropriate remedy for continuing overcrowding at the detention facility. Whenever the inmate population exceeded its capacity for four days or more the county was ordered to pay $1,000 per day if the population reached 213-217, and up to $10,000 daily if the population goes over 247. Even though the plaintiffs had withdrawn the motion for contempt, the court kept the power to punish violations that may have occurred, or might occur in the future. (Public Safety Building)

State Appeals Court
CONTRABAND

Brooks v. State, 529 So.2d 313 (Fla.App. 1 Dist. 1988). The defendant was convicted in the circuit court of possession of contraband by a prisoner, and he appealed. The district court of appeal, affirming the decision, found that the defendant, an inmate at a correctional institution, could be convicted for possession of contraband by a prisoner, even though he was not on the grounds of the correctional institution at the time he was observed in possession of marijuana. The court stated that the offense was aimed at punishing an inmate for possession of contraband anywhere, and therefore the observation of this prisoner as possessing contraband while off the prison grounds was a violation. (State Correctional Institution, Florida)

U.S. Appeals Court
USE OF FORCE
VISITS
SEARCHES

Bruscino v. Carlson, 854 F.2d 162 (7th Cir. 1988), cert. denied, 109 S.Ct. 3193. In a class action suit brought against the Marion Penitentiary in Illinois by inmates held in the Control Unit, the inmates claimed use of excessive force and other charges because they were subjected to rectal searches every time they left or re-entered the unit. The appeals court ruled that because inmates in the Control Unit require greater supervision than other prisoners, rectal searches can be legally performed on such inmates. Use of physical restraints during attorney visitation and limited out-of-cell time was also upheld by the federal district court. The court found that extraordinary security measures employed in a maximum security federal prison, such as limitation of time spent outside cells, denial of opportunities for socialization, handcuffing, shackling, spread-eagling and rectal searches were reasonable measures in view of the history of violence at the prison and the incorrigible character of the inmates and thus it did not constitute cruel and unusual punishment. Further, the court found that the transfer of prisoners to a maximum security federal prison did not result in incremental deprivation so great as to constitute actionable deprivation of natural liberty and thus require a hearing. (The United States Penitentiary in Marion, Illinois)

U.S. Appeals Court
RELIGIOUS SERVICES
RELIGIOUS GROUPS

Cooper v. Tard, 855 F.2d 125 (3rd Cir. 1988) A federal appeals court upheld the constitutionality of a prison rule that prohibited a group of Muslim inmates from having unsupervised group worship in the prison yard. The court affirmed that prohibiting group activity without supervision does not violate the free exercise rights of inmates in this instance. The court agreed that the Muslim's group prayer, known as Du'a, established a leadership structure within the prison, and authorities had valid rational reason for not permitting inmates to establish structure within the prison. (Trenton State Prison, New Jersey)

U.S. Appeals Court
PROTECTION
SEPARATION

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
DISTURBANCE

Cowans v. Wyrick, 862 F.2d 697 (8th Cir. 1988). A prison inmate brought an action against a guard alleging that the guard had inflicted cruel and unusual punishment upon the inmate in violation of the inmate's eighth amendment rights. The federal district court entered judgment on the jury verdict finding in favor of the inmate. Additionally, because the jury did not access any damages, the court, sua sponte, awarded nominal damages of $1 to the inmate. The guard appealed, and the Appeals Court found that the jury instruction which allowed the jury to find for the inmate without finding that the inmate had suffered any pain, misery, anguish, or similar harm, whether capable of estimation or not, was a reversible error. As a result, the case was reversed and remanded for a new trial. According to the court, the jury is required to award nominal damages to a prisoner bringing a civil rights suit once the jury finds cruel and unusual punishment has occurred if the jury has not been able to convert into dollars the injury and pain that the prisoner has suffered. However, if the jury finds that the prisoner has suffered no pain of any kind, then the question of damages, nominal or otherwise, does not arise. A claim of cruel and unusual punishment has not been established without a showing of some measure of pain. The court noted that reasonable measures undertaken to resolve a disturbance at a prison when the disturbance indisputably poses significant risks to the safety of inmates and prison staff do not rise to the level of cruel and unusual punishment. (Missouri State Penitentiary)

U.S. Appeals Court
GANGS

David K. v. Lane, 839 F.2d 1265 (7th Cir. 1988). White inmates at Illinois' Pontiac Correctional Center sued officials on the grounds that their failure to aggressively halt gang influence violated their right to equal protection. Inmates in protective custody are confined more hours each day and have less job opportunities. While 2 percent of the total inmate population is white, 40 percent of the white population is in protective custody compared to 9 percent of the black population and 13 percent of the hispanic population. The plaintiffs alleged that the proportion of white inmates in protective custody stems from officials' failure to discipline non-violent displays of gang membership. But the appeals court ruled that, even though a policy of punishing gang "activity," but not displays of "gang membership" results in an inordinately high number of white inmates needing protective custody, prison officials aren't guilty of discrimination. In ruling against the white inmates, the court found that they had presented no evidence that "a racially-based discriminatory purpose...has shaped the Pontiac administration's gang activity policy." However, even while finding that prison officials were not guilty of unlawful discrimination, the court criticized their policy suggesting that display of gang insignia or letting inmates control prison job assignments should not be permitted. The court ruled the prison officials to "take a firmer control and seek to ultimately eliminate gang affiliation by such reasonable methods as it may develop." The court also rejected the inmates' claim that Title VI of the Civil Rights Act of 1964 was violated. Title VI, 42 U.S.C. Sec. 2000d, prohibits discrimination in the use of federal funds. While the prison receives federal funds for forecasting models, there was no evidence that these funds directly benefited or related to the implementation of gang regulations and protective custody procedures. [Subsequent federal legislation may alter future courts' analysis of similar situations.] (Illinois' Pontiac Correctional Center)

U.S. Appeals Court
CLASSIFICATION
PROTECTION

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
SEPARATION
PROTECTION

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 entail court intervention. (Arkansas Department of Corrections)

U.S. Appeals Court
RELIGIOUS SERVICES
SAFETY REGULATIONS
SECURITY RESTRICTIONS

Mumin v. Phelps, 857 F.2d 1055 (5th Cir. 1988). Islamic prisoners at a state penitentiary brought an action challenging the refusal of prison officials to transport them from outcamps where they are held to the main prison facility for weekly congregational services. The U.S. District Court denied relief, and the inmates appealed. The appeals court affirmed and found that the refusal of the prison officials to transport the Muslim inmates from outcamps of the prison to the main prison facility for weekly congregational services required by the Islamic creed was a permissible limitation on the prisoners' exercise of their right to freedom of religion. The penitentiary asserted that it was without sufficient financial resources or adequate numbers of security personnel to safely transport the inmates for weekly services, the government objective was content neutral, and there was no showing of alternatives. The alleged peaceful and nonviolent characteristics of Muslim inmates did not preclude a finding that prison security was a legitimate concern for officials in denying the request of the Muslim inmates held at outcamps to be transported to the main prison for weekly religious services. (State Penitentiary, Angola, Louisiana)

U.S. Appeals Court
HAIR LENGTH

Pollock v. Marshall, 845 F.2d 656 (6th Cir. 1988), cert. denied, 109 S.Ct. 239, reh'g. denied, 109 S.Ct. 545. An inmate at a maximum security facility filed a civil rights action against the prison officials after being required to cut his hair. The inmate professed a belief in Lakota American Indians who believe hair is sacred and should not be cut. The court found the inmate's religious beliefs to be sincere, but they also found prison authorities had interests which were both legitimate and reasonably related to security and sanitation in limiting the length of prisoner's hair. (Southern Ohio Correctional Facility)

U.S. District Court
PROTECTION
SAFETY REGULATIONS
SECURITY PRACTICES
STAFFING

Thomas v. Benton County, Ark., 702 F.Supp. 737 (W.D. Ark. 1988). The parents of an arrestee who committed suicide in a county jail brought a civil rights action against the county. On June 22, 1983, the plaintiffs' decedent, their son, was incarcerated in the Benton County, Arkansas, jail. Late on the evening of that day he tore strips from his bedding and fashioned a "rope". He hung himself from a light fixture in his cell, also occupied at the time by two other inmates. These two individuals declined to come to his aid, because, as expressed by them at the trial, they did not want to become involved and perhaps be charged with a "murder rap." Instead of doing the obviously humanitarian thing of coming to his aid, they claimed that they began to bang on the cell bars and yell at the jailers that Thomas had hung himself. Although there was a dispute in the evidence about how long it took the jailers to respond, it is clear that several minutes elapsed before a jailor came to the scene. Upon arriving at the scene, the jailor saw Thomas hanging from the fixture but did not enter the cell to aid him because of a jail rule that prohibited jailers from entering occupied cells on felony row unless at least two jailers were present. The night of this occurrence, only two jailers, a male and female, were on duty. The female jailer also served in the capacity of despatcher, and another rule prohibited her from leaving the radio. The plaintiffs, his parents and personal representatives, claim that the existence of harmful conditions and practices and the lack of appropriate procedures in the operation of the Benton County Jail denied the decedent his constitutional right of due process. They sought damages from the defendant, Benton County, Arkansas, for pain and suffering, mental anguish, and the loss of their son's companionship. After a verdict was entered against the parents, the parents moved for a new trial. The district court, denying the motion, found that the jury finding that the county did not violate the civil rights of the arrestee and did not treat him with deliberate indifference was not against clear weight of evidence. (Benton County Jail, Arkansas)

U.S. Appeals Court
DISTURBANCE

Unwin v. Campbell, 863 F.2d 124 (1st Cir. 1988). A prison inmate sued state and local police officers seeking damages for injuries sustained during the quelling of a disturbance. Defendants moved for summary judgment on the grounds of qualified immunity. The U.S. District Court denied the motion as to certain

defendants, and they appealed. The appeals court reversing in part and affirming in part, found that two of the defendants were entitled to qualified immunity, absent evidence that they had any contact with the defendant; but there were issues of fact, precluding summary judgment in favor of the remaining defendants, as to the magnitude of the disturbance in question.

Allegations of the complaint concerning the attempt to subdue a boisterous inmate did not support the inference of a prison disturbance of such magnitude that it indisputably posed significant risks to the safety of the inmates and prison staff, and thus to state an eighth amendment claim. An inmate not involved in the struggle, who was injured by police action, did not have to allege that the defendant policemen and state troopers acted maliciously and sadistically for the very purpose of causing harm. Allegations of the complaint to the effect that one or more of the state troopers or police officers seriously injured the prison inmate when they unjustifiably struck him several times while he was innocently standing in the dayroom observing an isolated struggle between two inmates, if true, would tend to show that the officers violated clearly established law and thus were not entitled to qualified immunity. When prison officials are responding to an outbreak of violence, they cannot be expected to measure nicely the precise amount of force necessary to restore order. Where the institutional security is not at stake, the officials' license to use force is more limited, and to establish an eighth amendment liability, an injured inmate need not prove malicious and sadistic intent, and liability will be imposed where the officials' actions involved wanton and unnecessary infliction of pain as determined by the need for the application of force, the relationship between the need and the amount of force used, and the extent of the injury inflicted. (Merrimack County House of Correction, Boscawen, New Hampshire)

1989

U.S. District Court
SECURITY PRACTICES
VISITS

Berrios-Berrios v. Thornburg, 716 F.Supp. 987 (E.D. Ky. 1989). A lawsuit was filed by a female inmate to challenge the refusal of prison officials to permit her to breast-feed her child. She moved for a preliminary injunction allowing her to breast-feed her child during normal visitation hours, to store breast milk in a refrigerator, and to compel the defendants to make arrangements for the delivery of the breast milk to the child's caretaker. The court found that the need for immediate resolution of the inmate's request to be allowed to breast-feed her child during normal visitation hours and to store the breast milk negated requirements to exhaust administrative remedies, and that the inmate was entitled to a preliminary injunction allowing her to breast-feed her child during regular visitation periods. A substantial threat existed that the absence of an injunction would irreparably injure the inmate's ability to breast-feed her child and the inmate and her child would unnecessarily be deprived of the beneficial effects of breast-feeding; the defendants failed to allege any harm. However, the court ruled that the inmate's interest in breast-feeding her child with milk stored in a refrigerator was outweighed by the government's compelling interest arising out of the need for security checks, the desire to avoid negligence claims, and the cost and burden of providing the refrigerators and a system for the storage and delivery of the milk to caretakers. (Federal Correctional Institution, Lexington, Kentucky)

U.S. Appeals Court
CLOTHING
DISTURBANCE
"LOCK-IN"
USE OF FORCE

Campbell v. Grammer, 889 F.2d 797 (8th Cir. 1989). Inmates brought an action against prison officials alleging that their constitutional and statutory rights were violated during a prison lockdown. The U.S. District Court entered a judgment in favor of the inmates and awarded attorneys' fees; the defendants appealed. The court of appeals found that the supervising lieutenant's failure to issue jumpsuits pursuant to his superiors' order after a shakedown did not rise to the level of cruel and unusual punishment. The lieutenant had been assigned to supervise the adjustment center for the first time on the day of the lockdown and thus, the failure to carry out his superiors' orders was due to misunderstanding, inexperience, oversight, inadvertence or recklessness.

Courts should ordinarily accord actions of prison officials much deference; courts should be especially reluctant to interpose their hindsight when challenged conduct occurred during a prison disturbance. When faced with the necessity of using force to quell a disturbance, prison officials are compelled to balance competing concerns of insuring safety of inmates and staff and of using the least confining or least dangerous measure to control those who threaten the safety of others. Given the fact that such decisions are necessarily made in haste and under pressure, measures taken will not be held to be an eighth amendment violation if imposed in a good faith effort to maintain or restore discipline and not maliciously and sadistically for the very purpose of causing harm. The court found however, that the inmates had been intentionally, rather than accidentally, sprayed with the high-powered firehoses, which resulted in an eighth amendment violation. As a result, they upheld awards to the inmates of $750, $100 and $50. (Nebraska State Penitentiary)

U.S. District Court
PROTECTION

C.H. v. Sullivan, 718 F.Supp. 726 (D. Minn. 1989). Prisoners who were serving sentences under a federal witness security program brought action against the Attorney General and his agents, challenging double celling. The district court found that double celling was not cruel and unusual punishment despite the concern that double celling might result in the discovery of their identities by other inmates and threaten their security. The court also found that the use of a seniority system to determine which prisoners were double celled did not violate due process. Depriving prisoners serving sentences under a federal witness security program of seniority, and with it a single cell, for the violation of prison regulations did not so infringe upon the prisoners' safety as to constitute a violation of the fifth amendment. The seniority method was reasonably related to valid prison objectives of discipline and relief of overcrowding. The prisoners being disciplined were advised of charges and the facts supporting the charges and they were given a reasonable opportunity to call witnesses and present documentary evidence in their defense and an investigation was conducted to ensure that incompatible prisoners were not housed together. The court is permitted to look at the challenged conditions of confinement alone or in combination to determine whether an eighth amendment violation has occurred; a particular prison policy may not directly be a violation, but may lead to conditions which do constitute punishment without a penological purpose. (Federal Correctional Institution, Sandstone, Minnesota)

U.S. Appeals Court
STAFFING
ESCAPE

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)

U.S. Appeals Court
FACIAL HAIR

Fromer v. Scully, 874 F.2d 69 (2nd Cir. 1989). An Orthodox Jewish inmate brought action for declaratory relief challenging a prison beard length regulation. The U.S. District Court found in favor of the inmate, and appeal was taken. The appeals court affirmed and certiorari was granted. The Supreme Court vacated and remanded. The court of appeals remanded without opinion. The U.S. District Court found that the regulation violated the free exercise clause, and appeal was taken. The appeals court, in reversing the original decision, found that a regulation forbidding inmates from wearing beards in excess of one inch in length did not violate the free exercise rights of an Orthodox Jew. According to the court, the Orthodox Jewish inmate who challenged the beard length regulation had the burden to demonstrate that correctional concerns were irrational. The Department of Correctional Services did not have to demonstrate a logical connection between the one-inch beard limitation and the interest of prison officials in identifying inmates for regulation to survive the inmate's free exercise challenge. A rational connection existed between the regulation limiting the inmates' beards to one inch in length and the ease of identification of the inmates' facial features and, thus, the beard length regulation did not violate a free exercise clause. The prison officials' concerns with being able to identify inmates' facial features did not require officials to choose between a regulation forbidding all beards or a rule permitting all beards. The regulation prohibiting beards in excess of one inch in length was a reasonable compromise for purposes of the free exercise clause. According to the appeals court, the district court failed to show proper deference to judgment of prison officials when the court found that the state regulation forbidding inmates from wearing beards more than one inch long violated the free exercise rights of Orthodox Jews; the district court's belief that there were few Orthodox Jews in prison, unsupported by record evidence, impermissibly placed the burden on prison officials. (New York State Prison)

U.S. Appeals Court
RELIGION

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. Appeals Court
MAIL
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
ESCAPE

Henry v. Perry, 866 F.2d 657 (3rd Cir. 1989). A prisoner brought a civil rights action against a prison guard arising out of the prison guard's use of deadly force in attempting to prevent the prisoner's escape. In his complaint, the plaintiff alleged that, while being returned to Pittsburgh from a track meet and upon arrival at Pittsburgh and believing the officers in charge of him including the defendant to be unarmed, he proceeded to effect an escape and that thereupon "Mr. Perry commenced to fire 5 or 6 shots at me without ordering me to stop or that he had a weapon and would shoot to kill." One of the shots wounded the plaintiff in the arm. He completed his escape but was subsequently recaptured. The U.S. District Court denied the prison guard's motion for summary judgment and the prison guard appealed. The court of appeals, reversing and remanding with directions, found that the prison guard was entitled to qualified immunity from liability. The appeals court stated that the use by prison guards of deadly force on an escapee may be cruel and unusual punishment within the meaning of the eighth amendment but where the escapee has committed crime involving the infliction of serious bodily harm, deadly force may be used as necessary to prevent an escape and if, where feasible, some warning has been given.

Using deadly force appeared to be the "only means of preventing his escape and even that did not actually do so." Where an escapee has committed a crime involving the infliction of serious bodily harm, the court stated, citing **Tennessee v. Garner**, 471 U.S.1 (1985), such as the murder committed by the prisoner, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning if given. (State Correctional Institution, Pittsburgh, Pennsylvania)

U.S. Appeals Court
RELIGIOUS
ARTICLES
RELIGION
SATANISM

McCorkle v. Johnson, 881 F.2d 993 (11th Cir. 1989). A state inmate brought a civil rights action challenging a prison policy that restricted inmate access to satanic materials. The U.S. District Court dismissed and the inmate appealed. The appeals court, affirming the lower court decision, found that the policy did not violate the inmate's first amendment rights. Even if Satanism was a religion entitled to first amendment protection and even if the state inmate was a sincere believer in Satanism, a prison policy restricting the access to satanic materials was justified by the prison officials' concern for institutional security and order, particularly in view of the fact that the inmate could practice Satanism without materials. The court found that the policy adopted was valid as reasonably related to a legitimate penological interest in institutional security and order and was an "informed and measured response to the violence inherent in Satan worship, and to the potential disorder that it might cause within the prison." (Holman Facility, Alabama)

U.S. District Court
PROTECTION
SECURITY
PRACTICES

Policano v. Koehler, 715 F.Supp. 598 (S.D.N.Y. 1989). An inmate claimed that another prisoner stole his cosmetics and, later on the same day, together with other prisoners, assaulted and robbed him of his watch and gold chain. Both incidents were perpetrated by inmates from another housing area who were

not supposed to be in his housing area, according to prison regulations. The inmate sued prison officials, claiming that the incidents resulted from their negligence because the corrections officer on duty was reading a newspaper at the time the alleged acts occurred. The court dismissed the inmate's federal civil rights lawsuit, finding that mere negligent failure to provide adequate security does not state a claim for violation of constitutional rights. (Rikers Island House of Detention for Men, New York)

U.S. District Court
RELIGIOUS SERVICES

Ra Chaka v. Franzen, 727 F.Supp. 454 (N.D. Ill. 1989). A Muslim prison inmate sued state corrections department officials, alleging violations of civil rights when his request for prison-wide "Jumha" religious services was denied. In order to improve security, the prison had divided inmates into three units, based on personality types, and prison-wide services would have involved an undesirable mixing of personnel from different units, and services were available within units. The district court found that the granting of permission to hold such services did not render the prisoner's case moot as he also claimed monetary damages for past deprivation. State officials were not protected from individual liability by the eleventh amendment. A prohibition against services was warranted on prison security grounds; even if deprivation were deemed not valid, officials would not be personally liable and the equal protection rights of the inmate were not violated when they allegedly did not receive a proportionate share of the prison budget for their religious activities. The prison was merely required to provide a "reasonable opportunity" for them to practice their religion. (Stateville Correctional Center, Illinois)

U.S. District Court
ESCAPE

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. District Court
CLASSIFICATION
CROWDING
PRETRIAL DETAINEES
STAFFING

Ryan v. Burlington County, N.J., 708 F.Supp. 623 (D. N.J. 1989). A pretrial detainee who was rendered quadriplegic as a result of an attack by a county jail inmate brought a civil rights action against the county board of chosen freeholders, and various jail personnel. On the defendants' motion for summary judgment, the district court granted the motion in part and denied the motion in part. It found that the warden and the jail captain who advised and assisted the warden were not entitled to qualified immunity, but the corrections officers were entitled to qualified immunity. Members of the county board of chosen freeholders were not entitled to absolute legislative immunity because the board knew that the county jail was overcrowded, and the board also was aware that no inmate classification system separating known dangerous inmates from others was in place at the jail. Moreover, the board could not reasonably have believed that its refusal to supply the county jail with additional security personnel was lawful.

The warden of the county jail was not entitled to qualified immunity from the pretrial detainee's civil rights claim, insofar as it was based on overcrowding. The jury could conclude that the warden neglected to attempt available solutions to overcrowding at the jail. The court also stated that the warden and the jail captain who advised and assisted the warden in setting procedures governing daily administration were not entitled to qualified immunity from the pretrial detainee's civil rights claim arising from the inmate assault, insofar as it was based on the failure to institute a classification system separating pretrial detainees from dangerous inmates. Neither official took any action whatsoever in an attempt to establish such a system of classification. Sergeants in the county jail were entitled to qualified immunity, insofar as it was based on overcrowding and the failure to institute a classification system separating pretrial detainees from dangerous inmates, in view of their lack of authority to remedy overcrowding or to institute a classification system. (Burlington County Jail, New Jersey)

U.S. District Court
ESCAPE
USE OF FORCE

Ryan Robles v. Otero de Ramos, 729 F.Supp. 920 (D.Puerto Rico 1989). An inmate's father brought a Section 1983 action against a prison guard, administrator, and supervisors to recover for the shooting death of an escaping inmate. The defendants moved for summary judgment. The district court granted the motion and found that using deadly force against a convicted, escaping inmate was not an unnecessary and wanton infliction of pain, did not violate the eighth amendment, and was within the guard's qualified immunity from Section 1983 liability. The guard tried to physically prevent the escape, and was prevented from doing so by the inmate's spear. He warned the inmate to desist, fired a warning shot, and fired the

revolver after the inmate had jumped to the street outside the prison and started to run. The inmate's father failed to establish in the Section 1983 action that the training of guards and the use of firearms caused the death of the escaping inmate, that the policy on the use of deadly force deprived the inmate of constitutional rights, or that the administrator and supervisors were grossly negligent or deliberately indifferent. (Young Adults Institution, Miramar, Puerto Rico)

U.S. Appeals Court
ACCESS TO ATTORNEY
FACIAL HAIR
SAFETY REGULATIONS
SECURITY RESTRICTIONS

Solomon v. Zant, 888 F.2d 1579 (11th Cir. 1989). The widow of an inmate brought a civil rights action against a prison official who refused to permit the inmate to leave the death row cell block to see his attorney without first complying with shaving regulations. The U.S. District Court entered a judgment in favor of the widow, and the official appealed. The appeals court, reversing the lower court's decision, found that the shaving regulation was a legitimate security rule, and the enforcement of the rule did not violate the inmate's constitutional rights. The prison policy which prohibited any death sentenced inmate from leaving the cell block unless all shaving requirements were complied with was reasonably related to the government's legitimate interest in maintaining security in the penological institutions. Had the institution sought to impose some additional punishment, then it would have been necessary for him to be afforded a proper disciplinary hearing. However, refusing to allow him to leave the cellblock was simply part of the regulation. "After finding that institutions can require that inmates be clean shaven, it is reasonable to conclude that compliance with the policy will not result in a constitutional violation," said the court. (Federal Correctional Institution, Jackson, Georgia)

U.S. Supreme Court
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)

1990

U.S. Appeals Court
ESCAPE

Baker v. Lyles, 904 F.2d 925 (4th Cir. 1990). An inmate brought a civil rights action against a warden and other corrections officials, claiming his due process rights were violated following a disciplinary proceeding which resulted in the inmate being convicted of possessing escape contraband and of associating with other inmates in an escape attempt. The U.S. District Court entered summary judgment in favor of the defendants and the inmate appealed. The appeals court found that the inmate's due process rights were not violated when the disciplinary board convicted him of possession of escape contraband based upon undocumented hearsay of an anonymous informant, under the applicable "some evidence" standard, in view of further evidence available at the time of the final decision by the warden that the inmate had previously escaped from prison, that abundant work had been done to attain escape through an exhaust fan in the prison's chapel, and that escape tools had been redeemed in prison. (Maryland Penitentiary)

U.S. Appeals Court
PROTECTION

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. Appeals Court
SEARCHES
SECURITY
PRACTICES

Colon v. Schneider, 899 F.2d 660 (7th Cir. 1990). An inmate brought a Section 1983 action, alleging that a corrections official violated his rights under the due process clause of the fourteenth amendment when the official used chemical mace to compel him to submit to a strip search during the course of the inmate's transfer from one area of a correctional institution to another. The U.S. District Court issued an injunction prohibiting the official from using mace solely to compel strip searches incident to the transfer of inmates within the institution, and the official appealed. The inmate cross-appealed, arguing that he was entitled to one dollar in compensatory damages and that the district court erred in vacating the jury's award of punitive damages. The appeals court found that Wisconsin regulations governing the use of mace in prisons do not create a federally-protected liberty interest on behalf of inmates, and even if such regulations did create a liberty interest, the inmate failed to satisfy his burden that he was maced in the absence of constitutionally required procedural safeguards. The appeals court also found that, under the eleventh amendment, the district court lacked jurisdiction to adjudicate the claim which was nothing more than an allegation that the prison official violated state law, or to enjoin the official from engaging in the allegedly violative conduct. According to the court, in order for state regulations to create a constitutionally and protected liberty interest, the regulations must employ language of an unmistakably mandatory character, requiring that certain procedures "shall," "will," or "must" be employed, and that the challenged action will not occur absent specific substantive predicates. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
FACIAL HAIR
HAIR LENGTH

Dunavant v. Moore, 907 F.2d 77 (8th Cir. 1990). A prisoner brought a civil rights action claiming that a prison grooming policy violated his first amendment rights. Summary judgment for the defendants was granted by the U.S. District Court and the inmate appealed. The appeals court affirmed the decision, finding that the prison grooming policy prohibiting inmate beards longer than two inches was based on legitimate penological objectives related to security because a long beard could make identification more difficult and help the prisoners hide contraband. The rule did not violate the free exercise rights of the inmate who was a member of the Church of Jesus Christ Christian/Aryan Nation and who believed, based on religious grounds, that he should not shave, cut or round the corners of his beard. (Farmington Correctional Center, Missouri)

U.S. Appeals Court
FACIAL HAIR

Friedman v. State of Arizona, 912 F.2d 328 (9th Cir. 1990), cert. denied, 111 S.Ct. 996. Two orthodox Jewish inmates filed a federal civil rights lawsuit against a state prison challenging a policy prohibiting beards, arguing it violated their First Amendment right to exercise their religion freely. The U.S. Court of Appeals upheld the prison policy against the inmate's challenge. It found that the prison had presented evidence that the policy was rationally related to legitimate security interests, including orderly conduct of day-to-day activities, identification of prisoners responsible for disturbances and apprehension of escapees by aiding rapid and accurate identification. In addition, allowing someone to have a beard was not a guarantee that the person would "maintain the beard in exactly the same style, length or color as he had in the photograph," and the identification problem thus becomes unmanageable. The court noted that the prison allowed the inmates participation in other religious activities and practices, provided Kosher food and access to a rabbi. (Arizona State Prison)

U.S. Appeals Court
SAFETY
SECURITY
RESTRICTIONS

Hatch v. Sharp, 919 F.2d 1266 (7th Cir. 1990), cert. denied, 111 S.Ct. 1693. An inmate who was denied permission to play the state lottery brought a Section 1983 action alleging violations of due process and equal protection rights. The U.S. District Court entered judgment in favor of the lottery and prison officials, and appeal was taken. The court of appeals found that the inmate's due process rights were not violated by the prohibition against playing the lottery. Prison officials were entitled to draw a line at what personal property inmates could possess or in what financial transactions they could engage in order to further legitimate security and safety concerns. (Nottoway Corr. Center, Virginia)

U.S. District Court
CLASSIFICATION
ESCAPE

Siddiqi v. Lane, 748 F.Supp. 637 (N.D. Ill. 1990). An inmate brought a Section 1983 action alleging a violation of equal protection. On the defendants' motion to dismiss, the district court found that the inmate, who attempted an escape, was not denied equal protection by his subsequent security classification as a high escape risk, absent a showing of intentional or purposeful discrimination in his security classification. (Illinois State Prison System)

U.S. Appeals Court
HAIR LENGTH
FACIAL HAIR

Swift v. Lewis, 901 F.2d 730 (9th Cir. 1990). Inmates appealed from a judgment of the U.S. District Court which dismissed a civil rights action challenging a grooming policy. The appeals court, reversing and remanding, found that the Department of Corrections did not show that particular interests behind the grooming policy justified treating the plaintiff inmates differently than members of other religious groups, and the complaint stated a cause of action for damages against another inmate who had allegedly excluded one of the plaintiff inmates from a religious group. Two prisoners claimed to be Christians who as part of their religion adhere to the "Vow of the Nazarite," which prohibits, among other things, one's cutting his hair and beard. They argued that the officials had discriminated against their religion by exempting certain religious groups, such as Sikhs and American Indians, from the policy, but not exempting them. The appeals court found that the state Department of Corrections did not show that the grooming policies were actually based on the need for quick inmate identification, the prevention of sanitary problems, reducing contact between prisoners and guards during body searches, and reducing homosexual attractiveness of inmates or that any of those interests justified treating one group of inmates who claimed a religious belief precluding them from cutting their hair differently than other religious groups who made such a claim and were not subjected to the grooming policy prohibition of long hair and beards. Prison officials are not required to prove that their policy is the least restrictive method of furthering relevant penological interests, even when it infringes on an inmate's practice of religion, but they must at least produce some evidence that their policy is based on legitimate penological justifications. (Arizona State Prison)

U.S. District Court
CONTRABAND
SEARCHES

U.S. v. Oakley, 731 F.Supp. 1363 (S.D.Ind. 1990). A prisoner moved to suppress a controlled substance contained in balloons recovered by a digital rectal examination and by the administration of laxatives. The district court found that the physician's digital probe of the prisoner's rectum to remove balloons containing a controlled substance could be performed without a warrant and complied with the fourth amendment, even though the prisoner claimed that he suffered from internal hemorrhoids, and even though the search was performed on a bed in a dry cell. An x-ray indicated what appeared to be four or five balloons in the lower abdomen. The balloons had been in the prisoner's digestive tract for over three weeks and contained a lethal dosage of dilaudid; and the fecal impaction posed an additional health risk. The physician removed two balloons in the search. (United States Penitentiary, Terre Haute, Indiana)

U.S. Appeals Court
PRETRIAL DETAINEE
USE OF FORCE
CLASSIFICATION

White v. Roper, 901 F.2d 1501 (9th Cir. 1990). A pretrial detainee filed a civil rights action against a jail sergeant and deputies for deliberate indifference to his personal safety and excessive use of force. The U.S. District Court granted summary judgment for the defendants, and the detainee appealed. The appeals court, affirming in part, reversing in part, and remanding, found that genuine issues of material fact existed on the deliberate indifference claim, but the detainee who alleged he suffered a cut wrist and bruises when the officers attempted to subdue him when he resisted being put into another inmate's cell failed to make a showing sufficient to establish use of force against him was excessive or brutal. Genuine issues of material fact existed as to whether an officer was deliberately indifferent to a pretrial detainee's personal safety or intended to punish the pretrial detainee by ordering him in a cell of another detainee who had a history of violent behavior, in spite of the plaintiff inmate's protests and threats by other inmate. (San Francisco County Jail, California)

U.S. District Court
ESCAPE
USE OF FORCE

Wright v. Whiddon, 747 F.Supp. 694 (M.D. Ga. 1990) reversed 951 F.2d 297. A civil rights action was brought to recover damages for the wrongful death of and deprivation of the constitutional rights of a pretrial detainee, who was fatally shot while attempting to escape, against a city police officer, a city police chief, the city, and the county sheriff. On the defendants' motions for summary judgment, the district court found that the Fourth Amendment, rather than the Eighth Amendment, provided the standard for analyzing a claim that the pretrial detainee who was fatally shot while attempting to escape was subjected to unconstitutional use of excess force. The pretrial detainee had the status of a presumptively innocent individual, so was more akin to suspect than a convicted prisoner, and the Fourth Amendment's objective reasonableness standard accordingly applied. It was also found that genuine issue of material fact existed as to whether a reasonable police officer could believe the pretrial detainee who was attempting an escape posed a serious threat, thus rendering lawful the officer's action in fatally shooting the detainee, so as to preclude summary judgment on the issue of whether the officer was entitled to qualified immunity with respect to constitutional claims asserted under the civil rights statute Section 1983. The county sheriff who ordered the city police officer to shoot the pretrial detainee who was attempting the escape was not liable for violation of the fatally wounded detainee's constitutional rights, although it was argued that the sheriff intentionally authorized the commission of the unlawful act which resulted in the death and violation of constitutional rights. The sheriff did not have authority to command the police officer, and the police officer did not act pursuant to any command from the sheriff,

but in reliance on his own training and city policy, in deciding to draw his gun and fire at the detainee. The appeals court reversed the lower court ruling, finding that the officer was entitled to qualified immunity. (Turner County, Georgia)

1991

U.S. District Court
DISTURBANCE

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 conditions of the inmate's confinement in an outdoor rec area, wet and naked for a period of less than two hours, did not constitute cruel and unusual punishment. The prison officials placed the inmate in the rec area not for punishment but to restore order in the prison unit. The inmate was moved from his cell to the rec area to facilitate cleanup of the unit which he necessitated by setting off a sprinkler, and the duration of the confinement was relatively brief. (Potosi Correctional Center, Missouri)

U.S. District Court
PROTECTION
SAFETY

Haynes v. Michigan Dept. of Corrections, 760 F.Supp. 124 (E.D. Mich. 1991), affirmed, 945 F.2d 404. A prisoner who was stabbed by a prisoner in the adjoining cell brought a civil rights action against various prison officials. The U.S. District Court found that the inmate failed to make an Eighth Amendment claim for deliberate indifference against prison officials. The inmate claimed that officials ignored his report of a threat on his life, but the officials did not recall the inmate telling them about any threats, and the behavior of the officials and the inmate was inconsistent with the inmate's version of events. (State Prison for Southern Michigan)

U.S. Appeals Court
SEGREGATION

Johnson v. Boreani, 946 F.2d 67 (8th Cir. 1991). An inmate brought a civil rights action against prison officials, challenging his confinement in a strip cell on three different occasions. Following remand, the U.S. District Court entered summary judgment in favor of the officials and dismissed the inmate's claim for injunctive relief, and the inmate appealed. The court of appeals found that the prison officials did not violate the inmate's clearly established Eighth Amendment rights when they confined the inmate to a strip cell for control purposes, entitling them to qualified immunity. The officials could reasonably have believed that conditions in the strip cell did not subject the inmate to wanton infliction of pain or serious physical injury, in view of the short duration of confinement and absence of injury. Even if the inmate established that his Eighth Amendment rights were violated when he was placed in the strip cell, the inmate was not entitled to injunctive relief prohibiting the use of the strip cell for control purposes, absent evidence that such conduct was likely to recur unless enjoined. (Cummins Unit, Arkansas Department of Corrections)

U.S. Appeals Court
ESCAPE

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 conditions imposed on the pretrial detainee during his segregated confinement were reasonably related to legitimate governmental objectives and aborting his escape and ensuring his presence at trial and, thus, the segregation did not amount to unconstitutional "punishment" and, consequently, his placement in segregated confinement did not, in and of itself, violate due process. In addition, the pretrial detainee was not denied procedural due process by lack of a hearing at which he could contest reasons for his confinement, as he was not subjected to "discipline" for violation of a prison rule and, thus, could derive no liberty interest from a regulatory provision requiring jailers to provide for disciplinary hearings in cases of alleged violations of prisoner conduct rules. It was also 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)

State Court
ESCAPE

McQueen v. Williams, 587 So.2d 918 (Miss. 1991). A son of a man who was one of two men murdered by two convicts during a burglary that took place after the two convicts escaped from a county jail where they were being held because of overcrowded conditions, sued the county sheriff for the wrongful death of his father. He claimed that the failure to prevent the escape or "promptly and adequately" inform the public of the dangerousness of the offenders constituted negligence. The complaint, seeking $1.5 million in damages, claimed that the sheriff and his subordinates failed in a "ministerial duty" to keep the prisoners confined "by leaving the jail door unlocked" and thereby permitting an escape. The Mississippi Supreme Court upheld summary judgment for the defendant sheriff,

noting that, under state law, the sheriff's duty to keep prisoners confined, if any, is discretionary in nature, requiring the sheriff's personal "deliberation, decision and individual judgment." The sheriff was entitled to qualified immunity from liability, in the absence of any evidence that the sheriff exceeded his authority or committed intentional wrongdoing. (Mississippi)

U.S. District Court
SECURITY PRACTICES
RELIGIOUS SERVICES

Phelps v. Dunn, 770 F.Supp. 346 (E.D. Ky. 1991). A prison inmate brought a civil rights action alleging that his constitutional rights were violated by a deputy's decision to bar him from taking a leadership role in chapel services because he was gay. The U.S. District Court found that the inmate's right to practice his religion was not violated by the deputy's decision. There was strong disagreement among other inmates as to whether gays should be allowed to participate in services, and the deputy's decision was reasonably related to penological interests of security and rehabilitation of inmates by providing religious programs for the inmate population as a whole. (Northpoint Training Center, Burgin, Kentucky)

U.S. Appeals Court
DISTURBANCE
SECURITY PRACTICES

Stewart v. McManus, 924 F.2d 138 (8th Cir. 1991). A prisoner brought a Section 1983 action asserting claims based on his disciplinary treatment by Iowa correctional authorities after he had been transferred from Kansas. The U.S. District Court found no Eighth Amendment violation occurred when the prisoner was placed in plastic hand cuffs following a cell house disturbance, particularly where the prisoner's alleged wrist injury was slight. The inmate was flex-cuffed in a good-faith effort to restore discipline after a prison riot and only after guards ran out of ordinary handcuffs. (Iowa State Penitentiary)

U.S. Appeals Court
HATS

Young v. Lane, 922 F.2d 370 (7th Cir. 1991). On appeal and cross appeal from an order of the U.S. District Court in Jewish inmates' federal civil rights action against state prison officials, the court of appeals found that the state prison's policy of allowing Jewish inmates to wear their yarmulkes only inside their cells and during religious services did not deprive the inmates of their right to free exercise of religion, as the prison had a strong institutional interest in limiting the effectiveness of gangs by restricting the variety of available headgear, and that the policy operated with neutrality toward the content of religious expression and did not deprive the inmates of all means thereof. (Dixon Correctional Center, Illinois)

1992

U.S. District Court
SEARCHES

Blanks v. Smith, 790 F.Supp. 192 (E.D. Wis. 1992). An inmate brought a civil rights action against prison officials challenging the number of searches conducted during a two week "general shakedown." He alleged that such searches were "excessive and unreasonable" because he had no contact with other prisoners or visitors during that time. The district court found that the inmate's allegations stated an arguable claim for relief under the Eighth Amendment. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
RESTRAINTS

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. The court found that transporting the patient, who had had one leg amputated, in waist shackles and under armed guard was unnecessary and actually harmful to his treatment. (Massachusetts Treatment Center for the Sexually Dangerous)

U.S. District Court
FIRE

Lile v. Tippecanoe County Jail, 844 F.Supp. 1301 (N.D. Ind. 1992). It was found that a county jail official's refusal to open windows after an inmate started a fire in a cell block allegedly resulting in a detainee passing out was not intended to punish the detainee in violation of the Eighth Amendment. There was no medical evidence suggesting that the detainee suffered any injury resulting from the fire or the presence of smoke in the unit. The officials responded to and extinguished the fire, and there was no indication as to the length of time smoke was present or that any other inmates complained about the presence of smoke or suffered any discomfort or injury. (Tippecanoe County Jail, Indiana)

U.S. District Court
"LOCK IN"
SECURITY PRACTICES

Miller v. Campbell, 804 F.Supp. 159 (D. Kan. 1992). An inmate brought an action alleging cruel and unusual punishment during a lockdown. The defendants moved for summary judgment. The district court granted the motion, finding that the medical care of the inmate was not cruel and unusual punishment, where there was a mere difference of opinion regarding the nature of care offered. In addition, the brief lockdown, the shutdown of water and electricity, and the suspension of telephone access was related to legitimate correctional goals in response to inmates' throwing water-soaked trash into the walkway and was not cruel and unusual punishment. The water was turned off to prevent flooding and was turned on at intervals to allow the use of toilets and sinks. The electricity was shutdown after inmates damaged light fixtures, and nothing indicated

officials' deliberate indifference to dangerous conditions of confinement. The court noted that these deprivations were brief and were reasonably related to legitimate correctional goals. (Leavenworth County Jail, Kansas)

U.S. Appeals Court
FACIAL HAIR
HAIR LENGTH

Powell v. Estelle, 959 F.2d 22 (5th Cir. 1992). Prisoners brought civil rights actions alleging that the Texas Department of Criminal Justice's prohibition against long hair and beards violated their First Amendment right to exercise their religion freely. The U.S. District Court found no infringement on the prisoners' First Amendment rights, and the inmates appealed. The court of appeals found that the prohibition was rationally related to the achievement of the goal of advancing prison security by preventing the concealment of weapons and contraband in hair and beards, and evidence supported the district court's conclusion that the prohibition was rationally related to a security-related goal of identifying prisoners. Evidence was also sufficient to support the district court's conclusion that long hair and beards would have an adverse impact on the safety of prisoners working around industrial equipment and on the hygiene of the prison population as a whole. (Texas Department of Criminal Justice)

U.S. Appeals Court
HAIR

Scott v. Mississippi Dept. of Corrections, 961 F.2d 77 (5th Cir. 1992). Mississippi State Penitentiary inmates who were members of the Rastafari religion brought a suit alleging that a hair-grooming regulation was an unconstitutional violation of their free exercise of religion. The U.S. District Court entered summary judgment and the inmates appealed. The court of appeals found that the Mississippi Department of Corrections' hair-grooming regulation, which required short hair, did not violate the free exercise of religion rights of Rastafari inmates, even though religious beliefs included never cutting or combing one's hair, since the regulation was reasonably related to legitimate penological concerns of identification and security, other forms of expressing the inmate's religion remained open, and it was unlikely that penological interests could be equally well satisfied by other alternatives proposed by the inmates. (Mississippi State Penitentiary, Parchman, Mississippi)

U.S. Appeals Court
ESCAPE
TELEPHONE

U.S. v. Horr, 963 F.2d 1124 (8th Cir. 1992). A defendant was convicted in the U.S. District Court of conspiring to posses a firearm in prison and to escape, and attempting to possess a firearm in prison and to escape, and he appealed. The court of appeals found that the taped telephone conversations in which the prison inmate attempted to arrange an escape were admissible because the inmate, who was instructed at the prison orientation that inmate telephone calls were monitored and recorded, signed a form indicating that he was aware of the prison's telephone policy, and, thus, implied to the taping of his phone conversations. In addition, the defendant's allegations that he would have been labeled a prison "snitch" if he had reported to prison authorities that a fellow inmate had threatened to kill him if he did not come up with money to buy a gun to be used in an escape attempt was inadequate, without more, to demonstrate that the defendant had no reasonable opportunities to avoid the harm, as was required for a jury instruction on law of coercion or duress in prosecution of the inmate. (Federal Medical Center, Rochester, Minnesota)

U.S. Appeals Court
DISTURBANCE
SAFETY
SECURITY
PRACTICES
TRANSFER

Woodbridge v. Dahlberg, 954 F.2d 1231 (6th Cir. 1992). Prison inmates sued prison officials under Section 1983 alleging that the conduct of the officials following a prison protest demonstration violated their Fourth and Eighth Amendment rights. The U.S. District Court entered judgment on the jury verdict in favor of the prison officials, and the inmates appealed. The court of appeals found that the prison inmates' rights under the Fourth and Eighth Amendments were not violated by their detention in outdoor fenced areas in 40 degree temperatures, subsequent strip searches, and removal to another facility following the inmates' refusal to report to their cells as instructed, as the actions of the prison officials were necessary in view of the potentially dangerous situation. (Ohio State Reformatory)

1993

U.S. District Court
PROTECTION
SAFETY

Bragado v. City of Zion/Police Dept., 839 F.Supp. 551 (N.D.Ill. 1993). A suit was brought under the Section 1983 civil rights statute, the Illinois Survival Act, and the Illinois Wrongful Death Act seeking damages for the city's failure to personally inspect and prevent the suicide of a jail prisoner. After the jury returned a verdict in favor of the plaintiff, posttrial motions were made in which the plaintiff sought funeral expenses and the defendant sought judgment notwithstanding the verdict. The district court found that evidence supported a finding that jail officials acted with deliberate indifference to the prisoner's rights. Inadequate personal inspections of the prisoner were done despite the knowledge of the prisoner's suicidal tendencies. Audio and video monitoring were also insufficient. In addition, the on-duty officer knew of the prisoner's threat of suicide, as well as her intoxication and injuries to her wrists. The court also found that the jury's verdict awarding damages for the city's wrongful failure to prevent the prisoner's suicide, in the amount of $5,000 under the Illinois Survival Act and approximately $232,000 under

the Illinois Wrongful Death Act as well as nominal damages for Section 1983 civil rights violation, was supported by evidence and was reasonable. (City of Zion Police Station, Zion, Illinois)

U.S. Appeals Court
RESTRAINTS

Knox v. McGinnis, 998 F.2d 1405 (7th Cir. 1993). A prisoner brought a Section 1983 action against state corrections officials alleging that use of a "black box" restraining device while transporting segregation prisoners while outside the segregation unit violated the Eighth Amendment. The U.S. District Court granted summary judgment in favor of the defendants, and the prisoner appealed. The appeals court, affirming the decision, found that the correctional officials were entitled to qualified immunity from claims for damages against them in their individual capacities. In addition, claims against the defendants in their official capacities were barred by the Eleventh Amendment. It was also found that the prisoner lacked standing to seek prospective injunctive relief against prison officials in their official capacities as the prisoner, who had been released from segregation and returned to the general prison population where he was no longer subject to use of the black box, did not make a reasonable showing that he would again be subject to alleged illegality. (Stateville Correctional Center, Illinois)

U.S. District Court
CONTRABAND
SEARCHES

Lasley v. Godinez, 833 F.Supp. 714 (N.D.Ill. 1993). Inmates who were found guilty of possessing dangerous contraband in violation of a prison rule brought a pro se Section 1983 suit alleging that their due process rights were violated. On the defendants' motions to dismiss, the district court found that the administrative directive of the Illinois Department of Corrections (DOC) whose purpose was to establish a procedure to insure that a written report was completed whenever an inmate living area was searched did not create a protectible liberty interest for inmates to have their cells searched before the cells were assigned to them. The directive contained no substantive rules which would give rise to an entitlement. The discovery of contraband in the inmates' cells during the course of the searches was sufficient evidence to find them guilty of violating the prison rule. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
RESTRAINTS
SECURITY
PRACTICES

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
DISTURBANCE
USE OF FORCE

Moore v. Holbrook, 2 F.3d 697 (6th Cir. 1993). A prisoner brought a Section 1983 action against prison guards for an alleged assault. The United States District Court dismissed the action, and appeal was taken. The appeals court, reversing and remanding, found that there were genuine issues of material fact, precluding summary judgment for the prison officials. The prisoner claimed he was assaulted by officials during a prison disturbance and there were doubts as to whether the disturbance was in progress at the time of the assault. If the assault occurred during the disturbance, the guards were permitted to use greater force than normally necessary to control the prisoner. (Southern Ohio Correctional Facility)

U.S. District Court
ESCAPE

Spaulding v. Collins, 867 F.Supp. 499 (S.D. Tex. 1993). An inmate filed a petition for a writ of habeas corpus complaining of discipline he received after he was found guilty of attempting to escape by originating and possessing a forged court order. The district court found that the inmate's exclusion from portions of the disciplinary hearing during which a correctional officer gave testimony did not violate his due process rights. The hearing officer found that it was necessary to exclude the inmate in order to preserve internal order and discipline and to maintain institutional security. The court also found that denying the inmate permission to cross-examine an informant was not a denial of confrontation and cross-examination rights. Revealing the identity of the informant could pose a high risk of reprisal within the prison and the right to call witnesses in prison disciplinary proceedings is limited. Evidence supported a finding of guilt for attempted escape. (Alfred D. Hughes Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
SECURITY
PRACTICES

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)

1994

U.S. District Court
SAFETY

Arnold v. South Carolina Dept. of Corrections, 843 F.Supp. 110 (D.S.C. 1994). A state prison inmate who was injured while using faulty kitchen equipment brought a Section 1983 claim against prison officials based on Eighth Amendment violations. Upon the prison officials' motion for summary judgment, the district court found that the inmate failed to establish that the officials violated the Eighth Amendment's prohibition against cruel and unusual punishment. The inmate offered no evidence that the officials acted with a requisite culpable state of mind in failing to repair the equipment. Also, the deprivation of rights was not sufficiently serious to satisfy the objective component of violation. The proper remedy for the inmate was to file for workers compensation benefits. The court found that even if the inmate had established that prison officials violated the Eighth Amendment's prohibition against cruel and unusual punishment by failing to repair the faulty steam pot, prison officials were entitled to qualified immunity from the suit because it had not been clearly established that the right to properly functioning prison equipment was of constitutional magnitude. (McCormick Correctional Institution, South Carolina)

U.S. District Court
PROTECTION

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. Appeals Court
ESCAPE
USE OF FORCE

Brothers v. Klevenhagen, 28 F.3d 452 (5th Cir. 1994). Family members of a pretrial detainee who was killed while attempting to escape from custody during transport from one holding cell to another, brought an action in state court against the county and its sheriff alleging excessive force and violation of Section 1983. The defendants removed the action to federal court and the parties cross-moved for summary judgment. The U.S. District Court granted summary judgment for the defendants and the plaintiffs appealed. The appeals court, affirming the decision, found that the due process clause, rather than the Fourth Amendment, provided the constitutional standard for determining whether deputies used excessive force in their treatment of the detainee. The deputies' shooting and killing of the unarmed pretrial detainee who was escaping did not violate due process. The sheriff's department policy allowed deadly force only when immediately necessary to prevent escape and was designed in a good faith effort to maintain or restore discipline and not maliciously and sadistically for the purpose of causing harm. The deputies fired at the detainee only as a last resort to prevent an escape, and the detainee would have escaped if the deputies had not fired upon him. (Harris County Jail, Texas)

U.S. District Court
"LOCK-IN"
RELIGION

Campbell-El v. District of Columbia, 874 F.Supp. 403 (D.D.C. 1994). A prisoner claimed that enforcement of various prison security measures violated his rights under the Fifth and Eighth Amendment and under the Religious Freedom Restoration Act. The district court found that the confinement to maximum security and the enforcement of a lockdown policy, were reasonable in light of prison security concerns and did not violate either the Fifth Amendment due process or the Eighth Amendment cruel and unusual punishment clauses. This is particularly true where the prisoner was in maximum security at his own request for protective custody. The court also found that, to determine whether the prisoner's rights under the Religious Freedom Restoration Act (RFRA) had been violated, further discovery was required on the prisoner's claim that enforcement of the prohibition against gathering of more than 10 or 12 prisoners in a cellblock violated his religious

freedom rights. There was insufficient evidence in the record to show whether the regulation was the least restrictive means for furthering compelling government interest in prison security. (Maximum Security Facility, Lorton, District of Columbia)

U.S. District Court
HAIR LENGTH
RELIGIOUS ARTICLES

Diaz v. Collins, 872 F.Supp. 353 (E.D.Tex. 1994). A Native American inmate brought a Section 1983 action complaining of alleged violations of his right to practice Native American religion. The district court found that a prison regulation requiring inmates to cut their hair did not violate the Religious Freedom Restoration Act, despite the Native American inmate's claim that his religion required that he grow his hair long. Security concerns were compelling governmental interests, and the regulations were the least restrictive means available to achieve these compelling interests. The prison's requirement that a medicine pouch sought by the inmate be sent through the unit warden's office and that the inmate allow visual inspection of it for contraband was reasonable within the prison environment and did not substantially burden the inmate's right to freely practice his religion. The prison policy of requiring that the inmate's medicine pouch be stored in the inmate's cell did not substantially burden the inmate's religious beliefs. The prison regulation governing religious headbands did not substantially burden the practice of the Native American religion, and was founded upon a compelling state interest to maintain security and minimize carrying of contraband within the prison. The regulation required that any headband be kept in the inmate's cell. The inmate was confined to his cell for 22 to 23 hours per day and could wear the headband during that time. (Texas Department of Criminal Justice, Institutional Division, Coffield Unit)

U.S. District Court
DISCRETION
RESTRAINTS
SECURITY
RESTRICTIONS
SEGREGATION

Harrison v. Dretke, 865 F.Supp. 385 (W.D.Tex. 1994). A prisoner brought a civil rights action against prison officials claiming that he was placed on restraint status and "container restriction" (not allowed to keep cups, plates or similar items in his cell) without due process of law. The U.S. District Court dismissed the action and the inmate appealed. The appeals court remanded. On remand, the district court found that prison officials did not violate the prisoner's protected liberty interest when they placed him on restraint status after he assaulted another inmate. The prisoner failed to show that there were any regulations that limited the officers' discretion in imposing the restraint status, and any freedom of movement inmates had beyond escort under restraint was an unregulated privilege extended by prison officials. In addition, the state prison officials satisfied due process requirements when they revoked the prisoner's container privileges. The prison's classification committee reviewed the prisoner's status a little more than three weeks after placing him on container restriction and decided to continue the restrictions. This review was one of the prisoner's regularly scheduled classification hearings which must be held every 90 days pursuant to segregation regulations. The inmate had a right to attend such hearings and to present evidence. (Alfred Hughes Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
PROTECTION
SAFETY

Horn by Parks v. Madison County Fiscal Court, 22 F.3d 653 (6th Cir. 1994) U.S. cert. denied 115 S.Ct. 199. A juvenile detainee, by his limited conservator, brought Section 1983 and negligence claims seeking damages for injuries sustained in an attempted suicide. The appeals court, affirming in part and reversing in part, found that any violation of the Juvenile Justice Act in temporarily lodging the juvenile in an adult jail was not the proximate cause of his attempted suicide because the juvenile was scrupulously shielded from deleterious influences associated with adult facilities. The court also found that the prison officials' failure to take special precautions to protect the juvenile detainee from suicide was not deliberate indifference to his serious medical needs, as required to establish a Fourteenth Amendment violation. Juvenile detainees were not, as a class, particularly vulnerable to suicide and entitled to special screening for suicidal tendencies. (Madison County Detention Center, Kentucky)

U.S. District Court
PROTECTION

Huffman v. Fiola, 850 F.Supp. 833 (N.D. Cal. 1994). A prisoner filed a federal civil rights complaint against prison officials and police officers and sought to proceed in forma pauperis. The district court found that the prisoner stated a cognizable claim against police officers who allegedly watched and refused to assist or prevent an alleged sexual assault of the prisoner in a booking cell. (Pacific Grove Police Department and Monterey County Sheriff's Department, California)

U.S. Appeals Court
PROTECTION
SEGREGATION

Robinson v. Cavanaugh, 20 F.3d 892 (8th Cir. 1994). An inmate brought an action for damages against prison officials for violating his due process rights by failing to protect him from an attack by another inmate. The U.S. District Court dismissed and the inmate appealed. The appeals court, affirming the decision, found that the inmate's refusal to identify the inmate that he feared would attack him invalidated his failure to protect claim. Officials would not place the inmate in protective custody without knowing the identity of a potential assailant. (Missouri)

U.S. District Court
PROTECTION
SAFETY
SEGREGATION

Schwartz v. County of Montgomery, 843 F.Supp. 962 (E.D.Pa. 1994) affirmed 37 F.3d 1488. An inmate brought claims under Section 1983 and Pennsylvania law against a county correctional facility and its employees. The district court found that the defendants were not deliberately indifferent to the inmate's constitutional rights by failing to ensure that the facility's policies and procedures governing inmate classification and recreation were followed. Even though failure to follow policies and procedures resulted in the attempted strangulation of the inmate by a prisoner who was known to be extremely dangerous and who should have not been allowed to leave his cell unescorted, the policies and procedures did not cause the harm suffered by the inmate. According to the court, failure to communicate and follow policies and procedures did not rise above the level of negligence. Under Pennsylvania law, the defendants could not be held liable on the intentional tort theory for the attack, and the defendants were immune from negligence claims. (Montgomery County Correctional Facility, Eagleville, Pennsylvania)

U.S. Appeals Court
DISCRETION
SECURITY
PRACTICES

Sims v. Mashburn, 25 F.3d 980 (11th Cir. 1994). A prisoner brought a Section 1983 action against state prison officials, alleging that his Eighth Amendment rights were violated in connection with the stripping of his cell. The U.S. District Court entered judgment for the prisoner and the officials appealed. The court of appeals, reversing the decision, found that the alleged failure of a prison guard to monitor the prisoner after his cell was stripped, which allegedly caused the prisoner to be subject to a penalty for a period longer than necessary to achieve penal objectives, did not inflict cruel and unusual punishment upon the prisoner in violation of his Eighth Amendment rights. The official was allowed deference in determining when the penal objective had been reached, and his conduct had been in compliance with policies that were in place at the institution; consequently he could not be characterized as malicious or sadistic as needed for an Eighth Amendment violation. (St. Clair Correctional Facility, Alabama)

U.S. District Court
SECURITY PRACTICES
TELEPHONE
VISITS

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 also provided for expanded visitation and telephone privileges. (Maximum Control Complex, Indiana Department of Corrections, Westville, Indiana)

U.S. Appeals Court
STAFFING

Taylor v. Freeman, 34 F.3d 266 (4th Cir. 1994). State prison inmates filed an action alleging that overcrowding and understaffing exposed inmates to an unconstitutionally unacceptable risk of physical violence. On the inmates' motion for a preliminary injunction, the U.S. District Court issued a mandatory preliminary injunction ordering prison officials to reduce the total inmate population by 30 percent of operating capacity in two months, in addition to ordering officials to take other remedial actions. The defendants appealed. The appeals court found that, in issuing the mandatory preliminary injunction, the district court exceeded the limited remedial authority vested in federal courts to direct the way in which state prison officials meet the dictates of the Eighth Amendment. The court's assumption of extensive managerial control over the prison was premised upon conclusory findings regarding the inmates' allegations that overcrowding and understaffing exposed the inmates to an unacceptable risk of physical violence. (North Carolina's Morrison Youth Institution)

U.S. District Court
FIRE SAFETY

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 living conditions for the women prisoners violated contemporary standards of decency and violated the Eighth Amendment. The dormitories were open and crowded and could not contain fire within any one room. There was only one unlocked fire exit, no fire alarm system, no sprinkler system, and no regularly conducted fire drills. (District of Columbia Correctional System- the Lorton Minimum Security Annex, the Correctional Treatment Facility, the Central Detention Facility)

1995

U.S. District Court
RELIGIOUS GROUPS

Abdul Jabbar-Al Samad v. Horn, 913 F.Supp. 373 (E.D.Pa. 1995). Muslim inmates brought a civil rights suit against prison officials challenging a rule which prohibited inmates from leading religious groups. The district court denied the defendants' motion to dismiss, finding that the inmates stated claims for violation of their civil rights. The court found that the inmates had stated a claim under § 1980 and the First Amendment by alleging that the prison rule violated a tenet of Islam that requires Muslims to choose their religious leaders from within their congregation. The court also found that the inmates stated a claim under the equal protection clause of the Fourteenth Amendment because civic and religious prison groups were similarly situated and that it was not established that one group was fundamentally more dangerous than the other. (SCI-Graterford, Pennsylvania)

U.S. Appeals Court
ESCAPE
RESTRAINTS

Davidson v. Riley, 45 F.3d 625 (2nd Cir. 1995). An inmate filed a civil rights action against prison officials claiming that he did not receive a fair trial when he was made to appear and try his case while restrained by handcuffs and leg irons. The U.S. District Court dismissed the action and the inmate appealed. The appeals court found that the district court had the discretion to order physical restraints if necessary to maintain safety or security, but could impose no greater restraints than were needed to minimize the resulting prejudice to the inmate's fundamental due process right to a fair trial. The district court abused its discretion by delegating to the inmate's guards the decision whether security concerns outweighed the inmate's due process right to appear without shackles or manacles, by failing to conduct an evidentiary hearing on whether the inmate presented an escape risk, and by failing to minimize the prejudice in having the inmate shackled while he appeared before the jury. The errors could not be deemed harmless where the restraints affected the credibility of the inmate and his witnesses and where the evidence against him was not overwhelming. (New York State Department of Correctional Services)

U.S. District Court
GANGS

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.

The court found that double-celling and inmate assaults did not rise to the level of an Eighth Amendment violation in the absence of evidence that the overall total number of cell fights over a three-year period was significantly more than would be expected for a facility of the prison's size and security designation.

The court upheld the prison's efforts to identify and separate gang members, finding that inmate's were not entitled to a hearing before a special services unit officer prior to being transferred to a segregated housing unit because of gang membership. The inmates were given an opportunity to present their views to the institutional gang investigator (IGI) and the IGI was the critical decision-maker in the process. Also, although some inmates who were transferred for gang membership may not have affirmatively engaged in gang activity while confined, the court held that evidence showed that gang members join gangs "for life," justifying their placement in security housing. (Pelican Bay State Prison, California)

U.S. District Court
FIRE SAFETY

Masonoff v. DuBois, 899 F.Supp. 782 (D.Mass. 1995). Prison inmates filed a class action suit against prison officials alleging that conditions of confinement violated their rights under the Eighth Amendment. The district court granted summary judgment, in part, for the inmates. The court denied summary judgment for the prison officials with regard to fire safety issues raised by the inmates. Inmates alleged fire hazards caused by the lack of a functioning sprinkler system and the lack of automatic locks on cell doors, which are required by a state building code. Prison officials responded that the facility had implemented a rigorous fire

safety program which mitigated any dangers imposed by these deficiencies. The court noted that while it may look to state codes in its effort to determine society's standard of decency, such standards do not necessarily reflect constitutional minima. (Southeast Correctional Center, Massachusetts)

U.S. District Court
HAIR
SEARCHES
SEGREGATION

May v. Baldwin, 895 F.Supp. 1398 (D.Or. 1995). An inmate brought an action against prison officials alleging violation of his civil rights. The district court held that a prison requirement that he undo his dreadlocks in order to facilitate a hair search did not violate the Religious Freedom Restoration Act (RFRA) or any clearly established First Amendment right, even though the requirement did substantially burden the inmate's rights to exercise his Rastafarian religion. The court found that the prison's requirement that any inmate who was leaving or returning to the facility loosen their hair was the least restrictive means of furthering the prison's valid security interests. The court also found that confining the inmate to his cell for less than 24 hours to undo his braids in preparation for his transfer from the facility on the following day did not violate the inmate's rights. The court also found that requiring inmates in administrative segregation to submit to visual and body cavity searches when leaving their cells does not violate the Fourth Amendment. The court found that sanctioning an inmate who refuses to comply with valid prison regulations to one week in a disciplinary segregation unit with no outdoor recreation privileges is not unreasonable or arbitrary for the purposes of an Eighth Amendment claim. (Eastern Oregon Correctional Institution)

U.S. District Court
RESTRAINTS

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. District Court
FIRE SAFETY

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 assignment of the prisoner to administrative segregation in a section of the jail designed primarily for the mentally imbalanced did not violate the Eighth Amendment's prohibition against cruel and unusual punishment. Although the prisoner was injured when exiting his cell after it was set on fire by other prisoners, no jail official perceived that the prisoner was subject to a serious risk of harm from fire, since fires were ubiquitous in the jail and had not previously caused serious injuries. (Jefferson County Detention Center, Beaumont, Texas)

U.S. Appeals Court
CONTRABAND
VISITS

Rodriguez v. Phillips, 66 F.3d 470 (2nd Cir. 1995). A former inmate and his mother filed a § 1983 action against prison officials. The district court denied summary judgment for the defendants and they appealed. The appeals court reversed and remanded in part, and dismissed in part. The appeals court found that prison officials' belief that the inmate's three-day administrative confinement, without the opportunity to be heard, was reasonable. The court noted that the officials perceived a threat to security and safety following a report that the inmate's mother had passed contraband into the prison, and that they needed time to search the public spaces of the cell block and interview an informer. The court held that a substantive due process right to be free from excessive force from a state act in a nonseizure, nonprisoner context was not clearly established at the time that a prison officer used excessive force on the inmate's mother. Just before a visit to her son, the mother had apparently leaned against or touched the fence surrounding the prison, pausing before she continued to the visitors reception area. An officer radioed a report to officers inside the facility that he had seen the mother pass a small brown package through the fence to an unidentified inmate. Inside the prison the mother was questioned by officers about the incident and she was told she would not be allowed to visit her son that day. While she was waiting at the bus stop corrections officers seized her and brought her back for further questioning, police were contacted and she was arrested. Unable to make bail she was held overnight and she was released without explanation the next day. Two weeks later she arrived to visit her son and she was not allowed to, although her visiting rights had not been formally suspended. She alleged that an officer screamed at her, put both hands on her shoulders and propelled her toward the building entrance and threw her against the front door. (Mid-Orange Correctional Facility, New York)

U.S. District Court
PRETRIAL DETAINEES
PROTECTION
SECURITY PRACTICES

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)

1996

U.S. District Court
SECURITY PRACTICES
STAFFING

Baker v. Lehman, 932 F.Supp. 666 (E.D.Pa. 1996). A prisoner sued prison officials alleging they were deliberately indifferent to his Eighth Amendment right to personal safety by failing to protect him from an attack by another inmate. The district court granted summary judgment for the officials, finding that the prisoner did not show that the officials knew of any facts from which an inference of substantial risk of serious harm might be drawn. The court found that given the previous absence of violence in the prison clothing shop, the prisoner did not show that security measures in the clothing shop posed a substantial risk of harm. The prisoner alleged that lack of screening of prisoner-workers on the basis of prior crimes, the provision of only one guard for 150 inmates, and the availability of scissors created a substantial risk of serious harm in the shop. (State Correctional Institution at Graterford, Pennsylvania).

U.S. Appeals Court
"LOCK-IN"
SAFETY

Eason v. Thaler, 73 F.3d 1322 (5th Cir. 1996). A Muslim prisoner brought a § 1983 suit against five correctional officials alleging violations of his constitutional rights during a prison lockdown. The district court granted summary judgment for the officials and the appeals court affirmed the lower court decision. The prisoner was one of many ordered into lockdown status for nearly 26 days following a potentially explosive disturbance in a recreation yard. During the lockdown the prisoner was only allowed to leave his cell for showers; meals, library books, medical assistance and all other necessities and services were brought to inmates' cells. The court found that the prisoner was not entitled to notice or an opportunity to be heard before being placed in lockdown. The court ruled that the prisoner's right to practice his religion was not violated by the inclusion of pork in some of the meals served during the lockdown since prison officials had no reason to know that the prisoner was affiliated with the Muslim faith. The prisoner was not denied his constitutional right of access to courts by the prison's failure to provide him with every legal book he requested during the lockdown; the prisoner was not prejudiced in any litigation as a result of the alleged denial of access to the law library and he was only delayed in filing a § 1983 lawsuit which he filed after the lockdown ended without missing any deadlines. Prison officials were not deliberately indifferent to the health and safety of the prisoner when they permitted a gas leak to occur and did not evacuate prisoners from their cells; officials turned on exhaust fans to draw gas fumes out of prisoners' cells. Prison officials did not violate the prisoner's due process rights by including him in lockdown because the prisoner's segregation from the general population was instituted to protect the security and integrity of the prison unit and to protect prisoners from each other. (Smith Unit, Texas Department of Criminal Justice-Institutional Division)

U.S. District Court
RESTRAINTS

Fitts v. Witkowski, 920 F.Supp. 679 (D.S.C. 1996). An inmate sued corrections officials alleging violation of his Eighth Amendment rights by the use of four-point restraints. The district court held that a previous consent decree established a liberty interest in freedom from the use of four-point restraints except under procedures established by the decree and that there was an issue of fact as to whether the defendants complied with the decree. The court noted that this case did not involve a disturbance that threatened prison security so as to make pre-deprivation protections impossible. The court found that prison officials were entitled to qualified immunity for due process and Eighth Amendment claims because the existence of the decree did not clearly establish that the inmate had a liberty interest against the use of four-point restraints. (Perry Correctional Institution, South Carolina)

U.S. Appeals Court
SEGREGATION
RESTRAINTS
VISITS

Hosna v. Groose, 80 F.3d 298 (8th Cir. 1996). Inmates who were housed in an administrative segregation unit for their own safety brought a civil rights action against prison officials, seeking damages and injunctive relief for alleged equal protection violations. The district court granted partial injunctive relief. The appeals court reversed the lower court's grant of injunctive relief, finding that limiting the type of property in administrative segregation cells, restricting inmates' access to prison resources, and requiring that they be handcuffed while out of their cells did not violate equal protection. Prison officials had argued that their policies were designed to reduce the possibility of danger by or to administrative segregation inmates. Inmates were only allowed out of their cells for three hours of recreation per week. When they were out of the cells, inmates were handcuffed and escorted by guards. The inmates were not allowed to attend classes, religious services, or group recreational activities, nor could they work or visit the law library. Inmates were not allowed telephone access for personal calls, their visitation privileges were more restrictive, and they were provided with less opportunity to purchase items through the canteen. (Jefferson City Correctional Center, Missouri)

U.S. District Court
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
GANGS

Pichardo v. Kinker, 73 F.3d 612 (5th Cir. 1996). A state prison inmate brought a civil rights action against prison officials alleging his confinement in administrative segregation violated his due process rights. The district court dismissed the case as frivolous and the inmate appealed. The appeals court ruled that placing the inmate in administrative segregation because of his gang affiliation did not deprive him of a constitutionally cognizable liberty interest. (Coffield Unit, Texas Department of Criminal Justice)

U.S. Appeals Court
TELEPHONE

Pope v. Hightower, 101 F.3d 1382 (11th Cir. 1996). An inmate brought an action against prison officials challenging prison telephone restrictions that required inmates to designate no more than ten individuals on telephone calling lists, with the option of changing the lists every six months. The district court rendered a verdict for the inmate and the officials appealed. The appeals court reversed, finding that the calling list requirement did not violate the inmate's First Amendment right to communicate with family and friends. The court found that a rational connection existed between the restriction and a legitimate governmental interest in reducing criminal activity and harassment of judges and jurors. The court noted that the inmate had alternative means of exercising his First Amendment right because he could receive visitors and correspond with virtually anyone he wished. (Donaldson Correctional Facility, Alabama)

U.S. Appeals Court
FIRE SAFETY

Standish v. Bommel, 82 F.3d 190 (8th Cir. 1996). A former inmate brought a § 1983 action against prison officials challenging his conditions of confinement. The district court entered judgment against the inmate and he appealed. The appeals court affirmed the lower court decision, finding that the former inmate was not subjected to unconstitional conditions of confinement. The inmate alleged that unsafe conditions at the prison included the lack of smoke detectors in the housing unit, lack of water sprinklers, inadequate ventilation, and insufficient emergency procedures. The court found that these conditions did not violate the inmate's rights where the only recent fires were started when inmates set fire to mattresses or bedding and neither the former inmate or anyone else had been injured by smoke inhalation or fire. The court noted that prison officials had taken action to address fire hazards, such as prohibiting smoking. The court also found that the former inmate's rights were not violated when his housing unit leaked in bad weather, even though it forced him to move his mattress to the floor to stay dry. (Jefferson City Correctional Facility, Missouri)

U.S. Appeals Court
DISTURBANCE
USE OF FORCE
RESTRAINTS

Williams v. Benjamin, 77 F.3d 756 (4th Cir, 1996). An inmate filed a civil rights action claiming that correctional officers violated his constitutional rights when they sprayed him with mace, confined him for eight hours in four-point restraints on a bare metal bed frame, refused to allow him to wash off the mace, and denied medical care and the use of a toilet. The district court granted summary judgment to the prison officials and the appeals court affirmed in part and reversed and remanded in part. The appeals court found that the correctional officers' decision to use some force to quell a disturbance was justifiable after inmates threw water at an officer and refused to obey a command to desist. The court ruled that the initial application of mace was not cruel and unusual punishment, but that summary judgment was precluded for the claims that the use of restraints and related actions violated the Eighth Amendment. The court noted that four-point restraints can be used on a limited basis, as a last resort, without violating the Eighth Amendment when other forms of prison discipline have failed, and that the initial application of four-point restraints was justified. But the officers offered no evidence to dispute the inmate's affidavit that his long confinement without being able to wash off the mace caused "immense" pain and that the inmate pleaded with them for water to wash off the mace. According to the court, after the immediacy of the disturbance was at an end the unnecessary infliction of continued pain through a prolonged period of time would support the inference that the officers were acting to punish, rather than to quell a disturbance. (Lieber Correctional Institution, South Carolina)

1997

U.S. Appeals Court
CONTACT VISITS

Bazzetta v. McGinnis, 124 F.3d 774 (6th Cir. 1997). Prisoners brought a class action civil rights suit challenging prison regulations that limited contact visits for certain classes of prisoners. The district court denied the prisoners' motion for preliminary injunctive relief and the prisoners appealed. The appeals court affirmed, finding that the regulations were reasonably related to legitimate penological interests and did not violate the Eighth Amendment. The corrections department grades its prisoners on the basis of their dangerous

propensities, from grade I (lowest risk) to grade VI (highest risk). Regulations prohibit contact visits for grades V and VI, with rare exceptions. The regulations included restrictions on contact visits by children, members of the general public and former prisoners. (Michigan Department of Corrections)

U.S. District Court
RESTRAINTS
PRETRIAL DETAINEES

Casaburro v. Giuliani, 986 F.Supp. 176 (S.D.N.Y. 1997). A pretrial detainee alleged that he was subjected to cruel and unusual punishment because he was handcuffed in a holding cell for over 7 hours. According to the detainee, he was placed in a holding cage "that had no seats, no water, poor ventilation." He had notified officers that he was under a chiropractor's care for back problems but was allegedly tightly handcuffed behind his back anyway. After he complained he was re-handcuffed to a hook approximately 12 inches off of the floor. After complaining about this he was allegedly cuffed to the front of the cell in a standing position. The district court found that the detainee stated a § 1983 claim against officers, the police department and the city. (City of New York)

U.S. District Court
RESTRAINTS

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. 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
FIRE SAFETY
EARTHQUAKES

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 found that the detainees were not provided with reasonable safety from fire because the defendants failed to install door assemblies or additional sprinklers and had not responded reasonably to fire safety risks at the jail.

The detainees were exposed to excessive risks of harm from earthquakes in violation of their due process rights, where the jail lay a quarter mile from the San Andreas fault and faced a 50% chance of experiencing a high magnitude earthquake over the next 50 years. The jail appeared structurally unable to withstand substantial seismic activity and had a malfunctioning bar locking system and inadequate staffing that further augmented risk by potentially leaving inmates trapped in their cells during and after an earthquake. The court rejected the government's contention that more than 30 public buildings in the area had the same seismic rating as the jail. The court noted that the public's alleged tolerance of risk associated with entering a poorly-constructed library or museum for an hour did not equate to tolerance for spending 100 days continuously trapped in such a facility.

The court found deliberate indifference to the risk of earthquakes despite the defendants' contention that it would cost more than $33 million to upgrade the jail and efforts to gain voter approval for funding for a new facility had failed. The court noted that the city could have attempted other funding methods and did have some funds allocated for seismic repairs but diverted that money to other projects.

Despite some efforts to reduce noise in the jail, the detainees established a constitutional violation in noise levels which ranged between 73 and 96 decibels, exceeding acceptable levels,

and caused increased risk of psychological harm and safety concerns due to officers' inability to hear calls for help. The extent to which noise continued to exceed maximum standards suggested that previous noise reduction efforts were merely cosmetic and that far more could be done. (San Francisco Jail No. 3, California)

U.S. District Court
RESTRAINTS
SECURITY PRACTICES

Price v. Dixon, 961 F. Supp. 894 (E.D.N.C. 1997). An inmate sued prison officials alleging violation of his Eighth and Fourteenth Amendment rights when he was placed in four-point restraints for 28 hours. The court granted summary judgment in favor of the defendants, finding that they did not violate any clearly established rights of the inmate and were entitled to qualified immunity. The court upheld the limited use of mace to subdue the inmate who was disruptive and who was throwing urine on prison officers. The inmate had incurred more than 100 rule violations since he was admitted to the facility, and on one occasion the inmate even broke through steel handcuffs that were applied to restrain him. The court held that denying the inmate the opportunity to wash after being sprayed with mace did not violate any clearly establish right of the inmate. The inmate was afforded bathroom breaks and was not totally without access to any source of water. He was checked every 15 minutes and was released for regular meal times. The inmate was also evaluated by medical personnel. (Central Prison, Raleigh, North Carolina)

U.S. Appeals Court
PROTECTION
SECURITY PRACTICES

Rich v. Bruce, 129 F.3d 336 (4th Cir. 1997). An inmate brought a § 1983 action against a prison officer, alleging violation of his Eighth Amendment rights in connection with an attack by another inmate. The district court entered judgment for the inmate, awarding him $40,000 in compensatory damages and more than $20,000 in attorneys' fees. But the appeals court reversed, ruling that findings did not support the conclusion that the officer acted with deliberate indifference to a substantial risk of harm to the inmate. According to the appeals court, the officer's violation of prison rules regarding movement of the inmate did not support the conclusion that the officer acted with deliberate indifference. The plaintiff inmate was assigned to disciplinary segregation in Maryland's "Supermax" correctional facility due to his behavior. While the plaintiff was in an outside recreation area, the officer released another inmate from his cell for a period in the "day room" in front of the cells. This inmate was highly dangerous and a warning had been issued by the prison that he should be considered the enemy of all inmates. This inmate had also stabbed the plaintiff several months earlier and was considered to be the plaintiff's enemy in particular. While moving the plaintiff back to his cell the officer violated standard operating procedures and as a result the other inmate had the opportunity to attack the plaintiff with a shank. The plaintiff required hospitalization and surgery and has permanent scars as a result.

The officer, apparently frightened, filed a report that falsely stated that he had complied with certain security regulations that he had in fact broken. He later admitted that he had broken several regulations, including those that: (1) required no more than one inmate to be out of his cell for recreation at any given time; (2) required two officers to participate in taking an inmate out of his cell; (3) required inmates being given recreation in the dayroom to wear handcuffs; and (4) required that prisoners' clothes and persons be carefully searched before they leave their cells. (Maryland Correctional Adjustment Center)

U.S. District Court
SEARCHES-CELL
CONTRABAND

Robinson v. Ridge, 996 F.Supp. 447 (E.D.Pa. 1997). A prisoner sued state officials and employees alleging violation of his rights as the result of a random prison-wide security search. The district court held that the prisoner's right to free access to courts was not violated by the seizure of his legal materials, absent actual injury. The court also held that the seizure of the prisoner's religious materials in the course of a random security search, no matter how harmful the seizure might have been to the prisoner's religious practices, did not violate the Free Exercise Clause if it was reasonably related to the prison's legitimate penological interests. The prisoner's cell was searched as part of a prison-wide search during a declared state of emergency. During the search, the prisoner's personal property, including legal documents and articles of his Islamic faith, were thrown on the floor and swept into the trash. The prisoner asked for a receipt and was refused. He filed a grievance and was denied relief, but was subsequently offered $50, which he rejected. (SCI Graterford, Pennsylvania)

U.S. Appeals Court
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
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 supremecy 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 supremecy 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)

U.S. District Court
FIRE SAFETY

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 required the District to remedy environmental health problems at its correctional facility for women, including repairing or replacing roofs of dormitories, conducting a vermin eradication program, replacing torn mattresses and pillows, providing adequate prisoner-controlled lighting, and installing a drainage system to prevent hazardous accumulations of water. The court required the District to install and maintain a manual fire alarm system and fire detection system in the women's facility, and to ensure that all bed linens, blankets and curtains or draperies were fire-retardant. (District of Columbia)

1998

U.S. Appeals Court
RESTRICTIONS
WORK

Abu-Jamal v. Price, 154 F.3d 128 (3rd Cir. 1998). A state inmate brought a § 1983 action challenging a prison rule that prohibited inmates from carrying on a business or profession. The inmate moved for a preliminary injunction which the district court granted in part. The appeals court affirmed in part and reversed in part, remanding with instructions. The appeals court held that the inmate showed that the rule, which was enforced against him to restrict his writings, was not reasonably related to any legitimate interests and that the inmate faced irreparable harm as the result of the prison's investigation and enforcement of the rule. The court found that the inmate was likely to show that the rule was enforced due to the content of his writings, and that his writings did not affect the allocation of prison resources, other inmates, or orderly prison administration. But the appeals court found that the district court's injunction against enforcement of visitation rules was not warranted on the grounds that they were imposed in retaliation for the inmate's writings, and that the corrections department did not violate the inmate's access to the courts by imposing stricter visitation rules. The court found that the department had a valid, content-neutral reason for applying stricter visitation rules to the inmate's visitors, given evidence that the inmate's legal visitation privileges were being abused so that he could receive more than the permitted number of social visits. The department required verification that legal visitors were credentialed or employed by the inmate's attorney. (State Correctional Institution at Greene, Pennsylvania)

U.S. District Court
VISITS

Africa v. Vaughan, 998 F.Supp. 552 (E.D.Pa. 1998). A prison inmate who was denied visitation with a woman who, along with the inmate, was a member of an activist group, and who the inmate claimed was his wife, brought a § 1983 action. The district court granted summary judgment for the defendants, finding that the inmate failed to show that he and the woman were married for the purposes of Pennsylvania law; therefore, the denial of visitation did not violate equal protection. The court found that no statutory marriage existed, where the inmate had not obtained a marriage license, and there was no evidence that they had entered into an agreement sufficient to create a common law marriage. (S.C.I. Graterford, Pennsylvania)

U.S. District Court
TELEPHONE

Arney v. Simmons, 26 F.Supp.2d 1288 (D.Kan. 1998). Inmates brought a § 1983 action alleging constitutional violations in a system for providing telephone access to inmates. Prison restrictions on inmates' telephone access included a 10-person telephone call list that could be modified at 120-day intervals, monitoring of telephone calls, a prohibition on international calls from inmate telephones, and a prohibition on the inclusion of public officials on call lists. The court held that these restrictions did not violate inmates' rights to freedom of speech or freedom of association because the restrictions were content-neutral and unrelated to the purpose of suppressing expressions, inmates had significant alternative means to communicate through prison visitation and correspondence, alternatives to the restrictions would have an impact on prison resources, and there were no obvious, easy alternatives to the restrictions. The court held that the telephone system did not violate inmates' right of access to courts by permitting the monitoring or recording of attorney/client telephone conversations. (Lansing Correctional Facility, Kansas)

U.S. District Court
SEARCHES
TRANSFER

Aziz Zarif Shabazz v. Pico, 994 F.Supp. 460 (S.D.N.Y. 1998). A prison inmate brought a § 1983 action against prison officials and employees alleging violation of his constitutional rights. The district court granted summary judgment for the defendants. The court held that the inmate failed to allege facts sufficient to support a conspiracy claim or that officials had acted in retaliation for the inmate's exercise of protected rights. The court concluded that kicking of the inmate inside his ankles and feet while performing a pat frisk, while not to be condoned, was a de minimis use of force and did not violate the Eighth Amendment. The court noted that at one time the inmate admitted that he had sustained no physical

injuries. The court held that the pat frisk and strip frisk searches performed on the inmate were permissible and did not violate the provisions of a consent decree. The court found that performing a strip frisk on the prison inmate prior to his transfer to another facility did not violate his right of free exercise of religion, notwithstanding the inmate's religious objections to the requirement that he remove his clothing. According to the court, alleged verbal taunts, no matter how inappropriate, unprofessional or reprehensible they might seem, did not support a claim of cruel and unusual punishment absent any injury. Any psychological or emotional scars to the inmate were found to be de minimis and did not support a claim of cruel and unusual punishment. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
SAFETY

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
VISITS

Blair v. Loomis, 1 F.Supp.2d 769 (N.D.Ohio 1998). An inmate and his wife, a former correctional officer, sued prison officials challenging their denial of visitation. The district court denied the plaintiffs' motion for a temporary restraining order and temporary injunction. The court held that regulations governing visitation in Ohio prisons did not create a protectable liberty interest in a right to visitation. The court found that the public interest in a safe and orderly prison system outweighed the interest of the prisoner and his wife in maintaining their family relationship and the prisoner's interest in building a relationship that would help him to lead a law-abiding life upon his release. The court found that it was reasonable for Ohio law to consider present or former correctional officers to be security risks, and to exclude them from visitation for that reason, based upon their training in security procedures and their knowledge of facility operations. The prisoner and his wife were married while the prisoner was incarcerated, and the wife admitted to falsifying information on her visitor application to conceal the fact that she had been a corrections officer. (Grafton Correctional Institution, Ohio)

U.S. Appeals Court
SEGREGATION
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. Appeals Court
DRUG/ALCOHOL

Byrd v. Hasty, 142 F.3d 1395 (11th Cir. 1998). An inmate sought habeas corpus relief after the federal Bureau of Prisons (BOP) denied him a sentence reduction based on his completion of a drug treatment program. The district court denied relief and the inmate appealed. The appeals court reversed and remanded, finding that the BOP could not rely on the inmate's firearm sentence enhancement to deny his application for a sentence reduction. The appeals court held that the BOP exceeded its authority when it categorically excluded from eligibility those inmates who were convicted of nonviolent offenses who received sentencing enhancements for possession of a firearm. (Federal Prison Camp at Pensacola, Florida)

U.S. District Court
STAFFING

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. Appeals Court
HAIR
BEARDS
GROOMING

Hines v. South Carolina Dept. Of Corrections, 148 F.3d 353 (4th Cir. 1998). One hundred South Carolina inmates challenged the constitutionality of a prison grooming policy that required all male inmates to keep their hair short and their faces shaven. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the rule did not violate inmates' right to free exercise of religion, despite its incidental effect on the religious practices of some inmates. According to the court, the policy was neutral and the generally applicable rule was implemented to maintain order in prisons, which was reasonably related to legitimate penological interests. (South Carolina Department of Corrections)

U.S. Appeals Court
SECURITY
RESTRICTIONS

In Re Wilkinson, 137 F.3d 911 (6th Cir. 1998). Corrections officials challenged a district court order permitting an inmate to attend a pretrial deposition which was being conducted as a part of a civil rights action brought by the inmate. The appeals court granted a writ of mandamus which directed the district court to vacate its order. The appeals court held that the corrections officials adequately justified their general policy against allowing an inmate from being present at depositions in civil litigation brought by the inmate, noting that the inmate bore the burden of showing a specialized need for his attendance at the deposition. Corrections officials had cited five reasons for their policy: (1) maintaining staff authority; (2) preventing aggrandizement of inmates; (3) avoiding unnecessary tension; (4) protecting staff morale; and (5) preserving limited resources. (Lorain Correctional Institution, Ohio)

U.S. District Court
DISTURBANCE
RESTRAINTS

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 Corr. Institution, Memphis, Tennessee)

U.S. District Court
FREE EXPRESSION
ITEMS PERMITTED

Leitzsey v. Coombe, 998 F.Supp. 282 (W.D.N.Y. 1998). An inmate brought a § 1983 action against prison officials after he was disciplined for violating a prison rule that prohibited possession of materials pertaining to unauthorized organizations. The district court held that the prison rule did not violate the inmate's free speech or free exercise rights, and that the rule was not unconstitutionally vague. According to the court, it was reasonable and essential for prison officials to prohibit inmate participation in, and possession of, materials relating to organizations that foster disorder and threaten the security of the institution. (Attica Correctional Facility, New York)

U.S. Appeals Court
SEARCHES

Peckham v. Wisconsin Dept. Of Corrections, 141 F.3d 694 (7th Cir. 1998). A state prisoner brought an action against corrections officials challenging the constitutionality of strip searches. The district court dismissed the suit and the appeals court affirmed. The appeals court held that the strip searches violated neither the Fourth Amendment nor the Eighth Amendment. According to the court, strip searches of a state prisoner upon his arrival at a facility, return to the facility after medical appointments or court proceedings, and upon a general search of his cell block, did not violate the Fourth Amendment. The court held that as long as the searches were performed for legitimate, identifiable purposes, and not for harassment or punishment, they did not violate the Eighth Amendment. (Taycheedah Correctional Institution, Outagamie County Jail, Wisconsin)

U.S. District Court
FACIAL HAIR
RELIGIOUS ARTICLES

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. (Ariz. State Prison Complex-Winslow)

U.S. District Court
SEXUALLY ORIENTED MATERIALS

Waterman v. Verniero, 12 F.Supp.2d 364 and 12 F.Supp.2d 378 (D.N.J. 1998). Convicted sex offenders housed at a diagnostic and treatment facility sought a preliminary injunction preventing enforcement of a statute that barred prisoners in the facility from possessing sexually oriented materials. The district court granted the injunction, finding that the offenders were likely to succeed on the merits of their allegations that the statute was overbroad, vague, and violated the First Amendment. The court noted that depiction of sexually oriented had been permitted at the facility for over 20 years with no documented harm. The court later ordered a permanent injunction finding that the statute was overbroad and was not rationally related to rehabilitation. (New Jersey Adult Diagnostic and Treatment Center)

U.S. District Court
RELIGION

Withrow v. Bartlett, 15 F.Supp.2d 292 (W.D.N.Y. 1998). A Muslim inmate brought a § 1983 action claiming that a prison superintendent and correctional officers violated his First Amendment rights by disciplining him for participating in a group demonstrative prayer in a recreation yard. The district court granted summary judgment for the defendants, finding that prohibiting group demonstrative prayer in a prison recreational yard did not violate the inmate's right to free exercise of religion. The court found that a group demonstrative prayer in a highly populated prison yard posed the risk of disturbing other inmates with chanting and movements, and that the prohibition was rationally related to a legitimate penological interest in maintaining security. According to the court, the inmate had the option of engaging in nondemonstrative prayer in the yard or returning to his cell for prayer. (Wende Correctional Facility, New York)

1999

U.S. District Court
SAFETY

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. Appeals Court
RELIGION

Chatin v. Coombe, 186 F.3d 82 (2nd Cir. 1999). A state inmate who was disciplined for engaging in individual prayer in a prison recreation yard brought a § 1983 action against prison officials alleging violation of his constitutional rights. After a bench trial the district court held that the rule under which the inmate was punished was unconstitutionally vague, and enjoined its enforcement under similar circumstances. The appeals court affirmed, finding that the inmate's prayer could not be viewed as a "religious service" or "religious speech" as intended by a rule barring unauthorized services or speeches. The court found that the inmate was not afforded adequate notice that individual, silent, demonstrative prayer was prohibited outside the cell or other designated areas. The court held that the rule failed to provide sufficiently explicit standards for those who applied it. (Green Haven Correctional Facility, New York)

U.S. District Court
RESTRAINTS
SECURITY PRACTICES

Drummer v. Luttrell, 75 F.Supp.2d 796 (W.D.Tenn. 1999). An inmate brought a § 1983 action against corrections officials alleging that a disciplinary action violated her due process and Eighth Amendment rights. The district court held that strip-searching and handcuffing the inmate during a unit search did not constitute a due process violation because the action did not impose an atypical and significant hardship on her. The inmate had been strip-searched during a

shakedown of her dormitory. After squatting and coughing twice the inmate refused a direct order to do so again and was disciplined. She then left a shower area dressed in nothing but her panties and two male officers were called for assistance. (Shelby County Correctional Center, Tennessee)

U.S. Appeals Court
RESTRAINTS

Hartsfield v. Vidor, 199 F.3d 305 (6th Cir. 1999). A state prison inmate brought a § 1983 action alleging that he was unconstitutionally restrained. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part and remanded, finding that the officials' alleged act of keeping the inmate in hard restraints for two eight-hour periods after he damaged his cell did not amount to cruel and unusual punishment. The inmate alleged that during his periods in the restraints he was denied food, access to fresh water and the use of a toilet. The inmate had been placed in top-of-bed restraints for a total of eighteen hours. (Ionia Corrections Facility, Michigan)

U.S. Appeals Court
RESTRAINTS

Key v. McKinney, 176 F.3d 1083 (8th Cir. 1999). An inmate who had been restrained in handcuffs and leg shackles for 24 hours for throwing water in a correctional officer sued state prison officials under § 1983 claiming violation of his Eighth and Fourteenth Amendment rights. The district entered judgment for the defendants and the appeals court affirmed. According to the appeals court, the inmate did not suffer a serious deprivation of life's necessities and prison officials' conduct was not wanton. Although the shackles made it more difficult for the inmate to sleep and relieve himself, he was not deprived of bedding, food or bathroom facilities and he was checked by a nurse and guard at regular intervals. The record also contained references to the handcuffs being loosened and medical conditions being considered. The court also held that the inmate did not have any due process right to notice and an opportunity to be heard before being restrained, noting that the inmate had no liberty interest in not being restrained. The restraints were applied under a new policy implemented in response to inmate disturbances. Under the policy, inmates caught spitting, throwing objects, or starting a fire were to be placed in restraints for 24 hours. Inmates were given notice of the new policy. (Anamosa State Penitentiary, Iowa)

U.S. District Court
RESTRAINTS

Pendergrass v. Hodge, 53 F.Supp.2d 838 (E.D.Va. 1999). A prisoner brought a § 1983 action against prison officials challenging their policy on the use of restraints. The court held that placing a prisoner who had been assigned to restrictive housing in full restraints when he moved about the prison did not constitute a serious deprivation of a basic human need under the Eighth Amendment. (Riverside Regional Jail, Virginia)

U.S. District Court
WHEELCHAIR

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 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
RELIGIOUS ARTICLES
RELIGIOUS GROUPS

Spies v. Voinovich, 173 F.3d 398 (6th Cir. 1999). A Zen Buddhist inmate sued prison officials alleging that various prison regulations violated his First Amendment free exercise rights. The district court granted summary judgment in favor of the prison officials. The appeals court affirmed with regard to all of the inmate's First Amendment claims. The appeals court held that a prison regulation that required five documented members of a faith to be interested in forming a faith group before such a group could be formed did not violate the inmate's free exercise rights. The court also held that a prohibition against the inmate possessing certain religious articles in his cell did not violate his free exercise rights. The court noted that a small statue of Buddha, an altar cloth, a wooden fish, a picture of Buddha, and incense could be fashioned into weapons or could be used to cover up illegal activities. The court upheld the prison's prohibition against inmate-led groups and the prison's refusal to use the inmate's religious name. (North Central Correctional Institution, Ohio)

U.S. Appeals Court
CONTRABAND

U.S. v. Allen, 190 F.3d 1208 (11th Cir. 1999). A federal inmate was convicted in federal district court of possessing a prohibited object and he appealed. The appeals court vacated the district court decision and remanded with instructions. The appeals court held that under the statute that makes it unlawful for a federal inmate to possess a "prohibited object" and which defines a

"prohibited object" to include an object that is intended to be used as a weapon, the intent to use the object as a weapon is an element of the offense and not merely a sentencing factor. The inmate worked as a quality assurance inspector at an on-site UNICOR (federal prison industries) mattress factory. One morning he was observed to be acting suspiciously in his conversation with another inmate and he was searched. The search produced three nine-inch tufter needles and a wooden dowel with a hole bored into one in and a rope wrapped around the other end. The needles appeared to have been broken off from one of the sewing machines. The needles fit into the wooden dowel and when assembled could be used as a shank or ice-pick tool or weapon with a lanyard. The inmate did not contest that he possessed these objects but told his supervisor that he had intended to give them to his supervisors privately rather than in view of other inmates. (United States Penitentiary, Atlanta, Georgia)

U.S. District Court
TELEPHONE CALLS

U.S. v. Peoples, 71 F.Supp.2d 967 (W.D.Mo. 1999). A defendant who was charged with killing a witness to prevent testimony moved to suppress recordings of telephone conversations and in-person meetings that he had with a prisoner. The district court denied the motion, finding that the recordings did not violate the Fourth Amendment rights of the defendant. According to the court, a visitor of a prisoner did not have a reasonable expectation of privacy in conversations with the prisoner, or in telephone calls involving the prisoner. The recordings were made as part of a neral recording program undertaken to maintain prison safety by reducing the flow of contraband into the prison. (Corrections Corporation of America facility, Leavenworth, Kansas)

U.S. District Court
FIRE
FIRE SAFETY

White v. Cooper, 55 F.Supp.2d 848 (N.D.Ill. 1999). An inmate at a state prison brought an action against prison officials and a construction company to recover damages for injuries he incurred in a fire. The district court dismissed the construction company from the suit finding that the company was not a "state actor" for the purposes of § 1983. The court found that the inmate stated a claim against prison officials by alleging that they failed to assist him for an unreasonable time during a prison fire. According to the court, the allegation that state correctional officials knew the inmate faced severe and substantial risk from fire because of inoperative fire safety and prevention equipment, and failed to ensure that the system was operational, stated an Eighth Amendment claim. In addition to their disregard of non-operational fire safety and prevention systems, officials also allegedly failed to free the inmate from his burning cell. (Joliet Correctional Center, Illinois)

2000

U.S. District Court
CONTRABAND
SEARCHES- CELL

Ballance v. Virginia, 130 F.Supp.2d 754 (W.D.Va. 2000). A state prison inmate who was convicted of sexual crimes involving juveniles brought a § 1983 action against corrections officials alleging wrongful confiscation of photographs of children from his cell. The district court held that the confiscation complied with the First Amendment even though only a small percentage of photographs were of seminude children. The court noted that state officials provided minimum procedural safeguards, including notice of confiscation, provision of avenues for protest, and review of the prisoner's allegation of a First Amendment violation by someone who was not involved with the confiscation. The court found that the confiscation of all photographs served to further the prison's interests in both rehabilitation and institutional security because the possible discovery of the cache of photos by other prisoners created a potential for disturbance. According to the court, a prisoner has no Fourth Amendment right to be free from unreasonable searches of his cell because he has no expectation of privacy in his cell. (Wallens Ridge State Prison, Virginia)

U.S. District Court
CONTRABAND
SEARCHES- CELL

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
SEARCHES- CELL

Barstow v. Kennebec County Jail, 115 F.Supp.2d 3 (D.Me. 2000). A county jail inmate brought an action against a sheriff, detective, county commissioners and county, alleging claims under § 1983. The district court granted summary judgment, in part, for the defendants. The court held that the search of the inmate's jail cell did not violate his Fourth Amendment rights or his due process rights. The court found that the detective had probable cause to search the jail cell for evidence that the inmate had committed the crime of terrorizing because his cell mate had informed potential victims and the detective about the inmate's possible retaliatory plans. According to the

court, the Fourth Amendment does not require government officials to secure a search warrant prior to searching a prison cell. (Kennebec County Jail, Maine)

U.S. District Court
RESTRAINTS

Bowman v. City of Middletown, 91 F.Supp.2d 644 (S.D.N.Y. 2000). An arrestee who was held for 19 days on suspicion of murder brought a § 1983 action alleging false arrest, malicious prosecution and civil rights violations while confined. The district court held that denial of commissary privileges for five days was not a due process violation, especially since the only deprivation suffered was the inability to order cigarettes, which was the sole item the detainee desired from the commissary. The court found that the jail superintendent was entitled to qualified immunity from liability for his decision to have the pretrial detainee shackled when outside of his cell based on the wording of the note that the detainee had sent to the superintendent complaining of his loss of commissary privileges, because the right to complain to prison administrators was not clearly established. The note asked "[who] do you think you are" and promised "I will see you or whomever in court." (Orange County Jail, New York)

U.S. Appeals Court
RESTRAINTS

Fuentes v. Wagner, 206 F.3d 335 (3rd Cir. 2000). An inmate who had been detained in a county prison while awaiting sentencing sued corrections officers and prison officials under § 1983 for the alleged use of excessive force. A district court jury returned a verdict in favor of the defendants and the inmate appealed. The appeals court affirmed, finding that whether the inmate was placed in a restraint chair to stop his disruptive behavior and maintain prison order or for purposes of punishment was a jury question and that placement of the inmate in a restraint chair for eight hours did not violate substantive due process under the Eighth Amendment. The court noted that the inmate was not kept in the chair any longer than was authorized, his physical condition was checked every fifteen minutes and he was released every two hours for ten minutes to allow stretching, exercise, and use of the toilet. He was examined by a nurse at the end of the eight-hour period. According to the court, an inmate awaiting sentencing had the same status under the Constitution as a pretrial detainee and the Due Process Clause protected him from the use of excessive force amounting to punishment. (Berks County Prison, Pennsylvania)

U.S. District Court
FACIAL HAIR
HAIR LENGTH

Jackson v. District of Columbia, 89 F.Supp.2d 48 (D.D.C. 2000). Federal prisoners and District of Columbia prisoners who were serving their sentences in facilities operated by the Virginia Department of Corrections challenged the Department's grooming policy. The district court held that the policy, which required male prisoners to be clean-shaven and to keep their head hair short, did not violate the Religious Freedom Restoration Act (RFRA) nor the Free Exercise Clause of the First Amendment, even though it substantially burdened the prisoners' sincerely held beliefs. The court found the policy to be the least restrictive means to address the Department's compelling interests in prison security, gang elimination, inmate identification, and health and sanitation. (Virginia Department of Corrections)

U.S. District Court
RESTRAINTS
USE OF FORCE

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. Appeals Court
RESTRAINTS
PRETRIAL
DETAINEES

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
GANGS
SEPARATION

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 Corr'l Ctr., Tennessee)

U.S. District Court
FIRE SAFETY

Oladipupo v. Austin, 104 F.Supp.2d 643 (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 found that the fact that INS detainees held at the parish jail had fewer privileges than INS detainees held at a federal detention center did not violate the Equal Protection Clause. The court also found that housing INS detainees with convicted prisoners did not violate the Due Process Clause. The court denied summary judgment for the officials on the allegation that the housing unit at the jail had serious sewage problems that created unsanitary conditions. The court also denied summary judgment to the officials on the allegation that the jail had an inadequate number of emergency exits. (Avoyelles Parish Jail, Louisiana)

U.S. District Court
ESCAPE
SEARCHES

Richards v. Southeast Alabama Youth Ser. Diversion, 105 F.Supp.2d 1268 (M.D.Ala. 2000). The mother of a detainee who had committed suicide while in custody brought a civil rights action against city and county officials. The district court denied Eleventh Amendment immunity to the city defendants and denied summary judgment for the defendants on a deliberate indifference claim. The district court held that summary judgment was precluded by issues of material fact as to whether the actions of the police officer who transported the detainee to a privately-owned facility rose above the level of mere negligence and constituted deliberate indifference, and whether his actions were the proximate cause of the detainee's death. Despite his knowledge of the detainee's suicidal tendencies, the officer failed to search the detainee for weapons, failed to handcuff the detainee, and failed to inform the subsequent custodians of the detainee's suicidal proclivities. The court also found fact issues as to whether the actions or inactions of juvenile probation officers rose above the level of mere negligence and constituted deliberate indifference, and whether the detainee was in the custody of the officers at the time he escaped from the detention facility and committed suicide with a gun he had surreptitiously brought into the facility. The detainee had been taken to a privately-operated "diversion center" and was left alone in an intake room where he produced a gun, fled the center, walked into a wooded area and fatally shot himself. (Southeast Alabama Youth Services Diversion Center)

U.S. District Court
CLASSIFICATION
ESCAPE

Rivera Borrero v. Rivera Correa, 93 F.Supp.2d 122 (D.Puerto Rico 2000). An inmate brought a pro se § 1983 action against Puerto Rico corrections officials alleging that he had been unjustifiably kept in maximum security custody for more than three years before being reclassified to medium security. The inmate also sought to compel his reclassification to minimum security custodial status. The district court dismissed the case, finding that the inmate's three years in maximum security custody status was not arbitrary because the inmate had been charged with escape. Commenting on the case, Judge Casellas opened by stating "This case is a good example of the thicket of claims and arguments that can flourish from a *pro se* prisoner's understandable effort to save his complaint from doom." (Servicios Correccionales de Puerto Rico, Guayama Facility)

U.S. District Court
SEGREGATION

Valentin v. Murphy, 95 F.Supp.2d 99 (D.Conn. 2000). A pretrial detainee who was a former law enforcement officer charged with drug crimes, challenged his pretrial conditions of confinement in a state prison. The district court granted summary judgment for the defendants, finding that placement of the detainee in a segregation unit of a special prison was not "punishment" subject to due process. The court noted that the placement was for the detainee's own protection based on his status as an ex-law enforcement officer and that his conditions were better overall than those imposed on other inmates in the segregation unit. (Special Management Unit at the Walker Reception Center, Connecticut)

U.S. Appeals Court
RESTRAINTS

Williams v. Department of Corrections, 208 F.3d 681 (8th Cir. 2000). An inmate brought a civil rights action against the Iowa Department of Corrections and other defendants alleging that they had retaliated against him for participating in a hearing by placing leg irons on him too tightly.

The district court dismissed the action and the inmate appealed. The appeals court held that the inmate stated a retaliation claim against two correctional officers alleging that they placed leg shackles too tightly on the inmate and refused to loosen or remove the shackles after he complained. The inmate suffered intense pain, swelling and bruises. (Anamosa State Penitentiary, Iowa)

U.S. District Court
RESTRAINTS

Williams v. Goord, 111 F.Supp.2d 280 (S.D.N.Y. 2000). A state prisoner brought a § 1983 action against corrections officials alleging constitutional violations. The district court held that the conditions and duration of the prisoner's 75-day confinement in a Special Housing Unit (SHU) did not violate the prisoner's due process rights because they did not pose atypical or significant hardships. The conditions of the SHU included limited exercise times that were conducted in "cages" and limitations on the number of showers per week. The district court held that the fact that a prison employee issued a purportedly false misconduct report against the prisoner three days after he filed a grievance against the employee was insufficient to establish the prisoner's retaliation claim. But the district court denied summary judgment for the defendants on the issue of whether the officials knew that keeping the prisoner in mechanical restraints during his exercise period violated the Eighth Amendment. The court also held that there were genuine issues of material fact regarding whether placing the prisoner in mechanical restraints during his one-hour exercise period caused him "physical injury" as required by the Prison Litigation Reform Act (PLRA) to prevail on his Eighth Amendment claim. (Sullivan Correctional Facility, New York)

2001

U.S. Appeals Court
PRETRIAL DETAINEES
RESTRAINTS

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 which 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 court found that detainees were experiencing unjustified delays during attorney visitation. The district court required procedures to be established to ensure that attorney visits commenced within a specified time period following arrival at the jail, and the city was instructed to ensure the availability of an adequate number of visiting rooms that provide the requisite degree of privacy. 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. The appeals court agreed with the district court that detainees were entitled to reasonable after-the-fact procedural protections to ensure that such restrictions were terminated reasonably soon if they were not justified. These procedures include a hearing, written decision, timely review of appeal from placement in special restraint status, and the opportunity to seek further review based on good cause. (New York City Department of Correction)

U.S. Appeals Court
SECURITY PRACTICES

Curley v. Perry, 246 F.3d 1278 (10th Cir. 2001). A state inmate brought a pro se civil rights action seeking to restrict inmate-to-inmate correspondence in the state's prison system. The district court dismissed the complaint and the inmate appealed. The appeals court affirmed, finding that the inmate failed to state an Eighth Amendment claim. The inmate had claimed that prison officials created unconstitutional conditions of confinement by failing to prevent or monitor inmate-to-inmate correspondence, which was allegedly used by inmates to plan violence against other inmates. The court noted that the inmate had been placed in administrative segregation for his own safety, precluding a showing of requisite deliberate indifference to the inmate's health and safety. The inmate alleged that he had been targeted by members of the "Security Threat Group," a group of state inmates who take retaliatory actions against other inmates. (Central New Mexico Correctional Facility)

U.S. District Court
MEDIA ACCESS

Entertainment Network, Inc. v. Lappin, 134 F.Supp.2d 1002 (S.D.Ind. 2001). An Internet content provider sued a penitentiary warden and other government officials seeking declaratory and injunctive relief. The plaintiff wanted to broadcast the execution of the defendant who had been convicted of the bombing of the federal building in Oklahoma City, live over the Internet. The district court entered judgment for the defendants. The court found that the challenged prison regulation was not subject to strict scrutiny and was reasonably related to legitimate penological interests. The challenged regulation prohibited photographic, audio and visual recording devices at federal executions. The court noted that the First Amendment right of the press to gather news and information is not without limits, and that the press has no constitutional right of access to prisons or their inmates beyond that afforded to the general public. According to the court, the plaintiff was not being discriminated against because of the medium or means by which it sought to broadcast the execution, although the regulation allowed written or verbal accounts of

executions. (United States Penitentiary, Terre Haute, Indiana)

U.S. Appeals Court
RIOT

Jeffers v. Gomez, 267 F.3d 895 (9th Cir. 2001). An inmate brought a § 1983 action against prison officials after being shot during a prison riot The district court denied the officials' motion for summary judgment on qualified immunity grounds and they appealed. The appeals court reversed and remanded, finding that the officials were qualifiedly immune from civil rights liability and were not deliberately indifferent. The court noted that prison officials had investigated rumors of impending inmate violence before the riot and there was no evidence that they should have done anything differently once the threat materialized. According to the court, a prison warden complied with a statewide housing practice and he had no affirmative duty to change the policy. The inmate had been shot in the neck during the disturbance. (California State Prison, Sacramento)

U.S. District Court
VISITS

Glaspy 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 Corr'l Facility, Mich.)

U.S. Appeals Court
RESTRAINTS

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. Appeals Court
USE OF FORCE
DISTURBANCE

Jeffers v. Gomez, 240 F.3d 845 (9th Cir. 2001). An inmate who was shot by a correctional officer during a prison disturbance brought a civil rights action to recover for alleged violations of his constitutional rights. The district court denied summary judgment on qualified immunity grounds for the defendants. The appeals court reversed and remanded, finding that officers were qualifiedly immune from liability to the inmate. The court noted that the shot that one of the officers fired was aimed at an inmate who was attacking the plaintiff with a knife but accidentally hit the plaintiff in the neck. (California State Prison at Sacramento)

U.S. Appeals Court
RESTRAINTS

Kostrzewa v. City of Troy, 247 F.3d 633 (6th Cir. 2001). An arrestee sued a city and police officers asserting claims for use of excessive force. The district court dismissed the case but the appeals court reversed and remanded. The appeals court held that the allegations supported a claim for use of excessive force and that the officers were not entitled to qualified immunity. The appeals court found that the city's handcuff policy, that required all detainees to wear handcuffs, supported a § 1983 claim of the arrestee who allegedly suffered pain and injury from being restrained with handcuffs that were too small for his wrists, despite being arrested for a non-violent misdemeanant offense.

U.S. Appeals Court
GANGS

Mayoral v. Sheahan, 245 F.3d 934 (7th Cir. 2001). A pretrial detainee who was severely injured in a gang-instigated jailhouse riot brought a civil rights suit against a county sheriff and jail officers, alleging they were deliberately indifferent to his safety. 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 appeals court held that the failure of the jail to segregate inmates by gang affiliation was not a constitutional violation, given the high number of gang members housed in the jail and the burden that would be placed on administrators by such a policy. The court found that summary judgment was precluded by fact issues as to whether the detainee had asked an officer for protective custody and was ignored, and whether an officer delayed in summoning help when fighting broke out. (Cook County Jail, Illinois)

U.S. District Court
EMERGENCY DRILL
FIRE SAFETY

Ostrander v. Horn, 145 F.Supp.2d 614 (M.D.Pa. 2001). An inmate filed a § 1983 action concerning his forced participation in an emergency preparedness drill. The district court held that the action taken by correctional officers in conjunction with a drill did not rise to the level of a constitutional violation. The officers had handcuffed the prisoner, removed him from his cell, forcefully taken him to a temporary holding cell for a short period of time, and strip-searched him before he was

returned to his cell. According to the court, any inconvenience caused to the inmate by the emergency preparedness and fire evacuation drill was offset by the need of prison officials and emergency response team officers to secure the safety and security of the institution. (State Correctional Institution, Frackville, Pennsylvania)

U.S. Appeals Court
CLOTHING

Thornton v. Phillips County, Arkansas, 240 F.3d 728 (8th Cir. 2001). A jail inmate brought a § 1983 suit against a county, police officers and paramedics based on his treatment after he was injured in a fall that was allegedly caused by a jail jumpsuit that was too long. The district court dismissed the action, and the appeals court affirmed the district court finding that the allegations, including assertions that paramedics tried to put him on a stretcher while his foot was caught between stairs, alleged no more than mere negligence. (Phillips County Jail, Arkansas)

U.S. District Court
"LOCK-IN"
LOCK DOWN

Waring v. Meachum, 175 F.Supp.2d 230 (D.Conn. 2001). Inmates brought several class actions against prison administrators and correctional officers alleging constitutional violations during a lockdown. The actions were consolidated and the district court granted summary judgment in favor of the defendants. The court held that where a genuine emergency exists, officials may be more restrictive than they otherwise may be, and certain services may be suspended temporarily without violating the Eighth Amendment. The lockdown was precipitated by a series of prisoner assaults on staff and other prisoners. According to the court, the provision of cold food is not, by itself, an Eighth Amendment violation as long as it is nutritionally adequate and is prepared and served under conditions that do not present an immediate danger to the health and well-being of the inmates who consume it. The prisoners had been served primarily sandwiches for lunch and dinner, and cold cereal for breakfast, during an eight-day lockdown. The court noted that the diet was without fruits and vegetables, but that it was imposed for only a short period. According to the court, any failure to provide religious diets during the course of the eight-day lockdown did not violate the Eighth Amendment absent evidence of deliberate indifference. The court noted that one inmate's first meal was confiscated but future meals were delivered, often in an untimely manner, and that a second inmate missed two meals during the lockdown. The court held that a delay in delivering a medically-prescribed diet for six days during the lockdown did not violate the Eighth Amendment.The court found that refusal to allow prisoners to shower during the eight-day lockdown did not rise to the level of an Eighth Amendment violation, nor was failure to provide prisoners with changes of clothing during the lockdown. (Connecticut Corr'l Institution at Somers)

U.S. District Court
EXERCISE

Williams v. Goord, 142 F.Supp.2d 416 (S.D.N.Y. 2001). An inmate who was confined in segregation brought a § 1983 suit alleging constitutional violations and seeking declaratory relief, compensatory damages and punitive damages. The district court denied summary judgment for the defendants, finding that whether handcuff and waist chain restraints may have prevented the inmate from engaging in "meaningful exercise" for 28 days was a fact issue that needed to be resolved. The district court noted that a prisoner may be denied out-of-cell exercise under what is termed a "safety exception," but that a blanket policy denying such prisoners any opportunity for out-of-cell exercise could not be justified. The court found that lower ranking prison officers, who had no input into the development and implementation of restraint policies and believed they were following lawful orders, were entitled to qualified immunity. (Sullivan Corr'l Facility, New York)

U.S. Appeals Court
SECURITY
RESTRICTIONS
SEPARATION

Yousef v. Reno, 254 F.3d 1214 (10th Cir. 2001). An inmate who had been convicted of conspiracy to blow up aircraft and for participation in the World Trade Center bombing, was placed under "special administrative measures" (SAM) by the federal Bureau of Prisons to protect himself and prison personnel. Under these measures his access to mail, telephone calls, and visitors was limited, as were his privileges to carry religious materials, and opportunities for recreation and exercise time. The inmate brought a *Bivens* action challenging his conditions of confinement. The district court dismissed the claims and the inmate appealed. The appeals court affirmed and remanded, finding that the Bureau of Prisons had the discretionary power to implement the measures against the inmate. (F.C.I. Administrative Maximum, Florence, Colorado)

2002

U.S. District Court
RELIGIOUS SERVICES
GANGS

Allah v. Al-Hafeez, 208 F.Supp.2d 520 (E.D.Pa. 2002). A prisoner brought a civil rights action against prison officials. The district court granted summary judgment in favor of the defendants. The court held that the prisoner's two-month exclusion from religious services did not violate his First Amendment rights, in light of security and economic concerns. The prisoner had challenged a prison chaplain about the chaplain's teaching and the two had a disagreement, resulting in his exclusion from services for two months. The court also found no First Amendment violation in the prison's failure to hire a minister, or appoint a prisoner as a minister, for an additional Nation of Islam faith group, because of security and economic concerns. The court found that a prison regulation that prohibited group calisthenics in the prison yard was reasonably related to ensuring security and avoiding gang activity. Although the court found that there were genuine issues of material fact concerning the potential violation of the prisoner's free exercise rights when officials failed to provide entirely appropriate meals during Ramadan, the court concluded that the officials were entitled to qualified immunity because they did not know at the time that their conduct violated the prisoner's constitutional rights. The officials had attempted to observe Ramadan meal

restrictions, but failed by including beans in the menu. (State Correctional Institution at Frackville, Pennsylvania)

U.S. District Court
MAIL

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
MEDIA ACCESS

California First Amendment Coalition v. Woodford, 299 F.3d 868 (9th Cir. 2002). Nonprofit organizations, whose members included journalists who attended and reported on state executions, brought an action against state prison officials, challenging a regulation that barred public viewing of lethal injection procedures prior to the actual administration of the injection. The district court granted summary judgment in favor of the plaintiffs. The appeals court reversed and remanded. On remand, the district court entered a judgment that permanently enjoined prison officials from preventing uninterrupted viewing of executions, from the moment the condemned entered the execution chamber through the time the condemned was declared dead. The state again appealed and the appeals court affirmed, finding that the public has a First Amendment right to view executions and that the prison regulation impermissibly restricted this right. (San Quentin State Prison, California)

U.S. Appeals Court
DISTURBANCE
USE OF FORCE

Combs v. Wilkinson, 315 F.3d 548 (6th Cir. 2002). Death row inmates sued several state corrections supervisors and officers under § 1983, alleging that they used excessive force in quelling a disturbance in violation of the Eighth Amendment. The district court granted the defendants' motions for summary judgment and dismissal, and the inmates appealed. The appeals court affirmed in part, and reversed and remanded in part. The appeals court held that an individual officer's use of mace was not malicious or sadistic. The court found that summary judgment was precluded by fact questions as to whether the commander of a special response team adequately briefed the team members, and failed to control the use of chemical agents in the extraction of inmates. The court held that the commander was not liable under § 1983 for failing to admonish team members when he overheard them discussing particular inmates that they wanted to "beat," absent any showing that the commander encouraged or directly participated in the use of excessive force. The court found that the inmates were not entitled to an injunction requiring corrections officers to wear name tags or other identification and to videotape cell extractions, even though their failure to do so was a violation of state corrections policies and regulations. (Mansfield Corr'l Institution, Ohio)

U.S. District Court
FIRE SAFETY

Derby Industries, Inc. v. Chestnut Ridge Foam, 202 F.Supp.2d 818 (N.D.Ind. 2002). A manufacturer of a mattress intended for use in prisons sued a competitor for false advertising. The district court denied the plaintiff's request for a preliminary injunction, finding that a video tape was neither false nor misleading, and that the plaintiff manufacturer was not being irreparably harmed. The court found that the video advertisement, which depicted a flammability test for its and a competitor's products, was not literally false, noting that the test was a general procedure which could be per-formed in several ways. The plaintiff identified only one customer who was confused, and their con-fusion was not substantial enough for the manufacturer to lose business. (Derby Industries, Indiana)

U.S. Appeals Court
SECURITY PRACTICES

Fraise v. Terhune, 283 F.3d 506 (3rd Cir. 2002). State inmates brought a § 1983 action against corrections officials challenging their classification and treatment as members of a "Security Threat Group" (STG). The district court granted summary judgment in favor of the officials and the inmates appealed. The appeals court affirmed, finding that the STG policy did not violate the inmates' free exercise or equal protection rights, and that the transfer of the inmates to a STG management unit did not deprive them of a protected liberty interest. According to the court, the inmates' free exercise rights were not violated by the STG policies and practices because the officials had a legitimate and neutral objective in maintaining order and security in the prison system, and the officials had adequate grounds to conclude that the inmates were "core members" of an STG. The court noted that the inmates had alternative means available to practice their religion, which they call the Five Percent Nation. The inmates were recognized leaders of the Five Percent Nation and had taken documented roles in the group's activities. The appeals court found no violation of the inmates' equal protection rights because the inmate group had demonstrated a greater propensity for violence, and religion did not play any role in the decision to treat the group as an STG. The inmates were not deprived of a protected liberty interest by their transfer to the STG Management Unit because they were not subjected to a longer period of confinement and the transfer did not impose any atypical or significant hardships on them. (New Jersey Department of Corrections)

U.S. District Court
MAIL

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
LOCKDOWN

In Re Bayside Prison Litigation, 190 F.Supp.2d 755 (D.N.J. 2002). State prison inmates brought a § 1983 action against prison officials alleging numerous alleged constitutional violations. The district denied the defendants' motion to dismiss as it pertained to those inmates who alleged that the § 1983 actions were racially motivated, and noted that there was no available remedy for the inmates to exhaust before filing suit. According to the court, the grievance procedures described in the state prison's inmate handbook were not sufficiently clear, expeditious, or respected by prison officials to constitute an "available administrative remedy" for the purposes of the requirements of the Prison Litigation Reform At (PLRA). Noting frustration with the litigation, which "is, incredibly, still in its initial phases almost four-and-a-half years after the first complaint was filed," the court addressed "this latest, and presumably last Motion to Dismiss." The plaintiffs, hundreds of inmates at a state correctional facility, alleged that following a fatal stabbing of a corrections officer, a lockdown was ordered, during which they suffered "a panoply of injuries at the hands of the Defendants." (Bayside State Correctional Facility, New Jersey)

U.S. Appeals Court
VISITS
SEARCHES
SECURITY
PRACTICES

Jordan Ex Rel. Johnson v. Taylor, 310 F.3d 1068 (8th Cir. 2002). An action was brought on behalf of an eight-year-old prison visitor who was subjected to a partial strip search without reasonable suspicion. The district court granted summary judgment for the defendant, a correctional officer, and the appeals court affirmed. The appeals court held that the encounter did not constitute a partial strip "search" for which reasonable suspicion was required, where the visitor and the grandmother who had brought the girl were told that they could leave at any time. The eight-year-old girl triggered the metal detector that was used to screen potential prison visitors. All concerned agreed that the metal detector was probably triggered by the buttons on the girl's overalls. The girl removed her overalls in a bathroom while a female officer watched, which the court found to be consensual. (Pine Bluff Unit, Arkansas Department of Corrections)

U.S. District Court
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 Corr'l Center, Virginia)

U.S. Appeals Court
CONFIDENTIAL
INFORMATION

Peate v. McCann, 294 F.3d 879 (7th Cir. 2002). A state prisoner brought a civil rights against a corrections officer, alleging Eighth and Fourteenth Amendment violations in connection with a prison fight. The district court granted summary judgment in favor of the prisoner. The appeals court reversed and remanded, finding that genuine issues of material fact precluded summary judgment as to whether the officer acted with deliberate indifference toward the safety and health of the inmate. The appeals court also held that the prisoner was not entitled to information contained in a prison investigation file. The prisoner had been attacked twice by a fellow prisoner, and blamed the officer for failing to break up the second fight. (Miami Corr'l Facility, Indiana)

U.S. Appeals Court
GANGS

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. Appeals Court
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 changed the policy. (Airway Heights Corrections Center, Washington)

U.S. Appeals Court
TRANSPORTATION
RESTRAINTS

Thielman v. Leean, 282 F.3d 478 (7th Cir. 2002). An inmate housed in a medium-security treatment facility for sexually violent persons brought a § 1983 action seeking declaratory and injunctive relief, alleging that the facility's inmate transport policy violated his rights to procedural due process and equal protection under the Fourteenth Amendment. The district court dismissed the case and the inmate appealed. The appeals court affirmed, finding that the inmate had no state-created liberty interest in being free from restraint during transportation, even if the state's statutes gave the inmate a right to the least restrictive conditions of confinement during transport. According to the court, subjecting sexually violent persons to full restraints during transport to and from the medium-security facility, while not subjecting mental health or other patients to such full restraints, did not violate the inmate's equal protection rights. The inmate had a medical condition that required him to be transported from the facility for outside medical treatment an average of three times per month. The transport policy stated, in part, that "Inmates shall be placed in full and double-locked restraints, chain-belt type waist restraints with attached handcuffs, security Blackbox, and leg restraints." (Wisconsin Resource Center)

U.S. Appeals Court
RIOT
USE OF FORCE

Torres-Viera v. Laboy-Alvarado, 311 F.3d 105 (1st Cir. 2002). A prisoner who was injured by a tear gas canister fired by a prison officials during a disturbance, brought a § 1983 action alleging violation of his Eighth Amendment rights. The district court dismissed the action and the prisoner appealed. The appeals court affirmed, finding that the force was applied in a good faith effort to restore order, and was not malicious or sadistic. (Bayamon Correctional Institution, Puerto Rico)

U.S. Appeals Court
USE OF FORCE

Treats v. Morgan, 308 F.3d 868 (8th Cir. 2002). A state prisoner sued corrections officials under § 1983 alleging his Eighth Amendment rights were violated when he was sprayed with pepper spray and thrown to the floor. The district court denied the defendants' motion for summary judgment and the appeals court affirmed. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether it was reasonable for the officer to use of pepper spray and force against the prisoner who failed to obey commands, but who had not jeopardized any person's safety or threatened prison security. The prisoner alleged that he was sprayed in the face without any warning by an officer, and then thrown to the floor and handcuffed by a lieutenant. (North Center Unit, Arkansas Department of Correction)

U.S. Appeals Court
SECURITY
PRACTICES

U.S. v. Durham, 287 F.3d 1297 (11th Cir. 2002). A defendant challenged the use of an electric "stun belt" on him during his trial; his motion was denied by the district court. The defendant was subsequently convicted and appealed. The appeals court vacated and remanded, finding that the district court had abused its discretion by failing to make findings sufficient to justify the use of the stun belt during the trial. According to the court, physical restraints upon a criminal defendant at trial should be used as rarely as possible because their use tends to erode the presumption of innocence that is an integral part of a fair trial. The court held that use of the belt may have had an adverse impact on the defendant's ability to follow the proceedings and to take an active interest in the presentation of his case. The appeals court held that the novelty of the technology employed in the stun belt will likely cause the need for factual findings about the operation of the device, addressing issues such as the criteria for triggering the belt and potential for accidental discharge, to assess the need for its use as compared to less restrictive methods of restraint. The appeals court noted that the district court did not, on the record, consider any less restrictive alternatives to prevent escape and to ensure courtroom safety. The defendant had attempted to escape from a jail and had managed to slip out of a set of leg irons using a key he had concealed on his person. The defendant's attorney argued that the defendant would be "more concerned about receiving such a jolt than he is about thinking about the testimony and giving me aid and assistance in the defense of this case." The court suggested that a stun belt poses "a far more substantial risk of interfering with a defendant's Sixth amendment right to confer with counsel than do leg shackles. The fear of receiving a painful and humiliating shock for any gesture that could be perceived as threatening likely chills a defendant's inclination to make any movements during the trial-- including those movements necessary for effective communication with counsel." The appeals court also found that "stun belts have the potential to be highly detrimental to the dignified administration of criminal justice... If activated, the device poses a serious threat to the dignity and decorum of the courtroom." (U.S. District Court for the Northern District of Florida)

U.S. District Court
SECURITY RESTRIC-
TIONS
SEGREGATION

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)

U.S. Appeals Court
RESTRAINTS

Williams v. City of Las Vegas, 34 Fed.Appx. 297 (9th Cir. 2002). An arrestee brought a suit against a city and correctional officer alleging the use of excessive force. The district court granted summary judgment to the defendants and the appeals court affirmed. The appeals court held that the officer's use of force and restraints when the arrestee refused to cooperate during the booking process was not excessive under either the Eighth Amendment standard for prisoners, nor the Fourteenth Amendment standard for pretrial detainees. The court noted that all of the officer's conduct associated with this claim had been videotaped from three different positions by surveillance camer-as. According to the court, the use of waist and leg restraints on the inmate in his jail cell did not violate the Eighth Amendment, where the inmate had refused to stand still during a frisk search and displayed erratic and seemingly uncooperative behavior. (Las Vegas Dept. of Detention, Nevada)

U.S. District Court
TRANSPORTATION
RESTRAINTS

Williams-El v. McLemore, 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 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)

2003

U.S. Appeals Court
BOOKS
PUBLICATIONS
MAIL

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
RESTRAINTS
USE OF FORCE

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
FIRE SAFETY

Boyd v. Anderson, 265 F.Supp.2d 952 (N.D.Ind. 2003). Prisoners filed a complaint in state court, alleging that state corrections officials had violated their federally-protected rights while they were confined in a state prison. The case was removed to federal court, where some of the claims were dismissed. The court noted that the Eight Amendment deliberate indifference standard applies to prison conditions affecting fire safety, although not all unsafe conditions constitute punishment under the Eighth Amendment. (Indiana State Prison)

U.S. Appeals Court
STAFFING

Cagle v. Sutherland, 334 F.3d 980 (11th Cir. 2003). The personal representative of the estate of a pretrial detainee who hung himself in his cell brought a § 1983 action, alleging that officials failed to prevent his suicide. The district court denied summary judgment in favor of the defendants and they appealed. The appeals court vacated and remanded. The appeals court held that the county's violation of a consent decree that arose out of a voluntary settlement of a prior jail conditions

lawsuit, did not establish a violation of the pretrial detainee's constitutional rights actionable under § 1983. The consent decree required the county to provide a second nighttime jailer to staff the jail during the hours that the detainee committed suicide, but the court noted that the prior lawsuit was not concerned with the risk of prisoner suicides. According to the court, the county's failure to fund the second jailer did not rise to the level of deliberate indifference to the strong likelihood that a suicide would result. (Winston County Jail, Alabama)

U.S. Appeals Court
PRETRIAL DETAINEE
TRANSFER
TELEPHONE

Cavalieri v. Shepard, 321 F.3d 616 (7th Cir. 2003). The mother of a pretrial detainee who attempted suicide brought a § 1983 action against a police officer, alleging deliberate indifference to the detainee's risk of attempting suicide. The district court denied summary judgment for the officer and the officer appealed. The appeals court affirmed. The appeals court held that summary judgment was precluded by an issue of fact as to whether the officer was aware that the detainee was on the verge of trying to commit suicide and whether the officer was deliberately indifferent to the detainee's safety. The court noted that the detainee's right to be free from deliberate indifference to the risk that he would attempt suicide was clearly established. The detainee was transferred to a county facility after a brief period of detention in a city jail. When he was admitted to the county facility he was not placed on suicide watch, but he did ask to speak to a mental health advisor. He was assigned to a holding cell that contained a telephone with a strong metal cord. When the police officer called the county facility to complain about calls from the inmate, county employees found the detainee unconscious, hanging from the wire telephone cord. The detainee remained in a vegetative state after his unsuccessful suicide attempt. (Champaign County Correctional Facility, Illinois)

U.S. District Court
SECURITY PRACTICES

Glenn v. Berndt, 289 F.Supp.2d 1120 (N.D.Cal. 2003). A state inmate brought a pro se § 1983 action alleging that officers let two inmates assault him when he was returning to his cell after a lockdown. The inmate alleged that officers stood by and watched him fight with one of the inmates. The district court granted summary judgment for the defendants. The court held that the accidental opening of two cells, allowing inmates to be released, could not be characterized as the wanton infliction of unnecessary pain in violation of the Eighth Amendment. The officers allegedly waited for other officers to arrive before opening a door into the area in which the fight was occurring. The court held that a reasonable officer could have believed that it was lawful to wait to enter the area until another officer, who was inside the block, exhausted his efforts to control the situation with a gas gun and pepper spray. (Pelican Bay State Prison, California)

U.S. Appeals Court
ITEMS PERMITTED

Kimberlin v. U.S. Dept. of Justice, 318 F.3d 228 (D.C.Cir. 2003). Prison inmates brought an action against the federal Bureau of Prisons (BOP) alleging that the BOP's ban on electric or electronic musical instruments, except those used in connection with religious activities, violated their constitutional rights to free expression and equal protection. The district court held that the policy did not violate the First Amendment, but entered summary judgment in favor of the inmates on their equal protection claim. The inmates appealed and the appeals court affirmed. The appeals court held that the BOP reasonably interpreted a statute that banned the use of appropriated funds for the "use or possession" of electric or electronic musical instruments, as a prohibition against the possession of such instruments. The court noted that even if the inmates' rights of free expression were implicated by the BOP regulation, it did not impermissibly infringe on those rights because it was reasonably related to the legitimate interest in conserving correctional funds, and inmates have access to alternatives such as voice and acoustic instruments. (Federal Correctional Institution at Cumberland, Maryland)

U.S. District Court
PROTECTION
RELIGIOUS SERVICES
SEGREGATION

Lewis v. Washington, 265 F.Supp.2d 939 (N.D.Ill. 2003). State inmates filed a class action under § 1983 alleging that prison officials violated their constitutional rights while they were in protective custody. The district court granted summary judgment for the officials, in part. The court held that officials were entitled to qualified immunity because it was not clearly established that inmates in temporary protective custody after they appealed denial of their requests for permanent protective custody, had First Amendment rights to communal religious services, and Fourteenth Amendment rights to programs and services equivalent to those offered to other inmates. (Stateville Correctional Center, Illinois)

U.S. District Court
RESTRAINTS

Myers v. Milbert, 281 F.Supp.2d 859 (N.D.W.Va. 2003). A state prisoner brought a pro se action against corrections officers, alleging that they violated his rights by inappropriately restraining him for 20 hours on a stretcher, and feeding him a "nutra-loaf" diet for three days. The district court granted summary judgment in favor of the officers, finding that the prisoner did not suffer from a serious medical condition as a result of being restrained, and that the disciplinary nutra-loaf diet did not violate the prisoner's Eighth Amendment rights. The court noted that the inmate had assaulted a corrections officer and kicked a door. After being placed on the restraint stretcher, called a "stokes basket," the inmate's handcuffs were loosened and he was given numerous bathroom breaks, medications, and food and liquids. (Northern Regional Jail and Correctional Facility, West Virginia)

U.S. District Court
SEARCHES
SEGREGATION

Skundor v. McBride, 280 F.Supp.2d 524 (S.D.W.Va. 2003). An inmate brought claims against corrections officials, challenging visual body cavity searches. The district court granted summary judgment in favor of the defendants. The court held that the prison practice of performing visual body cavity searches when dangerous, sequestered prisoners left a recreation area, was rationally related to the legitimate penological objective of staff safety and did not violate the prisoners' Fourth Amendment rights. The court noted that there was a potential for the exchange of weapons in the recreation area, and that prisoner privacy was addressed by using only male staff to perform the searches, and positioning the staff between the inmate and anyone else who might view him. According to the court, the searches were an efficient way to steadily process the large number of inmates seeking recreation, and there were no readily available alternatives to the recreation yard searches. (Mount Olive Correctional Center, West Virginia)

U.S. Appeals Court
TELEPHONE

U.S. v. Gangi, 57 Fed.Appx. 809 (10th Cir. 2003) [unpublished]. A defendant who was convicted for bank fraud challenged the taping of his jail telephone calls. The appeals court held that it was not objectively reasonable for the detainee to have any expectation of privacy in his outgoing calls from jail, and that the detainee impliedly consented to the taping of his calls from jail. The court noted that the detainee was cognizant of detention settings, which permitted a strong inference that he fully understood the fact that jail telephones were monitored. According to the court, the detainee was a "keen observer of detail" and was presumed to have seen signs above other telephones that provided notice of telephone monitoring. The court held that the Fourth Amendment is not triggered by the routine taping of outgoing jail calls. (Uinta County Detention Center, Wyoming)

U.S. Appeals Court
SEX OFFENDER

West v. Schwebke, 333 F.3d 745 (7th Cir. 2003). Civilly committed sex offenders brought a § 1983 action against employees of a state treatment facility, alleging that therapeutic seclusion as practiced at the facility violated their due process rights. The district court denied summary judgment for some of the employees and they appealed. The appeals court affirmed, finding that the offenders were entitled, as a matter of due process, to the exercise of professional judgment as to the needs of residents and that due process requires that the conditions and duration of involuntary civil confinement bear some reasonable relation to the purpose for which the persons are committed. The court found that summary judgment was precluded by fact issues as to whether employees' use of seclusion against the offenders, for at least 20 days and as much as 82 consecutive days in one case, could be justified on either security or treatment grounds. The court noted that civil detention institutions may employ both incapacitation and deterrence to reduce violence within their walls, but if mental limitations render a detainee insensible to punishment, the only appropriate goal would be incapacitation. (Wisconsin Resource Center, Sand Ridge Secure Treatment Center)

U.S. District Court
SEARCHES

Wood v. Hancock County, 245 F.Supp.2d 231 (D.Me. 2003). A misdemeanor arrestee brought a civil rights action against a county and county officials, alleging he was subjected to unconstitutional strip searches while in jail. The district court denied the defendants' motions for judgment on the pleadings or for summary judgment. The court held that the arrestee stated a claim, precluding judgment on the pleadings. The court found that summary judgment was precluded by genuine issues of fact as to whether the jail policy of strip searching misdemeanor arrestees after contact visits was reasonable, and whether the jail had a custom of conducting strip searches upon admission. The court noted that further proceedings were needed to determine if it was a "custom" to strip search misdemeanor arrestees without reasonable suspicion that an arrestee harbored contraband or weapons, and that evidence suggested that officers did not comply with recording requirements for strip searches. (Hancock County Jail, Maine)

2004

U.S. District Court
CONTRABAND
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
CLASSIFICATION
SUPER MAX
SECURITY RESTRIC-
TIONS

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. Appeals Court
MAIL

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. (Snake River Correctional Institution, Oregon)

U.S. Appeals Court
TRANSPORTATION

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
CLASSIFICATION
SEPARATION

Carmichael v. Richards, 307 F.Supp.2d 1014 (S.D.Ind. 2004). A county jail prisoner who was injured by his cellmate brought a § 1983 action against a sheriff in his individual and official capacities, claiming that the sheriff failed to take reasonable measures to ensure his physical safety, and did not provide necessary medical care. The district court granted summary judgment in favor of the defendants. The court held that the sheriff could not be held individually liable for failing to ensure the physical safety of a medium security inmate who was injured by a maximum security inmate, absent evidence that the sheriff knew of a substantial risk that the inmate would be harmed, or evidence of a causal link between the policy of mixing of medium and maximum security prisoners and the increased risk of violence. The court also found that the sheriff was not liable in his official capacity. The jail had three types of cell classifications: maximum, medium and minimum security. Inmates are classified by the shift leader who is on duty at the time an inmate arrives at the jail. (Johnson County Jail, Indiana)

U.S. Appeals Court
USE OF FORCE
RESTRAINTS

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
FIRE SAFETY

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. Appeals Court
SAFETY

Hall v. Bennett, 379 F.3d 462 (7th Cir. 2004). An inmate brought a § 1983 claim against prison supervisors alleging deliberate indifference following an incident in which the inmate received a severe electrical shock while working as an electrician at the prison. The district court granted summary judgment for the supervisors and the inmate appealed. The appeals court vacated and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the supervisors knew that the inmate could suffer a severe shock as a consequence of working on a live wire without protective gloves. (Correctional Industrial Facility, Pendleton, Indiana)

U.S. Appeals Court
STAFFING

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
WHEELCHAIR

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 removed daily so that wheelchair-bound inmates have some minimal area within with 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
SAFETY

Reynolds v. Powell, 370 F.3d 1028 (10th Cir. 2004). A state inmate brought a pro se § 1983 action alleging that he was subjected to cruel and unusual punishment by being exposed to a hazardous condition in the prison shower area. The district court entered summary judgment in favor of the defendants and the inmate appealed. The appeals court affirmed, finding that the alleged slippery floors resulting from a standing water problem in the prison shower area did not rise to the level of a condition that posed a substantial risk of serious harm, even though the inmate was on crutches and had warned officials that he was at a heightened risk of falling. (Uinta IV Maximum Security Facility, Utah)

U.S. District Court
STAFFING

Thompson v. Spears, 336 F.Supp.2d 1224 (S.D.Fla. 2004). A prisoner brought an action against a county and a jail official, alleging deliberate indifference to his safety, negligent supervision, and negligent infliction of emotional distress. The district court granted summary judgment in favor of the defendants. The court held that a lack of monitoring devices in jail cells did not pose an objectively substantial risk of harm to the inmate, particularly in light of the fact the state Model Jail Standards did not require cameras. The court found that the inmate presented no evidence that the officer posts were located so far that officers could not hear calls for help. The court held that the county was not liable under § 1983, even if jail officers did not actually follow the county policy of making hourly walk-throughs to monitor cells, where there was no evidence that the county had officially sanctioned or ordered the officers to disregard the county policy. The prisoner

had been temporarily transferred from a state prison to the county jail in order to be involved in a family court matter. The inmate, who was from Jacksonville, Florida, alleged that he was severely beaten by other inmates for over two hours, after the Miami Dolphins beat the Jacksonville Jaguars in a football game. (Pretrial Detention Center, Miami-Dade County, Florida)

U.S. Appeals Court
ESCAPE

U.S. v. Sack, 379 F.3d 1177 (10th Cir. 2004). A defendant who had been ordered to reside in a halfway house following his arrest but failed to return after a day of work, pled guilty to escape. The inmate appealed and the appeals court held that the defendant was in custody, within the meaning of the escape statute, while he was ordered to reside in the halfway house. (La Pasada Halfway House, New Mexico)

U.S. District Court
RESTRAINTS

Watson v. Riggle, 315 F.Supp,2d 963 (N.D.Ind. 2004). A state prison inmate brought a pro se § 1983 Eighth Amendment action against corrections officers, alleging use of excessive force in connection with the removal of handcuffs. The district court granted summary judgment in favor of the officers, finding that the officers who restrained the inmate's wrists in order to remove the handcuffs following the inmate's refusal to allow the removal, used reasonable force, given the inmate's argumentative nature and minimal injuries. The court noted that the inmate's argumentative nature could have led to a greater disturbance, and that a medical examination found only a cut on one hand and swelling in the wrist, with the full range of motion, and no further treatment was required. (Miami Correctional Facility, Indiana)

U.S. District Court
"LOCK-IN"

Wrinkles v. Davis, 311 F.Supp.2d 735 (N.D.Ind. 2004). Death row inmates at a state prison brought a § 1983 action in state court, alleging that a 79-day lockdown of the death row area violated their constitutional rights. The lockdown had been implemented after a death row inmate was killed during recreation, apparently by other death row inmates. The court held that ceasing, for security reasons, allowing religious volunteers into the death row unit for group religious services and for spiritual discussions during the lockdown did not violate the inmates' First Amendment right to practice their religion. The court also found no violation for the alleged denial of inmates' access to telephones for 55 days, to hygiene services for 65 days, to hot meals for 30 days, and to exercise equipment. According to the court, suspending all personal visits to death row inmates for the first 54 days of the lockdown did not violate the inmates' First Amendment rights, where visitation privileges were a matter subject to the discretion of prison officials. (Indiana State Prison)

2005

U.S. District Court
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 injures 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
FIRE SAFETY
PUBLICATIONS

Banks v. Beard, 399 F.3d 134 (3rd Cir. 2005). A state inmate brought a free speech challenge to a state corrections policy on behalf of himself and other similarly situated inmates. The policy restricted access to newspapers, magazines, and photographs by inmates who are placed in a prison's long-term segregation unit. The district court granted summary judgment in favor of the state and the inmate appealed. The appeals court reversed and remanded, finding that a valid, rational connection did not exist between the policy and a stated rehabilitation objective, nor prison security concerns. The court noted that confinement in the unit was not based on a specific rule infraction or for a specific duration, and that an inmate could remain in the unit under the publication ban indefinitely. According to the court, there was no evidence that inmates misused periodicals or photographs in ways described by corrections officials, such as to fuel fires or as crude weapons. There was no evidence regarding the effect of the ban on the frequency of fires, and inmates were permitted to possess other items that could be used for the purposes that were supposedly targeted by the policy. The court noted that inmates had no alternative means to exercise their First Amendment right of access to a reasonable amount of newspapers, magazines and photographs. The court described alternative policies, such as establishing reading periods in which periodicals could be delivered to inmates' cells and later collected, establishing a limit on the number of photographs that an inmate could have in his cell at one time, or escorting inmates to a secure mini-law library to read periodicals of their choosing. The policy bans all newspapers and magazines from a publisher or prison library, or from any source, unless the publication is

religious or legal in nature. (State Correctional Institution at Pittsburgh, Pennsylvania)

U.S. Appeals Court
VISITS

Bazzetta v. McGinnis, 423 F.3d 557 (6th Cir. 2005). A class of state prisoners challenged restrictions on visitation. The district court entered judgment for the plaintiffs and the appeals court affirmed. The U.S. Supreme Court reversed and remanded. On remand, the district court declined to dissolve its injunctive order of compliance and the state corrections department appealed. The appeals court reversed and remanded, finding that the department regulation that restricted visitation did not, on its face, violate procedural due process. The court noted that prisoners do not have a protected liberty interest in visitation. The regulation indefinitely precluded visitation from persons other than attorneys or clergy for prisoner with two or more substance abuse violations. The appeals court opened its decision by stating "This case marks another chapter in a ten-year controversy between incarcerated felons, their visitors, and the Michigan Department of Corrections." (Michigan Department of Corrections)

U.S. District Court
DISTRIBURANCE
PRETRIAL DETAINEE
RESTRAINTS
USE OF FORCE

Birdine v. Gray, 375 F.Supp.2d 874 (D.Neb. 2005). A pretrial detainee brought a § 1983 action against jail employees claiming violation of his right to be free of punishment and his right to privacy. The district court dismissed the complaint. The court held that the detainee did not have a privacy right that would allow him to cover the window of his cell with towels, noting that the cell contained a privacy wall which allowed for partial privacy while using the toilet. The court found that the inmate's privacy rights were not violated when he was moved from one cell to another, naked. The inmate had removed all of his clothes and refused to put them back, and jail staff moved him unclothed to a cell closer to their station where he could be constantly watched. The court found no violation when the inmate was placed in a restraint chair because he was confined as a last resort when all other restraint options proved ineffective. According to the court, the detainee was monitored, the chair was not used to punish, and the detainee was offered the opportunity to be released in return for acting appropriately. The court found no due process violation when a stun gun was applied to the detainee two times, after he engaged in violent actions as jail officers attempt to settle him into a cell to which he was being transferred. The court found that the detainee's conduct was an immediate threat to institutional safety, security and efficiency. (Lancaster County Jail, Nebraska)

U.S. Appeals Court
BOOKS
RELIGION

Borzych v. Frank, 439 F.3d 388 (7th Cir. 2006). An inmate sued state prison officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), challenging a ban on books the inmate deemed necessary for the practice of his Odinist religion. The district court entered summary judgment for the officials and the inmate appealed. The appeals court held that, even if the state substantially burdened the inmate's religious exercise by banning books he deemed necessary to practice his Odinist religion, the ban on such books was the least restrictive means to promote a compelling state interest in safety, and thus did not violate the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court noted that the books promoted violence to exalt the status of whites and demean other races, and that redaction of offensive material was not a realistic option. According to the court, a state prison procedure that prohibited activities and literature that advocate racial or ethnic supremacy or purity was not overbroad, in violation of free speech guarantees or RLUIPA, where the overbreadth of the regulation was not substantial in relation to its proper applications. Officials had refused to allow the inmate to possess the books *Creed of Iron, Temple of Wotan,* and *The NPKA Book of Blotar,* which he said were necessary to practice his religion. The inmate identified his religion as Odinism (or Odinic Rite), which like Asatru and Wotanism entails the worship of Norse gods. The inmate maintained that the books were religious texts. The officials conceded that Odinism is a religion. (Wisconsin Department of Corrections)

U.S. Appeals Court
USE OF FORCE

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
PROTECTION

Collins v. County of Kern, 390 F.Supp.2d 964 (E.D.Cal. 2005). An inmate brought a § 1983 action against a county and a sheriff's department, stemming from an attack by other inmates while he was incarcerated. A fight had erupted in a jail housing unit between Black and Hispanic inmates and the inmate was injured. The district court granted summary judgment in favor of the defendants. The court held that inmate failed to establish that department officials knew of and disregarded a risk of attack when they moved the inmate to another jail unit. At the time of the

move, the inmate did not inform anyone of safety concerns or segregation issues due to a purported gang affiliation. The court found that officials took prompt action to stop the fight, secure the area, and ensure prompt medical treatment for the inmate. The court noted that a "prison official need not believe to [a] moral certainty that one inmate intends to attack another at [a] given place at time certain before he is obligated to prevent such an assault." According to the court, before being required to take action, an official must have more than a mere suspicion that an attack will occur. (Lerdo Pre-Trial Facility, Kern County, California)

U.S. District Court
CONTRABAND
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
GANGS

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. Although the designation caused the prisoner to be excluded from community placement and placed on visitor restrictions, the court found that his designation was not based on his religious beliefs but rather was due to his gang affiliation. The court upheld the state's policy directive regarding classification of inmates as security threat group members, finding it was rationally related to the legitimate state interest of maintaining order in the prison. According to the court, identifying, reclassifying and separating prisoners who are members of groups that engage in the planning or commitment of unlawful acts or acts of misconduct "targets a core threat to the safety of both prison inmates and officials." 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 Maximum Security Facility, Michigan)

U.S. Appeals Court
LOCKDOWN
SEARCHES- CELL

Hart v. Sheahan, 396 F.3d 887 (7th Cir. 2005). Female pretrial detainees brought an action against a county and jail superintendent alleging deprivation of liberty without due process. The district court dismissed the case and the detainees appealed. The appeals court reversed and remanded, finding that the detainees stated a claim upon which relief could be granted. The detainees alleged that during monthly lockdown searches of the jail, they were confined for 48 to 50 hours at a time to their cells, where they were not under observation or within hailing distance of correctional officers. The detainees alleged that serious injuries resulted from their inability to get the officers' attention during a crisis. The court noted that an alternative procedure was available to the jail that would allow inmates in each locked tier to be released from their cells after that tier was searched, resulting in shorter lockdown periods. (Cook County Jail, Illinois)

U.S. Appeals Court
SEARCHES
PRETRIAL DETAINEE

Hicks v. Moore, 422 F.3d 1246 (11th Cir. 2005). A former pretrial detainee brought an action challenging strip search practices at a county jail. The district court denied immunity for the defendants and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the mere fact that a detainee was to be placed in the jail's general population did not justify a strip search, but that reasonable suspicion existed for the plaintiff's strip search because he had been charged with a family violence battery offense. The court noted that battery is a crime of violence that would permit the inference that the detainee might be concealing weapons or contraband. (Habersham County Jail, Georgia)

U.S. District Court
FIRE SAFETY
CONTRABAND

Howard v. Snyder, 389 F.Supp.2d 589 (D.Del. 2005). A state prison inmate brought a § 1983 action against corrections officials, alleging that legal papers were missing from a box of personal effects that were seized from his cell as contraband, when the box was returned. The inmate alleged that his access to court was hindered. The district court granted summary judgment to the officials, finding that the "two box rule" under which the materials were confiscated, served legitimate penological interests. According to the court, the regulation promoted fire safety and limited the access to contraband. The court noted that the inmate had continual access to the prison's law library and that he could have obtained approval for an extra box. (Delaware Correctional Center)

U.S. District Court
SAFETY

Littlejohn v. Moody, 381 F.Supp.2d 507 (E.D.Va. 2005). A federal prisoner brought a pro se action against prison officials, seeking injunctive relief and monetary damages. The inmate alleged violation of his constitutional rights when he was shocked by an electrical surge because a buffing machine that he was using did not have a ground-prong in its plug. The district court granted the defendants' motion to dismiss. The court held that one official did not know of a substantial risk of harm at the time the prisoner was shocked because he had sent the buffer to be repaired when it had shocked prisoners in the past, and he reasonably assumed that the machine was safe when it returned. Although the court found that allegations supported a deliberate indifference claim against a prison safety manager and electrical shop foreman, the court granted them qualified immunity because the right to be protected from a significant risk of injury was not clearly established at the time of the incident. (Federal Bureau of Prisons, Virginia)

U.S. District Court
RELIGIOUS SERVICES
SEARCHES

McRoy v. Cook County Dept. of Corrections, 366 F.Supp.2d 662 (N.D.Ill. 2005). A Muslim inmate at a county correctional facility brought a civil rights action under § 1983, alleging that his opportunities to practice his faith were restricted in violation of the Free Exercise Clause of the First Amendment. The district court granted summary judgment in favor of the defendants. The court held that the inmate's free exercise rights were not violated by the cancellation of Muslim services during lockdowns, staff shortages, and when no volunteer imams were available to preside over services. The court noted that inmates should not be granted authority as religious leaders over other inmates, and cancellation of services when volunteer imams were not available was warranted. The court found that the policy of limiting the number of Muslim services to three each week did not violate the inmate's free exercise rights, nor was a policy that limited the number of inmates who could attend Muslim services at the same time. The court also found no violation in the policy of strip-searching inmates when they were leaving or returning to an inmate area, noting that the inmate could choose not to attend a service because of the policy and could pray in his cell or common area instead. The court upheld the facility's decision not to create a Muslim-only living unit. The court noted that the inmate was permitted to pray in his cell using religious materials he was allowed to keep there, as well as being allowed to pray in the common area of his living unit. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
BOOKS
FIRE SAFETY

Neal v. Lewis, 414 F.3d 1244 (10th Cir. 2005). A Shiite Muslim prisoner filed a pro se action seeking injunctive relief and damages under § 1983, alleging that prison officials violated his civil rights by interfering with his religious observance. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed. The court held that the officials did not violate the prisoner's First Amendment rights by enforcing a prison regulation that limited the number of books that could be kept in a cell. The court also found no violation of the prisoner's due process or equal protection rights. The regulation limited prisoners to the possession of twelve books, plus one dictionary, one thesaurus, and the primary religious text for their declared religion. The court noted that nothing prevented the prisoner from stocking his cell with twelve religious texts. According to the court, the regulation was applied equally to all inmates, and it promoted legitimate administrative and penological objectives including fire safety, institutional security, control of the source and flow of property in prison, and the effective establishment of a behavior-incentive program. The court noted that the prisoner failed to choose any of the options available to him. (El Dorado Correctional Facility, Kansas)

U.S. Appeals Court
SEARCHES
VISITS

Neumeyer v. Beard, 421 F.3d 210 (3rd Cir. 2005). Prison visitors filed a § 1983 action seeking a declaration that the prison's practice of subjecting visitors' vehicles to random searches violated their constitutional rights. The district court entered summary judgment in favor of the defendants and the visitors appealed. The appeals court affirmed, holding that the prison's practice of engaging in suspicionless searches of prison visitors' vehicles was valid under the special needs doctrine. According to the court, the relatively minor inconvenience of the searches, balanced against the prison officials' special need to maintain the security and safety of the prison, rose beyond their general need to enforce the law. The court noted that some inmates have outside work details and may have access to the vehicles. The prison had posted large signs at all entranceways to the prison and immediately in front of the visitors' parking lot that stated "...all persons, vehicles and personal property entering or brought on these grounds are subject to search..." Visitors are asked to sign a Consent to Search Vehicle form before a search is conducted and if they refuse they are denied entry into the prison and are asked to leave the premises. (State Correctional Institution at Huntingdon, Pennsylvania)

U.S. Appeals Court
SEGREGATION

Peoples v. CCA Detention Centers, 422 F.3d 1090 (10th Cir. 2005). A pretrial detainee who was housed at a detention center operated by a private contractor under a contract with the United States Marshals Service brought actions against the contractor and its employees, alleging Fifth and Eighth Amendment violations. The district court dismissed the action and the inmate appealed. The appeals court affirmed. The appeals court held that the employees did not punish the pretrial detainee in violation of his due process rights when they placed him in segregation upon his arrival at the center and kept him in segregation for approximately 13 months without a hearing. The detainee was first placed in segregation because the center lacked bed space in the general population, and he remained in segregation due to his plot to escape from his previous pretrial detention facility. According to the court, the detention center has a legitimate interest in segregating individual inmates from the general population for nonpunitive reasons, including threats to the safety and security of the institution. (Corrections Corporation of America, Leavenworth, Kansas)

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. District Court
TELEPHONE CALLS
VISITS

U.S. v. Ali, 396 F.Supp.2d 703 (E.D.Va. 2005). A pretrial detainee who was charged with terrorism-related offenses filed a motion for relief from conditions of confinement. The district court denied the motion, finding that the measures imposed did not violate due process. The court also found that judicial relief was not available because the detainee did not exhaust available administrative remedies, even though the detainee completed an inmate request form seeking permission to receive regular phone calls to his family and lawyers, and visits from his family. According to the court, the detainee did not pursue succeeding options available to him when his request was denied. The court held that the "Special Administrative Measures" (SAM) imposed on the detainee at the request of the Attorney General did not violate the detainee's due process rights, where the SAMs were imposed to further the legitimate and compelling purpose of preventing future terrorist acts. The measures prevented the detainee from receiving regular phone calls from his family and lawyers, and from receiving visits from his family. According to the court, there was no alternative means to prevent the detainee from communicating with his confederates, and the special accommodations sought by the detainee would have imposed unreasonable burdens on prison and law enforcement personnel. The court noted that the measures did not restrict the detainee's ability to help prepare his own defense. (Alexandria Detention Center, Virginia)

U.S. Appeals Court
HAIR LENGTH

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. Appeals Court
GANGS
TRANSFER

Westefer v. Snyder, 422 F.3d 570 (7th Cir. 2005). State prisoners brought a § 1983 action challenging their transfers to a higher-security prison. The district court granted summary judgment for the defendants and the prisoners appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoners' suit challenging transfers to a high security prison was not subject to dismissal for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA), where the transfer review process was not available to prisoners in disciplinary segregation, and the prisoners' grievances were sufficient to alert the prison that the transfer decisions were being challenged. The court held that the alleged change in a prison policy that required transferring gang members to a high security facility did not constitute an ex post facto violation. The court ruled that the prisoners stated a claim for denial of due process, where the conditions at the high security prison were arguably different enough to give the prisoners a liberty interest in not being transferred there, and there was a dispute as to whether the state provided sufficient pre- and post-transfer opportunities for the

prisoners to challenge the propriety of the transfers. The court held that the transfers did not violate the gang members' First Amendment associational rights, noting that prisoners had no right to associate with gangs. (Tamms Correctional Center, Illinois)

U.S. District Court
TRANSPORTATION

Young v. Hightower, 395 F.Supp.2d 583 (E.D.Mich. 2005). A state prison inmate brought a pro se civil rights action against prison officials, alleging they were deliberately indifferent to his safety when they refused to buckle his seatbelt when he was transported in chains in a prison van and when the vehicle was then involved in a collision that resulted in injuries to the inmate. The district court held that the inmate had satisfied the exhaustion requirement of the Prison Litigation Reform Act (PLRA) even though he did not return a document requested in response to his completed step III grievance form. The court found that prison policy did not require specific documents to be filed with the step III form and the request for documents suggested that the request was procedural rather than substantive. According to the court, when an inmate takes the prison grievance procedure to its last step, the PLRA exhaustion requirement has been satisfied if the state forgoes an opportunity to decide matters internally. (Chippewa Correctional Facility, Michigan)

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U.S. District Court
TRANSPORTATION
RESTRAINTS

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
SUPERMAX
TRANSFER

Austin v. *Wilkinson*, 502 F.Supp.2d 675 (N.D.Ohio 2006). A state inmate filed a § 1983 action alleging that the procedure for transferring him to a super maximum security prison violated due process. The inmate moved to compel the state to reduce his security placement level. The district court granted the motion. The court held that the process used by the state to increase the inmate's security placement level after he killed his cellmate violated due process, even though the prison's rules infraction board found insufficient evidence that the inmate acted solely in self-defense, where the prison's classification committee recommended that the inmate's security placement remain unchanged, the inmate was not given notice of the warden's decision to override the committee's recommendation or opportunity to argue his position and submit evidence, the inmate was not given a hearing on administrative appeal, the board's finding was subject to review by the committee, and the inmate was transferred to a super maximum security prison before the review process was complete. According to the court, due process required that the warden and the state's administrative appeals board provide adequate reasoned statements to justify their decisions to override the prison's classification committee's recommendation that the inmate's security placement remain unchanged after he killed his cellmate. The court held that the state prison system was required to provide an individualized review of the security risk presented by an inmate following his transfer to a super maximum security prison, and thus the state's use of a boilerplate checklist violated the inmate's due process rights, where the inmate received no meaningful review of his situation or of the events leading to his transfer. (Ohio State Penitentiary)

U.S. District Court
SUPERMAX
TRANSFER

Austin v. *Wilkinson*, 502 F.Supp.2d 660 (N.D.Ohio 2006). State inmates in a super maximum security prison facility brought a class action against corrections officials under § 1983 alleging that procedures for transferring them to, and retaining them at, the prison violated due process. The district court ruled that the procedures denied due process and ordered modifications. Prison officials appealed. The appeals court affirmed in part, reversed in part and remanded. Certiorari

was granted. The United States Supreme Court affirmed in part, reversed in part and remanded. On remand, the inmates moved for an order extending the court's jurisdiction over due process issues for one year, and the officials' moved to terminate prospective relief. The district court granted the inmates' motion and denied the officials' motion. (Ohio State Penitentiary)

U.S. District Court
FIRE SAFETY

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. District Court
FIRE SAFETY

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. Appeals Court
SEGREGATION

Freeman v. Berge, 441 F.3d 543 (7th Cir. 2006). An inmate brought a § 1983 action against prison officials, alleging cruel and unusual punishment. After a jury returned a verdict in favor of the inmate, the district court granted judgment as a matter of law for the defendants, and the inmate appealed. The court of appeals affirmed. The court held that the prison's feeding rule requiring that, when meals were delivered to an inmate's cell, the inmate had to be wearing trousers or gym shorts, was a reasonable condition to the receipt of food in light of security issues and respect for female security officers' privacy. The court found that prison officials' withholding of food from the inmate when he refused to put on trousers or shorts did not constitute the use of food deprivation as punishment, for the purposes of the Eighth Amendment prohibition against cruel and unusual punishment. The court found that prison officials' withholding of food from the inmate when he wore a sock on his head when meals were delivered to his cell was a reasonable condition to the receipt of the food, in light of security issues presented by the possibility that a sock could be used as a weapon if something was inside it. According to the court, withholding of food from the inmate when he refused to remove the sock from his head did not constitute the use of food deprivation as punishment. Inmates in the Supermax are fed their three meals a day in their cells. The prison's feeding rule requires that the prisoner stand in the middle of his cell, with the lights on, when the meal is delivered and that he be wearing trousers or gym shorts. If the inmate does not comply with the rule, the meal is not served to him. The inmate wanted to eat in his underwear, so on a number of occasions over a two-and-a-half-year period he refused to put on pants or gym shorts and as a result was not served. Because he skipped so many meals he lost 45 pounds. (Wisconsin Maximum Security Facility, "Supermax")

U.S. Appeals Court
RESTRAINTS

Hanks v. Prachar, 457 F.3d 774 (8th Cir. 2006). A former county jail detainee brought a § 1983 action against county jail officials, alleging violation of his due process rights in connection with the use of restraints and confinement, requesting damages and injunctive relief. The district court

granted summary judgment in favor of the officials and the former detainee appealed. The appeals court affirmed the grant of summary judgment on the claims for injunctive relief, reversed the grant of summary judgment on the claims for damages, and remanded for further proceedings. The court held that the detainee's claim for injunctive relief was rendered moot by detainee's release from jail. The court found that summary judgment was precluded by genuine issues of material fact as to whether the detainee was restrained in shackles and chains or confined in a padded unit for the purpose punishment, or for valid reasons related to legitimate goals. The detainee alleged he was placed in four-point restraints, chained to a wall in a "rubber room," forced to shower in waist chains and shackles, and denied hearings before being punished. The detainee was 17 years old when he was admitted to the jail. (St. Louis County Jail, Minnesota)

U.S. District Court
EXERCISE
LOCK DOWN
RIOT

Hayes v. Garcia, 461 F.Supp.2d 1198 (S.D.Cal. 2006). A state prisoner brought a pro se § 1983 action against a warden, alleging that he was denied outdoor exercise in violation of the Eighth Amendment. The warden moved for summary judgment. The district court granted the motion, holding that the denial of outdoor exercise was not the result of the warden's deliberate indifference, and thus did not violate the defendant's Eighth Amendment rights, in that restrictions on exercise were instituted for the primary purpose of preventing further race-based attacks, injuries, and homicides. The prisoner was denied outdoor exercise for a period of just over nine months following racial tension, rioting, and other racial violence in the prison. (Calipatria State Prison, California)

U.S. District Court
LOCKDOWN

Hurd v. Garcia, 454 F.Supp.2d 1032 (S.D.Cal. 2006). A state inmate filed a § 1983 action alleging that conditions of his confinement during a lock down violated his constitutional rights. The court held that suspension of outdoor exercise at the state prison for 150 days was not motivated by prison officials' deliberate indifference or malicious and sadistic intent to harm or punish the inmate, and thus did not constitute cruel and unusual punishment in violation of Eighth Amendment. The court noted that the entire unit was locked down as the result of a riot between African-American and Caucasian inmates, and restrictions on outdoor exercise were instituted for the primary purpose of preventing further race-based attacks, injuries, and homicides. (Calipatria State Prison, California)

U.S. Appeals Court
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
MAIL
GANGS

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
CELL SEARCH
GANGS

Navarro v. Adams, 419 F.Supp.2d 1196 (C.D.Cal. 2006). A state prisoner filed a pro se petition for a writ of habeas corpus, challenging his state court conviction and his sentence for first degree murder. The district court held that a deputy sheriff's search of his cell and seizure of attorney-client privileged documents did not warrant federal habeas relief because it did not substantially prejudice the prisoner's Sixth Amendment right to counsel. The court noted that the prisoner's cell was searched to locate evidence regarding gang activity and threats to witnesses, not to interfere with his relationship with his defense counsel, and the information seized was turned over to the trial court for an in-camera review without being viewed by any member of the prosecution team. (California)

U.S. District Court
SEARCHES- CELL
PUBLICATIONS

Pepper v. Carroll, 423 F.Supp.2d 442 (D.Del. 2006). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The court granted the officials' motion for summary judgment. The court found that the officials' decision to "shake down" the inmate's cell was not in retaliation for his having filed a civil rights action, and thus did not violate the inmate's First Amendment right to access courts, where shakedowns were routine, and the inmate was thought to have prohibited materials in his cell. The court also held that the officials did not violate the inmate's First Amendment free speech rights by refusing the word puzzles sent by the inmate's family through regular mail and by disallowing catalogs for magazines or books, where there was no allegation that the inmate had been denied actual magazines or books, and word puzzles were not permitted under prison regulations. According to the court, the prison officials' denials of several privileges while the inmate was voluntarily housed in a security housing unit, including extra visits, reading material, exercise, television, cleaning tools, boiling water, ice, razors, and additional writing utensils, were not a sufficiently serious deprivation to support the inmate's claim that the denials constituted cruel and unusual punishment under the Eighth Amendment. (Delaware Correctional Center)

U.S. Appeals Court
SECURITY PRACTICES
STAFFING

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. (Indiana Department of Corrections Maximum Control Complex, Westville, Indiana)

U.S. District Court
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
RELIGIOUS ARTICLES

Sample v. Lappin, 424 F.Supp.2d 187 (D.D.C. 2006). An inmate brought suit for declaratory and injunctive relief, claiming that a denial of his request for wine violated the Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA), and that the Bureau of Prisons' (BOP) Director failed to train, supervise, and promulgate policies requiring his subordinates to comply with RFRA and RLUIPA. The defense moved to dismiss, and the parties cross-moved for summary judgment. The district court held that genuine issues of material fact existed as to whether an outright ban on an inmate's consumption of wine was the least restrictive means of furthering the government's compelling interest in controlling intoxicants. The inmate described himself as "an observant Jew" who "practiced Judaism before his incarceration and continues his practice of Judaism while confined," and who "sincerely believes that he must drink at least 3.5 ounces of red wine (a reviit) while saying Kiddush, a prayer sanctifying the Sabbath, during Friday night and Saturday shabbos services." The court found that the inmate exhausted his administrative remedies, as required by the Prison Litigation Reform Act (PLRA), with respect to his request for wine, regardless of whether he asked that a rabbi, a chaplain, or a Bureau of Prisons (BOP) staff member administer the wine to him. According to the court, the inmate's obligation to exhaust his administrative remedies did not require that he posit every conceivable alternative means by which to achieve his goal, which was the unburdened exercise of his sincere religious belief. (Federal Correctional Institution, Beaumont, Texas)

U.S. Appeals Court SECURITY PRACTICES	*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 the 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 SEARCHES- CELLS	*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. Appeals Court SEGREGATION PROTECTION	*Smith v. Cummings*, 445 F.3d 1254 (10th Cir. 2006). A prisoner brought civil rights claims and state law claims against a former prison officer and prison officials. The district court entered judgment against the prison officer and summary judgment in favor of the other defendants. The appeals court affirmed in part and remanded in part. The court held that prison officials did not violate the Eighth Amendment by failing to clear an area through which segregated inmates passed, of all inmates from the regular population, when escorting segregated inmates to and from the protective housing unit, absent a showing of conditions posing a serious risk of harm or evidence of deliberate indifference. The court noted that no segregated inmate was ever assaulted on these occasions, other precautions were taken by the officials, and the officials acted promptly in response to the inmate's particular safety concerns once alerted. (Lansing Correctional Facility, Kansas)
U.S. District Court PUBLICATIONS	*Smith v. Miller*, 423 F.Supp.2d 859 (N.D.Ind. 2006). A state inmate filed a § 1983 action challenging prison officials' decision to confiscate his anarchist materials. The officials moved for summary judgment. The district court held that fact issues remained as to whether mere possession of anarchist literature presented a clear and present danger to prison security. The court opened its opinion by stating: "The issue of anarchism has raised its ugly face again, this time in a prison context…The question here focuses on whether or not prison officials at the Indiana State Prison are authorized to confiscate anarchist materials from inmates incarcerated there…While the question presented here is a very close one, and it may be one on which the prison authorities will later prevail….there needs to be a more extensive factual record." The court noted that if a trial were to be held, the court would attempt to appoint counsel for the plaintiff and make every effort to keep the case as narrowly confined as possible. According to the court, "Although it is a close case, there is enough here, if only barely enough, to keep the courthouse doors open for this claim which necessarily involves overruling and denying the defendants' motion." (Indiana State Prison)
U.S. District Court GANGS	*Stewart v. Alameida*, 418 F.Supp.2d 1154 (N.D.Cal. 2006). A state prison inmate brought a § 1983 action against California corrections officials alleging violation of his First and Fourteenth Amendment associational and due process rights, claiming that his validation as a gang associate kept him in a secure housing unit. Officials moved for summary judgment and the district court granted the motion. The court held that state regulations providing for gang validation based on association bore a rational relation to a penological interest in institutional security and that the full accommodation of inmate's associational rights would seriously hinder security and compromise safety. According to the court, an interview after he was gang-validated afforded the inmate an adequate procedural remedy consistent with due process. The court found that any of three photographs of the inmate posing with inmates, some of whom were validated gang associates and one of whom was a validated gang member, supported the inmate's gang validation consistent with due process. (San Quentin Adjustment Center, California)
U.S. District Court EVACUATION	*Tate v. Gusman,* 459 F.Supp.2d 519 (E.D.La. 2006). A pretrial detainee brought a § 1983 action against a sheriff, arising from conditions of confinement following a hurricane. The district court held that the detainee failed to state a nonfrivolous claim upon which relief could be granted and dismissed the action. The detainee alleged that the manner and timing of his evacuation from a flooded prison system medical unit following a hurricane constituted cruel and unusual

punishment, but the court found that the detainee did not allege that the sheriff personally acted with deliberate indifference to the detainee's safety. The court noted that the detainee did not allege that he suffered any physical injury as a result of any of the conditions or lack of medical attention. (Orleans Parish Prison, Louisiana)

U.S. Appeals Court
TELEPHONE CALLS

U.S. v. *Morin*, 437 F.3d 777 (8th Cir. 2006). A defendant was convicted in district court and he appealed. The appeals court affirmed, finding that recordings of the defendant's jailhouse telephone calls were admissible for sentencing purposes. The court found that the defendant impliedly consented to the warrantless tape-recording of his jailhouse telephone calls, and thus, the recordings were admissible for sentencing purposes. The defendant had been given a prisoners' handbook that informed him that his jailhouse calls would be monitored, and there were signs above the phones in the prison informing him of that fact. (North Dakota)

U.S. Appeals Court
PUBLICATIONS
BOOKS
ITEMS PERMITTED

Wardell v. *Duncan*, 470 F.3d 954 (10th Cir. 2006). A state prisoner brought a pro se § 1983 action against prison officials, alleging that a prison policy that required prisoners to purchase all hobby materials, legal materials, books, and magazines from their prison accounts, and prohibiting gifts to prisoners of such materials from unauthorized sources, violated his due process rights, his right of access to the courts, and his First Amendment rights. The district court granted summary judgment in favor of the officials. The prisoner appealed. According to the court, the confiscation of documents mailed to the prisoner which were purchased by a person who was a visitor of another inmate, did not violate the prisoner's First Amendment rights, where the ban was content neutral, it was rationally related to the penological interest of preventing bartering, extortion, possession of contraband, and other criminal activity by prisoners, the prisoner was still able to purchase the same materials himself using funds from his prison account, and he had access to the same materials in the prison law library. The court noted that permitting such third-party gifts and then trying to control the resultant security problems through reactive efforts of prison officers would impose an undue burden on prison staff and resources. The court held that the inmate's proposed accommodation, allowing third party gifts if third parties provided relevant information, such as the source, amount, and manner of payment, would entail data collection, processing, and substantial staff resources. The suit was prompted by prison officials' interception of three parcels mailed to plaintiff. The first contained books from a "Mystery Guild" book club; the other two contained legal documents from the Colorado State Archives and the Library of Congress which had been purchased for the plaintiff by a third party who was listed as another inmate's visitor and, thus, fell within a Colorado Department of Corrections (CDOC) prohibition on gifts from unauthorized sources. The court also held that denial of the prisoner's access to courts claim that challenged the prison policy restricting receipt of his legal mail, was warranted, absent a showing that the prisoner's failure to receive his legal mail actually frustrated, impeded, or hindered his efforts to pursue a legal claim. (Fremont Correctional Facility, Colorado)

U.S. District Court
STAFFING
PROTECTION

Wilson v. *Maricopa County*, 484 F.Supp.2d 1015 (D.Ariz. 2006). Survivors of an inmate who had died after being assaulted by other inmates while they were held in a jail known as "Tent City," brought a § 1983 action against a sheriff, alleging Eight Amendment violations. Following denial of the survivors' motion for summary judgment and denial of the sheriff's motion for summary judgment based on qualified immunity, and following appeal by the sheriff, the sheriff moved to stay the litigation and the survivors moved to certify the appeal as frivolous. The district court granted the survivors' motion, finding that the sheriff's appeal was frivolous. The court held that, for purposes of qualified immunity, the law was clearly established in July 2003 that the sheriff's alleged conduct of housing inmates in tents without adequate staffing, while being deliberately indifferent to the danger of inmate-on-inmate assaults, would violate the Eighth Amendment. The survivors presented evidence that the sheriff had for many years been aware that the conditions at Tent City were likely to create a substantial risk of serious harm to inmates. The conditions include a lack of security inherent in the use of tents, inadequate staffing, officers abandoning their posts and making off-yard shift changes, intentionally harsh inmate living conditions, and a lack of officer training. The survivors' asserted that these problems were known to the sheriff through a variety of sources, including consultant reports, concerns expressed by a county risk manager, and a prior state court case in which the county and sheriff were held liable under § 1983 for an inmate assault at Tent City. The state court case affirmed a jury verdict against the sheriff and held that the lack of supervision and security measures at Tent City supported the jury's finding of deliberate indifference. (Maricopa County jail known as "Tent City," Arizona)

2007

U.S. Appeals Court
SAFETY

Ambrose v. *Young*, 474 F.3d 1070 (8th Cir. 2007). The personal representative for the estate of a state prisoner who was electrocuted while on a prison work detail brought a § 1983 action against state corrections officials. The district court denied the officials' motion for summary judgment and they appealed. The appeals court affirmed in part and reversed in part. The court held that: (1) the deliberate indifference standard applied; (2) the corrections officer in charge of the prisoner's work crew was deliberately indifferent to the serious risk of the prisoner's electrocution; (3) the corrections officer was not entitled to qualified immunity; (4) the supervisory official for the DOC was not deliberately indifferent; and (5) the warden was not deliberately indifferent to the lack of training of the corrections officer in charge of the work crew. The court noted that the prohibition against cruel and unusual punishment applies to the conditions of confinement, and that prison work assignments fall under the ambit of conditions of confinement. According to the court, the Eighth Amendment forbids knowingly compelling an inmate to perform labor that is beyond an inmate's strength, dangerous to his or her life or health, or unduly painful, and requires supervisors to supervise and train subordinates to prevent the deprivation of the inmate's constitutional rights. The prisoner was on an Emergency Response Team (ERT) when he was killed. ERTs are comprised of minimum-security inmates from South Dakota's four state penitentiaries. The ERTs are dispatched to natural disaster clean-up sites, where they assist in removing downed trees and other debris. The inmates are required to comply with correctional officers' orders and conduct themselves appropriately. The only training the inmate received was watching a chainsaw safety training video. The court held that qualified immunity will be defeated in a § 1983 claim if a government official knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the plaintiff, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury. It is enough that the official acted or failed to act despite his knowledge of a

substantial risk of serious harm. The court found that the corrections officer had the opportunity to deliberate and think before the electrocution incident occurred. The prisoner was electrocuted by a downed power line and the officer knew that the dangling, live power line created a substantial risk of harm, and despite the risk, the officer told the prisoner and other inmates to stomp out a non-threatening fire within arms reach of the line. The court held that the corrections officer was not entitled to qualified immunity for his deliberately indifferent conduct, in ordering the prisoner and other inmates to stomp out a fire near a dangling live power line, where the law was clearly established at the time of the electrocution incident that knowingly compelling a prisoner to perform labor that was dangerous to his life or health violated the Eighth Amendment. Although a supervisory official knew about the downed power line, and allegedly failed to call 911 emergency services and did not tell the prisoners to stay away from it, any failure to call 911 did not contribute to the electrocution incident. Everyone present knew that the power line was dangerous, and the official was not near the power line when another supervisory official ordered the prisoner and other inmates to stomp out a fire that was near the line. According to the court, a state prison warden was not deliberately indifferent to an alleged lack of training of the corrections officers because previous accidents involving the prison work crew resulted in only minor injuries, it was not the prison's policy to have prisoners go near live power lines, and there was no showing that the corrections officer in charge would not have ordered prisoner and other inmates to put out the fire near the downed power line if he had any additional training. (South Dakota Department of Corrections)

U.S. District Court
SAFETY

Graham v. *Poole,* 476 F.Supp.2d 257 (W.D.N.Y. 2007). A state prisoner brought a § 1983 action against prison officials. The officials moved to dismiss and the district court granted the motion. The court held that the prisoner's allegations that he slipped and fell as he was leaving the shower due to the failure of prison employees to provide non-slip mats on the floor in and near the shower amounted to nothing more than negligence, and thus was insufficient to state an Eighth Amendment claim against the employees. The court found that the prisoner failed to allege that a prison superintendent was personally involved in any alleged Eighth Amendment violation, as required to state a § 1983 claim against the superintendent. The prisoner alleged that following his accident, the superintendent instituted a policy providing an additional towel to each cell to be utilized for a bath mat, but did not allege that the superintendent was aware of any hazardous condition prior to prisoner's accident. (Five Points Correctional Facility, New York)

U.S. District Court
GANGS
PUBLICATIONS

Greybuffalo v. *Kingston*, 581 F.Supp.2d 1034 (W.D.Wis. 2007). A state inmate brought a § 1983 action for declaratory and injunctive relief, challenging, on First Amendment grounds, prison officials' actions in confiscating two documents as "gang literature" and disciplining him for possessing the documents. One document was a publication of the "American Indian Movement" (AIM). The other was a code of conduct for a prisoner group that was created to enable "self-protection of Native Americans." The court held that interpreting the prison regulation to prohibit inmates from possessing literature of any group that had not been sanctioned by prison officials was an exaggerated response to legitimate security interests that violated the First Amendment. The court found that the history of the civil rights organization referenced in the seized document did not permit the reasonable conclusion that the inmate's possession of the document implicated a legitimate interest in preventing gang activity or prison security. The court ordered the expungement from prison records of the finding that the inmate's possession of the document violated prison rules. The court held that officials could reasonably conclude that the inmate's possession of a code of conduct for a prisoner group that was created to enable "self-protection" of Native American prisoners could lead to future security problems and that the officials did not violate the inmate's free speech rights when it prohibited and disciplined the inmate for possessing the code of conduct. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
SAFETY

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. Appeals Court
CONTRABAND
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
CELL CAPACITY
CONTRABAND
GANGS
SEARCHES-CELL
STAFFING

Jurado Sanchez v. *Pereira*, 525 F.Supp.2d 248 (D.Puerto Rico 2007). A prisoner's next of kin brought a civil rights action under § 1983 against prison officials, seeking to recover damages for the prisoner's death while he was incarcerated, and alleging constitutional rights violations, as well as state law claims of negligence. The officials moved for summary judgment on the cause of action under § 1983. The district court denied the motion, finding that summary judgment was precluded by the existence of genuine issues of material fact on the failure to protect claim and as to whether the officials had qualified immunity. According to the court, genuine issues of material fact existed as to

whether there were enough guards at the prison when the prisoner was killed by another inmate, and whether officials were mandated to perform weekly or monthly searches of cells, which could have prevented the accumulation of weapons used in the incident in which the prisoner was killed. Bayamon 308, an intake center, was considered minimum security with some limitations. The inmate capacity at Bayamon 308 is 144. Although the capacity was not exceeded, some cells, despite being originally built for one inmate, housed two inmates. According to the court, Bayamon 308 does not comply with the 55 square footage minimum requirements for each cell in a continuing federal consent order. Therefore, the individual cell gates are left continuously open, like an open dormitory. At the time of the incident officials did not take gang affiliation into consideration when segregating prisoners. The prisoner did not identify himself as a gang member, nor inform officials that he feared for his life. The facility was under court order to follow a staffing plan that stated the minimum amount of staff, the optimum amount, the fixed positions and the movable positions, pursuant to a lawsuit. Fixed positions, such as control units, cannot be changed under any circumstances, but the movable positions may be modified depending on necessity due to the type of inmate at the facility. The plaintiffs alleged that the defendants did not comply with the staffing plan, while the defendants insisted that they did comply. (Bayamon 308 Facility, Puerto Rico)

U.S. Appeals Court
HAIR LENGTH

Longoria v. *Dretke*, 507 F.3d 898 (5th Cir. 2007). A prisoner brought a *pro se* action against prison officials, claiming his right to exercise his religion was denied when they denied him permission to grow his hair. The district court dismissed the action and the prisoner appealed. The appeals court affirmed. The court held that the prison's grooming policy did not violate the Religious Land Use and Institutionalized Persons Act (RLUIPA) and did not violate equal protection. The court noted that even if the grooming policy created a substantial burden on the prisoner's religious exercise, the policy served the prison's compelling interest in maintaining order and safety in the prison, since long hair facilitated the transfer of contraband and weapons and long hair could allow escaped prisoners to more easily alter their appearance. The court held that the policy was the least restrictive means to achieve that interest. According to the court, although female prisoners were not subject to the same grooming policy, the policy applied to all prisoners incarcerated in the male prison, and the application of different grooming regulations to male and female inmates did not implicate equal protection concerns. (Robertson Unit, Texas Department of Criminal Justice-Institutional Division)

U.S. District Court
PUBLICATIONS

Moses v. *Dennehy*, 523 F.Supp.2d 57 (D.Mass. 2007). Prison inmates sued a department of corrections, claiming that a regulation banning possession of sexually explicit materials violated their First Amendment rights. The department moved for summary judgment. The district court entered judgment for the department. The court held that there was a rational relationship between the regulation banning inmates' possession of sexually explicit materials and a legitimate interest in prison security. According to the court, the regulation satisfied the First Amendment requirement that alternative means of expression be provided because inmates were afforded an opportunity to receive materials on a wide range of subjects, other than those involving sexuality or nudity, and there was even an exception allowing for nude images having medical, educational, or anthropological content. According to the court, the possibility of harm to other inmates supported the validity of the regulation. The court concluded that the administration of the regulation did not violate the First Amendment, where publications known always to feature sexually explicit materials were banned outright, and others were banned following prison staff inspection of individual issues. (Massachusetts Department of Correction)

U.S. District Court
CONTRACT SERVICES
DELIBERATE INDIFFERENCE
MALPRACTICE

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
GANGS
PROTECTION
TRANSFER

Rodriguez v. *Secretary for Dept. of Corrections*, 508 F.3d 611 (11th Cir. 2007). A Florida prisoner brought a § 1983 suit against two prison officials, alleging that they violated his Eighth Amendment right to be free from cruel and unusual punishment. The prisoner was assaulted by a fellow prisoner hours after his release from administrative segregation and reentry into the general prison population. The prisoner had asked to be transferred to another institution or to be placed in protective custody. The district court granted summary judgment in favor of the chief of prison security, and judgment as a matter of law in favor of an assistant warden, and the prisoner appealed. The appeals court vacated and remanded. The court held summary judgment was precluded by genuine issues of material fact existed as to whether the defendants had subjective knowledge that the prisoner faced a substantial risk of serious harm from his former gang members. The court ruled that it was a jury question as to whether the prison security chief's actions "caused" the Eighth Amendment violation. There was evidence that the prisoner told the security chief that he was a former gang member who decided to renounce his membership, that gang members had threatened to kill him when he returned to the compound in retaliation for his renunciation, and that the prison compound was heavily populated with gang members. (Everglades Correctional Institution, Florida)

U.S. District Court
CLOTHING
RELIGIOUS ARTICLES

Singh v. *Goord*, 520 F.Supp.2d 487 (S.D.N.Y. 2007). An inmate who professed a belief in the Sikh faith brought an action against various officials of the New York State Department of Correctional Services (DOCS) under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Free Exercise Clause of the First Amendment, the New York State Constitution, and various other constitutional provisions. The DOCS moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the inmate failed to exhaust

administrative remedies, as required under the Prison Litigation Reform Act (PLRA), with respect to his free exercise clause claim regarding his right to wear a Kacchera, which was a religious undergarment. The court found that summary judgment for the defendants was precluded by an issue of fact as to whether the inmate received the decision of the Superintendent, but failed to appeal it.

The court also found that the inmate sincerely believed that he was required to possess a second Kanga, which was a Sikh religious comb, and therefore the prison's policy of limiting the inmate to a single Kanga placed a substantial burden on his religious beliefs under RLUIPA. Summary judgment was denied because of fact issues regarding the security risk posed by the Kara, which was a steel bracelet worn by Sikhs, and whether there was a compelling governmental interest to allow the Sikh inmate to only wear the Kara for 30 minutes at a time during meals. The court held that the inmate established a First Amendment free exercise claim with respect to his free exercise clause claim regarding his right to use a reading lamp at night for prayer purposes. The court concluded that the DOCS speculation that the beliefs of the inmate might not be sincere and could instead be "partly" motivated by his resistance to the prison environment was insufficient to defeat the inmate's motion for summary judgment on his free exercise clause claim. According to the court, given that the Sikh inmate would be unable to tie his turban in one of the traditional ways, in a manner sufficient to cover his head using a cloth that was merely 30 inches by 36 inches, the inmate established that the prison's policy regarding cloth length substantially burdened his religious beliefs. The court also found that because the inmate was required to shower with his turban, and to wash his turban every day, the limitation of two turbans was a substantial burden on the inmate's religious practice. The inmate also challenged several other prison policies that involved his hair, separate storage of his religious materials, and other restrictions. (Fishkill Correctional Facility, New York)

U.S. Appeals Court
RELIGION

Smith v. *Allen*, 502 F.3d 1255 (11th Cir. 2007). An inmate brought a civil rights action against prison officials to recover for alleged violation of his free exercise rights under the First Amendment and under the Religious Land Use and Institutionalized Persons Act (RLUIPA), based on prison officials' denial of requests for religious accommodations allegedly associated with his practice of Odinism. The district court granted the officials' motion for summary judgment, and the inmate appealed. The appeals court affirmed. The court held that the term "appropriate relief," as used in section of RLUIPA creating a private cause of action in favor of prison inmates whose free exercise rights are violated, and further providing that, if the inmate successfully sues, then he/she may "obtain appropriate relief," is broad enough to include monetary damages, but the provision could not be construed as creating a private right of action against individual prison officials in their personal capacity for award of monetary damages. The court found that the inmate's practice of Odinism constituted a "religious exercise" for purposes of the RLUIPA, but decisions by the prison officials did not substantially burden the inmate's free exercise rights. Prison officials provided the inmate with a secure location in which to practice the rites of his religion and did not allow him to observe these rites in general prison area. They denied his request for a small fire pit and instead provided only a candle to represent "pine fire of purification." (Religious Activities Review Committee of the Alabama Department of Corrections, Limestone Correctional Facility, Alabama)

U.S. District Court
BOOKS
RELIGION

Wares v. *Simmons*, 524 F.Supp.2d 1313 (D.Kan. 2007). A prisoner brought suit pursuant to § 1983, claiming violations of the Fifth Amendment and the free exercise clause of the First Amendment, arising from the prison defendants' prohibition on his possession of certain religious texts. The court granted summary judgment in favor of the defendants. The court held that the prisoner's exercise of his religion was not substantially burdened by prison regulations preventing him from possessing a Psalm book (which he had in another form) and a book of teachings by a particular rabbi, and therefore his rights under the free exercise clause of the First Amendment were not violated. According to the court, by virtue of the other religious materials and items that the prisoner was permitted to possess and ceremonies that he was permitted to engage in, his religious conduct or expression was not significantly inhibited or constrained, he remained able to express adherence to his faith, and he had a reasonable opportunity to exercise his sincerely-held religious beliefs. The court found that even if the prisoner's exercise of his religion was substantially burdened by the prison regulations, prison administrators did not violate the prisoner's First Amendment rights since they identified legitimate penological interests in security, safety, rehabilitation, and sound correctional management that justified the impinging conduct, and alternative means of achieving the prisoner's right to freely exercise his religion were available. (Hutchinson Correctional Facility, Kansas)

U.S. Appeals Court
BOOKS
RELIGION

Washington v. *Klem*, 497 F.3d 272 (3rd Cir. 2007). A prisoner filed a pro se action against a Department of Corrections (DOC), pursuant to § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging the DOC's policy of only allowing ten books in a prisoner's cell violated his religious exercise. The district court granted summary judgment in favor of the DOC and the prisoner appealed. The appeals court reversed and remanded. The court held that the policy "substantially burdened" the prisoner's religious exercise under RLUIPA, since the prisoner could not practice his religion in the absence of reading 4 books per day about Africa and African people and then proselytizing about what he had read. The court noted that the DOC allowed only one weekly visit to the prison library which precluded the prisoner from reading 4 books daily, or 28 books per week, that the DOC provided no evidence that the prisoner could freely trade books located inside the prison, and that the DOC forced the indigent prisoner to have outsiders continuously mail books to him which severely inhibited his ability to read 4 new books daily. The court found that the valid interests of the DOC in the safety and health of prisoners and DOC employees were not furthered by the DOC's policy of limiting the prisoner to 10 books in his cell, as required to uphold the policy against the prisoner's claim that the policy violated RLUIPA by substantially burdening his religious exercise. The court concluded that the book limitation policy did not decrease the likelihood of fire or hiding places for contraband in a cell, given the DOC's permission for the prisoner to have magazines and newspapers in addition to the 10 books. The court also held that the policy was not the least restrictive means of achieving the DOC's valid interests in safety and health, as required to uphold the policy against the prisoner's challenge, given the DOC's other policies allowing the prisoner to have 4 storage boxes of personal property in his cell and permitting more than 10 books if approved for educational purposes. According to the court, the least restrictive means would have been to allow the prisoner to choose what property he could keep in his storage units, as long as the property did not violate a prison policy for an independently legitimate reason. (State Correctional Institution-Retreat, Pennsylvania)

U.S. District Court
CLASSIFICATION
SAFETY
SEGREGATION

Basciano v. *Lindsay*, 530 F.Supp.2d 435 (E.D.N.Y. 2008). A pretrial detainee petitioned for a writ of habeas corpus seeking an order lifting special administrative measures governing his confinement and releasing him from a special housing unit back into the general prison population. The district court denied the petition. The court held that the restrictive conditions of pretrial confinement which removed the detainee from the general prison population, did not amount to punishment without due process. The court noted that there was substantial evidence of the detainee's dangerousness, a rational connection between the conditions and a legitimate purpose of protecting potential victims, and the existence of an alternative means for the detainee to exercise his right to communicate with others and with counsel. (Metropolitan Detention Center, Brooklyn, New York)

U.S. Appeals Court
SAFETY
TRANSPORTATION

Brown v. Fortner, 518 F.3d 552 (8th Cir. 2008). A former inmate brought a § 1983 action against correction officers alleging deliberate indifference by failing to provide safe transportation. The district court denied the officers' claims of qualified immunity and denied their motions for summary judgment. The officers appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that evidence that a correction officer transporting inmates as part of a convoy refused to fasten the inmate's seatbelt knowing that he could not do so himself because of his shackles, and drove recklessly while ignoring requests to slow down, was sufficient for a reasonable jury to conclude that the officer manifested deliberate indifference for the inmate's safety in violation of the Eighth Amendment. The court found that another correction officer who was driving a vehicle as part of the convoy who drove too fast and followed the lead vehicle too closely did not act with deliberate indifference for the safety of the inmate passenger in the lead vehicle, even though the officer's driving proximately caused a multiple vehicle rear-end accident which resulted in the inmate's injuries, absent evidence that the officer was asked to slow down and refused, or that the officer knew that the inmate had been denied a seatbelt. (Missouri Department of Corrections)

U.S. District Court
SEARCHES

Bullock v. *Sheahan*, 568 F.Supp.2d 965 (N.D.Ill. 2008). Two county inmates who were ordered released after being found not guilty of the charges against them brought an action individually and on behalf of a class against a county sheriff and county, challenging the constitutionality of a policy under which male inmates, in the custody of the Cook County Department of Corrections (CCDC), were subjected to strip searches upon returning to CCDC after being ordered released. The district court held that male inmates in the custody of CCDC who were potentially discharged were similarly situated to female potential discharges, as supported the male inmates' claim that the county's policy of strip searching all male discharges and not all female discharges violated the Equal Protection Clause. The court noted that the two groups of inmates were housed within the same facility, there were varying security classifications within each group that corresponded to each other, statistics concerning inmate violence clearly indicated that it took place among female as well as male inmates, and the county's primary justification for distinguishing between male and female discharges, namely, its alleged inability to hold them in a receiving, classification, and diagnosis center (RCDC) while their records were reviewed, was a logistical rather than a security concern. The court found that the county's blanket strip search policy for male discharged inmates was not substantially related to the achievement of important governmental objectives--jail safety and security--and thus the policy deprived male discharges of their constitutional right to equal protection. The court noted that female discharges were just as capable of importing contraband into the jail as their male counterparts. (Cook County Dept. of Corrections, Illinois)

U.S. District Court
CONTRABAND
VISITS

Carter v. *Federal Bureau of Prisons*, 579 F.Supp.2d 798 (W.D.Tex. 2008). A prison visitor filed an action against the federal Bureau of Prisons (BOP) and the United States Department of Justice under the Federal Tort Claims Act (FTCA) claiming wrongful denial of inmate visitation. The district court dismissed the case for lack of subject matter jurisdiction. The court held that the United States had to be named as a defendant in an action under the Federal Tort Claims Act (FTCA) and that the plaintiff visitor had to provide grounds for relief under Texas law in order to recover. The plaintiff had traveled from Illinois to the Greater El Paso area “for the purpose of visiting her husband,” who at the time was a prisoner at the BOP’s Federal Satellite Low La Tuna facility. She alleged that upon arriving at La Tuna, a BOP agent selected her for contraband testing pursuant to a mandate from the Director and testing was accomplished using a device called the Ion Spectrometer. The test was positive and the plaintiff was denied visitation with her husband. (Low La Tuna Facility, Federal Bureau of Prisons, Texas)

U.S. District Court
CONTRABAND
SEARCHES

Collins v. *Knox County*, 569 F.Supp.2d 269 (D.Me. 2008). A female arrestee brought a § 1983 action against a county, sheriff, and corrections officers, alleging an unconstitutional policy and/or custom and practice of conducting a strip search and visual body cavity search of every person taken into custody at the jail. The district court granted summary judgment for the defendants. The court held that the county did not have an unconstitutional strip search policy or custom at the county jail, and that the sheriff did not acquiesce to a policy or practice of unconstitutional strip searches. The court found that there was no evidence of an unconstitutional policy and/or custom and practice of conducting a strip search and visual body cavity search of every person taken into custody at the county jail, as required for the arrestee to establish a § 1983 claim against the county. The court found that the strip search of the female arrestee upon her admission to jail after self-surrendering on an outstanding felony arrest warrant was reasonable under the Fourth Amendment. The court found that the search was based on a drug charge in her inmate file, the fact that she made a planned admission to jail which provided the opportunity to conceal contraband, and that she was going to be housed overnight at the jail, which had a problem with contraband. The search was performed by a female officer in the changing area of the shower stall adjacent to the booking area, which was mostly shielded from view by a plastic curtain. (Knox County Jail, Maine)

U.S. District Court
LOCK DOWN
SEARCHES
TRANSPORTATION
VISITS

Davis v. *Peters*, 566 F.Supp.2d 790 (N.D.Ill. 2008). A detainee who was civilly committed pursuant to the Sexually Violent Persons Commitment Act sued the current and former facility directors of the Illinois Department of Human Services' (DHS) Treatment and Detention Facility (TDF), where the detainee was housed, as well as two former DHS Secretaries, and the current DHS Secretary. The detainee claimed that the conditions of his confinement violated his constitutional rights to equal protection and substantive due process. After a bench trial, the district court held that: (1) the practice of searching the detainee prior to his visits with guests and attorneys violated his substantive due process rights; (2) the practice of using a “black-box” restraint system on all of the detainee's trips to and from court over a 15-

month period violated his substantive due process rights; and (3) the detainee would be awarded compensatory damages in the amount of $30 for each hour he wore the black box in violation of his rights. The court found that a 21-day lockdown following an attempt at organized resistance by a large number of detainees at the facility, shortly after the breakout of several incidents of violence, was not outside the bounds of professional judgment for the purposes of a substantive due process claim asserted by the detainee. The court noted that strip searches of a detainee prior to his court appearances and upon his return to the institution did not violate substantive due process, where detainees were far more likely to engage in successful escapes if they could carry concealed items during their travel to court, and searches upon their return were closely connected with the goal of keeping contraband out of the facility. The court held that the practice of conducting strip searches of the detainee prior to his visits with guests and attorneys was not within the bounds of professional judgment, and thus, violated the detainee's substantive due process rights, where the only motivation for such searches appeared to be a concern that a detainee would bring a weapon into the meeting, and most weapons should have been detectable through a pat-down search. (Treatment and Detention Facility, Illinois)

U.S. Appeals Court
FACIAL HAIR
HAIR LENGTH
RELIGION

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 court noted that the district court's finding that the corrections department director's expert testimony that male inmates presented greater security risks than female inmates was credible, and was not clearly erroneous. The court found that a policy that generally prohibits inmates from wearing beards, which prevented the inmate from refraining from "rounding the corners" of his beard, did not violate RLUIPA, even though inmates with medical conditions were allowed to have a quarter-inch beard. The court ruled that safety and security concerns constituted a compelling penological interest, and the prohibition was the least restrictive means available to further that interest. The court found that the beard policy did not violate the inmate's free exercise or equal protection rights. 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
RELIGIOUS ARTICLES
RELIGIOUS SERVICES
SAFETY
STAFFING

Fowler v. *Crawford*, 534 F.3d 931 (8th Cir. 2008). A state prisoner brought an action against prison officials, alleging that the officials' refusal to grant him access to a sweat lodge in which to practice his Native American faith violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment to the prison officials. The prisoner appealed. The appeals court affirmed. The court held that the prohibition on the sweat lodge on the grounds of a maximum-security prison was in furtherance of a compelling governmental interest, and that the ban was the least restrictive means by which to further that compelling interest. The court noted that serious safety and security concerns arose due to the burning of embers and hot coals, blunt instruments such as split wood and large scalding rocks, sharper objects such as shovels and deer antlers, and an enclosed area inaccessible to outside view, and the sweat lodge would have drained prison security's manpower over the 6 to 7 hour duration of the ceremony. The court noted that even though another prison within the state had previously operated a sweat lodge, ordering every prison to do so would result in a requirement that every institution within the jurisdiction accommodate inmates of the Native American faith, which would discourage officials from accommodating other religious practices, knowing that all institutions would likely have to accommodate the same practices. Prison officials had suggested alternatives to, and sought a compromise with, the prisoner to no avail, offering him an outdoor area where he could smoke a ceremonial pipe and practice other aspects of his faith in open view. The prisoner rejected anything short of a sweat lodge with a minimum of 17 times per year. (Jefferson City Correctional Center, Missouri)

U.S. Appeals Court
RELIGIOUS SERVICES

Greene v. *Solano County Jail*, 513 F.3d 982 (9th Cir. 2008). A former prisoner sued a county jail official asserting statutory and constitutional challenges to the county jail's policy of prohibiting maximum security prisoners from participating in group worship. The district court entered summary judgment for the official and the prisoner appealed. The appeals court reversed in part, vacated in part, and remanded. The court held that the religious exercise at issue in the prisoner's suit under the Religious Land Use and Institutionalized Persons Act (RLUIPA) was engaging in group worship, not practicing his religion as a whole. Therefore, even if the ban on group worship did not place a substantial burden on the prisoner's practice of Christianity, such fact would not ensure that ban was in compliance with RLUIPA. According to the court, the jail's policy of prohibiting the maximum security prisoner from attending group religious worship services substantially burdened the prisoner's ability to exercise his religion as required for the ban to violate RLUIPA. The court found that summary judgment was precluded by genuine issues of material fact as to whether the jail's policy was the least restrictive means of maintaining security. (Solano County Jail, Claybank Facility, California)

U.S. Appeals Court
CLASSIFICATION
GANGS

Howard v. *Waide*, 534 F.3d 1227 (10th Cir. 2008). An inmate brought claims against several Colorado Department of Corrections (CDOC) employees and a grievance officer pursuant to § 1983, alleging deliberate indifference in violation of the Eighth Amendment. The district court granted the grievance officer's motion to dismiss and granted the other defendants' motions for summary judgment, and the inmate appealed. The appeals court affirmed in part, reversed in

part, and remanded. The court held that the inmate established an objective substantial risk of serious harm, as required for his Eighth Amendment deliberate indifference claim, by alleging that he had previously been targeted by a notorious prison gang because of his build and sexual orientation, that he was threatened, sexually assaulted, and prostituted against his will by members of this gang, and was later transferred to a different facility for his own safety, and, that after arriving at the new facility, he was identified by a member of the same prison gang who had assaulted him in the past and was housed in a less-restrictive area of the prison where it was easier for gang members to assault him. The court found that summary judgment was precluded by genuine issues of material fact as to whether the corrections' employees had subjective knowledge of a significant risk of substantial harm to the inmate. The court also found that summary judgment was precluded by genuine issues of material fact as to whether the employees responded to the known risk to the inmate by a prison gang in a reasonable manner. (Sterling Correctional Facility, Colorado)

U.S. District Court
HAIR LENGTH
RELIGION

Johnson v. ***Collins***, 564 F.Supp.2d 759 (N.D.Ohio 2008). A state prisoner brought a civil rights suit against a prison warden and others, seeking injunctive relief against the enforcement of a prison policy that banned the wearing of shoulder-length dreadlocks. The district court denied the warden's motion for judgment on the pleadings. The court held that the possibility that the prisoner could show that the warden, by adhering to a prison policy that prohibited the wearing of shoulder-length dreadlocks for security reasons, was continuing to violate the prisoner's federal rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) by substantially burdening the exercise of his Rastafarian religion, precluding the Eleventh Amendment from barring the suit seeking injunctive relief against the warden in his official capacity. The court found that the warden was not entitled to qualified immunity as a government official performing discretionary functions on the claim that he substantially burdened the prisoner's rights under RLUIPA to practice his Rastafarian religion. The court held that the prisoner's suit for injunctive relief against ongoing enforcement of the prison policy banning the wearing of shoulder-length dreadlocks was not mooted by his transfer to another prison within the same state system, nor did a change in the prison grooming code to allow for religious-based exemptions. (Madison Correctional Institution, Toledo Correctional Institution, Mansfield Correctional Institution, Lebanon Correctional Institution, Ohio)

U.S. District Court
PUBLICATIONS

Johnson v. ***Raemisch***, 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
SEARCHES

Jones v. ***Murphy***, 567 F.Supp.2d 787 (D.Md. 2008). A male arrestee brought a class action, alleging that a booking facility's policy of frisking female arrestees while searching male arrestees down to their underwear violated the equal protection clause of the Fourteenth Amendment. The district court granted summary judgment for the arrestee, finding that the booking facility's gender-differentiated search policy was not reasonably related to a legitimate penological interest in preventing arrestees from bringing weapons into the booking facility, and thus violated the equal protection clause of the Fourteenth Amendment. The court noted that the additional staff needed to more thoroughly search female arrestees was not overly burdensome, and searching all arrestees to their last layer of clothing was a readily available constitutional alternative. (Baltimore City Central Booking, Maryland)

U.S. District Court
CONTRABAND
VISITS

King v. ***Caruso***, 542 F.Supp.2d 703 (E.D. Mich. 2008). The wife of a state prison inmate brought suit against prison officials alleging violation of her First Amendment rights, her Equal Protection rights, and her Fourteenth Amendment due process rights when her visitation rights were withdrawn for attempting to smuggle a cell phone into an institution. The district court granted summary judgment for the defendants. The court held that termination of the spouse's visitation rights did not violate her First Amendment right to freedom of association nor did it infringe upon any liberty interest for purposes of procedural or substantive due process. The court noted that a hearing on the cutoff of visitor's rights could be conducted by a division of the Department of Corrections and that hearing procedures did not deny the spouse procedural due process with respect to any liberty interest she might possess. The court found that the termination was reasonably related to penological interests and did not violate equal protection. (Chippewa Correctional Facility, Michigan)

U.S. Appeals Court
GANGS
PROTECTION
SEPARATION

Klebanowski v. ***Sheahan***, 540 F.3d 633 (7th Cir. 2008). A detainee who was being held for trial brought a § 1983 action against a sheriff, a jail and its officers, alleging deliberate indifference to risks of housing gang members with non-gang members, which caused attacks on the detainee by gang members. The detainee had suffered two attacks at the hands of his fellow prisoners. The defendants moved for summary judgment. The district court granted the motion and the detainee appealed. The appeals court affirmed. The court held that the allegation by the detainee that his attack by gang members was brought on by the jail's policy of housing gang members with non-gang members, allowing them weapons, and periodically leaving them unattended, did not sufficiently establish an unconstitutional policy, for purposes of establishing deliberate indifference in violation of due process in his § 1983 action. According to the court, the detainee submitted no evidence showing an express endorsement of the claimed policies, that any policymaker caused the circumstances of which he complained, or any evidence to establish the existence of a widespread practice by the jail. The court found that jail officers were not deliberately indifferent to the detainee in violation of due process by not taking steps to protect the detainee from attack by gang members. The court held that the detainee's statements to officers prior to the attack, that he was afraid for his life, were not sufficient to alert the

officers to a specific threat as he did not provide specific identities of those who had threatened him, did not tell officers he had actually been threatened with future violence, nor that the attack had been inflicted due to his non-gang status. (Cook County Jail, Illinois)

U.S. District Court
CLOTHING
RELIGIOUS ARTICLES

Lewis v. ***Ollison***, 571 F.Supp.2d 1162 (C.D.Cal. 2008). A state prisoner filed a § 1983 action against prison officials, alleging violation of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court held that a temporary shower policy of escorting prisoners from their cells to the shower room and back wearing only boxer shorts and shower shoes, which was adopted by the prison due to security concerns, created at most an inconvenience, but not a significant interference with the Islamic religious clothing requirement. The clothing requirement directs Muslim men to exercise modesty by covering their "awrah," which is a portion of the body from the navel to the knee, from others' gaze. The court found that the policy did not violate RLUIPA, since Muslims did not have to shower every day to practice their religion and the prisoner could have cleansed himself in his cell sink. The court also found that the policy was reasonably related to a legitimate penological interest in maintaining prison safety and security. The court held that the rights of the Muslim prisoner under RLUIPA to practice his religion of Islam had not been subjected to a substantial burden by the policy that limited the prisoner to the possession of no more than 12 ounces of scented oil in his cell, and limited him to buying no more than 8 ounces of scented oil per purchase order. According to the court, the rule had been drafted after consultation with a Muslim imam and permitted prisoners to be in the possession of religious prayer oil that served their religious purposes for many weeks, if not many months. (Ironwood State Prison, California)

U.S. Appeals Court
RELIGIOUS SERVICES
STAFFING

Mayfield v. ***Texas Dept. of Criminal Justice***, 529 F.3d 599 (5th Cir. 2008). A state prisoner, who practiced the Odinist/Asatru faith, brought claims pursuant to § 1983 against a state criminal justice department and prison officials, alleging First Amendment violations, as well as violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the defendants' motion for summary judgment, and appeal was taken. The appeals court affirmed in part, vacated in part, reversed in part, and remanded. The court held that the claims brought by the prisoner pursuant to the § 1983 action alleging First Amendment violations and pursuant to RLUIPA seeking declaratory relief as well as a permanent injunction against prison officials in their official capacity were not barred by sovereign immunity. The court found that the prisoner's claims for compensatory damages against prison officials in their official capacity on claims brought pursuant to § 1983 alleging First Amendment violations and RLUIPA violations were barred by the provision of the Prison Litigation Reform Act (PLRA) prohibiting actions for mental or emotional injury suffered while in custody without a prior showing of physical injury. According to the court, a state criminal justice department's regulation of not allowing an Odinist group to assemble for religious services in the absence of an outside volunteer was reasonably related to a legitimate penological interest, for the purposes of determining whether the regulation encroached on the prisoner's First Amendment right to free exercise. The court noted that officials asserted justifications for the volunteer requirement that involved prison security concerns, as well as staff and space limitations. The court held that summary judgment for the state was precluded by a genuine issue of material fact as to the neutrality of the prison's enforcement of the policy of not allowing religious groups to assemble for religious services in the absence of an outside volunteer. The court also found that summary judgment was precluded by genuine issues of material fact as to whether rune literature was banned from the prison library, as to whether the prison's policy of not allowing the Odinist group to assemble for religious services in the absence of an outside volunteer imposed a substantial burden on the prisoner's religious exercise, and as to whether the prison's policy of preventing the possession of runestones substantially burdened the prisoner's religious exercise. (Texas Department of Criminal Justice, Hughes Unit)

U.S. District Court
EXERCISE

Norwood v. ***Woodford***, 583 F.Supp.2d 1200 (S.D.Cal. 2008). A state inmate filed an action alleging that prison officials deprived him of outdoor exercise, in violation of the Eighth Amendment, and retaliated against him for asserting his right to be free from harm, in violation of the First Amendment. The officials moved to dismiss the complaint. The district court granted the motion in part and denied in part. The court held that the allegation that the inmate was deprived of outdoor exercise for 39 days was sufficient to satisfy the objective component of his Eighth Amendment claim. According to the court, the issue of whether state prison officials acted with deliberate indifference when they denied the inmate any outdoor exercise for a 39-day period during an alleged emergency lockdown situation involved fact questions that could not be resolved on a motion to dismiss. The court noted that it was clearly established at the time of the deprivation that state prison officials' denial of outdoor exercise for inmates for an extended period of time could constitute an Eighth Amendment violation, and thus the officials were not entitled to qualified immunity from liability. (Calipatria State Prison, California)

U.S. District Court
RELIGIOUS SERVICES

Pugh v. ***Goord***, 571 F.Supp.2d 477 (S.D.N.Y. 2008). State prisoners sued prison officials, alleging violations of their constitutional and statutory rights to free exercise of Shi'a Islam and to be free from the establishment of Sunni Islam. Following remand from the appeals court, the plaintiffs moved for summary judgment. The district court granted the motions in part and denied in part. The court held that one prisoner's claim for injunctive relief qualified for a "capable of repetition, yet evading review" exception, and therefore was not rendered moot by his transfer to another facility. The court noted that the corrections department had the ability to freely transfer the prisoner between facilities prior to the full litigation of his claims, and there was a reasonable expectation that the prisoner would be subject to the same action again, given that the department's policies were applicable to all of its prison facilities. The court held that summary judgment was precluded by genuine issues of material fact as to whether the corrections department's regulations relating to Shi'ite prisoners, which failed to provide for Friday prayer services independent of Sunni participation, were reasonably related to legitimate penological interests. The court also held that genuine issues of material fact existed as to whether the corrections department was able to accommodate Shi'ite prisoners so as not to violate their rights under the Establishment Clause at de minimis cost. The court held that summary judgment was precluded by genuine issues of material fact as to whether the Shi'ite prisoners' religious beliefs were substantially burdened by attendance at a Sunni-led, Sunni-dominated Friday Jumah service, and/or use of a Zohr prayer as a substitute for attending Jumah services. According to the court, summary judgment was precluded by genuine issues of material fact as to whether a prison policy denying Shi'ite prisoners Friday prayer

services independent of Sunni participation was the least restrictive means of furthering a compelling government interest, precluding summary judgment in the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court held that the state did not waive immunity under the Eleventh Amendment as to money damages by accepting federal funds pursuant RLUIPA. The court found that Shi'ite prisoners' right to a reasonable opportunity to worship by way of separate Jumah services for Shi'ites and Sunnis was clearly established, for the purposes of determining whether prison officials were qualifiedly immune from the prisoners' free exercise claim. (New York State Department of Correctional Services, Mid-Orange Correctional Facility and Fishkill Correctional Facility)

U.S. District Court
EXERCISE
SEARCHES

Sanchez Rodriguez v. ***Departamento de Correccion y Rehabilitacion***, 537 F.Supp.2d 295 (D.Puerto Rico 2008). An inmate filed a § 1983 action alleging that Puerto Rico prison officials denied him his constitutional right to enjoy daily recreational time outside of his cell because he refused to submit to visual body cavity searches. After dismissal of his complaint, the inmate filed a motion for reconsideration. The district court denied the motion. The court held that the searches did not constitute cruel and unusual punishment. According to the court, the requirement that inmates submit to visual body cavity searches in order to leave their cells for recreation was needed to preserve internal order and institutional security, and thus did not constitute cruel and unusual punishment in violation of the Eighth Amendment. (Maximum Security Prison, Ponce, Puerto Rico)

U.S. District Court
FIRE SAFETY

Shine v. ***Hofman***, 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 district court dismissed in part. The court found that allegations by the detainee that state officials failed to provide adequate fire sprinklers or access to fire extinguishers stated a claim for violation of the detainee's due process rights. The court held that the detainee's allegations that he was subjected to segregation, and that the conditions of segregation included a small cell with no windows and no opportunity to interact with other human beings, did not state a claim for violation of the due process clause. The court noted that prisons may impose restrictions on pretrial detainees so long as those restrictions are related to a non-punitive governmental purpose. (Vermont Department of Corrections)

U.S. District Court
RELIGIOUS ARTICLES
RELIGIOUS SERVICES

Sisney v. ***Reisch***, 533 F.Supp.2d 952 (D.S.D. 2008). A state inmate brought an action under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging corrections officials refused to make various accommodations for his practice of the Jewish religion. The district court held that the State of South Dakota, by accepting Federal prison funding, waived its Eleventh Amendment immunity in claims for monetary damages under RLUIPA. The court found that the officials' denial of the inmate's request for a permanent space for Jewish inmates' religious services did not impose a substantial burden on his exercise of the inmate's religion. The court noted that the inmate admitted that Jewish inmates had sufficient space for their services and that lack of a permanently designated room for their services did not prevent him from practicing his religion.

The court also found that summary judgment was precluded by fact issues as to whether officials' denial of the inmate's request, that Jewish inmates be given additional time to conduct group Torah, Kabalistic and language studies, was the least restrictive means of furthering any legitimate penological interest. The court found that officials' denial of the inmate's request to possess and use a lightbulb diffuser and to use oils and burn herbs in his cell appeared to be the least restrictive means for furthering a compelling governmental interest, where diffusers posed a serious fire hazard, other inmates and staff might be allergic to the fumes or find the aroma offensive, and they could be used to conceal prohibited activities such as smoking. (South Dakota State Penitentiary)

U.S. District Court
SEARCHES

Streeter v. ***Sheriff of Cook County***, 576 F.Supp.2d 913 (N.D.Ill. 2008). Current or former pretrial detainees filed a class action under § 1983 against a county sheriff and the county, challenging a strip search policy at the county jail, alleging it violated their Fourth and Fourteenth Amendment rights. The district court denied summary judgment for the defendants. The court held that the detainees stated a claim for violation of their Fourth Amendment rights in connection with group strip searches that were allegedly conducted in an unreasonably intrusive manner and went on longer than penologically necessary. The court also found that the detainees stated a claim for violation of their rights under the Due Process Clause of the Fourteenth Amendment in connection with group strip searches that were allegedly conducted in a manner intended to humiliate and embarrass the detainees, and that went on longer than necessary. (Cook County Jail, Illinois)

U.S. District Court
CONFIDENTIAL
INFORMATION
SEX OFFENDER

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. The court found that jail officials did not act with deliberate indifference to the inmate's safety, in violation of the Eighth Amendment, in connection with a corrections officer's alleged disclosure to other inmates that the inmate had been charged with rape. The court noted that following the disclosure, the inmate spoke with a captain who agreed to, and did remove another inmate who had allegedly taunted him about the rape charge from the inmate's housing unit. The inmate was not harmed, or placed in imminent danger, as a result of the disclosure. According to the court, disclosure to other inmates that the inmate had been charged with rape did not violate any of the inmate's privacy rights, since the information was not privileged or otherwise protected, and the inmate was also a sentenced offender under the authority of the New York State Department of Correctional Services. (Steuben County Jail, New York)

U.S. District Court
LIGHTING

Walker v. ***Woodford***, 593 F.Supp.2d 1140 (S.D.Cal. 2008). A state prisoner filed a civil rights action against a prison and its personnel alleging that prison officials violated his Eighth Amendment rights by refusing to turn off the lights in their cells. The defendants filed a motion for summary judgment. The district court granted the motion. The court held that the prisoner had to present evidence showing that the prison's 24-hour illumination policy was the cause of his insomnia or related problems before the prison could be required to explain why legitimate penological interests justified it. According to the court, the prisoner's testimony did not establish that the illumination caused the unnecessary and wanton infliction of pain, or that prison personnel were deliberately indifferent to his serious medical needs in not modifying the illumination policy. The court found that prison officials were not plainly incompetent in requiring low-level lighting in prison cells 24 hours per day for security purposes. (Calipatria State Prison, California)

U.S. District Court
CONTRABAND
SAFETY

Warren v. ***Goord***, 579 F.Supp.2d 488 (S.D.N.Y. 2008). An inmate brought a § 1983 suit against corrections officials for failure to protect him from harm from other prisoners, in violation of his Eighth Amendment rights. The district court granted summary judgment for the defendants. The court held that the officials' failure to install metal detectors at the entrance to a recreation yard where an inmate was assaulted by other prisoners would not support the imposition of § 1983 liability on the inmate's Eighth Amendment claim, absent evidence that the officials did not take reasonable measures to address the risk that prisoners would carry weapons into the yard or that the presence of metal detectors would have significantly alleviated the risk. The court noted that other security measures were in place to address the dangers of attacks in the yards, including random frisks and metal detector screenings, more extensive screenings when alerted to specific dangers, and placement of prison officers in the yard during exercise periods. (Green Haven Correctional Facility, New York)

U.S. District Court
SECURITY PRACTICES

Washpon v. ***Parr***, 561 F.Supp.2d 394 (S.D.N.Y. 2008). An arrestee brought an action under § 1983 against court officers alleging false arrest, illegal search, malicious prosecution, denial of equal protection, excessive force, and violation of free speech. The district court granted summary judgment for the officers in part and denied in part. The court held that any restrictions on the arrestee's speech inside the courthouse were reasonable under the First Amendment in light of her admitted failure to pass through security or to comply with officers' orders to leave the building, absent evidence that government regulation of speech inside the courthouse amounted to viewpoint discrimination. At one point during the incident the arrestee allegedly “proceeded to speak in a loud manner, using profanity.” (Bronx County Criminal Court, New York)

U.S. District Court
CONTRABAND
SEARCHES

Williams v. ***Fitch***, 550 F.Supp.2d 413 (W.D.N.Y. 2008). A state inmate filed a § 1983 action alleging that corrections officers sexually abused him. The district court dismissed the case. The court held that the officers did not violate the inmate's Eighth Amendment rights by searching and handling his penis on three occasions while searching for contraband. The court noted that X-rays showed the presence of a metal object in the foreskin of the inmate's penis, and the searches were undertaken in a private location, without undue physical intrusion, humiliation, or physical injury. (Attica Correctional Facility, New York)

2009

U.S. District Court
RESTRAINTS
SECURITY PRACTICES
SEGREGATION

Bowers v. ***Pollard***, 602 F.Supp.2d 977 (E.D.Wis. 2009). An inmate brought a § 1983 action against correctional facility officials, challenging the conditions of his confinement. The court held that the correctional facility's enforcement of a behavior action plan that regularly denied the inmate a sleeping mattress, occasionally required him to wear only a segregation smock or paper gown, and subjected him to frequent restraint did not deny the inmate the minimal civilized measure of life's necessities and was targeted at his misconduct, and thus the plan did not violate the inmate's Eighth Amendment rights. The court noted that the inmate's cell was heated to 73 degrees, he was generally provided some form of dress, he was granted access to hygiene items, and he was only denied a mattress and other possessions after he used them to perpetrate self-abusive behavior, covered his cell with excrement and blood, and injured facility staff. The court held that the state Department of Corrections' regulations governing procedures for placing an inmate on observational status to ensure his safety and the safety of others, and the procedures for utilizing restraints for inmate safety were sufficient to protect the inmate's liberty interest in avoiding an erroneous determination that his behavior required such measures. The procedures governing observational status required the inmate to be orally informed of the reasons for placement on the status and prohibited placement for more than 15 days without an evidentiary hearing. The procedures governing restraints prohibited restraining an inmate for more than a 12-hour period. (Green Bay Correctional Institution, Wisconsin)

U.S. District Court
SEARCHES
SECURITY PRACTICES

Bullock v. ***Dart***, 599 F.Supp.2d 947 (N.D.Ill. 2009). Inmates filed a § 1983 action challenging the constitutionality a county's policies of performing blanket strip searches on male, but not female, inmates returning to county jail from court hearings at which charges against them were dismissed, and of providing privacy screens for female discharges but not male discharges. After entry of summary judgment in the inmates' favor, the defendants moved for reconsideration. The district court granted the motion in part. The court held that male inmates were similarly situated to female potential discharges. The court found that fact issues remained as to whether the county's policies were justified, and whether security considerations prevented the county from segregating inmates against whom charges had been dismissed before they returned to their divisions. The defendants asserted that the much greater number of male inmates in county custody and the differences in the nature and frequency of dangerous incidents in each population justified the policy. The court held that the county's policy and practice of segregating female possible discharges from the remainder of female court returns, such that female actual returns could elect to avoid strip searches, but not segregating male possible discharges in a similar manner, was not gender-neutral on its face, for the purposes of the Equal Protection Clause. (Cook County Department of Corrections, Illinois)

U.S. District Court
ITEMS PERMITTED
SEARCHES-CELL
TELEPHONE

Cox v. ***Ashcroft***, 603 F.Supp.2d 1261 (E.D.Cal. 2009). A prisoner brought a § 1983 action against the United States Attorney General, several federal prosecutors, and the owner and employees of a privately-owned federal facility in which the prisoner was incarcerated, alleging constitutional violations arising from his arrest, prosecution, and incarceration. The district court dismissed the action. The court held that the prisoner did not have any Fourth Amendment rights to privacy in his cell, and thus did not suffer any constitutional injury as a result of the search of

his cell and the confiscation of another inmate's legal materials. The court found that the prisoner lacked standing to bring a claim against the warden of a privately-owned federal prison facility, alleging that paying the prisoner at a rate below minimum wage violated the Fair Labor Standards Act (FLSA). The court noted that prisoners were not "employees" within the meaning of FLSA. (Taft Corr. Institution, Wackenhut Corrections Corporation, California)

U.S. District Court
SAFETY
REGULATIONS
SECURITY PRACTICES
STAFFING

Estate of Gaither ex rel. Gaither v. ***District of Columbia***, 655 F.Supp.2d 69 (D.D.C. 2009). The personal representative of the estate of a prisoner, who was killed while incarcerated, brought a § 1983 action against the District of Columbia and several individual officials and jail employees, alleging negligence, deliberate and reckless indifference to allegedly dangerous conditions at a jail, and wrongful death. The district court granted summary judgment in part and denied in part. The court found that summary judgment was precluded by genuine issues of material fact as to: (1) whether the District of Columbia's inmate and detainee classification policies, procedures, and practices were inadequate; (2) whether the District of Columbia's jail staffing policies, procedures, and practices were inadequate; (3) whether the security policies, procedures, and practices were inadequate; (4) whether the District of Columbia adequately trained Department of Corrections officials; and (5) whether officials provided adequate supervision of inmates. (District of Columbia Central Detention Facility)

U.S. District Court
RELIGIOUS SERVICES
SEARCHES

Forde v. ***Zickefoose***, 612 F.Supp.2d 171 (D.Conn. 2009). A federal prisoner petitioned for a writ of habeas corpus, alleging that she was being denied freedom of religious expression, in violation of the First and Fourth Amendments and the Religious Freedom Restoration Act (RFRA). The district court granted the government's motion for summary judgment in part and denied in part. The court held that summary judgment was precluded by issues of fact as to: (1) whether the prisoner's exercise of her religion was substantially burdened by the prison's non-emergency cross-gender pat-down search policy; (2) whether the prisoner's exercise of her religion was substantially burdened by the prison's policy of requiring her to carry an identification photograph that showed her without a hijab to cover her head; and, (3) whether the prisoner's exercise of her religion was substantially burdened by the prison's failure to provide an imam during Ramadan. The court held that the prison's non-emergency cross-gender pat-down search policy did not violate the prisoner's limited right, under the Fourth Amendment, to bodily privacy. According to the court, although the prisoner made a sufficient showing of a subjective expectation of privacy, the expectation would not be considered reasonable by society, since the prison had a legitimate penological interest in security and in providing equal employment opportunities to both male and female staff, and no available further accommodation was reasonable under the circumstances. (Federal Correctional Institution, Danbury, Connecticut)

U.S. Appeals Court
MEDIA ACCESS

Hammer v. ***Ashcroft***, 570 F.3d 798 (7th Cir. 2009). A federal prisoner who was formerly on death row and was housed in a special confinement unit, filed a pro se lawsuit against various officials of the Bureau of Prisons (BOP), alleging that they violated his First Amendment and equal protection rights by enforcing a policy that prevented prisoners in a special confinement unit from giving face-to-face interviews with the media. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed. The court held that the BOP policy that prevented prisoners in special confinement units at maximum security prisons from giving face-to-face or video interviews with the media did not violate the equal protection clause. According to the court, although the BOP did not prevent such media interviews with other prisoners in a less secure confinement, the policy was rationally related to the BOP's need for greater security in situations involving prisoners in special confinement units in maximum security prisons, since media attention could increase tensions among prisoners, leading to an increased risk of violence among the more violent prisoners. The court found that the BOP did not violate the prisoner's free speech rights where the policy was rationally related to the prison's need for greater security in situations involving prisoners in special confinement units in maximum security prisons, since media attention could increase tensions among prisoners, glamorize violence, and promote celebrity, leading to an increased risk of violence. The court noted that the BOP did allow correspondence from prisoners in special confinement units to media representatives, prisoners were free to file lawsuits, and correspondence sent to courts and attorneys by prisoners could not be censored. ("Special Confinement Unit," U.S. Penitentiary, Terre Haute, Indiana)

U.S. Appeals Court
RELIGIOUS SERVICES
SECURITY PRACTICES

Jova v. ***Smith***, 582 F.3d 410 (2nd Cir. 2009). Prisoners brought a pro se action against prison officials alleging violation of their rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment in favor of officials. The prisoners appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the prison's restrictions on the prisoners' practice of the Tulukeesh religion, which limited the practice to the privacy of the prisoner's cell and keeping a holy book with the prison chaplain from whom the prisoners' could seek permission to read it, served prison officials' compelling security and administrative interests, for the purposes of the prisoners' action alleging violation of their rights under RLUIPA. The court held that prison officials' restrictions which allowed a prisoner to serve as a facilitator of meetings only if the religion was known outside of the prison and prohibited the prisoners' demand to spar and receive professional martial arts training, was the least restrictive means of furthering their compelling interests of safety and institutional security, for the purposes of prisoners' action alleging violation of their rights under RLUIPA. According to the court, the restriction struck a delicate balance between allowing prisoners to participate in congregational activities while ensuring the meetings did not serve as proxies for gang recruitment and organization, while furthering the officials' compelling interests in safety and institutional security. (Shawangunk Correctional Facility, New York)

U.S. District Court
CONTRABAND
MAIL
TELEPHONE CALLS

Loret v. ***Selsky***, 595 F.Supp.2d 231 (W.D.N.Y. 2009). An inmate brought a § 1983 action against state correctional officials and employees, alleging procedural due process violations in connection with a prison disciplinary action. The district court granted summary judgment to 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 there were legitimate security reasons for the correctional facility officials' denial of the inmate's request for a recording or transcript of the telephone conversation between him and his son. The conversation formed part of the basis for disciplinary charges against the inmate for conspiracy to smuggle contraband into the facility and for telephone abuse. A package addressed to the inmate had been opened by corrections employees, and was found to contain a quantity of marijuana and some small bottles of liquor. The package was later identified as having been sent to the plaintiff by

his adult son. The court held that the superintendent of the correctional facility was not liable in his individual capacity to the inmate under § 1983 for any due process violations in connection with disciplinary proceedings against the inmate, absent a showing that the superintendent was personally involved in the alleged constitutional deprivation. (Wyoming Correctional Facility, New York)

U.S. District Court
SEARCHES
TRANSFER

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 city's strip search policy at the time. (Washington County Jail, Oregon)

U.S. District Court
EXERCISE
LOCK DOWN
RIOT

Norwood v. ***Woodford***, 661 F.Supp.2d 1148 (S.D.Cal. 2009). A state inmate brought a § 1983 action against prison officials alleging violation of his Eighth Amendment rights when he was denied outdoor exercise for five weeks. The district court granted summary judgment for the defendants. The court held that the inmate's denial of outdoor exercise for a period of five consecutive weeks during a lockdown at the prison supported the objective component of an Eighth Amendment claim for cruel and unusual punishment, but failed to meet the subjective component since the officials did not act with deliberate indifference to his needs. The court noted that the lockdown was instituted after an inmate's death in a prison riot involving the attempted murder of prison staff. According to the court, even though the inmate was transferred to the facility after the riot and was not a participant, the lockdown of all prisoners was necessary to ensure immediate and long-lasting safety to inmates and staff. (California State Prison, Corcoran)

U.S. District Court
LOCKS

Rodriguez-Borton v. ***Pereira-Castillo***, 593 F.Supp.2d 399 (D.Puerto Rico 2009). Relatives of a deceased pretrial detainee brought a § 1983 action against prison officials, requesting damages for constitutional violations culminating in the detainee'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 fact issues as to the lack of adequate inmate supervision and malfunctioning cell locks and cell lights. The court also found an issue of material fact as to whether the Administrator of the Puerto Rico Administration of Corrections (AOC) failed to act with regard to security risks, including malfunctioning door locks, in the annex within which the pretrial detainee was found hanged.

The court also found a genuine issue of material fact as to the prison annex superintendent's failure to remedy supervision problems in housing units where he knew inmates were able to and did move freely in and out of their cells due to malfunctioning door locks. The court held that summary judgment was precluded by a genuine issue of material fact as to a correctional officer's failure to patrol the living area of the annex within which the pretrial detainee was found hanged while he knew inmates were able to freely move around. The court denied qualified immunity to the defendants because it was clearly established at the time of the alleged inaction, and a reasonable prison official working in the system would have known that a lack of supervision, combined with the knowledge that cell locks did not function, would create an obvious and undeniable security risk. (Administration of Corrections of the Commonwealth of Puerto Rico, and Annex 246)

U.S. Appeals Court
CONTRABAND
SEARCHES

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
SEPARATION
TRANSFER

Savage v. *Judge*, 644 F.Supp.2d 550 (E.D.Pa. 2009). Prison inmates brought a civil rights action against prison officials for allegedly violating their civil rights in connection with reassignment of the inmates to different cells and assaults allegedly committed upon them. Inmates not only asserted unlawful retaliation claims, but claimed that officials exercised excessive force in violation of their Eighth Amendment rights and unlawfully conspired to violate their rights. 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 prison officials, in separating the cellmates from each other and in transferring one to another facility, were retaliating against the cellmates for their pursuit of grievances, or were taking necessary action to prevent the cellmates from engaging in homosexual activity in a cell. The court also found a genuine issue of material fact as to how an inmate sustained an injury to his face while he was being transferred to another cell. (Graterford L-Unit- RHU, Pennsylvania Department of Corrections)

U.S. Appeals Court
CONTRABAND
SEARCHES

Serna v. *Goodno*, 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,)

U.S. Appeals Court
RELIGIOUS ARTICLES

Singson v. *Norris*, 553 F.3d 660 (8th Cir. 2009). A prisoner brought an action against a state department of corrections, alleging its policy prohibiting in-cell use of tarot cards violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The prisoner was a follower of Wiccan and asserted that tarot cards were part of his religious practices. Following a trial, the district court ruled in favor of the department of corrections. The prisoner appealed. The appeals court affirmed. The court held that the policy did not violate RLUIPA, where the potential effect of in-cell use of tarot cards on the guards and allocation of prison resources outweighed the restrictions felt by any interested inmate-users. (Arkansas Department of Correction)

U.S. Appeals Court
RELIGIOUS SERVICES
SECURITY PRACTICES

Sossamon v. *Lone Star State of Texas*, 560 F.3d 316 (5th Cir. 2009). A prison inmate brought a civil rights action challenging prison officials' refusal to allow him to participate in religious services while he was on cell restriction, and refusal to make a chapel available for religious services due to security concerns allegedly presented by holding such services in the chapel. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court dismissed as moot in part, reversed in part, affirmed in part and remanded. The court held that the state-wide cessation, in all correctional facilities in Texas, of the policy of preventing general-population prisoners on cell restriction from attending religious services had the effect of mooting the civil rights claim. The court found that the Religious Land Use and Institutionalized Persons Act (RLUIPA) did not create an individual-capacity cause of action in favor of the prison inmate against prison officials who had denied him access to a prison chapel. According to the court, RLUIPA did not provide clear notice that, by accepting federal funds, the state was waiving its sovereign immunity from liability for such monetary damages. The court held that summary judgment was precluded by genuine issues of material fact on the inmate's claims for injunctive relief challenging the denial of access to a chapel. The inmate alleged that his exercise of religion was substantially burdened because he could not use the prison chapel where he could kneel in front of an alter in view of a cross, and due to his being able to attend religious services only at other locations in the prison that were not specifically designed for Christian worship. (Robertson Unit of the Texas Department of Criminal Justice, Correctional Institutions Division)

U.S. Appeals Court
ACCESS TO
ATTORNEY
SECURITY
RESTRICTIONS

U.S. v. *Mikhel*, 552 F.3d 961 (9th Cir. 2009). An alien inmate convicted of capital offenses moved to allow attorney-client access without special administrative measures (SAM) restrictions that allegedly violated the Due Process Clause and Sixth Amendment right to effective assistance of appellate counsel. The appeals court held that modification of the SAM was warranted to permit the attorney to use a translator in a meeting with the inmate, and modification of the SAM was warranted to allow the attorney's investigators to disseminate the inmate's communications. The court also found that modification of the SAM was warranted to allow the attorney's investigator to meet with the inmate. The court found that the SAM was an exaggerated response to the prison's legitimate security interests and unacceptably burdened the inmate's due process and Sixth Amendment rights. (Central District, California)

U.S. Appeals Court
RESTRAINTS

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 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)

2010

U.S. District Court
MAIL
SECURITY
RESTRICTIONS

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. (Admin. Max., Florence, Colorado, Fed. Bureau of Prisons)

U.S. District Court
LOCK DOWN
PRETRIAL DETAINEES
USE OF FORCE

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
LOCK DOWN
RELIGIOUS SERVICES

Chappell v. *Helder*, 696 F.Supp.2d 1021 (W.D.Ark. 2010). An inmate brought a § 1983 suit claiming that religious presentations in a dayroom during lockout times contravened the Free Exercise Clause of the Constitution. The court held that the presentations contravened the inmate's rights under the Free Exercise Clause. The court noted that although he was not told to sit and listen, nor was he forced to participate, there was a forced inculcation in the fact that he was unable to remove himself to a place where he did not have to hear the presentations. The court found that allowing only the "Holy Bible" to be possessed by inmates during a morning lockout violated the inmate's rights under the Establishment Clause, but the inmate's right of meaningful access to the courts was not violated. (Washington County Detention Center, Arkansas)

U.S. Appeals Court
EXPOSURE TO
CHEMICALS
CLEANING SUPPLIES

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. District Court
BOOKS
RELIGIOUS SERVICES

Ciempa v. *Jones*, 745 F.Supp.2d 1171 (N.D.Okla. 2010). An inmate brought claims against state prison officials under § 1983 for alleged violations of the First, Fourth, and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that prison officials did not violate the inmate's First Amendment right to free exercise of religion, RLUIPA, the inmate's due process rights, or equal protection, by denying him access to particular issues of a religious publication based on guidelines prohibiting publications that advocate terrorism, criminal behavior, racial, religious, or national hatred. According to the court, the guidelines were reasonably related to the legitimate penological goal of maintaining order and security, individual review of incoming publications was a rational means of achieving that goal and did not deprive the inmate of all means of exercising his religion, and allowing such materials would have a significant negative impact on other inmates and guards.

The court also found no violation from the officials' denial of access to a book containing instructions for scaling walls, traveling under or over barbed wire, and combat techniques, since preventing the book was the least restrictive means of ensuring that the inmate did not receive information that would facilitate violence or escape.

But the court held that the officials failed to meet their burden to show that prohibiting a book about the warrior ethos and the history of stoicism in the military was the least restrictive means of achieving a compelling interest, as required for summary judgment on the inmate's RLUIPA claim. The court found that prison officials did not violate the inmate's First Amendment rights by denying him meeting space and time in a prison chapel to conduct religious classes or meetings, based on a state-wide policy of denying meeting space and time to the religious group due to the racial and hate filled nature of the materials and doctrine of the group. But the court found that the officials failed to meet their burden to show that banning the religious group from the chapel was the least restrictive means of achieving a compelling interest, as required for summary judgment on the inmate's RLUIPA claim.

According to the court, prison officials' failure to provide the inmate with a Halal diet did not violate his rights under First Amendment or RLUIPA, where the inmate failed to establish that such failure imposed a substantial burden on his religious exercise, since the inmate stated that his religious needs could be satisfied by the provision of a Kosher diet. (Dick Conner Correctional Center, Jess Dunn Correctional Center, Oklahoma)

U.S. District Court
BOOKS

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. District Court
ESCAPE
SECURITY PRACTICES

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
DISTURBANCE
SEX OFFENDER
USE OF FORCE

Enriquez v. *Kearney*, 694 F.Supp.2d 1282 (S.D.Fla. 2010). A civil detainee brought a pro se civil rights action against correctional facility officers and physicians, asserting claims for excessive force. The officers and physicians moved for summary judgment. The district court granted the motion. The court held that officers did not use excessive force against the civil detainee in violation of his due process rights by spraying him with pepper spray, handcuffing him, and escorting him from a detention unit in restraints, where the detainee did not sustain any serious injury, and the decision to use pepper spray was only made after officers attempted for more than one hour to verbally convince the detainee to cooperate and leave the unit where his interaction with officers was causing a disturbance. The court noted that there was no indication that the force was imposed as punishment rather than in a good faith effort to further the need to maintain order and security on a unit where numerous sexually violent predators (SVPs) were held. (Florida Civil Commitment Center, Arcadia, Florida)

U.S. Appeals Court
PUBLICATIONS

Farid v. *Ellen*, 593 F.3d 233 (2nd Cir. 2010). A state prisoner brought suit against correctional officials under § 1983, alleging that he was deprived of rights protected by the First Amendment when he was disciplined by prison officials for possessing and distributing a booklet of which he was the principal author. The district court granted in part and denied in part the parties' summary judgment motions. The parties appealed and cross-appealed. The appeals court affirmed in part and vacated and remanded in part. The court held that the prison disciplinary rule prohibiting contraband was unconstitutionally vague as applied to the state prisoner. The prisoner was disciplined for possessing and distributing a brochure that violated an inmate group's internal bylaws by not having been approved by the group's staff advisor. The court noted that the bylaws did not indicate that violation of the group's bylaws constituted a violation of the prison contraband rule, thus exposing the prisoner to far greater penalties than the group could have imposed, and prison rules conferred almost complete enforcement discretion on prison officials. According to the court, the prisoner's right to not be punished under prison rules for violation of an inmate group's internal bylaws was clearly established, weighing against the prison officials' claim of qualified immunity in the § 1983 action. The court noted that the essence of constitutional prohibitions on vagueness was that the rules must give notice of conduct that they, rather than another set of rules, prohibit and must constrain discretion of officials who apply them. The court held that summary judgment was precluded by genuine issues of material fact as to whether state prison officials actually intended to punish the prisoner under the prison's contraband rule or for violating an internal bylaw of an inmate group. (Woodbourne Correctional Facility, Clinton Correctional Facility, New York)

U.S. District Court
RELIGION
SEARCHES
STAFFING

Forde v. *Baird*, 720 F.Supp.2d 170 (D.Conn. 2010). A federal inmate petitioned for a writ of habeas corpus, alleging that she was being denied freedom of religious expression, in violation of the First Amendment and the Religious Freedom Restoration Act (RFRA). The district court granted summary judgment for the defendants, in part, and denied in part. The court held that the Muslim inmate's right to free exercise of religion was substantially burdened, as required to support her claim under RFRA, by a prison policy allowing for non-emergency pat searches of female inmates by male guards, despite prison officials' claim that the inmate's belief was not accurate. The court found that the choice offered the inmate, of violating her understanding of the precepts of Islam, or refusing a search and risking punishment, constituted a substantial burden. The court found that the prison's interest in maintaining safety and security of the female prison through the use of cross-gender pat searches was not compelling, as required to justify a substantial burden on the inmate's right of free exercise of religion under RFRA, where the prison's arguments

regarding how and why the cross-gender pat searches promoted safety and security at the prison were actually related to the staffing of the facility, not to its safety and security. According to the court, the prison's interest in avoiding staffing and employment issues at the female prison through the use of cross-gender pat searches was not compelling, as required to justify a substantial burden on the inmate's right of free exercise of religion under RFRA. The court noted that even if the prison's interests in maintaining safety and security and avoiding staffing and employment issues were compelling, cross-gender pat searches were not the least restrictive means of addressing these interests, as required to justify the substantial burden on an inmate's right of free exercise of religion under RFRA, absent evidence that the prison considered and rejected less restrictive practices to cross-gender pat searches. (Federal Correctional Institution in Danbury, Connecticut)

U.S. District Court
DISTURBANCE
RELIGIOUS SERVICES
SECURITY
RESTRICTIONS

Gordon v. *Caruso*, 720 F.Supp.2d 896 (W.D.Mich. 2010). An inmate sued corrections officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), claiming that they violated his rights by preventing him from engaging in group worship services with other adherents of his faith. Following denial of a defense motion for summary judgment, officials moved for reconsideration. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether prison officials' ban on Asatru group worship was the least restrictive means of furthering their interest in maintaining prison security. The court found that prison officials who banned Asatru group worship had a rational basis for treating members of the Asatru faith differently from other groups that promoted racist and supremacist teachings, based on a demonstrated connection between the practice of Asatru and violence and racial conflict in the prison setting, and thus, there was no violation of the inmate's equal protection rights. The court noted that the other groups that were allowed to engage in group activity were not shown to present similar security concerns. (Michigan Department of Corrections)

U.S. District Court
RELIGIOUS SERVICES

Green v. *Tudor*, 685 F.Supp.2d 678 (W.D.Mich. 2010). A state inmate brought a § 1983 action against four employees at a prison for claims arising from his access to a prison law library and the adequacy of the prison's food service. The defendants moved for summary judgment. The district court granted the motion. The court held that the inmate failed to exhaust administrative remedies prior to bringing his claim against an assistant librarian alleging denial of access to courts through a denied “call-out” request. The court found that the assistant librarian did not engage in retaliatory conduct against the inmate and did not deny the inmate equal protection. The court held that the assistant food service director did not coerce the inmate, an Orthodox Muslim, into participating in Jewish religious practices, and did not take any actions establishing a state religion, so as to violate the Establishment Clause of the First Amendment. The court held that the alleged denial by the prison's assistant food service director of adequate advance notice of meal substitutions, hot meals during non-daylight hours during a religious holiday, and adequate nutritional calories to the Muslim inmate was rationally related to legitimate governmental and penological interests of prison security and fiscal budgetary discipline, and thus the denials did not violate the inmate's First Amendment free exercise rights. The court noted that the inmate retained alternative means for practicing his Muslim faith, and granting requests for specialized diets would be expensive and would divert resources from other penological goals. (Muskegon Correctional Facility, Michigan)

U.S. District Court
RESTRAINTS
SAFETY

Gruenberg v. *Gempeler*, 740 F.Supp.2d 1018 (E.D.Wis. 2010). A prisoner, proceeding pro se, filed a § 1983 action against various prison officials, guards and medical staff, alleging violations of the Eighth Amendment. The district court granted the defendants’ motion for summary judgment. The court held that the prisoner did not have a clearly established right to not be continually restrained without clothing or cover in a cell following his ingestion of a handcuff key, a master key for belt restraints and one of the keys used for opening cell doors, and therefore, prison officials were entitled to qualified immunity in the prisoner's § 1983 action alleging violations of the Eighth Amendment. According to the court, continuous restraint of the prisoner without clothing or cover in a cell did not violate the prisoner's Fourteenth Amendment due process rights, where the prisoner was not restrained for a disciplinary reason, but to ensure prison staff was able to regain possession of a handcuff key, a master key for belt restraints and one of the keys used for opening cell doors following the prisoner's ingestion of them. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
CONTRABAND
SEARCHES
USE OF FORCE

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. District Court
SAFETY
TRANSFER

Hartry v. *County of Suffolk*, 755 F.Supp.2d 422 (E.D.N.Y.2010). An inmate brought a § 1983 action against a sergeant and a county, alleging failure to protect him from harm and deliberate indifference to his health and safety. The district court denied the defendants’ motion for summary judgment. The court held that the inmate's transfer from one county prison to another county prison deprived him of a meaningful opportunity to pursue his administrative remedies following an attack by another inmate, and therefore, his failure to exhaust administrative remedies prior to bringing his § 1983 action against the sergeant and the county was excused. The court noted that the inmate handbook permitted an inmate five days to file a grievance, and the inmate was transferred within two days of the attack. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the inmate faced a real and significant threat of harm from other inmates, and whether the prison sergeant was aware of a substantial risk of harm to the inmate from other inmates. The court also found a genuine issue of material fact as to whether moving an inmate only in response to a direct threat, within or outside of the jail, was a reasonable protective measure. (Suffolk County Correctional Facility, New York)

U.S. District Court
RELIGIOUS ARTICLES
SATANISM

Indreland v. *Yellowstone County Bd. of Comr's*, 693 F.Supp.2d 1230 (D.Mont. 2010). A state prisoner brought a § 1983 action against a county board of commissioners and prison officials, alleging, among other things, that the defendants' actions, including denying him access to satanic materials and holding him in maximum security, interfered with his free exercise of religion in violation of First Amendment and Religious Land Use and Institutionalized Persons Act (RLUIPA). The court held that prison officials' denial of access to his satanic medallion did not interfere with his free exercise of religion in violation of First Amendment and RLUIPA, where the officials had a legitimate penological interest in denying the prisoner a chain that the officials believed could be used to strangle another inmate. According to the court, prison officials segregated the prisoner because he was involved in fights with other inmates, and not solely on account of his alleged satanic religion, and thus the prisoner's segregation did not interfere with his free exercise of religion in violation of First Amendment and RLUIPA. The court held that the county detention facility was not required under the First Amendment or RLUIPA to purchase religious materials for the prisoner at its own expense. But the court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison chaplain was working in conjunction with prison staff to deny the prisoner, who claimed to practice satanism, his free exercise of religion, and therefore, whether the chaplain was state actor. (Yellowstone County Detention Facility, Montana)

U.S. District Court
DISTURBANCE
USE OF FORCE

Johnson v. *Roberts*, 721 F.Supp.2d 1017 (D.Kan. 2010). A former county jail inmate brought an action against a deputy, sheriff, and county board of commissioners, alleging use of excessive force when the deputy used a stun gun on the inmate. The district court granted summary judgment in favor of the defendants. The court held that the use of a stun gun to subdue the county jail inmate was reasonable and did not violate the inmate's Eighth Amendment rights. The court noted that the inmate had placed a towel in front of a security camera in violation of a jail rule, and when deputies responded to the inmate's cell to confiscate the towel and the inmate's property box, the inmate refused to hand over the box and either dropped or threw the box to the floor and refused an order to pick it up, placing the deputy in the position of bending down to retrieve the box from directly in front of the noncompliant inmate. The court found that the use of a stun gun was not a clearly established violation of the Eighth Amendment at the time of the incident and thus the deputy, sheriff, and county board of commissioners were entitled to qualified immunity. The court noted that the deputy used the stun gun to ensure the inmate's compliance with orders and not to punish the inmate. (Miami County Jail, Kansas)

U.S. District Court
MAIL
RELIGIOUS ARTICLES
USE OF FORCE

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 an ADC employee's use of force against the inmate was justified by the inmate's disruptive behavior during the search of her cell and thus did not give rise to the ADC employee's liability on an excessive force claim. The inmate alleged that the ADC employee grabbed her by the arm, dragged her from her cell, and threw her into the shower. The court note that there was no medical evidence that the ADC employee's use of handcuffs caused any permanent injury to the inmate as required to support a claim that the employee used excessive force against the inmate. 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. District Court
SEARCHES
VISITS

Mashburn v. *Yamhill County*, 698 F.Supp.2d 1233 (D.Or. 2010). A class action was brought on behalf of juvenile detainees against a county and officials, challenging strip-search procedures at a juvenile detention facility. The parties cross-moved for summary judgment. The court held that the scope of an admission strip-search policy applied to juvenile detainees was excessive in relation to the government's legitimate interests, in contravention of the Fourth Amendment. According to the court, notwithstanding the county's general obligation to care for and protect juveniles, the searches were highly intrusive, the county made no effort to mitigate the scope and intensity of the searches, and less intrusive alternatives existed. The court found that county officials failed to establish a reasonable relationship between their legitimate interests and post-contact visit strip-searches performed on juvenile detainees, as required under the Fourth Amendment. The court noted that the searches occurred irrespective of whether there was an individualized suspicion that a juvenile had acquired contraband, and most contact visits occurred between juveniles and counsel or therapists. (Yamhill County Juvenile Detention Center, Oregon)

U.S. Appeals Court
EXERCISE
LOCK DOWN

Norwood v. *Vance*, 591 F.3d 1062 (9th Cir. 2010). A state inmate brought a § 1983 action, alleging that corrections officials violated the Eighth Amendment by depriving him of outdoor exercise. The district court denied the officials' motion for summary judgment and, following a jury award of nominal and punitive damages, made an award of attorney's fees. The officials appealed. The appeals court reversed and vacated the award of attorney's fees. The appeals court held that the district court erred in failing to include in jury instructions requested language regarding the deference due to correction officials' decisions, and that the error was prejudicial. According to the court, failure to give additional guidance on deference rendered the instruction incomplete and misleading, and jurors might well have reached a different conclusion if properly instructed. The court held that correction officials were entitled to qualified immunity in the inmate's § 1983 action alleging that his Eighth Amendment rights were violated by restrictions placed on his outdoor exercise during prison lockdowns. According to the court, given the extraordinary violence gripping the prison, it would not have been clear to a reasonable official that denying outdoor exercise was unlawful, particularly since officials had a duty to keep inmates safe and their judgments as to how to do that were entitled to wide-ranging deference. The court noted that while exercise is one of the basic human necessities protected by the Eighth Amendment, a temporary denial of outdoor exercise with no medical effects is not a substantial deprivation. (California State Prison, Sacramento, California)

U.S. Appeals Court
CONTRABAND
SEARCHES

Nunez v. *Duncan*, 591 F.3d 1217 (9th Cir. 2010). A federal inmate brought a pro se *Bivens* action against prison officials, alleging he was subjected to a random strip search in violation of his First, Fourth, and Eighth Amendment rights. The district court entered summary judgment for the officials, and the inmate appealed. The appeals court affirmed, finding that the strip search of the inmate pursuant to a policy authorizing strip searches of inmates returning from outside work detail was reasonably related to a legitimate penological interest in controlling contraband within the prison, and did not violate the inmate's Fourth Amendment rights. (Fed.Prison Camp, Sheridan, Oregon)

U.S. Appeals Court
VIDEO SURVEILLANCE

Pourmoghani-Esfahani v. *Gee*, 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 his 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 appeals court accepted the depiction of events from closed-circuit television 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 Co. Jail, Florida)

U.S. Appeals Court
CLASSIFICATION
EXERCISE
LOCK DOWN

Richardson v. *Runnels*, 594 F.3d 666 (9th Cir. 2010). An African-American state prisoner brought a § 1983 action against a prison warden and correctional officers, among others, alleging that he was subjected to racial discrimination during prison lockdowns, and that the defendants were deliberately indifferent to his need to exercise, in violation of the Eighth Amendment. The district court granted the defendants' motion for summary judgment. The prisoner appealed. The appeals court affirmed in part and reversed in part. The district court held that summary judgment was precluded by genuine issues of material fact as to whether reasonable men and women could differ regarding the necessity of state prison officials' racial classification in response to prison disturbances that were believed to have been perpetrated or planned by prisoners who were African-American, and whether the officials' lockdown of all African-American prisoners in the unit containing high-risk prisoners following disturbances was narrowly tailored to further a compelling government interest. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether state prison officials were deliberately indifferent to the need for exercise of a prisoner who was subjected to prison lockdowns. (High Desert State Prison, California)

U.S. Appeals Court
PUBLICATIONS
SAFETY REGULATIONS

Singer v. *Raemisch*, 593 F.3d 529 (7th Cir. 2010). An inmate, whose books, magazines and manuscript about the fantasy role-playing game Dungeons and Dragons were confiscated by prison officials under a prison's policy banning fantasy games, filed a § 1983 action alleging violation of his First Amendment right to free speech. The district court granted the defendants summary judgment. The inmate appealed. The appeals court affirmed. The court held that despite the inmate's contention that a fantasy role-playing game had never incited prison violence or motivated devotees to form stereotypical street or prison gangs in the past, prison officials were rational in their belief that, if left unchecked, fantasy role-playing games could lead to gang behavior among inmates and undermine prison security in the future. The court also found that, despite the inmate's contention that fantasy role-playing games had a positive rehabilitative effect on prisoners, prison officials were rational in their belief that fantasy role-playing games could impede inmates' rehabilitation, lead to escapist tendencies or result in more dire consequences, and thus the prison ban on fantasy role-playing games did not violate the inmate's First Amendment free speech rights. The court noted that officials were concerned about potential inmate obsession with escape, both figurative and literal and based the ban on the possibility that games could foster inmates' obsession with escaping from both real life and the correctional environment, placing legitimate penological goals of prison security and inmate rehabilitation in peril.

According to the court, the prison policy prohibiting possession of fantasy role-playing game manuals, strategy guides, character novellas, and other related materials was rationally related to the goal of preventing susceptible inmates from embarking upon a dangerous escapist path, and thus confiscation of the inmate's role-playing books, magazines and manuscript did not violate his First Amendment free speech rights. The court found that prison officials' ban on fantasy role-playing games and publications met the requirement that inmates have alternative means of exercising a restricted right, under the Turner test for reviewing the reasonableness of prison regulations impacting constitutional rights, since the inmate whose fantasy role-playing game materials were confiscated could express himself by writing another work of fiction, could possess other reading materials, or could engage with other inmates in allowable games. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
EVACUATION

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
SEGREGATION
TRANSFER
USE OF FORCE

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. Appeals Court
EXERCISE
SEGREGATION

Thomas v. *Ponder*, 611 F.3d 1144 (9th Cir. 2010). A state prisoner brought a § 1983 action against prison officials, alleging violations of the Eighth Amendment. The district court granted the officials' motion for summary judgment and the prisoner appealed. The appeals court reversed and remanded. The court held that the prison officials knew that a serious risk of harm existed for the prisoner, who was denied exercise for nearly 14 months, as required for the prisoner's § 1983 action. According to the court, officials made and reviewed a decision to keep the prisoner confined without out-of-cell exercise, and the prisoner submitted repeated written and oral complaints. The court found that summary judgment was precluded by a genuine issue of material fact as to whether prison officials acted reasonably in confining the prisoner for nearly 14 months. The court noted that officials may be more restrictive than they otherwise may be if a genuine emergency exists, and certain services may be suspended temporarily, but the court found that even where security concerns might justify a limitation on permitting a prisoner to mingle with the general prison population, such concerns do not explain why other exercise arrangements are not made. (Salinas Valley State Prison, California)

U.S. District Court
SAFETY
SEARCHES

U.S. v. *Ghailani*, 751 F.Supp.2d 508 (S.D.N.Y. 2010). A defendant, an alleged member of Al Qaeda charged with conspiring to kill Americans abroad, moved for an order directing the Bureau of Prisons (BOP) to cease from employing visual inspection of his rectal area when entering or leaving a correctional center for court appearances. The district court denied the motion, finding that the search policy was justified by a legitimate governmental interest in protecting the safety of prison and court personnel and other inmates. The court noted that the policy was adopted at the national level in recognition of the substantial danger that inmates will secrete weapons or other contraband in body cavities, that the government made a credible showing that ready alternatives were not available to protect this important security interest, and that the defendant's Sixth Amendment rights would be protected adequately by existing procedures. (Metropolitan Correctional Center, Manhattan, New York)

U.S. District Court
CLOTHING
SECURITY
RESTRICTIONS

Williams v. *Ozmint*, 726 F.Supp.2d 589 (D.S.C. 2010). An inmate brought a § 1983 action against correctional facility officials, alleging violations of the Eighth and Fourteenth Amendments. The officials filed a motion for summary judgment. The district court granted the motion. The court held that sanctions imposed upon an inmate who committed sexual misconduct offenses while imprisoned, including wearing a pink jumpsuit for 90 days and eating meals earlier, were rationally related to penological interests, and therefore, did not violate equal protection. According to the court: (1) the jumpsuit provided visual identification to officials, especially female officers; (2) that the inmate had a recent history of sexual misconduct; (3) activity and movement restrictions lessened the risk of the inmate committing another offense that could result in transmission of blood-borne pathogens; and (4) the jumpsuit served as disincentive to engage in the conduct in the first instance. The court found that the requirement that an inmate who committed sexual misconduct offenses while imprisoned wear a pink jumpsuit did not create an objectively intolerable risk of harm in violation of the Eighth Amendment, where the policy was not applied maliciously and sadistically, and absent an imminent and substantial risk of serious harm. (Ridgeland Corr'l Inst., South Carolina)

U.S. District Court
RELIGIOUS SERVICES
SEGREGATION
EXERCISE

Young v. *Ericksen*, 758 F.Supp.2d 777 (E.D.Wis. 2010). A state prisoner brought a § 1983 action claiming correctional officers and staff violated his constitutional rights by refusing to allow him to exercise outside his cell for almost an entire year and that they violated the Religious Land Use and Institutionalized Person Act (RLUIPA) by refusing to allow him to attend religious services and meet with an Imam. The district court denied the defendants' motion for summary judgment. The court held that summary judgment was precluded by a genuine issue of material

fact as to whether prison officials fairly denied the state prisoner out-of-cell exercise. According to the court, for the purposes of the prison officials' claim of qualified immunity from the state prisoner's § 1983 claim, it was clearly established that denying a prisoner out-of-cell exercise for almost an entire year without legitimate penological concerns would constitute a violation of the prisoner's Eighth Amendment rights. The court held that summary judgment was precluded by a genuine issue of material fact as to whether denying the state prisoner, who was on protective confinement (PC) status, the opportunity to attend public worship services was reasonably related to the prison's interest in protecting the prisoner and maintaining overall security. (Green Bay Correctional Institution, Wisconsin)

2011

U.S. Appeals Court
USE OF FORCE
VIDEO
SURVEILLANCE

Alspaugh 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 Maximum Security Correctional Facility, Michigan)

U.S. District Court
CLASSIFICATION
SECURITY
RESTRICTIONS
TELEPHONE CALLS

Aref v. *Holder*, 774 F.Supp.2d 147 (D.D.C. 2011). A group of prisoners who were, or who had been, incarcerated in communication management units (CMU) at federal correctional institutions (FCI) designed to monitor high-risk prisoners filed suit against the United States Attorney General, the federal Bureau of Prisons (BOP), and BOP officials, alleging that CMU incarceration violated the First, Fifth, and Eighth Amendments. Four additional prisoners moved to intervene and the defendants moved to dismiss. The district court denied the motion to intervene, and granted the motion to dismiss in part and denied in part. The court held that even though a federal prisoner who had been convicted of solicitation of bank robbery was no longer housed in the federal prison's communication management unit (CMU), he had standing under Article III to pursue constitutional claims against the Bureau of Prisons (BOP) for alleged violations since there was a realistic threat that he might be redesignated to a CMU. The court noted that the prisoner had originally been placed in CMU because of the nature of his underlying conviction and because of his alleged efforts to radicalize other inmates, and these reasons for placing him in CMU remained.

The court found that the restrictions a federal prison put on prisoners housed within a communication management unit (CMU), which included that all communications be conducted in English, that visits were monitored and subject to recording, that each prisoner received only eight visitation hours per month, and that prisoners' telephone calls were limited and subjected to monitoring, did not violate the prisoners' alleged First Amendment right to family integrity, since the restrictions were rationally related to a legitimate penological interest. The court noted that prisoners assigned to the unit typically had offenses related to international or domestic terrorism or had misused approved communication methods while incarcerated. The court found that prisoners confined to a communication management unit (CMU), stated a procedural due process claim against the Bureau of Prisons (BOP) by alleging that the requirements imposed on CMU prisoners were significantly different than those imposed on prisoners in the general population, and that there was a significant risk that procedures used by the BOP to review whether prisoners should initially be placed within CMU or should continue to be incarcerated there had resulted in erroneous deprivation of their liberty interests. The court noted that CMU prisoners were allowed only eight hours of non-contact visitation per month and two 15 minute telephone calls per week, while the general population at a prison was not subjected to a cap on visitation and had 300 minutes of telephone time per month. The court also noted that the administrative review of CMU status, conducted by officials in Washington, D.C., rather than at a unit itself, was allegedly so vague and generic as to render it illusory. The court held that the conditions of confinement experienced by prisoners housed within a communication management unit (CMU), did not deprive the prisoners of the "minimum civilized measure of life's necessities" required to state an Eighth Amendment claim against the Bureau of Prisons (BOP), since the deprivation did not involve the basics of food, shelter, health care or personal security.

The court found that a federal prisoner stated a First Amendment retaliation claim against the Bureau of Prisons (BOP) by alleging: (1) that he was "an outspoken and litigious prisoner;" (2) that he had written books about improper prison conditions and filed grievances and complaints on his own behalf; (3) that his prison record contained "no serious disciplinary infractions" and "one minor communications-related infraction" from 1997; (4) that prison staff told him he would be "sent east" if he continued filing complaints; and (5) that he filed a complaint about that alleged threat and he was then transferred to a high-risk inmate monitoring communication management unit (CMU) at a federal correctional institution. (Communication Management Units at Federal Correctional Institutions in Terre Haute, Indiana and Marion, Illinois)

U.S. District Court
GANGS
CLASSIFICATION
SEPARATION

Baker v. *Kernan*, 795 F.Supp.2d 992 (E.D.Cal. 2011.) A state inmate filed a § 1983 action against a prison official alleging that a policy of separating members of rival prison gangs denied him equal protection, due process, and the right to be free from cruel and unusual punishment. The official moved for summary judgment. The district court granted the motion. The court held that the state's policy of separating members of rival prison gangs did not deny the inmate due process or violate his right to be free from cruel and unusual punishment, where the program was a rational response to a legitimate security concern, and it preserved the inmate's ability to exercise regularly outside, be considered for a job, use the facilities off the main yard, meet with a prison chaplain, and see visitors. The court also found that the state's classification of prisoners by their gang affiliation did not violate the inmate's equal protection rights, even if members of a larger gang fared slightly better in some aspects of confinement, where the classification was not based on race. The court noted that there was a long history of gang members immediately attacking members of rival gangs, and the policy of identifying and separating members of rival gangs advanced safety and order by preventing them from violently attacking each other. (California State Prison, Sacramento)

U.S. District Court
SAFETY
USE OF FORCE

Bridgewater v. *Taylor*, 832 F.Supp.2d 337 (S.D.N.Y. 2011). A New York state prisoner brought a § 1983 action against prison officials and correctional officers, alleging excessive force, failure to protect, and failure to supervise and properly train in violation of the Eighth Amendment. After the prisoner's motion for summary judgment against an officer was preliminarily denied, the prisoner moved for reconsideration and the former prison superintendent and another officer moved to dismiss. The district court denied the motion for reconsideration and granted the motion to dismiss. The court held that the prisoner did not properly serve the complaint on the officer or superintendent and that the prisoner failed to state a failure to protect claim against the officer. The court held that summary judgment was precluded by genuine issues of material fact as to whether the correctional officer acted with malice or wantonness toward the prisoner necessary to constitute an Eighth Amendment violation, or whether he was applying force in a good–faith effort to maintain discipline. The court also found that summary judgment was precluded by genuine issues of material fact as to whether the correctional officer's use of physical force against the prisoner was more than de minimus. (Sing Sing Correctional Facility New York)

U.S. Appeals Court
CONTRABAND
GANGS
VISITS

Bustos v. *A & E Television Networks*, 646 F.3d 762 (10th Cir. 2011). An inmate brought an action against a television network, alleging defamation. The district court granted summary judgment in favor of the network and the inmate appealed. The appeals court affirmed. The appeals court held that the television network's statement in a broadcast that the inmate was a member of the Aryan Brotherhood prison gang was not materially false, and therefore, was not actionable for defamation under Colorado law, where the inmate engaged in recreation yard conversations with gang members, engaged in a drug smuggling conspiracy with the gang in which he would receive drug filled balloons from a visitor and distribute them to the gang, and the inmate sent a handwritten apology to the gang leader apologizing after the conspiracy failed and referred to leader repeatedly as “bro.” (Supermax, Florence, Colorado)

U.S. District Court
LOCKS

Byron v. *Dart*, 825 F.Supp.2d 958 (N.D.Ill. 2011). A pretrial detainee who was stabbed in the head by an unknown inmate who opened the detainee's cell door from outside without a key brought a § 1983 action against the county sheriff, jail administrators, and a corrections officer, alleging that the defendants failed to protect him in violation of the Fourteenth Amendment. The officials moved to dismiss for failure to state a claim. The district court denied the motion. The court held that the detainee's allegations in his complaint stated a “sufficiently serious injury” as required for a Fourteenth Amendment failure to protect claim against the prison administrators. The court also found that the detainee's allegations in his complaint were sufficient to state a “deliberate indifference” element of the detainee's Fourteenth Amendment failure to protect claim against prison administrators. The detainee alleged that the problem of malfunctioning cell doors was “pervasive,” “well-documented,” and “expressly noted by prison officials in the past,” that work orders to repair cell doors were never executed, and that he complained about his door, but it was never repaired. According to the court, the detainee became aware, from his own observations and in speaking with other detainees, that numerous cells were “in a state of disrepair and/or had malfunctioned,” and that specifically, the doors of the cells could be “popped” open by detainees from the outside without a key. (Cook County Jail, Illinois)

U.S. District Court
ESCAPE
SECURITY PRACTICES

Dean v. *Walker*, 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)

U.S. Appeals Court
STAFFING
SAFETY

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
PUBLICATIONS

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
MAIL
SECURITY PRACTICES

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. Appeals Court
FACIAL HAIR
RELIGION
SECURITY PRACTICES

Kuperman v. *Wrenn*, 645 F.3d 69 (1st Cir. 2011). A Jewish former state inmate brought a § 1983 action against prison officials, alleging a prison regulation prohibiting inmates from growing facial hair longer than one quarter of an inch violated his First Amendment exercise of religion rights, as well as Fourteenth Amendment equal protection and the Religious Land Use and Institutionalized Person Act (RLUIPA). The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed, finding that the regulation was reasonably related to the penological interests of prison safety and security and did not prohibit the inmate from alternative means of exercising his rights. The court found that accommodating the inmate's desire to grow a beard would adversely impact prison resources and that there was no ready alternative to the prison regulation. According to the court, the regulation did not violate the inmate's Fourteenth Amendment equal protection rights, and the regulation furthered the compelling government interest of prison safety and security in the least restrictive means of doing so. (New Hampshire State Prison)

U.S. District Court
TRANSFER
RESTRAINTS
USE OF FORCE

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. Appeals Court
CLASSIFICATION
WORK

Milligan v. *Archuleta*, 659 F.3d 1294 (10th Cir. 2011). A state inmate filed a § 1983 action alleging that prison officials took away his prison employment in retaliation for his grievance regarding his designation as a potential escape risk, and in violation of his equal protection rights. The district court dismissed the complaint on its own motion and the inmate appealed. The appeals court reversed and remanded. The appeals court held that the district court erred in dismissing the equal protection claim, even though the complaint was deficient because it did not plead facts sufficient to show that the inmate's classification as an escape risk lacked a rational basis or a reasonable relation to a legitimate penological interest. According to the court, amendment of the complaint would not necessarily be futile, and the claim was not based on an indisputably meritless legal theory. The court noted that the fact that the state inmate did not have a constitutional right to employment did not foreclose his retaliation claim against the prison official arising from loss of his prison job after he filed a grievance. (Colorado Territorial Correctional Facility)

U.S. District Court
PUBLICATIONS
RELIGION
VISITS
WORK

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 state-

ments 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. Appeals Court
EXERCISE
RIOT
LOCK DOWN
SECURITY PRACTICES

Noble v. *Adams*, 646 F.3d 1138 (9th Cir. 2011). A state inmate brought a § 1983 action against prison officials who were responsible for a post-riot lockdown of a prison, alleging that the lockdown resulted in denial of his Eighth Amendment right to outdoor exercise. The district court denied the officials' motion for summary judgment and subsequently denied the officials' motion for reconsideration. The officials appealed. The appeals court reversed and remanded with instructions. The appeals court held that the state prison officials were entitled to qualified immunity from the inmate's § 1983 claim that the post-riot lockdown of prison resulted in denial of his Eighth Amendment right to outdoor exercise because it was not clearly established at the time of the lockdown, nor was it established yet, precisely how or when a prison facility housing problem inmates must return to its normal operations, including outdoor exercise, during and after a state of emergency called in response to a major riot. (Corcoran State Prison, California)

U.S. Appeals Court
MAIL

Perry v. *Secretary, Florida Dept. of Corrections*, 664 F.3d 1359 (11th 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 *Procunier v. Martinez* 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
RESTRAINTS
SAFETY
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
SECURITY PRACTICES
PROTECTION

Shields v. *Dart*, 664 F.3d 178 (7th Cir. 2011). A pretrial detainee brought a pro se § 1983 action against prison officials who allegedly were deliberately indifferent in failing to protect him from an attack by other inmates at a county jail. The prison officials moved for summary judgment. The district court granted the motion and the detainee appealed. The appeals court affirmed. The court held that the officials were unaware of a substantial risk of serious injury to the pretrial detainee, and thus the officials were not deliberately indifferent in failing to protect the detainee from the attack. According to the court, a corrections officer on duty during the two inmates' attack did not act with deliberate indifference by failing to enter a day room where the attack was occurring. The officer verbally commanded the inmates to stop the attack. The officer was alone, intervened by promptly calling for back-up and monitoring the fight from a secure area until other officers arrived, and was not required to put herself in significant jeopardy by attempting to break up fight herself. (Cook County Jail, Illinois)

U.S. Appeals Court
WORK
PROTECTION
SAFETY

Smith v. *Peters*, 631 F.3d 418 (7th Cir, 2011). A state prisoner brought an action against prison employees, alleging that the employees violated the Eighth Amendment by forcing him to work at hard labor in dangerous conditions, and violated the First Amendment by penlizing him for questioning the propriety of the work assignment and preparing to sue. The district court dismissed the complaint. The prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner stated a claim against prison employees for violating his Eighth Amendment right to be free from cruel and unusual punishment by forcing him to work at hard labor in dangerous conditions. The prisoner alleged that he was assigned to uproot tree stumps in cold weather, without being given any protective gear, that he developed blisters from handling heavy tools in the cold without gloves, and that he was subjected to the risk of getting hit by the blades of the tools because they slipped from their handles as prisoners hacked away without proper training. The court found that the prisoner stated a claim against prison employees for violating his First Amendment right to free speech, by alleging that the employees penalized him for questioning the propriety of his work assignment and preparing to sue. (Branchville Correctional Facility, Indiana)

U.S. Appeals Court
CONTRABAND

U.S. v. *Franco*, 632 F.3d 880 (5th Cir. 2011). An inmate in a privately owned and operated county jail, who had paid a corrections officer to bring contraband into a county correctional facility, was convicted after a district court jury trial of aiding and abetting in the bribery of a public official. The defendant appealed. The appeals court affirmed. The court held that it was constitutional to apply the federal bribery statute to the defendant, even though he used his own money, and not federal funds, to pay the corrections officer. The officer had been paid a total of $425 over a period of time to bring peanut butter, tuna fish, and other small food items, a cell phone, enchiladas and a box containing marijuana. (Ector County Correctional Center, Texas)

U.S. Appeals Court
PUBLICATIONS

Van den Bosch v. *Raemisch*, 658 F.3d 778 (7th 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. (Wisconsin Department of Corrections, Green Bay Correctional Institution)

2012

U.S. Appeals Court
PUBLICATIONS
SECURITY PRACTICES

Al-Owhali v. *Holder*, 687 F.3d 1236 (10th 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. Appeals Court
CONTRABAND
SAFETY
SECURITY RESTRICTIONS
TELEPHONE CALLS

Beaulieu v. *Ludeman*, 690 F.3d 1017 (8th Cir. 2012). Patients who were civilly committed to the Minnesota Sex Offender Program (MSOP) brought a § 1983 action against Minnesota Department of Human Services (DHS) officials and Minnesota Department of Corrections (DOC) officials, alleging that various MSOP policies and practices relating to the patients' conditions of confinement were unconstitutional. The district court granted summary judgment in favor of the defendants and the patients appealed. The appeals court affirmed. The appeals court held that: (1) the MSOP policy of performing unclothed body searches of patients was not unreasonable; (2) the policy of placing full restraints on patients during transport was not unreasonable; (3) officials were not liable for using excessive force in handcuffing patients; (4) the officials' seizure of televisions from the patients' rooms was not unreasonable; (5) the MSOP telephone-use policy did not violate the First Amendment; and (6) there was no evidence that officials were deliberately indifferent to the patients' health or safety. According to the court, the MSOP identified reasons for its policy requiring 13–inch clear-chassis televisions or 17– to 19–inch flat-screen televisions--that the shelves in patients' rooms could safely hold those televisions, and that a clear-chassis or flat-screen television would reduce contraband concealment. According to the court, those justifications implicated both patient safety and MSOP's interest in maintaining security and order at the institution and making certain no contraband reached patients. The court also found that the (MSOP) telephone-use policy did not violate the First Amendment free speech rights of patients who were civilly committed to MSOP. According to the court, the policy of monitoring patients' non-legal telephone calls and prohibiting incoming calls was reasonably related to MSOP's security interests in detecting and preventing crimes and maintaining a safe environment. The court upheld the 30-minute limit on the length of calls, finding it was reasonably related to the legitimate governmental interest of providing phone access to all patients, and that patients had viable alternatives by which they may exercise their First Amendment rights, including having visitors or sending or receiving mail, and patients had abused telephone privileges prior to implementation of the policy by engaging in criminal activity or other counter-therapeutic behavior by phone. (Minnesota Sex Offender Program)

U.S. District Court
HAIR LENGTH
RELIGION

Benning v. *Georgia*, 864 F.Supp.2d 1358 (M.D.Ga. 2012). A Jewish inmate brought an action against the State of Georgia, the Georgia Board of Corrections, the Georgia Department of Corrections (GDC), and its Commissioner, in his official capacity, alleging that the defendants violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) by refusing to allow him to grow earlocks in accordance with his religious beliefs. The court held that: (1) the inmate's religious belief that he was forbidden from shaving his earlocks was sincerely held; (2) the inmate's religious beliefs were substantially burdened by the defendants' refusal to allow him to grow earlocks; (3) uniformity was not a compelling government interest justifying the defendants' refusal to allow the inmate to grow earlocks; and (4) the defendants failed to prove that banning earlocks completely was the least restrictive means of furthering compelling governmental interests. (Autry State Prison, Georgia)

U.S. District Court
RELIGIOUS ARTICLES

Davis v. *Powell*, 901 F.Supp.2d 1196 (S.D.Cal. 2012). A state prisoner who was a Muslim brought a pro se § 1983 action against a prison warden and other prison employees for claims arising out of the prison's ban on prayer oil. The court held that allegations that a prison warden issued an addendum to a Department Operations Manual (DOM) that implemented a policy that only orders for certain religious items would be counted under the quarterly package program was sufficient to state First Amendment retaliation claim against warden. The court noted that: (1) the policy made it more burdensome to obtain items required for the inmate to practice his religion or practice it as easily as inmates of different faiths; (2) that there existed a causal link between the policy and his faith; (3) that his required religious oil was banned approximately five months after the inmate appealed the policy; (4) that the policy would chill a person of ordinary firmness from practicing his religion, and (5) that a legitimate penological interest was not furthered by the policy. The court found that the inmate's allegation that a prison warden enacted a policy which considered special orders for religious packages to be counted as quarterly packages for inmates, because of its adverse effects on plaintiffs of a particular religion, stated an equal protection claim. According to the court, the articles listed in the policy were those ordered by only prisoners of that religion. The court held that the warden and officials were not entitled to qualified immunity from the inmate's claim alleging a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA), where a reasonable person in the position of the prison warden and related officials would believe that his or her conduct in enacting a policy banning the purchase and receipt of prayer oil by inmates for 14 months violated inmates' First Amendment right to freely exercise his or her religion and of the inmate's Equal Protection rights. (Calipatria State Prison, California)

U.S. District Court
CLASSIFICATIONS
GANGS
SECURITY PRACTICES

Facey v. *Dickhaut*, 892 F.Supp.2d 347 (D.Mass. 2012). A prisoner at a state correctional institution filed a pro se § 1983 action against the prison and officials alleging his Eighth Amendment right to be free from cruel and unusual punishment was violated when officials knowingly placed him in danger by assigning him to a housing unit where he was violently attacked by members of a rival gang. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the complaint stated a claim against the deputy superintendent and an assistant for violation of the Eighth Amendment, by alleging that officials were aware of the feud between two rival prison gangs, that the prisoner was a known member of one of the gangs, that despite this knowledge officials had assigned the prisoner to a section of the prison where a rival gang was housed, and as a result he was violently attacked and sustained permanent injuries. The court found that the official who had instituted the gang housing policy could not be held personally liable, since he did not implement the policy, nor was he deliberately indifferent in supervising or training those who did. According to the court, state prison officials who had placed the prisoner known to be a gang member in danger by assigning him to a housing unit where he was violently attacked by members of a rival gang, were not entitled to qualified immunity in the prisoner's § 1983 suit. The court noted that clearly established law provided that the Eighth Amendment was violated if officials disregarded a known, substantial risk to an inmate's health or safety, and the officials had disregarded this risk, as well as violated a prison policy, by placing rival gang members in same housing unit. (Souza Baranowski Correctional Center, Mass.)

U.S. District Court
PRETRIAL
DETAINEES
VIDEO
SURVEILLANCE

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 thhhattt 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
PUBLICATIONS
RELIGION
SAFETY

Forter v. *Geer*, 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. Appeals Court
HAIR LENGTH
RELIGIOUS GROUPS

Grayson v. *Schuler*, 666 F.3d 450 (7th Cir. 2012). A former state prisoner brought a § 1983 action against a correctional officer, alleging the forcible shearing of his dreadlocks violated the free exercise clause of the First Amendment. The defendant moved for summary judgment. The district court granted the motion. The former prisoner appealed. The appeals court reversed and remanded. The appeals court held that while the prisoner's Religious Land Use and Institutionalized Persons Act (RLUIPA) claim against the correctional officer in his official capacity was barred by the state's sovereign immunity, the officer was not entitled to qualified immunity. The court noted that the Act does not create a cause of action against state employees in their personal capacity. The court held that the taking of a Nazirite vow, which barred the cutting of hair, by the state prisoner who was a member of the orthodox African Hebrew Israelites of Jerusalem was religiously motivated, for purposes of the prisoner's claim that prison officials failed to accommodate his religious beliefs and thus violated the free exercise clause of the First Amendment. The court found that the officer was not entitled to quality immunity because there was no suggestion that the officer who ordered shearing of prisoner's dreadlocks due to a reasonable belief that the prisoner was insincere in his religious beliefs, or was a security threat. (Big Muddy Correctional Center, Illinois)

U.S. Appeals Court
CLOTHING
KEYS
RESTRAINTS
SECURITY PRACTICES

Gruenberg v. *Gempeler*, 697 F.3d 573 (7th Cir. 2012). A state prisoner, proceeding pro se, filed a § 1983 action against various prison officials, guards, and medical staff, alleging violations of the Eighth Amendment. The district court granted summary judgment for the defendants. The prisoner appealed. The appeals court affirmed. The appeals court held that: (1) the prisoner did not have a clearly established right to not be continually restrained without clothing or cover in a cell for five days following his ingestion of a handcuff key, the master key for belt restraints, and the key used for opening cell doors, where restraint had been imposed to keep the prisoner from re-ingesting those keys; (2) the continuous restraint of the prisoner without clothing or cover in a cell for five days did not violate his Fourteenth Amendment due process rights; (3) the prisoner's Fourth Amendment and Fourteenth Amendment substantive due process claims were barred; and (4) the district court did not abuse its discretion by ruling that the prisoner was competent to advance his case and was not entitled to appointed counsel. (Waupun Correction Institution, Wisconsin)

U.S. District Court
CONTRABAND
EXERCISE
LOCK DOWN
RIOT
SECURITY PRACTICES

Hayes v. *Dovey*, 914 F.Supp.2d 1125 (S.D.Cal. 2012). A state prisoner brought a § 1983 action against a prison's former warden, chief deputy warden, and associate warden alleging they deprived him of outdoor exercise for approximately nine months in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion. The court held that prison officials did not act with deliberate indifference when they precluded outdoor exercise for nine months, and that prison officials were entitled to qualified immunity. Officials had stopped providing outdoor exercise for general population prisoners during a state of emergency at the facility following a major riot. During this time, the prisoner was allowed to work in a program office for approximately 30 hours per week. The court noted that the riot involved a concerted and organized attack on prison officials, the lockdown was imposed to investigate and prevent continued violence, and despite the lockdown and exercise restrictions there were many instances of violence, including two incidents of attempted murder on a peace officer, 20 incidents of battery on a peace officer or prison staff member, and 46 instances of inmates in possession of weapons or metal stock. According to the court, it was not clearly established at the time of the lockdown precisely how or when a prison that houses problem inmates must return to its normal operations, including outdoor exercise, during and after a state of emergency called in response to a major riot. (Calipatria State Prison, California)

U.S. District Court
RELIGIOUS SERVICES

Jones v. *Hobbs*, 864 F.Supp.2d 808 (E.D.Ark. 2012). A prisoner brought an action against various state department of correction (DOC) officials, 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 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 officials impeded the prisoner's efforts to secure a diet which comported with the dictates of his religion; (2) whether fiscal and security concerns were rationally connected to the

denial of a religious diet; (3) whether the prisoner had a sufficient alternative means to practice his religion; (4) whether there was an alternative way to accommodate the prisoner's request for a vegan meal at de minimis cost to valid penological interests; and (5) whether the prisoner's right to a diet suiting his religious beliefs was clearly established. (Arkansas Department of Correction)

U.S. District Court
RELIGIOUS ARTICLES
RELIGIOUS SERVICES

Joseph v. *Fischer*, 900 F.Supp.2d 320 (W.D.N.Y. 2012). A state prisoner who observed the Nation of Gods and Earths (NGE) faith brought an action against correctional officials, alleging that the officials violated his right to practice his religion, denied his right of access to courts, and retaliated against him. The prisoner sought declaratory and injunctive relief, as well as money damages. The officials moved for judgment on the pleadings. The district court granted the motion in part and denied in part. The court held that the issue of whether correctional officials' restrictions on NGE activities were adequately justified by legitimate security concerns, as required under the First Amendment and RLUIPA, could not be resolved on a motion for judgment on the pleadings, since it was not possible, based solely on the pleadings, to determine whether the actions of the officials had unjustifiably burdened the prisoner's religious exercise. The court held that individual correctional officials were qualifiedly immune from the prisoner's claim for damages based on the officials' preventing the prisoner from participating in such activities, where the rights of the prisoner, who observed the NGE faith, to hold study group classes, wear certain articles of clothing or emblems, and observe NGE holy days, were not clearly established First Amendment rights, given that department of corrections protocols did not specifically protect such religious activities. The court found that the prisoner's allegations, that he was denied access to courts due to a correctional official's confiscation or destruction of documents, failed to state a claim for denial of access to courts, where the allegations were conclusory, and the prisoner failed to show what prejudice he suffered as a result of the official's alleged actions. (Attica Correctional Facility, New York)

U.S. Appeals Court
RELIGIOUS ARTICLES
SAFETY REGULATIONS

McFaul v. *Valenzuela*, 684 F.3d 564 (5th Cir. 2012). A prisoner brought a pro se civil rights action against prison officials who had denied his request for a religious medallion to use in Celtic Druid ceremonies. The district court entered summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed, finding that the prison's prohibitions on nonconforming neo-Pagan medallions and medallions costing more than $25 did not violate the prisoner's First Amendment right to free exercise of religion, and the prisoner failed to meet his burden of showing that the prohibitions substantially burdened his ability to practice his religion, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The appeals court also held that enforcement of the prohibitions against the prisoner did not violate equal protection. Officials had prevented the prisoner from having a black onyx pentagram for use in Celtic Druid ceremonies, and the court found that the prohibitions were reasonably related to penological interests, including safety, security, and discipline, did not discriminate against nontraditional religions, and did not prevent the prisoner from performing some religious rituals. The court noted that permitting prisoners to possess nonconforming medallions would have forced guards to determine whether the items were permitted religious medallions or contraband items. (Preston Smith Unit, Texas Department of Criminal Justice)

U.S. Appeals Court
RELIGION

Moussazadeh v. *Texas Dept. of Criminal Justice*, 703 F.3d 781 (5th Cir. 2012). A Jewish state prisoner brought an action against the Texas Department of Criminal Justice, alleging that the defendant denied his grievances and requests for kosher meals in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Texas Religious Freedom Restoration Act. The district court entered summary judgment for the defendant and the prisoner appealed. The appeals court reversed and remanded. The court held that the state Jewish prisoner exhausted his administrative remedies with respect to his claim that a prison's failure to provide him with kosher meals violated RLUIPA, where the prisoner went through the state's entire grievance process before filing suit. The court found that sufficient evidence established that the prisoner's religious beliefs were sincere, as required to support a claim against state's department of criminal justice for violation of RLUIPA, where the prisoner stated that he was born and raised Jewish and had always kept a kosher household, the prisoner offered evidence that he requested kosher meals from the chaplain, kitchen staff, and the department, and while at another prison, he ate kosher meals provided to him from the dining hall. The court noted that the prisoner was harassed for his adherence to his religious beliefs and for his demands for kosher food, and that the department transferred the prisoner for a time so he could receive kosher food. The court held that the prisoner was denied a generally available benefit because of his religious beliefs, and thus, the state's department of criminal justice imposed a substantial burden on the prisoner's religious exercise under RLUIPA, where every prisoner in the department's custody received a nutritionally sufficient diet, every observant Jewish prisoner at the designated prison received a kosher diet free of charge, and the Jewish prisoner at issue was forced to pay for his kosher meals. The court found that there was no evidence of a compelling government interest in forcing the Jewish prisoner to pay for all of his kosher meals. The court also found that summary judgment was precluded by a general dispute of material fact as to whether the state's department of criminal justice employed the least restrictive means of minimizing costs and maintaining security by forcing the Jewish prisoner to pay for all of his kosher meals. (Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division)

U.S. District Court
RELIGIOUS ARTICLES

Native American Council of Tribes v. *Weber*, 897 F.Supp.2d 828 (D.S.D. 2012). A Native American organization and inmates brought an action against the Secretary of the South Dakota Department of Corrections, alleging the Department's policy banning all tobacco from its facilities violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court found that the inmates' use of tobacco was a religious exercise protected under RLUIPA, that the policy placed a substantial burden on the inmates' exercise of their religious beliefs, and the policy was not supported by a compelling governmental interest where there was little evidence that tobacco from the Native American religious ceremonies created a security or safety risk. According to the court, the Native American inmates' use of tobacco in pipes, tobacco ties, and prayer flags was a religious exercise protected under RLUIPA, notwithstanding the use of red willow bark instead of tobacco by other members of their tribe. The court noted that the inmates used tobacco prior to their incarceration as part of traditional healing and other religious ceremonies. (South Dakota Department of Corrections)

U.S. District Court
GANGS
RELIGIOUS ARTICLES
RELIGIOUS SERVICES

Panayoty v. *Annucci*, 898 F.Supp.2d 469 (N.D.N.Y. 2012). Inmates in a state prison who were affiliated with the religious group Nation of Gods and Earth filed a § 1983 action against prison officials seeking declarative and injunctive relief concerning constraints the prison placed on the practice of their religion, which allegedly violated the First Amendment and Religious Land Use and Institutionalized Persons Act (RLUIPA), as well as the equal protection clause of Fourteenth Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court found that the inmates' practice of congregating with each other and wearing crowns, as part of their affiliation with the Nation of Gods and Earth group, was religious in the inmates' scheme of beliefs, and sincerely held, as required to demonstrate a prima facie showing of First Amendment free exercise and RLUIPA violations against the prison officials who had established protocols prohibiting such practices. The court noted that one inmate had a twelve-year history of the religious practice, dating back to before he was incarcerated, another inmate's practice extended back 25 years, and both expressed that the Nation of Gods and Earth religion had helped them draw closer to a life of righteousness and had shaped their character. The court held that there was no evidence that the inmates' practice of displaying the Nation of Gods and Earth's Universal Flag, symbols, and texts in their cells, as part of their affiliation with the group, was religious in the inmates' scheme of beliefs, and sincerely held, and the inmates failed to adequately assert First Amendment free exercise and RLUIPA violations against prison officials. Although the inmates asserted that the prison's prohibition of this practice required them to live under a shroud of secrecy, members of the group were required to register with the facility deputy superintendent for programs, so their practice was well known.

The court held that summary judgment was precluded by genuine issues of material fact as to whether the prison prohibition on the practice of congregating with each other and wearing religious crowns was reasonably related to security concerns that the religion was affiliated with gang activity, and whether the measures were the least restrictive means of accomplishing security concerns. (New York State Department of Corrections and Community Supervision, Mid–Orange Correctional Facility, Riverview Correctional Facility)

U.S. District Court
MEDIA ACCESS

Philadelphia Inquirer v. *Wetzel*, 906 F.Supp.2d 362 (M.D.Pa. 2012). A newspaper brought an action against the secretary of a state department of corrections (DOC), alleging the First Amendment guaranteed the right to observe a prisoner's execution without obstructions. The newspaper moved for a preliminary injunction. The district court granted the motion. The court held that the historical practice in Pennsylvania indicated that the public and press traditionally enjoyed a right of access to executions and that permitting the press to view an entire execution without visual or auditory obstruction contributed to the proper functioning of the execution process. The court found that the state's significant interest in protecting the identities of employees taking part in lethal injections did not outweigh the newspaper's right of access to observe executions, and that the newspaper demonstrated that granting a preliminary injunction would not result in harm to the state. The court noted that "… allowing the press to report on the entire method of execution may promote a more informed discussion of the death penalty… and it may promote the public perception of fairness and transparency concerning the death penalty, which can only be achieved by permitting full public view of the execution…. Allowing the press to view the entire execution also provides significant community therapeutic value, as well as exposes the execution process to public scrutiny." (Pennsylvania Department of Corrections)

U.S. Appeals Court
BOOKS
SAFETY REGULATIONS
SECURITY RESTRICTIONS

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. District Court
SECURITY PRACTICES
DISCRETION

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. District Court
RELIGIOUS GROUPS
RELIGIOUS SERVICES
SECURITY PRACTICES

Sweet v. *Northern Neck Regional Jail*, 857 F.Supp.2d 595 (E.D.Va. 2012). An inmate, proceeding in forma pauperis, brought a § 1983 action against a sergeant and a jail, alleging that a prohibition against speaking in Arabic during prayer violated his First Amendment rights. The district court dismissed the case. The court held that the jail policy requiring prayers or services be spoken in English when inmates from different housing units and classification levels congregated, but allowing prayers to be offered in Arabic within individual housing units, was reasonably related to legitimate penological interests of security and did not substantially burden inmates' right to free exercise of their First Amendment rights. The court noted that the jail was concerned about inmates plotting riots or escapes while congregating with other units, jail officers did not speak Arabic, and inmates could gather within their housing units and pray in Arabic. (Northern Neck Regional Jail, Virginia)

U.S. Appeals Court
BOOKS
GANGS

Toston v. *Thurmer*, 689 F.3d 828 (7th Cir. 2012). A state prison inmate brought a pro se civil rights complaint under § 1983 against prison officials, alleging that his rights of free speech and due process were violated when a disciplinary proceeding found him guilty of possession of gang literature and sentenced him to 90 days confinement in segregation. The inmate's due process claim was dismissed, and the district court granted summary judgment for officials on the free speech claim. The inmate appealed. The appeals court affirmed in part and vacated in part. The appeals court held that the limitation of the state prison inmate's right of free speech, as a result of a disciplinary proceeding that found him guilty of possession of gang literature, was adequately justified by prison officials' legitimate concern that the inmate copied from a prison library book a ten-point program by the founder of a hate group's predecessor in order to show it to others that the inmate hoped to enlist in a prison gang, with the program to serve as the gang's charter. The court noted that a prison librarian's decision that on the whole a book is not gang literature does not preclude disciplinary proceedings against an inmate who copies incendiary passages from it. The inmate had purchased, with prison permission, "To Die for the People: The Writings of Huey P. Newton" the founder of the Black Panthers, and he had checked out two books from the prison library about the Black Panthers. The court vacated the district court decision regarding the alleged due process violation. The inmate alleged that his due process rights were violated because he had no notice that copying passages from prison library books or a book he had been allowed to purchase could subject him to a sentence of 90 days' confinement in segregation for possessing gang literature. The appeal court ordered the district court to determine whether a 90–day sentence to segregation was, or was not, a deprivation of liberty. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
SECURITY PRACTICES
SEGREGATION
TRANSFER

U.S. v. *Bout*, 860 F.Supp.2d 303 (S.D.N.Y. 2012). A federal prisoner convicted of multiple conspiracies to kill United States nationals, kill officers and employees of the United States, acquire, transfer, and use anti-aircraft missiles, and provide material support to a designated foreign terrorist organization, who had been held in solitary confinement, moved to be transferred to the general prison population. The motion was construed as a habeas petition. The district court held that continued solitary confinement violated the prisoner's Eighth Amendment rights. According to the court, the decision of the federal Bureau of Prisons (BOP) to indefinitely hold the federal prisoner in solitary confinement was not rationally related to any legitimate penological objectives and thus violated the prisoner's Eighth Amendment rights. The court found that although the BOP argued that the prisoner's release from solitary confinement would pose a high security risk, there was no evidence that the prisoner had a direct affiliation with any member of a terrorist organization, or that he personally engaged in violent acts. The court concluded that the prisoner did not present an unusually high risk of escape or harm to others, any involvement that the prisoner had with the former Liberian dictator, Charles Taylor, occurred several years ago and was not the basis of his criminal conviction, and the prisoner's release into the general population would have minimal impact on guards, other inmates, and prison resources. (Special Housing Unit, Metropolitan Correctional Center, New York)

U.S. District Court
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)

U.S. Appeals Court
ESCAPE

U.S. v. *Tyerman*, 701 F.3d 552 (8th Cir. 2012). A defendant was convicted in district court of being a felon in possession of a firearm and he appealed. The appeals court reversed and remanded. After a trial, the defendant was convicted in the district court of being a felon in possession of a firearm and ammunition, and possession of a stolen firearm. His motion for acquittal or new trial was denied and the defendant appealed. The appeals court affirmed. The court held that the government's passive conduct in receiving information regarding the location of the defendant's gun, from the defendant's counsel, did not violate the defendant's Sixth Amendment right-to-counsel. The court found that the defendant's conduct in creating handcuff keys and practicing the use of them constituted a substantial

step, as an element of attempt, with respect to escaping from pretrial incarceration, for purposes of using attempted escape as the basis for a sentence enhancement for obstruction of justice. At sentencing, a U.S. Marshal testified that prison guards discovered two homemade handcuff keys in the defendant's cell. According to the Marshal, during the investigation, other inmates revealed the defendant's plans to escape from jail and his use of the law library (which lacked surveillance) to practice removing handcuffs. Finding the Marshal credible, the district court applied a two-level adjustment for obstruction of justice based on the attempted escape, sentencing the defendant 72 months' imprisonment. (U. S. District Court, Iowa)

U.S. Appeals Court
CLASSIFICATION
SECURITY PRACTICES
SUPERMAX
TRANSFER

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. District Court
CONTRABAND
PRETRIAL DETAINEES
SAFETY REGULA TIONS
SECURITY PRACTICES

Wilkins v. *District of Columbia*, 879 F.Supp.2d 35 (D.D.C. 2012). A pretrial detainee in a District of Columbia jail who was stabbed by another inmate brought an action against the District. The district court entered judgment as a matter of law in favor of the District and the detainee moved for reconsideration. The district court granted the motion and ordered a new trial. The court held that the issue of whether the failure of District of Columbia jail personnel to follow national standards of care for inmate access to storage closets and monitoring of inmate movements was the proximate cause of the detainee's stabbing by a fellow inmate was for the jury, in the detainee's negligence action, under District of Columbia law. Another inmate who was being held at the D.C. Jail on charges of first-degree murder attacked the detainee. The inmate had received a pass to go to the jail's law library, unaccompanied. Apparently he did not arrive at the library but no one from the library called the inmate's housing unit to report that he had not arrived. An expert retained by the detainee asserted that failure to monitor inmate movements violated national standards for the operation of jails. En route to the jail mental health unit, the detainee saw the inmate enter a mop closet. The inmate, along with another inmate, approached the detainee and stabbed him nine times with a knife. During court proceedings there was testimony that the inmates had hidden contraband in the mop closets. The closets are supposed to be locked at all times, other than when the jail is being cleaned each afternoon. But there was evidence from which the jury could infer that all inmates except those who did not have jobs cleaning in the jail had access to them. According to the detainee's expert witness, keeping mop closets locked at times when the general inmate population is permitted to be in the vicinity of the closets is in accordance with national standards of care for the operation of detention facilities. According to the district court, "In sum, the circumstantial evidence of Mr. Foreman's [inmate who attacked the detainee] freedom of movement is enough to have allowed a jury to conclude that the District's negligence was a proximate cause of Mr. Wilkins's injury…". (District of Columbia Central Detention Facility)

U.S. District Court
PRETRIAL DETAINEES
SAFETY
TRANSPORTATION
WHEELCHAIR

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 Dept., Oneida Co. Corr'l. Facility, N.Y.)

U.S. District Court
SAFETY
REGULATIONS

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
SECURITY
RESTRICTIONS

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. Appeals Court
SEARCHES
SEX OFFENDER
VIDEO
SURVEILLANCE

Arnzen v. *Palmer*, 713 F.3d 369 (8th Cir 2013). Patients at a state Civil Commitment Unit for Sex Offenders (CCUSO) brought a § 1983 complaint against CCUSO administrators, challenging placement of video cameras in CCUSO restrooms, and moved for a preliminary injunction to stop their use. The district court denied the motion as to cameras in "dormitory style restrooms" but granted an injunction ordering that cameras in "traditional style bathrooms" be pointed at a ceiling or covered with lens cap. The appeals court affirmed. The appeals court held that CCUSO conducted a "search" by capturing images of patients while occupying single-user bathrooms, and that CCUSO did not conduct a reasonable search by capturing patients' images, thereby constituting a Fourth Amendment violation. The appeals court found that the district court did not abuse its discretion in issuing preliminary injunctive relief. The court noted that the patients had a reasonable expectation of privacy in a single-person bathroom when there was no immediate indication it was being used for purposes other than those ordinarily associated with bathroom facilities, and that involuntarily civilly committed persons retain the Fourth Amendment right to be free from unreasonable searches that is analogous to the right retained by pretrial detainees. According to the court, the facility did not conduct a reasonable search of its involuntarily committed patients by capturing images of patients while they occupied single-user bathrooms in a secure facility, thereby constituting a violation of Fourth Amendment, where the cameras did not provide administrators with immediate alerts concerning patient safety or prevent assaults or dangerous acts, and less intrusive methods were available for administrators to use to prevent illicit activities by patients. (Iowa Civil Commitment Unit for Sex Offenders)

U.S. Appeals Court
LOCKS
PRETRIAL DETAINEES
SAFETY

Baker v. *RR Brink Locking Systems, Inc.*, 721 F.3d 716 (5th Cir. 2013). A pretrial detainee brought an action against the manufacturer of allegedly faulty locks on cell doors that permitted another inmate to enter the detainee's cell and assault and rape him. The manufacturer moved for summary judgment. The district court denied the motion and then denied reconsideration. The manufacturer moved for permission to file an appeal before the case had been adjudicated. The motion was granted in part. The appeals court affirmed, allowing the case to continue. (RR Brink, Harrison County Detention Center, Mississippi)

U.S. Appeals Court
CLASSIFICATION
GANGS

Castro v. *Terhune*, 712 F.3d 1304 (9th Cir. 2013). A state inmate brought an action challenging his validation as an "associate" of a recognized prison gang on due process grounds. The district court granted the defendants' motion for summary judgment. The appeals court reversed and remanded. On remand, the district court again entered summary judgment for the defendants. The appeals court again reversed and remanded. Following a bench trial on remand, the district court granted the inmate prospective relief, requiring prison officials to determine whether an inmate was a gang associate under a new validation procedure. After officials validated the inmate as a "prison-gang associate" for a second time, the district granted the defendants' motion to terminate the case. The inmate appealed. The appeals court affirmed. The appeals court held that the California prison regulation relating to validation of inmates as prison gang affiliates was not facially vague. The court found that the district court erred by not evaluating whether "some evidence" supported the inmate's validation, but because the record contained "some evidence" that inmate was involved with a gang, remand was not warranted. (SHU at Pelican Bay State Prison, California)

U.S. Appeals Court
CONTACT VISITS
CONTRABAND
RESTRAINTS

Chappell v. *Mandeville*, 706 F.3d 1052 (9th Cir. 2013). A state prison inmate brought a § 1983 action against prison officials, alleging violations of the Eighth and Fourteenth Amendments. The defendants moved for summary judgment on the ground of qualified immunity and the district court granted summary judgment as to some, but not all, of the claims. The defendants appealed. The appeals court reversed. The appeals court held that: (1) it was not clearly established that subjecting the prison inmate to a contraband watch violated the Eighth Amendment prohibition against cruel and unusual punishment, and thus prison officials were entitled to qualified immunity on the Eighth Amendment claim; (2) the contraband watch was not such an extreme change in conditions of confinement as to trigger due-process protection; and (3) it was not clearly established whether a state-created liberty interest existed with regard to the contraband watch, and thus officials were entitled to qualified immunity on the claim that the inmate's right to due process was violated because he was not provided with an opportunity to be heard by the official who ordered contraband watch. The inmate's fiancée had visited him, and when she entered the prison she was

wearing a ponytail hairpiece. The next day the hairpiece was discovered in a trash can near the visiting room. Prison officials then searched the entire visiting area and found spandex undergarments in the women's bathroom. Both the hairpiece and the undergarments tested positive for cocaine residue. Prison staff conducted a search of the inmate's cell, during which they notified him that they believed that someone had introduced drugs through a hairpiece. The officials discovered three unlabelled bottles of what appeared to be eye drops in the inmate's cell. The liquid in the bottles tested positive for methamphetamine. The inmate was then placed on a contraband watch. The contraband watch conditions included 24-hour lighting, mattress deprivation, taping the inmate into two pairs of underwear and jumpsuits, placing him in a hot cell with no ventilation, chaining him to an iron bed, shackling him at the ankles and waist, and forcing him to eat "like a dog." (California State Prison, Sacramento)

U.S. District Court
CLOTHING
PRETRIAL DETAINEES
SEARCHES
USE OF FORCE

Clay v. *Woodbury County, Iowa*, 982 F.Supp.2d 904 (N.D.Iowa 2013). A female arrestee brought a § 1983 action against a city, an arresting officer, county, county sheriff, and jail officers, alleging, among other things, that jail officers "strip searched" her without reasonable suspicion and in unconstitutional manner, and did so in retaliation for her vociferous complaints about her detention and the search of her purse and cell phone. The defendants moved for summary judgment, and the arrestee moved to exclude expert testimony. The district court held that the expert's reference to an incorrect standard for the excessive force claim did not warrant excluding his opinions in their entirety, although portions of the expert's report were inadmissible.

The court found that the incident in which male and female county jail officers forcibly removed the female arrestee's under-wire bra and changed her into jail attire was not a "strip search" within the meaning of the Iowa law which defined a "strip search" as "having a person remove or arrange some or all of the person's clothing so as to permit an inspection of the genitalia, buttocks, female breasts or undergarments of that person or a physical probe by any body cavity," where there was no indication that the officers inspected the arrestee's private parts or physically probed any of her body cavities. The court also found that the arrestee whose clothing was forcibly removed in the presence of male and female county jail officers in a holding cell after the arrestee refused to answer questions during the booking process and to remove her clothing herself, was not subjected to a "strip search" requiring reasonable suspicion under the Fourth Amendment. According to the court, the officers did not violate the arrestee's privacy rights under the Fourth Amendment where the officers' reason for removing the arrestee's bra-- institutional safety-- was substantially justified, and the scope of the intrusion was relatively small. The court also found that the officers were entitled to qualified immunity from the female arrestee's § 1983 unlawful search claim, where the officers neither knew, nor reasonably should have known, that their actions would violate the arrestee's privacy rights.

The court held that summary judgment was precluded by genuine issues of material fact as to whether the amount of force used by female county jail officers during the booking process to forcibly remove the female arrestee's under-wire bra and change her into jail attire after the arrestee refused to answer questions, became disruptive, and refused to remove her clothing herself, was reasonable. The officers allegedly threw the arrestee onto the cell bunk, causing her to bang her head against the bunk or cell wall. The court found that male county jail officers did not use excessive force, within the meaning of the Fourth Amendment, in restraining the female arrestee in a holding cell after the female officers had allegedly thrown the arrestee onto a cell bunk, causing her to bang her head against bunk or cell wall, in an effort to forcibly remove the arrestee's clothing and to change her into jail attire. (Woodbury County Jail, Iowa)

U.S. District Court
CROWDING

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
CROWDING

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
CONTRABAND
SEARCHES-CELL

Denny v. *Schultz*, 708 F.3d 140 (3rd Cir. 2013). A federal prisoner petitioned for a writ of habeas corpus challenging findings made by Disciplinary Hearing Officer (DHO) that he had possessed weapons in violation of a prison regulation and sanctioned him with forfeiture of 40 days of good time credit and the imposition of 60 days in disciplinary

segregation. The district court dismissed the petition and the prisoner appealed. The appeals court affirmed. The appeals court held that the DHO did not violate the federal prisoner's due process rights when it found that the prisoner had committed the prohibited act of "Possession of a Weapon," on the basis that two homemade shanks had been found in a cell that he shared with another prisoner. The court noted that, although those weapons may have belonged to his cellmate, all prisoners had an affirmative responsibility to keep their "area" free from contraband and the collective responsibility theory applied. (Federal Correctional Institution, Fairton, New Jersey)

U.S. Appeals Court
FIRE SAFETY
SAFETY REGULATIONS
ITEMS PERMITTED
SEARCHES- CELL

Devbrow v. *Gallegos*, 735 F.3d 584 (7th Cir. 2013). A prisoner brought a § 1983 claim against two prison officials, claiming that the officials denied him access to the courts by confiscating and then destroying his legal papers in retaliation for a prior lawsuit he filed. The district court granted the prison officials' motion for summary judgment, and denied the prisoner's motion for reconsideration. The prisoner appealed. The appeals court affirmed. The appeals court held that the prisoner failed to authenticate a purported e-mail from a prison official to a law librarian supervisor, where there was no circumstantial evidence that supported the authenticity of the e-mail, and no evidence that the prisoner or anyone else saw the official actually compose or transmit the purported e-mail. The court held that the official's removal of the prisoner's excessive legal materials from his cell, to eliminate a fire hazard and to make it easier for officials to conduct searches and inventories of the prisoner's property during prison searches, was not retaliation for the prisoner's filing of a prior lawsuit. According to the court, the prisoner's speculation regarding the officials' motive could not overcome the officials' sworn statements on the motion for summary judgment. (Westville Correctional Facility, Indiana)

U.S. District Court
GANGS
PROTECTION
SAFETY

Dunn v. *Killingsworth*, 984 F.Supp.2d 811 (M.D.Tenn. 2013). A prisoner brought a § 1983 action against prison officials, alleging that the officials violated his Eighth Amendment rights by not providing him with adequate protection from gang-related violence. The district court conducted an initial review of the prisoner's complaint, pursuant to the Prison Litigation Reform Act (PLRA). The court held that the prisoner's allegations: (1) that a gang member threatened his personal safety: (2) that the prisoner's family paid other inmates for the prisoner's personal safety; (3) that the prisoner repeatedly requested to be placed in protective custody; and (4) that prison officials denied such requests, were sufficient to state the serious deprivation prong of his claim for violation of his Eighth Amendment rights. The court also found that the prisoner's allegations that prison officials denied his requests for protection despite the stabbing of prisoners and a guard at the prison, and that prison officials failed to take any effective steps to provide better protection for all inmates, were sufficient to state a deliberate indifference prong of his claim for violation of his Eighth Amendment rights. (South Central Correctional Center, Tennessee)

U.S. District Court
CELL CAPACITY
CROWDING
PRETRIAL DETAINEE

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
CROWDING
PRETRIAL DETAINEES
SAFETY
SAFETY REGULATIONS

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, Away From Home, Inc., Texas)

U.S. Appeals Court
ITEMS PERMITTED

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. District Court
CLEANING SUPPLIES
SAFETY

Florio v. *Canty*, 954 F.Supp.2d 227 (S.D.N.Y. 2013). A prisoner, proceeding pro se, brought a § 1983 action against a warden and a corrections officer, alleging violations of the Eighth Amendment. The defendants moved to dismiss. The district court granted the motion. The court held that the prisoner's exposure to human waste on two occasions, for a total of less than a few hours, did not give rise to a serious risk of substantial harm. The prisoner alleged that prison officials waited 10 to 30 minutes after two separate incidents of a toilet overflowing to release the prisoner from his cell and having the prisoner clean the cell with inadequate cleaning gear and without training, allegedly resulting in the prisoner developing a foot fungus. The court held that this was not deliberate indifference to a substantial risk to his health and safety, as would violate the Eighth Amendment. The court noted that officials acted to alleviate the unsanitary conditions, the overflow also occurred in approximately 20 other cells, and the prisoner was not prevented from bathing or washing his clothes after the incidents. (Anna M. Kross Center, Rikers Island, New York City Department of Corrections)

U.S. Appeals Court
TRANSPORTATION

Fluker v. *County of Kankakee*, 741 F.3d 787 (7th Cir. 2013). An inmate and his wife filed a § 1983 action against a county and the county sheriff's office to recover for injuries the inmate suffered when a correctional officer who was driving a jail transport vehicle was required to brake suddenly, causing the inmate to hurtle forward and hit his head on a metal divider. The district court granted summary judgment for the defendants. The plaintiffs appealed. The appeals court affirmed. The appeals court held that the district court had the ability, in the interests of judicial economy and finality, to address the merits of the suit once it determined that the inmate had not exhausted his remedies under the Prison Litigation Reform Act (PLRA). (Kankakee County, Jerome Combs Detention Center, Illinois)

U.S. District Court
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 Detention Center, Kankakee County, Illinois)

U.S. Appeals Court
FACIAL HAIR
RELIGION
SECURITY PRACTICES

Garner v. *Kennedy*, 713 F.3d 237 (5th Cir. 2013). A Muslim state prisoner brought an action against prison officials alleging the Texas Department of Criminal Justice's (TDCJ) policy of prohibiting prisoners from wearing beards for religious reasons violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) and his constitutional rights. The district court granted summary judgment to the defendants, and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. On remand, and after a bench trial, the district court granted declaratory and injunctive relief in favor of the prisoner. The defendants appealed. The appeals court affirmed. The appeals court held that TDCJ's no-beard policy was not the least restrictive means of advancing the compelling government interest in controlling costs, and the no-beard policy was not the least restrictive means of advancing the compelling government interest in security. According to the court, although prison officials testified that there would be additional costs from allowing prisoners to wear quarter-inch beards for religious reasons due to the construction of barbershops, the purchase of barbering supplies, or the creation of new identification cards, almost all of that testimony was speculative, the officials admitted that no specific studies of costs had been done, and there was no evidence that TDCJ, which already imposed limits on hair length, would encounter greater or added difficulty if it enforced a one-quarter-inch as opposed to a clean-shaven rule. Although TDCJ presented evidence that allowing inmates to have beards hindered inmate identification, TDCJ allowed inmates to shave their heads, and there was testimony that shaved heads posed just as many identification problems as allowing prisoners to grow and shave beards. (Texas Department of Criminal Justice, McConnell Unit, Beeville, Texas)

U.S. Appeals Court
AUDIO
COMMUNICATION

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
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
CHEMICAL AGENTS

Hannon v. *Beard*, 979 F.Supp.2d 136 (D.Mass. 2013). Twenty-seven state inmates filed a § 1983 action against the Massachusetts Department Of Correction (MDOC), UMass Correctional Health (UMCH), the governor, and prison officials, alleging violations of their right to be free of cruel and unusual punishment by exposing them to harmful environmental conditions, First Amendment rights by retaliating against them for filing grievances and law suits, fundamental right of access to courts, and due process and equal protection rights. The officials moved to dismiss. The district court granted the motion, finding that the Eleventh Amendment barred claims against MDOC and UMCH, and that the inmates failed to state plausible Eighth Amendment claims and First Amendment retaliation claims. According to the court, the inmates' allegations that they were exposed to unsafe levels of toxins at a facility were not enough to show that the alleged deprivation was objectively serious, and thus were insufficient to state a plausible Eighth Amendment claim. The court noted that the inmates did not allege specific facts that would support a finding that environmental toxins were actually present, that the inmates were actually exposed to those substances, and that exposure caused injury. (UMass Correctional Health, and Massachusetts Dept. of Correction, Souza Baranowski Correctional Center)

U.S. Appeals Court
LOCKS
PRETRIAL DETAINEES
SAFETY
SECURITY PRACTICES

Junior v. *Anderson*, 724 F.3d 812 (7th Cir. 2013). A pretrial detainee brought a suit under § 1983 against a guard who allegedly failed to protect him from an attack by other inmates. The district court granted summary judgment in favor of the guard, and the detainee 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 guard acted with a conscious disregard of a significant risk of violence to the detainee, when she noted that two cells in the corridor where she was posted were not securely locked, but only noted that this was a "security risk" in her log. The guard then let several of the inmates who were supposed to remain locked up out of their cells, let them congregate in a darkened corridor, and then left her post, so that no guard was present to observe more than 20 maximum-security prisoners milling about. The court found that the detainee was entitled to appointed counsel in his § 1983 suit against a prison guard. According to the court, although the case was not analytically complex, its sound resolution depended on evidence to which detainee in his distant lockup had no access, and the detainee needed to, but could not, depose the guard in order to explore the reason for her having left her post and other issues. (Cook County Jail, Illinois)

U.S. Appeals Court
BOOKS
JEWELRY
RELIGIOUS ARTICLES
SAFETY
REGULATIONS
SECURITY PRACTICES

Kaufman v. *Pugh*, 733 F.3d 692 (7th Cir. 2013). A state prisoner brought an action against prison officials, challenging their refusal to permit a weekly atheist study group, their refusal to allow the prisoner to wear a "knowledge thought ring" that he regarded as a religious symbol, and their failure to make atheist books that he donated available in the prison library. The prisoner asserted claims under the Free Exercise Clause, the Establishment Clause, and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment to the prison officials. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that summary judgment was precluded by fact issue as to how many prisoners in the state prison would be interested in forming a weekly atheism study group.

The court found that refusal to allow the prisoner to wear a "knowledge thought ring" did not discriminate against atheism. The court noted that the prisoner conceded that the ring was an individualized symbol, thereby admitting that his inability to wear the ring did not impose a substantial burden on his ability to practice atheism. According to the court, the prison officials were entitled to draw a distinction between, on the one hand, religious emblems that were common to members of other umbrella religious groups, easy to recognize, and difficult to abuse as a gang symbol, and on the other hand, emblems that were unique to each prisoner and that posed a potential security risks.

According to the court, prison officials' refusal to allow the state prisoner to form a weekly atheism study group did not violate the prisoner's rights under the Free Exercise Clause or the Religious Land Use and Institutionalized Persons Act (RLUIPA), in the absence of evidence that the prisoner would be unable to practice atheism effectively without the benefit of a weekly study group. The court found that the alleged failure of state prison officials to make available in the prison library three used books on atheism that had been mailed to the prisoner, did not violate the prisoner's rights under the Free Exercise Clause and the RLUIPA, absent evidence of a substantial burden on the prisoner's ability to follow his atheistic beliefs. (Stanley Correctional Facility, Wisconsin)

U.S. District Court
STAFFING

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 Corp. of America, Idaho Correctional Center)

U.S. Appeals Court
CONTRABAND
HAIR LENGTH
RELIGION
SAFETY
REGULATIONS
SECURITY PRACTICES

Knight v. *Thompson*, 723 F.3d 1275 (11th Cir. 2013). Native American inmates brought an action against the Alabama Department of Corrections, challenging its short-hair policy under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court entered judgment for the Department and the inmates appealed. The appeals court affirmed. The appeals court held that the Department's short-hair policy for male inmates furthered compelling governmental interests in security, discipline, hygiene, and safety, as required to survive a challenge under RLUIPA by inmates who wished to wear their hair long in accordance with dictates of their Native American religion. The court noted that long hair was used to conceal weapons and contraband, it concealed inmates' fungus outbreaks, sores, cysts, and tumors, and it impeded the ability of prison staff to identify inmates. According to the court, allowing an exception for Native American inmates would not eliminate the Department's concerns, as inmates could manipulate searches of their own hair to conceal weapons, and it would do nothing to assuage the Department's concerns about hair-pulling during fights. The court held that the Department's short-hair policy, which applied to all male inmates without exception, did not discriminate on the basis of race or religion in violation of the Native American inmates' equal protection rights. (Alabama Department of Corrections)

U.S. District Court
BOOKS
CONTRABAND
PRETRIAL DETAINEES
RELIGIOUS ARTICLES
SAFETY
REGULATIONS
SECURITY
RESTRICTIONS

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. The court held that the jail, the jail administrator, and the county sheriff's denial of a typewriter in the pretrial detainee's cell to accommodate his alleged handwriting disability did not

violate the detainee's rights under Title II of the Americans with Disabilities Act (ADA). The court noted that the detainee was able to write by hand, although he stated he experienced pain when doing so. According to the court, if the detainee chose to avoid writing by hand he had substantial access to a typewriter in the jail's law library, there was no permanent harm from the handwriting he performed, there was no evidence the detainee was not able to adequately communicate with lawyers and jail officials without a typewriter in his cell, and the accommodation of an in-cell typewriter would impose an undue burden on jail personnel because metal and moving parts of typewriter could be used as weapons. (Gwinnett County Jail, Georgia)

U.S. Appeals Court
HAIR LENGTH
RELIGION

Lewis v. *Sternes*, 712 F.3d 1083 (7th Cir. 2013). A state prisoner brought an action against prison officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging removal of his dreadlocks violated his religious rights and denied him equal protection. The district court granted the defendants' motion for summary judgment. The prisoner appealed. The appeals court affirmed. The appeals court held that there was no evidence that the prison did not need to regulate hair length or hairstyle, or that the need was not great enough to warrant interference with the inmate's religious observance. (Dixon Correctional Center, Illinois)

U.S. District Court
RESTRAINTS
USE OF FORCE

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. Appeals Court
CLOTHING
PUBLICATIONS
SEARCHES

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
PUBLICATIONS

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 commonsense 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
PUBLICATIONS

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. District Court
PROTECTION
SAFETY
SEGREGATION
USE OF FORCE

Randle v. *Alexander*, 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. According to the court, the alleged forced fight between the inmate and a fellow inmate, orchestrated, condoned, and covered up by correctional officers was an objectively serious violation of the inmate's Eighth Amendment right to reasonably safe conditions of confinement, and the intent evinced by such activity was, at the very least, one of indifference to inmate safety, supporting the inmate's § 1983 Eighth Amendment conditions of confinement claim against the officers.

The court held that the African-American state inmate's allegations in his complaint that a correctional officer arranged inmates in his company so that white inmates were close to officers' posts, whereas black inmates were placed further away, that white inmates were given superior jobs, that the officer's efforts in forcing a fight between the inmate and a fellow inmate were done purposefully for his amusement because both inmates were black, and that the officer's treatment of the inmate and other black inmates was motivated by his intent to discriminate on the basis of race and malicious intent to injure inmates, stated a § 1983 equal protection claim against the officer.

The court ruled that the correctional officers were not entitled to qualified immunity from the inmate's § 1983 Eighth and Fourteenth Amendment claims because inmates had a clearly established right to remain incarcerated in reasonably safe conditions, and it was objectively unreasonable to threaten inmates until they agreed to fight each other in front of prison officials. 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 Corr'l. Facility, Protective Custody Unit, N.Y. State Department of Corrections)

U.S. Appeals Court
TRANSPORTATION
RESTRAINTS
SAFETY

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
SAFETY
REGULATIONS
SECURITY
RESTRICTIONS
SEGREGATION
TELEPHONE CALLS
VISITS
VIDEO
SURVEILLANCE

Royer v. *Federal Bureau of Prisons*, 933 F.Supp.2d 170 (D.D.C. 2013). A federal prisoner brought an action against Bureau of Prisoners (BOP), alleging classification as a "terrorist inmate" resulted in violations of the Privacy Act and the First and Fifth Amendments. The BOP moved for summary judgment and to dismiss. The district court granted the motion in part and denied in part. The court held that BOP rules prohibiting contact visits and limiting noncontact visits and telephone time for federal inmates labeled as "terrorist inmates", more than other inmates, had a rational connection to a legitimate government interest, for the purpose of the inmate's action alleging the rules violated his First Amendment rights of speech and association. According to the court, the prison had an interest in monitoring the inmate's communications and the prison isolated inmates who could pose a threat to others or to the orderly operation of the institution. The court noted that the rules did not preclude the inmate from using alternative means to communicate with his family, where the inmate could send letters, the telephone was available to him, and he could send messages through others allowed to visit. The court found that the inmate's assertions that the prison already had multiple cameras and hypersensitive microphones, and that officers strip searched inmates before and after contact visits, did not establish ready alternatives to a prohibition on contact visits for the inmate and limits on phone usage and noncontact visits due to being labeled as a "terrorist inmate." The court noted that increasing the number of inmates subject to strip searches increased the cost of visitation, and microphones and cameras did not obviate all security concerns that arose from contact visits, such as covert notes or hand signals. The court held that the inmate's allegations that he was segregated from the prison's general population for over six years, that he was subject to restrictions on recreational, religious, and educational opportunities available to other inmates, that contact with his family was limited to one 15 minute phone call per week during business hours when his children

were in school, and that he was limited to two 2-hour noncontact visits per month, were sufficient to plead harsh and atypical conditions, as required for his Fifth Amendment procedural due process claim. According to the court, the inmate's allegations that he was taken from his cell without warning, that he was only provided an administrative detention order that stated he was being moved due to his classification, that he was eventually told he was classified as a "terrorist inmate," that such classification imposed greater restrictions upon his confinement, and that he was never provided with a hearing, notice of criteria for release from conditions, or notice of a projected date for release from conditions were sufficient to plead denial of due process, as required for his claim alleging violations of the Fifth Amendment procedural due process. (Special Housing Units at FCI Allenwood and USP Lewisburg, CMU at FCI Terre Haute, SHU at FCI Greenville, Supermax facility at Florence, Colorado, and CMU at USP Marion)

U.S. Appeals Court
CLASSIFICATION
SEPARATION

Smith v. *Sangamon County Sheriff's Dept*., 715 F.3d 188 (7th Cir. 2013). A pretrial detainee filed suit under § 1983 against a sheriff's department to recover for injuries sustained when he was severely beaten by another inmate housed in a maximum-security cellblock. The district court entered summary judgment for the sheriff's department, and the detainee appealed. The appeals court affirmed. The court held that the detainee failed to establish that the security classification policy used by the sheriff's department to assign inmates to cellblocks within the jail was deliberately indifferent to inmate safety in violation of his due-process rights. The court noted that: (1) the detainee presented no evidence that the classification policy created a serious risk of physical harm to inmates, much less that the sheriff's department knew of it and did nothing; (2) the attack by the detainee's cellmate was not enough to establish that the policy itself systematically exposed inmates like the detainee to a serious risk of harm; and (3) it was unclear that a policy strictly segregating those accused of nonviolent crimes from those accused of violent crimes would do a better job of ensuring inmate safety than the multiple-factor classification system used by the sheriff's department. The detainee claimed that the Department's approach to classifying inmates for cellblock placement ignored serious risks to inmate safety because the security classification policy fails to separate "violent" from "nonviolent" inmates and thus fails to protect peaceful inmates from attacks by inmates with assaultive tendencies. The appeals court described the classification practices: "A classification officer interviews each new detainee and reviews a range of information, including the inmate's age, gender, gang affiliation, medical concerns, current charge, criminal history, behavioral and disciplinary history within the jail, and any holds due to parole violations. Pursuant to standards recommended by the American Correctional Association, the classification policy assigns point values within these categories, with higher point values corresponding to lower security risks." (Sangamon County Detention Facility, Illinois)

U.S. Appeals Court
LOCK DOWN

Turley v. *Rednour*, 729 F.3d 645 (7th Cir. 2013). An Illinois prisoner serving a life sentence brought a § 1983 action against prison officials, alleging that the prisoner and other inmates classified as low-aggression offenders in the prisoner's cellhouse were subject to lockdowns for more than 50 percent of the days in a 33-month period. The district court dismissed the complaint at the screening stage for prisoner civil actions and the prisoner appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the prisoner had exhausted his administrative remedies. The court found that frequent unit-wide prison lockdowns for substantial periods of time deprived him of exercise and caused him various health issues, such as irritable bowel syndrome, severe stress, headaches, and tinnitus, stated a claim for an Eighth Amendment violation. According to the court, the prisoner sufficiently alleged prison officials' deliberate indifference to physical and psychological injuries, as required to state a claim for an Eighth Amendment violation, based on excessive prison lockdowns. The court noted that the prisoner alleged that he had filed multiple grievances about prison conditions, including a grievance specifically challenging small cells, and that the prison was the subject of numerous past lawsuits, including one specifically ordering a remedial plan for overcrowding, small cells, and lack of adequate medical care and hygiene. (Menard Correctional Center, Illinois)

U.S. Appeals Court
CONTRABAND
SAFETY
SECURITY PRACTICES

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
CLEANING SUPPLIES
CROWDING
SAFETY

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)

2014

U.S. Appeals Court
EXPOSURE TO CHEMICALS

Cantley v. *West Virginia Regional Jail and Correctional Facility Authority*, 771 F.3d 201 (4th Cir. 2014). Two arrestees brought a § 1983 action for damages and declaratory and injunctive relief against a regional jail authority and three of its former or current executive directors, challenging the constitutionality of visual strip searches and delousing of the arrestees. The district court granted summary judgment to the defendants. An arrestee appealed. The appeals court affirmed. The court held that: (1) the post-arraignment visual strip search of one arrestee did not violate the Fourth Amendment; (2) the pre-arraignment visual strip search of the other arrestee did not violate a clearly established right where the arrestee was strip-searched in a private room, and he was to be held until the next morning in a holding cell where he might interact with up to 15 other arrestees; (3) delousing of the arrestees did not violate a clearly established right; and (4) declaratory and injunctive relief would be premature. The court noted that the delousing was done in a private room with only one officer, who was of the same sex as the arrestees, and it did not entail the officer himself touching either arrestee. (West Virginia Regional Jail and Correctional Facility Authority)

U.S. Appeals Court
GANGS
SEX OFFENDER

Danser v. *Stansberry*, 772 F.3d 340 (4th Cir. 2014). A federal inmate who was attacked in a recreation cage brought a Bivens action alleging that officials were deliberately indifferent to his safety. The district court denied the officials' motion for summary judgment based on qualified immunity. The officials appealed. The appeals court vacated and remanded with instructions. The court held that a corrections officer did not disregard an excessive risk to the safety of the inmate in violation of the Eighth Amendment when he placed the inmate, a convicted sex offender, in a recreation cage with a fellow inmate, a violent gang member, and left the recreation area unsupervised, during which time the gang member attacked the inmate. According to the court, the officer was not aware that the inmate was a sex offender or that he was required to check prison databases in which that information was contained, there were no orders issued requiring that the inmate and gang member be separated from each other, and the officer's dereliction of duty in leaving the recreation area did not constitute anything other than negligence. (Federal Correctional Institution, Butner, North Carolina)

U.S. District Court
VIDEO SURVEILLANCE

Dilworth v. *Goldberg*, 3 F.Supp.3d 198 (S.D.N.Y. 2014). In a county jail detainees' action against a county, the detainees moved for spoliation sanctions based on the county's alleged failure to preserve capital project plans that allegedly showed surveillance camera locations, and videos from a surveillance camera in the housing area where one detainee was allegedly beaten. “Spoliation” is the destruction or significant alteration of evidence, or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation. The district court denied the motion, finding that the detainees failed to show that the capital project plans existed, and failed to show that a surveillance camera in the housing area existed. The court noted that ambiguous statements made by a jail official that he was not sure if such plans existed but that they might indicate camera locations, and a speculative expert opinion stating that it was customary for a system installer to provide an “as built” floor plan detailing camera placement, were insufficient to show that such plans in fact existed for the jail. (Westchester County Department of Corrections, New York)

U.S. District Court
LOCKS
SECURITY PRCTICES

Freeland v. *Ballard*, 6 F.Supp.3d 683 (S.D.W.Va. 2014). A prisoner brought an action against prison officials, alleging the officials were deliberately indifferent to serious security breaches and failed to protect him from another inmate who escaped a segregation cell and attacked him with a piece of metal. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner's allegation that there was at least one prior incident when an inmate repeatedly beat on his door until it became unsecured and permitted the inmate to escape from the cell and assault another prisoner, did not give rise to a plausible claim that prison officials had actual knowledge of a substantial risk of harm to the prisoner and disregarded that risk in violation of the Eighth Amendment. But the court found that the prisoner's allegations, that an inmate escaped a segregation cell and attacked prisoner with a piece of metal but prison officials did nothing to intervene to stop the attack when they had the opportunity to do so, and that the officials were aware of prior incidents of inmates beating their doors open and attacking other inmates, were sufficient to state an Eighth Amendment claim. (Mount Olive Corr'l. Complex, W. V.)

U.S. Appeals Court
CLASSIFICATION
GANGS
SEGREGATION
TRANSFER

Griffin v. *Gomez*, 741 F.3d 10 (9th Cir. 2014). A state inmate filed a petition for a writ of habeas corpus challenging his placement in a security housing unit (SHU). After the writ was issued, the district court ordered the state to release the inmate from segregated housing conditions, and the state appealed. The appeals court vacated, reversed, and remanded. The appeals court held that the district court abused its discretion by finding that the state had violated its order issuing a writ of habeas corpus requiring the state to release the inmate from the facility's security housing unit (SHU). According to the court, the state subsequently placed the inmate in the facility's administrative segregation unit (ASU) and then in another facility's SHU. The court noted that the inmate had been released into federal custody before the order was issued, his placement in ASU after he was released from federal custody pending evaluation of his gang status was standard procedure, and the inmate was validated as an active gang member and placed in other SHU. According to the court, the district court improperly impeded state prison management. (Pelican Bay State Prison, California)

U.S. Appeals Court
PROTECTION
SAFETY
SECURITY PRACTICES
WEAPON

Harrison v. *Culliver*, 746 F.3d 1288 (11th Cir. 2014). A state prisoner brought a § 1983 action against prison officials, relating to an inmate-on-inmate assault with a box cutter, and asserting an Eighth Amendment violation based on deliberate indifference to a substantial risk of serious harm. The district court granted summary judgment to the prison officials and denied the prisoner's motion to proceed in forma pauperis. The prisoner appealed. The appeals court affirmed. The appeals court held that: (1) past incidents of inmate-on-inmate violence involving weapons did not constitute a substantial risk of serious harm; (2) the prison's policies for monitoring a back hallway in which the prisoner was attacked did not create a substantial risk of serious harm; (3) lack of oversight of the prison's hobby craft shop did not create a substantial risk of serious harm; and (4) prison officials were not deliberately indifferent with respect to oversight of the hobby shop. (W.C. Holman Correctional Facility, Alabama)

U.S. Appeals Court
ITEMS PERMITTED

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
LOCKS

Lakin v. *Barnhart*, 758 F.3d 66 (1st Cir. 2014). State inmates filed § 1983 actions alleging that prison officials acted with deliberate indifference to a substantial risk that inmates would use padlocks issued to them by the prison to assault fellow inmates, in violation of the Eighth Amendment and the Maine Civil Rights Act. The district court entered summary judgment in the officials' favor, and the inmates appealed. The appeals were consolidated, and the appeals court affirmed. The court held that the inmates did not face a substantial risk of being assaulted with padlocks by their fellow inmates, and thus the prison officials did not violate the Eighth Amendment by failing to discontinue the practice of providing padlocks to inmates to secure their personal items, where annual occurrences of padlock assaults at the prison had generally been few, both in absolute number and as a percentage of total inmate violence. (Maine State Prison)

U.S. District Court
LOCK DOWN

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 lockdown. (N.Y. City Department of Corrections)

U.S. District Court
RESTRAINTS

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. Appeals Court
PRETRIAL DETAINEES
PROTECTION
SAFETY REGULATIONS
USE OF FORCE
RESTRAINTS

Shreve v. *Franklin County, Ohio*, 743 F.3d 126 (6th Cir. 2014). A detainee brought an action against a county, its sheriff, and sheriff's deputies, alleging that the deputies used excessive force against him when they subdued him with a stun gun while he was in custody. The district court granted the defendants' motion for summary judgment. The detainee appealed. The appeals court affirmed. The appeals court held that the sheriff's deputies did not act with deliberate indifference towards the detainee's federally protected rights when they subdued the detainee with a stun gun while he was in custody, and therefore the deputies did not use excessive force against the detainee under the Fourteenth Amendment. According to the court: (1) the deputies tried to handcuff the detainee several times before using the stun gun, showing that they sought to minimize the stun gun's use; (2) the deputies also warned the detainee that the stun gun would hurt and that he did not want to have the gun used on him, which showed that they were trying to avoid unnecessary harm; and (3) the deputies faced an ongoing danger with the detainee thrashing about on the cell floor with a loose handcuff, as the deputies had been trained never to lose control of an inmate with

a loose handcuff because it could be used as a weapon. The court held that the incident, in which the detainee lunged towards a sheriff's deputy with his hands raised after a hospital examination, was a rapidly evolving, fluid, and dangerous predicament which precluded the luxury of a calm and reflective pre-response deliberation, and therefore the detainee was required to show that the deputy's actions involved force employed maliciously and sadistically for the very purpose of causing harm, rather than in a good faith effort to maintain or restore discipline, in order to establish the use of excessive force under the Fourteenth Amendment. The court noted that the detainee lunged toward the deputy after asking the deputy "Do you want a piece of me?" and the deputy explained that he had "no way of retreating" because of the cramped quarters and the detainee's position over him while standing on the hospital bed. (Franklin County Corrections Center II, Ohio)

U.S. District Court
RELIGIOUS GROUPS

Thompson v. *Smeal*, 54 F.Supp.3d 339 (M.D.Pa. 2014). A state prisoner brought a case against prison officials, alleging that denial of his request that Christian inmates be granted communal feasts on Christmas and Easter violated his religious and equal protection rights, and violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the officials' motion for summary judgment and the inmate appealed. The appeals court vacated and remanded. On remand, the officials again moved for summary judgment, and the inmate moved for partial summary judgment. The district court denied the motions. The court held that summary judgment on the prisoner's First Amendment claim was precluded by genuine issues of material fact as to: (1) whether the prison's policy of refusing to provide Christmas and Easter communal meals for Christians only, with a group prayer over the food, was legitimately and neutrally applied; (2) whether the prison's penological interests were served by allowing some religious meals and not others; and (3) whether there were alternative means of exercising the prisoner's right to free religious expression. According to the court, summary judgment on the RLUIPA claim was precluded by a genuine issue of material fact as to whether denying communal meals to Christian inmates at the state prison was the least restrictive means to achieve the prison's alleged compelling interests of security, space limitations, and food safety concerns. (State Correctional Institution in Camp Hill, Pennsylvania)

U.S. District Court
CLASSIFICATION
GANGS
PROTECTION

Thornton v. *Jackson*, 998 F.Supp.2d 1365 (N.D.Ga. 2014). An inmate and his wife brought a § 1983 action against various prison employees and officials, alleging violations of the Eighth Amendment, as well as negligence and intentional infliction of emotional distress (IIED). The defendants moved for summary judgment. The district court granted the motion. The court held that the inmate, who was housed at the prison as a visiting-inmate while testifying against another member of the inmate's gang, was not incarcerated under conditions posing a substantial risk of harm, as required to establish the objective requirement for his § 1983 claim against various prison officials and employees. The inmate alleged violation of the Eighth Amendment after he was assaulted by three other inmates. The inmate claimed that his different color jumpsuit identified him as snitch and as a target for violence. The court noted that the prison's inmates did not have a history of attacking visiting inmates, the prison had an order requiring the inmate be kept separate from one other inmate, but did not require protective custody or isolation, the inmate did not have problems with anybody for seven days, and the inmate saw some other inmates talking and reported that he suspected that they were talking about him, but he did not hear what they were saying. (Fulton County Jail, Atlanta)

U.S. District Court
TRANSPORTATION

Torres v. *Amato*, 22 F.Supp.3d 166 (N.D.N.Y. 2014). The administrator of a pretrial detainee's estate brought a § 1983 action against corrections officers, a sheriff, government officials, and a county, alleging deliberate indifference to the serious risk of harm in violation of the Fourteenth Amendment and various state claims. The defendants moved for summary judgment. The district court denied the motion. The court held that: (1) disputes of material fact as to whether the door to a transport van was improperly latched or the officer was operating the van in a reckless manner precluded summary judgment on the deliberate indifference claim against the officers; (2) a dispute of material fact as to the personal involvement of government officials in the alleged conduct precluded summary judgment on deliberate indifference claim against the officials and the county; and (3) the defendants were not entitled to qualified immunity from the § 1983 claim. The court noted that the detainee's right to be free from deliberate indifference to a substantial risk of harm was clearly established at the time the detainee suffered fatal injuries after falling out of transport van driven by corrections officers, and thus, officers and government officials were not entitled to qualified immunity from the § 1983 claim of deliberate indifference to a substantial risk of harm in violation of the Fourteenth Amendment. (Montgomery County Sheriff's Department, New York)

U.S. District Court
WHEELCHAIR
TRANSPORTATION

Turner v. *Mull*, 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)

U.S. Appeals Court
ESCAPE

U.S. v. *Batts*, 758 F.3d 915 (8th Cir. 2014). A defendant pleaded guilty in the district court to escape of a prisoner in custody. He appealed. The appeals court affirmed, finding that the prison camp from which the defendant walked away was not a non-secure facility, as required in order to make the defendant eligible for a sentence reduction on such basis at sentencing. (Federal Correctional Institution, Forrest City, Arkansas)

U.S. District Court
RELIGIOUS SERVICES
SECURITY PRACTICES

Walker v. *Artus*, 998 F.Supp.2d 18 N.D.N.Y. 2014). A Muslim inmate housed in a state prison special housing unit (SHU) brought a § 1983 action alleging that state prison officials deprived him of his rights in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Free Exercise Clause of the First Amendment. The officials moved for summary judgment. The district court granted the motion. The court held that denial of the inmate's requests to participate in congregate religious services by audio or video feed was reasonably related to legitimate security and cost concerns, and the inmate had adequate means to exercise his burdened right, including weekly visits from an Imam, and thus denial of the inmate's requests did not violate the inmate's free exercise rights under the First Amendment. The court also found that the officials' denial furthered compelling government interests of promoting prison security and managing costs, and the burden placed on the inmate was the least restrictive means necessary to serve those interests, and thus denial of inmate's requests did not violate RLUIPA. (Clinton Correctional Facility, New York)

U.S. Appeals Court
RELIGIOUS SERVICES
SECURITY PRACTICES
SEGREGATION
STAFFING

Yellowbear v. *Lampert*, 741 F.3d 48 (10th Cir. 2014). A state prisoner brought an action against individual prison officials, seeking prospective injunctive relief against them for violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment for the officials and the prisoner appealed. The appeals court vacated and remanded. The appeals court held that summary judgment was precluded by a factual issue as to whether preventing the state prisoner from exercising his sincerely held religious belief --using a sweat lodge -- served a compelling governmental interest, and that it was the least restrictive means of furthering that interest. The appeals court began its opinion by stating: "Andrew Yellowbear will probably spend the rest of his life in prison. Time he must serve for murdering his daughter. With that much lying behind and still before him, Mr. Yellowbear has found sustenance in his faith. No one doubts the sincerity of his religious beliefs or that they are the reason he seeks access to his prison's sweat lodge—a house of prayer and meditation the prison has supplied for those who share his Native American religious tradition. Yet the prison refuses to open the doors of that sweat lodge to Mr. Yellowbear alone, and so we have this litigation." The prison's sweat lodge is located in the general prison yard and Yellowbear was housed in a special protective unit because of threats against him, not because of any disciplinary infraction he had committed. Prison officials asserted that the cost of providing the necessary security to take the prisoner from the special protective unit to the sweat lodge and back was "unduly burdensome." (Wyoming Medium Correctional Institution)

2015

U.S. District Court
RELIGIOUS GROUPS

Ajala v. *West*, 106 F.Supp.3d 976 (W.D. Wisc. 2015). An inmate brought an action against prison officials for alleged violation of his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Free Exercise Clause, the Establishment Clause, and the Equal Protection Clause. The inmate challenged a prison policy that allegedly prohibited the inmate from wearing a "kufi," a head covering worn by some Muslims, unless he was in his cell or participating in congregate services. The prison officials moved for summary judgment, and the inmate moved for an extension. The district court held that: (1) the policy imposed a substantial burden on the inmate's religious exercise; (2) the policy was not the least restrictive means of furthering the prison's interest of preventing prisoners from using a religious head covering as a potential gang identifier; (3) the policy was not the least restrictive means of furthering the prison's interest in preventing prisoners from hiding contraband; (4) the policy was not the least restrictive means of furthering the prison's interest in preventing prison violence; and (5) prison officials were entitled to qualified immunity from the inmate's constitutional claims. The court noted that the law was not clearly established that the inmate had a constitutional right to wear a kufi at all times. (Wisconsin Secure Program Facility)

U.S. District Court
CONTRABAND

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. District Court
ITEMS PERMITTED

Cavanagh v. *Taranto*, 95 F.Supp.3d 220 (D. Mass. 2015). A pretrial detainee's son brought an action under § 1983 against correctional officers who were on duty the day of the detainee's suicide, alleging the officers violated the detainee's due process rights. The officers moved for summary judgment. The district court granted the motion. The court held that the officers were not deliberately indifferent to the detainee's mental health history and safety, to her safety through inadequate cell checks, or to her safety by failing to remove a looped shoelace from her cell. The court noted that the detainee was not identified as a suicide risk, the officers did not have access to the detainee's medical records, the officers were not trained to make suicide assessments, and the detainee's risk of suicide was not so obvious that someone other than a professional could have recognized the risk. (Suffolk County House of Correction, Massachusetts)

U.S. Appeals Court
RESTRAINTS

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 be-

havior, 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 the that 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
RESTRAINTS
SECURITY PRACTICES

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. District Court
STAFFING
PROTECTION

Cotta v. *County of Kings*, 79 F.Supp.3d 1148 (E.D.Cal. 2015). An inmate's mother, individually and as representative of the inmate's estate, as well as the prisoner's two daughters, brought an action against a county, and county jail officials, alleging that inadequate safety at the jail violated the inmate's constitutional rights and ultimately led to his death when he was killed by a cellmate. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) the inmate's due process right to protection from violence was violated; (2) the jail's staffing policy on the night the inmate was murdered was not lacking, such that any need to remedy the staffing policy was not obvious; (3) an official's decision to house the inmate together with the cellmate was a ministerial determination that was not entitled to immunity; (4) an official did not breach her duty of care to protect the inmate from any foreseeable harm; and (5) summary judgment was precluded by genuine issues of material fact as to whether the county's lack of a policy requiring its employees to report safety risks was the cause of the inmate's murder and whether the county's conduct shocked the conscience. (Kings County Jail, California)

U.S. District Court
PUBLICATIONS

Crime, Justice & America, Inc. v. *Honea*, 110 F.Supp.3d 1027 (E.D. Cal. 2015). The publisher of a magazine intended for newly arrested county jail detainees awaiting trial brought an action against a county alleging violation of the right to free speech protected under the First Amendment after the county barred general distribution of unsolicited paper products to detainees. After a bench trial, the district court held that: (1) the county jail's policy of limiting written publications was rationally related to legitimate a penological interest in preventing inmates from using paper to conduct illicit activity; (2) electronic touch-screen kiosks that displayed the publisher's magazine in the jail were sufficient alternative means; (3) the impact of accommodating the asserted right weighed in favor of the county policy; and (4) the policy was not an exaggerated response. The court found that a corrections officer's testimony regarding the nefarious uses of paper in county jails, including that he could not recall a time when the publisher's law-oriented magazine had been used by detainees for such purposes was not, without more, sufficient to refute the county's explanation that its policy limiting detainee's access to paper was rationally related to a legitimate penological interest. The court ruled that the publisher's proposal to provide two copies of the publisher's law-oriented magazine in the county jail law library, standing alone, was not a sufficient alternative means for the publisher to communicate the existence of the magazine to county jail detainees, where most inmates would likely have left the jail before they would receive it from the library. (Butte County Jail, California)

U.S. Appeals Court
RESTRAINTS
SECURITY PRACTICES

Davis v. *Wessel*, 792 F.3d 793 (7th Cir. 2015). A civil detainee brought a pro se action under § 1983 against security guards employed at civil detention facility for sexually violent persons, operated by the Illinois Department of Human Services. The detainee alleged violation of his rights under the Due Process Clause of the Fourteenth Amendment. The district court entered judgment on a jury verdict in favor of the detainee and the security guards appealed. The appeals court vacated and remanded. The court held that the issue of whether security guards employed at the

civil detention facility refused to remove the detainee's handcuffs with the intent of humiliating him, by preventing him from using the restroom and forcing him to urinate on himself, was for a jury to decide. The court found that the security guards were not entitled to qualified immunity from the claim by the detainee under § 1983 alleging excessive use of restraints in violation of the Due Process Clause after the guards refused to remove the detainee's handcuffs because it was clearly established at the time the detainee requested to use the restroom, which had no windows, that keeping the handcuffs on was not rationally related to a legitimate non-punitive purpose absent an indication that the detainee was a security risk. (Illinois
Department of Human Services, Rushville Treatment and Detention Facility)

U.S. District Court
GANGS
CLASSIFICATION
PROTECTION

Facey v. *Dickhaut*, 91 F.Supp.3d 12 (D.Mass. 2014). A prisoner at a state correctional institution filed a pro se § 1983 action against corrections officials, alleging that the officials knowingly placed him in danger by assigning him to a housing unit where he was violently attacked by members of a rival gang, in violation of his Eighth Amendment right to be free from cruel and unusual punishment. Both parties filed motions to strike, and the officers moved for summary judgment. The court held that summary judgment was precluded by issues of fact as to whether corrections officials knew that the prisoner faced a substantial risk of serious harm, and whether the officials violated clearly established rights (Souza–Baranowski Correctional, Massachusetts)

U.S. Appeals Court
LOCKDOWN

Harrington v. *Scribner*, 785 F.3d 1299 (9th Cir. 2015). An African-American inmate brought a § 1983 action against state prison officials, alleging that a race-based lockdown at the prison violated his equal protection rights, and that he suffered injuries related to shower restrictions in violation of the Eighth Amendment. The district court entered judgment on a jury verdict in favor of the officials. The inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court noted that racial classifications in prisons are immediately suspect and subject to strict scrutiny, for equal protection purposes, which requires the government to prove that the measures are narrowly tailored to further a compelling government interest. The court found that the jury instructions erroneously diluted the narrow tailoring requirement for the strict scrutiny test that applied to the race-based Equal Protection claim. (California State Prison–Corcoran)

U.S. Appeals Court
GANGS

Hinojosa v. *Davey*, 803 F.3d 412 (9th Cir. 2015). A state prisoner petitioned for federal habeas relief, challenging a state statutory amendment modifying the credit-earning status of prison-gang members and associates in segregated housing, so that such prisoners could no longer earn any good-time credits that would reduce their sentences. The district court denied the petition and the prisoner appealed. The appeals court reversed and remanded with instructions to the district court. The court held that the amendment disadvantaged the offenders it affected by increasing the punishment for their crimes, an element for an ex post facto violation. The court noted that even if a prisoner could easily opt out of his prison gang, a prisoner who continued doing what he was doing before the statute was amended would have his prison time effectively lengthened. (Special Housing Unit, Corcoran State Prison, California)

U.S. Appeals Court
VISITS

Jackson v. *Humphrey*, 776 F.3d 1232 (11th Cir. 2015). A wife brought an action under § 1983 against corrections officials, claiming that revocation of her visitation privileges with her incarcerated husband who was on a hunger strike violated the First Amendment. The district court granted summary judgment, based on qualified immunity, in favor of the officials, for their decision to terminate the wife's visitation privileges during the time of hunger strike. The court denied summary judgment to the officials for the period following the end of the hunger strike, ruling that the question of whether the officials continued to enjoy qualified immunity after the hunger strike ended was one for a jury. The officials appealed. The appeals court reversed and remanded, finding that the officials were entitled to qualified immunity. According to the court, the officials' decision had been motivated by lawful considerations even though it had consequences in the future, where the husband had a considerable amount of influence over other prisoners and considered himself, and was viewed by others, to be the leader of the hunger strike. The court noted that evidence suggested that the wife had urged her husband to prolong that strike after the strike had ended, and the officials were legitimately concerned that the strike might spread, about the disruption caused by the strike, and about the security and safety of staff and inmates. (Georgia Department of Corrections, Georgia Diagnostic and Classification Prison Special Management Unit)

U.S. Appeals Court
CONTRABAND
CELL PHONE

Johnson v. *American Towers, LLC*, 781 F.3d 693 (4th Cir. 2015). Prison guard who was shot multiple times in his home at the direction of an inmate who ordered the attack using a contraband cellular telephone, together with his wife, brought a state-court action for negligence and loss of consortium against several wireless service providers and owners of cell phone towers, asserting that they were liable for the guard's injuries because they were aware that their services facilitated the illegal use of cell phones by inmates and yet failed to take steps to curb that use. Following removal to federal court and denial of the plaintiffs' motion to remand, the defendants filed a joint motion to dismiss. The district court granted the motion and the plaintiffs appealed. The appeals court affirmed. The appeals court held the plaintiffs failed to allege sufficient facts to set forth a plausible claim for relief. The court noted that although the complaint contained a bare assertion that "an inmate at the prison using a cell phone ordered a co-conspirator outside of the prison to kill [the guard]," the plaintiffs failed to offer any further factual enhancement to support their claims, such as by identifying the wireless service provider that carried the alleged call or when the alleged call occurred, such that a wireless service provider would likely be unable to determine whether it carried the alleged call without more identifying information. (Lee Correctional Institution, South Carolina)

U.S. District Court
VISITS
SEARCHES

Knight v. *Washington State Department of Corrections*, 147 F.Supp.3d 1165 (W.D. Wash. 2015). A prison visitor who suffered from a seizure disorder, and was subjected to a strip search and pat-down searches, brought an action against the state Department of Corrections (DOC) and DOC officials, alleging that the searches violated the Americans with Disabilities Act (ADA). The defendants moved for summary judgment. The district court granted the motion, finding that: (1)the strip search and pat-down searches did not violate ADA; (2) guards did not act with deliberate indifference in conducting a strip search; (3) the prison was not a place of public accommodation, under the Washington Law Against Discrimination, as to visitors participating in an extended family visitation program; (4)

the guards' conduct was not sufficiently extreme to support an outrage claim; and (5) the guards' conduct did not support a claim for negligent infliction of emotional distress. According to the court, there was no showing that the guards proceeded in conscious disregard of a high probability of emotional distress when ordering the strip search, as the visitor suggested the strip search as an alternative to a pat search and the guards followed this suggestion, and all visitors were subjected to pat-down searches, which were justified on safety grounds. (Monroe Correctional Complex, Washington)

U.S. District Court
BOOKS

Minton v. *Childers*, 113 F.Supp.3d 796 (D. Md. 2015). A prisoner brought a § 1983 action against prison officials, seeking injunctive relief, along with nominal and punitive damages, after the officials barred his receipt of used books pursuant to prison directives. The officials and the prisoner both filed motions for summary judgment. The district court granted the officials' motion and denied the prisoner's motion. The court held that the prisoner failed to exhaust administrative remedies under Maryland law prior to filing the § 1983 action in federal court, in violation of the Prison Litigation Reform Act (PLRA). The court found that a prison directive banning inmate possession of incoming used books not sent directly by a publisher was reasonably related to legitimate penological interests, as required by due process. The court noted that the prisoner was allowed to receive new books sent directly from a publisher, the ban was expressly aimed at advancing jail security and protecting the safety of jail personnel and other inmates, the ban was logically connected to those goals, to allow inmates to possess used books from stores or e-commerce companies could have had significant impact on the safety and security of prison personnel and other inmates. The court noted that the prisoner did not point to an alternative that fully accommodated his rights while at same time imposed de minimis cost to valid penological interests. (Eastern Correctional Institution, Maryland)

U.S. Appeals Court
CELL PHONE

Santiago-Lugo v. *Warden*, 785 F.3d 467 (11th Cir. 2015). A prisoner filed a habeas corpus petition, seeking relief on due process grounds for disciplinary sanctions he received for possession of a cellular telephone, which included revocation of his good time credits. The district court denied the prisoner's petition and the prisoner appealed. The appeals court affirmed, finding that the prisoner was given sufficient notice of the charges against him, as required by due process. (Federal Correctional Complex at Coleman Medium Prison, Florida)

U.S. Appeals Court
RELIGIOUS ARTICLES

Schlemm v. *Wall*, 784 F.3d 362 (7th Cir. 2015). A prisoner, a Navajo Tribe member, brought an action under the Religious Land Use and Institutionalized Persons Act (RLUIPA) against the Wisconsin Department of Corrections, seeking an order requiring the state prison system to accommodate some of his religious practices. The district court granted the prison's summary judgment motion. The prisoner appealed. The appeals court affirmed in part and reversed in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prisoner's inability to eat game meat for a religious feast substantially burdened his religious exercise, and as to whether the prisoner's inability to wear a multicolored headband while praying in his cell and during group religious ceremonies substantially burdened his religious exercise, and whether prison had a compelling justification for prohibiting multicolored headbands. (Wisconsin Department of Corrections)

U.S. District Court
SECURITY PRACTICES

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 Co. Jail, Texas)

U.S. District Court
RESTRAINTS
USE OF FORCE

Shuford v. *Conway*, 86 F.Supp.3d 1344 (N.D.Ga. 2015). Pretrial detainees brought a § 1983 action against a sheriff and other county jail officials and employees, alleging excessive force in violation of the Fourteenth Amendment. The defendants moved for summary judgment. The district court granted the motion, finding that the jail employees did not apply force maliciously and sadistically against any detainee. According to the court, in shooting the pretrial detainee with a non-lethal chemical agent projectile, taking him to the floor, and placing him in restraint chair, the employees did not apply force maliciously and sadistically. The court noted that the detainee had hit a wall and metal partition, creating a risk of self-harm, the restraints reduced or eliminated the detainee's ability to inflict harm against himself, and the detainee did not suffer serious or permanent injuries. (Gwinnett County Jail, Georgia)

U.S. Appeals Court
WHEELCHAIR
TRANSPORTATION

Turner v. *Mull*, 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. 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. 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)

U.S. Appeals Court
ESCAPE

U.S. v. *Goad*, 788 F.3d 873 (8th Cir. 2015). After a federal district court denied a motion to dismiss an indictment, the defendant conditionally pled guilty to escape from custody. The defendant appealed. The appeals court affirmed, finding that the defendant was in "custody" at a residential reentry center, such that his unauthorized departure from the center constituted an escape from custody. The court noted that a person may be in custody for the purposes of a statute prohibiting escape from custody, even though the physical restraints upon him are minimal and even though the custody may be deemed constructive, rather than actual. (Gerald R. Hinzman Residential Reentry Center, Iowa)

U.S. District Court
SEGREGATION
SECURITY RESTRICTIONS

U.S. v. *Mohamed*, 103 F.Supp.3d 281 (E.D.N.Y. 2015). A defendant who was indicted for murder of an internationally protected person and attempted murder of an internationally protected person, filed a motion to vacate or modify special administrative measures governing conditions of his pretrial detention. The district court denied the motion, finding that the measures were rationally connected to the legitimate government objective of preventing the detainee from coordinating violent attacks. The detainee had been placed in a special housing unit and limitations on communications between him and people inside or outside the prison were limited. The court noted that the detainee had admitted allegiance to terrorist organizations, had previously broken out of prison two times, one escape was allegedly coordinated between the defendant and a terrorist organization, and three prison guards had been killed during one escape. (Metropolitan Correctional Center, Manhattan, New York)

U.S. Appeals Court
RESTRAINTS

U.S. v. *Sanchez-Gomez*, 798 F.3d 1204 (9th Cir. 2015). Defendants filed challenges to a federal district court policy, adopted upon the recommendation of the United States Marshals, to place defendants in full shackle restraints for all non-jury proceedings, with the exception of guilty pleas and sentencing hearings, unless a judge specifically requests the restraints be removed in a particular case. The district court denied the challenges. The defendants appealed. The appeals court vacated and remanded. The appeals court found that the defendants' challenges to the shackling policy were not rendered moot by the fact that they were no longer detained. The court held that there was no adequate justification of the necessity for the district court's generalized shackling policy. According to the court, although the Marshals recommended the policy after some security incidents, coupled with understaffing, created strains in the ability of the Marshals to provide adequate security for a newly opened, state-of-the-art courthouse, the government did not point to the causes or magnitude of the asserted increased security risk, nor did it try to demonstrate that other less restrictive measures, such as increased staffing, would not suffice. (Southern District of California, United States Marshals, San Diego Federal Courthouse)

U.S. District Court
ACCESS TO ATTORNEY
ITEMS PERMITTED
SECURITY PRACTICES

United States v. *Rivera*, 83 F.Supp.3d 1154 (D.Colo. 2015). A prisoner moved for a standing order directing the Bureau of Prisons (BOP) to permit counsel and a defense investigator to bring laptop computers into the facility during the remaining pendency of his criminal action. The district court denied the motion. The court held that the BOP reasonably refused to allow defense counsel and defense investigators to bring their laptop computers into the maximum security facility, and instead permitted them to download materials from their own computers onto the BOP's "clean" computer that did not store downloaded information. The court noted that the increased staff and equipment necessary to thoroughly inspect every laptop for weapons and other contraband to ensure the security of staff and inmates would be a burden. The court noted that counsel could print a hard copy of any materials that could not readily be downloaded onto a clean computer. (Administrative Maximum Facility Florence, and FCI Englewood, Federal Bureau of Prisons, Colorado)

U.S. Appeals Court
WHEELCHAIR
TRANSPORTATION

Wagoner v. *Lemmon*, 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 Dept. of Corrections)

U.S. Appeals Court
EXERCISE
WEAPON

Williams v. *Hampton*, 797 F.3d 276 (5th Cir. 2015). Inmates and parents of a deceased inmate, as wrongful death beneficiaries, brought a § 1983 action against a state correctional officer for the death of one inmate and the injuries of two other inmates arising out of an inmate-on-inmate attack. The district court entered judgment against the officer and she appealed. The appeals court reversed, finding that the corrections officer who was guarding a prison exercise yard was not deliberately indifferent to a substantial risk of inmate-on-inmate violence when she failed to ascertain if her single-shot, nonlethal block gun was loaded and later took two rubber bullets for the gun with her back into the prison building and did not give them to the officer who relieved her. According to the court, although three inmates were subsequently attacked by other inmates who escaped from their exercise pens, there was no evidence that the officer realized that the gun was unloaded, that she knew there was a risk that inmates could escape from the pens, or that a loaded block gun could have prevented the assaults. (State Penitentiary in Parchman, Mississippi)

SECTION 40: SANITATION

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.

1970

U.S. District Court
BEDDING
KITCHEN

Hamilton v. Schiro, 338 F.Supp. 1016 (E.D. La. 1970). Fact that mattresses issued to inmates were not cleaned contributes to court's finding of constitutional violation. Unsanitary condition of jail kitchen contributes to court's finding of constitutional violation. (Orleans Parish Prison, Louisiana)

1971

U.S. District Court
HOT WATER
LAUNDRY

Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Oh. 1971), aff'd, 456 F.2d 854 (6th Cir. 1972). There must be hot and cold water for bathing. Clean towels and washcloths, soap, toothbrush, toothpaste, and shaving gear shall be provided. Clean linens shall be provided regularly and clothing shall be laundered and exchanged weekly. Prisoners shall be dressed in jail clothing. (Lucas County Jail, Ohio)

1972

U.S. District Court
BEDDING
CLOTHING
LAUNDRY

Hamilton v. Landrieu, 351 F.Supp. 549 (E.D. La. 1972). Every existing mattress shall be disposed of and new mattresses procured, replaced annually, and linen shall be laundered at least once a week. Court ordered that all prisoners be clothed in prison uniforms so that inmates could be readily distinguished from employees and visitors. Each defendant not having a change of clothing would be provided one. (Orleans Parish Prison, Louisiana)

1973

U.S. District Court
KITCHEN

Goldsby v. Carnes, 365 F.Supp. 395 (W.D. Mo. 1973). A trained and experienced Food Service Manager with management skills must be hired and given direct authority over the kitchen operation. The county health department should periodically inspect kitchen facilities to insure that they meet ordinary standards. There must be a regular cleaning schedule for all kitchen equipment. (Jackson County Jail, Kansas City, Missouri)

U.S. District Court
CLOTHING
LAUNDRY

Inmates of Suffolk Co. Jail v. Eisenstadt, 360 F.Supp. 676 (D. Mass. 1973), aff'd, 494 F.2d 1196 (1st Cir. 1974). Detainees are to be given daily showers. Institutional clothing is to be given to all detainees who need it. Free laundry service must be given to detainees at least once a week. (Suffolk County Jail, Massachusetts)

U.S. District Court
BEDDING
LAUNDRY

Johnson v. Lark, 365 F.Supp. 289 (E.D. Mo. 1973). Clean mattress covers, blankets and towels will be provided upon admission and cleaned, washed or repaired at reasonable intervals. (St. Louis County Jail, Missouri)

1975

U.S. District Court
LAUNDRY
BEDDING

Campbell v. McGruder, 416 F.Supp. 100 (D. D.C. 1975). Clean clothing, clean towels, and clean bed linen are to be provided at least once a week. (D.C. Jail)

U.S. District Court
FOOD SERVICE

Padgett v. Stein, 406 F.Supp. 287 (M.D. Penn. 1975). Sanitary and nutritious meals contribute to the absence of cruel and unusual punishment. (York County Prison, Pennsylvania)

1976

U.S. District Court
CLOTHING
LAUNDRY
PLUMBING

Mitchell v. Untreiner, 421 F.Supp. 886 (N.D. Fla. 1976). Inmates without adequate clothing shall be furnished clothing within eight hours of booking and shall have available a daily change of clean clothes. Clean towels and washcloths shall be issued to inmates within eight hours of booking and shall be frequently laundered. Inmates shall not be housed in cells which do not have showers except isolation cells, and inmates in isolation cells or cells without working showers shall receive at least five showers a week. (Escambia County Jail, Pensacola, Florida)

U.S. District Court
CLOTHING
BEDDING

Tate v. Kassulke, 409 F.Supp. 651 (W.D. Ky. 1976). A committee should be designated to see that clean clothing and bedding are received once a week. (Jefferson County Jail, Kentucky)

1977

U.S. District Court
HOT WATER
TOILETS
SHOWERS
KITCHEN
FOOD SERVICE

Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. Each cell shall contain a working toilet that flushes from the inside and a wash basin with hot and cold water. Showers shall be maintained in a safe and sanitary manner so that detainees may receive showers on a daily basis. All individuals involved in preparation, handling, or service of food shall meet minimum public health standards for restaurant employees. The jail kitchen shall be inspected monthly by the health department or another agency approved by the court. (Platte County Jail, Missouri)

U.S. District Court
SHOWERS

Anderson v. Redman, 429 F.Supp. 1105 (D. Del. 1977). Housing of inmates in converted common areas without adequate sanitary facilities violates state statutes and regulations requiring facilities to be sufficient for every inmate to bathe as often as necessary but at least three times a week. (Delaware Correctional Center)

U.S. District Court
SHOWERS
CLOTHING
BEDDING

Goldsby v. Carnes, 429 F.Supp. 370 (W.D. Mo. 1977). Each inmate will be afforded an opportunity to shower at least every other day. Standard bath size towels will be provided to each inmate, and each inmate without such will be furnished with soap, toothbrush, toothpaste, and shaving gear in sufficient quantity to allow adequate maintenance of personal hygiene. Sheets will be large enough to allow for shrinkage. Mattress covers or plastic coated mattresses will be provided. All new inmates will be provided with underwear and clothing. (Jackson County Jail, Kansas City, Missouri)

1978

U.S. Appeals Court
HOUSEKEEPING

Bijeol v. Nelson, 579 F.2d 423 (7th Cir. 1978). Pretrial detainees may be required to perform general housekeeping tasks. (Metro Correctional Center, Chicago)

U.S. District Court
SHOWERS
TOILETS
KITCHEN
COMMON AREAS

Burks v. Walsh, 461 F.Supp. 454 (W.D. Missouri, 1978). Actions were brought seeking injunctive and declaratory relief on behalf of inmates at the Missouri State Penitentiary. After a trial limited to the issues of overcrowding and unsanitary conditions, the district court held that: (1) triple celling inmates in 59.2-square-foot cells in the diagnostic center, in 65-square-foot cells in the administrative segregation unit, and in 66-square-foot cells in the adjustment unit, as well as double celling of inmates in 47.18-square-foot cells in the special treatment unit, constituted cruel and unusual punishment in violation of the eighth amendment, but (2) except in such instances, the conditions in the aggregate which presently existed at the State Penitentiary did not violate the cruel and unusual punishment clause of the eighth amendment.

In examining conditions of state penitentiary, the court's inquiry had to be limited to determining whether conditions at the penitentiary caused inmates to suffer deprivations of constitutional dimensions.

The eighth amendment's prohibition against cruel and unusual punishment is not limited to specific acts directed at selected individuals, but is equally pertinent to general conditions of confinement. Confinement itself can result in a finding of cruel and unusual punishment. However, only where confinement is characterized by conditions and practices so bad as to be shocking to the conscience of reasonably civilized people.

In determining whether conditions at the state penitentiary constituted cruel and unusual punishment, the district court had to be cautious not to place undue emphasis upon "design capacities" and minimum square footage mandates of other courts, nor were minimum square footage standards of various professional associations dispositive. Furthermore, in applying the "totality of circumstances" approach to Missouri Penitentiary conditions, the relaxed amicable atmosphere generated by the prison administration had to tip scales in favor of the state in areas of doubtful constitutionality.

In the aggregate, and with certain exceptions regarding overcrowding in certain units, all conditions presently existing at Missouri State Penitentiary, including but not limited to conditions and qualities of individual cells, showers, toilets, dining halls, kitchen, windows, temperature, noise level, canteen, recreational areas, laundry service, ventilation systems, visiting room, pest control program, prison industries and other activities, are not intolerable in light of the modern conscience, or shocking to the conscience of the court, and thus do not violate cruel and unusual punishment clause of the eighth amendment.

Double celling of penitentiary inmates in 65-square-foot cells in administrative segregation unit was not intolerable, inhumane, totally unreasonable or shocking to the court's conscience where common areas of unit were very clean and sanitary, individual cells were reasonably clean and sanitary, and the unit was utilized to punish those inmates who committed serious offenses while confined in penitentiary.

Double celling of state penitentiary inmates in diagnostic unit cells measuring 59.2 square feet for period of one to five weeks did not violate the eighth amendment, in spite of the fact that inmates were confined to their cells for greater portion of day than were inmates in general population, where they could leave their cells three times daily for meals, once a week to go to canteen, once a week to go to movies, and once a week for two hours of gym and where, in addition, much of their time was occupied by meetings with caseworkers, taking a battery of tests and physical examinations. (Missouri State Penitentiary)

1979

U.S. Appeals Court
CELLS
HOUSEKEEPING
RODENTS/PESTS
BEDDING

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 the following areas.

EXERCISE. The court ruled that an inmate did not have a constitutional right to outdoor exercise. The argument for the plaintiff was that outdoor exercise was essential to health. The court though, citing Estelle v. Gamble, 420 U.S. 97 (1976), stated that the constitution criterion in matters of physical health is that the jailer must not be deliberately indifferent to the serious needs of his prisoners. Here, there was no evidence presented of a medical nature that the inmates' health needs were adversely affected by the absence of outdoor exercise. Consequently, the court refused to order the jail officials to allow the inmate outdoor exercise.

SANITATION. At the Jackson County Jail, the prisoners were responsible for cleaning their own cells, and a trusty was to assume responsibility for cleaning the cells when the inmate was unable or unwilling to clean after himself. There was no evidence of rodents in the jail. The jail was sprayed for insects once a month to minimize the cockroach problem. Sheets and other bedding as well as clothes were cleaned regularly. Under these circumstances, the court found no constitutional violations regarding the sanitation of the Jackson County Jail.

1980

State Supreme Court
TOILETS
SINKS

Attorney General v. Sheriff of Worcester County, 413 N.E.2d 722 (Mass. 1980).
The Massachusetts Supreme Court ordered the Worcester County Jail to comply with Public Health regulations concerning sinks, toilets and beds. The jail contained seven isolation cells which did not have a toilet, sink or raised bed. After a public health official inspected these cells and found them to be in violation of health regulations, jail officials stated that they intended to correct the violations in six of the cells but would keep the seventh as it is for confinement of potentially suicidal inmates. The court determined that county jails are subject to health department inspections and that isolation units are not to be excluded from the scope of health regulations. The court then ruled that the evidence with respect to the danger of suicide fell short of requiring an exception to the regulations. The court stated that indestructible toilet and sink units are available and that such units could not be used by an inmate to injure himself or others. The court then ordered jail officials to install such units to achieve compliance with health code regulations. (Worcester County Jail, Massachusetts)

U.S. District Court
SHOWERS
CLOTHING
FOOD SERVICE

Griffin v. Smith, 493 F.Supp. 129 (W.D. N.Y. 1980). Allegations of fungus infested showers do not state a claim upon which relief can be granted. Allegations that inmates are limited to one change of socks, shorts and T-shirts per week do not state a claim upon which relief can be granted. Allegation of unsanitary food utensils and the provision to inmates in the Special Housing Unit of food portions smaller than provided to the general population state a claim upon which relief can be granted. (Attica Correctional Facility, New York)

U.S. District Court
CELLS

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. The claim that financial restrictions have prevented improvements in jail conditions is not a defense to constitutional violations.

Although lights were left on all night in the county jail, and there was a high noise level at night, such were not per se unconstitutional conditions, since inmates could sleep during the day, and there was no indication that inmates had developed psychological or physiological problems. An entirely inadequate ventilation system at the county jail constituted a constitutionally intolerable living condition.

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. (Clay County Jail, Missouri)

U.S. District Court
TOILET
HOT WATER

Lightfoot v. Walker, 486 F.Supp. 504 (S.D. Ill. 1980). All cells are to have a working toilet and sink with hot and cold water. (Menard Correctional Center, Menard, Illinois)

U.S. District Court
KITCHEN
FOOD SERVICE

Nicholson v. Choctaw Co., Ala., 498 F.Supp. 295 (S.D. Ala. 1980). Meat served shall be butchered professionally and subject to inspection. Road-killed meat shall not be served. The food shall be nutritious. The public health regulations are to be followed, and there is to be regular inspection by the public health officials. All food handlers are to be checked for communicable diseases. (Choctaw County Jail, Alabama)

U.S. Appeals Court
KITCHEN

Ramos v. Lamm, 639 F.2d 559 (10th Cir. 1980), cert. denied, 450 U.S. 1041. While the state health code does not establish a constitutional minimum for the conditions of a kitchen, it is substantial evidence of what constitutes the humane conditions required by the eighth amendment. The record indicates that the conditions of the kitchen constitute a substantial hazard to the health of the inmates and that they, therefore, violate the eighth amendment. (State Penitentiary, Canon City, Colorado)

1981

U.S. District Court
PLUMBING

Heitman v. Gabriel, 524 F.Supp. 622 (W.D. Mo. 1981). Plumbing conditions are cited. In this case against the Buchanan County Jail, the United States District Court ordered that no inmate is to be assigned to a cell used as a communal toilet, and ordered the jail's plumbing to be cleaned and repaired. The court also found that the jail was overcrowded considering all of the conditions, particularly the plumbing and the lack of out-of-cellblock exercise. (Buchanan County Jail, Missouri)

U.S. Supreme Court
CROWDING
RODENTS/PESTS
FOOD SERVICE
SHOWERS

Rhodes v. Chapman, 101 S.Ct. 2392 (1981). In a remarkable 8 to 1 decision, the Supreme Court upheld double celling at the Southern Ohio Correctional Facility at Lucasville. The maximum security facility was built in the early 1970's with gymnasiums, workshops, school rooms, day room, two chapels, a hospital ward, a commissary, a barber shop and a library. Outdoors, there is a recreation field, visitation area and library. The physical plant itself is a topflight first-class facility. Each cell is sixty-three square feet in area and contains a bed or bunk bed measuring thirty-six by eighty inches, a cabinet nightstand, a wall-mounted sink with hot and cold water, a flushable toilet and a built-in radio. One wall of each cell is barred. Day rooms are open from 6:30 a.m. until 9:30 p.m., and inmates may pass between these rooms and their cells for a ten minute period each hour. At the time of the trial, the facility housed 2,300 inmates, two-thirds of whom were serving life or long-term sentences. Some 1,400 men were double celled.

Despite the favorable nature of the plant's design, the district court found that double celling constituted cruel and unusual punishment. The Supreme Court reversed, noting: "No static test can exist by which courts determine whether conditions of confinement are cruel and unusual, for the Eighth Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Applying those principles to this institution, the court found that the evidence did not support a conclusion that the eighth amendment was violated.

The majority said:

The double celling made necessary by the unanticipated increase in prison population did not lead to deprivations of essential food, medical care or sanitation. Nor did it increase violence among inmates or create other conditions intolerable for prison confinement. Although job and educational opportunities diminished marginally as a result of double celling, limited work hours and delay before receiving education do not inflict pain, much less unnecessary and wanton pain. Deprivations of this kind simply are not punishment.

The Court continued, "We would have to wrench the eighth amendment from its language and history to hold that delay of these desirable aids to rehabilitation violates the Constitution." Three justices, Brennen, Blackmun and Stevens, authored a concurring opinion. It attempted to list some of the things which would determine whether a facility has such poor conditions as to violate the eighth amendment. Those conditions are:

-Physical plant conditions: lighting, heat, plumbing, ventilation, living space, noise levels, and recreation space.

-Sanitation: control of vermin and insects, food preparation, medical facilities, lavatories and showers, clean places for eating, sleeping and working

-Safety: protection from violent, deranged or diseased inmates, fire protection and emergency evacuation.

-Staffing: trained and adequate guards and other staff, and avoidance of placing inmates in positions of authority over other inmates.

This majority of justices cautioned that sixty-three square feet of cell space is not enough for two men. Such conditions, they noted, are a clear signal to legislative officials that additional facilities must be constructed or inmate populations reduced by other means. The justices did state, however, that cramped facilities are not unconstitutional per se.

NOTE: This decision dealt with long-term convicted inmates, not short-term persons in county and city jails. In some circumstances, pretrial detainees who are still presumed innocent until convicted have greater rights, such as access to lawyers and courts. On the other hand, because of the short periods of confinement, a jail facility does not need as elaborate areas for recreation, libraries, exercise and other services, as required for the longer term population of prisons. (Southern Ohio Correctional Facility, Lucasville)

1982

State Court
BEDDING
CLOTHING

Hickson v. Kellison, 296 S.E.2d 855 (W.Vir. 1982). General conditions at the Pocahontas County Jail were found to violate constitutional standards by a federal district court, noting that the jail failed to provide the inmates with personal hygiene supplies, bedding and towels, and adequate clean clothing. The court stated that the legislature required counties to maintain jails at reasonable and acceptable standards. (Pocahontas County Jail, West Virginia)

U.S. District Court
TOILET
PLUMBING
BEDDING

Strachan v. Ashe, 548 F.Supp. 1193 (D. Mass. 1982). Isolation unit conditions are held unconstitutional. Alleging that conditions of an isolation unit in a county correctional facility in Massachusetts were unconstitutional, the plaintiff brought this Section 1983 action.

Although the plaintiff contended that the procedural aspects of the disciplinary proceedings which placed him in isolation, as well as the conditions of isolation were unconstitutional, the court focused on the conditions of the isolation cell. The cell was ten feet by ten feet with no toilet or running water. The plaintiff was permitted to leave his cell only fifteen minutes daily to exercise and to wash with cold water. His only bedding was a mattress on the floor. He was allowed only one blanket, a sheet and pillow. Food served to him was cold.

In discussing the lack of plumbing facilities, the court found that conditions of the isolation cell violated minimum state standards, which did not establish a constitutional violation per se, but lack of adequate plumbing facilities has previously been held to a violation of the eighth amendment.

The court held that because the defendant supervisors had actual notice of the prison conditions, the administrative negligence of not acting on those conditions rose to the level of deliberate indifference in this case. The defendants argued that they were entitled to "good faith immunity," that they could not have been expected to know that they were violating the constitutional rights of the plaintiff. The court rejected this argument, finding that the inmate clearly had a constitutional right to adequate and hygienic means of disposing of his bodily waste. (Hampden County House of Corrections, Massachusetts)

1983

State Court
TOILETS
PLUMBING
HOT WATER

Michaud v. Sheriff of Essex County, 458 N.E.2d 702 (Mass. 1983). Cells in several Massachusetts jails are not to be used until flushing toilets and hand-washing sinks with hot and cold running water are installed, according to a state court ruling. Existing toilet facilities in the cells consist of metal or plastic buckets without lids, shared by several inmates. Emptied only once daily, inmates are subject to continually smelling the odor of their wastes. The cells are not to be used until the ordered improvements are made. (Essex County Jail and House of Corrections, Lawrence, Massachusetts)

1985

U.S. Appeals Court
BEDDING
TOILETS
FOOD SERVICE

Goodson v. City of Atlanta, 763 F.2d 1381 (11th Cir. 1985). 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
RODENTS/PESTS
PLUMBING

Hoptowit v. Spellman, 753 F.2d 779 (9th Cir. 1985). Inmates brought an action challenging conditions of confinement in a state prison system. On remand, 682 F.2d 1237, the United States District Court entered judgment finding conditions in violation of the eighth amendment and ordered relief; the state appealed. The court of appeals held that: (1) the change of administration, resulting in defendants named in the action either leaving office or changing positions, did not warrant reopening the record on remand; (2) inadequate lighting, vermin infestation, substandard fire prevention, and safety hazards in the prison violated minimum requirements of the eighth amendment; and (3) the order for relief was overbroad in requiring provision of adequate food and clothing where there were no findings of inadequate food and clothing.

Adequate lighting is one of the fundamental attributes of adequate shelter required by the eighth amendment. The evidence that the lighting at the state prison was so poor that it was inadequate for reading, caused eyestrain and fatigue and hindered attempts to insure that basic sanitation was maintained supported the district court's conclusion that the lighting violated the eighth amendment.

The plumbing at the state prison which was in such disrepair as to deprive inmates of basic elements of hygiene and which seriously threatened inmates' physical and mental well-being amounted to cruel and unusual punishment under the eighth amendment.

Vermin infestation at the state prison, considered in light of unsanitary conditions such as standing water, flooded toilets and sinks, and dank air, was unnecessary and wanton infliction of pain proscribed by the eighth amendment.

Lack of adequate ventilation and air flow which undermined the health of prison inmates and the sanitation of the prison violated the minimum requirement of the eighth amendment.

The failure to provide adequate cell cleaning supplies in light of overall squalor at the state prison violated the eighth amendment. (State Penitentiary, Washington)

U.S. District Court
CROWDING
PLUMBING
FOOD SERVICE

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 plaintiff's 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. 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. (Federal Correctional Institution at Danbury, Connecticut)

1986

U.S. District Court
PLUMBING

Jackson v. Gardner, 639 F.Supp. 1005 (E.D.Tenn. 1986). Inmates of a county jail brought a Section 1983 action challenging the constitutionality of conditions of confinement. After resolution of some of the conditions complained of, and stipulation as to others, the district court held that: (1) Prison conditions under which an average inmate was confined twenty-four hours a day in a physically dilapidated, insect infected, dimly lit, poorly ventilated area averaging under twenty square feet per inmate, without any available recreation or diversion other than some reading or letter writing, sharing a shower which might not have hot water with twelve to fourteen others, sharing a sink and toilet with three or four others, and possibly sleeping on an unsanitary floor, or within inches of a toilet, in clothing which may not have been recently washed, constituted cruel and unusual punishment; (2) In order for the county jail to provide constitutionally acceptable confinement, population at the main jail facility had to be reduced, regular out-of-cell recreation had to be provided, visitation increased, and fire escape plans had to be communicated to inmates and prominently displayed in corridors at all times. (Sullivan County Jail, Tennessee)

U.S. District Court
CLOTHING

McClung v. Camp County, Tex., 627 F.Supp. 528 (E.D. Tex. 1986). District court ules 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) evidence was sufficient to support a finding that jail fire safety conditions did not violate inmate's constitutional rights; and (4) administering insulin to a diabetic inmate three times daily rather than four times daily did not violate the inmate's rights. (Camp County Jail, Texas)

1987

U.S. District Court
PLUMBING
TOILETS

Nilsson v. Coughlin, 670 F.Supp. 1186 (S.D.N.Y. 1987). Inmates stated a claim under the Eighth Amendment for cruel and unusual punishment. The inmates alleged there was raw sewage in the cells, unsanitary dining facilities, a constant level of noise that was physically harmful, a lack of meaningful vocational, educational or recreational programs, and a host of other conditions. The federal court ruled that a fair inference could be drawn from the pro se complaint that the prison officials were grossly negligent in supervising or, alternatively, in promulgating policies, that caused unconstitutional conditions. (Sullivan Correctional Facility, New York)

1988

U.S. District Court
SHOWERS

Davenport v. DeRoberts, 844 F.2d 1310 (7th Cir. 1988), cert. denied, 109 S.Ct. 260. Inmates brought a class action suit against the prison alleging cruel and unusual punishment because they were allowed only one hour per week for exercise and one shower per week. The federal district court granted injunctive relief and allowed three showers per week and five hours out-of-cell exercise per week, except when there was an emergency or a lock down. The court awarded only nominal damages. The Department of Corrections' own medical director testified that four to seven hours outside the cell, and three showers, were the weekly minimum necessary to prevent serious adverse effects on the physical and mental health of inmates confined in what is a form of solitary confinement. The department also argued that each cell contained a wash basin in which the inmate could wash himself as often as he liked and that the cells were large enough for the inmate to engage in various sorts of exercise, including push-ups, sit-ups and running in place. The lower court noted that "we do not suggest that this is always and everywhere the constitutional minima. Much less may suffice when the period of incarceration is brief." However, on the issue of showers, the court noted that limiting the number of showers to one a week did not have a serious effect on the mental or physical well-being of the inmates and that "the deprivation merely of cultural amenities is not cruel and unusual punishment." The appeals court agreed, refusing to uphold an order for three showers per week. (Stateville Correctional Center)

U.S. District Court
CELLS
RODENTS/PESTS

Harris v. Fleming, 839 F.2d 1232 (7th Cir. 1988), affirmed, 993 F.2d 1549. An inmate filed a federal civil rights lawsuit against three prison officials, claiming he had been subjected to cruel and unusual punishment seeking $320,000 in compensatory and punitive damages. The inmate stated that the prison failed to supply him with toilet paper for five days, or with soap, toothpaste or a toothbrush for ten days and he was kept in a "filthy" roach-infested cell. He also complained that during 28 days in a segregation unit he was refused permission to exercise. Since the inmate suffered no physical harm, but merely some unpleasantness, the federal appeals court found that the defendants'

temporary neglect of the prisoner was not intentional and that it did not reach unconstitutional proportions. While the court found that the circumstances of the case demonstrated some neglect and indifference on the prison's part, it concluded that the conditions were temporary and affected only one inmate. Although the inmate was deprived of "yard or recreation time," he could have "improvised temporarily with jogging in place, aerobics, or pushups." (Menard Correctional Center, Illinois)

U.S. Appeals Court
HAIR LENGTH

Pollock v. Marshall, 845 F.2d 656 (6th Cir. 1988), cert. denied, 109 S.Ct. 239, reh'g. denied, 109 S.Ct. 545. An inmate at a maximum security facility filed a civil rights action against the prison officials after being required to cut his hair. The inmate professed a belief in Lakota American Indians who believe hair is sacred and should not be cut. The court found the inmate's religious beliefs to be sincere, but they also found prison authorities had interests which were both legitimate and reasonably related to security and sanitation in limiting the length of prisoner's hair. (Southern Ohio Corr. Facility)

1989

U.S. District Court
FOOD SERVICE
SEWERAGE

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.

The court also found that the substandard sanitation in the jail was unconstitutional. Jails are constitutionally obligated to provide reasonably adequate sanitation for their inmates. This generally requires control of vermin and insects and clean places for eating, sleeping, and working and, additionally, concerns such areas as food preparation, medical facilities, lavatories, and showers. The substandard sanitation in the county jail endangered the health of sentenced prisoners and pretrial detainees, in violation of the eighth and fourteenth amendments. Food was being prepared in unsanitary surroundings and inmates were being required to live and sleep in and around seeping sewerage and in warm dark places which were not regularly and adequately cleaned, lit or ventilated.

The court stated: "At various times heretofore, in an effort to address persistent overcrowding, the court has authorized the sheriff in his discretion to release inmates under a prioritized release order and has imposed a fine of $100 per day for each inmate sleeping on the floor. Other efforts have been made the county in a timid sort of way to select inmates who might be eligible for release. None of these efforts have succeeded in bringing the population of the jail down." 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. Appeals Court
CELLS
HOUSEKEEPING
LAUNDRY

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. According to the court, inmates are entitled to reasonably adequate sanitation, personal hygiene, and laundry privileges, particularly over a lengthy period. Evidence that the inmate was confined for two years in a cell covered with filth and human waste and was denied access to proper cleaning supplies or laundry service was sufficient to establish that his confinement was cruel and unusual punishment within the meaning of the eighth amendment. Evidence that the inmate complained about filthy conditions in his cell continuously over a two-year period but that supervisory officers failed to provide him with any relief was sufficient to hold officers liable for eighth amendment violations. 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
SINKS
CELLS

Johnson v. Pelker, 891 F.2d 136 (7th Cir. 1989). An inmate brought a civil rights action challenging the conditions of his confinement. The U.S. District Court granted a summary judgment for the defendants, and appeal was taken. The appeals court found that neither an accidental dumping of water on the inmate, nor the denial of his request for dry bedding and clothing, deprived him of constitutional rights. The court also ruled that the inmate's allegation that he had been placed in a cell for three days without running water and in which feces had been smeared on walls, while his request for cleaning supplies and for the water to be turned on were ignored, stated a cause of action for the violation of the inmate's eighth amendment rights. (Menard Correctional Center, Illinois)

1990

U.S. District Court
PLUMBING
SEWERAGE

Buffington v. O'Leary, 748 F.Supp. 633 (N.D.Ill. 1990). A prisoner sued a prison official under Section 1983, alleging Eighth and Fourteenth Amendment deprivation. The U.S. District Court found that the prisoner stated a cause of action for constitutional deprivation by alleging that there was "rusted water" and "a scent of bad smelling pipes" in his cell, and that human waste backed up through the plumbing. While the defendant prison official contended that these conditions were no more than "an inconvenience or discomfort," the court found that it could not "with assurance determine that the conditions" in the housing unit met an "essential" or "minimum" standard of sanitation. (Stateville Correctional Center, Illinois)

State Appeals Court
BEDDING

Williams v. Kelone, 560 So.2d 915 (La.App. 1 Cir. 1990). A prisoner brought a tort action against employees of a prison for damages the prisoner allegedly sustained as a result of having to sleep with a soiled blanket. The district court dismissed the action, and the prisoner appealed. The appeals court, affirming the decision, found that the prisoner was not deprived of basic personal hygiene, and thus the prisoner was not deprived of a constitutional right to be free of cruel and unusual punishment. A prison's providing a prisoner, who was placed in administrative lockdown, with a blanket which was assigned to the cell, whether the blanket had been used by a previous prisoner or not, was not a deprivation of basic personal hygiene. The prisoners were given clean sheets upon entering administrative lockdown, and the sheets were cleaned weekly thereafter. The blankets were cleaned two to three times a year and were replaced if they became extremely soiled. In point of fact, there was no evidence showing that the prisoners were subject to cold temperatures which would constitutionally require that they be given any blanket at all. Under these conditions, the furnishing of a soiled blanket was not a deprivation of "basic personal hygiene" constituting cruel and unusual punishment. (State Penitentiary, Angola, Louisiana)

1991

U.S. Appeals Court
SEWERAGE

McCord v. Maggio, 927 F.2d 844 (5th Cir. 1991). A state prisoner brought a suit against a warden for alleged violation of Eighth Amendment rights arising from prison conditions. The U.S. District Court entered judgment in favor of the warden. The court of appeals, affirmed in part and reversed and remanded in part. On remand, relief was again denied, and the prisoner appealed. The court of appeals found that the prisoner's Eighth Amendment rights were violated by his repeatedly having to sleep and live in sewage and foul water, and remand was necessary for consideration of whether an "extraordinary circumstances" defense applied and whether causation and significant injury were shown. (Louisiana State Penitentiary)

U.S. Appeals Court
BEDDING
CLOTHING

Porth v. Farrier, 934 F.2d 154 (8th Cir. 1991). A reformatory inmate filed a civil rights action alleging a violation of his Eighth Amendment rights. The U.S. District Court entered judgment for the prison officials and the inmate appealed. The court of appeals found that confinement of the inmate in a strip cell without clothes, bedding, or a mattress for approximately 12 hours was not so inhumane, base or barbaric as to shock one's sensibilities even though the prison officials acted improperly. While clothing and bedding are basic necessities, the court stated, confinement without them can only be determined to be cruel and unusual punishment on the basis of the totality of the circumstances. Prison conditions which only result in discomfort do not amount to cruel and unusual punishment. (Iowa State Men's Reformatory)

U.S. District Court
PLUMBING
SEWERAGE

Thomas v. Jabe, 760 F.Supp. 120 (E.D. Mich. 1991). An inmate brought a civil rights action against prison officials. The officials moved for summary judgment. The district court found that genuine issue of material fact existed as to whether the inmate's Eighth Amendment rights were violated when he was forced to stay in a cell that was flooded with water and human waste. The defendants knew about a water leak and subsequent flooding well in advance of the inmate's placement in the quiet cell, and it should have been obvious it was unsuitable for occupation. (State Prison of Southern Michigan in Jackson)

1992

U.S. Appeals Court
SEWERAGE

Burton v. Armontrout, 975 F.2d 543 (8th Cir. 1992), appeals pending. Inmates brought an action against correctional officers to recover for cruel and unusual punishment for failing to warn inmates that hospital sewage was contaminated with the AIDS (Acquired Immune Deficiency Syndrome) virus and other infectious diseases. The U.S. District Court directed a verdict in favor of some officers, entered judgment on a jury verdict in favor of the remaining officers, and granted an injunction. Appeals were taken, and the appeals court found that the injunction requiring the county correctional center to provide adequate protective clothing and warnings to inmates of potential danger of working in

contaminated waste was permissible despite a general verdict in favor of correctional officers on constitutional claims. The court found that evidence showed that despite the passage of three years and a greater awareness of dangers of AIDS, prison officials failed to provide adequate protective clothing. The court also found that the county inmates who were involved in the cleanup of the sewage were not subjected to "cruel and unusual punishment" when correctional officers failed to warn that sewage could be contaminated with the AIDS virus and other infectious diseases. (Jefferson County Correctional Center, Missouri)

U.S. Appeals Court
HOUSEKEEPING
RODENTS/PESTS

Jackson v. Duckworth, 955 F.2d 21 (7th Cir. 1992). An inmate brought a Section 1983 action against prison officials alleging that subhuman conditions at prison violated the Eighth Amendment's prohibition against infliction of cruel and unusual punishments. The U.S. District Court granted summary judgment for the prison officials, and the inmate appealed. The court of appeals found that genuine issues of material fact as to the ghastliness of the inmate's prison conditions and state of mind of the prison officials precluded summary judgment against the inmate in the action. The inmate's affidavit stated that he was forced to live with filth, rodents, inadequate heating, no toilet paper, and drinking water containing small black worms which turned into small black flies, and that officials visited his unit routinely, and observed the conditions described, but failed to take adequate corrective measures. (Indiana Prison System)

U.S. District Court
FOOD SERVICE

Miles v. Konvalenka, 791 F.Supp. 212 (N.D.Ill. 1992). A prison inmate brought a suit alleging deprivation of his constitutional rights. The district court dismissed the action with prejudice. The court found that the discovery of a dead mouse in a food tray of a fellow inmate did not violate the inmate's Eighth Amendment rights; the deprivation to the inmate was minimal at most and prison officials did not act with deliberate indifference. (Joliet Correctional Center, Joliet, Illinois)

U.S. District Court
HOT WATER
RODENTS/PESTS

Warren v. Stempson, 800 F.Supp. 991 (D.D.C. 1992). An inmate brought a Section 1983 action regarding his treatment and prison conditions. The inmate claimed that the adjustment segregation cell block into which he had been placed was plagued with rats, mice, roaches, spiders, flying bugs, insects, birds and lice, and that the shower water was usually cold. The court did not condone such conditions and believed that, if they exist, they were substandard, the court did not believe they rose to a level of cruel and unusual punishment under the Eighth Amendment. (District of Columbia)

U.S. Appeals Court
FOOD SERVICE
RODENTS/PESTS

Wishon v. Gammon, 978 F.2d 446 (8th Cir. 1992). An inmate brought an action under Section 1983 alleging Eighth Amendment violations and denial of equal protection. The U.S. District Court entered an order granting the prison officials' motion for summary judgment, and the inmate appealed. The appeals court affirmed the decision. The inmate failed to establish that the infestation of his cell with insects and other vermin and the improper cleaning of his cell or the fact that he was allegedly routinely served cold food that was often contaminated with foreign objects violated his Eighth Amendment rights. There was evidence that the cells were sprayed for pests every month and would be sprayed more frequently on request by a prisoner, and that the inmate never used the opportunity provided to clean the cell himself. There was also no evidence that the food served was nutritionally inadequate or prepared in a manner presenting an immediate danger to the inmate's health, or that his health suffered because of the food. (Moberly Training Center for Men, Missouri)

1993

U.S. District Court
HOT WATER

Matthews v. Peters, 818 F.Supp. 224 (N.D.Ill. 1993). A prison inmate brought an action against employees of the Department of Corrections charging that defendants violated his constitutional rights by depriving him of hot water in his cell for a period of seven months while segregated. On the defendants' motion for judgment on pleadings, the district court found that the prison officials would not be relieved on qualified immunity grounds from having to defend the inmate's lawsuit in view of a showing of deliberate indifference by prison officials in the refusal to cure readily remediable conditions. (Stateville Correctional Center, Illinois)

U.S. District Court
SINKS

McNeal v. Ellerd, 823 F.Supp. 627 (E.D. Wis. 1993). Prisoners who were placed in a cell with a non-functional sink brought a Section 1983 action against prison employees seeking damages and declaratory and injunctive relief, and the prison employees moved to dismiss. The district court found that the prisoners failed to show a serious deprivation of basic human needs and thus were unable to establish a prima facie case that prison conditions violated the Eighth Amendment. The prisoners did not allege that generally unsanitary conditions existed, that the non-functional sink caused particular unsanitary conditions in the cell, or that they were deprived of potable water. (Racine Correctional Institution, Wisconsin)

U.S. District Court
SINKS
PLUMBING

Thomas v. Brown, 824 F.Supp. 160 (N.D. Ind. 1993). A state prisoner brought a civil rights action, claiming that he had been deprived of running water in a sink in his cell. The district court found that material issues of fact, precluding summary judgment on behalf of prison officials, existed as to whether the prisoner had been subjected to cruel and unusual punishment. There was dispute about whether the prisoner had notified authorities, and as to whether the officers had shown necessary deliberate indifference to his plight. However, the complaint did not state an equal protection claim. (Indiana State Prison)

U.S. District Court
RODENTS/PESTS

Walton v. Fairman, 836 F.Supp. 511 (N.D. Ill. 1993). Pretrial detainees brought a pro se Section 1983 action against corrections officials and a sheriff alleging that conditions of confinement violated their due process rights. The defendants moved to dismiss. The district court found the pretrial detainees sufficiently alleged facts in their civil rights complaint to show that conditions of confinement in the county jail violated their due process rights so as to survive a motion to dismiss. The detainees alleged that rats bit them and one claimed that a swarm of mice attacked him. The alleged bites and attacks took place in about a month and a half time span. The detainees alleged that they told officials about the large nest of rats and mice and that the officials did not exterminate or make any efforts to rid the jail of the vermin. (Cook County Jail, Illinois)

1994

U.S. Appeals Court
CELLS
HOUSEKEEPING

Whitnack v. Douglas County, 16 F.3d 954 (8th Cir. 1994). An inmate who had been convicted and was awaiting sentencing, and a pretrial detainee, brought a Section 1983 action against a county, the director of the county department of corrections, and correctional officers, alleging unconstitutional conditions of confinement. The U.S. District Court entered judgment for the inmate and detainee, and the correctional officers appealed. The appeals court, reversing and remanding, found that the filthy conditions of a cell did not constitute unconstitutionally cruel and unusual punishment respecting the inmate, and did not violate due process respecting the detainee, given the brevity of their confinement under such conditions. The intolerable conditions lasted not more than 24 hours before adequate cleaning supplies were made available which could make conditions tolerable. (Douglas County Correctional Center, Nebraska)

1995

U.S. District Court
HOUSEKEEPING
PESTS
PLUMBING
RODENTS

Geder v. Godinez, 875 F.Supp. 1334 (N.D. Ill. 1995). A prisoner brought a civil rights action against several prison officials alleging cruel and unusual conditions of confinement. On a motion by the defendants for summary judgment, the district court found that prison conditions, including the alleged presence of defective pipes, sinks and toilets, improperly cleaned showers, a broken intercom system, stained mattresses, accumulated dust and dirt, and infestation by roaches and rats, viewed separately or cumulatively, were insufficient to establish deprivation of human need sufficient to constitute a violation of the Eighth Amendment. No violation was shown absent a showing that prison officials knew of and consciously disregarded an excessive risk to inmates' health or safety. Prison conditions are not unconstitutional under the Eighth Amendment simply because they are restrictive or harsh. (Stateville Correctional Center, Joliet, Illinois)

U.S. District Court
RODENT/PESTS
TOILETS

Masonoff v. DuBois, 899 F.Supp. 782 (D.Mass. 1995). Prison inmates filed a class action suit against prison officials alleging that conditions of confinement violated their rights under the Eighth Amendment. The district court granted summary judgment, in part, for the inmates. The court found that the use of chemical toilets violated the Eighth Amendment rights of the inmates where the use and emptying of the toilets resulted in extremely unsanitary conditions, the toilets caused an unbearable stench, and prison inmates suffered numerous health problems caused by the use of toilets including nausea, burns, and rashes. The court also found that there were genuine issues of material fact as to whether prison officials acted with deliberate indifference regarding chemical toilets, precluding summary judgment. The court held that genuine issues of material fact precluded summary judgment on the allegation that pest or vermin infestation created inadequate sanitation in violation the Eighth Amendment. The court noted that infestation of vermin such as rats, mice, birds, and cockroaches in the prison is inconsistent with adequate levels of sanitation required by the Eighth Amendment. (Southeast Correctional Center, Massachusetts)

U.S. District Court
SHOWERS
HOUSEKEEPING

Summers v. Sheahan, 883 F.Supp. 1163 (N.D.Ill. 1995). An inmate filed a pro se suit against jail officials, seeking compensatory and punitive damages for alleged violations of his constitutional rights. The district court dismissed the action. The court held that the inmate's allegation that he contracted bronchitis because he did not receive his heart medicine failed to state an Eighth Amendment claim absent allegations that jail officials were aware of his condition or that they deliberately withheld his medication. The court also held that failure of the officials to authorize the inmate's overnight stay at a county hospital was not a violation of his rights because the inmate was placed in the jail hospital where he was observed overnight as recommended by the county physician. The inmate alleged he was forced to sleep on cold floors for approximately two months, but the court found this was an inevitable consequence of

overcrowding rather than punishment and represented a "temporary inconvenience" rather than a violation of his rights; jail officials were also not liable for failing to deal with the overcrowding problems at the jail. The court found that the inmate's allegations of vermin-infested food rose to the level of a constitutional violation but jail officials were not shown to have been deliberately indifferent to the problem. The inmate's allegations that he was forced to stay in an unsanitary, germ- and bacteria-filled environment, and that showers were filthy and clogged, failed to state a claim for violation of the Eighth Amendment. (Cook County Jail, Illinois)

U.S. District Court
PLUMBING
RODENTS/PESTS
BEDDINGS
CELLS
FOOD SERVICE

Robinson v. Il. State Corr. Ctr. (Stateville), 890 F.Supp. 715 (N.D.Ill. 1995). A prison inmate housed in a segregation unit sued prison officials alleging violation of his civil rights in connection with his conditions of confinement. The district court dismissed several elements of his suit, but found that his complaint that inadequate heating and cooling posed a risk to his health was actionable under § 1983. However, the inmate did not claim that he suffered injuries as a result of unsanitary conditions in the segregation unit and the court found that these claims were not actionable. The inmate alleged that the toilet area was unsanitary, there were roaches and bed bugs, and there was a lack of weekly bedding supplies; the court held that while these allegations stated unpleasant conditions, they did not rise to the level of a constitutional violation. The court also held that allegations that the prison's food preparation area was unsanitary did not present an immediate danger to the health and well-being of the inmate and thus failed to state an actionable claim. (Stateville Correctional Center, Illinois)

U.S. District Court
BEDDING
RODENTS/PESTS
CLOTHING

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 conditions that the inmate complained of--sleeping on the floor inside a cold cell for one week--although uncomfortable, were at most temporary and were therefore not serious enough to be considered cruel and unusual punishment. The court noted that nothing in the Constitution requires elevated beds for prisoners. The inmate's claims that he had not had a change of uniform or sheets from the time of his arrival, and that his tier was infested with roaches, water bugs, fruit flies and mice failed to state an Eighth Amendment claim absent an allegation and a factual basis supporting the inference that the defendants maintained the conditions to punish the inmate. The court also noted that failure of prison officials to keep vermin under control in a crowded jail does not violate the Constitution. (Cook County Department of Corrections, Illinois)

1996

U.S. Appeals Court
RODENTS/PESTS
BEDDING
HOUSEKEEPING

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 appeals court found that the inmate's allegations of deliberate indifference to prolonged pest infestation at the jail were sufficient to state a § 1983 claim. The inmate admitted that the jail had been sprayed twice by a pest control service during a 16-month period, but he alleged that cockroaches were everywhere and that roaches and mice crawled over him and constantly awakened him. He also stated a claim by alleging that he was denied protection from cold temperatures in the jail by the jail staff's failure to provide him with blankets. (Cook County Jail, Illinois)

U.S. Appeals Court
TOILETS
PLUMBING

Smith v. Copeland, 87 F.3d 265 (8th Cir. 1996). A pretrial detainee brought a federal civil rights action against jail officials alleging the use of excessive force and challenging his conditions of confinement. The district court granted summary judgment for the defendants on several issues and the inmate appealed. The appeals court affirmed, finding that the inmate's allegations that he was exposed to raw sewage for four days due to an overflowing toilet failed to state a constitutional claim based on conditions of confinement. The court found that having to endure the stench of his own feces and urine for four days amounted to a de minimis imposition on detainee's rights, and noted that the inmate did not dispute the assertion by jail officials that he was offered the opportunity to clean up the mess himself. (Cape Girardeau County Jail, Missouri)

U.S. Appeals Court
SHOWERS

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 court 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)

1997

U.S. Appeals Court
RODENTS/PESTS
CLOTHING
HOUSEKEEPING
SEWERAGE

Beverati v. Smith, 120 F.3d 500 (4th Cir. 1997). Inmates sued prison officials alleging that their confinement to administrative segregation violated their procedural and substantive due process rights. The district court granted summary judgment for the officials and the inmates appealed. The appeals court affirmed, finding that conditions in administrative segregation were not so atypical that exposure to them for six months imposed significant hardship in relation to the ordinary incidents of prison life. The alleged conditions included: cells infested with vermin; cells smeared with human feces and urine and flooded with water; unbearably hot temperatures; cold food in small portions; infrequent receipt of clean clothing, bedding and linen; inability to leave cells more than three or four times per week; denial of outside recreation; and denial of educational or religious services. (Maryland Penitentiary)

U.S. District Court
WATER

Gholson v. Murry, 953 F.Supp. 709 (E.D.Va. 1997). Inmates brought a § 1983 action against prison officials alleging violation of their constitutional rights. The district court granted summary judgment for the officials. The court held that officials did not violate the Eighth Amendment with respect to lead in the prison water system because the officials reviewed the situation and informed staff and inmates of the steps they needed to take to safeguard themselves from exposure. (Mecklenburg Correctional Center, Virginia)

U.S. District Court
CROWDING
HOT WATER
PLUMBING
RODENTS/PESTS
SEWERAGE
WATER

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 found due process violations resulting from physical defects in the jail's water, plumbing and sewage system which created safety hazards. The jail's antiquated water supply system violated public health requirements and safe drinking water codes. Deteriorated sanitary fixtures such as unsealed floors, hot water pipes with deteriorated asbestos insulation, violated the detainees' rights as did sewage leaks from plumbing equipment. These conditions violated detainees' rights even though there was no evidence of any disease resulting from the deficiencies. The court found that although conditions relating to food preparation and storage remained inadequate, recent improvements including efforts to combat vermin infestation and allocating $100,000 to replace a floor and make other repairs shielded the defendants from liability for deliberate indifference. (San Francisco Jail No. 3, California)

U.S. District Court
FOOD SERVICE
RODENTS/PESTS

Tucker v. Rose, 955 F.Supp. 810 (N.D.Ohio 1997). Inmates brought a claim against a prison warden, food service supervisor, and food service manager alleging Eighth Amendment violations based on serving inmates food tainted by rodents. The district court granted summary judgment for the defendants, finding that occasional rodent presence was not sufficiently serious for an Eighth Amendment claim. The court found that none of the defendants were deliberately indifferent to the situation, noting ongoing pest control measures at the facility including semi-monthly preventative measures and regular inspections. According to the court, rodents had been detected infrequently in the food service area, had never presented a significant problem at the prison food service area, and the food service supervisor did not observe any evidence of rodents in connection with an allegedly tainted bag of food. (Lorain Correctional Institution, Ohio)

1998

U.S. Appeals Court
CELLS
SHOWERS

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 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. Appeals Court
WATER

LaBounty v. Coughlin, 137 F.3d 68 (2nd Cir. 1998). An inmate sued prison officials under § 1983 alleging that he was subjected to unconstitutional conditions of confinement. The district court entered summary judgment for the officials and the inmate appealed. The appeals court vacated and remanded, finding that the inmate stated an Eighth Amendment deliberate indifference claim based on allegations that he was exposed to friable asbestos while incarcerated and that officials knowingly failed to protect him from such exposure. The court also vacated summary judgment on the inmate's tainted drinking water claim to allow the district court to determine whether officials responded properly to the inmate's request for production of documents. (Woodbourne Correctional Facility, New York)

U.S. District Court
BEDDING
RODENTS/PESTS
HOUSEKEEPING

Simpson v. Horn, 25 F.Supp.2d 563 (E.D.Pa. 1998). An inmate brought a § 1983 action against a corrections commissioner and officials, alleging that conditions of confinement at an overcrowded facility violated his Eighth Amendment rights, and that a classification system for double-cell assignment violated the equal protection clause. The district court found that the alleged deficiencies in the facility were not cruel and unusual punishment, but that fact issues precluded summary judgment on the equal protection claim. The court found that housing two inmates in a cell designed for one inmate does not, per se, violate the Eighth Amendment proscription against cruel and unusual punishment, but it may if it results in deprivations of essential food, medical care, sanitation or other conditions intolerable for human confinements. The inmate had alleged that as the result of overcrowding, inmates were not provided with adequate furniture, cleaning supplies, laundry service, ventilation, bedding, clothing, seating, recreational equipment, or telephones. He also alleged that food was served cold 85% of the time and that the dining hall was not kept clean or free of vermin. (State Correctional Institution at Graterford, Pennsylvania)

1999

U.S. District Court
CROWDING
TOILETS
SHOWER

Harris v. Brewington-Carr, 49 F.Supp.2d 378 (D.Del. 1999). A pretrial detainee challenged his conditions of confinement and a district court judge refused to dismiss the case, finding that the detainee had sufficiently alleged violation of his due process rights. The pretrial detainee alleged that he was required to sleep on the floor for one week while being held in a booking and receiving area, that he had to sleep on the floor for three weeks before receiving a bed, that he was housed in a one man cell with two other men, that the open toilet in his cell was unsanitary and deprived him of his right to privacy, that there was a lack of showers and excessive noise, that he was housed with sentenced and unsentenced inmates, and that as a non-smoker he had to breathe cigarette smoke from other inmates. (Multi-Purpose Criminal Justice Facility, Delaware)

U.S. Appeals Court
TOILETS

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. Appeals Court
WATER

Robinson v. Page, 170 F.3d 747 (7th Cir. 1999). An inmate brought a civil rights action alleging that his Eighth Amendment rights were violated by prison officials' refusal to address the problem of lead in the prison's drinking water. The district court dismissed the case. The appeals court affirmed in part and vacated and remanded in part. The appeals court held that to the extent that the inmate sought relief for alleged physical consequences he had or would suffer as the result of lead in the water, the action was not barred by the

federal statute (CRIPA) that restricted inmate suits for mental or emotional injury. The appeals court disagreed with the district court's decision that the inmate had not alleged an amount of lead in the water that currently made him ill. The appeals court remanded the case for further action regarding the possibility of future health problems that might be alleged. (Tamms Closed Maximum Security Facility, Illinois)

U.S. District Court
SHOWERS
WATER
HOUSEKEEPING

Roop v. Squadrito, 70 F.Supp.2d 868 (N.D.Ind. 1999). An inmate who was HIV-positive and incarcerated in a county jail on an outstanding arrest warrant brought a § 1983 claim and a claim under the Americans with Disabilities Act (ADA) against county officials. The district court denied summary judgment for the defendants. He was initially housed by himself in an old shower room, which had a working shower but no flushable toilet. After five days he was moved to a solitary cell located close to the jail's command module, where there was no toilet or shower in the cell. The court found that the fact that the inmate was required to sleep on a floor mattress for an extended period of time and was not provided with a bunk while detained in the jail was not a constitutional deprivation under the Eighth Amendment. The court also found no constitutional violation in the alleged lack of ability to exercise while in the county jail, since he could have done sit-ups or push-ups in his cell and was only in jail for 30 days. No violation was found regarding the inmate's complaint that he was not able to take showers more often while confined because the court held that the deprivation of "a mere cultural amenity" is not cruel and unusual punishment. The inmate's complaints about sanitation, including dirt on the floor of his cell, were not found to be a constitutional violation. However, the court found that the alleged deprivations and violations, when taken together, constituted a violation of his Eighth Amendment rights, precluding summary judgment for the jail officials. (Allen County Jail, Indiana)

2000

U.S. District Court
HAIR CUTTING

Deblasio v. Johnson, 128 F.Supp.2d 315 (E.D.Va. 2000). State prisoners brought a § 1983 action challenging a state corrections department's grooming regulation that required all male inmates' hair to be no more than one inch thick and precluded special styles such as braids or mohawks. The district court granted summary judgment in favor of the defendants, finding that the regulation did not violate the inmates' rights under the First or Fourth Amendments. The court also found that punishment for violations of the regulation, which included isolation and loss of recreation and visitation privileges, did not violate the Eight Amendment. The court held that even if the regulation had a disparate impact on inmates of a certain religion, it did not violate the equal protection clause. The court also found that the regulation did not violate the equal protection clause with regard to alleged gender discrimination, where the prison experience and data demonstrated that male inmates were more violent than female inmates, and therefore contraband hidden in the hair of male inmates posed a greater security threat. According to the court, failure to ensure that barbering equipment was sanitized between haircuts and that barbers were trained and checked or vaccinated for hepatitis, did not violate the Eight Amendment. The court also found no Eight Amendment violation in the refusal of officials to provide razors to inmates to facilitate compliance with the regulation, even though this resulted in inmates borrowing razors from other inmates, increasing the risk of hepatitis. (Virginia Department of Corrections)

U.S. District Court
SEWERAGE

Oladipupo v. Austin, 104 F.Supp.2d 643 (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 found that the fact that INS detainees held at the parish jail had fewer privileges than INS detainees held at a federal detention center did not violate the Equal Protection Clause. The court also found that housing INS detainees with convicted prisoners did not violate the Due Process Clause. The court denied summary judgment for the officials on the allegation that the housing unit at the jail had serious sewage problems that created unsanitary conditions. The court also denied summary judgment to the officials on the allegation that the jail had an inadequate number of emergency exits. (Avoyelles Parish Jail, Louisiana)

2001

U.S. District Court
CLOTHING
BEDDING
LAUNDRY

Brown v. McElroy, 160 F.Supp.2d 699 (S.D.N.Y. 2001). A prisoner brought an action against the Immigration and Naturalization Service (INS) and Public Health Service (PHS) alleging inadequate medical treatment and other complaints. The district court found that PHS officials were absolutely immune from liability on the claim of inadequate health care. The court found no constitutional violation from the alleged conditions of a cold room, no clean bed linens, toiletries, or clean clothing. (Buffalo Federal Detention Facility, Batavia, New York)

U.S. District Court
HOUSEKEEPING
PLUMBING
SEWERAGE

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 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. The inmate also alleged that the small bunk aggravated his arthritis. The appeals court held that the inmate's exposure to feces in his cell, foul water, filth, excessive heat, smoke, and mace, and the lack of outdoor exercise, resulted in a substantial risk of serious harm. (Max. Sec'y Facility, Lorton Corr'l Complex, District of Columbia)

U.S. District Court
TOILETS

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 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
WATER

Carroll v. Detella, 255 F.3d 470 (7th Cir. 2001). An inmate brought a § 1983 action against state prison officials and state environmental protection officials, seeking damages and injunctive relief on the grounds that the drinking water at two state prisons was contaminated. The district court granted summary judgment in favor of the defendants and the inmate appealed. The appeals court affirmed, finding that alleged lead contamination in one prison, and radium contamination in another prison, did not constitute cruel and unusual punishment. According to the court, the lead contamination was caused by corrosion of the water pipes, but only when water was still in the pipes overnight, and the inmate had been told to let water run before drinking it in the morning. The environmental protection agency had found the level of radium in the water at the other prison was less than half of the maximum allowed in a revised standard. The court noted that failing to provide a maximally safe environment, one completely free from pollution or safety hazards, is not a violation of the Eighth Amendment. (Stateville and Menard Correctional Facilities, Illinois)

U.S. District Court
SHOWERS

Curry v. Kerik, 163 F.Supp.2d 232 (S.D.N.Y. 2001). A pretrial detainee brought a § 1983 action against corrections officials alleging violation of the due process clause arising out of dangerous conditions. The court held that the detainee stated a due process violation by alleging that he was exposed to an unsanitary and hazardous showering area for over nine months. The court found that the detainee's allegation that officials negligently appointed, trained and supervised employees and failed to enforce rules requiring facility inspections and addressing repair complaints were sufficient to show the personal involvement of the officials. The detainee alleged that he had alerted the officials to dangerous conditions on several occasions, and the conditions led to his injury when he fell in a shower, which stated a claim of deliberate indifference according to the court. The inmate alleged that the shower facility in his unit leaked, tiles were falling off the wall, and there were no shower curtains or floor mats. (North Infirmary Command, Correctional Facility, New York City Department of Correctional Services)

U.S. Appeals Court
TOILETS
SEWERAGE

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
PLUMBING
RODENTS/PESTS

Gaston v. Coughlin, 249 F.3d 156 (2nd Cir. 2001). A prisoner brought a § 1983 action alleging that his conditions of confinement violated the Eighth Amendment. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that the prisoner's allegations regarding unsanitary conditions in his cell and exposure to below-freezing temperatures during winter due to unrepaired broken windows, were sufficient to state an Eighth Amendment claim. The prisoner alleged that mice were constantly entering his cell and that the area directly in front of his cell was filled with human feces, urine and sewage water for several days. (Auburn Correctional Facility, New York)

U.S. Appeals Court
CLOTHING
FOOD SERVICE
SEWERAGE
HOT WATER

Herman v. Holiday, 238 F.3d 660 (5th Cir. 2001). An inmate brought a § 1983 action against prison officials alleging constitutional violations, including unhealthful conditions and exposure to asbestos. The district court entered summary judgment for the officials and the appeals court affirmed. The appeals court held that the inmate was precluded from recovering for emotional or mental damages because he failed to allege a physical injury. The inmate alleged that he was

subject to cold showers, cold food, unsanitary dishes, insect problems, lack of adequate clothing, and the presence of an open "cesspool" near his housing unit. (East Carroll Detention Center, Louisiana)

2002

U.S. District Court
FOOD SERVICES

Drake v. Velasco, 207 F.Supp.2d 809 (N.D.Ill. 2002). An inmate sued county corrections officials and a food service company under § 1983, alleging failure to provide him with sanitary meals. The district court denied the defendants' motion to dismiss. The court held that the inmate's allegations supported Fourteenth Amendment claims and a claim of deliberate indifference under § 1983. The court found that the inmate sufficiently alleged sufficient injury. The inmate alleged that the food service company's preparation was so unsanitary as to pose both an immediate risk to the inmate's health, and that the food served hindered his recovery from his ulcer, cirrhosis of the liver, and Hepatitis B and C. The inmate alleged that unsanitary conditions included serving meals on trays that contained spoiled food from previous meals, and inadequate supervision of employees that resulted in improper handling, preparation and sterilization of equipment. (Cook County Jail, Illinois, and Aramark Food Services)

U.S. Appeals Court
SEWERAGE
TOILETS

Frye v. Pettis County Sheriff Dept., 41 Fed.Appx. 906 (8th Cir. 2002). A pretrial detainee brought a § 1983 action against county officials, alleging unsafe and hazardous living conditions at a county jail. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the detainee failed to show that jail officials were deliberately indifferent to his health and safety because the toilet in his cell leaked both sewage and water. Jail staff frequently provided blankets or towels to absorb the water and a plumber had attempted to fix the toilet after the detainee slipped and fell. (Pettis County Jail, Missouri)

U.S. District Court
BEDDINGS
CELLS
TOILETS
SHOWERS

Liles v. Camden County Dept. of Corrections, 225 F.Supp.2d 450 (D.N.J. 2002). Former inmates brought an action against county officials alleging that conditions of confinement violated their Eighth Amendment rights. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that no evidence showed that prison mattresses, that were between two and two and one-half inches thick, caused the inmates' back injuries. The court found that the inmates' claims regarding inadequate bedding did not rise to the level required to support a claims of inadequate prison conditions, where the inmates received two sheets and one blanket, but no pillow. The court found that the inmates' claims that they received spoiled food on one occasion, and were served food on trays that smelled, did not rise to the level required to support a claims of inadequate prison conditions. The court held that evidence did not support the claim that shower conditions caused the inmates to break out in rashes. Although the inmates presented an expert report of a "forensic sanitarian," the court noted that the report concluded only that the poor condition of the shower and lack of sanitation "may result" in rashes. Inmates alleged that state laundry services did not adequately clean their laundry, causing them to hand-wash their clothing and dry and store their clothing in their cells. The court held that the inmates failed to show any practice or policy of the prison that caused rashes and infections. The court held that a 22-day lock-down that caused inconvenience and discomfort to the inmates did not violate the Eighth Amendment, although the inmates were allowed only 20 minutes daily outside their cells to shower, use the bathroom, exercise and make phone calls. The court noted that the lock-down went into effect because an inmate had tried to escape out of a prison roof and the roof had to be prepared. The court found that summary judgment was precluded by fact issues as to whether fighting that broke out as the result of prisoners urinating on each other constituted a threat to the health and safety of the inmates. The inmates alleged that violence among inmates broke out when urine splashed on inmates who slept on cell floors next to toilets, due to crowding. (Camden County Correctional Facility, New Jersey)

U.S. District Court
SANITATION

Ortiz v. Voinovich, 211 F.Supp.2d 917 (S.D.Ohio 2002). An inmate sued state officials alleging that she was sexually assaulted by a corrections officer and that she was subjected to cruel and unusual punishment in violation of her Eighth Amendment rights. The district granted summary judgment for the defendants in part, and denied it in part. The court found no evidence to support the claim that a prison investigator and warden had knowledge of inadequate conditions while the inmate was in segregation. The inmate alleged she was provided with inadequate heat, bedding, sanitation and access to medical treatment while segregated. (Ohio Reformatory for Women at Marysville)

U.S. District Court
BEDDING

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)

2003

U.S. District Court
CELLS

Boyd v. Anderson, 265 F.Supp.2d 952 (N.D.Ind. 2003). Prisoners filed a complaint in state court, alleging that state corrections officials had violated their federally-protected rights while they were confined in a state prison. The case was removed to federal court, where some of the claims were dismissed. The court held that the prisoners' allegations that cells were very small and that they were denied out of cell recreation stated an Eighth Amendment claim. The court found that the prisoners stated an Eighth Amendment claim with their allegations that their cells were filthy and that they suffered from a total lack of sanitation and personal hygiene. The court held that the prisoners stated an Eighth Amendment claim with allegations that their cells were small and that they were denied out of cell recreation. (Indiana State Prison)

U.S. District Court
RODENTS/PESTS
SHOWERS

Govan v. Campbell, 289 F.Supp.2d 289 (N.D.N.Y. 2003). An inmate filed a pro se action alleging that county officials violated his Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants. The court held that the inmate's alleged conditions, consisting of unclean shower stalls with rust bubbles, cockroaches that crawled into his orifices while he slept, wild birds that were flying free through the facility, and an unsafe condition that resulted from the on-duty officer's inability to see directly into his cell at all times, did not rise to the level of a constitutional violation. The inmate also alleged that a correctional officer was sleeping while he was supposed to be supervising recreation in a gym. The court noted that the inmate did not assert how he was actually harmed by the conditions. (Albany County Correctional Facility, New York)

U.S. District Court
TOILETS

Mitchell v. Newryder, 245 F.Supp.2d 200 (D.Me. 2003). A detainee brought a § 1983 action against a county jail officer, alleging permanent traumatization as a result of being made to sit in his feces for five hours after his repeated requests to use a toilet were denied by the officer. The district court denied the officer's motion to dismiss. The court found that the detainee sufficiently alleged that he was denied a minimum civilized measure of life's necessity and that the officer had a culpable state of mind. The court held that the detainee could not seek compensatory damages absent an actual physical injury. The court agreed to consider the detainee's request for injunctive relief, barring further interference with his rights by the officer. The detainee alleged that the officer refused to allow him to use a toilet and then refused to let him clean himself up for five hours after he defecated in his pants. According to the detainee, the officer displayed hostility towards him during his denial, using insulting and offensive language and expressions. The detainee had been placed in a cell without a toilet, mattress or blanket, upon his admission to the jail. He was not being punished for anything but he was purposefully being separated from other inmates. The detainee alleged that he was not intoxicated, nor did he act disrespectfully. (Aroostook County Jail, Maine)

U.S. District Court
TOILETS
CELLS

Porter v. Selsky, 287 F.Supp.2d 180 (W.D.N.Y. 2003). A prisoner brought a civil rights action alleging Eighth and Fourteenth Amendment violations. The court held that officials were not deliberately indifferent to conditions that posed a substantial risk of harm to the inmate, even though the inmate was subjected to other inmates who threw feces, set fires, and flooded cells with overflowing toilets. The court noted that the officials spent a great deal of time addressing those acts, cleaning and disinfecting the cells, moving inmates behind plexiglass shields, and punishing the violators. (Special Housing Unit, Wende Correctional Facility, New York)

2004

U.S. District Court
HOUSEKEEPING
CROWDING

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
RODENTS/PESTS

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 found an Eighth Amendment violation due to mosquito infestation coupled with insufficient screen gauge, which exacerbated the heat problems by deterring death row inmates from opening their windows to increase circulation. The court noted that pest infestation problems were linked to chronic sleep deprivation, which exacerbated the symptoms of mental illness. The court found a violation due to "ping-pong" toilets, and that corrections officials were deliberately indifferent to the risk of harm that these toilets presented to death row inmates. Experts established that a serious health hazard resulted when the feces of one inmate bubbled up in the neighboring cell, and that this was exacerbated when toilets overflowed. According to the court, the State Department of Health warned corrections officials every year for the past eleven years that the malfunctioning toilets were a critical public health problem that required immediate attention. (Mississippi Department of Corrections, Unit 32-C, State Penitentiary in Parchman)

U.S. District Court
TOILETS

Masonoff v. *Dubois*, 336 F.Supp.2d 54 (D.Mass. 2004). State inmates filed a class action under § 1983 alleging that conditions of their confinement violated their Eighth Amendment rights. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that the facility's superintendent and administrator were not entitled to qualified immunity because a prisoner's right to adequate and hygienic means to dispose of his bodily wastes was clearly established in 1991. The court noted that a state court had required prison officials to inspect toilets at least twice per month and issued specific directions regarding their inspection, cleaning and replacement. The officials allegedly did nothing to alleviate obvious sanitation problems associated with the cleaning and maintenance of the toilets. (Southeast Correctional Center, Massachusetts)

2005

U.S. District Court
WATER

Brown v. *Williams*, 399 F.Supp.2d 558 (D.Del. 2005). A detainee brought an in forma pauperis action against prison officials alleging unconstitutional conditions of confinement. The district court granted summary judgment in favor of the officials. The court held that the detainee was not exposed to unreasonably high levels of contaminated water, although water from his cell sink was allegedly discolored, and the detainee fainted shortly after he drank the water. A sample of the water was taken to a laboratory for independent testing and it met or exceeded requisite standards. (Howard R. Young Correctional Institution, Delaware)

U.S. Appeals Court
CELLS
SINKS
TOILETS
WATER

Hearns v. *Terhune*, 413 F.3d 1036 (9th Cir. 2005). A state prison inmate brought a § 1983 action alleging violation of his Eighth Amendment rights related to an attack in prison, and inhumane conditions in a disciplinary segregation unit. The district court dismissed the action and the inmate appealed. The appeals court reversed and remanded. The court held that the inmate's allegations stated a claim that conditions were sufficiently serious to form the basis for an Eighth Amendment violation. The inmate alleged that there was a lack of drinkable water in the prison yard, where temperatures exceeded one hundred degrees. The inmate also alleged that conditions in disciplinary segregation created serious health hazards, including toilets that did not work, sinks that were rusted, and stagnant pools of water that were infested with insects. (Calipatria State Prison, California)

U.S. Appeals Court
CELLS
TOILETS
WATER

Surprenant v. *Rivas*, 424 F.3d 5 (1st Cir. 2005). A pretrial detainee brought a § 1983 action against a county jail and jail personnel, alleging that he was falsely accused of an infraction, deprived of due process in disciplinary proceedings, and subjected to unconstitutional conditions of confinement. A jury found the defendants liable on three counts and the district court denied judgment as a matter of law for the defendants. The defendants appealed. The appeals court affirmed. The court held conditions of confinement were shown to be constitutionally deficient, where the detainee was placed in around-the-clock segregation with the exception of a five-minute shower break every third day, all hygiene items were withheld from him, he could only access water--including water to flush his toilet--at the discretion of individual officers, and was subjected daily to multiple strip searches that required him to place his unwashed hands into his mouth. (Hillsborough County Jail, New Hampshire)

2006

U.S. District Court
FOOD SERVICE

Carr v. *Whittenburg*, 462 F.Supp.2d 925 (S.D.Ill. 2006). A state prisoner brought a § 1983 action against prison officials, alleging retaliation for filing a prison grievance regarding food handling by the security staff and the inmate cell house workers. The court held that genuine issues of material fact as to the intent and motive of the prison officials precluded summary judgment. The grievance alleged that the Unit Superintendent allowed his security staff and the inmate cell house workers to act as food handlers in the absence of required medical staff approval and appropriate sanitation apparel, in violation of Illinois Department of Corrections policies. (Menard Correctional Center, Illinois)

U.S. District Court
CELLS

Keel v. *Dovey*, 459 F.Supp.2d 946 (C.D.Cal. 2006). A state inmate filed a § 1983 action alleging that prison officials violated her civil rights by placing her in administrative segregation pending the investigation of a disciplinary charge against her, and by conducting a disciplinary hearing that violated her procedural due process rights. Officials moved for summary judgment. The district court granted the motion.. The court held that the administrative segregation the inmate endured pending disciplinary investigation was not an atypical and significant hardship in relation to the ordinary incidents of prison life. According to the court, even if her cell was unsanitary, birds and mice were present in inmate cells, and she lost her prison job and her ability to participate in religious ceremonies, the inmate did not suffer forfeiture of time credits, she had non-contact visits of one hour in length, and there was no evidence regarding conditions of cells outside of administrative segregation. (California Institution for Women, Chino)

U.S. District Court
RODENTS/PESTS
CELLS

Murray v. *Edwards County Sheriff's Dept.*, 453 F.Supp.2d 1280 (D.Kan. 2006). A former pretrial detainee at a county jail brought a § 1983 action against a county sheriff's department, sheriff, undersheriff, and county attorney, alleging various constitutional violations. The district court granted summary judgment in favor of the defendants. The court held that alleged inadequate temperature-control and ventilation, the presence of insects, and a lack of cleaning at the county jail did not violate the due process rights of pretrial detainee, where jail cells were heated and cooled by air conditioning that was on the same ventilation system as the rest of the courthouse in which the jail was located, detainees had the ability to open cell windows and had fans to use in the Summer, detainees were allowed additional blankets in Winter, the jail and courthouse were treated for insects on a monthly basis, and cleaning materials were provided to detainees to use in their cells. (Edwards County Jail, Kansas)

U.S. District Court
CELLS
RODENTS/PESTS

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. (Multi-Purpose Criminal Justice Facility, Delaware)

2007

U.S. District Court
SHOWERS
BEDDING
RODENTS/PESTS

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 alleged conditions from overcrowding at a District of Columbia jail-- showers infested with bacteria, standing water, various diseases and hundreds of unsanitary and defective mattresses, some of which contained roaches and other insects, did not constitute the deprivation of basic human needs, as required for jail overcrowding to constitute cruel and unusual punishment. (Central Detention Facility. D.C. and Correctional Treatment Facility operated by the Corrections Corporation of America)

U.S. District Court
WATER
SINKS

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. (River Parish Correction Center, Louisiana)

U.S. Appeals Court
KITCHEN
FOOD SERVICE

George v. *Smith*, 507 F.3d 605 (7th Cir. 2007). A state prisoner sued prison officials under § 1983, alleging deprivations of his speech rights and deliberate indifference to his serious medical needs. The district court dismissed some of the claims and granted summary judgment for the defendants on the remaining claims. The prisoner appealed. The appeals court affirmed. The court held that the prisoner's allegation that his health was placed at risk by an allegedly malfunctioning dishwasher that left particles of food on his plate at dinner failed to state an Eighth Amendment claim. The court found that the prisoner's allegations that a prison employee had failed to provide a purported atlas that he had ordered, on security grounds, were insufficient to state a First Amendment violation where the prisoner did not provide a description, title or other identifying information for the book. The court held that the prisoner's allegation that the prison refused to allow him to speak to the public at large by placing advertisements in newspapers was insufficient to state a claim for violation of his First Amendment free speech rights where the prisoner did not provide the content of the advertisements. (Wisconsin)

U.S. Appeals Court
SHOWERS

Polanco v. *Hopkins*, 510 F.3d 152 (2nd Cir. 2007). A prisoner filed a pro se § 1983 action against several correctional employees claiming violations of his First, Eighth, and Fourteenth Amendments rights for his alleged exposure to mold in a gym shower and for unjust discipline. The district court denied the prisoner's motion to proceed in forma pauperis and granted the defendants' motion to dismiss. The prisoner appealed, and the appeals court dismissed the appeal. The appeals court held that the prisoner was not in imminent danger of a serious physical injury as required for in forma pauperis status under the exception to the three-strikes rule of the Prison Litigation Reform Act (PLRA). The court found that the imminent danger exception does not violate equal protection and that the in forma pauperis statute is not overbroad. (Auburn Correctional Facility, New York)

U.S. Appeals Court
TOILETS
CELLS
SEWERAGE

Vinning-El v. *Long*, 482 F.3d 923 (7th Cir. 2007). A prisoner brought a § 1983 action against two prison officers, alleging that they violated his Eighth Amendment rights by subjecting him to inhumane conditions of confinement in a disciplinary-segregation unit. The district court granted summary judgment in favor of the officers based on qualified immunity, and the prisoner appealed. The appeals court reversed and remanded, finding that summary judgment was precluded by a genuine issue of material fact as to whether the officers were deliberately indifferent to a serious condition. The prisoner alleged that, after a fight with his cellmate, he was stripped of his clothing and placed in a cell in the disciplinary-segregation unit where he was not permitted to take any personal property with him. The prisoner asserted that the floor of the cell was covered with water, the sink and toilet did not work, and the walls were smeared with blood and feces. He was allegedly forced to remain in the cell without a mattress, sheets, toilet paper, towels, shoes, soap, toothpaste, or any personal property, for six days. (Menard Correctional Center, Illinois)

U.S. District Court
SEWERAGE
TOILETS

Cockcroft v. *Kirkland*, 548 F.Supp.2d 767 (N.D.Cal. 2008). A state inmate brought a pro se § 1983 action against prison officials, alleging Eighth Amendment violations related to toilet and cleaning supply problems. The district court dismissed the action in part. The court held that the defendants were not entitled to qualified immunity from claims that they refused to give the inmate adequate supplies and tools to sanitize his toilet in response to a widespread backflushing toilet problem caused by a design defect, in which sewage would rise up in the toilet of a cell when the toilet in an adjoining cell was flushed. According to the court, the officials' conduct, as alleged, violated the prisoner's clearly established rights under the Eighth Amendment to a minimum level of cleanliness and sanitation. The court found that the official was not entitled to qualified immunity from the state prisoner's § 1983 claim that the official was deliberately indifferent to his safety. The court held that the prisoner's § 1983 claim that a prison official was deliberately indifferent to his safety, in violation of the Eighth Amendment, was not barred by the Prison Litigation Reform Act (PLRA) provision that a prisoner may not bring an action for mental or emotional injury suffered while in custody without a prior showing of physical injury, even though the prisoner never suffered any physical injury as a result of the official's alleged acts. The prisoner alleged that the official disclosed to three other inmates that they had been placed on his enemy list at his request, and that this caused him to be considered an informant, which in turn caused him to place nine more inmates on his enemy list. (Pelican Bay State Prison, California)

U.S. District Court
HOUSEKEEPING
SHOWERS

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 held that denial of showers and cleaning supplies for several weeks did not give rise to a violation under the Eighth Amendment. The court found that a skin rash suffered by the prisoner, allegedly due to the lack of showers, was a de minimis injury insufficient to satisfy the "physical injury" requirement for a prisoner bringing a civil action for a mental or emotional injury under the Prison Litigation Reform Act (PLRA). (Wyoming Correctional Facility, New York)

U.S. Appeals Court
BEDDING
CROWDING

Hubbard v. *Taylor*, 538 F.3d 229 (3rd Cir. 2008). Pretrial detainees filed suit under § 1983, challenging conditions of their confinement on Fourteenth Amendment due process grounds. The district court granted the defendants' motion for summary judgment and the detainees appealed. The appeals court vacated and remanded. On remand the district court granted the defendants' renewed motions for summary judgment and the detainees again appealed. The appeals court affirmed. The court held that triple-celling of the pretrial detainees was rationally related to prison officials' legitimate governmental interest in trying to manage overcrowding conditions at the prison, for the purposes of the detainees' claim that triple-celling violated their Fourteenth Amendment due process right. The court found that requiring the 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. The court noted that although many pretrial detainees did spend a substantial amount of time on floor mattresses, they also had access to 3,900 square foot dayrooms, there was no evidence that the use of the floor mattresses resulted in disease or the splashing of human waste upon the detainees, and over $2.8 million dollars had been spent on capital improvements during the past five years to maintain or elevate the living conditions for prisoners. The court noted that even if the detainees' due process 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 prison officials to qualified immunity in the detainees' suit under § 1983 challenging conditions of their confinement. (Multi-Purpose Criminal Justice Facility, Delaware)

U.S. Appeals Court
RODENTS/PESTS
SANITATION

Sain v. *Wood*, 512 F.3d 886 (7th Cir. 2008). A civilly-committed sex offender brought a § 1983 action alleging that his conditions of confinement violated his Fourteenth Amendment due process rights. The district court granted summary judgment in favor of some defendants and denied a motion for summary judgment based on qualified immunity for the clinical director of a detention facility. The clinical director appealed. The appeals court reversed and remanded. The court found that the offender's alleged conditions of confinement did not amount to inhumane treatment in violation of the Fourteenth Amendment. The conditions purportedly included unpleasant odors, lack of air conditioning, peeling paint and the presence of cockroaches which, according to the court, did not amount to inhumane treatment. The court noted that although the alleged conditions were unpleasant, they were not so objectively serious that they could establish a constitutional violation. (Joliet Treatment and Detention Facility, Illinois Department of Human Services)

U.S. District Court
SANITATION
TOILETS

Spotts v. *U.S.*, 562 F.Supp.2d 46 (D.D.C. 2008). Federal inmates brought an action against the United States under the Federal Tort Claims Act (FTCA), alleging that Bureau of Prisons (BOP) officials acted negligently by failing to evacuate the prison prior to the landfall of a hurricane. The government moved to transfer venue and the district court transferred the venue to the Eastern District of Texas. The court noted that although the BOP resided in the District of Columbia, the decision to keep the prisoners at the prison before and during the hurricane was made by the BOP's Regional Director in Texas, and sufficient activities giving rise to the inmates' tort claims did not occur in the District of Columbia. The inmates alleged that the warden failed to respond to their concerns about the hurricane, that prison officers handed out plastic bags for the inmates to fill with human waste, that prison officials denied the inmates access to food and medical attention, and that prison staff discouraged the filing of tort claims. The inmates also alleged that BOP agents failed to properly supply the prison during the month that followed the hurricane, and that during that time inmates were forced to live in substandard conditions and suffered various physical and emotional injuries as a result. (United States Penitentiary in Beaumont, Texas)

U.S. District Court
BEDDING
HOUSEKEEPING
TOILETS

Wesolowski v. *Kamas*, 590 F.Supp.2d 431 (W.D.N.Y. 2008). A state prisoner brought a § 1983 action against correction officers and a superintendent, alleging that the defendants subjected him to cruel and unusual punishment and denied him equal protection of the law, in violation of his Eighth and Fourteenth Amendment rights. The district court granted the defendants' motion for summary judgment. The court held that the prisoner's rights under the Eighth and Fourteenth Amendments were not violated by a soiled mattress, the plexiglass shield over the front of his cell, another inmate's overflowed toilet, the use of a single slot to pass objects through a cell door, the denial of his preferred cleaning materials when other suitable materials were made available to him, or a single two-week period during which the plaintiff's cell

was not cleaned. The court noted that the prisoner's complaints related principally to his personal preferences as to the cleanliness of his cell. Prison officials did not display deliberate indifference to the prisoner's complaints, but instead responded quickly and appropriately, in that the prisoner received a new mattress within two days of his request, and he was moved to a new cell without a plexiglass cover within five days of his complaint. (Southport Corr'l Facil., New York)

2009

U.S. District Court
SANITATION

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 the class of detainees was the prevailing party entitled to attorney's fees. (Maricopa County Sheriff and Maricopa County Board of Supervisors, Arizona)

U.S. District Court
SHOWERS

Gray v. *Hernandez*, 651 F.Supp.2d 1167 (S.D.Cal. 2009). A state prisoner brought a § 1983 action, seeking damages and declaratory and injunctive relief, against an acting warden, captain, and two employees in a prison library. The prisoner alleged he was placed in administrative segregation pending the investigation of rule violation charges filed by the two employees, accusing him of attempting to extort money from them by offering to settle his potential suit against them. The district court held that the prisoner sufficiently alleged a chilling of his First Amendment right to file grievances and pursue civil rights litigation by alleging that his placement in administrative segregation caused him mental and financial harms. The court held that the prisoner's allegations that his placement in administrative segregation forced him to endure 24-hour lock-down, lack of medical treatment, only one shower every three days, and lack of exercise did not constitute an allegation of a dramatic departure from the standard conditions of confinement, as would invoke procedural due process protections. The court noted that an inmate does not have a liberty interest, for purposes of procedural due process, in being housed at a particular institution or in avoiding isolation or separation from the general prison population, unless the proposed transfer will subject the inmate to exceptionally more onerous living conditions, such as those experienced by inmates at a “Supermax” facility. (Mule Creek State Prison, High Desert State Prison, Donovan State Prison, California)

U.S. District Court
WATER

Jackson v. *Goord*, 664 F.Supp.2d 307 (S.D.N.Y. 2009). A state prisoner brought an action against correctional staff and officials, alleging that the defendants had violated his constitutional rights. After granting summary judgment for the defendants with respect to all of the prisoner's claims, except for his environmental claims, the defendants filed a supplemental motion for summary judgment on the environmental claims. The district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to conditions in the prison auto body shop when the inmate worked there, the risk that the toxic materials in the shop created, and whether the inmate's alleged headaches, nosebleed, and nausea were related to his work at the auto body shop. The court also found that summary judgment was precluded by genuine issues of material fact as to whether the prisoner was exposed to asbestos for four to five hours a day over an extended period of time, and whether there was a risk to his health as a result of such exposure. According to the court, summary judgment was precluded by genuine issues of material fact as to whether the prisoner was exposed to an unreasonable risk of serious harm from the prison's water quality or from exposure to cigarette smoke, and whether the prison defendants knew that the prisoner faced substantial risks of serious harm and disregarded those risks by failing to take reasonable measures to abate the risks. The court also found a genuine issue of material fact as to whether the prison superintendent knew of the allegedly ongoing constitutional violations and had the authority to correct the problems and failed to do so. (Green Haven Correctional Facility, New York)

U.S. District Court
BEDDING
RODENTS/PESTS
WATER

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. The court held that a substantial risk of harm to the prisoner's health or safety did not result from the prisoner's detention, where, among other things, a professional exterminator routinely sprayed the facility for rodents and bugs, exposed wires from ceiling light fixtures that had been pulled down by inmates were not hazardous or were not located in cells where the prisoner had been confined, the ventilation system was operational and only temporarily malfunctioned when inmates put paper and other materials in vents, fresh water was located in coolers in pods and was brought to the prisoner's cell several times per day, and the prisoner had been provided with a concrete sleeping slab and extra blankets. (Crittenden County Detention Center, Arkansas)

2010

U.S. District Court
SEWERAGE
SHOWERS

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 held that the prisoner's allegations were sufficient to state a colorable § 1983 claim that he was deprived of personal hygienic items and sanitary conditions in violation of the Eighth Amendment, where the prisoner alleged he was regularly deprived of toilet paper and soap, that he was only allowed to shower twice a week, that he was made to strip in dirty showers full of filth and insects, that the unit in which he resided was littered with food and urine and contained open sewers, and that he suffered illness as a result. The court found that the prisoner's allegations that the food he was provided lacked nutritional value and was of lesser quality than food provided to other inmates, that officers made trays of food from dirty food carts located next to inmate showers and that birds picked at the inmate's food while the carts were outside were factually sufficient to state a colorable § 1983 Eighth Amendment conditions of confinement claim. 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
COMMON AREAS
SANITATION

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
PLUMBING
RODENTS/PESTS

Mitchell v. *Dodrill*, 696 F.Supp.2d 454 (M.D.Pa. 2010). A federal prisoner initiated a Bivens-type action against the Bureau of Prisons (BOP) employees, making several complaints about various conditions of his former place of confinement. The district court granted summary judgment for the defendants in part, and denied in part. The court held that, absent any evidence that the alleged conditions of the prisoner's cell caused harm to the prisoner, and that the Bureau of Prisons (BOP) defendants were deliberately indifferent to that harm, cell conditions did not violate the Eighth Amendment. The prisoner alleged that his cell was in poor condition, with poor welding and rust erosion present at the base of the walls, had inadequate plumbing, was infested with "cockroaches, spiders, worms, mice and other unknown insects," and lacked ventilation. The court held that double celling of the prisoner did not violate the Eighth Amendment where the prisoner did not allege that he was singled out for double-celling or that his health or life was endangered by the condition. The court noted that double celling inmates is not per se unconstitutional, and that considerations that are relevant in determining if double celling violates the Eighth Amendment include the length of confinement, the amount of time prisoners spend in their cells each day, sanitation, lighting, bedding, ventilation, noise, education and rehabilitation programs, opportunities for activities outside the cells, and the repair and functioning of basic physical facilities such as plumbing, ventilation, and showers. (Special Management Unit, United States Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
FOOD SERVICE
KITCHEN

Smith-Bey v. *CCA/CTF*, 703 F.Supp.2d 1 (D.D.C. 2010). A District of Columbia inmate brought a § 1983 action against a prison, the private corporation that ran the prison, and a food services company, alleging the prison's kitchen was so poorly maintained and infested with vermin that being forced to eat food prepared there amounted to cruel and unusual punishment in violation of the Eighth Amendment. The defendants moved to dismiss for failure to state a claim. The district court granted the motion. The court held that the two instances in which the inmate discovered cockroaches in his food, "while certainly unpleasant," did establish an Eighth Amendment violation. (Correctional Treatment Facility, Washington, D.C.)

2011

U.S. District Court
RODENTS/PESTS

Solomon v. *Nassau County*, 759 F.Supp.2d 251 (E.D.N.Y. 2011). A pretrial detainee brought an action against a county, jail, sheriff, and undersheriff, alleging that his civil rights were violated when he was bitten by a rodent in his jail cell. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that because the sheriff and undersheriff were not "personally involved" in any alleged failure to maintain a safe prison environment, they were not subject to § 1983 liability for the injury to the pretrial detainee who was bitten by a rodent in his jail cell. The court held that summary judgment was precluded by genuine issues of material fact as to whether the pretrial detainee was exposed to a substantial risk of contracting rabies or another dangerous disease from a rodent bite, and whether the county was aware of the substantial risk of serious harm. According to the court, although protection of inmates from harmful chemicals and the need to prevent inmates from using poisons, glue traps, or door sweeps as weapons were legitimate penological interests that supported the reasonableness of the jail's pest control plan, a genuine issue of fact existed as to whether the county was adequately complying with the plan, and whether the lack of compliance could have resulted in the alleged substantial risk of harm. (Nassau County Correctional Center, New York)

2012

U.S. Appeals Court
CLOTHING
ISOLATION
RESTRAINTS

Gruenberg v. *Gempeler*, 697 F.3d 573 (7th Cir. 2012). A state prisoner, proceeding pro se, filed a § 1983 action against various prison officials, guards, and medical staff, alleging violations of the Eighth Amendment. The district court granted summary judgment for the defendants. The prisoner appealed. The appeals court affirmed. The appeals court held that: (1) the prisoner did not have a clearly established right to not be continually restrained without clothing or cover in a cell for five days following his ingestion of a handcuff key, the master key for belt restraints, and the key used for opening cell doors, where restraint had been imposed to keep the prisoner from re-ingesting those keys; (2) the continuous restraint of the prisoner without clothing or cover in a cell for five days did not violate his Fourteenth Amendment due process rights; (3) the prisoner's Fourth Amendment and Fourteenth Amendment substantive due process claims were barred; and (4) the district court did not abuse its discretion by ruling that the prisoner was competent to advance his case and was not entitled to appointed counsel. (Waupun Correction Institution, Wisconsin)

2013

U.S. District Court
HOUSEKEEPING
RODENTS/PESTS
SANITATION

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. (Stateville Correctional Center, Illinois Department of Corrections)

U.S. District Court
CROWDING

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
BEDDING
CELLS
CROWDING
FOOD SERVICE
SANITATION

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
HOUSEKEEPING
SANITATION
TOILETS

Florio v. *Canty*, 954 F.Supp.2d 227 (S.D.N.Y. 2013). A prisoner, proceeding pro se, brought a § 1983 action against a warden and a corrections officer, alleging violations of the Eighth Amendment. The defendants moved to dismiss. The district court granted the motion. The court held that the prisoner's exposure to human waste on two occasions, for a total of less than a few hours, did not give rise to a serious risk of substantial harm. The prisoner alleged that prison officials waited 10 to 30 minutes after two separate incidents of a toilet overflowing to release the prisoner from his cell and having the prisoner clean the cell with inadequate cleaning gear and without training, allegedly resulting in the prisoner developing a foot fungus. The court held that this was not deliberate indifference to a substantial risk to his health and safety, as would violate the Eighth Amendment. The court noted that officials acted to alleviate the unsanitary conditions, the overflow also occurred in approximately 20 other cells, and the prisoner was not prevented from bathing or washing his clothes after the incidents. (Anna M. Kross Center, Rikers Island, New York City Department of Corrections)

U.S. District Court
HOUSEKEEPING
TOILETS

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. Appeals Court
BEDDING
CROWDING
HOUSEKEEPING

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. (Fed. Corr. Inst. Ray Brook, N.Y.)

U.S. District Court
HOUSEKEEPING
SEWERAGE

Washington v. *Afify*, 968 F.Supp.2d 532 (W.D.N.Y. 2013). A Muslim inmate, proceeding pro se, brought an action against the department of correctional services (DOCS) employees, alleging violations of the First, Eighth, and Fourteenth Amendments. The employees moved to dismiss. The district court granted the motion in part and denied in part. The district court held that: (1) ordering the inmate to clean up human waste did not violate the Eighth Amendment; (2) housing the inmate with a cellmate who allegedly exposed the inmate to pornographic images and prevented him from reciting his daily prayers with necessary humility and tranquility did not violate the inmate's First Amendment free exercise right; (3) the inmate's allegations that he was denied two religious breakfast meals and one evening meal during a Muslim holy month unless he signed up to work in the mess hall were insufficient to state a claim; (4) the Muslim inmate's allegations that he was singled out in being ordered to clean up feces, being transferred to a different cell, and transferred to new prison job were insufficient to state a claim for violations of Fourteenth Amendment equal protection. The court held that the inmate's allegations that he was charged with disobeying a direct order after he refused to clean feces, that he was found guilty by a biased hearing officer, and that the hearing officer called the inmate a "little monkey" and warned that there was "more retaliation on the way" were sufficient to state a § 1983 claim for violations of Fourteenth Amendment due process against the hearing officer. The court also found that the inmate's allegations that he filed a grievance against a prison employee, that the employee told the inmate he was "nuts" and that the inmate "was playing with the wrong one," and that the employee issued a false misbehavior report against the inmate the next day, were sufficient to state a § 1983 retaliation claim in violation of the First Amendment. (Southport Corr. Facility, N.Y.)

2014

U.S. District Court
FOOD SERVICE
RODENTS/PESTS
TOILETS
WATER

Cano v. *City of New York*, 44 F.Supp.3d 324 (E.D.N.Y. 2014). Pretrial detainees brought an action against a city and police officers, alleging that inhumane conditions at a detention facility violated due process. The city and the officers moved to dismiss. The district court denied the motion, finding that the detainees alleged objectively serious conditions that deprived them of basic human needs, that the officers and the city were deliberately indifferent to conditions at the facility, and that there was punitive intent. The detainees alleged that, over a 24-hour period, they were subjected to overcrowded cells, insects, rodents, extreme temperatures, unsanitary conditions, sleep deprivation, lack of adequate food and water, lack of access to bathroom facilities, and lack of protection from the conduct of other inmates. (Brooklyn Central Booking, New York)

U.S. District Court
WATER
TOILETS

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 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. District Court
TOILETS
SEWERAGE

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
PESTS/RODENTS

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. (Little Sandy Correctional Complex, Green River Correctional Complex, Kentucky)

2015

U.S. District Court
SEWERAGE
HOUSEKEEPING

Barnes v. *County of Monroe*, 85 F.Supp.3d 696 (W.D.N.Y. 2015). A state inmate brought a § 1983 action against a county, county officials, and correctional officers, alleging that the officers used excessive force against him and that he was subjected to unconstitutional conditions of confinement during his pretrial detention. The defendants moved for judgment on the pleadings. The district court granted the motion in part and denied in part. The court held that the former pretrial detainee's allegation that a county correctional officer used excessive force when he responded to a fight between the detainee and fellow inmates, and jumped on the detainee's back, striking him in face and knocking out a tooth, and that the officer was not merely using force to maintain or restore discipline but that the entire incident was "premeditated," stated a § 1983 excessive force claim against officer under the Due Process Clause. According to the court, the former detainee's allegations that county correctional officers used excessive force when they pushed him face-first into a glass window, pushed him to the floor, kicked, stomped on and punched him, and used handcuffs to inflict pain, that as a result of the altercation, the inmate urinated and defecated on himself and experienced dizziness and a concussion, and that the force used on him was in response to his reaching for legal papers and attempting to steady himself, stated a § 1983 excessive force claim against the officers under the Due Process Clause. The court found that the former detainee's allegations that, after he was released from a special housing unit (SHU), county correctional officers placed him in a poorly ventilated cell where he was exposed to human excrement and bodily fluids over the course of multiple days, and that he was subjected to extreme conditions in the SHU by way of 24-hour lighting by the officers, stated a § 1983 conditions-of-confinement claim against the officers under the Due Process Clause. (Upstate Correctional Facility and Monroe County Jail, New York)

U.S. Appeals Court
SHOWERS
HOUSEKEEPING

Brauner v. *Coody*, 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 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
RODENTS/PESTS
CROWDING

Cano v. *City of New York*, 119 F.Supp.3d 65 (E.D.N.Y. 2015). Pretrial detainees temporarily housed in a booking facility brought an action against a city and city officials under § 1983 alleging deliberate indifference to detainee health in violation of the Due Process Clause of the Fourteenth Amendment. The defendants moved for summary judgment and the district court granted the motion. The court held that: (1) temporarily subjecting detainees to overcrowded jail cells was not deliberate indifference; (2) failure to provide sleeping equipment, such as beds, cots, pillows, blankets, or bedding was not deliberate indifference; (3) availability of only one toilet for 24 hours in each overcrowded holding cell was not deliberate indifference; (4) alleged failure to provide food and water was not deliberate indifference; (5) police officers were not subjectively aware of a risk to the detainees; (6) police officers did not act with punitive intent; (7) placement of pretrial detainees in jail cells with alleged rodent and insect infestations was not deliberate indifference; (8) placement of pretrial detainees in jail cells with alleged violent offenders that had limited police supervision, allegedly leading to fights, thefts, and bullying, was not deliberate indifference to detainee health; and (9) alleged exposure of pretrial detainees to extreme hot or cold temperature conditions in unventilated jail cells was not deliberate indifference to detainee health that would violate the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment. The court noted that the detainees were not kept in the cells for more than 24 hours, and were not harmed by the alleged overcrowding. (Brooklyn Central Booking, City of New York Police Department, New York)

U.S. Appeals Court
WATER
CLOTHING
HYGIENE ITEMS

Chavarriaga 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) allegations that correctional officers deprived the prisoner of potable water were sufficiently serious so as to reach level of an Eighth Amendment violation; and (2) 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. 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. District Court
BEDDING
CLOTHING
WATER
SHOWERS

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 and conditions of confinement were sufficient to state a plausible claims for Due Process violations; and (4) 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, Mo.)

U.S. District Court
HOUSEKEEPING

Montoya v. *Newman*, 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. The court found that evidence did not support the detainee's § 1983 municipal liability claim based on failure to abate unsanitary conditions and disease in the county jail, where there was no evidence that, prior to the detainee's incarceration in the county jail, the sheriff was aware of a mold or sanitation problem in the jail that presented a serious risk to the health of detainee or other inmates, that the sheriff was deliberately indifferent to those conditions, or that those conditions were a cause of the detainee's illness. (Huerfano County Jail, Colorado)

U.S. District Court
CELLS
HOUSEKEEPING
CLOTHING

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. (Century Regional Detention Facility, Los Angeles County, California)

U.S. Appeals Court
WATER
RODENTS/PESTS

Smith v. *Dart*, 803 F.3d 304 (7th Cir. 2015). A pretrial detainee brought action under § 1983 against a county alleging deliberate indifference to his health in violation of the right to the provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment, as well as failure to pay adequate wages under the Fair Labor Standards Act (FLSA) for his job in the jail's laundry room. The district court dismissed the case and the detainee appealed. The appeals court held that the detainee sufficiently alleged that the food he received was "well below nutritional value," as required to state a claim under § 1983 for deliberate indifference to his health in violation of the Due Process Clause of the Fourteenth Amendment. The court held that the detainee failed to allege harm stemming from the presence of spider nests, cockroaches, and mice, and thus failed to state a claim under § 1983 for deliberate indifference to his health in violation of the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment. The court noted that the detainee did not allege that pests were present in his cell, or that pests had ever come into contact with his person or his property, or that he'd been bitten or stung or otherwise suffered physical or psychological harm, or that his property had been damaged. The court found that the detainee's claims that prison water contained cyanide, lead, and "alpha and beta radiation," if true, were sufficient to allege deprivation of drinkable water, as required to state a claim under § 1983 for deliberate indifference to his health in violation of the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment. (Cook County Jail, Illinois)

U.S. Appeals Court
HOUSEKEEPING

Turner v. *Mull*, 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. 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. (Eastern Reception Diagnostic Correctional Center, Missouri)

U.S. Appeals Court
CELLS
SEWERAGE

Willey v. *Kirkpatrick*, 801 F.3d 51 (2d Cir. 2015). A state prisoner brought an action under § 1983 against a prison superintendent, a corrections sergeant, and corrections officers, alleging unsanitary conditions, theft of legal documents, harassment, malicious prosecution, and false imprisonment. The district court granted summary judgment to the defendants. The prisoner appealed. The appeals court vacated the district court's decision and remanded the case for further proceedings. The court held that remand was required for the district court to address issue in first instance of whether the prisoner had a right under the First, Fifth, Eighth, or Fourteenth Amendments to refuse to provide false information to a corrections officer. The court held that the prisoner stated a claim of unsanitary conditions of confinement against the defendants by alleging that while being kept naked, he had been exposed, at a minimum, to seven days of human waste in a shielded cell that would have "exponentially amplified the grotesquerie of odor" of the accumulating waste, which resulted in mental-health problems and attempted suicide. (Wende Correctional Facility, New York)

SECTION 41: SEARCHES

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.

1960

U.S. Appeals Court

Charles v. United States, 278 F.2d 386 (9th Cir. 1960). All custodial searches are presumed reasonable unless they violate the dictates of reason either because of their number or their manner of perpetration. (Honolulu Police, Hawaii)

1971

U.S. Appeals Court
BLOOD TESTS
LAXATIVES

Anderson v. Nosser, 438 F.2d 183 (5th Cir. 1971); 456 F.2d 835 (5th Cir. 1972), cert. denied, 409 U.S. 848 (1971). Male arrestees/petitioners forced to strip and kept in such condition for up to thirty-six hours and female arrestees/petitioners were forced to go without clothing other than underwear leads to finding of constitutional violation. Detainees given large quantities of laxatives were forced to submit to blood tests for no legitimate reason leads to court's finding of constitutional violation. (Mississippi State Penitentiary, Parchman)

1972

U.S. Appeals Court
STRIP SEARCH

Christman v. Skinner, 468 F.2d 723 (2d Cir. 1972). Strip searches after every outside visit, if done in retaliation for starting a state claim against the jail, constitute denial of access to courts. (Monroe County Jail, New York)

U.S. District Court
"SHAKEDOWNS"

Hamilton v. Landrieu, 351 F.Supp. 549 (E.D. La. 1972). "Shakedowns" shall be conducted more frequently and systematically and shall not be intended to or conducted so as to harass inmates. (Orleans Parish Prison, Louisiana)

U.S. Appeals Court
STRIP SEARCH

McCray v. State of Maryland, 456 F.2d 1 (4th Cir. 1972). Strip searches are to be conducted with maximum courtesy, maximum respect for the person's dignity and minimum physical discomfort to the person being searched. (State Penitentiary, Maryland)

1973

U.S. Appeals Court
STRIP SEARCH

Daugherty v. Harris, 476 F.2d 292 (10th Cir. 1973), cert. denied, 414 U.S. 872. Strip searches of prisoners before or after visits are allowed. (Leavenworth Federal Penitentiary, Kansas)

1974

U.S. District Court
STRIP SEARCH
EMPLOYEE

Gettlemen 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
"SHAKEDOWNS"
STRIP SEARCH
FRISK SEARCH

Giampetruzzi v. Malcolm, 406 F.Supp. 836 (S.D. N.Y. 1975). Closer surveillance of the cells of inmates in administrative segregation, such as cell inspection and shakedown does not violate the fourth amendment, equal protection, or due process. During shakedown, inmates must be permitted to watch the correctional officer search their cells. Strip searches after personal visits, while not doing so to the general population,

does not violate the fourth amendment, due process, or equal protection. Frisks of inmates upon going to and from gym activities does not violate due process, equal protection, or the fourth amendment. (New York City House of Detention for Men)

1976

U.S. District Court
STRIP SEARCH
BODY CAVITY

Bell v. Manson, 427 F.Supp. 450 (D. Conn. 1976). Strip and rectal searching after court appearances is upheld. (Community Correctional Center, Bridgeport, Connecticut)

U.S. District Court
BODY CAVITY
SEARCH

Hodges v. Klein, 412 F.Supp. 898 (D. N.J. 1976). Unless the inmates in segregation are going to mix with the general population, there is no need for a body cavity search whenever an inmate enters or leaves segregation. (Trenton State Prison, New Jersey)

1977

U.S. District Court
LIVING AREAS

Goldsby v. Carnes, 429 F.Supp. 370 (W.D. Mo. 1977). All living units should be checked for contraband at least once a month. (Jackson County Jail, Kansas City, Missouri)

1978

U.S. Appeals Court
BODY CAVITY
SEARCH

Hurley v. Ward, 584 F.2d 609 (2nd Cir. 1978). A prohibition against anal and genital searches of the named plaintiff without a showing of probable cause is confirmed. (New York State Correctional System)

U.S. Appeals Court
STRIP SEARCH

United States v. York, 578 F.2d 1036 (5th Cir. 1978), cert. denied, 439 U.S 1005 (1978). For a strip search of a prisoner to be conducted the government must show reasonableness, not probable cause, that there is contraband on the individual. The more intrusive the search, the heavier the burden is on the government to prove reasonableness. (Federal Correctional Institution, Miami, Florida)

1979

U.S. Supreme Court
LIVING AREAS
BODY CAVITY
SEARCH
STRIP SEARCH

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 confided 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, New York)

1980

U.S. District Court
CELL SEARCH
DAMAGE TO PROPERTY
BODY CAVITY SEARCH

Brown v. Hilton, 492 F.Supp. 771 (D. N.J. 1980). An inmate retains some residual fourth amendment rights including a right to protection against unreasonable searches. A search of the cell which leaves the cell in shambles and damages personal property is unreasonable. The use of anal inspections when moving an inmate to segregation is valid where the individual has been found to possess items which are a threat to institutional security. The Court notes that there are no routine anal inspections and seems to suggest that it might not approve such. (New Jersey State Prison, Trenton)

U.S. District Court
BODY CAVITY SEARCH

Massey v. Wilson, 484 F.Supp. 1332 (D. Colo. 1980). While body cavity searches are a valid security technique, when they are performed in an unreasonable place or manner, they become unconstitutional. (State Penitentiary, Colorado)

U.S. District Court
BODY CAVITY SEARCH

Sims v. Brierton, 500 F.Supp. 813 (N.D. Ill. 1980). Requiring inmates to submit to a body cavity search in order to consult with an attorney or to have a deposition taken violates the right of access to the courts. There are no security considerations demonstrated in this context which would support such a requirement. (Stateville Correctional Center, Illinois)

U.S. District Court
CELL SEARCH

Taylor v. Leidig, 484 F.Supp. 1330 (D. Colo. 1980). The conduct of a cell search in the absence of the inmate-occupant is valid. (Colorado State Penitentiary)

1981

U.S. District Court
STRIP SEARCH
BODY CAVITY SEARCH

Frazier v. Ward, 528 F.Supp. 80 (N.D. N.Y. 1981). The Supreme Court's decision in Bell v. Wolfish does not stand for the proposition that strip searches are per se constitutional, but rather, that body cavity searches are not per se unreasonable under the fourth amendment. Prison officials in New York were not entitled to relief from judgment which prohibited them from conducting visual body cavity searches upon inmates returning after contact visits. (Clinton Correctional Facility, New York)

U.S. Appeals Court
STRIP SEARCH

Logan v. Shealy, 660 F.2d 1007 (4th Cir. 1981), cert. denied, 102 S.Ct. 1435 (1981). The U.S. Court of Appeals for the Fourth Circuit has held that the routine strip searching of jail detainees at the Arlington County (Virginia) jail violates the standards enunciated in Bell v. Wolfish, 441 U.S. 520. The policy to strip search all persons held at the Detention Center for weapons or contraband regardless of their offense had been in effect since 1975 and was applied to Lucy Logan, an attorney who had been involved in a two car collision and had been taken to the station house for a breath analysis. She had been ordered released on her own recognizance but told she would have to wait at a detention center for four hours or until a responsible person came for her. (Arlington County Jail, Virginia)

U.S. Appeals Court
CELL SEARCH

Olsen v. Klecker, 642 F.2d 1115 (8th Cir. 1981). Conducting unannounced cell searches without any cause is a valid security procedure. (North Dakota State Penitentiary)

State Court
BODY CAVITY SEARCH

State v. Hartzog, 635 P.2d 694 (Sup. Ct. Wash. 1981). Body cavity search of inmates en route to court is approved. The plaintiff challenged the constitutionality of security procedures applied to all defendants who are penitentiary inmates who appear before the Walla Walla Superior Court. The courtroom security order requiring inmates to be

searched at the prison prior to departure, and to be subjected to a skin and probe search upon arrival at the county jail did not require a body cavity search at the prison, and therefore did not result in two body cavity searches. The single search was upheld. (Washington State Penitentiary, Walla Walla, Washington)

State Court
BODY SEARCH
SAME-SEX SEARCH

Sterling v. Cupp, 625 P.2d 123 (Sup. Ct. Ore. 1981). The conduct of body searches by guards of the opposite sex constitutes a needless indignity and a degrading experience which violates the Oregon constitution. The court notes the long-standing rule that female inmates are only to be searched by female guards and suggests that the use of female guards to search male inmates would raise a serious equal protection problem. While pretermitting the question whether women have a right to be employed as guards in a male institution, the court seems to suggest that such employment may be required. (State Penitentiary, Oregon)

U.S. Appeals Court
STRIP SEARCH

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. (City of Chicago, Illinois)

U.S. District Court
BODY CAVITY SEARCH

U.S. v. Miller, 526 F.Supp. 691 (W.D. Okl. 1981). Prior notice that a federal prisoner might be subjected to a body cavity search is not required where prison officials have reason to believe that the prisoner is hiding or might be hiding contraband in a body cavity. Officials had overheard the prisoner's telephone conversation with his common-law wife in which smuggling of marijuana was discussed. After a visit from his wife, the prisoner was subjected to a body cavity search, which yielded marijuana. (Federal Correctional Institution, El Reno, Oklahoma)

U.S. Appeals Court
SEARCH OF PROSTHETIC

U.S. v. Sanders, 663 F.2d 1 (2nd Cir. 1981). The court determines that search of an artificial leg is not as great an intrusion as a body cavity search. A routine inquiry to the Treasury Enforcement Computer System indicated that the defendant was suspected of trafficking narcotics from South America and that he might conceal cocaine in an artificial leg. Having discovered that information, the customs officer also noted that the defendant was using a "Z" passport. Questioning of the defendant as to why he had a round trip ticket to Venezuela resulted in an incredible story. On those facts, the customs officer acted properly in taking the defendant to a hospital for removal of the artificial leg, in which drugs were found. (J.F.K. Airport)

U.S. District Court
PAT SEARCH

Waddell v. Brandon, 528 F.Supp. 1097 (W.D. Okl. 1981). The plaintiff's civil rights suit against the officer for injuries sustained during a pat down search is frivolous. Accordingly, the officer as the prevailing party was entitled to recover his reasonable attorney fees under 42 U.S.C.A. Section 1988. (Valley Brook, Oklahoma)

U.S. District Court
VISITOR SEARCH

Wool v. Hogan, 505 F.Supp. 928 (D. Vt. 1981). The United States District Court for Vermont dismissed Kirk Wool's 42 U.S.C. Section 1983 suit against the correctional facility. Wool had alleged that prison officials had interfered with his right to marriage and family relationships by requiring his visitors to submit to strip searches. The case arose after Wool began receiving weekly contact visits from his girl friend and their infant daughter. Three months after these visits began, prison officials began requiring the girl friend and the infant to submit to strip searches prior to contact visits with Wool. On a visit a few months later, the woman refused to be strip searched, and the two were denied visitation privileges. Wool's relationship with the two eventually deteriorated, and he subsequently filed suit claiming that the strip search policy had discouraged their visits. He also alleged that the officials' denial of his earlier request to marry had violated his fundamental rights under the fourteenth amendment.

In reviewing Wool's complaints, the district court noted that prison administrators are accorded wide ranging authority in the execution of policies that are needed to preserve internal order, discipline and security. The court then held that penal officials have an interest in restricting the flow of contraband into an institution, and that strip searching visitors suspected of carrying such contraband was not an exaggerated response. The court reasoned that the maintenance of a family relationship requires communication, compassion, and constancy, and the strip search policy did not hinder such goals. The court also rejected Wool's claim that the strip searches "chilled" his first amendment right of association. The court stated that while it is clear that free members of society have the right of physical association, such a right is significantly curtailed by a criminal conviction. The court then found that prison security justified any "chilling" effect on Wool's first amendment rights. In dealing with Wool's request to marry, the court

determined that the fundamental nature of the right to marry arises from an individual's interest in being free from governmental interference in making important personal decisions. The court noted, however, that states have traditionally had a significant interest in the marriage relationship. In this regard the court ruled that Vermont prison officials had a specific interest in Wool's rehabilitation and concluded that the officials acted reasonably in denying his marriage request in light of those interests. (St. Albans Correctional Facility, Vermont)

1982

U.S. Appeals Court
STRIP SEARCH

DeMier v. Gondles, 676 F.2d 92 (4th Cir. 1982). Plaintiffs brought suit challenging the strip search policy of the Arlington County (Virginia) sheriff's office. The policy required mandatory strip search of all detainees without regard to severity of the offense or anticipated duration of stay at the County Detention Center. After the plaintiffs' arrests for minor offenses (playing a stereo too loud and writing obscene words on a traffic ticket), both were taken to the detention center, strip searched, and placed in holding rooms separate from the general inmate population for a short time and then released on bail. Suit was brought, and shortly thereafter, the Virginia state assembly passed legislation severely curtailing the circumstances under which strip searches could be conducted. The plaintiffs then voluntarily dismissed the action and were awarded attorney's fees under 42 U.S.C. Section 1988. The U.S. Court of Appeals for the 4th Circuit, in affirming the district court noted that "the plaintiffs' actions were the catalyst which caused a defendant to remedy his errant ways. (Arlington County Detention Facility, Virginia)

U.S. District Court
STRIP SEARCH

Hunt v. Polk County, 551 F.Supp. 339 (S.D. Iowa 1982). Strip searches of prearraignment detainees charged with minor offenses are declared impermissible. A federal district court judge in Iowa found that no strip searches of prearraignment detainees charged with minor offenses would be permitted unless the offense is associated with weapons or contraband, or unless there is a basis for reasonable suspicion that the particular detainee is concealing a weapon or contraband.

Because these detainees are being held solely due to their inability to post cash bail, and because most are traffic violators, the court found that there was little reason to believe that a particular detainee would be concealing contraband or a weapon. (Polk County Jail, Iowa)

U.S. Appeals Court
VISITOR SEARCH

Hunter v. Auger, 672 F.2d 668 (1982). The Constitution mandates that a reasonable suspicion standard govern strip searches of visitors to penal institutions. That standard is flexible enough to afford the measure of fourth amendment protection without imposing an insuperable barrier to the exercise of all search and seizure powers. To justify the strip search for a particular visitor under the reasonable suspicion standard, prison officials must point to specific objective facts and rational inferences that they are entitled to draw from those facts in light of their experience. (Men's Penitentiary, Fort Madison, Iowa)

State Appeals Court
SEARCH OF
PROPERTY

People v. Greenwald, 445 N.Y.S.2d 865 (App. Div. 1982). Search of prisoners' inventoried items is permissible without a search warrant. The Supreme Court, Appellate Division, of New York, has ruled that police personnel were allowed to examine an arrestee's belongings after they had been inventoried and locked away.

The plaintiff had been admitted consistent with normal booking procedures at which time his personal property including his wallet was sealed in an envelope and placed in the property room. Later, a search of his wallet revealed a piece of paper with the name, address, and telephone number of one of his victims. The court upheld the search and stated:

> It is now beyond doubt that under the fourth amendment an arresting officer may, without a warrant, search a person validly arrested. The fact of a lawful arrest, standing alone, authorized the search (Michigan v. Defillippo, 443 U.S. 31, 99 S.Ct. 2627; Gustafson v. Florida, 414 U.S. 260, 94 S.Ct. 488; United States v. Robinson, 414 U.S. 218, 94 S.Ct. 467). That there may be some time interval between the arrest and the subsequent taking of property for use as evidence does not change this principle, nor does the fact that 'the clothing or effects are immediately seized upon arrival at the jail, held under the defendant's name in the property room of the jail, and at a later time searched and taken for use at the subsequent criminal trial.' (United States v. Edwards, 415 U.S. 800, 94 S.Ct. 1234, 1239).

The court noted that a warrant would have been required if Greenwald had left his wallet at home.

U.S. District Court
STRIP SEARCH

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 has 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
STRIP SEARCH

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
PAT SEARCH

Smith v. Fairman, 678 F.2d 52 (C.D. Ill. 1982), cert. denied, 103 S.Ct. 1879 (1982). The 7th Circuit Court of Appeals has held that a pat down search by a female prison guard of a male inmate is permissible so long as the search does not extend to the genital area. The plaintiff was an inmate in an Illinois correctional facility and was subjected to a frisk search which encompassed the head, neck, back, chest, stomach, waist, and the outside of his legs and thighs. Arguing that such a search by a member of the opposite sex was cruel and unusual punishment, he brought this action seeking $40,000 damages and an order to prohibit such searches.

In affirming the district court's ruling for the defendants, the court of appeals noted that any search may be humiliating and degrading, but recognized the clear necessity of searches in prisons and jails. The plaintiff did not argue that the type of search was itself illegal, but only that it was cruel and unusual punishment under the eighth amendment for a member of the opposite sex to conduct the search.

In an affidavit, the warden of the facility stated that the Department of Corrections was obligated to avoid sex discrimination in hiring under Title VII and could not only employ male guards, and that allowing inmate searches only by members of the same sex would prevent the department from fulfilling its obligation of hiring and utilizing people without regard to sex. The court recognized that some limitations do exist, (for example, surveillance by male guards of female inmates who were showering or sleeping) but held that because the inmate was fully clothed during the search, and the search did not extend to the genital or anal area, it was reasonable and did not violate his right of privacy or the eighth amendment's prohibition against cruel and unusual punishment. (Pontiac Correctional Center, Illinois)

1983

State Appeals Court
VISITOR SEARCH

Comm. v. Lapia, 457 A.2d 877 (Penn. App. 1983). Anonymous tip does not provide "reasonable suspicion" for strip search of visitor. The Superior Court of Pennsylvania determined that a strip search of a visitor was improper since it was conducted based only on an anonymous tip.

U.S. Appeals Court
BODY CAVITY SEARCH

Dufrin v. Spreen, 712 F.2d 1084 (6th Cir. 1983). Visual body cavity search of female arrestee is constitutional. The Sixth Circuit Court of Appeals found that the search of a detainee arrested for assaulting her stepdaughter was constitutional. The court reached the verdict because:

(1) the offense for which the detainee was arrested was a violent offense;
(2) the detainee would be coming into contact with the general jail population;
(3) the search was conducted in privacy, by a female officer, and was visual only; and
(4) there was no offensive behavior by the matron or anyone else associated with the search.

The court referred to several other cases which prohibited the strip searching of all detainees. (Oakland County Jail, Michigan)

U.S. District Court
STRIP SEARCH

Giles v. Ackerman, 559 F.Supp. 226 (D. Ida. 1983), reh'g, 746 F.2d 614 (1984) cert. denied, 105 S.Ct. 2114 (1984). Strip search of female traffic offender upheld by district court, then overturned by Appeals Court. A women in Idaho filed suit against the Bonneville County sheriff's office after she was strip searched following arrest for failure to appear and pay parking tickets. Although the district court judge found the circumstances unusual and was sympathetic, he held that it was not unreasonable to search the woman after it became clear that she would not be released on bond prior to her hearing in court.

Finding that the policy requiring a strip search of every prisoner processed into the general population of the facility was reasonable, he held that it was not a violation of the fourteenth amendment. On appeal, the higher court reversed the initial decision, finding the practice violated the defendant's fourth amendment rights. On appeal to the United State Supreme Court (See: Ackerman v. Giles, 1985), the appeals court decision remained when certiorari was denied. (Bonneville County Jail, Idaho)

U.S. Appeals Court
STRIP SEARCH

Hodges v. Stanley, 712 F.2d 34 (2nd Cir. 1983). Second strip search is found unconstitutional by circuit court. An inmate who was strip searched two times in a short period was found to have a valid constitutional claim by the Second Circuit Court of Appeals, reversing the lower court's dismissal of the inmate's civil rights suit.

The inmate was strip searched prior to being admitted to administrative detention at the Metropolitan Correctional Center in New York, and was then subjected to a second strip search almost immediately. The lower court had dismissed the case, but the higher court disagreed, and noted that the inmate was under continuous escort between the first and second searches and that there had been no opportunity to obtain contraband. (Metropolitan Correctional Center, New York)

U.S. Supreme Court
SEARCH WARRANT
EVIDENCE

Illinois v. Gates, 103 S.Ct. 2317, ruling below 423 N.E.2d 887 (1983), reh'g denied, 104 S.Ct. 33. United States Supreme Court relaxes search standards. Gates' conviction on drug charges was reversed because the original source of information for the police was an anonymous informer. The Supreme Court had requested that both sides present to the court arguments relating to a "good faith exception" to the exclusionary rule. The Court eventually decided that it had no standing to make a determination. The Court ruled that the evidence seized based on a warrant which was secured in large part on the basis of the information provided anonymously had been wrongfully excluded.

Writing for the majority, Justice Rehnquist agreed that the credibility and reliability of an informant is highly relevant, as well as the facts on which the informer bases his conclusions, but noted that these factors should not be "entirely separate and independent requirements" which should be "rigidly exacted in every case."

Holding that the evidence in question was lawfully seized and should be admitted at trial, the Court advanced a "common sense, practical" approach to the probable cause question, taking into consideration the "totality of the circumstances." The Gates' case replaces Aguilar v. Texas, 378 U.S. 108 (1964) and Spinelli v. U.S., 393 U.S. 410 (1969), which had previously been the test for probable cause. (Bloomingdale Police Department, Illinois)

U.S. Supreme Court
SEARCH OF
PROPERTY

Illinois v. Lafayette, 103 S.Ct. 2605 (1983). U.S. Supreme Court finds inventory search of inmate's property permissible at time of admission. The high court determined that police were allowed to routinely search the personal property of an arrestee at the police station during the admission process, prior to being detained.

The court found that the practical necessities of ensuring the security and safety of the detention facility and property, justified an inventory search as part of the standard process associated with incarceration.

The plaintiff in the case was arrested for disturbing the peace and was taken to a police station where his shoulder bag was searched without a warrant, and its contents were inventoried during the booking process. Subsequently, the plaintiff was charged with illegally possessing controlled substances. The lower court had suppressed the evidence because it viewed the search as invalid. The Supreme Court reversed that decision, concluding that since the search did not rest on probable cause, the absence of a warrant was immaterial to the reasonableness of the search. (Kankakee City Police Department, Illinois)

U.S. Appeals Court
FRISK SEARCH
SAME-SEX SEARCH

Madyun v. Franzen, 704 F.2d 954 (7th Cir. 1983), cert. denied, 104 S.Ct. 493 (1983). Female officers are allowed to frisk male inmates. A Federal Court of Appeals has held that the State of Illinois may require male inmates, even those with religious objections, to submit to frisk searches by female officers.

The plaintiff claimed that his Islamic faith prevented any physical contact with a woman other than his wife or mother. He was sentenced to fifteen days in segregation for refusing to submit to a search. The court also held that the state may implement opposite sex searches of male prisoners without requiring the same of female prisoners.

The rationale for the decision was that the state's goal of providing equal opportunity for women could be obtained only if women can perform all essential tasks necessary to the security of the institution. (Pontiac Correctional Center, Illinois)

State Supreme Court
ATTORNEY SEARCH

Rhode Island Defense Attorneys' Association v. Dodd, 463 A.2d 1370 (1983). Rhode Island Supreme Court rules that attorney searches and refusal to allow briefcases in cell area are valid. In a case filed by the Rhode Island Defense Attorneys' Association, the court found that existing procedures did not violate any constitutional rights.

Attorneys are required to pass through a metal detector. If the device is activated, they are asked to remove metal items and to pass through again. A pat-down search is used only as a last resort.

Briefcases are inspected only for the purpose of discovering weapons or other lethal objects. Finally, the facility refuses to allow briefcases in the cell area, but permits attorneys to take files and papers into the cell block.

The court supported these practices, stating that "It is our opinion that these procedures, in light of the potential dangers confronting the state, are reasonable." (Rhode Island Department of Corrections)

Appeals Court
FRISK SEARCH
SAME-SEX SEARCH

Rivera v. Smith, 462 N.Y.S.2d 352 (App. 1983), aff'd, 472 S.2d 210 (1985). Muslim inmate may refuse frisk search by female guards. An appellate court in New York has ruled that generally inmates may refuse for religious reasons to submit to frisk searches by female guards, finding no reason why male guards could not be used to conduct routine searches. The court ruled that an officer of either sex must be allowed to conduct the search when contraband is suspected or in other emergency circumstances. (Attica Correctional Facility, New York)

U.S. District Court
STRIP SEARCH

Roscom v. City of Chicago, 570 F.Supp. 1259 (N.D. Ill. 1983). Visual strip search of all pretrial detainees regardless of severity of crime is upheld by federal district court. Suit was brought against the City of Chicago by a woman who was detained for writing dishonored checks, alleging violation of her constitutional rights.

The plaintiff sued the sheriff of Cook County, the jail director of the Cook County Jail, and various city officials. 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 had previously ruled that although the sheriff and jail director were not personally involved in the search, they could be individually liable if the policy which they implemented was found unconstitutional (550 F.Supp. 153).

The court held that the policy of conducting visual strip searches of all pretrial detainees during processing was a legitimate procedure to insure jail security. Probable cause is not needed for these searches, as the need for jail security outweighs the privacy interest of inmates.

In upholding the searching procedures, the court relied on Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861 (1979). The opinion stated:

> Wolfish does not require a showing of probable cause for visual strip searches of pretrial detainees. None of the regularized and nondiscriminatory procedures is unreasonable as applied to all pretrial detainees. County's interest in the security of its Jail is legitimate. Its visual strip search policy of all pretrial detainees, carried out (1) by same sex personnel, (2) in a separate room, (3) without in any way touching the detainees, is reasonable under the balancing test of Wolfish. (441 U.S. at 560)

The court concluded that the plaintiff had not been unconstitutionally deprived of any of her rights. (Cook County Jail)

1984

U.S. Supreme Court
CELL SEARCH
DAMAGE TO PROPERTY

Block v. Rutherford, 104 S.Ct. 3227 (1984). U.S. Supreme Court reverses lower court rulings. Pretrial detainees in Los Angeles Central Jail will not have contact visits and will not be allowed to be present when cells are searched.

Pretrial detainees at the Los Angeles County Central Jail brought a class action in Federal District Court in 1975 against the County Sheriff and other officials, challenging the jail's policy of denying pretrial detainees contact visits with their spouses, relatives, children and friends, and the jail's practice of conducting random, irregular "shakedown" searches of cells while the detainees were away at meals, recreation, or other activities. The District Court concluded that the danger of permitting lower security risk inmates to have contact visits was not great enough to warrant deprivation of such contact and, with regard to cell searches, that allowing inmates to watch from a distance while their cells are searched would allay inmate concerns that their personal property would be unnecessarily confiscated or destroyed.

In a six to three decision, the Supreme Court relied upon its previous ruling in Bell v. Wolfish, 441 U.S. 520, to uphold practices at the Los Angeles County Central Jail. Writing for the majority, Chief Justice Burger stated that " ...The principles articulated in Wolfish govern resolution of this case....We affirm that, 'proper deference to the informed discretion of prison authorities demands that they, and not the courts, make the difficult judgments which reconcile conflicting claims affecting the security of the institution, the welfare of the prison staff, and the property rights of the detainees.' 441 U.S. at 557. Accordingly, the judgment of the Court of Appeals is reversed."

Permitting Detainees to Observe Cell Searches. The appeal presented to the Supreme Court the issue of whether detainees are entitled to observe jail staff when their cells are being searched according to jail policies which require irregular or random "(shakedown)" searches. The majority found the method of conducting searches virtually identical to that presented in Wolfish, and found no reason to reconsider the prior support of that method in light of a fourth amendment challenge and a due process challenge. (Los Angeles County Central Jail)

U.S. District Court
STRIP SEARCH

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.

U.S. District Court
CELL SEARCH

Cook v. City of New York, 578 F.Supp. 179 (S.D. N.Y. 1984). Valid reason needed to search inmate cell, although search warrant not required. According to a federal district court in New York, corrections officials may enter an inmate's cell to search it without a warrant. However, they may not seize an item in the cell unless there is a legitimate institutional interest involved. In this case, facility staff entered the plaintiff's cell to search for a coat which they thought had been worn during a robbery. They seized an address book which was found during the search and not the coat (which was not found). The court found this a potential violation of fourth amendment rights. (Correctional Institution, Napanoch, New York)

U.S. District Court
STRIP SEARCH

Kathriner v. City of Overland, Missouri, 602 F.Supp. 124 (E.D. Mo. 1984). The U.S. District Court held that strip searching a pretrial detainee without reason to believe she possessed contraband or weapons violated her constitutional rights. The plaintiff challenged the blanket policy of strip searching all prisoners, regardless of their length of detention. Corrections officials who conducted the search were granted good faith immunity because they adopted the strip search policy when Bell v. Wolfish was decided and had not been put on notice that their actions were unconstitutional. The court held the city liable for their violations. (Overland City Lockup, Missouri)

U.S. Appeals Court
STRIP SEARCH

Mary Beth G. v. City of Chicago, 723 F.2d 1263 (7th Cir. 1984). Female detainees are awarded damages for strip searches. Four women who were strip searched at a lockup while awaiting arrival of bail funds brought action against the city. The women were all arrested for misdemeanor charges. The court found the strip search policy which resulted in the searching of prisoners who were not inherently dangerous and were only detained briefly while awaiting bond was unreasonable under the fourth amendment. Also, equal protection was violated as similarly situated males were subjected to only hand searches. Each plaintiff was awarded between $25,000 and $35,000 in damages; attorney's fees were also awarded. (Chicago City Lockups)

U.S. Appeals Court
STRIP SEARCH

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 has 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
CELL SEARCH

Nakao v. Rushen, 580 F.Supp. 718 (N.D. Cal. 1984), vacated 766 F.2d 410 (9th Cir. 1985). Search of inmate cell and seizure of letters found improper because no institutional purpose involved. A federal district court in California found that corrections officials acted improperly when they searched an inmate's cell for mail written by his wife. The wife was under investigation for improperly using letterheads and other materials when she was employed by a county social service department. Several letters from the inmate's wife were seized during the search and were forwarded to county officials. His wife was subsequently fired for misuse of supplies. Because the inmate was not suspected of misconduct and because the search was not justified in terms of facility security, the court found the search and seizure improper. On appeal, the circuit court of appeals found that the search did not violate the fourth amendment, and remanded the case to the lower court for consideration of the first amendment and state law. (San Quentin Prison, California)

U.S. Appeals Court
EMPLOYEE

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)

State Appeals Court
VISITOR SEARCH

State v. Balser, 460 So.2d 74 (La. App. 1984). Strip search of visitor upheld by Louisiana court. The mother of a prisoner was routinely pat searched prior to a visit and was ordered to return several items to her car. Upon her return, she was taken to a private room for an additional search (strip), which produced several bags of marijuana in her sock. She was subsequently tried and sentenced to six months of hard labor.

The appeals court upheld the searches because signs were posted stating that visitors were subject to personal searches, her prior knowledge of procedures from previous visits , and her initial written consent to submit to personal searches. (Louisiana State Penitentiary)

U.S. Appeals Court
BODY CAVITY
SEARCH

U.S. v. Caldwell, 750 F.2d 341 (5th Cir. 1984), cert. denied, 105 S.Ct. 1873 (1984). Appeals court approves cavity search of prisoner. The U.S. Court of Appeals for the Fifth Circuit has ruled that federal prison officials in a facility in Texarkana did not violate any major constitutional rights of a prisoner when they subjected him to a digital rectal search following a visit. The search was conducted based on a tip from

an inmate informant which predicted that the prisoner would conceal narcotics in his rectum following a visit. After the visit the prisoner was taken to the facility hospital, but the search was not completed because the prisoner reacted violently. Following a day in a "dry" cell, marijuana was found in five balloons in the prisoner's excrement. The court found the procedure "practicable, as indicated by the type of contraband and the method of suspected introduction." (Federal Correctional Institution, Texarkana, Texas)

1985

U.S. Supreme Court
STRIP SEARCH

Ackerman v. Giles, 105 S.Ct. 2114 (1985). U.S. supreme court denies review of strip search case - appeals court ruling stands. An important indication of strip search guidelines was provided by the 1985 decision of the Court to deny certiorari for Ackerman v. Giles. Ruling:

> County policy of strip searching all persons admitted to county jail, regardless of severity of charges or whether officials have reasonable suspicion that arrestee is concealing contraband, and unsupported by any indication that strip searches effectively deter smuggling of contraband into jail, violates fourth amendment. A strip search of a person who was arrested for minor traffic offense and was described as cooperative and orderly violated fourth amendment in absence of individualized suspicion that she was carrying contraband or was in any way threatening jail security.

In denying review of the case, the decision of the Ninth Circuit Court of Appeals, overturning the district court decision which had approved the practice, now stands throughout the circuit. 746 F.2d 614 (9th Cir. 1984). (Bonneville County Jail, Idaho)

U.S. Appeals Court
VISITOR SEARCH

Blackburn v. Snow, 771 F.2d 556 (1985). A woman was awarded $177,040 for violations of fourth amendment rights when repeatedly subjected to strip searches when visiting her brother. The sheriff imposed a rule requiring all visitors to submit to body cavity strip-searches, without any suspicion of carrying contraband or anything else. Merely because they were visiting, they were strip searched. The court ruled that the sheriff was not immune from damages, and that the county was liable for the policy as well. The plaintiff's returning to the prison for visits on future occasions where she was again strip searched did not imply consent to waive her constitutional rights, added the court. (Plymouth County Jail, Massachusetts)

State Supreme Court
VISITOR SEARCH

Commonwealth v. Dugger, 486 A.2d 382 (Pa. Sup. Ct., 1985). Search of visitors requires "reasonable," not probable cause, Penn. Supreme Court rules. Under a Pennsylvania statute governing prisoner visitor searches, the state supreme court has ruled that prison officials only need to reasonably suspect that contraband is being carried in order to search a visitor.

State Court
JUVENILE
PAT SEARCH

In re Terrence G., 37 CrL 2413 (N.Y. Sup. Ct. 1985). Pat search of juvenile detained as runaway upheld. A fifteen year old boy was detained by police in a New York subway station under the provisions of the state's runaway statute. A pat search was conducted, producing a pistol hidden in his pants. The plaintiff argued that the pistol could not be used as evidence because the search was inappropriate. The court disagreed, finding that the search was not a full custodial search, and that the officers had a duty to protect the youth and themselves under the statute.

U.S. Appeals Court
STRIP SEARCH

Joan W. v. City of Chicago, 771 F.2d 1020 (1985). Appealing to a jury to imagine themselves in a plaintiff's position is impermissible because it encourages them to depart from their neutral role. This is called the "Golden Rule." The plaintiff's counsel was therefore in violation when he asked the jury "How would you feel" if strip-searched, laughed at, and subjected to abusive language following an arrest for a traffic violation. Apparently, the counsel made the remarks after the defendants insisted to the jury that the plaintiff's emotional damages were insignificant since she didn't tell friends about the incident. Following all remarks, the judge gave the jury extensive guidance on how to assess damages and noted that the counsel was not unduly emotional in making the argument nor did the judge believe that the large damage award ($112,000) was due to the statement. Any errors that occurred did not require reversal, ruled the court. It added, however, that damages beyond $75,000 were excessive. (Chicago Police Department, Illinois)

U.S. Appeals Court
STRIP SEARCH

Jones v. Edwards, 770 F.2d 739 (1st Cir. 1985). Strip Search of Arrestee Found Unconstitutional; Case Remanded to Determine Damages. The U.S. Court of Appeals for the Eighth Circuit concluded that a lower court erred in failing to grant the plaintiff's motion for judgment, remanding the case for determination of compensatory damages. The court declined to allow the award of punitive damages. The plaintiff was arrested for allowing his dog to run loose. During booking procedures, the uncooperative arrestee was subjected to a visual strip search. Guided by Bell v. Wolfish, the court concluded that the search violated the plaintiff's fourth amendment rights. The court noted that the plaintiff's offense was "hardly the sort of crime to

inspire officers with the fear of introducing weapons or contraband into the holding cell." The officers did not have any reason to suspect the plaintiff was harboring contraband. While acknowledging the importance of security procedures, the court concluded that "..security cannot justify the blanket deprivation of rights of the kind incurred here." (Lincoln County Jail, Nebraska)

U.S. District Court
STRIP SEARCH

John Does 1-100 v. Ninneman, 612 F.Supp. 1069 (D.C. Minn. 1985) and John Does 1 100 v. Boyd, Civil 2-84-378, (D.C. Minn. 1985). Strip searches of detainees arrested for minor offenses barred; individual defendants, but not county, given qualified immunity. Following the decisions of several circuits, the Federal District Court found that the county's practice of strip searching detainees arrested for minor offenses unrelated to drugs, weapons or predatory conduct to be unconstitutional under the fourth amendment. The county was held liable for the practice, but individual defendants were granted immunity because the law was not clearly established in this area. (Chicago County, Minnesota)

State Appeals Court
SEARCH OF PROPERTY

People v. Nagel, 38 CrL 2101 (Ill App. Ct. 4th Dist., October 1, 1985). Appeals court rules that police should not have conducted inventory search of detainee's locked briefcase. A police prisoner had more than enough cash to meet the 50 dollar bond set for the offense on which he had been arrested, but his locked briefcase was searched by police anyway. Although the Supreme Court has permitted inventory searches of prisoners' property as a valid exception to the fourth amendment's warrant requirements, the majority of the Illinois Appellate Court found that the search is permissible only if it is incident to the further incarceration of the prisoner. The state had argued that "incarceration" should be interpreted to mean any period of detention, no matter how short, including the booking process. The majority disagreed: "Incarceration must mean something more intrusive than simple detention for the purely administrative purpose of booking an individual who would otherwise be subject to immediate release on a non-substantial criminal charge. Simply put, the significant inquiry is whether there is a reasonable belief that the defendant will be subject to further incarceration. If he is, then the inventory search is legitimate... The focus must necessarily begin and end with an examination of the reasonableness of the police officer's necessarily ad hoc determination based on the facts and information available to the officer at the station house following arrest."

State Appeals Court
BODY CAVITY SEARCH

People v. West, 37 CrL 2359 (Cal Ct. App., 5th Dist, 7/23/85). Search of forty honor farm prisoners reasonable under Bell v. Wolfish. Officials received information that marijuana would be brought into the honor farm and decided to have medical staff conduct full body and cavity searches on all forty prisoners after they returned from work furloughs. A marijuana balloon was found in one prisoner's rectum. The court found that the four factors established in Bell v. Wolfish, 441 U.S. 520 (1979), were properly balanced by officials in this instance. There was justification for the search, the scope of intrusion was appropriate, and the searches were conducted in a proper manner and location. (Stanislaus County Honor Farm)

U.S. District Court
URINE TEST

Peranzo v. Coughlin, 608 F.Supp. 1504 (D.C. NY 1985). Use of emit test (urine test for drugs) upheld. Prisoners in a state correctional facility filed a suit to stop officials from taking disciplinary actions against them based solely upon the unconfirmed results of the Syva Emit-st drug detection system. The state had adopted the system as a way to deal with the problem of narcotics in the facility. The federal judge found that the Emit testing apparatus was a purely mechanical device which required the operator to exercise no discretion, read no graphs and make no subjective interpretations. State officials had implemented a policy of making a second test (by a different individual if possible), whenever a positive result was obtained. According to the judge, the reliability of the test as the basis for imposing disciplinary sanctions was the critical issue in the case. Noting that other tests had been found sufficiently reliable to be used in criminal trials and having reviewed various studies which had been conducted on the Emit test, the court held that "the risk that double Emit testing will result in erroneous deprivation of inmates' liberty interest has not been shown to be so significant that additional testing procedures can be required... ." (N.Y. DOC)

State Appeals Court
STRIP SEARCH

Rankin v. Colman, 476 So.2d 234 (Fla.App. 5 Dist. 1985). The plaintiff filed a civil rights complaint seeking damages arising from a strip search which was conducted after her arrest for failure to produce her driver's license. The Circuit Court, Orange County, dismissed the complaint, and the plaintiff appealed. The District Court of Appeal held that: (1) a strip search and body cavity search of persons arrested for minor traffic offenses are prima facie unreasonable and an unwarranted intrusion on personal privacy of such persons, at least without some showing of justification by arresting authority, and (2) the complaint which alleged that the plaintiff was forced to undergo strip search procedure even though there was no reason to believe she had concealed contraband or weapons, and that policy, practice and procedure of conducting such searches was approved and authorized by sheriff was sufficient to state a cause of action under Section 1983. (Orange County Jail, Florida)

U.S. Appeals Court
VISITOR SEARCH

Thorne v. Jones, 765 F.2d 1270 (1rst 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. Appeals Court
BODY CAVITY SEARCH

United States v. Smith, 774 F.2d 1005 (1985). The warden at the Federal Correctional Institution in El Reno, Okla., did not have sufficient evidence to authorize a rectal search, according to a federal appellate court. Jim Moore, a correctional counselor, received a tip from an inmate that Smith, a prisoner, might receive narcotics at his next contact visit with his wife. Moore passed this tip to Dennis Beasley, an investigative supervisor at El Reno, who then asked the warden to have Smith subjected to a rectal search after Smith's next contact visit with his wife. The warden agreed and the ensuing search disclosed that Smith was carrying 14 grams of marijuana in two vials.

The court noted that a digital or simple instrument search of an inmate's body cavity can only be conducted upon approval of the warden and only if the warden has a "reasonable belief" that the inmate is concealing contraband in or on his person. The court found no indication that the inmate who gave the tip was reliable. Neither the corrections supervisor, Beasley, who requested the search, nor the warden, who authorized the search, knew the identity of the tipster, much less his reliability. Jim Moore had merely passed on the tip with no additional information regarding the reliability of the informant. Accordingly, the court found the warden could not have been acting on "reasonable belief" that Smith was going to bring drugs in following his contact visit. (Federal Correctional Institution, El Reno, Oklahoma)

U.S. District Court
STRIP SEARCH

Wagner v. Thomas, 608 F.Supp. 1095 (D.C. Tex. 1985). Strip searching prisoners in front of fellow prisoners upheld. A federal district court has upheld several practices of a Texas county jail. The Court agreed that strip searching prisoners in view of other prisoners was necessary to accomplish security interests in controlling contraband, where individual strip searches would present severe security risks and random searches would be rendered almost useless unless all inmates were removed from their cells at the same time before they could hide contraband. The court did not find the participation of female officers in the preliminary stages of these searches offensive because they could not have seen the prisoner's nude body during the actual search. (Dallas County Jail, Texas)

1986

U.S. District Court
BODY CAVITY

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)

State Appeals Court
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 a 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. (DOC, New York)

U.S. Appeals Court
STRIP SEARCH

McRorie v. Shimoda, 795 F.2d 780 (9th Cir. 1986). A prison inmate brought a civil rights action based on allegations that a prison guard attempted to plunge a riot stick into his anus during a strip search after a shakedown. The United States District Court dismissed the suit for failure to state a claim on which relief could be granted, and the inmate appealed. The court of appeals held that: (1) the inmate's allegations, if proved, stated an eighth amendment violation; (2) if true, the prison guard's alleged conduct amounted to deprivation of the inmate's liberty interest which rose to the level of a substantive due process violation; and (3) the availability of state court relief did not bar federal relief under Section 1983 for alleged prison guard brutality which constituted a deprivation of substantive due process.

In determining whether a prison guard's conduct amounts to brutality and is therefore a liberty deprivation without due process, the court must look to such factors as a need for the application of force, the relationship between the need and amount of force that was used, the extent of the injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or applied maliciously and sadistically for the very purpose of causing harm. (Oahu Community Correctional Center, Hawaii)

State Appeals Court
DRUG TEST

Pabon v. LeFevre, 508 N.Y.S.2d 95 (A.D. 3 Dept. 1986). A prison inmate brought an Article 78 proceeding seeking to review a determination by the Commissioner of Correctional Service that the inmate violated a disciplinary rule. The Supreme Court at Special Term transferred the proceeding. The Supreme Court held that the application to the inmate of a directive that an inmate unable to provide a urine specimen for drug testing within three hours shall be considered to have refused to submit a specimen was not improper, despite inmate's claim that he was taking cold medication, was nervous, and was unable to provide a specimen. (Clinton Correctional Facility, New York)

U.S. District Court
DRUG TEST

Pella v. Adams, 638 F.Supp. 94 (D.Nev. 1986). The taking of a urinalysis sample from a Nevada prisoner did not constitute an unreasonable search. The discovery by a prison official of a green leafy substance and seeds in the prisoner's living area was sufficient to establish probable cause for the urinalysis which tested positive for the presence of marijuana. (Northern Nevada Correctional Center)

State Appeals Court
DRUG TEST

People v. Roth, 397 N.W.2d 196 (Mich.App. 1986). The defendant pled guilty to obtaining a controlled substance by fraud in the Osceola Circuit Court. The defendant appealed the addition of conditions of probation. The court of appeals held that: (1) submission to urinalysis testing was a lawful condition of probation, and (2) restriction of the defendant's right to travel was not unconstitutional. (Michigan)

State Appeals Court
EMPLOYEE

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)

U.S. District Court
OPPOSITE SEX

Smith v. Chrans, 629 F.Supp. 606 (C.D.Ill. 1986). Inmates' constitutional rights were not infringed by inadvertent and occasional sightings by female prison employees of the inmates in their cells or open shower and toilet facilities engaged in basic bodily functions. The intrusion into the prisoners' personal privacy was unwanted, but their rights were necessarily limited as a result of their incarceration. The policy required minimum unwanted intrusions by persons of the opposite sex and, in addition, avoided discrimination against women in job opportunities because of their gender. The need for institutional security and the right of institution administrators to search inmates may limit prisoner's expectation of privacy, but some shred of personal body integrity must remain. A prisoner cannot be subjected to maliciously motivated searches of his person or intentional harassment. (Pontiac Correctional Center, Illinois)

U.S. District Court
STRIP SEARCH

Smith v. Montgomery County, Md., 643 F.Supp. 435 (D.Md. 1986). An arrestee who was strip searched while temporarily detained at the county jail brought action against the county and several of its officials for certification of a retrospective damages class. The district court held that: (1) jail officials had probable cause to search temporary detainees arrested for felonies or misdemeanors involving weapons or contraband or with prior records of convictions or unresolved arrests for felonies or misdemeanors involving weapons or contraband, and (2) members of class whose fourth amendment

rights were violated by jail's strip search policy were entitled to $200 nominal damages. Reasonable suspicion would exist to strip search all felony arrestees and all temporary detainees arrested for misdemeanor offenses that involved weapons or contraband, for purposes of determining the plaintiff class in an action against the county for conducting indiscriminate strip searches. Reasonable suspicion would also exist to strip search all temporary detainees with prior records of convictions, unresolved arrests for felony offenses, or for misdemeanors involving weapons or contraband. (Montgomery County Detention Center, Maryland)

U.S. Appeals Court
DRUG TEST

Spence v. Farrier, 807 F.2d 753 (8th Cir. 1986). Not only are EMIT brand urine test results good evidence in prison disciplinary hearings, but inmates have no right to present expert testimony in regard to EMIT reliability, according to a federal appellate court. Inmates at the Iowa State Penitentiary filed a suit against prison officials contending that use of EMIT test results without independent, confirmatory tests violated their due process rights, as did the refusal to allow them to run corroborative tests or to call testing personnel or expert witnesses to challenge EMIT results. The court noted that in a prison setting, due process requirements are satisfied if **some** evidence supports the decision of the prison disciplinary board. Since EMIT tests results are ninety-five percent accurate, they obviously provide some evidence of drug use, the court said. Thus, the use of the test with the confirmatory second EMIT test is sufficiently reliable to provide evidence of drug use.

The court also noted that to allow prisoners to present expert testimony in regard to EMIT reliability would seriously interfere with the institutional goal of drug deference and prompt resolution of drug related infractions. Although it is conceivable that an inmate could be unjustly disciplined as a result of EMIT tests, the margin of error is insignificant in light of institutional goals, according to the court. Therefore, Iowa need not implement all possible procedural safeguards against erroneous deprivations of liberty when utilizing results of scientific testing devices in disciplinary proceedings. (Iowa State Penitentiary)

U.S. Appeals Court
DRUG TEST

United States v. Williams, 787 F.2d 1182 (7th Cir. 1986). Assuming that the taking of a urine sample entails a search or seizure, a probation condition that required the probationer to submit to urinalysis at the direction of probation authorities was reasonable. Given the probationer's status as a repeat offender and his lengthy and substantial criminal record, authorities understandably did not view even his casual use of marijuana lightly. Even if the taking of a urine sample entails a search or seizure, imposition of condition of probation that the defendant undergo drug screening was permissible under the fourth amendment in view of prior urinalysis results. (Department of Corrections, Illinois)

U.S. Appeals Court
STRIP SEARCH

Ward v. County of San Diego, 791 F.2d 1329 (9th Cir. 1986), cert. denied, 483 U.S. 1020. If no reasonable ground existed for a sheriff's blanket strip search policy, as applied to the plaintiff, the law in May of 1981 was sufficiently clear to subject the sheriff to liability for civil damages under Section 1983. The policy subjected the plaintiff and other minor offense arrestees to a strip search even before an own recognizance release determination was made. Prior to 1981, the court of appeals established that strip searches of arrestees for a minor offense are unconstitutional absent individualized suspicion that the arrestee is carrying or concealing contraband or is suffering from a communicable disease. (Los Colinas Womens Detention Facility, California)

U.S. Appeals Court
STRIP SEARCH
BODY CAVITY

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-body 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 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)

U.S. District Court
CELL SEARCH

Williams v. Kyler, 680 F.Supp. 172 (M.D. Pa. 1986). Due to the self-contradictory nature of its language, a Pennsylvania regulation governing the presence of inmates during cell searches was found not to create a substantive right. While the regulation contained an explicit disclaimer to the effect that it "[did] not create any rights in any person, " it also stated that an inmate "[had] a right to be present during an investigative search" and that inmates should be notified of their option to remain during searches. In the absence of a clear expression of intent to create a substantive right, the ambiguity was resolved against the creation of such a right. Prisoners do not possess any privacy right in their cells under the Fourth Amendment. (Pennsylvania State Prison)

1987

U.S. Appeals Court
STRIP SEARCH

Abshire v. Walls, 830 F.2d 1277 (4th Cir. 1987). $7,000 Award upheld in strip search case. A jury award of $7,000 in damages against three police officers who strip searched an arrestee without proper cause was upheld by a federal appeals court. Following his arrest by police in Baltimore, Maryland, for disorderly conduct, Thomas Abshire as taken to a police station and handcuffed to a railing. At trial, Abshire testified that he made numerous requests to use the telephone, all of which were denied. After Abshire became indignant, it was suggested by one of the officers that he be strip searched. Abshire was then unhandcuffed and escorted to a utility room, where he was forced to disrobe and subject himself to a strip search. Baltimore County strip search policy provides that arrestees should not be subjected to a strip search unless specific factors are present. Considering this testimony, the court of appeals found that there was a question as to the reasonableness of the search and the jury's resolution of that question was not clearly erroneous. Therefore, the award of $2,000 in compensatory damages and $5,000 in punitive damages against the three officers was upheld. However, the award of $4,000 in attorney's fees was found to be too small and the court of appeals ordered the district court to recalculate this award. (Towson Precinct #6 of the Baltimore County Police Department, Maryland)

U.S. District Court
USE OF FORCE
BODY CAVITY
SEARCH

Bruscino v. Carlson, 654 F.Supp. 609 (S.D. Ill. 1987). Action was brought by federal inmates complaining of use of excessive force, performance of rectal searches, amount of time they had to spend in their cell, transfer procedures and various other conditions that had existed at prison since "lockdown" began. On objections to magistrate's report and recommendation, the district court held that: (1) restraining control unit inmates during legal visits did not violate their right of access to the courts; (2) rectal searches at the prison did not constitute unnecessary and wanton infliction of pain within the meaning of the eighth amendment; (3) restraining federal inmates to beds for prolonged periods without checking them every thirty minutes violated federal regulations but because incidents were isolated, there was no policy or practice of abuse and thus no constitutional violation requiring injunctive relief; (4) "out of cell time" granted federal prisoners for exercise and recreation did not violate the eighth amendment where the inmates in disciplinary segregation and protective custody were allowed five hours exercise per week outside their cells, and the prisoners in control unit were permitted seven hours exercise per week, and general population inmates received eleven hours of exercise per week; and (5) inmates had no right to a due process hearing before placement at and/or transfer to a maximum security federal prison. Although control unit inmates at the prison were given a hearing before placement in that unit, there were distinct differences between conditions of confinement for general population and control unit. (Marion Penitentiary, Illinois)

U.S. District Court
STRIP SEARCH

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. Appeals Court
BODY CAVITY SEARCH
STRIP SEARCH

Hay v. Waldron, 834 F.2d 481 (5th Cir. 1987). Administrative segregation inmates were subjected to body cavity strip searches each time they entered or left their cell. The policy required the inmate to fully disrobe in his cell and to reveal for visual inspection the various parts of his person where a weapon or contraband might be concealed. An inmate who was held in administrative segregation challenged this policy, filing a federal civil rights lawsuit. The appeals court found that this policy was constitutional and reasonably related to legitimate security objectives. The court held that strip searches must merely be reasonably related to legitimate security interests, and therefore rejected the inmate's endorsement of a "least restrictive means" or probable cause" standard for the constitutionality of strip searches. However, the appeals court ruled that the magistrate's finding that the prison had not discriminatorily applied its strip-search policy against the inmate and his witnesses for bringing a civil rights action against prison officials was premature and ordered further hearing on this matter. (Texas Department of Corrections)

U.S. District Court
DAMAGE TO PROPERTY

Hikel v. King, 659 F.Supp. 337 (E.D.N.Y. 1987). A prisoner was taken to court to testify as a prosecution witness in a criminal trial, he took with him a document showing his conviction and sentence and another piece of paper with a summary of the testimony he planned to give. The inmate claimed that upon his return to the correctional facility he was searched and correctional officers then destroyed the two papers he had taken to court, as well as three photographs of his girlfriend. The federal district court did not find that the destruction of these documents could have impeded any suit that he could have brought. Therefore, the inmate's claim involved the deprivation of personal property rather than denial of access to the courts. As such, it was not actionable under federal civil rights law, since there was an adequate state remedy available. (Long Island Correctional Facility)

U.S. Appeals Court
STRIP SEARCH
DRUG/ALCOHOL TESTING

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
BODY CAVITY SEARCH

Kennedy v. Los Angeles Police Dept., 667 F.Supp. 697 (D.C. Cal. 1987). The policy of the Los Angeles Police Department mandating a visual body cavity search for every pretrial detainee arrested on any felony charge is unconstitutional according to a federal district court. Some determination of reasonable suspicion is required for persons initially booked on felonies as well as those booked on misdemeanors. The classification by an offense alone is not sufficiently probative of the question of whether a particular arrestee is harboring contraband. The court ruled that body cavity searches of pretrial detainees cannot take place if they are arbitrary and purposeless. (Los Angeles Police Department)

State Appeals Court
URINE TEST
DRUG/ALCOHOL TESTING

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. Appeals Court
EMPLOYEE

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 DOC)

Wash. Supreme Court
URINE TEST
DRUG/ALCOHOL TESTING

Petition of Johnston, 745 P.2d 864 (Wash. 1987). The Washington Supreme Court concluded that a single positive result to an "EMIT" urinalysis test, conducted to detect the presence of marijuana, was sufficient evidence of marijuana use to uphold, on due process grounds, a revocation of prisoners' good time credits or the imposition of mandatory segregation time. The Centers for Disease Control had determined that the test in question was 97-99 percent accurate. (Washington State DOC)

State Appeals Court
SHAKEDOWNS
CELL SEARCH
SEARCH OF PROPERTY

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. (Louisiana)

U.S. District Court
STRIP SEARCH

Swart v. Scott County, Minn., 650 F.Supp. 888 (D. Minn. 1987). In a Section 1983 action challenging the constitutionality of the county sheriff's practice of strip searching detainees, both parties moved for attorney fees after the county had admitted that the search was unconstitutional, and the jury had returned a verdict stating that the detainee had sustained no damages. The district court held that: (1) the detainee was entitled to limited fee award, and (2) the county was not entitled to fee award. If the plaintiff's lawsuit was the catalyst that brought about voluntary compliance with applicable law by defendant, the plaintiff is prevailing party for purposes of award of attorney's fees, despite the fact that necessity of judicial relief has been mooted by defendant's voluntary compliance. (Scott County Jail, Minnesota)

U.S. District Court
BODY CAVITY SEARCH

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. District Court
DRUG TESTING

Adkins v. Martin, 699 F. Supp. 1510 (W.D. Okl. 1988). An inmate filed a petition for a writ of habeas corpus, challenging the institutional urinalysis testing program that detected his alleged use of contraband drugs. The federal district court dismissed the writ of habeas corpus, ruling that the use of enzyme immunoassay testing of urine samples, in conjunction with other methods, was sufficiently reliable so that use of the test results as evidence in a prison disciplinary proceeding did not violate due process. The court also ruled that the fact that the incident report form arising out of the inmate's positive drug test indicated that the urine sample had been taken in the unit to which the inmate had been assigned, when in fact the specimen had been taken in the compound lieutenant's office, was a minor error and did not show errors or possibility of errors in the collection and safeguarding of the specimen. (Federal Correctional Institution, El Reno, Oklahoma)

U.S. District Court
URINE TEST
EMPLOYEE DRUG/ALCOHOL 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
BODY CAVITY SEARCH

Bruscino v. Carlson, 854 F.2d 162 (7th Cir. 1988), cert. denied, 109 S.Ct. 3193. In a class action suit brought against the Marion Penitentiary in Illinois by inmates held in the Control Unit, the inmates claimed use of excessive force and other charges because they were subjected to rectal searches every time they left or re-entered the unit. The appeals court ruled that because inmates in the Control Unit require greater supervision than other prisoners, rectal searches can be legally performed on such inmates. Use of physical restraints during attorney visitation and limited out-of-cell time was also upheld by the federal district court. The court found that extraordinary security measures employed in a maximum security federal prison, such as limitation of time spent outside cells, denial of opportunities for socialization, handcuffing, shackling, spread-eagling and rectal searches were reasonable measures in view of the history of violence at the prison and the incorrigible character of the inmates and thus it did not constitute cruel and unusual punishment. Further, the court found that the transfer of prisoners to a maximum security federal prison did not result in incremental deprivation so great as to constitute actionable deprivation of natural liberty and thus require a hearing. (The United States Penitentiary in Marion, Illinois)

U.S. District Court
BODY CAVITY SEARCH
EMPLOYEE

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 the 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
BODY CAVITY SEARCH

Morgan v. Ward, 699 F.Supp. 1025 (N.D.N.Y. 1988). Individual inmates filed Section 1983 actions against various guards and prison officials for alleged deprivation of civil rights. The district court found that prison adjustment committee hearings, in which an inmate could have his disciplinary segregation period extended for up to unlimited successive 14-day periods, violated procedural due process. The committee did not give at least a 24-hour written notice of infractions to the inmate, did not provide written findings, and the inmates believed they could not call witnesses in the hearing. Also, while the placement of inmates' names over their cells in the disciplinary segregation unit may have made the inmates feel as if they were being treated like animals in a zoo, the inmates' incredible testimony concerning the guards' alleged writing of animal names on name tags and requiring the inmates to bark like a dog before showers were insufficient to support the inmates' cruel and unusual punishment claim. (Clinton Correctional Facility, Dannemora, New York)

U.S. District Court
STRIP SEARCH
BODY CAVITY SEARCH

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. District Court
STRIP SEARCH

Polk v. Montgomery County, MD, 689 F.Supp. 556 (D. Md. 1988). A detainee brought a civil rights action against a county and matron for having been subjected to an unlawful visual strip search, seeking $2.7 million in damages. A jury awarded her $1. She appealed, seeking an additional $113,107 for attorney's fees, rejecting a $31,000 settlement offer by the county. Because the plaintiff had refused to join a class action suit, Smith v. Montgomery County, 643 F.Supp. 435 (D. Md. 1986) the court concluded that she was in search of a greater monetary award, ruling that such an award would be unjustified because of the nominal recovery and the opportunity which the plaintiff had to join a successful class action on identical issues. The court awarded her $4,651.86 in attorneys' fees. (Montgomery County Detention Center, Maryland)

U.S. District Court
DRUG/ALCOHOL TESTING
EMPLOYEE

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. Appeals Court
BODY CAVITY
STRIP SEARCH

Rickman v. Avaniti, 854 F.2d 327 (9th Cir. 1988). A prisoner brought a Section 1983 action against prison officials challenging the prison's visual strip search policy. The U.S. District Court granted summary judgment to the prison officials, and the prisoner appealed. The appeals court, affirming the lower court decision, found that the prison policy requiring prisoners in the administrative segregation unit to submit to visual strip and body cavity searches when leaving their cells was constitutional, and given the unit's security demands, the prisoner's cell was a reasonable place for conducting such searches. The court found limited intrusiveness based on the fact that the searches are visual and involve no touching. The court rejected the claim of an inmate that he had been deprived of his right to exercise time, sunlight, visits, free exercise of religion, medical treatment and access to the law library because he has refused to submit to body searches upon leaving his cell. (Arizona State Prison)

1989

U.S. Appeals Court
BLOOD TESTS

Dunn v. White, 880 F.2d 1188 (10th Cir. 1989), cert. denied, 110 S.Ct. 871. A prisoner filed a Section 1983 action against prison officials, alleging that officials assaulted him and threatened to place him in disciplinary segregation when he refused to submit to a blood test for AIDS (Acquired Immune Deficiency Syndrome). The U.S. District Court dismissed the complaint, and the prisoner appealed. The appeals court found that the nonconsensual AIDS test did not violate the prisoner's first amendment or fourth amendment rights. The prison had a substantial interest in pursuing a program to treat those infected with the disease and in taking steps to prevent further transmission, and that interest outweighed the prisoner's limited expectation of privacy. In addition, the court also stated that the prisoner was not entitled to a due process hearing before being threatened with disciplinary segregation because of his refusal to submit to the test. (Conner Correctional Center, Oklahoma)

U.S. Appeals Court
CELL SEARCH

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
BODY-CAVITY
SEARCH

Kennedy v. Los Angeles Police Dept., 887 F.2d 920 (9th Cir. 1989). An arrestee brought a civil rights action against the police department and two of its officers. The U.S. District Court entered a judgment in favor of the

arrestee, and the defendants appealed. The appeals court found that the police officers were not entitled to qualified immunity from the arrestee's civil rights suit where they lacked probable cause to arrest her for grand theft. The arresting of the plaintiff for grand theft without probable case constituted a reckless disregard for her right not to be arrested without probable cause and therefore justified the jury's award of punitive damages against the arresting officers. The city's blanket policy subjecting all felony arrestees to a visual body-cavity search was unconstitutional. The decision affirmed a jury award of $25,000 in damages against the City in a lawsuit brought by a female arrested for grand theft who was required to expose her vaginal and anal cavities during a strip search at a city jail. The text of the city's policy required a "skin search" of all arrestees booked into detention facilities on any felony offense or for a misdemeanor offense related to the use of narcotics. It also stated that "when there is probable cause to believe that an arrestee is concealing contraband or weapons inside a body cavity, a visual body-cavity search shall be conducted." In practice, however, the policy was applied to require "perfunctory body-cavity searches of all felony arrestees." The court remarked that the "intrusiveness of a body-cavity search cannot be overstated." The court found that the fact that an arrestee had committed a felony indicated little about the likelihood of the arrestee concealing drugs, weapons, or other contraband, the basis for the policy. In this case, the woman's arrest involved an "ordinary squabble between two roommates" and only became a felony because arresting officers making "an educated guess" decided that the missing items were valued in excess of $399. There was no reasonable suspicion that the woman was concealing contraband. Such reasonable suspicion may be based upon the nature of the offense, the arrestee's appearance and conduct, and the prior arrest record. A blanket policy of subjecting all felony arrestees to visual body cavity searches, the court held, did not meet constitutional scrutiny. (Van Nuys Jail, California)

U.S. District Court
URINE TEST
DRUG/ALCOHOL TESTING

Ramey v. Hawk, 730 F.Supp. 1366 (E.D.N.C. 1989). A prison inmate filed an action challenging as unconstitutional a disciplinary action wherein he was found to have failed to provide a urine sample, and petitioned for habeas corpus. On a motion for summary judgment, the district court, allowing the motion and granting the summary judgment, found that the urine testing program, on its face and as applied, did not constitute an unreasonable search and seizure, did not violate due process, and did not constitute cruel and unusual punishment. The Bureau of Prisons regulations providing for urine testing of prisoners to deter and detect drug use were reasonably related to legitimate penological interests and thus did not violate a prohibition against unreasonable searches and seizures, right to due process, or prohibition against cruel and unusual punishment. The policy allowed the inmate to drink eight ounces of water after being requested to produce a urine specimen, allowed two hours in which to produce the specimen, and gave an opportunity at the hearing to rebut the presumption of unwillingness arising from the failure to produce a specimen within two hours. (Federal Correctional Institution, Butner, North Carolina)

U.S. Appeals Court
BLOOD TEST
STRIP SEARCH
X-RAY

Thompson v. City of Los Angeles, 885 F.2d 1439 (9th Cir. 1989). An arrestee brought a civil rights action against the Board of Regents of the University of California whose police officer had arrested him for grand theft auto, and the county in whose jail the arrestee was detained. The U.S. District court dismissed the action as to the university regents and granted summary judgment for the county, and the arrestee appealed. The appeals court, affirming in part, reversing in part and remanding, found that the university was a state instrumentality for eleventh amendment purposes, so the board of regents was not a "person" subject to liability under the federal civil rights statute. Subjecting the grand theft auto arrestee at the county jail to a strip search, x-rays, and a blood test did not violate the arrestee's fourth or fourteenth amendment rights, for purposes of a civil rights action; but it would be presumed that the county maintained the "custom" of unconstitutional jail conditions in the form of a shortage of beds and could be held liable for the arrestee's injuries resulting from the alleged constitutional deprivation of failing to provide him with a bed or mattress for nights spent in the county jail, based on a prior court order regarding the same jail. (Los Angeles County Jail, California)

U.S. Appeals Court
DRUG TESTING
URINE TEST

Thompson v. Owens, 889 F.2d 500 (3rd Cir. 1989). A prisoner brought a civil class action alleging a deprivation of due process rights arising from the failure to prison officials to provide a complete chain of custody evidence regarding his urine sample at this misconduct hearing on drug violation charges. The U.S. District Court entered a judgment for the prison, and the prisoner appealed. The appeals court, affirming the decision, found that the prisoner's due process rights were not violated, as the urine test results, even with an incomplete chain of custody, constituted "some evidence" that the defendant had committed an offense and the due process clause did not require a higher standard of proof. The court noted, in rejecting the inmate's claim, that due process is satisfied in prison disciplinary proceedings as long as "some evidence" supports the decision of the hearing officer, citing **Superintendent v. Hill**, 472 U.S. 445, 105 S.Ct. 2768 (1985). Noting further that

there was no allegation that the urine sample was tampered with, the court held that positive urinalysis results based on samples that officials claim to be the prisoner's constitute some evidence of his drug use. (State Correctional Institution, Rockview, Pennsylvania)

U.S. Appeals Court
SEARCH WARRANT
PROBATIONERS

U.S. v. Schoenrock, 868 F.2d 289 (8th Cir. 1989). Defendants appealed from an order of the U.S. District Court, revoking their probation and requiring them to resume serving prison sentences received for violating drug laws. The appeals court, affirming the decision of the lower court, found that the probation term that allowed the warrantless searches of the defendant's premises, vehicles and persons for the presence of alcoholic or controlled substances was reasonably related to rehabilitation and protection of the public and did not violate the Federal Probation Act. The term was designed to help prevent the defendants' future alcohol and substance abuse, and only one search was carried out after the defendant had aroused suspicions of probation officers. It was also found by the court that the probation officers' warrantless search of the defendants' residence for drugs and alcohol was not unreasonable under the fourth amendment. The term was imposed only after the district court carefully evaluated the defendant's particular needs and concluded that only a condition authorizing warrantless searches would suffice to ensure the compliance with other probation terms. Even if a probation term authorizing warrantless searches of the defendant's premises, vehicles and persons for drugs and alcohol was facially overbroad, the probation officers acted reasonably in applying terms and did not violate the Federal Probation Act. The probation officers did not search the residence until the defendant aroused their suspicions by diluting his urine sample, submitting positive samples, smuggling drugs into his work release center, failing to cooperate in his treatment programs, and visiting a liquor store. (Nebraska)

1990

U.S. Appeals Court
STRIP SEARCH

Colon v. Schneider, 899 F.2d 660 (7th Cir. 1990). An inmate brought a Section 1983 action, alleging that a corrections official violated his rights under the due process clause of the fourteenth amendment when the official used chemical mace to compel him to submit to a strip search during the course of the inmate's transfer from one area of a correctional institution to another. The U.S. District Court issued an injunction prohibiting the official from using mace solely to compel strip searches incident to the transfer of inmates within the institution, and the official appealed. The inmate cross-appealed, arguing that he was entitled to one dollar in compensatory damages and that the district court erred in vacating the jury's award of punitive damages. The appeals court found that Wisconsin regulations governing the use of mace in prisons do not create a federally-protected liberty interest on behalf of inmates, and even if such regulations did create a liberty interest, the inmate failed to satisfy his burden that he was maced in the absence of constitutionally required procedural safeguards. The appeals court also found that, under the eleventh amendment, the district court lacked jurisdiction to adjudicate the claim which was nothing more than an allegation that the prison official violated state law, or to enjoin the official from engaging in the allegedly violative conduct. According to the court, in order for state regulations to create a constitutionally and protected liberty interest, the regulations must employ language of an unmistakably mandatory character, requiring that certain procedures "shall," "will," or "must" be employed, and that the challenged action will not occur absent specific substantive predicates. (Columbia Correctional Institution, Wisconsin)

U.S. District Court
SAME-SEX SEARCH
STRIP SEARCH

DiLoreto v. Borough of Oaklyn, 744 F.Supp. 610 (D. N.J. 1990). A detainee who was subjected to a strip search brought a civil rights action against police officers. On cross motions for summary judgment, the district court found that a female officer's observation of the female detainee's urination, absent any particularized suspicion that the detainee might harm herself or be in possession of contraband, violated the detainee's civil rights. (Oaklyn Police Station, New Jersey)

U.S. District Court
BODY CAVITY
SEARCH

Geder v. Lane, 745 F.Supp. 538 (C.D. Ill. 1990). A prisoner sued prison officials, claiming a violation of his constitutional rights in connection with an involuntary visual body cavity search. The district court found that the inmate's Fourth Amendment rights were not violated when he was forced to submit to a visual search of his rectum by nonmedical personnel, for the presence of contraband, following his return from a court hearing. The court rejected his argument that the search had to be performed by "qualified medical personnel," since only a physical or intrusive body cavity search required such personnel, and the prison policy of conducting a visual search of the rectum of all prisoners who had been away from a secured area was not required to be modified so as to excuse examinations of prisoners who had been handcuffed and under escort the entire time. (Graham Correctional Center, Illinois)

U.S. District Court
BLOOD TESTS

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. District Court
BODY CAVITY SEARCH

Hill v. Koon, 732 F.Supp. 1076 (D.Nev. 1990), modified, 917 F.2d 589. Prisoners who had been subjected to digital anal body cavity searches brought a Section 1983 action against the associate warden of the prison, as well as other prison employees. The district court found that the first searches, which were conducted on both inmates, were done for valid penological reasons in a reasonable manner and were not unconstitutional. A subsequent search of one inmate was not done for legitimate penological reason or on a basis of reasonable cause, but the physician's assistants who conducted the searches were not liable, because the assistants acted pursuant to orders of the warden or his designee, and all circumstances known to assistants indicated it was appropriate for them to proceed with searches. There was a legitimate penological need for anal body cavity searches of inmates where smuggling of drugs into the prison was common. If a digital body cavity search of a prisoner is conducted in a reasonable manner, it will not constitute cruel and unusual punishment. Searches were conducted in a reasonable manner, in private, with appropriate hygiene, by trained physician's assistants in an infirmary at the prison, and during the conduct of searches there was no effort to humiliate or degrade the inmate being searched. The preponderance of evidence was that there was reasonable cause to believe that prison inmates had concealed drugs in their anal cavities after they had participated in regular inmate visitation; thus, the digital anal body cavity searches of inmates done in a reasonable manner were not unconstitutional.

The digital anal body cavity search of a prison inmate, who was believed to have received dilaudids, was not done for legitimate penological reason or on the basis of reasonable cause, and thus, the prisoner was entitled to recover from the associate warden $1,000 in general damages and $3,000 in punitive damages. There had been no previous search of his cell, and there was very little to indicate that the inmate was concealing drugs in his anal cavity on that day, though it was quite clear that he had received and had been using drugs. The physician's assistants who conducted the unconstitutional digital anal body cavity search on the prison inmate were not liable in the Section 1983 action by the inmate.

In an unpublished decision the appeals court affirmed in part and reversed in part the lower court decision. (Nevada State Prison)

U.S. District Court
DRUG TESTING

Holm v. Haines, 734 F.Supp. 366 (W.D.Wis. 1990). A prisoner sought leave to proceed in forma pauperis with respect to certain claims raised in his proposed complaint against various prison officials. The district court found that the court would give separate consideration to each claim raised in the pro se complaint, granting leave to proceed in forma pauperis only as to those claims for which there was an arguable basis in law or fact. The prisoner was entitled to proceed in forma pauperis with respect to his claim that it was improper for prison officials to find that the prisoner violated a prison rule prohibiting the use of marijuana based on findings of an Enzyme Multiple Immunoassay Technique test and the prisoner was not entitled to view a copy of the laboratory test results and that the tests were uncorroborated, and that lack of

corroboration rendered tests so unreliable as to form an insufficient basis for the finding that the prisoner was guilty of a rule prohibiting the use of marijuana. (Waupun Correctional Institution, Waupun, Wisconsin)

U.S. District Court
OPPOSITE SEX
STRIP SEARCH

Merritt-Bey v. Salts, 747 F.Supp. 536 (E.D. Mo. 1990), affirmed, 938 F.2d 187. A black male inmate brought a Section 1983 action against correctional officers, alleging that a strip search violated his Fourth Amendment rights. On the defendants' motion for summary judgment, the U.S. District Court found that the inmate's Fourth Amendment rights were not violated when he was strip searched prior to being placed in administrative segregation after having committed two conduct violations, consisting of verbal assault of a correctional officer and carrying contraband, within a span of 15 minutes. According to the court, the search was reasonably related to prison objectives, including the prevention of introduction of weapons or other contraband into the institution. The presence of a female prison guard during the search did not present a constitutional violation; the fact that female correctional officers might be able to view strip searches of male prisoners did not render the search policy violative of the prisoners' privacy rights. There were legitimate penological interests in both "providing equal employment opportunities and the security interests in deploying available staff efficiently." Even assuming that the correctional officer stated, during the strip search of the inmate, "[s]o, it's not true what they say about all blacks anyway," there was no constitutional violation. The inmate alleged only a single, isolated remark, which on its face was not harassing, and does not comprise a constitutional violation. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
X-RAY SEARCH

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 forth 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. District Court
EMPLOYEE
STRIP SEARCH

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)

U.S. District Court
VISITOR SEARCH

Smith v. Maloney, 735 F.Supp. 39 (D.Mass. 1990). A visitor to an inmate at a state correctional institution brought a civil rights suit alleging that searches of her violated federal constitutional rights and Massachusetts law. The court ruled that a state regulation and prison visitor's liberty interests were violated by searching the visitor without her signature in a logbook consenting to the search. The state regulation provides that unless there is probable cause to search, a visitor to be searched more intrusively than a thorough pat down should be told that he may leave the institution rather than submit to a search, and that if the visitor agrees to the search, he shall record such consent by signing the logbook. (MCI- Cedar Junction, Massachusetts)

U.S. Appeals Court
OPPOSITE SEX

Timm v. Gunter, 917 F.2d 1093 (8th Cir. 1990), cert. denied, 111 S.Ct. 2807. Prisoners at an all-male Nebraska state penitentiary brought a class action alleging that allowing female guards to perform pat searches and see them nude or partially nude violated their right to privacy, and the female guards asserted equal employment claims. The U.S. District Court granted the prisoners partial relief, and the male prisoners and female guards appealed. The court of appeals found that allowing female guards to pat search male prisoners on the same basis as male guards was a reasonable regulation as applied at the Nebraska State Penitentiary, and so did not violate any privacy rights which the prisoners retained. The pat searches were performed in a professional manner that did

not include instruction to deliberately search an inmates' genital and anal areas, the prisoners' privacy rights had to be balanced against legitimate equal employment rights of male and female guards and against internal security needs of the prison, and the administrators' decision that allowing pat searches on a sex-neutral basis was not an unreasonable regulation. (Nebraska State Penitentiary)

U.S. Appeals Court
URINE TEST

Tyler v. Barton, 901 F.2d 689 (8th Cir. 1990). A parolee brought an action against Nebraska correction facility officials claiming his constitutional rights suffered an invasion when, for drug testing purposes, the parole official and employees of a correctional center required the parolee to urinate in a bottle in the presence of a correction facility employee. The defendants moved for a summary judgment on qualified immunity grounds. The U.S. District Court denied the motion, and appeal was taken. The appeals court, reversing and remanding, found that a legitimate question existed as to whether the parolee possessed the right to be free from visual observation while furnishing a urine sample required as a condition of parole status, however, the correction facility officials did not violate any clearly established constitutional right in requiring the parolee to urinate in a bottle in the presence of a correction official and had qualified immunity from civil rights liability. (Omaha Correctional Center, Nebraska)

U.S. District Court
BODY CAVITY SEARCH
LAXATIVES

U.S. v. Oakley, 731 F.Supp. 1363 (S.D.Ind. 1990). A prisoner moved to suppress a controlled substance contained in balloons recovered by a digital rectal examination and by the administration of laxatives. The district court found that the physician's digital probe of the prisoner's rectum to remove balloons containing a controlled substance could be performed without a warrant and complied with the fourth amendment, even though the prisoner claimed that he suffered from internal hemorrhoids, and even though the search was performed on a bed in a dry cell. An x-ray indicated what appeared to be four or five balloons in the lower abdomen. The balloons had been in the prisoner's digestive tract for over three weeks and contained a lethal dosage of dilaudid; and the fecal impaction posed an additional health risk. The physician removed two balloons in the search. (U.S. Penitentiary, Terre Haute, Indiana)

U.S. Appeals Court
BLOOD TESTS

Walker v. Sumner, 917 F.2d 382 (9th Cir. 1990). A former state inmate brought a civil rights action against a state prison director and various prison officers and administrators, alleging that he was deprived of his constitutional rights when prison guards forced him to submit to a blood test, purportedly in connection with an Acquired Immune Deficiency Syndrome (AIDS) testing program, by threatening to shoot him with "taser" guns. The U.S. District Court, adopting a report and recommendation of the magistrate, granted a motion for summary judgment against the inmate, and the inmate appealed. The court of appeals, reversing and remanding, found that the prison officials' general protestations of concern for the welfare of state citizens and the prison community, without further explanation, were simply insufficient to render involuntary seizure of blood specimens, even from prison inmates, constitutionally reasonable, even assuming the mandatory AIDS testing was the purpose of the sampling. There was no showing that the testing was based on a legitimate penological objective or that the blood-testing policy was related to any such objective. (Nevada State Prison)

U.S. District Court
BODY CAVITY SEARCH

Wetmore v. Gardner, 735 F.Supp. 974 (E.D.Wash. 1990). A state prisoner brought a suit against prison officials, challenging the policy of subjecting all prisoners transferred to the intensive management unit to an involuntary digital rectal probe for possible contraband, without a showing of probable cause that the prisoners were carrying contraband. The prison authorities moved for judgment notwithstanding a jury verdict in favor of the prisoner. The district court denied the motion and found that the prison officials had a burden of establishing that their practice was reasonably related to a legitimate penological goal. The prisoner had met the initial burden of showing that the practice was a deprivation of rights reaching constitutional magnitude; and prison officials were not entitled to qualified immunity. The state prison officials were not entitled to introduce into evidence a display board showing photographs of objects which were recovered from within the confines of the penitentiary and were allegedly capable of being secreted in a prisoner's anal cavity. The probative value of evidence was outweighed by prejudicial effect, as there was no proof that any of such items had ever been recovered from a rectal search. (Washington State Penitentiary)

1991

U.S. District Court
STRIP SEARCH

Allen v. Board of Com'rs of County of Wyandotte, 773 F.Supp. 1442 (D.Kan. 1991). An arrestee, charged with a misdemeanor traffic offense, sued the county sheriff's department, the county sheriff, a sergeant, and deputies alleging that the defendants battered and falsely imprisoned her and subjected her to a strip search in violation of the

federal constitution. The defendants moved for summary judgment. The U.S. District Court found that the strip search of the arrestee was unreasonable under the Fourth and Fourteenth Amendments absent any showing of necessity to confine the arrestee with other prisoners, but the five hour detention was not unreasonable under the Fourth Amendment. The deputy who conducted the strip search was not entitled to qualified immunity because the strip search of traffic offenders without some level of suspicion that they were harboring drugs, contraband or a weapon was pre se unreasonable at the time of the plaintiff's arrest. The state law claims for battery, negligence per se, false and negligent imprisonment, and negligent training and supervision and adoption of policies fell within exceptions to the Kansas Tort Claims Act. (Wyandotte County Sheriff's Department, Kansas)

U.S. Appeals Court
VISITOR SEARCH

Cochrane v. Quattrocchi, 949 F.2d 11 (1st Cir. 1991). A prison visitor, who was required to submit to a strip search before she was permitted to visit her inmate father, brought an action for damages asserting civil rights violations and state law claims for battery, intentional infliction of emotional distress, false imprisonment, and assault. The U.S. District Court directed verdicts against the prison visitor at the conclusion of her case and she appealed. The court of appeals found that whether the prison visitor was subjected to a strip search before being permitted to visit her inmate father in retaliation for the father's naming a deputy and correctional officer as suppliers of cocaine on which he overdosed, rather than based upon any individualized suspicion whatsoever, presented a question for the jury, considering the absence of any evidence that the prison visitor ever violated any prison visitation rule or ever supplied the father with drugs, and the deputy's indefinite testimony as to the reliability of his confidential informant. It was also found that the prison visitor did not give a legally cognizable consent to the strip search before being permitted to visit her inmate father when she signed a consent form after being confronted with the constitutionally intolerable choice of being denied prison visitation access indefinitely or waiving her constitutional right to be free from an unreasonable search. (Rhode Island Adult Corrections Institute)

U.S. Appeals Court
BODY CAVITY SEARCH

Cookish v. Powell, 945 F.2d 441 (1st Cir. 1991). An inmate sued prison officials pursuant to Section 1983 alleging that a visual body cavity search conducted in the presence of female correctional officers violated his Fourth Amendment rights. The U.S. District Court denied the prison officials' motion for summary judgment on the basis of a qualified immunity defense, and the prison officials appealed. The court of appeals found that the prison officials' reasonable, although mistaken, conclusion that an emergency existed, permitting the search within visual range of prison guards of the opposite sex, did not subject the prison officials to personal liability. In this case, an emergency obviously existed during a disturbance and riot, and the court found that the defendants could have reasonably concluded that an emergency still existed in the immediate aftermath of the riot at which time the search took place. As long as this conclusion was reasonable, even if it were mistaken, the defendants should not be held liable. (New Hampshire State Prison)

U.S. Appeals Court
BODY CAVITY SEARCH
EVIDENCE
VISITOR SEARCH

Daugherty v. Campbell, 935 F.2d 780 (6th Cir. 1991), cert. denied, 112 S.Ct. 939. A prison visitor who was subjected to a visual body search before being permitted to visit her husband brought a civil rights action. The U.S. District Court denied the warden's motion for summary judgment, and the warden appealed. The court of appeals found that the warden was not entitled to qualified immunity; at the time of the incident, the search of prison visitors without at least reasonable suspicion that they carried contraband violated clearly established law. In this case, there was no probable cause or reasonable suspicion that the visitor possessed contraband. (Turney Center Correctional Facility, Tennessee)

U.S. District Court
STRIP SEARCH

Draper v. Walsh, 790 F.Supp. 1553 (W.D. Okl. 1991). A pretrial detainee who was subjected to a visual strip search in a county jail filed suit against the county sheriff. On the sheriff's motion for summary judgment, the district court found that the county's policy of subjected detainees arrested for traffic violations or other minor offenses to a visual strip search at the discretion of a police officer was unconstitutional on its face, making qualified immunity an unavailable defense. (Cleveland County Detention Center, Oklahoma)

U.S. District Court
BLOOD TESTS

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
EX POST FACTO

Jones v. Murray, 763 F.Supp. 842 (W.D. Va. 1991), modified, 962 F.2d 302. A prisoner filed suit challenging the constitutionality of Virginia legislation which directs the Virginia Department of Corrections to take and store the blood of a convicted felon for subsequent DNA analysis. Prison officials moved for summary judgment. The U.S. District Court granted the motion, finding that the legislation did not violate the plaintiffs Fourth Amendment right. The court found that, to the extent that the DNA analysis reveals identification characteristics, the plaintiffs indicated no legitimate expectation of privacy; the state has a significant interest in deterring and detecting recidivist acts by convicted felons, and the search in extracting blood was minimal. The court also found that the Virginia legislation requiring convicted felons to provide blood samples for DNA testing did not violate the ex post facto clause, even though the prisoners convicted prior to the statute's effective date were required to provide the state with a blood sample prior to release from prison; the legislature did not intend to punish convicted felons for their past crimes through legislation, blood tests were not conducted so as to inflict any punishment upon prisoners, and the blood test requirement was not a condition for parole eligibility. On appeal, the court modified the lower court ruling, finding that the legislation violated the ex post facto clause to the extent that it could be enforced to modify mandatory parole. (Virginia Department of Corrections)

U.S. Appeals Court
VISITOR SEARCH

Long v. Norris, 929 F.2d 1111 (6th Cir. 1991), cert. denied, 112 S.Ct. 187. Inmates and former inmates brought a Section 1983 action against prison officials, challenging a policy which authorized strip and body cavity searches of visitors, regardless of probable cause. The U.S. District Court denied the officials' motion for summary judgment based on qualified immunity, and appeal was taken. The court of appeals found that state prison regulations granting inmates visitation rights, which could not be removed without good cause, gave rise to a clearly established due process right which was violated by prison officials' policy of subjecting prison visitors to strip and body cavity searches regardless of probable cause. According to the court, caselaw "clearly established the contours of the prison visitor's right to be free from a visual body cavity search in the absence of reasonable suspicion that he or she is carrying contraband." (Morgan County Regional Correctional Facility, Tennessee)

U.S. Appeals Court
VISITOR SEARCH

Marriott By and Through Marriott v. Smith, 931 F.2d 517 (8th Cir. 1991). A plaintiff brought suit under Section 1983 against a sheriff, county jailers, and the county and its commissioners, alleging that her Fourth Amendment rights were violated when she was searched at the jail after she visited an inmate. The court of appeals found that the prison visitor exception to the Fourth Amendment search warrant requirement did not apply to the search of a visitor who had already finished a visit to the jail and was no longer in a position to smuggle contraband into jail, and the defendants were not entitled to qualified immunity, since nothing in prior cases suggested that a jail visitor's Fourth Amendment right not to be searched without a warrant could be abridged after visit and after danger of smuggling had passed. (Morgan County Jail, Missouri)

U.S. District Court
EMPLOYEE

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. (District of Columbia Department of Corrections)

U.S. District Court
STRIP SEARCH
USE OF FORCE

Sanders v. Heitzkey, 757 F.Supp. 981 (E.D. Wis. 1991). An inmate sued corrections officials for alleged violations of civil rights which occurred during a visual strip search of the inmate. The officers moved for summary judgment. The U.S. District Court found

that the officers who did not participate in the strip search could not be personally liable for money damages for the alleged civil rights violations which occurred during the search. It also found the inmate's constitutional rights were not violated when he was required to submit to the visual strip search, pursuant to prison policy, when he was about to be confined in a segregation unit following a disciplinary hearing, or when the corrections officers used physical force to compel him to submit to the remainder of the strip search after he became abusive and disruptive. (Green Bay Correctional Institution, Wisconsin)

U.S. Appeals Court
CELL SEARCH

Scher v. Engelke, 943 F.2d 921 (8th Cir. 1991), cert. denied, 112 S.Ct. 1516. An inmate filed a civil rights action seeking damages for cruel and unusual punishment based on retaliatory searches of his cell. The U.S. District Court awarded the prisoner $1 nominal damages and a jury verdict awarded the inmate $1,000 punitive damages. The guard appealed. The court of appeals found the retaliatory search of the inmate's cell, ten times in nineteen days, and leaving the cell in disarray after three of those searches, could amount to cruel and unusual punishment under the Eighth Amendment, even if there was no physical abuse, injury or pain. The pattern of the searches showed "calculated harassment unrelated to prison needs," particularly since the defendant officer testified that he had no reason to believe that the inmate had contraband in his cell when he conducted the cell searches. The guard was not entitled to qualified immunity; although no court had previously held cell searches to amount to an Eighth Amendment violation, the unlawfulness of the retaliatory conduct was apparent. (Missouri Eastern Correctional Center)

U.S. District Court
BODY CAVITY SEARCH

Terrovona v. Brown, 783 F.Supp. 1281 (W.D. Wash. 1991). An inmate brought a Section 1983 action challenging the constitutionality of a digital rectal probe search. On the defendants' motion for summary judgment, the U.S. District Court found that the prison officials adequately demonstrated a valid, rational connection between the digital rectal probe search policy prior to placement in a unit housing for particularly violent offenders, and a legitimate governmental interest in the safety and order of the institution. The inmate failed to demonstrate that the search was unreasonable under the Fourth Amendment or a wanton infliction of pain violating the Eighth Amendment. (Washington Corrections Center, Shelton, Washington)

U.S. Appeals Court
EVIDENCE
LAXATIVES
SEARCH WARRANT

U.S. v. Oakley, 944 F.2d 384 (7th Cir. 1991), cert. denied, 112 S.Ct. 1508. An inmate was convicted of possession of contraband in a federal prison by the U.S. District Court, and he appealed. The court of appeals found that probable cause existed quite apart from balloons of dilaudid removed from the inmate's rectal tract in a challenged warrantless search, for the issuance of a search warrant authorizing prison authorities to administer a laxative to the inmate. It was based on a tip that the inmate would be receiving 100 dilaudid pills from his girlfriend during an upcoming visit, on the inmate's suspicious activity during the visit in repeatedly moving his hand from the girlfriend's pocket to his mouth, on the inmate's lack of bowel movements during the 26 days following the visit when he was confined in a dry cell, and on an x-ray indicating the presence of balloon-shaped objects in the defendant's rectal tract causing blockage of the colon. (Federal Penitentiary, Terre Haute, Indiana)

U.S. District Court
USE OF FORCE

Valdez v. Farmon, 766 F.Supp. 1529 (E.D. Cal. 1991). A prison inmate brought a civil rights action alleging that a prison official used unnecessary and wanton force in connection with an ordered strip search. On motions for, inter alia, summary judgment, the district court found that the inmate's allegations that prison officials used excessive force against her, allegedly using an electronic stun gun in connection with threatening the inmate to comply with a strip search, were properly analyzed under the Eighth Amendment, rather than the Fourth Amendment, as all of the allegations concerning compensable injury were directed at the means by which the search was undertaken, not the propriety of the search itself. Furthermore, the inmate's allegation that prison officials use of force against her would not be analyzed under the Fourteenth Amendment due process clause as unjustified deprivation of liberty, as such analysis would have been redundant where the case was analyzed under the Eighth Amendment. (Northern California Women's Facility, Stockton, California)

U.S. Appeals Court
BODY CAVITY SEARCHES
QUALIFIED IMMUNITY

Vaughan v. Ricketts, 950 F.2d 1464 (9th Cir. 1991). Prisoners brought a civil rights action against prison officials challenging rectal searches conducted at prison. The U.S. District Court denied the officials' motion for summary judgment on the issue of qualified immunity, and appeal was taken. The court of appeals affirmed. At trial, the district court entered judgment in favor of the officials, and the prisoners appealed. The court of appeals found that the determination on prior appeal that no reasonable prison officer could have believed that rectal searches of inmates were conducted in a reasonable manner did not preclude a finding of qualified immunity at trial, where the inmates did not necessarily prove all of their allegations underlying their Fourth Amendment claim.

The evidence in the civil rights action created a jury question as to whether rectal searches of prisoners by prison officials were supported by reasonable cause, in determining whether the officials were protected by qualified immunity, despite evidence that prisoners resided in a wing of the prison in which explosives had not been found, as the discovery of explosives in another wing of the prison led officials to believe that explosives were spreading throughout the cell block population and could be in any prisoner's possession. Evidence also created a jury question as to whether the searches were carried out in a reasonable manner, for purposes of determining whether officials were entitled to qualified immunity. In addition, the court found that the jury verdict finding that the search of the prisoners by prison officials violated the Fourth Amendment but that officials were entitled to qualified immunity was not inconsistent. If the jury concluded that prison officials thought they had sufficient cause to search, but that the officials were mistaken in that belief, it could find both a Fourth Amendment violation and qualified immunity. (Arizona State Prison)

U.S. Appeals Court
SEARCH OF PROPERTY

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)

1992

U.S. Appeals Court
EVIDENCE
VISITOR SEARCH

Boren v. Deland, 958 F.2d 987 (10th Cir. 1992). The wife of an inmate sued state prison officials under Section 1983 after officials strip-searched her prior to a visit with her husband to determine whether she was wearing inappropriate clothing in violation of the visiting room policy. The district court found that the search was based upon reasonable suspicion and that the wife had consented, and the wife appealed. The court of appeals, affirming the decision, found that the wife had a legitimate expectation of privacy when she entered prison to visit her husband, and the search was supported by reasonable individualized suspicion and did not violate the Fourth Amendment. On several occasions, prison visitors complained that the wife wore white denim jeans with a hole in the crotch and that she and her husband engaged in inappropriate sexual conduct during visiting hours. One of the officers involved in ordering the search had also previously observed the wife wearing the offending clothing. The wearing of such clothing during a visit violated Utah State Prison regulations, and the search was supported by reasonable individualized suspicion as a result of numerous people observing the violation. (Utah State Prison)

U.S. District Court
OPPOSITE SEX

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 accomodation to prevent unnecessary observations of his naked body by female guards. (Columbia Corr. Institution, Portage, Wisconsin)

U.S. District Court
SAME-SEX SEARCH
STRIP SEARCH

Cottrell v. Kaysville City, Utah, 801 F.Supp. 572 (D. Utah 1992), reversed, 994 F.2d 730. A motorist brought a civil rights action against a city, police officer, and employees of a county jail for violations of her constitutional rights after she was strip searched in jail. The district court found that the strip search of the female motorist in the county jail by female jail personnel did not violate her Fourth Amendment rights and that it was reasonable for a police officer to believe that the strip search was appropriate to detect whether drugs were concealed on the motorist's body, where her actions suggested that she was probably under the influence of drugs or alcohol, her breath did not smell of alcohol, and no drugs were found in her vehicle. The appeals court reversed the lower court decision, finding that further proceedings were required to determine if the search was reasonable. (Davis County Jail, Utah)

U.S. Appeals Court
BODY CAVITY SEARCHES

Covino v. Patrissi, 967 F.2d 73 (2nd Cir. 1992). A prison inmate brought an action challenging the constitutionality of random visual body cavity searches. The U.S. District Court denied the motion for a preliminary injunction, and the inmate appealed. The court of appeals found that the visual body cavity searches were related to legitimate penological interests and the inmate did not show that reasonable alternatives that would be fully effective. (Northwest State Correctional Facility, Vermont)

U.S. Appeals Court
OPPOSITE SEX PAT SEARCH

Jordan v. Gardner, 953 F.2d 1137 (9th Cir. 1992), affirmed, 986 F.2d 1521. Female inmates brought a suit challenging the constitutionality of a prison regulation which permitted cross gender pat searches. The U.S. District Court enjoined prison officials from implementing the policy and the prison officials appealed. The appeals court, reversing the decision, found that the regulation did not violate inmates' freedom of religion. The fact that female inmates had no alternative means of observing religious objections to searches did not require invalidation of the regulation permitting cross gender pat searches under the First Amendment given that inmates were able to follow other tenets of their religion and that the inmates failed to show alternatives to the prison policy. The court found that the prison regulation which permitted cross gender searches was reasonable and did not violate the Fourth Amendment, given that searches were conducted for security purposes, were brief in duration and conducted on fully clothed inmates, were conducted in a professional manner, and given that requiring same sex searches would displace officers throughout the prison. The regulation was adopted to meet the prison's internal security needs after careful consideration, prison guards were carefully trained to conduct searches in the least threatening manner, and brief pat searches did not violate evolving standards of decency. (Washington Corrections Center for Women, Washington)

U.S. Appeals Court
OPPOSITE SEX

Letcher v. Turner, 968 F.2d 508 (5th Cir. 1992). An inmate brought a Section 1983 action alleging that the presence of female guards during a strip search invaded his constitutional right to privacy. The U.S. District Court dismissed the case, and the inmate appealed. The appeals court, affirming the decision, found that the presence of female guards during a strip search of a male inmate following a food throwing incident that involved eighteen or nineteen inmates did not violate a constitutional right of privacy. (Winn Correctional Center, Louisiana)

U.S. District Court
OPPOSITE SEX PAT SEARCH

Martin v. Swift, 781 F.Supp. 1250 (E.D. Mich. 1992). A female civil rights plaintiff brought a Section 1983 action against a city, an officer, and a police chief arising out of an alleged unconstitutional pat-down search by a male police officer. On the defendants' motions for summary judgment, the district court found that the plaintiff failed to state an actionable Section 1983 claim against the city based on a policy of allowing male police officers to conduct pat-down searches of females accused of misdemeanors as the complaint cited only a single incident of unconstitutional activity, and, thus, did not allege that the pat-down search was conducted pursuant to "policy" of the city. In addition, the plaintiff failed to state an actionable Section 1983 claim against the city police chief based on the fact that, as chief, he had failed to properly supervise and train police personnel and, thus, was responsible for the male police officer who conducted the pat-down search of the plaintiff in an allegedly unconstitutional manner. There were no allegations of a history of abuse during pat-down searches by city police officers or a history of abuse by the officer who conducted the search. However, a material issue of fact as to whether the male police officer conducted the pat-down search of the female misdemeanor suspect in an unconstitutional manner precluded granting summary judgment to the officer. When law enforcement officers act in an objectively reasonable manner, they will be entitled to qualified immunity, and the issue before the court was whether a reasonable officer would have acted similarly to the defendant officer during the pat-down search. (Royal Oak Police Department, Michigan)

U.S. District Court
CELL SEARCH
STRIP SEARCH

Proudfoot v. Williams, 803 F.Supp. 1048 (E.D. Pa. 1992). A prisoner brought a civil rights action against state corrections officers who conducted a search of his prison cell and opened his legal mail. The district court found that the corrections officer who opened the prisoner's legal mail during the search of the prisoner's cell and appeared to scan a letter to the prisoner's attorney violated the prisoner's constitutional right of access to the courts. However, the officer was entitled to a defense of qualified immunity; the officer did not act unreasonably in violation of a clearly defined legal duty, especially where the envelopes were oversized and contained enclosures likely to contain contraband. The court also found that the officers did not violate the prisoner's civil rights in ordering a strip search. Although the prisoner's cell had been searched three times in eight days, the officers were unaware of the two previous searches that may have justified the prisoner's perception of the search as harassment. (State Correctional Institution, Graterford, Pennsylvania)

U.S. District Court
CELL SEARCH
DRUG TEST

Rodriguez v. Coughlin, 795 F.Supp. 609 (W.D.N.Y. 1992). A prison inmate brought a civil rights action against prison officials seeking damages with respect to urinalysis testing and a search of his cell. On the defendants' motion for summary judgment, the district court found that the prison officials were entitled to qualified immunity with respect to

the complaint that the urinalysis testing procedures violated the prisoner's Fourth Amendment rights against unreasonable searches and seizures. The Fourth Amendment status of urinalysis testing was not "clearly established" in 1988, when the prisoner was tested. In addition, the prison officials were entitled to qualified immunity on the prisoner's claims that the urinalysis testing program violated due process rights in that prisoner selection was not random, the prisoner was given no advance notice, and recordkeeping was inaccurate. No liberty interest was implicated where the prisoner was not disciplined in any manner after the urine tests, which were negative. Furthermore, the urinalysis testing of the prisoner, conducted in accordance with established guidelines, did not constitute cruel and unusual punishment. The court also found that the search of the prisoner's cell for contraband did not violate the prisoner's right of access to the courts and to his attorney although the original complaint in the instant civil rights case was missing after the search, where the inmate received an extra copy of the missing document a "week or so" after it was lost, and thus did not show harm. (Orleans Correctional Facility, New York)

U.S. Appeals Court
EMPLOYEE

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. District Court
VISITOR SEARCH

Smith v. Matthews, 793 F.Supp. 998 (D.Kan. 1992). A prison inmate and his wife and daughter brought a *Bivens* action against a warden of a prison seeking declaratory judgment, injunctive relief, and damages for alleged constitutional violations. Upon the defendants' motion to dismiss, or in the alternative, for summary judgment, the district court found that the warden did not act arbitrarily and capriciously in permanently restricting the wife's visitation. The wife refused to complete the first search by prison officials and the fact that she later consented to a second or further search, and the fact that no contraband was found, did not negate the potential consequences of her first refusal. In addition, reliable and confidential information of a drug smuggling scheme that included an inmate and his wife provided probable cause to issue a warrant for a body search of the inmate's wife during her attempt to visit the inmate. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
BODY CAVITY SEARCHES

Zunker v. Bertrand, 798 F.Supp. 1365 (E.D. Wis. 1992). An inmate brought a Section 1983 action against a prison warden alleging that a policy regarding pre- and post-visitation visual body cavity searches violated the inmate's Fourth and Fourteenth Amendment rights. The district court found that visual body cavity searches conducted after contact visits in prisons as a means of preventing inmates' possession of weapons and contraband, even absent probable cause, were reasonable. In addition, the language of the prison regulation under which a strip search "may only" be conducted in a clean and private place did not establish the prisoner's liberty interest in having visual body cavity searches conducted in complete privacy which could form the basis of a Section 1983 claim for violation of the Fourteenth Amendment. Even if the searches violated provisions of prison regulations, as they were not conducted in a private place, the violation would not give rise to a constitutionally protected liberty interest. (Green Bay Correctional Institution, Wisconsin)

1993

U.S. District Court
BODY CAVITY SEARCH

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
STRIP SEARCHES

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. District Court
BLOOD TESTS

Ewell v. Murray, 813 F.Supp. 1180 (W.D. Va. 1993). Inmates filed a Section 1983 action challenging the constitutionality of a Virginia prison regulation under which any inmate who refused to provide a blood sample for DNA analysis would not earn good-conduct allowance credits. The district court found that the due process clause did not create a liberty interest in earning a certain number of good-time credits. The Virginia prison regulation was not ex post facto law, even if the regulation made inmates' original sentences more burdensome, because reasonable prison regulations and punishment for infractions were not additional punishment as long as inmates' mandatory release dates were not postponed. (Buckingham Correctional Center and Brunswick Correctional Center, Virginia)

U.S. Appeals Court
BODY CAVITY SEARCH

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. Appeals Court
BODY SEARCH
OPPOSITE SEX

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. District Court
STRIP SEARCH

Kidd v. Gowen, 829 F.Supp. 16 (D.N.H. 1993). An action was brought against a county concerning the strip search of an intoxicated protective custody detainee. The district court found that the facility's policy of strip-searching intoxicated protective custody detainees violated the Fourth Amendment because it permitted such searches without any individualized suspicion that a particular detainee might be secreting weapons or other contraband. The county offered no evidence showing that such detainees were more likely to secrete weapons or other contraband or that the threat of self-harm by such detainees was greater. (Strafford County House of Correction, New Hampshire)

U.S. District Court
DRUG TEST
URINE TEST

Laird v. McBride, 858 F.Supp. 822 (N.D. Ind. 1993). An inmate filed a habeas corpus petition alleging a violation of due process in proceedings before the Conduct Adjustment Board. The district court found that the state Department of Correction's random urinalysis program on its face was constitutional, where the program established requisite procedures for selection of inmates to be tested, instructions for obtaining samples, and instructions on the chain of custody. The inmate had notice of the program and thus the program did not violate the due process clause. The defendant said he did not receive a notice of the program because the posted memorandum was torn down. However, the memorandum was posted in all inmate dorms, the inmate was previously tested under the program before the test at issue, and all inmates were aware of the prohibition against using or possessing drugs in a penal institution. The court also found that the error in not following the chain of custody procedures of the program was harmless and the chain of custody comported with due process requirements. (Westville Correction Center, Indiana)

U.S. District Court
CONTRABAND
LIVING AREAS

Lasley v. Godinez, 833 F.Supp. 714 (N.D.Ill. 1993). Inmates who were found guilty of possessing dangerous contraband in violation of a prison rule brought a pro se Section 1983 suit alleging that their due process rights were violated. On the defendants' motions to dismiss, the district court found that the administrative directive of the Illinois Department of Corrections (DOC) whose purpose was to establish a procedure to insure that a written report was completed whenever an inmate living area was searched did not create a protectible liberty interest for inmates to have their cells searched before the cells were assigned to them. The directive contained no substantive rules which would give rise to an entitlement. The discovery of contraband in the inmates' cells during the course of the searches was sufficient evidence to find them guilty of violating the prison rule. (Stateville Correctional Center, Illinois)

U.S. District Court
BODY SEARCH
STRIP SEARCH

Newkirk v. Sheers, 834 F.Supp. 772 (E.D. Pa. 1993). Pretrial detainees brought a suit against a local government and prison officials in their official and individual capacities alleging violation of their constitutional rights. On cross motions for summary judgment, the district court found that individual county employees did not enjoy qualified immunity from strip and body search claims. The law concerning the unconstitutionality of these searches without particularized reasonable suspicion was so clearly established by the time of the detainees' arrests that no reasonable officer could have believed that such conduct was constitutional. In addition, the county could be held liable based on its adoption of a policy permitting such strip searches. (Schuylkill County Prison, Pennsylvania)

U.S. District Court
BLOOD TEST

Ryncarz v. Eikenberry, 824 F.Supp. 1493 (E.D. Wash. 1993). A prisoner sued various prison officials based on alleged violation of his constitutional rights resulting from being required to submit to a blood draw pursuant to a Washington statute requiring that blood be drawn from any inmate convicted of a sex offense or a violent offense, for purposes of DNA identification analysis. The district court found that the Washington statute did not violate the Fourth Amendment in light of its minimal intrusion and the state's interest in identification. In addition, reasonable officers would have believed their conduct in drawing blood was reasonable under the Eighth Amendment and they were thus entitled to qualified immunity. It was also found that, absent a showing that the inmate directly told officials he considered the blood draw to be contrary to his religious practices, officials were entitled to qualified immunity with respect to the prisoner's First Amendment claim. (Washington State Penitentiary)

U.S. District Court
VISITOR SEARCH

U.S. v. Spriggs, 827 F.Supp. 372 (E.D. Va. 1993) affirmed 30 F.3d 132. A defendant charged with narcotics distribution while visiting a prison moved to suppress drugs seized during a strip search. The district court denied the motion, finding that the visitor to the prison was warned that all visitors will be searched and consented to the search. He could not withdraw his consent after the search had commenced, and thus, the drugs recovered during the search could be suppressed. The warrantless strip search of the prison visitor was found reasonable. After consenting to a pat down of his upper body and thorough inspection of his mouth, the visitor balked at a pat down of his groin area. The visitor attempted to withdraw his consent, and asserted a suspect religious objection to the search. (Occoquan Facility, Lorton Reformatory, Lorton, Virginia)

1994

U.S. Appeals Court
PERSONAL
PROPERTY

Aldape 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
BODY CAVITY SEARCH
QUALIFIED IMMUNITY

Castillo v. Gardner, 854 F.Supp. 725 (E.D. Wash. 1994). An inmate brought an action against a prison official and the governor seeking damages resulting from a policy permitting digital rectal probe searches of inmates. On a motion for summary judgment by the defendants, the district court found that the policy of conducting digital rectal probes without probable cause was not reasonably related to a legitimate penological goal and was therefore unconstitutional. The prison official and the governor were immune from the suit because a holding in an earlier case in which approximately 100 other inmates asserted identical claims directed that the court find immunity. (Washington State Penitentiary)

U.S. Appeals Court
STRIP SEARCH
VISITOR SEARCH

Daugherty v. Campbell, 33 F.3d 554 (6th Cir. 1994). A prison visitor brought a civil rights action against a warden in connection with the warden's authorization of a strip search of the visitor. The U.S. District Court entered judgment for the warden and the visitor appealed. The appeals court, reversing and remanding, found that, as a matter of law, where no independent objective information existed, uncorroborated information upon which the warden relied was insufficient to warrant the strip search, notwithstanding the warden's contention that since some information regarding the visitor's alleged smuggling of drugs into prison came from a reliable officer, they required no corroboration. The officer had simply relayed an anonymous tip to the warden, and letters received by the warden personally were either anonymous or had a fictitious name and provided no reliability. The court found that a generalized suspicion of smuggling activity does not justify a strip search of a visitor. Reasonable suspicion requires individualized suspicion, specifically directed toward a person targeted for a strip search, and exists only if information contained in an anonymous tip is linked to other objective facts known by correctional authorities. (Turney Center, Tennessee)

U.S. Appeals Court
BODY CAVITY SEARCH

Del Raine v. Williford, 32 F.3d 1024 (7th Cir. 1994). A prison inmate brought a civil rights action against prison employees. The U.S. District Court dismissed the action and the inmate appealed. The appeals court found that a digital rectal search of the inmate did not constitute cruel and unusual punishment, even though alternative technology for rectal searches existed. The court noted that there was no evidence of calculated harassment unrelated to prison needs and that rectal searches in prison were necessary, and thus psychological harm was unavoidable. The court found that the search was not conducted in an unnecessarily brutal, painful, and humiliating manner. (United States Penitentiary, Marion, Illinois)

U.S. Appeals Court
BODY CAVITY SEARCH

Elliott v. Lynn, 38 F.3d 188 (5th Cir. 1994). A prisoner who was subjected to a visual body cavity search in the general presence of other inmates, guards and nonsearching officers brought a Section 1983 action against the Secretary of the Louisiana Department of Corrections, alleging that the search violated his Fourth Amendment rights. The U.S. District Court entered summary judgment for the Secretary and the prisoner appealed. The appeals court, affirming the decision, found that although the privacy of the prisoner was compromised, the search was constitutionally reasonable. An emergency situation created by an increasing number of murders justified the immediate search of inmates. Because the crisis required immediate action and because of the large number of inmates, the Secretary of the Louisiana Department of Corrections was justified in conducting strip searches in the most time-efficient place and manner available. This meant the searches were conducted on a collective rather than individual basis. Although the Secretary's airplane pilot and news media personnel could have observed the search from a walkway that opened into the room where the searches were conducted, the record did not show that they demonstrated any interest in viewing the searches. (Louisiana State Penitentiary)

U.S. District Court
QUALIFIED IMMUNITY
STRIP SEARCH

Kelly v. Foti, 870 F.Supp. 126 (E.D.La. 1994). A sheriff was sued by a female arrestee for civil rights violations that allegedly occurred when the arrestee was strip-searched. Both parties moved for summary judgment. The district court found that the sheriff, who was sued by the arrestee for alleged civil rights violations that occurred when the arrestee was strip-searched following an arrest for a minor traffic infraction, was not entitled to qualified immunity where subjecting the arrestee to a strip-search was not objectively reasonable, despite the arrestee's lack of a picture identification that would have enabled police to check her criminal history. The arrestee's appearance and conduct at the time of the arrest and thereafter did not provide reasonable suspicion that the arrestee had possible contraband. (New Orleans Police Department, Louisiana)

U.S. Appeals Court
URINE TEST

Lucero v. Gunter, 17 F.3d 1347 (10th Cir. 1994). An inmate who was subjected to disciplinary sanctions for refusing to undergo urinalysis testing brought a civil rights action against prison officials. The U.S. District Court dismissed the inmate's pro se complaint, and he appealed. The appeals court, affirming in part, reversing in part and remanding, found that the inmate's allegation that prison officials' request that he submit to urinalysis was an unreasonable search under the Fourth Amendment was sufficient to state a civil rights claim. However, the urine samples used by prison officials for drug testing constituted nontestimonial evidence and did not implicate the inmate's Fifth Amendment right against self-incrimination. The inmate's Sixth Amendment right to counsel was not implicated when he was asked by prison officials to submit to urinalysis. (Limon Correctional Facility, Colorado)

U.S. Appeals Court
SEARCH OF PROPERTY
"SHAKEDOWNS"

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
DRUG TEST
STRIP SEARCH

Scaife v. Wilson, 861 F.Supp. 1027 (D.Kan. 1994). An inmate filed a civil rights complaint against prison officials. The district court found that random urine testing in a prison drug surveillance program did not impermissibly impact upon constitutionally protected interest or constitute cruel and unusual punishment, even where the testing procedure employed a strip search and continuous observation of inmates. (El Dorado Correctional Facility, El Dorado, Kansas)

U.S. Appeals Court
VISITOR SEARCH
QUALIFIED IMMUNITY

Spear v. Sowders, 33 F.3d 576 (6th Cir. 1994). A prison visitor sued prison officials under Section 1983 alleging that a strip search and search of her car when she visited an inmate violated the Fourth Amendment. The U.S. District Court granted summary judgment to prison officials on the basis of qualified immunity and the prison visitor appealed. The appeals court, reversing and remanding, found that law was clearly established at the time of the search that prison officials needed reasonable suspicion to search prison visitors. The prison officials did not have reasonable suspicion to search the prison visitor based upon a confidential informant's tip that the inmate was receiving drugs "every time an unrelated female visited." Therefore, the officials did not have qualified immunity in the action. Furthermore, the prison officials' search of the visitor's car violated the Fourth Amendment, and the prison officials were not immune. (Northpoint Training Center, Kentucky)

U.S. District Court
STRIP SEARCH
VISITOR SEARCH

Varrone v. Bilotti, 867 F.Supp. 1145 (E.D.N.Y. 1994). The son of a prison inmate brought a Section 1983 action against a prison official after he was required to submit to a strip search before he was allowed to visit his father. The district court found that the son had a diminished expectation of privacy as a prison visitor. However, the son did not waive his Fourth Amendment rights by signing a consent form or because of a posted sign warning that a search may be required. The court found that the search was not warranted by a confidential informant's tip and a generalized suspicion of drug smuggling. Material issues of fact precluding summary judgment existed as to whether the search of the son was reasonable. The prison official was not entitled to summary judgment on the grounds of qualified immunity. Although the official did not participate in making the decision to subject the prison inmate's son to a strip search, the official actually performed the search in question. (Arthur Kill Correctional Facility, New York)

U.S. Appeals Court
SEARCH OF PROPERTY

Wycoff v. Hedgepeth, 34 F.3d 614 (8th Cir. 1994). An inmate brought an action against prison officials alleging that the search of his legal papers outside his presence was in contempt of an earlier consent decree. The U.S. District Court declined to find civil contempt and appeal was taken. The appeals court, affirming the decision, found that the discovery of bomb-making instructions in the inmate's cell was an exigent circumstance required under the previous consent decree for search of an inmate's legal papers outside the inmate's presence. Prison officials reasonably concluded that the inmate may have concealed contraband in the papers. The shortage of prison staff justified the one-day delay following the seizure of papers before the search was conducted. The investigators who usually conducted the searches were out of prison, 17 staff members were sick or on vacation, and the emergency response team was providing security for court in session in the prison. (Iowa State Penitentiary)

1995

U.S. District Court
BODY SEARCHES
OPPOSITE SEX

Carl v. Angelone, 883 F.Supp. 1433 (D.Nev. 1995). Male and female correctional officers sued the Director of the Nevada Department of Prisons alleging that he 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 had conceded that he made the transfers because he wanted female correctional officers at women's correctional facilities and therefore transferred the male officers out because they were men and transferred the female officers in because they were women. The district court denied the Director's motion to dismiss, ruling that he could not base his claim of qualified immunity or a bona fide occupational qualification (BFOQ) defense. The court held that allowing the Director to use the BFOQ defense would in essence reverse the burden of proof, requiring the plaintiffs to demonstrate that the defendant could not have reasonably believed that the BFOQ applied. The court ruled that the Director was not entitled to rely on an incorrect statement of the Nevada Attorney General's Office in establishing his affirmative defenses of BFOQ. According to the court, to be entitled to a BFOQ defense a prison must demonstrate why it cannot reasonably rearrange job

responsibilities within the prison in order to minimize the clash between the privacy interests of inmates and the safety of prison employees on one hand, and the nondiscrimination requirement of Title VII on the other. The court noted that there is no per se rule making it illegal for male correctional officers to conduct routine or random body searches of female prisoners. (Nevada Department of Prisons)

U.S. District Court
PAT SEARCH
SAME-SEX SEARCH

Ellis v. Meade, 887 F.Supp. 324 (D.Me. 1995). A pretrial detainee filed a § 1983 action against a jail officer and jail administrator seeking compensation for alleged mistreatment while confined at the jail. The district court entered judgment for the defendants, finding that the male officer's comments to the detainee, "How are you doing little boy," and "How's the little guy doing," did not constitute sexual harassment. The court also held that the officer's patting of the detainee on the buttocks did not constitute a "search" for Fourth Amendment purposes and did not violate the detainee's right to privacy, nor did it constitute "punishment" in violation of the detainee's due process rights. The court found that the officer's actions of patting the detainee were immune from liability on an assault and battery claim and that the officer's observation of the detainee while naked did not violate the detainee's Fourth Amendment privacy rights. The court noted that the officer's purpose in patting the inmate was not to punish, but to placate the detainee, which was rationally connected to the officer's stated purpose and was not excessive. The court commented that while the officer's actions were possibly mistaken and ill-advised, they were not so egregious that they exceeded as a matter of law the scope of any discretion the officer could have possessed. (Penobscot County Jail, Maine)

U.S. Appeals Court
DRUG TEST
EMPLOYEE

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
BLOOD TESTS

Gilbert v. Peters, 55 F.3d 237 (7th Cir. 1995). Several offenders who were convicted for sex offenses challenged an Illinois statute that was enacted after they had been convicted, requiring all incarcerated sex offenders to submit blood specimens to the Department of State Police prior to final discharge, parole or release. The district court dismissed the action with prejudice and the appeals court affirmed, finding that the statute did not violate the ex post facto clause. The court held that the ex post facto clause does not prohibit every alteration of a prisoner's confinement that may work to his disadvantage, but that only measures which are both retroactive and punitive fall within the purview of the clause. The court held that any sanctions that might result from an inmate's refusal to comply with the statute would be disciplinary measures and would not violate the ex post facto clause. (Dixon Correctional Center, Illinois)

U.S. Appeals Court
BODY CAVITY SEARCH

Hayes v. Marriott, 70 F.3d 1144 (10th Cir. 1995). A male prison inmate brought a § 1983 action against officials alleging violation of his Fourth, Eighth and Fourteenth Amendment rights during a body cavity search. The inmate alleged that the search was conducted in view of several female prison officials and staff. The district court dismissed the case and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded the case for further proceedings, finding summary judgment was precluded by material issues of fact concerning the reasonableness of the search. The inmate alleged that he was unnecessarily subjected to the search in the presence of over 100 people, including female secretaries and case managers from other buildings. The court noted that the prison officials' explanation of the search was not sworn, did not include affidavits based on personal knowledge and did not explain which female staff members were allowed to view the search and what their functions were. (Arkansas Valley Correctional Facility, Colorado)

U.S. Appeals Court
STRIP SEARCH

Kraushaar v. Flanigan, 45 F.3d 1040 (7th Cir. 1995). An arrestee brought a civil rights action against arresting officers, a jailer, and a county official, claiming that he was improperly subjected to a strip search following his arrest for driving under the influence (DUI). The U.S. District Court entered judgment in favor of the defendants and the arrestee appealed. The appeals court found that the arresting officer's belief that the arrestee had put "something down his pants" when he was arrested for driving under the influence, based on the arrestee's furtive hand movements, established probable cause for the strip search of the arrestee at the police station. An Illinois strip search statute that required written authorization and a written report in connection with a strip search, did not create constitutionally protected liberty interest. A county jailer did not commit assault under Illinois law when he instructed the arrestee to remove his pants and lower his underwear for a visual inspection, where the jailer was justified in conducting a strip search based on the arresting officer's belief that the arrestee had hidden something in his pants. The arrestee's testimony that the arresting officer unbuttoned the arrestee's pants at the scene of the traffic arrest, causing them to fall around

his thighs and exposing his underwear, created a fact issue as to whether the arrestee was subjected to an impermissible strip search, requiring remand in the arrestee's civil rights action against the arresting officers, despite the arresting officers' testimony that the officer had merely stuck his thumb inside the arrestee's waistband as part of a pat-down search. (Tazewell County Jail, Illinois)

U.S. District Court
BLOOD TESTS

Kruger v. Erickson, 875 F.Supp. 583 (D.Minn. 1995). A state inmate petitioned for a writ of habeas corpus challenging the constitutionality of his having to provide a blood sample for deoxyribonucleic acid (DNA) analysis. The district court found that prison officials' taking of a blood sample from the state inmate for purposes of criminal investigation was properly done and did not offend the due process clause. Prison officials took blood from the inmate for DNA analysis pursuant to a Minnesota statute, procedures employed by the prison health services unit were performed according to medically acceptable protocols developed by the Minnesota Bureau of Criminal Apprehension (BCA), and a trained laboratory technician drew the blood. In addition, the withdrawing of the state inmate's blood did not amount to unnecessary and wanton infliction of pain prohibited by the Eighth Amendment. The withdrawal of the blood for DNA database was a search and seizure, but it was reasonable. The statute authorizing the test served a legitimate governmental interest of assisting investigation and prosecution of sex crimes, and a trained technician took the blood according to Minnesota BCA policy. The court also found that taking the state inmate's blood pursuant to Minnesota statute, which was not penal in nature, did not violate the ex post facto clause. (Minnesota Correctional Facility, Stillwater, Minnesota)

U.S. Appeals Court
DRUG TEST
URINE TEST

Lucero v. Gunter, 52 F.3d 874 (10th Cir. 1995). Dismissal of an inmate's pro se Section 1983 civil rights suit, alleging that Department of Corrections officials violated his Fourth Amendment rights when they requested the inmate to submit to a urinalysis, was remanded. On remand the U.S. District Court denied the inmate's motion for appointment of counsel and granted the defendants' motion to dismiss. The inmate appealed. The appeals court, affirming the decision, found that the selection of the inmate for a urinalysis request was random, so as not to violate the Fourth Amendment or give rise to the Section 1983 claim by the inmate. Tested inmates were chosen by computer-guided selection procedures and shift commanders ensured that the selected inmates completed the tests. There was no evidence that the official who selected the inmate for testing was aware of the inmate's identity. In addition, the fact that the inmate's urinalysis request was made during the evening did not indicate that the request was not truly random or made for harassment purposes. The request was made during evening hours because the day shift manager was unable to complete all the testing during the day shift. (Limon Correctional Facility, Colorado)

U.S. District Court
DRUG TEST

McDiffett v. Stotts, 902 F.Supp. 1419 (D.Kan. 1995). A prison inmate filed a § 1983 action against prison authorities and the district court granted summary judgment for the defendants. The court held that the inmate's allegations with regard to urinalysis testing did not state a cognizable claim under § 1983. The testing was not conducted only to harass him, and although the testing was not random it did not violate the Fourth Amendment because one test was ordered because the inmate was suspected of smoking marijuana in his cell, and the other was ordered based on suspicion that the inmate possessed marijuana. The court noted that the Kansas regulation that allowed targeting of certain prison inmates for drug screening is reasonably related to the legitimate penological interest of keeping drugs out of a prison. The court also held that the Kansas statute that allows drivers tested for being under the influence of drugs or alcohol to have a second test by a physician of their choice has no bearing on drug screening of prison inmates. (El Dorado Correctional Facility, Kansas)

U.S. Appeals Court
CELL SEARCH

Mitchell v. Dupnik, 75 F.3d 517 (9th Cir. 1995). An inmate brought a § 1983 action against law enforcement and corrections officials. The district court entered judgments in favor of the inmate and the appeals court affirmed in part, reversed in part, vacated in part and remanded. The court found that a jail regulation on cell searches did not create a protected liberty interest in the inmate being present during a search of his legal papers and that inspection of legal papers is not a dramatic departure from conditions of confinement which might conceivable create a liberty interest. The court held that punitive damages should not have been awarded against a sheriff, jail corrections commander, and superintendent of discipline in their official capacity, as such an award was in reality an assessment of punitive damages against the county, which is immune from such damages. The district court had entered judgments awarding $1,550 in compensatory damages, and an additional $100,000 in punitive damages against the defendants in their official capacities. (Pima County Adult Detention Center, Arizona)

U.S. District Court
STRIP SEARCH

Nowosad v. English, 903 F.Supp. 377 (E.D.N.Y. 1995). A plaintiff brought a § 1983 action against county officials and individuals involved with his arrest and prosecution. The district court found that the plaintiff stated an excessive force claim, where he alleged that during the course of his arrest he was pushed, his arm was painfully and roughly twisted, and he suffered such difficulties as a disabling knee injury, arm, shoulder, back and leg injuries causing pain. The court found that a strip search did not violate the Fourth Amendment, where the fact that the plaintiff was charged with menacing with a weapon provided an element of reasonable suspicion that another weapon was concealed. (Suffolk County Police Department, New York)

U.S. Appeals Court
BLOOD TESTS

Rise v. State, 59 F.3d 1556 (9th Cir. 1995). Prisoners filed a § 1983 suit alleging that collection of blood samples for a DNA data bank violated their Fourth Amendment rights and was a prohibited ex post facto punishment. The district court dismissed the case the appeals court affirmed. The appeals court held that the Oregon statute which required felons convicted of murder or specific sexual offenses to submit a blood sample for a DNA data bank was rationally related to the public's interest in preventing recidivism and in accurately identifying murderers and sex offenders. The court found that requiring a blood sample from felons, even if they were convicted before enactment of the statute, did not violate the ex post facto law because its purpose was not to punish convicted felons. The court also held that the felons' due process rights did not require a hearing before being required to submit a blood sample. The court noted that gathering genetic information for identification purposes from the blood of convicted murderers or sexual offenders does not constitute more than a minimal intrusion on their Fourth Amendment rights. (Oregon Department of Corrections)

U.S. Appeals Court
DOGS
STRIP SEARCH
VEHICLE
VISITOR SEARCH

Romo v. Champion, 46 F.3d 1013 (10th Cir. 1995). Visitors to a prison brought a Section 1983 action alleging a violation of their constitutional rights by law enforcement officials in connection with stopping their vehicle at a roadblock, a canine sniff of their vehicle and their bodies, and a strip search of one of the visitors. The U.S. District Court granted summary judgment against the visitors and they appealed. The appeals court, affirming the decision, found that the initial stop of the vehicle as it was attempting to enter the prison, in order to facilitate a drug-sensing dog's sweep of the car and its occupants, did not violate the Fourth Amendment. Public interest in keeping drugs out of prisons and maintaining prison security was substantial, the roadblock was reasonably tailored to achieve those objectives, and interference with the occupants' individual liberty was not significant. After the drug-sniffing dog alerted officers to one of the visitors, prison officials possessed at least reasonable suspicion that the visitor was concealing narcotics and ordering her to submit to a strip search before entering the prison was constitutional. (Dick Conner Correctional Center, Hominy, Oklahoma)

U.S. Appeals Court
STRIP SEARCH

Seltzer-Bey v. Delo, 66 F.3d 961 (8th Cir. 1995). A prison inmate filed a § 1983 action against prison officials. 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 the inmate's claim that a corrections officer sexually assaulted him during daily strip searches stated a cause of action for violation of the Fourth Amendment prohibition against unreasonable searches and seizures. The inmate alleged that the officer made sexual comments about his penis and buttocks, rubbed his buttocks with a nightstick, and asked the inmate if it reminded him of something. (Potosi Correctional Center, Missouri)

U.S. District Court
DAMAGE TO PROPERTY

Smith v. O'Connor, 901 F.Supp. 644 (S.D.N.Y. 1995). A pro se inmate brought a civil rights action alleging that correctional officials destroyed his personal property, including his legal papers, during a search of his cell. The district court dismissed the case, finding that a directive that required correctional officials to refrain from destroying property did not create a property interest to which due process rights could be attached. The court also held that the inmate failed to show any prejudice resulting from the destruction of his legal papers and thus failed to state a claim that he was denied access to the courts. The court noted that state law provided a remedy for deprivation of property in its Court of Claims act, which permits an inmate to pursue a claim against the state. The inmate asserted that correctional officials stepped on his belongings and left his cell in disarray in violation of an agency directive, but the court held that failure to follow the state directive was not protected by federal law. (Sing Sing Correctional Facility, New York)

U.S. Appeals Court
VISITOR SEARCH
AUTOMOBILE
BODY CAVITY SEARCH

Spear v. Sowders, 71 F.3d 626 (6th Cir. 1995). A prison visitor sued prison officials under § 1983 alleging that a strip search and a search of her car when she visited an inmate violated the Fourth Amendment. The district court granted summary judgment for the officials on the basis of qualified immunity. The appeals court affirmed in part, reversed in part and remanded the case. The court found that information supplied by a confidential informant that an inmate "was receiving drugs every time a young unrelated female visitor visited" gave prison guards reasonable suspicion and justified a body cavity search of the visitor. The court noted that if prison officials had detained the visitor without probable cause and told her she would not be permitted to depart without submitting to a search, those circumstances would have violated her right to be free from being detained absent probable cause. Prison visitors can be subjected to some searches, such as a pat-down or metal detector sweep, merely as a condition of visitation absent any suspicion, and visitors seeking entry to a controlled environment acknowledge a lesser expectation of privacy. Prison officials may not search a visitor who objects without giving the visitor a chance to abort the visit and depart. A visitor does not consent to an invasive search simply by appearing at the prison for a visit even if he or she may consent to less invasive searches merely by entering the facility. However, the court found that fact questions existed about the exact scope of the search of the visitor's car or whether a sign was posted and visible notifying the visitor that her car would be searched, making summary judgment inappropriate with regard to that search. (Northpoint Training Center, Kentucky)

U.S. District Court
BODY CAVITY SEARCH
LAXATIVES
X-RAY

Cameron v. Hendricks, 942 F.Supp. 499 (D.Kan. 1996). An inmate who had been subjected to a rectal probe and who had been required to have a bowel movement in the presence of correctional officers and hospital staff brought a § 1983 action alleging violation of his right to be free from unreasonable searches and seizures. The district court granted summary judgment to the defendants. The court found that the officials did not violate the inmate's Fourth Amendment rights when they transported him to a local hospital and took X-rays, nor when they had a physician perform a rectal probe and give the inmate an enema when the x-ray revealed that the inmate had concealed a handcuff key in his rectum. (El Dorado Correctional Facility, Kansas)

U.S. Appeals Court
OPPOSITE SEX

Canedy v. Boardman, 91 F.3d 30 (7th Cir. 1996). A Muslim inmate filed a § 1983 action claiming that a female prison guard's participation in a strip search and daily observations of male inmates violated his right to privacy. The district court dismissed and the appeals court affirmed, finding that the defendants were entitled to qualified immunity against the inmate's First Amendment claims. The court noted that at the time of the events in question, it was not clear that a Muslim inmate's interest in observing religious nudity taboos outweighed a prison's interest in having guards observe prisoners at all times, and in providing equal employment opportunity to women. (Columbia Correctional Institution, Wisconsin)

U.S. District Court
STRIP SEARCH

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
STRIP SEARCH

Fernandez v. Rapone, 926 F.Supp. 255 (D.Mass. 1996). Inmates brought a civil rights action against prison officials alleging violation of their rights when they were subjected to strip searches following contact visits. The district court held that subjecting the inmates to searches in the presence of other prisoners in order to prevent the introduction of contraband was not unreasonable in violation of the Fourth Amendment nor did the searches violate substantive due process. The court noted that the searches were performed by male correctional officers out of view of visitors and other staff, and that the searches were reasonable in light of inmates' diminished expectation of privacy while confined. The court also found that alleged occasional degrading remarks made by prison officers during the searches did not violate substantive due process. (North Central Correctional Institution, Massachusetts)

U.S. District Court
PAT SEARCH
USE OF FORCE

Hill v. Blum, 916 F.Supp. 470 (E.D.Pa. 1996). A state inmate who was a Muslim brought a civil rights action against a prison guard who conducted a part-down search that allegedly included a brief (two seconds) touching of the inmate's genitals, which allegedly violated the inmate's moral, ethical and religious beliefs. The district court granted summary judgment for the guard, finding that the search did not violate the free exercise rights of the inmate nor the Fourth Amendment. The court also found that the search did not violate the inmate's due process rights and did not constitute cruel and unusual punishment. The court noted that pat-down searches were conducted routinely for security reasons and the guard's search was in accordance with prison regulations. The inmate also alleged that he was removed from his position in the prison kitchen as a result of retaliation for filing a grievance against the guard. The court found that the inmate was not subjected to retaliation, noting that the guard was not a member of the support team that decided to remove the inmate from his kitchen position. (State Correctional Facility, Frackville, Pennsylvania)

U.S. Appeals Court
STRIP SEARCH

Kelly v. Foti, 77 F.3d 819 (5th Cir. 1996). An arrestee filed a § 1983 action against police and jail officials asserting constitutional and tort claims. The district court denied the defendants' motion for summary judgment and they appealed. The appeals court affirmed in part, dismissed in part, and remanded the case. The appeals court held that the conduct of the arrestee in making an illegal left turn and failing to present a driver's license did not create reasonable suspicion that she was hiding weapons or contraband so as to justify a strip search for the purposes of a police officer's claim of qualified immunity. The court found that the strip search was not objectively reasonable under the law at the time of the search, absent individualized suspicion. The court ruled that jail officials may strip search a person arrested for a minor offense and detained pending posting of bond only if they possess reasonable suspicion based on such factors as the nature of the offense, the arrestee's appearance and conduct, or a prior arrest record. The court noted that although the arrestee lacked photograph identification and failed to post bond within five hours, she readily identified herself, explained that she had left her driver's license in her hotel room, cooperated with police, and presented a purse full of other nonphoto identification. (City of New Orleans and Sheriff)

U.S. District Court
STRIP SEARCHES

Richerson v. Lexington Fayette Urban County Government, 958 F.Supp. 299 (E.D.Ky. 1996). A pretrial detainee brought a civil rights action challenging a strip search that was conducted when he returned from a courtroom. The district court entered judgment for the

defendants, finding that it was reasonable to have a policy of strip searching detainees, even those held for minor, nonviolent traffic offenses, upon their return from a courtroom to the general population of the detention center. According to the court, when pretrial detainees, including those charged with minor, nonviolent offenses, are kept in the detention center's general population prior to arraignment and are then put in a position where exposure to the general public presents a very real danger of contraband being passed, the policy of strip searching is justified and reasonable. (Fayette County Detention Center, Kentucky)

U.S. District Court
CELL SEARCH

Schenck v. Edwards, 921 F.Supp. 679 (E.D.Wash. 1996). An inmate brought a § 1983 action against state corrections officials in connection with discipline imposed for possession of another inmate's draft legal pleadings, and alleging that the search of his cell was illegal. The district court found that disciplining the inmate for mailing a draft legal pleading to another inmate did not violate the First Amendment. The court noted that a prison prohibition against inmates preparing legal documents for other inmates was reasonably related to the prison's interest in preventing inmate-to-inmate debt. The court also held that the search of his cell and inspection of legal documents outside his presence was constitutional and could not be the basis for a civil rights claim by the inmate. (Washington State Penitentiary)

U.S. Appeals Court
BLOOD TESTS

Schlicher v. (NFN) Peters, I and I, 103 F.3d 940 (10th Cir. 1996). Prison inmates challenged the constitutionality and execution of a Kansas statute that provided for collection of blood and saliva specimens from certain convicted felons for use by the State Bureau of Investigation. The district court denied the inmates declaratory and injunctive relief and the inmates appealed. The appeals court affirmed, finding that the statute and its execution did not violate the Fourth Amendment prohibition against unreasonable search and seizure. (Kansas)

U.S. District Court
DNA

Shelton v. Gudmanson, 934 F.Supp. 1048 (W.D.Wis. 1996). An inmate convicted of first-degree sexual assault brought an action for monetary and injunctive relief under § 1983, challenging a state law that required him to provide a biological specimen to the state for inclusion in a deoxyribonucleic acid (DNA) data bank. The district court held that the DNA sampling to which the inmate was subjected was not an unreasonable search under the Fourth Amendment. The court found that even assuming that the nonconsensual swabbing of the inmate's cheek was a search, it was reasonable in light of the minimal nature of the intrusion, the inmate's limited privacy interest in his identifying information, and the public's considerable interest in preventing recidivism by sex offenders. (Oshkosh Correctional Institution, Wisconsin)

U.S. District Court
STRIP SEARCH

Swain v. Spinney, 932 F.Supp. 25 (D.Mass. 1996) reversed in part 117 F.3d 1. A female arrestee brought a § 1983 action against a city and several of its police officials alleging that her rights were violated by a strip search conducted by a female officer. The court granted summary judgment for the defendants, finding that the search did not violate the arrestee's constitutional rights and that the defendants were entitled to qualified immunity. The court also found that the arrestee failed to show that the city was deliberately indifferent to the constitutional rights of its citizens. Before her arrest, an officer witnessed the arrestee try to discard concealed contraband (marijuana) and police legitimately discovered rolling papers in her pocketbook after her arrest. The strip search was conducted out of public view in front of only one person of the same sex, and the arrestee was never touched during the procedure. On appeal, qualified immunity was denied to the officials. (North Reading Police Station, Massachusetts)

U.S. Appeals Court
STRIP SEARCH
VISITOR SEARCH

Wood v. Clemons, 89 F.3d 922 (1st Cir. 1996). Prison visitors sued prison officials alleging that strip searches violated their Fourth Amendment rights. The district court entered summary judgment for the defendants on the basis of qualified immunity. The appeals court affirmed, finding that the superintendent acted reasonably, in light of information before him, that the visitors would be bringing drugs to the inmate, entitling him to qualified immunity. The court found that reasonable suspicion is the proper standard by which to gauge the constitutionality of prison-visitor strip searches. The court noted that reasonable suspicion is something stronger than a mere "hunch' but something weaker than probable cause and that reasonable suspicion can arise from something that is less reliable than that required to show probable cause. In this case, the superintendent had grown to trust an officer to provide him with reliable information and the superintendent also found a police detective, on whose report the officer's report was based, to be a reliable and trustworthy source of information. The superintendent had approved a strip search of a female inmate's teenaged children based on a tip which he erroneously believed to have been confirmed by two unconnected confidential informants. (Maine Correctional Center)

1997

U.S. District Court
OPPOSITE SEX
USE OF FORCE

Collins v. Scott, 961 F.Supp. 1009 (E.D.Tex. 1997). A male Muslim inmate sued prison officials alleging violation of the Religious Freedom Restoration Act (RFRA) and § 1983 arising from a strip search by a female officer. The district court dismissed the case, finding that ordering the inmate to submit to a strip search did not substantially burden his religious rights and was the least restrictive means of furthering a compelling government interest in maintaining security. The court found that prison officials did not use excessive force

in conducting the strip search and that they were entitled to qualified immunity. The officials had shocked the inmate with an electronic capture shield and placed him in restraints when he refused to submit to a search. The court noted that the inmate was willing to be strip searched by a males in all cases, and by females in emergency or extraordinary circumstances, despite the teaching of the inmate's religion that he should not be naked in the presence of males or females. Prison officials usually accommodated the inmate's request to be strip searched by male staff. (Coffield Unit, Texas Department of Criminal Justice)

U.S. Appeals Court
STRIP SEARCH

Foote v. Spiegel, 118 F.3d 1416 (10th Cir. 1997). A motorist sued state highway patrol officers alleging she was illegally detained and subjected to a strip search. The district court denied the officers' motion for summary judgment on qualified immunity grounds and the officers and plaintiff appealed. The appeals court held that one of the troopers was not entitled to qualified immunity for the strip search because undisputed facts known to the trooper did not justify the strip search under clearly established law. The motorist had been arrested for driving under the influence and tested negative for alcohol on a breathalyzer. She was not placed in the general population of a detention facility, had no opportunity to hide anything beneath her clothing after her vehicle was stopped, and a thorough pat-down search of her lightweight summer clothing at the jail revealed no drugs. The county jail's policy of conducting strip searches of all persons arrested on drug charges had been held unconstitutional by a federal appeals court in 1993, but a jail officer testified that all persons arrested on drug charges were subjected to strip searches. (Davis County Jail, Utah)

U.S. District Court
URINE TEST

Harris v. Keane, 962 F.Supp. 397 (S.D.N.Y. 1997). A state prison inmate brought a § 1983 action against corrections officers and officials. The district court granted summary judgment for the defendants, finding that the inmate's confinement in keeplock for a total of 23 days did not implicate a liberty interest for the purposes of a due process claim. The court also found that a corrections officer had probable cause to order a urinalysis test of the inmate where the officer had smelled marijuana from a gallery below him, and other corrections officers reported that the inmate was the only person on the gallery at that time. (Oneida Correctional Facility, New York)

U.S. District Court
STRIP SEARCH
BODY CAVITY SEARCH
VISITOR SEARCH

Laughter v. Kay, 986 F.Supp. 1362 (D.Utah 1997). A pregnant prison visitor brought a § 1983 action against officers after she was subjected by the officers to manual body cavity searches along with her three-year-old son. The district court granted summary judgment in favor of the plaintiff, finding that a manual body cavity search of a prison visitor must be justified by probable cause and the officers lacked probable cause. The court held that the prison-visitor exception to the prohibition against warrantless searches did not apply because the officers had no intention of allowing the visitor into the prison to visit, that no exigent circumstances existed, and that the visitor's consent to the searches did not validate them. The court denied qualified immunity to the officers. The court found that probable cause was not established by an affidavit relating information about one prisoner's alleged drug activities and the affiant's belief that the visitor would pass drugs to another prisoner, where the affidavit failed to connect the visitor or the prisoner she was visiting to the prisoner who had allegedly engaged in drug activity. The court also found that probable cause was not established by an uncorroborated note from a confidential prisoner-informant referring to a "thing" to be taken to the visitor's address, monitored telephone conversations in which prisoners made oblique references to the visitor, the discovery of syringes in the vehicle the visitor drove to the prison several days before the search, or an uncorroborated tip from one prison officer's mother. (Central Utah Correctional Facility)

U.S. District Court
CELL SEARCH
DAMAGE TO PROPERTY
LIVING AREAS

Robinson v. Ridge, 996 F.Supp. 447 (E.D.Pa. 1997). A prisoner sued state officials and employees alleging violation of his rights as the result of a random prison-wide security search. The district court held that the prisoner's right to free access to courts was not violated by the seizure of his legal materials, absent actual injury. The court also held that the seizure of the prisoner's religious materials in the course of a random security search, no matter how harmful the seizure might have been to the prisoner's religious practices, did not violate the Free Exercise Clause if it was reasonably related to the prison's legitimate penological interests. The prisoner's cell was searched as part of a prison-wide search during a declared state of emergency. During the search, the prisoner's personal property, including legal documents and articles of his Islamic faith, were thrown on the floor and swept into the trash. The prisoner asked for a receipt and was refused. He filed a grievance and was denied relief, but was subsequently offered $50, which he rejected. (SCI Graterford, Pennsylvania)

U.S. Appeals Court
OPPOSITE SEX

Somers v. Thurman, 109 F.3d 614 (9th Cir. 1997). A male inmate brought a civil rights against female guards and prison officials alleging that visual body cavity searches performed by the guards, and their watching while he was showering naked, violated his Fourth and Eighth Amendment rights. The district court denied the guards' motions for summary judgment and they appealed. The appeals court reversed and remanded, finding that it was not clearly established in October 1993 that male inmates had a Fourth Amendment privacy interest which prohibited cross-gender searches. The court also held that the inmate failed to state a claim under the Eighth Amendment based on allegations that female guards pointed and joked while observing him showering or while conducting a body cavity search of

him. According to the court, the inmate did not allege that the guards intended to humiliate him or that the searches occurred without any penological justification. The court noted that, while it does not approve, the exchange of verbal insults between inmates and guards is a constant, daily ritual observed in the nation's prisons. (Calif. State Prison-Los Angeles)

U.S. Appeals Court
STRIP SEARCH

Swain v. Spinney, 117 F.3d 1 (1st Cir. 1997). A female arrestee brought a § 1983 action against police officials alleging that a female officer's strip search of her, under orders from a lieutenant, violated her federal and state rights. The district court granted summary judgment for the defendants and the arrestee appealed. The appeals court reversed and remanded, finding that issues of fact as to the basis for the search precluded summary judgment on the issues of reasonableness and qualified immunity. The appeals court affirmed the district court's finding that § 1983 liability was not established based on the city's alleged failure to properly train the police force as to its uniform policy on strip searches. According to the court, police officers were supplied with policy guidelines, and there was no evidence of any other incidents which would have put the city on notice that its approach was inadequate. The plaintiff was arrested for shoplifting and was suspected of having possessed a small baggie of marijuana. (North Reading Police Station, Massachusetts)

U.S. District Court
DRUG ISOLATION

Thomas v. Irvin, 981 F.Supp. 794 (W.D.N.Y. 1997). A prisoner brought a § 1983 action against prison officials alleging that their placement of him in drug watch isolation status for seven days violated the Eighth Amendment and his due process rights. The district court found that the state did not violate the inmate's due process rights, noting that the room in which he was confined was larger than an average cell at the prison and was equipped with all of the essential items necessary for proper rest and hygiene. The inmate was allowed to exercise and smoke cigarettes, and he received regular meals and daily medical attention. The officials had obtained credible information from a confidential informant that the inmate was in possession of narcotics after a visit. The prisoner had alleged that the isolation room had inadequate ventilation because two air vents in the room were covered as a security measure to prevent inmates from concealing contraband in the vents. (Wende Correctional Facility, New York)

U.S. Appeals Court
STRIP SEARCH
URINE TEST

Thompson v. Souza, 111 F.3d 694 (9th Cir. 1997). A prisoner sued prison officials for damages under § 1983 alleging that he was subjected to an improper strip search and urinalysis drug test. The officials moved for summary judgment and appealed when the district court denied their motion. The appeals court reversed and remanded with instructions, finding that the visual strip search of the prisoner's body cavities did not violate a clearly established Fourth Amendment right. The appeals court held that the search was not maliciously and sadistically conducted for the purpose of causing harm, and thus did not violate the prisoner's due process rights. The court also found that a nonrandom, compelled urinalysis test did not violate the prisoner's alleged privacy interests under the Fourth Amendment, especially considering that 16 of the 124 prisoners selected tested positive for drugs. The prisoner had complained that he was directed to run his fingers around his gums after manipulating his genitalia even though the prison guidelines suggested that genitalia inspection be the last step of a strip search. The prisoner also alleged that the search was conducted in view of other prisoners. The court found that the use of a bathroom as the location for the urinalysis test was not unreasonable, even though the floor was damp, the prisoner did not have shoes, and a prison official stood within eight inches of the prisoner's side continuously watching him urinate into a small plastic bottle. (California Men's Colony)

U.S. Appeals Court
PAROLEES

U.S. v. Cantley, 130 F.3d 1371 (10th Cir. 1997). A defendant who was a parolee appealed his conviction in federal court. The appeals court held that the prerequisites to a warrantless search of a parolee's residence pursuant to Oklahoma's probation and parole manual complied with the reasonableness requirement of the Fourth Amendment. The court noted that the prerequisites included reasonable grounds to believe that the parolee was keeping contraband on the property, that failure to search could result in an immediate threat to the public, employees and offenders, and that the search was not the result of a request for assistance from law enforcement officers who were unable to obtain a search warrant. (Oklahoma)

U.S. District Court
PAROLEES
SEARCH WARRANT

U.S. v. Carnes, 987 F.Supp. 551 (E.D.Mich. 1997). A parolee charged with possession of a firearm moved to suppress evidence. The district court held that officers had authority to conduct a warrantless search of the residence occupied by a parolee. According to the court, under Michigan law, warrantless administrative/regulatory searches in a parole or probation context need only be based on reasonable suspicion supported by articulable facts. The court found that the officer had reasonable grounds to believe that the parolee had violated his parole by residing at the residence, by failing to report to his parole officer, and by illegally entering his girlfriend's house and assaulting her. (Troy Police Department, Michigan)

U.S. Appeals Court
DRY CELL
CONTRABAND

U.S. v. Holloway, 128 F.3d 1254 (8th Cir. 1997). A defendant, an inmate in federal prison who was convicted of conspiracy to provide a controlled substance to an inmate in federal prison, appealed his conviction. The appeals court affirmed, finding that the inmate's

incarceration in a dry cell was a proportionate response to the reasonable suspicion that the inmate was carrying contraband, and did not violate the Fourth Amendment. The dry cell incarceration involved placement in a cell with no running water until such time as the inmate defecated; balloons containing heroin were removed from his fecal matter. Prison officials had received information that the inmate intended to smuggle drugs into the prison. They observed a suspicious visit, noting activity consistent with a drug exchange, and took the inmate to a dry cell. (United States Penitentiary at Leavenworth, Kansas)

U.S. District Court
PAROLEE

U.S. v. Phillips, 977 F.Supp. 1418 (D.Colo. 1997). A defendant who was on parole moved to suppress evidence seized from his home. The district court held that the warrantless search of the defendant's residence based on a tip that the defendant was in possession of handguns and illegal drugs was valid because it was based on reasonable grounds to believe that a parole violation had occurred. The court recognized exceptions to warrant requirements in situations where special needs, such as the needs of a state parole system, make a warrant and probable cause requirement impractical. According to the court, the twin aims of rehabilitating parolees and protecting the public justify limiting a parolee's Fourth Amendment rights and expectations of privacy. The court noted that parolees do not enjoy the absolute liberty to which every citizen is entitled. (Colorado)

U.S. Appeals Court
STRIP SEARCH
VISITOR SEARCH

Varrone v. Bilotti, 123 F.3d 75 (2nd Cir. 1997). The son of a prison inmate brought a § 1983 action against prison officials arising from the requirement that the son submit to a strip search before he was allowed to visit his father. Summary judgment was denied to all parties and they appealed. The appeals court reversed and remanded, finding that officials and their subordinates were entitled to qualified immunity. The court noted that the reasonable suspicion standard for the strip search of a visitor was clearly established at the time of the challenged search, and that the search was authorized based on reasonable suspicion. A corrections official had been provided with information by a narcotics bureau chief and other information which established reasonable suspicion to support the search, even if the corrections official did not personally investigate the reliability of the informant who provided the information to the bureau chief. (Arthur Kill Correctional Facility, New York)

U.S. District Court
STRIP SEARCH

Williams v. Price, 25 F.Supp.2d 605 (W.D.Pa. 1997). Death row inmates challenged their conditions of confinement in a civil rights action. The district court granted summary judgment in favor of the officials for most of the allegations. The court found that strip searches of inmates, including viewing of bodily cavities, before and after sessions with their attorneys, did not violate the inmates' Fourth Amendment rights. The court also found that the inmates were not denied equal protection because they were allowed only one hour of recreation per day, while inmates in another death row facility had two hours per day. The court held that the inmates' equal protection rights were not violated when they were denied access to recreational materials that were made available to inmates at other death row facilities, where there were more prisoners in their facility and contraband had been discovered. The court did not grant summary judgment to the defendants on the claim that failure to provide a soundproofed area for conversations between inmates and their attorneys violated the inmates' right to privacy. (State Correctional Institution at Greene, Pennsylvania)

U.S. District Court
STRIP SEARCH

Wilson v. Shannon, 982 F.Supp. 337 (E.D.Pa. 1997). An inmate brought a § 1983 action against prison officials alleging violation of his rights in connection with strip searches and denial of exercise. The district court granted summary judgment for the officials, finding that denial of exercise for only eight days in response to disciplinary problems created by the inmate did not indicate deliberate indifference in violation of the Eighth Amendment. The court also held that alleged repeated strip searches of the inmate, both at the library and as the result of a security check of his cell, did not violate the Fourth Amendment because the inmate failed to show that the searches were conducted in an unreasonable manner, even if they were unnecessary. (SCI Frackville, Pennsylvania)

1998

U.S. District Court
USE OF FORCE

Adewale v. Whalen, 21 F.Supp.2d 1006 (D.Minn. 1998). An arrestee sued a police officer and the city that employed him under federal civil rights laws and state tort claims. The district court found that the officer was entitled to qualified immunity from liability for his decision to jail the arrestee, but found that genuine issues of material fact precluded summary judgment on the grounds of official immunity on allegations of assault, battery and false imprisonment. The court held that the officer's decision to detain the arrestee for a misdemeanor did not violate her federal rights and was objectively reasonable, given the arrestee's admission that she had been drinking and intended to drive. The court held that the arrestee failed to show that the city improperly trained its officers to arrest noncooperative persons for obstruction of legal process, based only on the decision of a deputy director of police that it was proper to arrest someone for refusing to open a security door for the police. The arrestee suffered a broken arm which she alleged was the result of excessive force used by the officer during a pat-down search. (City of Richfield Police Department, Minnesota)

U.S. District Court
PAT SEARCH
STRIP SEARCH

Aziz Zarif Shabazz v. Pico, 994 F.Supp. 460 (S.D.N.Y. 1998). A prison inmate brought a § 1983 action against prison officials and employees alleging violation of his constitutional rights. The district court granted summary judgment for the defendants. The court held that the inmate failed to allege facts sufficient to support a conspiracy claim or that officials had acted in retaliation for the inmate's exercise of protected rights. The court concluded that kicking of the inmate inside his ankles and feet while performing a pat frisk, while not to be condoned, was a de minimis use of force and did not violate the Eighth Amendment. The court noted that at one time the inmate admitted that he had sustained no physical injuries. The court held that the pat frisk and strip frisk searches performed on the inmate were permissible and did not violate the provisions of a consent decree. The court found that performing a strip frisk on the prison inmate prior to his transfer to another facility did not violate his right of free exercise of religion, notwithstanding the inmate's religious objections to the requirement that he remove his clothing. According to the court, alleged verbal taunts, no matter how inappropriate, unprofessional or reprehensible they might seem, did not support a claim of cruel and unusual punishment absent any injury. Any psychological or emotional scars to the inmate were found to be de minimis and did not support a claim of cruel and unusual punishment. (Green Haven Correctional Facility, New York)

U.S. District Court
STRIP SEARCH

Duffy v. County of Bucks, 7 F.Supp.2d 569 (E.D.Pa. 1998). An individual who had been arrested and detained over a weekend brought a § 1983 action against the probation officer who had sought the warrant under which he was arrested, and various county officials. The district court held that the arrest and detention of the probationer pursuant to a facially valid warrant did not violate his substantive due process rights, even though the individual had informed officials that the warrant was actually for a different person who had the same name. The court found that although the probationer failed to allege that strip searches to which he was subjected had been performed pursuant to a pattern or practice, his allegations regarding strip searches were sufficient to state a due process claim against officers of the facility. The individual was subjected to strip searches at least once daily for no apparent reason, even though he had no access to contraband or visitors. (Bucks County, Pennsylvania)

U.S. District Court
STRIP SEARCHES

Foote v. Spiegel, 995 F.Supp. 1347 (D.Utah 1998). A detainee sued state and county officials alleging violation of her rights because she was strip searched. The district court denied summary judgment for the arresting officers and the case was affirmed in part, reversed in part, and dismissed in part on appeal. On remand, the district court held that there was not reasonable suspicion to strip search the detainee after a pat down search did not reveal contraband and the detainee was not being placed in the general jail population. The court found that suspicion that the detainee was under the influence of drugs or alcohol did not provide adequate justification for the search. The court found the county liable for failing to promulgate an adequate strip search policy that included reasonable suspicion of concealed contraband that would not be discovered through a rub search as a prerequisite to the strip search of a detainee who is not entering the general jail population. The court noted that flaws in the jail policy were known for a year prior to this incident and the county's refusal to change the policy exhibited deliberate indifference to the likelihood of future violations. (Davis County Jail, Utah)

U.S. District Court
STRIP SEARCH

Hollimon v. DeTella, 6 F.Supp.2d 968 (N.D.Ill. 1998). A prisoner filed a civil rights action against corrections officials at an institution where he had previously been incarcerated, alleging that he was subjected to a strip search for the sole purpose of humiliation. The district court denied the defendants' motion to dismiss, finding that the prisoner's claim was not subject to dismissal for failure to exhaust available administrative remedies. The prisoner alleged that he was subjected to ribald comments during the strip search, and that to further humiliate him, it was done with female guards present. (Stateville Correctional Center, Illinois)

U.S. District Court
USE OF FORCE
PAT SEARCH

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 had failed to comply with pat-frisk procedures and was increasingly loud and boisterous and he was ordered to be quiet by a corrections officer. The court noted that the inmate had other means of expressing his dissatisfaction, such as the grievance procedure. The court found that the alleged conduct of a corrections officer in pushing his genital area against the inmate during the pat-frisk search, and wedging the inmate's pants into his buttocks, was a de minimus activity that did not implicate the Eighth Amendment. The court also found that the alleged conduct of a corrections officer in pushing the inmate back into his cell after the search did not involve the use of excessive force in violation of the Eighth Amendment. (Attica Correctional Facility, New York)

U.S. District Court
CELL SEARCHES

Leitzsey v. Coombe, 998 F.Supp. 282 (W.D.N.Y. 1998). An inmate brought a § 1983 action against prison officials after he was disciplined for violating a prison rule that prohibited possession of materials pertaining to unauthorized organizations. The

district court held that the prison rule did not violate the inmate's free speech or free exercise rights, and that the rule was not unconstitutionally vague. The court held that a search of the inmate's cell did not violate the Fourth Amendment, and that prisoners do not have a reasonable expectation of privacy within the confines of their cells. The court ruled that because New York law offered the inmate an adequate remedy on his claim that his constitutional rights were violated when the prison officials took his bag of documents and personal items and later destroyed them, he could not receive relief on that claim in federal court. (Attica Correctional Facility, New York)

U.S. District Court
STRIP SEARCH

Magill v. Lee County, 990 F.Supp. 1382 (M.D.Ala. 1998). Pretrial detainees filed a civil rights action challenging a county's policy of conducting limited strip searches before detainees are placed in cells. The district court granted summary judgment in favor of the county, finding that the policy was reasonable and did not violate the Fourth Amendment. According to the court, no heightened suspicion was necessary before jail officials could conduct limited strip searches because the dangers posed by the detainees to the jail were as high for one inmate as for another, no matter what crimes those inmates were charged with. The policy required removal of outer clothing only, and was found reasonable by the court given that small objects, such as pills, needles, or other contraband, could pose difficult and dangerous situations for jail administrators. The court noted that the searches were conducted by officers of the same sex as the detainee, and that pat-down searches or use of a metal detector would not find drugs or small objects. (Lee County Jail, Alabama)

U.S. Appeals Court
BLOOD TESTS
DRUG/ALCOHOL TESTING

Nelson v. City of Irvine, 143 F.3d 1196 (9th Cir. 1998). Two arrestees brought a § 1983 action on behalf of themselves and others similarly situated against city officials, alleging that they were coerced into submitting to blood tests to determine their alcohol levels following arrest for driving under the influence. The arrestees alleged that they were deprived of the option to take breath or urine tests instead. The district court granted summary judgment in favor of the defendants but the appeals court affirmed in part, reversed in part, and remanded. The appeals court held that arrestees who were forced to undergo blood tests after requesting or consenting to breath tests stated Fourth Amendment claims. According to the court, requiring the arrestees to submit to warrantless blood tests after they have consented to available breath or urine tests violates the Fourth Amendment warrant requirement. The court found that arrestees who consented to breath tests did not impliedly consent to blood tests. (City of Irvine, California)

U.S. Appeals Court
STRIP SEARCH

Peckham v. Wisconsin Dept. Of Corrections, 141 F.3d 694 (7th Cir. 1998). A state prisoner brought an action against corrections officials challenging the constitutionality of strip searches. The district court dismissed the suit and the appeals court affirmed. The appeals court held that the strip searches violated neither the Fourth Amendment nor the Eighth Amendment. According to the court, strip searches of a state prisoner upon his arrival at a facility, return to the facility after medical appointments or court proceedings, and upon a general search of his cell block, did not violate the Fourth Amendment. The court held that as long as the searches were performed for legitimate, identifiable purposes, and not for harassment or punishment, they did not violate the Eighth Amendment. (Taycheedah Correctional Institution, Outagamie County Jail, Wisconsin)

U.S. Supreme Court
PAROLEES

Pennsylvania Bd. of Probation v. Scott, 118 S.Ct. 2014 (1998). A parolee sought review of an administrative order of the Pennsylvania Board of Probation and Parole which denied his request for administrative relief from the Board's revocation decision. The U.S. Supreme Court held that parole boards are not required by federal law to exclude evidence that has been obtained in violation of the Fourth Amendment. According to the Court, the application of the exclusionary rule would both hinder the functioning of state parole systems and alter the traditionally flexible, administrative nature of parole revocation proceedings. The court noted that the social costs of using the exclusionary rule to allow the parolee to avoid the consequences of his violation are compounded by the fact that parolees, particularly those who have already committed parole violations, are more likely to commit future criminal offenses than are average citizens. The parolee was required to refrain from owning or possessing weapons as a condition of his parole. Parole officers entered his home and found firearms, a bow, and arrows. (Pennsylvania Board of Probation and Parole)

U.S. Appeals Court
DNA

Shaffer v. Saffle, 148 F.3d 1180 (10th Cir. 1998). A state prisoner brought a pro se § 1983 action challenging the constitutionality of a state statute that required him to provide a deoxyribonucleic acid (DNA) sample for the compilation of a DNA Offender Database. The district court dismissed the action and the appeals court affirmed. The appeals court held that the prisoner's rights against unreasonable searches and seizures and self-incrimination had not been violated. The appeals court also held that the prisoner's rights under the Free Exercise Clause and the Ex Post Facto clause had not been violated. The court noted that the statute was neutral and generally applicable, and was not applied to him differently because of his religious belief. The court also noted that the legislature expressed its intent that the statute apply retroactively. (Mack Alford Center, Oklahoma)

U.S. District Court
URINE TEST

Thomas v. McBride, 3 F.Supp.2d 989 (N.D.Ind. 1998). A state prison inmate petitioned for habeas corpus relief challenging the loss of this good time credits at a disciplinary hearing. The district court denied the petition, finding that a valid chain of custody for a urine sample was established so as to satisfy due process. The court found that the inmate's claims that prison officials did not follow a state Department of Corrections executive directive on how an inmate urine sample is to be collected was not cognizable in habeas corpus. According to the court, a laboratory report which listed several drug classes, each of which was marked "negative" except for cannabinoids (THC) which was marked "positive," was constitutionally sufficient for the purpose of reporting test results used in a prison disciplinary action. (Westville Correctional Facility, Indiana)

U.S. Appeals Court
PAROLEES

U.S. v. Jones, 152 F.3d 680 (7th Cir. 1998). A defendant appealed his conviction in district court. The appeals court affirmed, finding that a warrantless search of a parolee's residence on "reasonable grounds" that occurred while the parolee was in state custody did not violate the Fourth Amendment. The parole officer who sought approval for the search while the inmate was in custody knew that the parolee was suspected of selling drugs from a vehicle, reportedly possessed a firearm with which he had threatened his former girlfriend, and was arrested in a car in which crack cocaine had been found. (Wisconsin Department of Corrections)

U.S. District Court
CELL SEARCH

Zimmerman v. Hoard, 5 F.Supp.2d 633 (N.D. Ind. 1998). A state prisoner brought a § 1983 action concerning events that occurred while he was a pretrial detainee at a county jail. The district court held that state directives and recommendations did not provide the basis for § 1983 claims. The inmate had alleged that the county officials failed to implement the Indiana Jail Standards and Rules and comply with the recommendations of the State Jail Inspector. The court held that the Fourth Amendment did not apply to cell searches. (Carroll County Jail, Indiana)

1999

U.S. District Court
STRIP SEARCH
OPPOSITE SEX

Carlin v. Manu, 72 F.Supp.2d 1177 (D.Or. 1999). Female state prison inmates challenged skin searches that were being observed by male correctional officers. The district court granted qualified immunity to the officers, noting this was not clearly identified as unlawful under existing law and that the observation was an isolated event caused by the emergency removal of the females to a male prison. The female facility was flooded and had to be evacuated, causing the female prisoners to be temporarily housed at a male facility. (Oregon Women's Correctional Center and Columbia River Correctional Institution, Oregon)

U.S. District Court
VISITOR SEARCHES

Chimurenga v. City of New York, 45 F.Supp.2d 337 (S.D.N.Y. 1999). A visitor to a juvenile detention facility filed at § 1983 and state law action against a city and corrections officials for false arrest, negligence and violation of her equal protection and due process rights following her arrest for allegedly attempting to smuggle contraband. The court granted summary judgment to the defendants in part and denied in part. The court held that the equal protection rights of the visitor were not violated and that an attorney did not have a liberty interest in access to a pass that would allow her to visit detainees in a juvenile detention facility, where there was no law or regulation that limited the discretion of the state corrections department to grant or deny a pass. But the court found that summary judgment was precluded by fact questions regarding whether correction officers planted a razor blade in a box brought by the visitor. (Adolescent Reception and Detention Center, Rikers Island, New York)

U.S. District Court
STRIP SEARCH
USE OF FORCE

Drummer v. Luttrell, 75 F.Supp.2d 796 (W.D.Tenn. 1999). An inmate brought a § 1983 action against corrections officials alleging that a disciplinary action violated her due process and Eighth Amendment rights. The district court held that strip-searching and handcuffing the inmate during a unit search did not constitute a due process violation because the action did not impose an atypical and significant hardship on her. The inmate had been strip-searched during a shakedown of her dormitory. After squatting and coughing twice the inmate refused a direct order to do so again and was disciplined. She then left a shower area dressed in nothing but her panties and two male officers were called for assistance. (Shelby County Correctional Center, Tennessee)

U.S. Appeals Court
OPPOSITE SEX
STRIP SEARCH
BODY CAVITY
SEARCH

Moore v. Carwell, 168 F.3d 234 (5th Cir. 1999). An inmate brought an in forma pauperis § 1983 suit against prison officials alleging that his First, Fourth and Eighth Amendment rights were violated by alleged multiple strip and body cavity searches performed by a female officer. The district court dismissed the case as frivolous and the inmate appealed. The appeals court affirmed in part, reversed and remanded in part. The appeals court held that the inmate's Fourth Amendment claim was not frivolous. According to the court, conducting strip and body cavity searches of a male prisoner by a female prison official, in the absence of an emergency or extraordinary circumstances and in the presence of male officers, would violate the inmate's Fourth Amendment right to be free from unreasonable searches and seizures. The inmate argued that his Baptist faith requires modesty and prohibits him from being viewed naked by a female other than his wife. (Beto I Unit, Texas Dept. of Criminal Justice)

U.S. Appeals Court
BLOOD TESTS

Roe v. Marcotte, 193 F.3d 72 (2nd Cir. 1999). Inmates challenged a statute requiring convicted sex offenders who were incarcerated as of the statute's effective date to submit a blood sample for analysis and inclusion in a DNA data bank. The district court dismissed the case and the appeals

court affirmed. The appeals court held that the statute did not violate the Fourth Amendment's prohibition against unreasonable searches and did not violate the equal protection clause. (Connecticut Department of Correction)

U.S. District Court
STRIP SEARCH

Shain v. Ellison, 53 F.Supp.2d 564 (E.D.N.Y. 1999). A detainee sued a county challenging its policy of strip searching all detainees regardless of the nature of the crime for which they were detained. The district court entered summary judgment in favor of the detainee, finding that the Fourth Amendment prohibited strip searches in the absence of reasonable suspicion that a detainee was concealing weapons or other contraband. The court held that the county's policy violated the Fourth Amendment and that a qualified immunity defense was not available as the unconstitutionality of the practice was known for years. (Nassau County Corr'l Center, New York)

U.S. Appeals Court
PAROLEES

U.S. v. Payne, 181 F.3d 781 (6th Cir. 1999). After a parolee was convicted of possession of marijuana and being a felon in receipt of firearms, the parolee challenged a Kentucky policy that authorized a parole officer to conduct a warrantless search of his person and property upon reasonable suspicion. The appeals court held that the policy satisfied the requirements of the Fourth Amendment but that evidence obtained by a parole officer in violation of the Fourth Amendment must be suppressed in a subsequent criminal proceeding. The appeals court found that the parole officer lacked reasonable suspicion to search the parolee's truck and the property of his estranged wife. The parolee had been placed under the maximum level of parole supervision, which meant he was required to have two office visits and one home visit with his parole officer each month. The parolee had also signed a statement acknowledging that he was "subject to a search and seizure if my Probation and Parole Officer [has] reasonable suspicion to believe that I may have illegal contraband on my property or person." (Kentucky)

U.S. District Court
CELL SEARCH
SEARCH WARRANT

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
CELL SEARCH

Ballance v. Virginia, 130 F.Supp.2d 754 (W.D.Va. 2000). A state prison inmate who was convicted of sexual crimes involving juveniles brought a § 1983 action against corrections officials alleging wrongful confiscation of photographs of children from his cell. The district court held that the confiscation complied with the First Amendment even though only a small percentage of photographs were of seminude children. The court noted that state officials provided minimum procedural safeguards, including notice of confiscation, provision of avenues for protest, and review of the prisoner's allegation of a First Amendment violation by someone who was not involved with the confiscation. The court found that the confiscation of all photographs served to further the prison's interests in both rehabilitation and institutional security because the possible discovery of the cache of photos by other prisoners created a potential for disturbance. According to the court, a prisoner has no Fourth Amendment right to be free from unreasonable searches of his cell because he has no expectation of privacy in his cell. (Wallens Ridge State Prison, Virginia)

U.S. District Court
CELL SEARCH

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
CELL SEARCH

Barstow v. Kennebec County Jail, 115 F.Supp.2d 3 (D.Me. 2000). A county jail inmate brought an action against a sheriff, detective, county commissioners and county, alleging claims under § 1983. The district court granted summary judgment, in part, for the defendants. The court held that the search of the inmate's jail cell did not violate his Fourth Amendment rights or his due process rights. The court found that the detective had probable cause to search the jail cell for evidence

that the inmate had committed the crime of terrorizing because his cell mate had informed potential victims and the detective about the inmate's possible retaliatory plans. According to the court, the Fourth Amendment does not require government officials to secure a search warrant prior to searching a prison cell. (Kennebec County Jail, Maine)

U.S. Appeals Court
VISITOR

Burgess v. Lowery, 201 F.3d 942 (7th Cir. 2000). Visitors who had been strip searched sued state prison officials under § 1983 seeking damages and injunctive relief. The district court denied the defendants' motion to dismiss and the appeals court affirmed. The appeals court held that the visitors' right not to be strip searched in the absence of reasonable suspicion that he or she was carrying contraband was clearly established. State prison regulations authorize strip searches of visitors only if the visitor consents *and* if there is reasonable suspicion that the visitor is carrying contraband. The visitors were the father and wife of inmates on death row and the court found that the state regulations applied indifferently to the visitors of death row inmates and to visitors of other inmates. (Illinois Department of Corrections)

U.S. District Court
STRIP SEARCH

Mason v. Village of Babylon, New York, 124 F.Supp.2d 807 (E.D.N.Y. 2000). An arrestee who was taken into custody based on a traffic warrant that was later determined to have been recalled, filed an action under § 1983 alleging false arrest and illegal search. The district court found that a no-contact partial strip search, incident to arrest violated the Fourth Amendment because neither the nature of the offense nor the circumstances of arrest raised any suspicion that would justify such an intrusion. The court noted that the unconstitutionality of a blanket strip-search policy had been well-established. The female arrestee was asked by a female arresting officer to lift her shirt, lower her pants, and rearrange her undergarments to dislodge any contraband that might be concealed. (Village of Babylon, Second Precinct, New York)

U.S. Appeals Court
STRIP SEARCH

Miller v. Kennebec County, 219 F.3d 8 (1st Cir. 2000). An arrestee brought a § 1983 action against an arresting officer, town, counties and county sheriffs alleging Fourth Amendment violations and state law claims arising out of her arrest and detention. The district court granted summary judgment for the defendants and the arrestee appealed. The appeals court affirmed in part and vacated and remanded in part. The appeals court held that the arresting officer was not entitled to qualified immunity because the warrant under which he brought the arrestee to jail explicitly directed that it was to be executed by bringing the defendant immediately before a sitting judge. The court also found that a fact question precluded summary judgment on the unreasonable strip search claim against the county where the arrestee was jailed. (Kennebec County and Knox County, Maine)

U.S. District Court
STRIP SEARCH

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. The officer had transported the arrestee to a state police barracks and conducted the strip search in a bathroom. (State Police Barracks in Brewster, New York)

U.S. District Court
STRIP SEARCH

Roberts v. Rhode Island, 175 F.Supp.2d 176 (D.R.I. 2000). A detainee brought an action against corrections officials challenging the constitutionality of policies that require all males committed to the state prison to be subjected to a strip search and visual body cavity search. The district court held that the policies were constitutionally deficient as applied to the detainee, who was searched while detained pursuant to an outstanding body attachment issued by a state family court. The court noted that the policies contained no language concerning what factors might give rise to reasonable suspicion that would permit a constitutional search, and that the policies were universally applied to all pre-arraignment detainees without any prior determination that there is a reasonable suspicion that the detainee may be carrying weapons or contraband. The detainee was searched upon initial admission to the facility and was searched again before being transported to court for arraignment. (Intake Services Center at the Adult Correctional Institution, Rhode Island)

U.S. Appeals Court
STRIP SEARCH
OPPOSITE SEX

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. Appeals Court
PAROLEES

U.S. v. Hebert, 201 F.3d 1103 (9th Cir. 2000). An offender appealed after the district court revoked an offender's supervised release based on methamphetimine found in a warrantless "parole search" of the offender's apartment. The appeals court affirmed, finding that the exclusionary rule would not be applied in a federal supervised release revocation hearing, even in the officers conducting the search lacked reasonable suspicion that the offender was involved in criminal activity. (United States District Court, Southern District of California)

U.S. District Court
STRIP SEARCH

Wilson v. Shelby County, Ala., 95 F.Supp.2d 1258 (N.D.Ala. 2000). A female arrestee who was strip searched before being placed in jail following her arrest on charges of driving under the influence sued county officials for damages. The district court denied the defendants' motion to dismiss, finding that the policy of strip searching all jail admittees, regardless of personal circumstances, violated the bodily privacy rights of the arrestee. The court held that the sheriff was not entitled to qualified immunity from suit. The arrestee was kept in an isolated cell with no opportunity to interact with the general population. The court noted that a strip search of an arrestee charged with a minor offense may be conducted only when there is a reasonable suspicion that the arrestee may be secreting drugs, weapons or other contraband on or in his or her body. The arrestee was an 18-year-old high school student who had been stopped at a drivers' license checkpoint and registered 0.08 percent blood alcohol. According to the arrestee, she was taken into a restroom by a female deputy and was ordered to strip, and then according to the arrestee "she checked my breasts and behind my ears and in my mouth and nose...and then she told me to squat and spread my butt apart and cough three times." (Shelby County Jail, Alabama)

2001

U.S. District Court
PAT SEARCH
CROSS GENDER

Colman v. Vasquez, 142 F.Supp.2d 226 (D.Conn. 2001). A female inmate placed in a special prison unit for victims of sexual abuse filed a § 1983 action against prison officials alleging that she was sexually abused by a male guard, and challenging the practice of having male guards conduct pat searches of female inmates. The district court denied the defendants' motions to dismiss, finding that fact issues remained. The court found that a male prison guard's repeated, involuntary, harassing and intimidating contact with a female inmate can constitute a substantial risk of harm under the Eighth Amendment, and that prison officials were required to investigate the female inmate's complaint that she had been sexually assaulted. (Federal Correctional Institution, Danbury, Connecticut)

U.S. District Court
STRIP SEARCH

Doan v. Watson, 168 F.Supp.2d 932 (S.D.Ind. 2001). Former inmates filed a § 1983 suit against a former and current sheriff, individually and in their official capacities, alleging unconstitutional strip search policies. The district court granted summary judgment in favor of the former inmates, finding that the jail policy of stripping inmates and requiring them to undergo a delousing procedure was an unreasonable search. According to the court, the policy authorized a blanket strip search without justification. The court noted that the Prison Litigation Reform Act (PLRA) did not require the former inmates to produce evidence of physical injury to pursue their claims. The inmates had been arrested for misdemeanor offenses and were subjected to intake searches before entering the general jail population. (Floyd County Jail, Indiana)

U.S. District Court
STRIP SEARCH

Gonzalez v. City of Schenectady, 141 F.Supp.2d 304 (N.D.N.Y. 2001). Male and female detainees sued a city claiming they were strip searched under an unconstitutional city policy. The district court held that the city policy of strip searching all detainees who were awaiting court action violated the Fourth Amendment. The court found that the police did not have reasonable suspicion to strip search a male detainee and a female detainee, who were charged with minor offenses. The court noted that the Fourth Amendment precludes strip or body cavity searches of arrestees charged with misdemeanors or other minor offenses unless officials have reasonable suspicion that the arrestee is concealing weapons or other contraband based on the crime charged, particular circumstances of the arrestee, or the circumstances of the arrest. (City of Schenectady, New York)

U.S. District Court
STRIP SEARCH

Lee v. Perez, 175 F.Supp.2d 673 (S.D.N.Y. 2001). An arrestee brought an action against a correctional officer, alleging he had been unconstitutionally strip searched. The district court entered a jury verdict in favor of the officer and the arrestee moved for reconsideration. The district court granted the motion, finding that there was insufficient evidence to support the jury's conclusion that the officer relied on permissible factors in making his decision to perform a body cavity search on the arrestee. According to the court, the officer testified that he had not considered the nature of the two misdemeanors with which the arrestee had been charged and could not identify any characteristic of the arrestee that led to his conclusion that the arrestee might have been carrying contraband. The arrestee had spent the night in a police holding cell and was arraigned in court the next morning. Bail was set at $250 but the arrestee was not allowed to post bail at the police station using money that had been in his possession at the time of his arrest. He was transported to the local jail where he was processed in. The intake process included a "personal hygiene check/visual body search" which consisted of having the arrestee

remove his clothes, followed by a visual inspection of his body. The officer contended that this hygiene check was not the same as a strip search because it did not require the inmate to open his mouth or bend over and spread his buttocks. (Orange County Correctional Facility, New York)

U.S. Appeals Court
EMPLOYEE

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
STRIP SEARCH

Shain v. Ellison, 273 F.3d 56 (2nd Cir. 2001). A misdemeanor detainee in a local correctional facility sued a county and various individuals, challenging the policy of requiring strip searches of all detainees regardless of the nature of the crime for which they were detained. The district court granted summary judgment for the detainee and awarded $1 in nominal damages. The appeals court affirmed in part and remanded in part. The appeals court held that the county's strip search policy violated the Fourth Amendment and its illegality was clearly established in 1995, but the detainee was not entitled to a new trial on the question of damages. The court noted that the searching officer did not have reasonable suspicion to conduct the search of the detainee, and that even if other officers had information that may have justified the search, the information was not relayed to the searching officer. (Nassau County Correctional Center, New York)

U.S. Supreme Court
PROBATIONS

United States v. Knights, 121 S.Ct. 1955 (2001). A sheriff's deputy, acting with reasonable suspicion, searched a probationer's apartment and found evidence later used to indict him for conspiracy to commit arson, for possession of an unregistered destructive device, and for being a felon in possession of ammunition. A federal appeals court ruled that the evidence gathered in this manner had to be suppressed, even with reasonable suspicion, because the search was for an investigatory rather than probationary purpose. The U.S. Supreme Court unanimously reversed the appeals court, finding that a warrantless search in this case, supported by reasonable suspicion and authorized by a probation condition, satisfied the Fourth Amendment. According to the Court, the judge in the probationer's criminal case had "reasonably concluded" that the condition of submitting to searches would further the two primary goals of probation--rehabilitation and protecting society from future criminal violations. No more than a reasonable suspicion, the Court found, was required to search the probationer's house, and a warrant is unnecessary. (California)

U.S. District Court
PAROLEES

U.S. v. Replogle, 176 F.Supp.2d 960 (D.Neb. 2001). In a prosecution for drug possession, the defendant moved to suppress evidence found in his house. The district court denied the motion, finding that while the defendant had a legitimate expectation of privacy in his house and the search was not voluntary, the warrantless search was valid because it was conducted pursuant to a valid probation order. The court noted that the defendant's probation officer was authorized to conduct warrantless searches and the probation order stated that the probationer "shall consent" to such searches. The probation officer knew that the defendant had violated a condition of his probation and a judge had advised the officer that she could visit the probationer and conduct a search. (U.S. District Court, Nebraska)

U.S. Appeals Court
STRIP SEARCH

Wilson v. Jones, 251 F.3d 1340 (11th Cir. 2001). A female arrestee brought a civil rights action against a county sheriff challenging her strip search following her arrest for driving under the influence. The district court denied the sheriff's motion to dismiss. The appeals court reversed. The appeals court held that the strip search violated the arrestee's Fourth Amendment privacy rights, but that the sheriff was entitled to qualified immunity because the unconstitutionality of the county's blanket strip search policy was not clearly established at the time of the search. The arrestee had been strip searched by a female corrections officer before being placed in a cell with the general female population because the county did not have separate facilities to temporarily hold female detainees. (Shelby County Jail, Alabama)

2002

U.S. Appeals Court
CELL SEARCH

Carter v. McGrady, 292 F.3d 152 (3rd Cir. 2002). A state prison inmate brought a pro se § 1983 action against prison officials alleging he was unlawfully subjected to cell searches and disciplinary proceedings in retaliation for his jailhouse lawyering, in violation of the First Amendment. The district court granted summary judgment in favor of the officials and the appeals court affirmed. The appeals court held that the disciplinary action taken by prison officials was reasonably related to legitimate penological interests, precluding the retaliation claim. The disciplinary action was taken in response to findings that the inmate had engaged in overt misconduct, including unauthorized use of a credit card, theft by deception, receiving stolen property, writing letters to inmates at other prisons, and storing paperwork in his cell in amounts

that exceeded safety regulations. The inmate had not been assigned to the law library to provide assistance to inmates, but was being paid by inmates for helping them. At one point the inmate produced documents that he alleged proved he had been appointed by the federal courts as a paralegal to assist other inmates. (State Correctional Institute at Mahoney, Pennsylvania)

U.S. Appeals Court
STRIP SEARCH

Cuesta v. School Bd. of Miami-Dade County, Fla., 285 F.3d 962 (11th Cir. 2002). A high school student sued a school board and a county under § 1983 alleging she was subjected to an unconstitutional strip search. The district court entered summary judgment for the school board and county and the student appealed. The appeals court affirmed, finding that there was reasonable suspicion to strip search the student. The student had distributed, with eight other students, an anonymous pamphlet on school grounds that included an essay in which the author "wondered what would happen" if he shot the principal, teachers or other students. The students were arrested for hate crime violations and transported to juvenile and adult detention facilities, depending on their ages. The plaintiff student, who was over 18 years old, was booked and strip searched at an adult detention facility pursuant to a policy that required the search of all newly-arrested felons. (Turner Guildford Knight Correctional Facility, Metro-Dade County, Florida)

U.S. Appeals Court
STRIP SEARCH

Dye v. Lomen, 40 Fed.Appx. 993 (7th Cir. 2002). A state prisoner brought § 1983 claims against correctional employees, alleging they used excessive force against him during two entries into his cell, that they refused to provide him with toilet paper for several days, and that they strip-searched him in front of a female employee. The district court granted summary judgment in favor of the correctional employees and the appeals court affirmed. The appeals court held that correctional officials did not use excessive force when they physically and mechanically restrained the prisoner and used a stun gun against him during two cell entries. The appeals court found that the failure to provide the prisoner with toilet paper for several days did not violate the prisoner's rights, absent proof that the officials deprived him of toilet paper to unnecessarily and wantonly inflict pain upon the prisoner. The appeals court held that strip-searching the male prisoner in front of female employees did not constitute cruel and unusual punishment. (Kettle Moraine Correctional Institution, Wisconsin)

U.S. District Court
RETALIATION

Farid v. Goord, 200 F.Supp.2d 220 (W.D.N.Y. 2002). An inmate brought a § 1983 action against correctional officers and prison officials, alleging free speech and procedural due process violations under the First and Fourteenth Amendments. The district court granted summary judgment, in part, for the defendants. The court held that the inmate, who had circulated a petition, engaged in protected conduct even though the prison had a grievance process that could have been used. The petition concerned allegations that an officer failed to allow inmates adequate time to finish their breakfast. The court noted that no regulation barring petitions was in effect at the time. The court denied summary judgment on the issue of whether the inmate's right to petition the government and right to free speech were violated by officers when they determined, independent of the facility's media review committee, that a copy of the petition the inmate had sent to the prison superintendent was unauthorized, and that two satirical articles written by the prisoner, one of which was published by local news media, were detrimental to the order of the facility. The court denied qualified immunity to officers on the inmate's retaliation claim, finding that the inmate's right not to suffer retaliation for engaging in protected First Amendment activities was clearly established at the time of the alleged retaliation. The inmate alleged that the officers retaliated with searches of his cell and work area, and with disciplinary charges for authoring and possessing certain articles. (Attica Correctional Facility, New York)

U.S. Appeals Court
STRIP SEARCH
PRIVACY

Farmer v. Perrill, 288 F.3d 1254 (10th Cir. 2002). A female federal prisoner brought a civil rights action against prison officials, alleging Fourth Amendment violations arising from strip searches. The district court denied summary judgment for the officials and refused to dismiss the action. The appeals court affirmed, finding that the prisoner's right not to be subjected to a humiliating strip search in full view of several others was "clearly established" at the time of the search in question. The court held that summary judgment was precluded because genuine issues of material fact existed as to whether prison officials had a legitimate penological need to conduct the strip search of the prisoner in an open area and in view of inmates and staff. According to the court, while a prison inmate's right to privacy must yield to a prison's need to maintain security, "it does not vanish altogether." (Englewood Federal Correctional Facility, Colorado)

U.S. Appeals Court
CELL SEARCHES

Foster v. Lawson, 291 F.3d 1050 (8th Cir. 2002). A state prison inmate brought § 1983 action alleging that corrections officials violated his Fourth Amendment rights by searching his legal materials in his absence. The district court entered judgment for the officials and the appeals court affirmed. The appeals court held that the officials' removal of a locker box containing both legal and non-legal materials, in order to separate the materials, outside of the presence of the inmate, did not violate a consent decree that allowed inmates to be present for searches of legal materials. (Iowa)

U.S. District Court
CELL SEARCH
CONTRABAND

Giba v. Cook, 232 F.Supp.2d 1171 (D.Or. 2002). A state prisoner brought a § 1983 action, alleging various constitutional violations. The district court granted summary judgment in favor of the defendants, finding that prison officials reasonably interpreted a rule proscribing the possession of legal materials belonging to another inmate as including both copies and originals of such materials. The court held that the prisoner was not denied access to the courts and that his First

Amendment rights were not violated when prison staff seized contraband contained in a box clearly labeled "confidential- legal matters" while the prisoner was not present. The court noted that although a prison officer scanned the contents of the box, he only confiscated contraband. The prisoner alleged that he had been given permission by another inmate to use copies of his legal papers in his own lawsuit. (Two Rivers Correctional Institution, Oregon)

U.S. District Court
STRIP SEARCH

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 Amend-ment 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. (United States Marshals Service)

U.S. District Court
STRIP SEARCH

Loeber v. County Of Albany, 216 F.Supp.2d 20 (N.D.N.Y. 2002). An arrestee who was strip searched several times after being arrested brought an action under § 1983, alleging numerous constitutional violations and state law claims. The arrestee had been arrested pursuant to a contempt order that was later expunged. The district court held that the county jail's strip search policy was constitutional. The policy only called for strip searches upon admission to the jail where there was a reasonable suspicion that the arrestee possessed contraband, including the cigarettes and candy that the arrestee had in his possession. The court noted that the Fourth Amendment prohibits a blanket policy under which all misdemeanor or minor offense arrestees are strip-searched when admitted to a jail. The court found that a strip search could also be conducted based on the crime charged, the particular characteristics of an arrestee, and/or the circumstances of the arrest. The arrestee had been strip searched when he was admitted to a courthouse holding cell, again when he was admitted to the county jail, and once again when he was taken to a Special Housing Unit for possessing cigarettes and candy, which were considered to be contraband. (Albany County Penitentiary, New York)

U.S. District Court
STRIP SEARCH

Murcia v. County of Orange, 185 F.Supp.2d 290 (S.D.N.Y. 2002). An arrestee who was, according to the court, "the unfortunate victim of mistaken identity" was arrested by city police officers who believed he was the same person named in a federal arrest warrant. The arrestee brought a § 1983 claim because he was subjected to one strip search at the city police department and three subsequent strip searches at a county correctional facility. The district court granted the arrestee's motion to amend his complaint, dropping false arrest claims but allowing the strip search claims to continue. The court noted that if the county sheriff's alleged policy of strip-searching every arriving prisoner existed, it was clearly unconstitutional and there could be no qualified immunity defense. (Orange County Correctional Facility, New York)

U.S. District Court
STRIP SEARCH
BODY CAVITY SEARCH
PRETRIAL DETAINEE

Murcia v. County of Orange, 226 F.Supp.2d 489 (S.D.N.Y. 2002). A detainee filed a § 1983 action alleging that a county violated his constitutional rights by strip searching him, under a policy of strip searching all detainees upon arrival at the correctional facility. The district court granted qualified immunity for the county sheriff, finding that the detainee's right to be free from strip searches without reasonable suspicion was not clearly established at the time. The court noted that the county's policy of subjecting all new felony detainees to visual body cavity searches required further scrutiny, although such searches for misdemeanor detainees had been clearly established as unconstitutional in 1994. (Orange Co. Corr'l Facil., New York)

U.S. Appeals Court
CROSS GENDER
STRIP SEARCH
PAT SEARCH

Oliver v. Scott, 276 F.3d 736 (5th Cir. 2002). A male prisoner brought a civil rights suit against a prison warden, correctional officers, and private contractors who operated a state jail facility, alleging constitutional violations arising from cross-gender surveillance and strip searches, and the absence of partitions in male shower areas. The district court dismissed a portion of the complaint for failure to state a claim and entered summary judgment in favor of the defendants for the remaining issues. The prisoner appealed and the appeals court affirmed. The appeals court held that any minimal right to bodily privacy possessed by the male prisoner did not preclude cross-gender surveillance and that such surveillance, in the absence of partitions in the male shower area, did not violate the prisoner's equal protection rights. The court noted that fundamental implied rights-—marriage, family procreation, and the right of bodily integrity—-do not include a right of prisoners to avoid surveillance by members of the opposite sex. According to the court, the existence of privacy partitions in female inmates' showers and the absence of male guard surveillance of female inmates did not violate the equal protection rights of the male prisoner because male prisoners were not similarly situated to female prisoners due to their conviction for more violent crimes, larger numbers, and higher incidence of violent gang activity and sexual predation. The court found that the prisoner's complaint did not identify a specific unconstitutional policy that correctional officers allegedly violated by engaging in cross-gender strip searches and monitoring of prisoners. (Dawson State Jail Facility, Texas)

U.S. District Court
STRIP SEARCHES
JUVENILE

Reynolds v. City of Anchorage, 225 F.Supp.2d 754 (W.D.Ky. 2002). A juvenile filed a suit against a juvenile officer under § 1983, alleging that the officer and others violated her constitutional rights during a warrantless strip search of her and four other juveniles at a juvenile facility. The district court granted summary judgment in favor of the defendants. The court held that at the time the juvenile was strip searched, it was not clearly established that a search warrant supported by probable cause was required to constitutionally strip search a minor suspected of possessing drugs in a juvenile home or detention center. Each girl had been searched one at a time, in her own room, with a female staff member present. (Bellewood Presbyterian Home for Children, Fayette County, Kentucky)

U.S. Appeals Court
DRUG TEST

Saulsberry v. Arpaio, 41 Fed.Appx. 953 (9th Cir. 2002). A detainee brought an action against a county sheriff alleging violation of his Fourth and Eighth Amendment rights. The district court entered judgment for the sheriff and the appeals court affirmed. The appeals court held that a physician working for the sheriff's office ordered catheterization and drug screening for the detainee solely for medical purposes, not for any administrative or investigative reasons, and therefore the tests did not violate the Fourth Amendment. (Maricopa Co. Sheriff's Office, Arizona)

U.S. District Court
BODY CAVITY

Seaver v. Manduco, 178 F.Supp.2d 30 (D.Mass. 2002). State inmates filed a § 1983 action alleging that corrections officials harassed them because of their status as sex offenders, and conducted retaliatory visual body cavity searches. The district court dismissed the action, finding that injunctive relief was not warranted, the inmates' claims for money damages based on harassment were barred by the Prison Litigation Reform Act (PLRA) and that officials were entitled to qualified immunity from liability for the searches. The court noted that the PLRA barred claims for mental or emotional injury without a showing of physical injury and that correctional officers had reasonable justification for conducting a visual body cavity search of the inmates where they were responding to a prison alarm because of what appeared to be a fight. The inmates alleged that staff members had posted a sign that stated "All sex offenders should be castrated" and that they were subjected to assaults from other prisoners as a result of the signs. (North Central Correctional Institution, Massachusetts)

U.S. District Court
SAME-SEX SEARCH
STRIP SEARCH

Turner v. Kight, 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 com-plaints 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 de-tainee'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 dur-ing the six hours the detainee was confined. The court held that if a strip search was conducted by an officer of the same sex during the processing of the detainee, it did not rise to the level of a Fourth Amendment violation, where the search was conducted in private and there was no physical contact between the officer and the detainee. (Montgomery County Detention Ctr., Maryland)

U.S. District Court
STRIP SEARCH

Turner v. Kight, 217 F.Supp.2d 680 (D.Md. 2002). A detainee who was arrested on an outstanding warrant brought a civil rights and state tort suit arising out of her arrest and the conditions of her detention. The district court held that the detainee was entitled to reconsideration of the court's determination that she was a "pretrial detainee" at the time of an allegedly unconstitutional strip search. The detainee claimed that she was a "temporary detainee" at the time of the search, which exempted her from a strip search according to county jail policy. (Montgomery County Detention Center, Maryland)

U.S. Appeals Court
PROBATIONERS
PAROLEES

U.S. v. Reyes, 283 F.3d 446 (2nd Cir. 2002). A federal offender who was serving a term of supervised release appealed denial of his motion to suppress evidence that was identified during a home visit by probation officers. The appeals court held that the offender had a severely diminished expectation of privacy, making it reasonable and lawful for probation officers to walk on to his driveway during a required home visit and to observe what they may see in plain view. The court noted that terms of the offender's supervised release mandated home visits "at any time." (U.S. District Court, Northern District of New York)

U.S. Appeals Court
PAROLEES

U.S. v. Tucker, 305 F.3d 1193 (10th Cir. 2002). A defendant convicted of possession of child pornography appealed his conviction, challenging a warrantless parole search. The district court held that the parole search was supported by reasonable suspicion and that seizure of the defendant's computer was justified under the plain-view doctrine. The court noted that probable cause is not required for a parole search that is conducted under a valid parole agreement and that the defendant had agreed to allow searches of his residence, diminishing his expectation of privacy. (Utah Department of Corrections)

U.S. Appeals Court
CELL SEARCH

Willis v. Artuz, 301 F.3d 65 (2nd Cir. 2002). A state prisoner sued prison officials, alleging violation of his Fourth Amendment rights as the result of a warrantless search of his cell. The district court dismissed the action and the appeals court affirmed. The appeals court held that the warrantless search, conducted at the request of police who were seeking evidence of an uncharged crime, did not violate the prisoner's right to be free of unreasonable searches, even though the search did not serve any purpose related to prison security, because the prisoner was a convicted offender, not a pretrial detainee. (Green Haven Corr'l Facility, New York)

2003

U.S. Appeals Court
STRIP SEARCH
OPPOSITE SEX
PRIVACY

Calhoun v. Detella, 319 F.3d 936 (7th Cir. 2003). A male state prisoner sued prison employees under § 1983, alleging that a strip search conducted in the presence of female officers violated his Eighth Amendment rights. The district court dismissed the case for failure to state a claim and the prisoner appealed. The appeals court affirmed in part, and vacated and remanded in part. The appeals court held that the prisoner's allegations stated an Eighth Amendment claim. The prisoner alleged that he was strip searched in front of female officers, that the officers made explicit gestures during the search and forced him to perform sexually provocative acts, and that the female officers were invited spectators. The appeals court also held that the Civil Rights of Institutionalized Persons Act (CRIPA) that barred federal civil actions by prisoners for mental or emotional injuries without a showing of physical injury, did not foreclose an action for nominal or punitive damages for violations that did not involve a physical injury. (Stateville Correctional Center, Illinois)

U.S. District Court
STRIP SEARCH

Dodge v. County of Orange, 282 F.Supp.2d 41 (S.D.N.Y. 2003). A suit sought a permanent injunction against a county jail's policy of strip searching newly arrived pretrial detainees upon their initial admission. The district court held that the policy, in its initial form and in two subsequent revisions, violated the Fourth Amendment to the extent that it allowed a strip search without individualized reasonable suspicion that a detainee was carrying contraband. The court granted a permanent injunction against the unconstitutional aspects of the policy. The banned policy allowed strip searches for factors such as being a known gang member or having prior escape charges. (Orange County Correctional Facility, New York)

U.S. Appeals Court
DRUG TEST

Estate of Allen v. City of Rockford, 349 F.3d 1015 (7th Cir. 2003). A pretrial detainee sued a city and several police officers under § 1983, alleging due process violations stemming from unwanted medical treatment received at a hospital following her arrest for driving under the influence of drugs. The district court granted summary judgment in favor of the defendants. The appeals court affirmed. The appeals court held that the officers owed the detainee a duty of care and safety during the time that the detainee was at the hospital, and that the officers' failure to intervene with the forcible medical treatment of the detainee did not violate her due process rights. The officers had taken the detainee to a hospital for the purpose of obtaining a urine sample. An emergency room physician stated that the detainee was not competent to make medical decisions regarding her health and might suffer a potentially life-threatening drug overdose if a drug screen was not conducted. The officers did not prevent the forcible extraction of blood and urine samples. (City of Rockford, Illinois)

U.S. District Court
DNA

Jimenez v. New Jersey, 245 F.Supp.2d 584 (D.N.J. 2003). An arrestee whose charges were subsequently dropped, brought a state court action alleging violation of his constitutional rights and various state court claims. The case was removed to the federal district court, where it was dismissed. The district court held that the arrestee had no due process right to pre-trial DNA testing, and therefore officers could not be held liable under § 1983. The arrestee had been held for 22 months, during which time he asked for DNA testing, asserting it would prove him innocent of the charges. (Atlantic County, New Jersey)

U.S. District Court
CELL SEARCH

Koger v. Snyder, 252 F.Supp.2d 723 (C.D.Ill. 2003). A state prisoner brought an action alleging violation of his rights in connection with the search and seizure of various documents in his cell, and his subsequent transfer to a different prison. The district court held that the search of the prisoner's cell and the seizure of documents did not violate the Fourth Amendment, where the search was undertaken when homemade weapons were found in another nearby cell, and other cells in the same area of the prison were searched. The court found that the prisoner's writings related to jail house lawyering were not entitled to any greater protections than other inmate-to-inmate communications. According to the court, the prisoner did not have a constitutionally protected right to remain in a particular prison and his lateral transfer to another prison, based on a warden's legitimate penological reasons, did not violate the prisoner's rights. The warden transferred the prisoner to send a message to the prison population that violation of the excess property rules would not be tolerated. (Danville Correctional Center, Illinois)

U.S. District Court
VISITOR SEARCHES
BODY CAVITY

Lynn v. O'Leary, 264 F.Supp.2d 306 (D.Md. 2003). An arrestee sued state prison officials, alleging that he was subjected to an unlawful arrest, excessive force, and an illegal cavity search. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that officials were not entitled to governmental official immunity, under state law, in light of allegations that the officials acted with malice or were grossly negligent when they allegedly searched the arrestee's cavities while he was attempting to visit his son, after the

officials informed the arrestee that a drug dog had falsely alerted on him. The arrestee had arrived at a state prison with his wife, intending to visit his son who was an inmate. While he was waiting to be admitted to the visiting area, a search dog was brought into the area and canvassed the room on a long leash. The dog gave a positive alert for drugs and the arrestee was subjected to a pat down search and his visitor locker was searched. No drugs were found on his person or in his locker and he was told that the dog had made a false alert. But he was not allowed to visit, and waited in lobby while his wife visited their son. After the visit prison officials ordered the arrestee into a side room where his wife heard him scream in pain. He informed the officials that he suffered from a medical condition. He was informed that he was under arrest and that he would be subjected to a strip and body cavity search, and the arrestee demanded that a warrant be produced. His clothes were forcibly removed and no contraband was found. $2,000 was taken from his wallet and divided among the prison officials. His person was then searched, including a body cavity examination. While he was dressing after the search one officer jerked up the arrestee's left leg, causing him to fall off a chair and hit his head against a wall, and he was knocked unconscious. He was taken to a hospital where he was found to be suffering from a contusion to his brain, and injury to his back, shoulder and arm. He was permanently banned from visiting his son. (Maryland House of Corrections Annex, Jessup, Maryland)

U.S. District Court
BODY CAVITY

Omar v. Casterline, 288 F.Supp.2d 775 (W.D.La. 2003). A detainee brought a *Bivens* suit alleging that federal prison officials subjected him to an unconstitutional search and failed to accommodate his religious needs. The district court held that a body cavity search conducted upon the detainee's arrival at a federal institution did not violate the Fourth Amendment, even though a female officer was present and officers allegedly ridiculed the detainee during the search. The district court denied summary judgment for the defendants on the detainee's religious claims. The detainee alleged that he informed the facility chaplain about his dietary restrictions, was served pork, could not see a clock from his cell, and was misinformed about the starting date of Ramadan. (United States Penitentiary, Pollock, Louisiana)

U.S. District Court
DNA

Padgett v. Ferrero, 294 F.Supp.2d 1338 (N.D.Ga. 2003). Convicted felons brought an action for injunctive relief seeking to have a Georgia law requiring DNA sampling of all convicted felons declared unconstitutional. The district court granted summary judgment in favor of the defendants. The court held that the DNA sampling law was not an unreasonable search and seizure, did not violate the convicted felons' privacy rights, did not violate the ex post facto clause, and did not violate due process. (George Department of Corrections)

U.S. District Court
STRIP SEARCH

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
BODY CAVITY
PRIVACY

Roland v. Murphy, 289 F.Supp.2d 321 (E.D.N.Y. 2003). A female county inmate sued corrections officers under § 1983 alleging that they improperly subjected her to a body cavity search. The district court denied the officers' motion for judgment on the pleadings, finding that the inmate had complied with the requirements of the Prison Litigation Reform Act (PLRA) by informally exhausting administrative remedies. The court noted that the inmate had informed sheriff's department internal affairs staff and the district attorney's office about the allegedly illegal search, triggering investigations that recommended dismissal of her case. The inmate alleged that she was subjected to a body cavity search that was conducted in an inappropriate manner at an inappropriate location. The inmate admitted that officers discovered contraband during a search of her cell and that she had attempted to hide contraband pills in her underpants in the past. She did not contest the necessity for the search, but objected to the manner in which it was conducted. The inmate claimed that the search was conducted in her cell by four female officers, in full view of three male officers who observed her private parts and made related crude remarks. (Nassau County Correctional Center, New York)

U.S. District Court
BODY CAVITY

Skundor v. McBride, 280 F.Supp.2d 524 (S.D.W.Va. 2003). An inmate brought claims against corrections officials, challenging visual body cavity searches. The district court granted summary judgment in favor of the defendants. The court held that the prison practice of performing visual body cavity searches when dangerous, sequestered prisoners left a recreation area, was rationally related to the legitimate penological objective of staff safety and did not violate the prisoners' Fourth Amendment rights. The court noted that there was a potential for the exchange of weapons in the recreation area, and that prisoner privacy was addressed by using only male staff to perform the searches, and positioning the staff between the inmate and anyone else who might view him. According to the court, the searches were an efficient way to steadily process the large number of inmates seeking recreation, and there were no readily available alternatives to the recreation yard searches. (Mount Olive Correctional Center, West Virginia)

U.S. Appeals Court
BODY CAVITY SEARCH
PRIVACY

Stewart v. Lyles, 66 Fed.Appx. 18 (7th Cir. 2003). [unpublished] A state inmate brought suit under § 1983 alleging that prison officers violated his constitutional rights by conducting a strip search in a public place, and then escalating the invasiveness of the search when he complained. The district court dismissed the complaint and recorded a "strike" against the inmate under the in forma pauperis statute. The inmate appealed and the appeals court vacated and remanded. The court held that the inmate stated a valid Eighth Amendment claim by alleging that the body cavity searches were not motivated by security or compliance concerns, but instead grew out of a malicious desire to harass him. The court also found that the inmate stated a retaliation claim under the First Amendment by alleging that officers singled him out for body cavity searches because he protested allegedly improper strip searches. (Stateville Correctional Center, Illinois)

U.S. District Court
STRIP SEARCH

Thomas v. City of Clanton, 285 F.Supp.2d 1275 (M.D.Ala. 2003). A detainee brought a § 1983 action alleging that he was subjected to an unconstitutional strip search, and that he had been subjected to sexual harassment while confined. The district court granted summary judgment in favor of the defendants. The court held that the strip search violated the detainee's Fourth Amendment rights, but that officials were not liable for the unwarranted strip search conducted by an officer. The court also held that a single complaint of sexual misconduct against an officer did not put the police department on notice of the need for increased supervision of the officer. The detainee was a passenger in a car in which marijuana was found, but the driver's wife had told the arresting officer that the marijuana belonged to the driver. There was no reasonable suspicion that the detainee was concealing a weapon, but he was subjected to a strip search anyway. The detainee had been taken to the police station where he was never booked, but was subjected to a strip search that was conducted in a bathroom. The detainee was then taken to the officer's home where the officer discussed oral sex. The detainee fled from the officer's home. The court noted that the officer's violation of the detainee's rights was deliberate, and that no amount of training would have prevented the violation. The court also noted that the police chief had attempted to investigate an earlier complaint of sexual misconduct lodged against the officer. (City of Clanton, Alabama)

U.S. Appeals Court
PROBATIONERS

U.S. v. Brown, 346 F.3d 808 (8th Cir. 2003). A defendant appealed his conviction for possessing cocaine with the intent to distribute. The appeals court affirmed the conviction, finding that the search of the defendant's residence did not violate the Fourth Amendment. According to the court, a probation officer had reasonable suspicion that the defendant was subject to a probationary search condition and was violating the terms of his probation, so that the search of his residence conducted by the probation officer with the assistance of drug task force agents was appropriate. (Arkansas)

U.S. District Court
DNA

U.S. v. Stegman, 295 F.Supp.2d 542 (D.Md. 2003). The government filed a notice of violation of conditions of supervised release after an offender refused to comply with a probation officer's order to submit a blood specimen pursuant to the DNA Analysis Backlog Elimination Act. The offender moved to dismiss the case and the district court denied the motion. The court held that the application of the Act did not violate the Ex Post Facto Clause, did not violate the Fourth Amendment, did not violate the separation of powers doctrine, and did not violate the offender's double jeopardy rights. (Maryland)

U.S. Appeals Court
DNA

Velasquez v. Woods, 329 F.3d 420 (5th Cir. 2003). A prisoner brought a civil rights action challenging the collection of a DNA sample by prison officials, as part of registration for a DNA database pursuant to state law. The district court dismissed the complaint as frivolous and the prisoner appealed. The appeals court affirmed, finding that the collection of the DNA sample from the prisoner did not violate the prisoner's Fourth Amendment rights. The court also held that officials did not violate the prisoner's due process rights by refusing to expunge false information from his prison record. (Texas)

U.S. District Court
DNA

Vore v. U.S. Dept. of Justice, 281 F.Supp.2d 1129 (D.Ariz. 2003). A federal prisoner who was forced to provide a DNA sample under the DNA Analysis Backlog Elimination Act of 2000, sought declaratory and injunctive relief, alleging that the Act violated his rights under the ex post facto clause and under the Fourth and Fifth Amendments. The district court held that non-consensual extraction of DNA from the prisoner was required under the Act, which did not violate the prisoner's Fifth Amendment self-incrimination rights, his Fifth Amendment due process rights, nor the ex post facto clause. (U.S. District Court, Arizona)

U.S. Appeals Court
STRIP SEARCH

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)

U.S. District Court
PRETRIAL DETAINEE
STRIP SEARCH

Wood v. Hancock County, 245 F.Supp.2d 231 (D.Me. 2003). A misdemeanor arrestee brought a civil rights action against a county and county officials, alleging he was subjected to unconstitutional strip searches while in jail. The district court denied the defendants' motions for judgment on the pleadings or for summary judgment. The court held that the arrestee stated a claim, precluding judgment on the pleadings. The court found that summary judgment was precluded by genuine issues of fact as to whether the jail policy of strip searching misdemeanor arrestees after contact visits was reasonable, and whether the jail had a custom of conducting strip searches upon admission. The court noted that further proceedings were needed to determine if it was a "custom" to strip search misdemeanor arrestees without reasonable suspicion that an arrestee harbored contraband or weapons, and that evidence suggested that officers did not comply with recording requirements for strip searches. (Hancock County Jail, Maine)

U.S. Appeals Court
STRIP SEARCH
VISIT

Wood v. Hancock County Sheriff's Dept., 354 F.3d 57 (1st Cir. 2003). A jail inmate sought damages under § 1983, alleging he was unconstitutionally strip searched on three separate occasions by correctional officers. The district court entered judgment in favor of the defendants and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded for a partial new trial. The appeals court held that a jury instruction that incorrectly defined a strip search, improperly limited the jury's deliberations on the nature of the searches of the misdemeanor detainee. The court found the district court's use of the term "deliberate," when describing a strip search, unduly directed the jurors to the officers' subjective intent, and that other elements of the definition (scrutiny of the mouth and armpits) were not prerequisites for finding that a strip search took place. The court noted that an individual detained on a misdemeanor charge may only be strip searched as part of the booking process if officers have reasonable suspicion that he is either armed or carrying contraband. According to the court, a blanket policy of strip-searching inmates after contact visits is constitutional, except in atypical circumstances. (Hancock County Jail, Maine)

2004

U.S. District Court
EMPLOYEE
VISITOR

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. District Court
STRIP SEARCH

George v. City of Wichita, 348 F.Supp.2d 1232 (D.Kan. 2004). An arrestee brought a § 1983 action against a city and a city detective alleging violations of his constitutional rights. The district court granted summary judgment in favor of the defendants. The court held that the strip search to which the arrestee was subjected after being arrested for a violent felony and booked into jail, did not violate his Fourth Amendment or due process rights. There was no evidence that the arrestee was subjected to anything beyond a visual examination or that he was intrusively touched by jail officials as part of the search. The court noted that the search was apparently conducted in an appropriate room and in an appropriate manner, and that the facility had a legitimate interest in preventing detainees charged with violent felonies from bringing weapons or contraband into the facility. (Sedgwick County Detention Facility, Kansas)

U.S. Appeals Court
DNA

Green v. Berge, 354 F.3d 675 (7th Cir. 2004). State prison inmates brought a Fourth Amendment challenge to a state law requiring those who were convicted of felonies to furnish DNA samples for storage in a data bank. The district court dismissed the action and the inmates appealed. The appeals court affirmed, finding that the state law comported with the Fourth Amendment's reasonable requirement under the "special needs" doctrine. The court noted that the inmates had no misunderstanding about the purpose of the samples or their potential use, and that the law was narrowly drawn and served an important state interest. (Wisconsin Supermax Penitentiary)

U.S. Appeals Court
DNA

Groceman v. U.S. Dept. of Justice, 354 F.3d 411 (5th Cir. 2004). Prisoners convicted of armed robberies sought to enjoin federal entities from collecting and retaining samples of their DNA under the provisions of the DNA Analysis Backlog Elimination Act. The district court dismissed the complaint for failure to state a claim and the prisoners appealed. The appeals court affirmed,

finding that persons incarcerated after conviction retain no constitutional privacy interest against their correct identification. The court found the DNA Act to be reasonable under the Fourth Amendment. (United States District Court for the Northern District of Texas)

U.S. District Court
BODY SEARCH
PRIVACY

Lay v. Porker, 371 F.Supp.2d 1159 (C.D.Cal. 2004). A state prison inmate brought a pro se § 1983 Fourth Amendment action against a corrections officer, alleging that he had been subjected to an overly intrusive body search in the presence of a female officer. The district court granted summary judgment in favor of the officer. The court held that the officer's alleged subjection of the inmate to a needlessly intrusive unclothed body cavity search in the presence of a female officer violated the Fourth Amendment, but the officer was entitled to qualified immunity because there was no clearly established right of inmates to be free from bodily exposure to officers of the opposite sex at the time of the search. (California Men's Colony)

U.S. Appeals Court
PRIVACY
STRIP SEARCHES

Mills v. City of Barbourville, 389 F.3d 568 (6th Cir. 2004). An arrestee brought a § 1983 action claiming that her constitutional rights were violated when a male jailer saw her bare chest during a search at the jail after her arrest. The district court dismissed some of the defendants and granted summary judgment in favor of the remaining defendants, and the arrestee appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the fact that a male jail employee may have seen the arrestee's bare breasts accidentally as he was walking by while the arrestee was being searched, was not a Fourth Amendment violation in the absence of any evidence that either the normal search policy was unconstitutional or that the search was carried out in an unconstitutional manner. The court noted that the search was conducted by female jailers. (Knox County Jail, Kentucky)

U.S. Appeals Court
PAROLEES

Moore v. Vega, 371 F.3d 110 (2nd Cir. 2004). A homeowner brought a § 1983 action against state parole officers, alleging that the officers violated her Fourth Amendment right to be free from unreasonable searches when they entered her home without a warrant to search for an absconded parolee who they had been informed was residing there. The district court denied the officers' motion for summary judgment based on qualified immunity and they appealed. The appeals court vacated and remanded with instructions. The appeals court held that the officers' warrantless entry into the homeowner's residence was unreasonable and violated the homeowner's rights, but the officers were entitled to qualified immunity because they were entitled under the "special needs" doctrine and state parole rules and regulations to search the home of a parolee without probable cause or a warrant. (Division of Parole, State of New York)

U.S. Appeals Court
STRIP SEARCH
JUVENILE

N.G. v. Connecticut, 382 F.3d 225 (2nd Cir. 2004). Parents of two female juveniles brought a suit under § 1983 for damages and injunctive relief, alleging that strip searches of the juveniles in juvenile detention facilities violated their Fourth Amendment rights. After a bench trial, the district court dismissed the complaint. The juveniles appealed. The appeals court vacated and remanded. The appeals court held that strip searches conducted on female juveniles after their transfer from one detention facility to another were unlawful because they were undertaken after the juveniles had been initially searched and had remained in custody. The court found that a strip search of a juvenile to determine whether the juvenile had taken a missing pencil required reasonable suspicion that the juvenile possessed the pencil. The court held that strip searches performed upon juveniles' initial admission to state detention facilities did not violate the Fourth Amendment because the state had an enhanced responsibility to take reasonable action to protect them from hazards resulting from the presence of contraband, even though they had not been convicted of any crime and were not confined awaiting trial on criminal charges. (Girls Detention Center, Connecticut)

U.S. District Court
STRIP SEARCH
BODY CAVITY
SEARCH

Powell v. Cusimano, 326 F.Supp.2d 322 (D.Conn. 2004). A former state prisoner brought a civil rights action against eight employees of the state corrections department. The district court entered summary judgment in favor of the employees. The court held that a corrections department administrative directive requiring that a strip and visual body cavity search be conducted upon placement in a restrictive housing, protective custody or close custody unit, was reasonable on its face. The court also held that the strip search of the prisoner when he was placed in restrictive housing was reasonably conducted, where the search was not accompanied by verbal abuse and the number of officers present during the strip search was not excessive in light of the prisoner's prior resistance to the escort to segregation. (Walker Reception and Special Management Unit, Connecticut)

U.S. Appeals Court
STRIP SEARCH

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, N.Y.)

U.S. District Court
STRIP SEARCHES
JUVENILE

Smook v. Minnehaha County, 340 F.Supp.2d 1037 (D.S.D. 2004). Former detainees at a county juvenile detention center brought a § 1983 action challenging the center's policy of strip-searching all juveniles admitted to the facility, regardless of the seriousness of the charged offense or the existence of suspicion. The court granted partial summary judgment in favor of the detainees. The court held that the suspicionless strip-searches of all juveniles could not be based on the officials' state statutory duty to report child abuse or neglect, where the duty to report was not a duty to detect, and any interest the officials had in detecting abuse was outweighed by the detainees' privacy interests. According to the court, the strip-search of non-felony detainees violated their rights to freedom from unreasonable searches, even though the center had implemented a policy requiring a two-hour grace period before a search. The court found that the officials' legitimate security interest in preventing the introduction of weapons and contraband was outweighed by the severe privacy intrusion entailed by the searches, given the lack of evidence of more than minimal smuggling of weapons and contraband into the facility. The court found a Fourth Amendment violation when a female detainee who was arrested for a curfew violation was strip-searched, even though she was permitted to keep her bra and underwear on, because the offense was not normally associated with weapons or drugs, there was no suspicion that the detainee was carrying or concealing a weapon or contraband and there was no indication of a prior delinquency record. (Minnehaha County Juvenile Detention Center, South Dakota)

U.S. Appeals Court
STRIP SEARCH
URINE TEST

Whitman v. Nesic, 368 F.3d 931 (7th Cir. 2004). A prisoner brought suit under § 1983 alleging that a strip search to which he was subjected constituted cruel and unusual punishment under the Eighth Amendment. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court held that the strip search of the prisoner in conjunction with a random drug testing program did not constitute cruel and unusual punishment, in spite of the prisoner's assertions that he felt humiliated, particularly by the 20-minute period he remained naked in a bathroom stall until he could produce a urine sample. (Racine Correctional Institution, Wisconsin)

U.S. District Court
PAROLEES

Wilson v. City of Fountain Valley, 372 F.Supp.2d 1178 (C.D.Cal. 2004). A parolee brought an action under § 1983 alleging that a state parole agent and police officers violated his constitutional rights by searching his residence. The district court granted summary judgment in favor of the defendants in part. The court held that the parole agent and officers had a reasonable suspicion that the parolee, who was a registered sex offender, was engaged in criminal activity based on a female's complaint that he was stalking her, which was consistent with the parolee's prior pattern of conduct. (City of Fountain Valley, California)

2005

U.S. District Court
URINE TEST

Alicea v. Howell, 387 F.Supp.2d 227 (W.D.N.Y. 2005). An inmate brought a § 1983 action against prison personnel, alleging constitutional violations in connection with a prison disciplinary proceeding. The district court granted summary judgment in favor of the defendants. The court held that the inmate's limited due process right to legal assistance was not violated, where he was provided with the assistance of a prison teacher and stated at a disciplinary hearing that he was satisfied with the assistance that he had received from her. The court concluded that the hearing officer was not biased against the inmate, and that there was some evidence to support the hearing officer's determination that the inmate was guilty of using drugs. The inmate had tested positive on a urinalysis test and corrections officers testified that the inmate had been given a clean, freshly-packaged sample jar. The court held that the due process clause did not require the hearing officer to call a facility physician to testify about whether it would have been possible for the inmate to produce urine containing a powdery substance. According to the court, the inmate never requested that a physician be called as a witness, and the officer who conducted the urinalysis testified that he sometimes received urine samples that were cloudy, and that substances causing the cloudiness would generally settle out after a while. (Orleans County Correctional Facility, New York State Department of Correctional Services)

U.S. District Court
PRETRIAL DETAINEE
STRIP SEARCH

Calvin v. Sheriff of Will County, 405 F.Supp.2d 933 (N.D.Ill. 2005). County inmates sued a sheriff under § 1983 alleging that a strip search policy violated the Fourth Amendment. The court granted summary judgment in favor of the inmates. The court held that the blanket policy of strip-searching persons arrested on failure-to-appear (FTA) warrants in misdemeanor traffic cases violated the Fourth Amendment. The court also found a Fourth Amendment violation in the blanket policy of strip-searching persons who were returned to jail for processing after being ordered released on traffic or misdemeanor charges, absent individualized suspicion or probable cause that a person was concealing contraband or weapons. The court noted that the searches were unconstitutional, even though arrestees had been given an opportunity to post bond before

the searches, and notwithstanding that persons arrested on FTA warrants were intermingled with the general population. (Will County Adult Detention Facility, Illinois)

U.S. Appeals Court
FRISK SEARCH

Conyers v. Abitz, 416 F.3d 580 (7th Cir. 2005). A state prison inmate brought a § 1983 action against prison officials, challenging a search imposed on him when he left a prison chapel. The inmate also claimed that prison officials hindered his observance of a religious fast, violating his right to religious exercise. The district court granted summary judgment for the officials on the ground that the inmate failed to his exhaust his claims. The inmate appealed. The appeals court affirmed in part, and vacated and remanded in part. The court held that any Fourth Amendment privacy interest that the inmate had in not being frisked upon leaving a prison chapel was insufficient to overcome the judicial deference generally afforded to prison officials when they are evaluating what is necessary to preserve institutional order and discipline. The court noted that the officials produced evidence that they had a legitimate security interest in frisking inmates as they left the prison chapel because the chapel was a hotbed of contraband exchanges. The court held that summary judgment was barred by fact issues as to whether prison officials had sufficient reasons to ignore the inmate's request to participate in a religious fast, which was made after an administrative deadline. The court found that the inmate's procedural shortcoming of failing to follow the prison's time deadlines for filing a grievance only amounts to a failure to exhaust administrative remedies, as required by the Prison Litigation Reform Act (PLRA), if prison administrators specifically relied on that shortcoming. (Illinois)

U.S. District Court
PAT SEARCH

Davis v. Castleberry, 364 F.Supp.2d 319 (W.D.N.Y. 2005). An inmate brought a civil rights action against a corrections officer who allegedly touched his penis during a pat frisk, and prison employees who investigated and denied his grievance. The district court granted summary judgment for the defendants. The court held that even assuming that the officer touched the inmate's penis during a pat frisk performed before the inmate entered a prison exercise yard, the conduct did not violate the Eighth Amendment because it was proper for the officer to have conducted the search and such a search could involve the genital area. The court noted that inmate grievance procedures are not even constitutionally required, and therefore an inmate's mere disagreement with the outcome of his grievance will not give rise to a constitutional claim. (Southport Correctional Facility, New York)

U.S. Appeals Court
DNA

Doe v. Moore, 410 F.3d 1337 (11th Cir. 2005). Florida sex offenders filed a class action challenging the constitutionality of Florida's sex offender registration and notification scheme and its DNA collection statute. The district court dismissed the action and the offenders appealed. The appeals court affirmed, finding that the registration and notification scheme did not violate the offenders' substantive due process rights or the Equal Protection Clause. The court found that the Sex Offender Act did not unreasonably burden the offenders' right to travel. The court also held that the DNA collection statute did not give rise to substantive due process rights. (State of Florida)

U.S. District Court
EMPLOYEE
VEHICLE

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. District Court
STRIP SEARCH

Gonzalez v. Narcato, 363 F.Supp.2d 486 (E.D.N.Y. 2005). An inmate brought a § 1983 action against prison officials, alleging violation of his First and Fourth Amendment rights. The district court granted summary judgment for the defendants. The court held that the prison officials' decision to prevent the inmate from attending a ceremony in the prison chapel conducted by a Catholic cardinal was reasonable and therefore did not violate the inmate's First Amendment rights to petition the government for redress of grievances. The court found that a corrections

department policy that required all inmates being admitted to a solitary housing unit (SHU) to undergo a strip frisk search to assure they had no contraband was reasonable and did not violate the inmate's Fourth Amendment right to be free from unreasonable searches. (Arthur Kill Correctional Facility, New York)

U.S. District Court
BLOOD TESTS
DNA

Henderson v. Belfueil, 354 F.Supp.2d 889 (W.D.Wis. 2005). A prison inmate brought a civil rights suit against a police detective who took a blood sample from the inmate as part of a criminal investigation of a prison assault. The district court granted summary judgment for the detective in part, and denied it in part. The court held that the detective did not violate the Eighth Amendment in having the inmate's blood drawn, where the sample was not taken to cause the inmate pain, but rather to further legitimate penal and law enforcement interests. The court found that fact issues as to whether the inmate consented to the blood draw precluded summary judgment on the inmate's Fourth Amendment claim. (Redgranite Corr'l Institution, Wisconsin)

U.S. Appeals Court
STRIP SEARCH

Hicks v. Moore, 422 F.3d 1246 (11th Cir. 2005). A former pretrial detainee brought an action challenging strip search practices at a county jail. The district court denied immunity for the defendants and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the mere fact that a detainee was to be placed in the jail's general population did not justify a strip search, but that reasonable suspicion existed for the plaintiff's strip search because he had been charged with a family violence battery offense. The court noted that battery is a crime of violence that would permit the inference that the detainee might be concealing weapons or contraband. (Habersham County Jail, Georgia)

U.S. District Court
CELL SEARCH

Lashley v. Wakefield, 367 F.Supp.2d 461 (W.D.N.Y. 2005). A prison inmate sued officials claiming deprivation of his Eighth Amendment rights. The district court entered partial summary judgment in favor of the defendants. The court held that summary judgment was precluded by material issues of fact as to whether prison officers subjected the inmate to lockdown, frequent cell searches and other forms of discipline, in retaliation for his work as a prison library clerk and his filing of numerous grievances. The court noted that prison inmates are protected, under the Eighth Amendment, from cell searches that lack any legitimate penological interest and are solely intended to harass. The inmate had been assisting other inmates with legal research and writing in the prison library. (Five Points Correctional Facility, New York)

U.S. District Court
STRIP SEARCH

McRoy v. Cook County Dept. of Corrections, 366 F.Supp.2d 662 (N.D.Ill. 2005). A Muslim inmate at a county correctional facility brought a civil rights action under § 1983, alleging that his opportunities to practice his faith were restricted in violation of the Free Exercise Clause of the First Amendment. The district court granted summary judgment in favor of the defendants. The court also found no violation in the policy of strip-searching inmates when they were leaving or returning to an inmate area, noting that the inmate could choose not to attend a service because of the policy and could pray in his cell or common area instead. (Cook County Department of Corrections, Illinois)

U.S. District Court
STRIP SEARCH

Morrison v. Cortright, 397 F.Supp.2d 424 (W.D.N.Y. 2005). An inmate brought a § 1983 action against a correctional officer and sergeant, alleging that the manner in which he was strip-searched violated his Eighth Amendment rights. The district court granted summary judgment in favor of the defendants. The court held that the officer's alleged conduct in performing the strip-search was not objectively sufficiently serious to rise to the level of an Eighth Amendment violation. The inmate alleged that the officer shined his flashlight into the inmate's anus and ran his middle finger between the inmate's buttocks in a wiping fashion, causing the inmate to urinate on himself. The inmate also alleged that the officer rubbed his genital area against the inmate's buttocks. (Attica Correctional Facility, New York)

U.S. Appeals Court
VEHICLE

Neumeyer v. Beard, 421 F.3d 210 (3rd Cir. 2005). Prison visitors filed a § 1983 action seeking a declaration that the prison's practice of subjecting visitors' vehicles to random searches violated their constitutional rights. The district court entered summary judgment in favor of the defendants and the visitors appealed. The appeals court affirmed, holding that the prison's practice of engaging in suspicionless searches of prison visitors' vehicles was valid under the special needs doctrine. According to the court, the relatively minor inconvenience of the searches, balanced against the prison officials' special need to maintain the security and safety of the prison, rose beyond their general need to enforce the law. The court noted that some inmates have outside work details and may have access to the vehicles. The prison had posted large signs at all entranceways to the prison and immediately in front of the visitors' parking lot that stated "...all persons, vehicles and personal property entering or brought on these grounds are subject to search..." Visitors are asked to sign a Consent to Search Vehicle form before a search is conducted and if they refuse they are denied entry into the prison and are asked to leave the premises. (State Correctional Institution at Huntingdon, Pennsylvania)

U.S. Appeals Court
DNA

Nicholas v. Goord, 430 F.3d 652 (2nd Cir. 2005). Convicted felons brought a § 1983 action against state officials and others, arguing that a state DNA-database statute violated their Fourth

Amendment rights. The district court dismissed the action and the felons appealed. The appeals court affirmed. The court held that the extraction and analysis of convicted felons' blood for DNA-indexing purposes constituted a search that implicated the Fourth Amendment, but that this search was justified under the "special needs" exception. (N.Y. State Dep't. Correctional Services)

U.S. District Court
STRIP SEARCH

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 Co. Jail, Maine)

U.S. Appeals Court
DNA

Padgett v. Donald, 401 F.3d 1273 (11th Cir. 2005). Incarcerated felons brought an action seeking injunctive relief, asking the court to find a state statute requiring DNA sampling of all convicted felons unconstitutional. The district court granted summary judgment in favor of the defendants and the felons appealed. The appeals court affirmed. The appeals court held the statute did not violate the prisoners' rights to privacy under the state constitution nor under the Fourteenth Amendment. The court found that the state's legitimate interest in creating a permanent identification record of convicted felons for law enforcement purposes outweighed the minor intrusion involved in taking prisoners' saliva samples and storing their DNA profiles, given the prisoners' reduced expectation of privacy in their identities. (Georgia Department of Corrections)

U.S. District Court
STRIP SEARCH

Powell v. Barrett, 376 F.Supp.2d 1340 (N.D.Ga. 2005). Former detainees at a county jail initiated a class action complaining about "blanket strip searches" conducted on inmates when they initially entered or returned to the jail. The detainees also alleged that they were detained beyond their scheduled release dates. The district court dismissed the action in part, and denied dismissal in part. The court granted qualified to immunity to the sheriffs with respect to the Fourth Amendment claims challenging the jails search policy, which required detainees to submit to a visual "front and back" inspection upon leaving a shower, without regard to reasonable suspicion. An arrested individual would be assigned to a room with thirty or forty other arrestees, asked to remove his clothing, and instructed to place the clothing in a box. As a group, the arrestees were required to shower and then, standing in a line with others, were visually inspected front and back by deputies. The court found that the policy did not violate clearly established rights of detainees at the time the searches were allegedly performed in 2003 and 2004. The court noted that some of these searches involved persons who were returning from court proceedings and who were entitled to be released from the facility. (Fulton Co Jail, Georgia)

U.S. District Court
CELL SEARCH
PAT SEARCH

Rodriguez v. McClenning, 399 F.Supp.2d 228 (S.D.N.Y. 2005). A prisoner brought a civil rights action alleging that a corrections officer sexually assaulted him during a routine pat-frisk search and retaliated against him for filing a subsequent grievance. The district court denied summary judgment for the officer. According to the court, the prisoner did not have any constitutional right to be free from cell searches of any kind, including retaliatory cell searches. The court found that the prisoner suffered punishment as the result of the officer's alleged retaliatory issuance of a misbehavior report, when he was placed in less desirable housing. (Green Haven Correctional Facility, New York)

U.S. District Court
JUVENILE
STRIP SEARCH

Smook v. Minnehaha County, S.D., 353 F.Supp.2d 1059 (D.S.D. 2005). Former detainees at a county juvenile detention center brought a § 1983 action challenging the center's policy of strip-searching all juveniles admitted to the facility, regardless of the seriousness of their charged offense or the existence of suspicion. The district court granted partial summary judgment in favor of the detainees and the defendants appealed. The appeals court held that the center's policy of strip searching minors arrest for minor or non-felony offenses, without any individualized determination of reasonable suspicion that the individual was or was likely to be carrying or concealing weapons, drugs or other contraband, violated the Fourth Amendment. The court denied qualified immunity for former and current directors of the detention center. The court noted that there was no demonstration that the incidence of smuggling weapons or contraband into the center was more than minimal, nor that any weapons or contraband could

not have been discovered with less invasive searches. (Minnehaha County Juvenile Detention Center, South Dakota)

U.S. Appeals Court
SANITATION
STRIP SEARCH

Surprenant v. Rivas, 424 F.3d 5 (1st Cir. 2005). A pretrial detainee brought a § 1983 action against a county jail and jail personnel, alleging that he was falsely accused of an infraction, deprived of due process in disciplinary proceedings, and subjected to unconstitutional conditions of confinement. A jury found the defendants liable on three counts and the district court denied judgment as a matter of law for the defendants. The defendants appealed. The appeals court affirmed. The court held conditions of confinement were shown to be constitutionally deficient, where the detainee was placed in around-the-clock segregation with the exception of a five-minute shower break every third day, all hygiene items were withheld from him, he could only access water--including water to flush his toilet--at the discretion of individual officers, and was subjected daily to multiple strip searches that required him to place his unwashed hands into his mouth. (Hillsborough County Jail, New Hampshire)

U.S. District Court
STRIP SEARCH

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
STRIP SEARCH

Thiel v. Wisconsin, 399 F.Supp.2d 929 (W.D.Wisc. 2005). A detainee held under the Wisconsin Sexually Violent Persons Law (WSVPL) brought a § 1983 action alleging due process violations in connection with his commitment. The district court denied the detainee's motion to proceed in forma pauperis and dismissed the action. The court held that no due process liberty interests were implicated by the manner in which the detainee was treated, either in regard to his commitment, or in regard to trips outside the facility to a county jail for court proceedings. The court found that the maximum security classification imposed on the detainee was an ordinary incident of such confinement and did not pose atypical or significant hardships. The court found no violations with the manner in which the detainee was strip searched, dressed in prison clothes and placed in restraints before being transported to a county jail for court proceedings. (Sand Ridge Secure Treatment Center, Wisconsin)

U.S. District Court
STRIP SEARCH

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 district court held that summary judgment was precluded by genuine issues of material fact regarding the reasonableness of the strip search, and the existence and implementation of a county policy authorizing strip searches for all gross misdemeanant arrestees. (Crow Wing County Jail, Minnesota)

U.S. Appeals Court
PRETRIAL RELEASE

U.S. v. Scott, 424 F.3d 888 (9th Cir. 2005). A defendant who was indicted for unlawfully possessing an unregistered shotgun moved to suppress the shotgun and his statements concerning it. The district court granted the motion and the government appealed. The appeals court affirmed. The court held that warrantless searches, including drug testing, imposed as a condition of pretrial release, required a showing of probable caused despite the defendant's pre-release consent. According to the court, the unconstitutional conditions doctrine limits the government's ability to exact waivers of rights as a condition of benefits, even when those benefits are fully discretionary. The court noted that pat-downs and similar minor intrusions need only be supported by reasonable suspicion. According to the court, searches were not necessary to ensure that the defendant appeared at trial. Among the defendant's conditions of release was his consent to "random" drug testing "any time of the day or night by any peace officer without a warrant," and to having his home searched for drugs "by any peace officer any time day or night without a

warrant." (U.S. District Court, Nevada)

U.S. Appeals Court
PAROLEE

U.S. v. Trujillo, 404 F.3d 1238 (10th Cir. 2005). A parolee whose home was searched sought to suppress evidence from the search, which resulted in his conviction of being a felon in possession of a firearm and ammunition. His motion was denied and he appealed. The appeals court affirmed, finding that the parolee's parole agreement was still in effect after he had been placed under arrest, so the warrantless search of his residence did not violate the Fourth Amendment's prohibition against unreasonable searches. (West Valley City Police Department, Utah)

2006

U.S. District Court
STRIP SEARCH
PRIVACY

Beasley v. City of Sugar Land, 410 F.Supp.2d 524 (S.D.Tex. 2006). An arrestee sued a city under § 1983, claiming she was subjected to a strip search in violation of the Fourth Amendment. The city moved for summary judgment and the district court entered summary judgment for the city. The court held that the municipality's policy of authorizing strip searches only when an official had reasonable suspicion that an arrestee was a threat to facility security, did not violate the Fourth Amendment. The arrestee was cited for driving her mother's car with no driver's license, no current motor vehicle inspection or registration, no insurance, and no license plate light, a few days after her eighteenth birthday. She was summoned to appear in court but mistakenly appeared five days late. She was arrested at her house on a warrant for failure to appear and she was allowed to put on shoes and socks, but was taken to jail in the clothes she was wearing--pajama pants and a cotton shirt with no bra. On the way to the city jail the arresting officer radioed for a female officer to meet him at the jail to perform a search. At the jail a female police officer told the arrestee to stand with her hands against a wall. She instructed the arrestee to lift her shirt and the officer lifted Beasley's breasts to feel beneath them. The officer then instructed the arrestee to drop her pants while continuing to hold up her shirt. The officer pulled the arrestee's panties taut and did a quick two-finger swipe across Beasley's vagina. The male arresting officer allegedly witnessed this search. The arrestee initially alleged that she was subjected to a "strip search and body cavity search," but the court found that her description of the events did not indicate that a body cavity search occurred. (City of Sugar Land, Texas)

U.S. District Court
STRIP SEARCH
PRETRIAL DETAINEE

Dare v. Knox County, 465 F.Supp.2d 17 (D.Me. 2006). In a class action, persons strip-searched by jail officials agreed to a consent decree. The district court approved the agreement, issuing an injunction ensuring compliance with the Fourth Amendment law governing strip searches of certain arrestees. The court enjoined the county from strip searching any persons charged with a crime that does not involve weapons, violence or controlled or scheduled substances during the jail admission process, while they are being held awaiting bail or a first court appearance, or after being arrested on a default or other warrant, unless the officer or person conducting the strip search has reasonable suspicion to believe the person does possess a weapon, controlled or scheduled substances, or other contraband. The court ordered the sheriff and his successors to keep a written log that records every instance in which a newly-admitted individual is subject to a strip search procedure, with the following information: (1) the date and time of the search procedure; (2) the name of each officer participating in the search procedure; (3) a brief statement of facts found to constitute "reasonable suspicion" for a strip search, to include the crime with which the individual was charged; and (4) the name of the officer who made the determination that "reasonable suspicion" warranted a strip search and who approved the search. The agreement also provided for monetary compensation of persons who had been improperly strip-searched. (Knox County Jail, Maine)

U.S. District Court
STRIP SEARCH

Gilanian v. City of Boston, 431 F.Supp.2d 172 (D.Mass. 2006). A detainee brought a civil rights action against a municipality, county, sheriff, and corrections officers alleging that strip searches violated her Fourth Amendment right to be free from unreasonable searches and seizures. The district court denied the detainee's motion, finding that fact issues as to whether the strip search of the detainee was justified and whether the search was conducted in a reasonable manner, precluded summary judgment. The case challenged two strip-searches of the detainee conducted while she was held in pretrial detention, and asserted claims against the City of Boston, Suffolk County, Suffolk County Sheriff Richard Rouse, and two unidentified Suffolk County corrections officers. The court suggested that the trial should focus primarily on the question of whether there was a less restrictive alternative. The court posed questions, including: could the policy change, from strip-searching to segregation, have been implemented at the time of the detainee's second strip-search; what changes, if any, in staffing, space allocation, and budget were necessary for the jail to switch to segregation after the *Roberts* decision; what less restrictive alternatives, other than segregation, might have been available to the Jail in March 2000; if the switch to segregation was possible in 2001, how far back in time is it proper to assume that the same switch could have been made? (Nashua Street Jail, Suffolk County, Massachusetts)

U.S. Appeals Court
STRIP SEARCH

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
STRIP SEARCH

Jean-Laurent v. Wilkerson, 438 F.Supp.2d 318 (S.D.N.Y. 2006). A detainee in a state facility sued officers and supervisors under § 1983, claiming that he was searched in violation of his due process rights. The district court held that the detainee stated a claim of unconstitutional strip search, under the Fourth Amendment, when he alleged that officers, having conducted a legitimate search in connection with prison-wide strip searches, took him out of his cell and subjected him to a second search, even though he had been in their custody ever since the first search, precluding any hiding of contraband on his person. The court also found that the detainee stated claim that the second of two strip searches violated his First Amendment rights as a Muslim, to avoid being seen naked. The court noted that while first search was in furtherance of a compelling government need to maintain order, allowing the search despite religious objection, there was no compelling government need for the second search. The court held that the detainee stated a claim that officers imposed a substantial burden on the religious exercise of the Muslim inmate, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA), by forcing him to submit to the second strip search. (George Motchan Det. Center, New York City)

U.S. District Court
STRIP SEARCHES

Johnson v. District of Columbia, 461 F.Supp.2d 48 (D.D.C. 2006). Pre-presentment arrestees brought a § 1983 action against the District of Columbia, U.S. Marshal's Service, and former U.S. Marshal, alleging that arrestees were subject to blanket strip searches and visual cavity searches without a reasonable individualized suspicion that the arrestees were concealing weapons or contraband. The government defendants moved to dismiss for failure to state a claim. The court denied the defendants' motion to dismiss. The district court held that: (1) arrestees' allegations that the District of Columbia knew, or should have known, that marshals were unconstitutionally strip searching arrestees supported a § 1983 claim as to the District of Columbia; (2) the alleged policy under a former U.S. Marshal, if true, violated the Fourth and Fifth Amendments; (3) the right to be free from a blanket strip-search policy was clearly established; and (4) allegations that a former marshal and District of Columbia acted in concert in developing a policy stated a claim that the marshal was "state actor." The arrestees alleged that there were blanket strip searches and visual cavity searches at Superior Court without a reasonable individualized suspicion, that subjected all female arrestees, but not male arrestees, to blanket strip searches. (District of Columbia and U.S. Marshal for the D.C. Superior Court)

U.S. Appeals Court
URINE TEST
DRUG/ALCOHOL TESTING

Louis v. Department of Correctional Services of Nebraska, 437 F.3d 697 (8th Cir. 2006). Inmates and former inmates brought an action against a state corrections department and various department officials alleging that the method of collecting and testing urine samples for drug use violated their constitutional right to procedural due process. The district court entered judgment in favor of defendants and the inmates appealed. The appeals court found that due process in connection with testing of the inmates' urine for drugs did not require that the inmates sign and seal the specimens after collection, absent evidence that the collection protocols requiring that the collector label and seal the specimens resulted in erroneous deprivations of inmates' good-time credits. According to the court, even if collection procedures did not eliminate all possibility of mislabeled samples, they conformed to the practices used in private-sector workplace drug testing, and were adequate to ensure reasonably reliable results. The court concluded that the refusal of the corrections department to fund confirmatory drug testing of a prisoner's urine sample after initial testing yielded a positive result, when the prisoner denied using illicit drugs, did not violate a prisoner's due process rights. The court noted that the initial testing was 95 percent accurate and that a prisoner had the opportunity to obtain confirmatory testing at an independent laboratory at his own expense. The appeals court upheld the refusal of the corrections department to allow inmates to call lab technicians as witnesses at disciplinary hearings to testify about procedures used for drug testing of inmates' urine samples, finding that this practice did not violate a prisoner's due process rights. The court noted that inmates could present urinalysis laboratory reports prepared by the lab technicians, and the exclusion of technicians' testimony was justified by the department's need to manage the environment of the prison and maximize the productivity of lab technicians. (Nebraska State Penitentiary)

U.S. District Court
STRIP SEARCH

Marriott v. County of Montgomery, 426 F.Supp.2d 1 (N.D.N.Y. 2006.) Arrestees brought suit, individually and on behalf of a class of others similarly situated, against a county sheriff's department, county sheriff, county undersheriff, former county undersheriff, a jail administrator and a lieutenant, challenging the constitutionality of the search policy of the county jail. The district court held that the policy, pursuant to which arrestees being admitted to a county jail were effectively subjected to strip searches, violated the Fourth Amendment and that the arrestees were entitled to permanent injunctive relief. The court found that the arrestees were the "prevailing parties" entitled to an award of attorney fees. According to the court, the Fourth Amendment precludes officials from performing strip searches and/or body cavity searches of arrestees charged with misdemeanors or other minor offenses unless the officials have a

reasonable suspicion that the arrestee is concealing weapons or other contraband based on the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest. The court held that the indiscriminate strip-searching of misdemeanor arrestees is unconstitutional. The policy required arrestees to remove their clothing in front of a corrections officer (CO) and take a shower, regardless of the nature of their crime and without any determination that there was a reasonable suspicion that they possessed contraband. The court found that the policy violated the Fourth Amendment, despite the claim that the written policy did not involve either a command for the arrestee to undress completely or a command for the CO to inspect the naked arrestee. The court noted that the procedure that was followed in fact by the COs required all admittees to remove their clothes, submit to a visual examination by the CO, and shower. The court held that the arrestees were entitled to a permanent injunction prohibiting county jail officials from conducting a strip search, as set forth in the jail's "change out" procedure. (Montgomery County Jail, New York)

U.S. District Court
CELL SEARCH

Navarro v. Adams, 419 F.Supp.2d 1196 (C.D.Cal. 2006). A state prisoner filed a pro se petition for a writ of habeas corpus, challenging his state court conviction and his sentence for first degree murder. The district court held that a deputy sheriff's search of his cell and seizure of attorney-client privileged documents did not warrant federal habeas relief because it did not substantially prejudice the prisoner's Sixth Amendment right to counsel. The court noted that the prisoner's cell was searched to locate evidence regarding gang activity and threats to witnesses, not to interfere with his relationship with his defense counsel, and the information seized was turned over to the trial court for an in-camera review without being viewed by any member of the prosecution team. (California)

U.S. District Court
CELL SEARCH

Pepper v. Carroll, 423 F.Supp.2d 442 (D.Del. 2006). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The court granted the officials' motion for summary judgment. The court found that the officials' decision to "shake down" the inmate's cell was not in retaliation for his having filed a civil rights action, and thus did not violate the inmate's First Amendment right to access courts, where shakedowns were routine, and the inmate was thought to have prohibited materials in his cell. (Delaware Correctional Center)

U.S. Appeals Court
STRIP SEARCH
JUVENILE

Smook v. Minnehaha County, 457 F.3d 806 (8th Cir. 2006). Former detainees at a county juvenile detention center brought a § 1983 class action against a county and individual county officials, challenging the center's policy of strip-searching all juveniles admitted to the facility regardless of the seriousness of the charged offense or the existence of suspicion. The district court entered partial summary judgment for the former detainees, finding that the searches violated the minors' constitutional rights, and that the officials were not qualifiedly immune from the minors' claims. The county and officials appealed the denial of qualified immunity. The appeals court reversed and remanded, finding that requiring a juvenile to strip to her undergarments upon admission to the facility was reasonable under the Fourth Amendment. A juvenile female had been brought to the center for a curfew violation. A female staff person took her to a private restroom, directed her to remove her shorts, t-shirt, and sandals, but allowed her to remain attired in her undergarments. The staff person touched her to look under her arms, between her toes, and through her hair and scalp. The court held that the search was reasonable under Fourth Amendment in light of the state's responsibility to act *in loco parentis* with respect to juveniles in lawful state custody, and that the special needs for such a search outweighed the invasion of personal privacy. The court held that the officials were entitled to qualified immunity where there was no appellate decision from the Supreme Court or any federal circuit ruling on such an issue, and, although many courts had concluded that the strip search of adult offenders without individualized suspicion was unreasonable, those cases did not consider interests involved when state had responsibility to act *in loco parentis*. (Minnehaha County Juvenile Detention Center, South Dakota)

U.S. District Court
STRIP SEARCH

Tardiff v. Knox County, 425 F.Supp.2d 190 (D.Me. 2006). A class action suit was brought against a county, its sheriff, and unidentified jail correctional personnel under § 1983, claiming that the Fourth Amendment rights of detainees alleged to have committed non-violent, non-weapons, and non-drug felonies, and detainees alleged to have committed misdemeanors, were violated when they were subjected to strip searches without reasonable suspicion that they were harboring contraband on or within their bodies. Summary judgment was granted in part and denied in part to the plaintiffs, and the defendants filed a motion for reconsideration. The district court held that: (1) evidence, including booking logs at the county jail, demonstrated that corrections officers routinely strip searched misdemeanor detainees without reasonable suspicion; (2) a jail administrator's letter was highly probative of what municipal policymakers knew about ongoing strip search practices at the jail; (3) intake and release log evidence provided proof that, for at least some corrections officers, strip searching was customary; and (4) the actions taken by the county in response to the unconstitutional practice of strip searching misdemeanor detainees amounted to acquiescence in it. According to the court, a county jail inspection report provided information about the circumstances surrounding search practices at the jail, as well as the knowledge of the county policymakers before the commencement of the class period, and, thus,

was relevant in the class action suit. (Knox County Jail, Maine)

U.S. District Court
BODY CAVITY SEARCH

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. Appeals Court
PAROLEES

U.S. v. Massey, 461 F.3d 177 (2d Cir. 2006). A parolee was convicted in the district court of unlawful possession of a firearm, and the parolee appealed. The appeals court affirmed, holding that the search of the apartment where the parolee was living, during a home visit, was reasonable. The court noted that the parolee agreed to home visits as a condition of parole, the parolee was living in his mother's apartment, the officer designated the bedroom assigned to parolee as the room she wished to visit and immediately upon entering the apartment the officer requested to see the bedroom and proceeded directly to it, and the bedroom was the only room the officer visited during the home visit until after she discovered weapons. (New York)

U.S. Appeals Court
STRIP SEARCH
BODY CAVITY SEARCH

Way v. County of Ventura, 445 F.3d 1157 (9th Cir. 2006). A female arrestee who had undergone a strip search with body cavity inspection upon booking on a misdemeanor charge of being under the influence of a controlled substance, brought § 1983 Fourth Amendment action against a county sheriff and against the deputy who had performed the search. The district court granted summary judgment for the arrestee, and defendants appealed. The appeals court affirmed in part and reversed in part. The court held that a suspicionless strip search conducted solely on basis of the county's blanket policy for controlled-substance arrestees offended the Fourth Amendment, where the intrusiveness of the search was extreme, the county did not show any link between the policy and legitimate security concerns for persons spontaneously arrested and detained temporarily on under-the-influence charges, and the arrestee was detained only until bail was posted and never entered the jail's general population. The court held that the defendants were entitled to qualified immunity because the appellate court in the county's federal circuit had never previously addressed the constitutionality of a body cavity search policy premised on the nature of drug offenses, and had held that the nature of offense alone may sometimes provide reasonable suspicion. (Ventura County Sheriff's Department, California)

U.S. District Court
PATDOWN
STRIP SEARCH
X-RAY
VISITOR SEARCH

Zboralski v. Monahan, 446 F.Supp.2d 879 (N.D.Ill. 2006). A visitor to a state treatment and detention facility brought a § 1983 action against facility officers, alleging that she was illegally searched prior to visits. The visitor moved to proceed in forma pauperis, and the district court granted the motion. The court held that the visitor stated Fourth Amendment claims based on unreasonable patdowns and "Rapiscan" scans, an invasion of privacy claim, and an assault and battery claim. The visitor alleged that she was illegally searched prior to visits, claiming invasion of privacy under Illinois law based on intrusion upon seclusion, alleging that her virtual naked image was captured through the Rapiscan machine, kept, and viewed hours later by officers. The court noted that the visitor was neither a patient nor under any criminal investigation. The visitor also alleged that an officer caused her to reasonably believe that she would place her fingers in the visitor's vaginal area, and physically touched her in such a manner at least four times. (Illinois Department of Human Services Treatment and Detention Facility, Joliet, Illinois)

U.S. District Court
RELEASE
STRIP SEARCHES

Bullock v. *Sheahan*, 519 F.Supp.2d 760 (N.D.Ill. 2007). Male former inmates of a county jail brought a class action against a county and a sheriff, alleging that the defendants had a policy and/or practice of subjecting male inmates to strip-searches prior to their release, and that such differing treatment of male inmates violated their rights under the Fourth and Fourteenth Amendments. The defendants moved to strike the plaintiffs' expert. The district court denied the motion, finding that the expert's testimony was admissible. According to the court, the expert testimony of a registered architect who specialized in the design of prisons and jails, concerning whether there was adequate space in the jail for the construction of additional bullpens to hold male detainees was relevant and reliable. The court noted that while the expert did not review all of the written discovery in the case, the expert reached his opinions after a tour of the jail and after reviewing other expert reports, jail floor plans, a sheriff's status report and charts summarizing certain computer records on male detainees. (Cook County Department of Corrections, Illinois)

U.S. District Court
RELEASE
STRIP SEARCHES

Bullock v. *Sheahan*, 519 F.Supp.2d 763 (N.D.Ill. 2007). Male jail inmates brought a class action against a county and county sheriff alleging violations of the Fourth and Fourteenth Amendments based on an alleged policy and/or practice under which male inmates were subjected to strip searches upon returning to a county department of corrections for out-processing after having been ordered released. The sheriff and county moved to strike certain portions of the inmates' motion for summary judgment. The district court granted the motion in part and denied in part. The court held that the sheriff and county had notice of the male jail inmates' claims challenging the policy and practice, despite allegations that the claims regarding the inmates having to strip in a large non-private group setting came as a surprise to the county and the sheriff because they were never addressed by inmates during fact or expert discovery. The court found that factual allegations contained in the complaint satisfied the notice pleading standards with respect to all claims, and that the county and sheriff did not provide specific evidence of any misrepresentations or sandbagging other than an affidavit stating that discovery did not focus on the privacy issue. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
PRIVACY
BODY CAVITY SEARCH
STRIP SEARCHES

Campbell v. *Miller*, 499 F.3d 711 (7th Cir. 2007). An arrestee brought a § 1983 action against a police officer and city, alleging that a strip search violated his Fourth Amendment rights. The district court entered judgment, upon jury verdict, in favor of the defendants and denied the arrestee's motion for judgment as a matter of law. The arrestee appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that evidence was sufficient to support a jury verdict that police officers had reasonable suspicion to believe that the arrestee was concealing contraband, as would justify a strip search and body cavity search of the arrestee, for the purpose of the arrestee's § 1983 unreasonable search claim. The court noted that the plaintiff was arrested for narcotics possession, when an officer first encountered the arrestee the officer reasonably believed that the plaintiff fit the description of a man who had just engaged in a drug transaction. The officer testified that he saw the arrestee drop a bag of marijuana and then disregard repeated commands to stop moving away. But the court found that a strip and body cavity search conducted on the arrestee in an open backyard was not reasonable, and thus, the search violated the arrestee's Fourth Amendment rights. The search involved nudity and visual inspection of the anal area, the backyard was exposed to the neighbors, the arrestee's friend was able to watch the search and others could have watched as well, and no exigency justified such a public exposure. The court concluded that the city was not liable under § 1983 for the arresting officer's unreasonable conduct. Although the city had a policy that any officer making an arrest had to conduct a body search of the prisoner, there was no policy requiring the search to be conducted in public, the decision to conduct the search in an open and exposed area was what rendered the search unconstitutional, and that decision was made by the officer. (City of Indianapolis, Indiana)

U.S. District Court
STRIP SEARCHES

Doe v. *Balaam*, 524 F.Supp.2d 1238 (D.Nev. 2007). A transsexual arrestee, who was strip searched at a county jail, brought an action against the county and county sheriff seeking damages, attorney fees, and a permanent injunction prohibiting the defendants from conducting certain strip searches. The defendants moved for summary judgment. The district court granted the motion. The court held that deputies at the county jail had a reasonable suspicion, based on specific articulated facts coming directly from the transsexual arrestee concealing a sock in his crotch area, that the arrestee was carrying or concealing contraband, so as to justify a strip search of the arrestee prior to being housed in the general jail population. The court noted that the arrestee had turned himself in for a misdemeanor destruction of property charge, and even though he had told deputies that he was a transsexual and that he had a rolled-up sock concealed in his crotch area, the deputies had no way of knowing whether the arrestee was truthful about what he was, in fact, concealing. According to the court, even if there had been a violation of the arrestee's Fourth Amendment rights against unreasonable searches and seizures, the transsexual arrestee failed to allege that the county sheriff knew of and failed to act or prevent any alleged violation, or that any individual employees acted pursuant to an official county policy or custom, as required to state a cognizable § 1983 claim against the sheriff and county for alleged constitutional violations. (Washoe County, Nevada)

U.S. District Court
STRIP SEARCHES
PRETRIAL DETAINEES

Doe No. 1 v. *Balaam*, 494 F.Supp.2d 1173 (D.Nev. 2007). Arrestees who were subjected to strip searches when they self-surrendered at a county jail and were then released on their own recognizance, pursuant to the sheriff department's contraband control policy, brought an action against the county and county sheriff. The arrestees sought damages, attorney fees, and a permanent injunction prohibiting the defendants from conducting certain strip searches, prohibiting the defendants from engaging in similar unconstitutional conduct in the future, and requiring and ordering the defendants to institute proper training and policy changes. The inmates moved for partial summary judgment and the district court granted the motion. The court held that the county's policy of

strip searching all arrestees who self-surrendered to the county jail, absent reasonable suspicion that any arrestee was smuggling contraband, was unreasonable, and thus amounted to deliberate indifference to the arrestees' Fourth Amendment rights, especially given that all of the arrestees were booked and then released on their own recognizance without ever being housed with the general jail population. (Washoe County Detention Facility, Nevada)

U.S. Appeals Court
BODY CAVITY SEARCH
STRIP SEARCH

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. Appeals Court
CELL SEARCHES
STRIP SEARCHES

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. Appeals Court
PRETRIAL DETAINEES

Tabbaa v. *Chertoff*, 509 F.3d 89 (2nd Cir. 2007). United States citizens brought an action alleging that the Bureau of Customs and Border Protection (CBP) officials violated their constitutional and statutory rights by detaining and searching them at a border when they returned from an Islamic conference in Canada. The district court entered summary judgment in the government's favor, and the plaintiffs appealed. The appeals court affirmed, finding that the suspicionless searches of the plaintiffs did not violate the Fourth Amendment. The court found that the burden placed on the plaintiffs' associational rights as the result of the CBP searches and detention was sufficiently significant to implicate First Amendment protections, but the searches and detention constituted the least restrictive means to protect the nation from terrorism. (U.S. Bureau of Customs and Border Protection, Buffalo, New York)

U.S. District Court
CELL SEARCH

Teahan v. Wilhelm, 481 F.Supp.2d 1115 (S.D.Cal. 2007). An indigent state prisoner brought a § 1983 action against two correctional officers, challenging the conditions of his confinement. The court dismissed the action. The court held that the prisoner's allegations that prison officials searched his cell numerous times over the course of one evening, resulting in several items of the prisoner's property being seized, did not state a claim of cruel and unusual punishment in violation of Eighth Amendment. (Centinela State Prison, California)

U.S. Appeals Court
STRIP SEARCH
BODY CAVITY SEARCH

U.S. v. *Barnes*, 506 F.3d 58 (1st Cir. 2008). The government appealed an order of the United States District Court for the District of Rhode Island suppressing cocaine seized from a defendant pursuant to a visual body cavity search. The appeals court vacated and remanded. The court held that the strip search for contraband and weapons was justified given the defendant's arrest for a drug trafficking crime, but that the arresting officer did not have individualized suspicion that the arrestee was "cheeking" drugs, as required to justify a visual body cavity search. According to the court, the evidence before the officer was that the arrestee was a suspected drug dealer in possession of narcotics and that some drug dealers concealed drugs between their buttocks. (Woonsocket Police Department, Rhode Island)

U.S. Appeals Court
DNA

U.S. v. *Kriesel*, 508 F.3d 941 (9th Cir. 2007). The government petitioned to revoke supervised release of a felon who refused to submit a DNA sample. In response, the convicted felon challenged the constitutionality of the Justice for All Act, which expanded coverage of the DNA Act to require DNA samples from all convicted felons on supervised release. The felon also challenged the regulation issued pursuant to the Justice for All Act. The district court upheld the constitutionality of the Justice for All Act and the validity of the regulation. The felon appealed. The appeals court affirmed. The court held that requiring a convicted felon on supervised release to provide a DNA sample, even through drawing of blood, did not constitute an illegal search. The court found that the government's significant interests in identifying supervised releasees, preventing recidivism, and solving past crimes outweighed the diminished privacy interests of the convicted felon. (United States District Court for the Western District of Washington)

U.S. District Court
BODY CAVITY
USE OF FORCE

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 district court held that, with respect to three body cavity search incidents, the prisoner would be permitted proceed with his Eighth Amendment excessive force claims against each correctional officer who he alleged was either directly involved in the use of force or was present and either encouraged or failed to stop it. The prisoner alleged that there was no need for force in connection with the first search, that his constitutional rights were violated in connection with the second search when several officers, who lacked legitimate security reasons for conducting a manual body cavity search, made contact with his genitals while conducting a strip search as a means of obtaining sexual gratification or humiliating him, and other officers who were present failed to intervene, and that, with respect to the third search, an officer used a taser against the prisoner when he posed no threat. (Wisconsin)

U.S. District Court
PAROLEES

Willis v. *Mullins*, 517 F.Supp.2d 1206 (E.D.Cal. 2007.) An arrestee brought a § 1983 action against law enforcement officers and a parole officer, alleging Fourth Amendment violations. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that the warrant-less entry into a motel room by the officers violated the arrestee's Fourth Amendment rights and that a genuine issue of material fact precluded summary judgment on qualified immunity. The court found that the officers' search of a briefcase did not violate the Fourth Amendment, and that the arrestee failed to state a claim against the officers upon which relief could be granted for violation of the Racketeer Influenced and Corrupt Organizations Act. (Kern County, California)

U.S. District Court
DNA-Deoxy Ribonucleic Acid
PRIVACY

Wilson v. *Wilkinson*, 608 F.Supp.2d 891 (S.D.Ohio 2007). A state prisoner brought a § 1983 action against state officials, challenging the constitutionality of a state statute requiring the collection of DNA specimens from convicted felons. The parties cross-moved for summary judgment. The district court held that the collection of a DNA specimen was not an unreasonable search and seizure, and that a DNA sample did not implicate the prisoner's Fifth Amendment privilege against self-incrimination. The court noted that law enforcement's interest in obtaining DNA for a database to solve past and future crimes outweighed the prisoner's diminished privacy rights. According to the court, the prisoner did not have a fundamental privacy interest protected by substantive due process in the information contained in a DNA sample and the profile obtained pursuant to the state statute. The court noted that the prisoner, as a convicted felon, did not enjoy the same privacy rights as did ordinary citizens. (Ross Correctional Institution, Ohio Department of Rehabilitation and Correction)

2008

U.S. District Court
VISITOR SEARCHES

Adeyola v. *Gibon*, 537 F.Supp.2d 479 (W.D.N.Y. 2008). An inmate brought a pro se action against a sheriff and correctional facility officials, alleging that they violated his constitutional rights by refusing to allow females to visit him unless they removed their head scarves for a search or presented proof that they were practicing Muslims. The district court granted summary judgment in favor of the sheriff and officials. The court held that the inmate failed to allege any injury in fact and thus lacked standing. The court held that the allegations, even if proven, did not violate any First Amendment right of the inmate to have visitors, in that it was reasonable for officials to require visitors to remove scarves to determine that they were not attempting to bring in contraband, and he was not denied visitors, given that visitors were simply required to agree to certain conditions before being allowed to see an inmate. (Erie County Holding Center, N.Y. State Department of Correctional Services)

U.S. Appeals Court
OPPOSITE SEX
STRIP SEARCHES

Archuleta v. *Wagner*, 523 F.3d 1278 (10th Cir. 2008). An arrestee brought a § 1983 action against a jailer and others alleging her Fourth and Fourteenth Amendment rights were violated when she was strip searched. The district court denied the jailer's request for qualified immunity and the jailer appealed. The appeals court affirmed the district court decision. The court held that the jailer was not justified in conducting the strip search during booking, following the arrest pursuant to an arrest warrant for harassment, where the arrestee never intermingled with the general jail population but rather was confined in a cell by herself for several hours while awaiting bail. The court noted that three pat down searches had been performed on the arrestee prior to booking, the arrestee was wearing shorts and a sleeveless blouse at the time of booking, the jailer saw that the arrestee did not have any tattoos or moles indicating that she was the culprit, and the crime of harassment was not a crime of violence. The court found that the arrestee had a right not to be strip searched during booking when she was not going to intermingle with the general prison population. She had already been through a pat-down search, and there was no reasonable suspicion that she had a weapon. According to the court, the jailer who conducted the strip search was not entitled to qualified immunity because at the time of this incident it was clearly established that a strip search could be justified if there was a reasonable suspicion that the detainee possessed weapons and the detainee intermingled with the general jail population. The 46-year-old mother of nine had been riding in a family van with some of her children when she was stopped by an officer because there was an extra child in the back seat. The officer arrested her with the belief that she was the person for whom a warrant had been issued. After being booked at the jail it became apparent that she was not the person named in the warrant because she did not have the tattoos and moles that were described in the file. Knowing that the plaintiff was not the person named in the warrant, a jail officer nonetheless continued to process and strip search her. As she was standing naked, she began to lactate. She tried to cover herself but was told by the officer to put her arms down. She was mocked continually by the officer and a male officer during this incident. (Jefferson County Detention Facility, Colorado)

U.S. District Court
PRETRIAL DETAINEES
STRIP SEARCHES

Brazier v. *Oxford County*, 575 F.Supp.2d 265 (D.Me. 2008). An arrestee brought a § 1983 action against a county and corrections officers, alleging that strip searches performed upon her during two post-arrest confinements at a county jail, both relating to her driving privileges, were unconstitutional. The district court held that the strip searches violated the county's written policy, and thus the county was subject to liability under

§ 1983. The court noted that the county's written policy prohibited strip searches of inmates charged with misdemeanor crimes unless there was reasonable suspicion to believe that an inmate was hoarding evidence to a crime, weapons, drugs, or contraband. (Oxford County Jail, Maine)

U.S. District Court
STRIP SEARCHES

Bullock v. *Sheahan*, 568 F.Supp.2d 965 (N.D.Ill. 2008). Two county inmates who were ordered released after being found not guilty of the charges against them brought an action individually and on behalf of a class against a county sheriff and county, challenging the constitutionality of a policy under which male inmates, in the custody of the Cook County Department of Corrections (CCDC), were subjected to strip searches upon returning to CCDC after being ordered released. The district court held that male inmates in the custody of CCDC who were potentially discharged were similarly situated to female potential discharges, as supported the male inmates' claim that the county's policy of strip searching all male discharges and not all female discharges violated the Equal Protection Clause. The court noted that the two groups of inmates were housed within the same facility, there were varying security classifications within each group that corresponded to each other, statistics concerning inmate violence clearly indicated that it took place among female as well as male inmates, and the county's primary justification for distinguishing between male and female discharges, namely, its alleged inability to hold them in a receiving, classification, and diagnosis center (RCDC) while their records were reviewed, was a logistical rather than a security concern. The court held that the CCDC exhibited discriminatory intent in strip searching all male inmates who were potentially discharged and not all female discharges, as supported the male inmates' claim that the county's strip search policy violated the Equal Protection Clause. The court found that the county's blanket strip search policy for male discharged inmates was not substantially related to the achievement of important governmental objectives--jail safety and security--and thus the policy deprived male discharges of their constitutional right to equal protection. The court noted that female discharges were just as capable of importing contraband into the jail as their male counterparts.

According to the court, the fact that there were a greater number of male inmates in a county jail did not legitimize an equal protection violation resulting from the county's blanket strip search policy for male discharged inmates. The court found that the county's policy of exempting male discharged inmates from obtaining privacy screens for use during strip searches violated the Equal Protection Clause. The court found that potentially discharged male inmates, for whom there was no longer any basis for detention, had a privacy interest with regard to strip searches which was arguably greater than that of pretrial detainees. According to the court, the county's policy of strip searching all male discharged inmates in large group settings in which inmates were placed at approximately an arm's length apart when searched violated the Fourth Amendment. The court found that the county sheriff was not acting as an arm of the state insofar as requiring strip searching of discharged male inmates, and thus was not entitled to qualified immunity. The court noted that an Illinois Administrative Code (IAC) provision stating that "detainees permitted to leave the confines of the jail temporarily, for any reason, shall be thoroughly searched prior to leaving and before re-entering the jail" did not mandate strip searches, just that inmates be "thoroughly searched." (Cook Co. Dept. of Corrections, Illinois)

U.S. District Court
BODY CAVITY SEARCH
STRIP SEARCHES

Collins v. *Knox County*, 569 F.Supp.2d 269 (D.Me. 2008). A female arrestee brought a § 1983 action against a county, sheriff, and corrections officers, alleging an unconstitutional policy and/or custom and practice of conducting a strip search and visual body cavity search of every person taken into custody at the jail. The district court granted summary judgment for the defendants. The court held that the county did not have an unconstitutional strip search policy or custom at the county jail, and that the sheriff did not acquiesce to a policy or practice of unconstitutional strip searches. The court found that there was no evidence of an unconstitutional policy and/or custom and practice of conducting a strip search and visual body cavity search of every person taken into custody at the county jail, as required for the arrestee to establish a § 1983 claim against the county. The court noted that it's prior determination in an unrelated case, that the county maintained an unconstitutional policy of strip searching all misdemeanor detainees, concerned a period several years prior to the time that the arrestee was detained. The court found that the strip search of the female arrestee upon her admission to jail after self-surrendering on an outstanding felony arrest warrant was reasonable under the Fourth Amendment. The search, in which the arrestee was required to run her fingers through her hair, extend her arms out straight, open her mouth for visual inspection, spread her toes, lift each of her breasts, expose her vagina, squat on her haunches with her back to the officer and, while squatting, cough violently several times, at which time she expelled menstrual fluid, caused the arrestee humiliation and embarrassment. The court found that the search was based on a drug charge in her inmate file, the fact that she made a planned admission to jail which provided the opportunity to conceal contraband, and that she was going to be housed overnight at the jail, which had a problem with contraband. The search was performed by a female officer in the changing area of the shower stall adjacent to the booking area, which was mostly shielded from view by a plastic curtain. (Knox Co. Jail, Maine)

U.S. District Court
STRIP SEARCHES

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. District Court
STRIP SEARCHES
VISITS

Davis v. *Peters*, 566 F.Supp.2d 790 (N.D.Ill. 2008). A detainee who was civilly committed pursuant to the Sexually Violent Persons Commitment Act sued the current and former facility directors of the Illinois Department of Human Services' (DHS) Treatment and Detention Facility (TDF), where the detainee was housed, as well as two former DHS Secretaries, and the current DHS Secretary. The detainee claimed that the conditions of his confinement violated his constitutional rights to equal protection and substantive due process. After a bench trial, the district court held that: (1) the practice of searching the detainee prior to his visits with guests and attorneys violated his substantive due process rights; (2) the practice of using a "black-box" restraint system on all of the detainee's trips to and from court over a 15-month period violated his substantive due process rights; (3) requiring the detainee to sleep in a room illuminated by a night light did not violate the detainee's substantive due process rights; (4) a former director was not protected by qualified immunity from liability for the constitutional violations; and (5) the detainee would be awarded compensatory damages in the amount of $30 for each hour he wore the black box in violation of his rights. The court noted that strip searches of a detainee prior to his court appearances and upon his return to the institution did not violate substantive due process, where detainees were far more likely to engage in successful escapes if they could carry concealed items during their travel to court, and searches upon their return were closely connected with the goal of keeping contraband out of the facility. The court held that the practice of conducting strip searches of the detainee prior to his visits with guests and attorneys was not within the bounds of professional judgment, and thus, violated the detainee's substantive due process rights, where the only motivation for such searches appeared to be a concern that a detainee would bring a weapon into the meeting, and most weapons should have been detectable through a pat-down search. (Treatment and Detention Facility, Illinois)

U.S. District Court
OPPOSITE SEX
PRIVACY
STRIP SEARCHES

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 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
STRIP SEARCHES
USE OF FORCE

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 officer did not use excessive force in requiring the prisoner to lift his genitals during an unclothed body search, even though the prisoner had pepper spray on his hands. The court held that officers did not use excessive force in violation of the Eighth Amendment when they allegedly attempted to trip the prisoner, pushed him into the frame of a holding cell door, and twisted and pulled his wrists as they put him in leg restraints in order to move the prisoner from the cell to an outside area where he could be decontaminated from the officer's use of pepper-spray. The court noted that the prisoner's medical evaluations, prior to and after the incident indicated that the prisoner did not sustain any injuries, such as cuts, abrasions, swelling or bruises. (Salinas Valley State Prison, California)

U.S. Appeals Court
STRIP SEARCHES

Hartline v. *Gallo*, 546 F.3d 95 (2nd Cir. 2008). An arrestee brought § 1983 and 1985 claims against a police department and others alleging her Fourth Amendment rights were violated when she was subjected to a strip search. The district court granted summary judgment in favor of the defendants and the arrestee appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that there was no reasonable suspicion that the arrestee was hiding drugs on her person as required to justify the strip search and the officers were not entitled to qualified immunity. The court found that summary judgment was precluded by an issue of material fact regarding whether the jail's surveillance system telecast the strip search. (Southampton Police Department, New York)

U.S. District Court
STRIP SEARCHES

Jean-Laurent v. *Wilkinson*, 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 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 Det. Center, N.Y. City Department of Correction)

U.S. District Court
BODY CAVITY SEARCHES
STRIP SEARCHES

Johnson v. *Government of District of Columbia*, 584 F.Supp.2d 83 (D.D.C. 2008). Female former arrestees filed a class action against the District of Columbia and a former United States Marshal for the Superior Court of District of Columbia, under § 1983, claiming violation of the Fourth and Fifth Amendments. The arrestees alleged that the marshal strip searched all females awaiting presentment to a superior court judge, without reasonable and particularized suspicion that any female was carrying contraband on her person and without strip searching any male arrestees. The District of Columbia moved for summary judgment and the district court granted the motion. The court held that the former United States Marshal for the Superior Court of the District of Columbia was a federal official who was not amenable to suit, under § 1983, as an employee, servant, agent, or actor under the control of the District of Columbia, precluding the female former arrestees' class action. The court noted that the marshal was empowered to act under the color of the federal Anti-Drug Abuse Act, and a District of Columbia law provided that the marshal acted under the supervision of the United States Attorney General. According to the court, the District of Columbia lacked authority to control the conduct of the former United States Marshal, precluding the female former arrestees' class action under § 1983. The arrestees were held for presentment for an offense that did not involve drugs or violence, but they were subjected to a blanket policy of a strip, visual body cavity search and/or squat search without any individualized finding of reasonable suspicion or probable cause that they were concealing drugs, weapons or other contraband. (District of Columbia, Superior Court Cellblock)

U.S. District Court
FRISK SEARCH
PAT DOWN SEARCH

Jones v. *Murphy*, 567 F.Supp.2d 787 (D.Md. 2008). A male arrestee brought a class action, alleging that a booking facility's policy of frisking female arrestees while searching male arrestees down to their underwear violated the equal protection clause of the Fourteenth Amendment. The district court granted summary judgment for the arrestee, finding that the booking facility's gender-differentiated search policy was not reasonably related to a legitimate penological interest in preventing arrestees from bringing weapons into the booking facility, and thus violated the equal protection clause of the Fourteenth Amendment. The court noted that the additional staff needed to more thoroughly search female arrestees was not overly burdensome, and searching all arrestees to their last layer of clothing was a readily available constitutional alternative. (Baltimore City Central Booking, Maryland)

U.S. Appeals Court
DNA- Deoxy Ribonucleic Acid

Kaemmerling v. *Lappin*, 553 F.3d 669 (D.C.Cir. 2008). A federal prisoner sought to enjoin application of the DNA Analysis Backlog Elimination Act (DNA Act), alleging the Act violated his rights under the Religious Freedom Restoration Act (RFRA) and the First, Fourth, and Fifth Amendments. The district court dismissed the action for failure to exhaust administrative remedies. The prisoner appealed. The appeals court affirmed. The court held that the prisoner's allegation that DNA collection burdened his free exercise of religion failed to state a claim under the First Amendment and RFRA. The court found that the potential criminal penalty for failure to cooperate with the collection of a DNA sample did not violate RFRA. According to the court, the collection of prisoner DNA furthers a compelling government interest using the least restrictive means. The court also found that the DNA Act does not violate equal protection despite the fact that it requires collection of DNA only from felons who are incarcerated or on supervised release, rather than those who are no longer under the supervision of the Bureau of Prisons (BOP), where the BOP's measure of control over supervised and incarcerated felons makes it significantly easier to collect their DNA samples. The court noted that the extraction, analysis, and storage of the prisoner's DNA information did not call for the prisoner to modify his religious behavior in any way, did not involve any action or forbearance on the prisoner's part, and did not interfere with any religious act in which the prisoner was engaged. (Federal Correctional Institution, Seagoville, Texas)

U.S. Appeals Court
URINE TEST

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
BODY CAVITY SEARCHES
STRIP SEARCHES

McCabe v. *Mais*, 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)

U.S. District Court
STRIP SEARCHES

Munyiri v. *Haduch*, 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)

U.S. District Court
PAROLEES

Portentoso v. *Kern*, 532 F.Supp.2d 920 (N.D.Ohio 2008). A parolee brought a § 1983 action against a state parole authority and officers, stemming from an alleged illegal search of his residential property and his arrest. The defendants moved for dismissal and for summary judgment. The district court granted the motion in part and denied in part. The court held that the state parole officers had probable cause to search the parolee's barn, for the purposes of the parolee's Fourth Amendment claim alleging warrantless and illegal search, since the parolee's ex-wife had reported to officers that her daughter told her there were weapons in the barn. The court held that summary judgment was precluded by genuine issues of material fact, regarding whether the parolee consented to the state parole officers' search of his house after searching the barn for weapons. The court found that the state parole officers had probable cause to arrest the parolee after finding ammunition in his house, since possession of ammunition contravened the parolee's conditions of supervision. (Ohio)

U.S. District Court
BODY CAVITY SEARCHES

Sanchez Rodriguez v. *Departamento de Correccion y Rehabilitacion*, 537 F.Supp.2d 295 (D.Puerto Rico 2008). An inmate filed a § 1983 action alleging that Puerto Rico prison officials denied him his constitutional right to enjoy daily recreational time outside of his cell because he refused to submit to visual body cavity searches. After dismissal of his complaint, the inmate filed a motion for reconsideration. The district court denied the motion. The court held that the searches did not constitute cruel and unusual punishment. According to the court, the requirement that inmates submit to visual body cavity searches in order to leave their cells for recreation was needed to preserve internal order and institutional security, and thus did not constitute cruel and unusual punishment in violation of the Eighth Amendment. (Maximum Security Prison, Ponce, Puerto Rico)

U.S. District Court
STRIP SEARCHES

Streeter v. *Sheriff of Cook County*, 576 F.Supp.2d 913 (N.D.Ill. 2008). Current or former pretrial detainees filed a class action under § 1983 against a county sheriff and the county, challenging a strip search policy at the county jail, alleging it violated their Fourth and Fourteenth Amendment rights. The district court denied summary judgment for the defendants. The court held that the detainees stated a claim for violation of their Fourth Amendment rights in connection with group strip searches that were allegedly conducted in an unreasonably intrusive manner and went on longer than penologically necessary. The court also found that the detainees stated a claim for violation of their rights under the Due Process Clause of the Fourteenth Amendment in connection with group strip searches that were allegedly conducted in a manner intended to humiliate and embarrass the detainees, and that went on longer than necessary. (Cook County Jail, Illinois)

U.S. District Court
BODY CAVITY SEARCHES
STRIP SEARCHES

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
BODY CAVITY SEARCH
PRETRIAL DETAINEES
STRIP SEARCHES

Tardiff v. *Knox County*, 573 F.Supp.2d 301 (D.Me. 2008). An arrestee brought a § 1983 action against a county alleging a strip and visual body cavity search violated the Fourth Amendment. The district court granted summary judgment for the plaintiff, in part. The court held that jail personnel did not have individualized reasonable suspicion that the arrestee was concealing contraband or weapons, as required to perform a strip and visual body cavity search of the arrestee who had been arrested for felony witness tampering. The court noted that the arrestee was not arrested for a violent felony, spending a night in jail did not implicate sufficiently serious security concerns to warrant a search, the county failed to show the underlying facts of the crime provided individualized reasonable suspicion, and the county failed to establish that the arrestee's conduct required the search. According to the court, a felony categorization alone does not obviate the requirement of individualized reasonable suspicion for a strip and visual body cavity search of an arrestee. (Knox County Jail, Maine)

U.S. District Court
BODY SEARCHES
CONTRABAND
PRIVACY

Williams v. *Fitch*, 550 F.Supp.2d 413 (W.D.N.Y. 2008). A state inmate filed a § 1983 action alleging that corrections officers sexually abused him. The district court dismissed the case. The court held that the officers did not violate the inmate's Eighth Amendment rights by searching and handling his penis on three occasions while searching for contraband. The court noted that X-rays showed the presence of a metal object in the foreskin of the inmate's penis, and the searches were undertaken in a private location, without undue physical intrusion, humiliation, or physical injury. (Attica Correctional Facility, New York)

U.S. Appeals Court
DNA
PRIVACY

Wilson v. Collins, 517 F.3d 421 (6th Cir. 2008). A state prisoner brought a § 1983 action against state officials challenging the constitutionality of Ohio's DNA Act that required the collection of DNA specimens from convicted felons. The district court granted summary judgment to the defendants and the prisoner appealed. The appeals court affirmed. The court held that collection of a DNA specimen pursuant to the statute was not an unreasonable search and seizure and that the prisoner did not have a fundamental privacy interest in the information contained in a DNA specimen. (Ohio Department of Rehabilitation and Correction)

U.S. District Court
PRIVACY
VISITOR SEARCHES
X-RAY

Zboralski v. *Monahan*, 616 F.Supp.2d 792 (N.D.Ill. 2008). The wife of a civilly committed resident of a state treatment and detention facility brought an action against facility employees, in their individual and official capacities, alleging claims under § 1983 for violations of her Fourth and Fourteenth Amendment rights, as well as claims for invasion of privacy and assault and battery, in connection with a series of searches the employees performed on her when she was visiting a resident. The court denied the employees' motion for summary judgment, in part. The court held that a hearing was required in order to develop the record on the issue of the reasonableness of the searches. The court held that summary judgment was precluded by fact issues as to whether the wife agreed to undergo a scan each and every time she entered the facility, and as to whether one employee intentionally touched the wife's vaginal area during pat-down searches. The court denied immunity to the employee and found that, as a matter of first impression, requiring the wife to submit to a scan in order to visit her husband amounted to an unconstitutional condition. The facility employed X-ray technology to conduct a body search of visitors. The court noted that questions to be addressed at a hearing included how the machine actually worked and the quality of the images it produced, and how reasonable persons would feel being subjected to such a scan. According to the court, to determine whether a body scan of a prison visitor is akin to a pat-down or strip search, the key factor is the level of embarrassment and intrusion that the visitor searched feels. (Illinois Department of Human Services' Treatment and Detention Facility, Joliet, Illinois)

2009

U.S. District Court
STRIP SEARCHES

Allison v. *GEO Group, Inc.*, 611 F.Supp.2d 433 (E.D.Pa. 2009). Arrestees detained in state custodial facilities managed by a private corporation brought a class action against the corporation, alleging the facilities' blanket policy of mandatory strip searches without individualized suspicion violated the Fourth Amendment. The corporation moved for judgment on the pleadings for failure to state a claim upon which relief could be granted and the district court denied the motion. The court held that the arrestees stated a § 1983 claim for a Fourth Amendment violation. The court noted that strip searches in a custodial facility differ qualitatively from other intake procedures which entail some incidental nudity but do not involve visual inspection of the naked body. The court said that the exposure of the naked body to scrutiny by government officers is what makes strip searches more invasive than other admission procedures at a custodial facility. According to the court, the searches involved visual inspection of the arrestees' naked bodies, the searches of named arrestees were not based on reasonable suspicion, and the purported class consisted of arrestees who were either charged with minor offenses or non-violent offenses that did not involve drugs. (George W. Hill Corr. Facility, Pennsylvania)

U.S. District Court
STRIP SEARCHES

Bullock v. *Dart*, 599 F.Supp.2d 947 (N.D.Ill. 2009). Inmates filed a § 1983 action challenging the constitutionality a county's policies of performing blanket strip searches on male, but not female, inmates returning to county jail from court hearings at which charges against them were dismissed, and of providing privacy screens for female discharges but not male discharges. After entry of summary judgment in the inmates' favor, the defendants moved for reconsideration. The district court granted the motion in part. The court held that male inmates were similarly situated to female potential discharges. The court found that fact issues remained as to whether the county's policies were justified, and whether security considerations prevented the county from segregating inmates against whom charges had been dismissed before they returned to their divisions. The defendants asserted that the much greater number of male inmates in county custody and the differences in the nature and frequency of dangerous incidents in each population justified the policy. The court held that the county's policy and practice of segregating female possible discharges from the remainder of female court returns, such that female actual returns could elect to avoid strip searches, but not segregating male possible discharges in a similar manner, was not gender-neutral on its face, for the purposes of the Equal Protection Clause. (Cook County Department of Corrections, Illinois)

U.S. District Court
STRIP SEARCHES

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
CELL SEARCHES

Cox v. *Ashcroft*, 603 F.Supp.2d 1261 (E.D.Cal. 2009). A prisoner brought a § 1983 action against the United States Attorney General, several federal prosecutors, and the owner and employees of a privately-owned federal facility in which the prisoner was incarcerated, alleging constitutional violations arising from his arrest, prosecution, and incarceration. The district court dismissed the action. The court held that the prisoner did not have any Fourth Amendment rights to privacy in his cell, and thus did not suffer any constitutional injury as a result of the search of his cell and the confiscation of another inmate's legal materials. The court found that the prisoner did not have any liberty or property interest in employment while in prison, and thus the prisoner did not suffer any violation of his due process right related to his termination from his prison job as a result of discipline arising from the search of his cell, precluding liability on the part of facility owner and its employees under § 1983. (Taft Correctional Institution, Wackenhut Corrections Corporation, California)

U.S. District Court
OPPOSITE SEX
PAT DOWN SEARCH
PRIVACY

Forde v. *Zickefoose*, 612 F.Supp.2d 171 (D.Conn. 2009). A federal prisoner petitioned for a writ of habeas corpus, alleging that she was being denied freedom of religious expression, in violation of the First and Fourth Amendments and the Religious Freedom Restoration Act (RFRA). The district court granted the government's motion for summary judgment in part and denied in part. The court held that summary judgment was precluded by issues of fact as to: (1) whether the prisoner's exercise of her religion was substantially burdened by the prison's non-emergency cross-gender pat-down search policy; (2) whether the prisoner's exercise of her religion was substantially burdened by the prison's policy of requiring her to carry an identification photograph that showed her without a hijab to cover her head; and, (3) whether the prisoner's exercise of her religion was substantially burdened by the prison's failure to provide an imam during Ramadan. The court held that the prison's non-emergency cross-gender pat-down search policy did not violate the prisoner's limited right, under the Fourth Amendment, to bodily privacy. According to the court, although the prisoner made a sufficient showing of a subjective expectation of privacy, the expectation would not be considered reasonable by society, since the prison had a legitimate penological interest in security and in providing equal employment opportunities to both male and female staff, and no available further accommodation was reasonable under the circumstances. (Federal Correctional Institution, Danbury, Connecticut)

U.S. District Court
STRIP SEARCHES
USE OF FORCE

Jackson v. *Gerl*, 622 F.Supp.2d 738 (W.D.Wis. 2009). A prisoner brought a § 1983 action against a warden and other prison officials, alleging that the use of a stinger grenade to extract him from his cell constituted excessive force in violation of the Eighth Amendment, and that an abusive strip search following the deployment of the grenade also violated the Eighth Amendment. The defendants moved for summary judgment and the district court granted the motion in part and denied in part. The court held that a prison lieutenant's extraction of the prisoner from inside his cell by means of a stinger grenade, which when detonated created a bright flash of light, emitted a loud blast accompanied by smoke, and fired rubber balls, was not "de minimis," as would bar a claim for excessive force under the Eighth Amendment. The court found that summary judgment was precluded by genuine issues of material fact as to whether the extraction of the prisoner from his cell by means of a stinger grenade was malicious and sadistic, or whether the use was in a good-faith effort to maintain or restore discipline. The court found that the officials' alleged failure to give the prisoner an opportunity to strip down on his own so that officials could perform a visual inspection of his person rather than be subject to a manual strip search was for a legitimate penological purpose, and thus did not violate the Eighth Amendment as a wanton infliction of psychological pain. The officials decided to manually strip search the prisoner after he had resisted following orders along every step of the way. The court noted that the performance of the strip search in front of a cell, rather than inside a cell, was not done to demean and humiliate the plaintiff, where the cell was not in an area widely visible to prisoners, but rather was at the end of a hall with no cell across from it. (Wisconsin Secure Program Facility)

U.S. District Court
BODY CAVITY SEARCH
PRIVACY
STRIP SEARCHES

Lopez v. *Youngblood*, 609 F.Supp.2d 1125 (E.D.Cal. 2009). Plaintiffs brought a class action against a county, sheriff, and former sheriff, seeking injunctive relief and damages for alleged violations of his federal and state constitutional rights resulting from strip and/or visual body cavity searches of detainees and inmates of the county jail. The district granted summary judgment in part and denied in part. The court held that the policy of the county sheriff's office of subjecting to strip search all pretrial detainees who are ordered released as a result of court appearances, upon their return from the courthouse and prior to their being returned to the county jail's general population for administrative reasons pending release, violated the detainees' Fourth Amendment rights. The court found that there was no evidence that pretrial detainees at the county jail were subjected to strip searches in small groups as a means of punishment, as required to establish that the strip searches violated the detainees' due process rights. According to the court, pre-arraignment arrestees were not similarly situated to post-arraignment detainees, such that the practice of providing privacy for pre-arraignment strip and/or visual body cavity searches, but not for such searches of post-arraignment detainees, did not violate equal protection, notwithstanding the contention that the interest in maintaining the privacy of one's body cavities was the same for both arrestees and detainees. The court held that the defendants were entitled to qualified immunity because, at the time the county sheriff's office maintained the policy allowing for group strip and visual body cavity searches of post-arraignment detainees of the county jail, it was not clearly established that such searches violated the detainees' Fourth Amendment rights. (Kern County Sheriff's Department, Central Receiving Facility, Ridgecrest, Mojave, and Lerdo facilities, California)

U.S. Appeals Court
STRIP SEARCHES

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 whether strip searches were conducted in a harassing manner intended to humiliate and cause psychological pain, and whether guards subjected the prisoner to a non-routine search in retaliation for his complaints about strip searches, were questions for the jury. (Stateville Correctional Center, Illinois)

U.S. District Court
STRIP SEARCHES

Miller v. *Yamhill County*, 620 F.Supp.2d 1241 (D.Or. 2009). Three inmates of a county correction facility brought a class action against a county and sheriff alleging their policy of strip searching inmates at the facility without reasonable suspicion that they were carrying contraband or weapons was a violation of the Fourth Amendment. The defendants moved for summary judgment and the district court granted the motion. The court held that the sheriff supervising the deputies who conducted allegedly unconstitutional searches was not liable under § 1983, where the sheriff was not personally involved in any of the searches at issue, and there was no causal connection between any conduct of the sheriff and the alleged violations.

The court held that the strip search of an inmate at the facility, who was arrested for threatening someone with a knife and a cane, was reasonable upon the inmate's entry into the general jail population following his completion of a drug treatment program, in light of the underlying menacing charge. The court noted that the inmate was returning to the jail at the time of his choosing and therefore had knowledge that he would be entering the jail, and the inmate was returning from a drug treatment facility because of his possession and use of contraband. According to the court, the strip search of another inmate at the facility, who had been arrested on charges of driving while suspended and the felony of attempt to elude, was reasonable, in light of one of the charges being a felony, and the fact that the inmate had eluded arrest earlier in the day, and therefore knew that the police were looking for him and that he would likely be entering the jail population.

The court found that the strip search of a third inmate at the facility, who had been arrested on driving under the influence of intoxicants (DUII) charges, was reasonable, noting that after her arrest, the inmate managed to remove and conceal her handcuffs in her underwear, and after an extended search of the patrol car and booking area, and repeated denials that she had the handcuffs, the inmate removed the handcuffs from her pants, and deputy concluded that a strip search was necessary on the basis that inmate might be concealing other contraband. (Yamhill County Corrections Facility, Oregon)

U.S. District Court
STRIP SEARCHES

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 city's strip search policy at the time. (Washington County Jail, Oregon)

U.S. District Court
CELL SEARCHES

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. The court held that allegations in the prisoner's complaint that an MDOC employee would frequently shake down his cell looking for prohibited Uniform Commercial Code (UCC) materials, and that the employee would leave the cell in disarray, failed to state a § 1983 claim against the employee for violation of the prisoner's constitutional rights, given that the prisoner failed to even allege that any legal materials were confiscated. (Michigan Department of Corrections)

U.S. District Court
PRIVACY
STRIP SEARCHES

Quinones-Ruiz v. *Pereira-Castillo*, 607 F.Supp.2d 296 (D.Puerto Rico 2009). A state inmate brought a pro se § 1983 action for injunctive and monetary relief against state prison officials, alleging that the requirement that he squat over a mirror set on the floor in order to have his anus examined when moved to different areas of the facility was conducted in a hostile and denigrating manner, and that it humiliated and frustrated him. The district court dismissed the action. The court found that the inmate's complaint failed to provide any details which could lead the court to conclude that the prison's requirement was unreasonable, or that the inmate was an inmate being held for a minor offense or one that did not involve drugs, weapons, or other forms of contraband, as required to state a § 1983 claim for a violation of the inmate's right against unreasonable searches and seizures or cruel and unusual punishment. (Las Cucharas Correctional Facility, Puerto Rico)

U.S. District Court
PRETRIAL DETAINEES
STRIP SEARCHES

Reinhart v. *City of Schenectady Police Dept.*, 599 F.Supp.2d 323 (N.D.N.Y. 2009). An arrestee brought a § 1983 action against a city, police department and officers, alleging Fourth Amendment violations following her arrest for allegedly making harassing telephone calls. The district court granted summary judgment for the defendants. The court held that probable cause existed to commence the criminal action and perform the arrest, and that the suspicionless seizure of the arrestee's brassiere while incarcerated qualified as a "special need" for Fourth Amendment purposes. The court noted that the police department had a policy of seizing brassieres purely as a safety measure to preclude their use as a suicide tool, and the policy was implemented in a manner reasonably designed to reduce intrusion on the arrestee's privacy by allowing her to remove the brassiere without disrobing. (Schenectady Police Department, New York)

U.S. Appeals Court
BODY CAVITY SEARCH
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. Appeals Court
PRIVACY
STRIP SEARCHES

Schmidt v. *City of Bella Villa*, 557 F.3d 564 (8th Cir. 2009). An arrestee brought a § 1983 action against a police chief and city, alleging the chief's photographing of her tattoo violated her rights. The defendants moved for summary judgment and the district court granted the motion. The arrestee appealed. The appeals court affirmed. The court held that the chief's photographing of the arrestee's tattoo was not an unreasonable search and did not violate due process, and the photographing of the arrestee's tattoo did not amount to a strip search under Missouri strip search law. The court found that the action of photographing the tattoo did not violate the Fourth Amendment, despite the fact that the arrestee was required to unzip her pants for the photograph and that the photograph was taken by male officer. The court concluded that the photograph served legitimate law enforcement purposes, the chief told the arrestee that photograph was needed for identification purposes, and the photograph was taken in private. The court noted that the arrestee gave a false date of birth and social security number. She was arrested for making a false declaration and for being a minor in possession of alcohol. (City of Bella Villa, Missouri)

U.S. Appeals Court
BODY CAVITY SEARCH
CONTRABAND
PRIVACY
SAME-SEX SEARCH

Serna v. *Goodno*, 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)

U.S. District Court
FEMALES
STRIP SEARCHES

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
PAROLES
SEARCH WARRANT

U.S. v. *Warren*, 566 F.3d 1211 (10th Cir. 2009). Following a warrantless search of his residence, a parolee was convicted of being a felon in possession of a firearm and possessing with intent to distribute cocaine base. The parolee appealed. The appeals court affirmed. The appeals court held that a police officer's warrantless search of the parolee's residence was justified under the special-needs exception to the warrant and probable cause requirements, as well as under Colorado law, where the officer searched the residence at the direction of a parole officer. The parolee had signed a written agreement which required him to allow the parole officer to search his person, residence, any premises under his control, or his vehicle. (Colorado)

U.S. District Court
PRETRIAL DETAINEES
PRIVACY
STRIP SEARCHES

Young v. *County of Cook*, 616 F.Supp.2d 834 (N.D.Ill. 2009). Pretrial detainees brought an action against a county, sheriff, and current and former directors of the county department of corrections, on behalf of themselves and two certified classes, alleging that the county jail's strip search policy for new detainees violated their rights under the Fourth and Fourteenth Amendments. The district court granted the parties' motions for summary judgment in part and denied in part. The court held that: (1) the strip search of detainees charged with misdemeanor offenses not involving drugs or weapons violated the Fourth Amendment; (2) the strip searches of members of a class of males who were subjected to a strip search as new detainees before privacy screens were installed violated the Fourth Amendment; (3) issues of material fact precluded summary judgment on the Fourth Amendment claims for the time period after privacy screens were installed; and (4) strip searches before privacy screens were installed violated due process. According to the court, there was no evidence that blanket strip searches were necessary with respect to these class members, and there was no evidence that the strip search of individual class members was required. The court noted that although intermingling with general prisoners may be one factor in evaluating the reasonableness of a prison's strip search policy with respect to new pretrial detainees, that fact standing alone is not enough to justify strip searches of pretrial detainees in the absence of individualized reasonable suspicion. (Cook County Jail, Illinois)

U.S. District Court
PRETRIAL DETAINEES
PRIVACY
STRIP SEARCHES

Young v. *County of Cook*, 616 F.Supp.2d 856 (N.D.Ill. 2009). Pretrial detainees charged with misdemeanors brought a civil rights class action under § 1983 against a county, a former county sheriff, and sheriff's employees, alleging that the jail's blanket strip search policy violated their Fourth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the detainees on the issue of liability and the defendants moved for reconsideration. The district court denied the defendants' motion for reconsideration. The court held that the county could have forfeited its claim to raise the issue that the details of 2,000 contraband reports revealed 832 instances where persons purportedly charged with misdemeanors were found to have contraband money during strip search process, where the county failed to properly bring this evidence to the court's attention during the summary judgment briefing process. According to the court, the deference accorded to the jail's expertise in matters of institutional security did not preclude the court from determining whether the evidence supported the application of the jail's policy of subjecting newly arriving misdemeanor detainees to a blanket policy of strip/body cavity searches. The court noted that the defendants asserted that the district court had "ignored ... downplayed, and ... distorted" the evidence. In its decision, the court responded "Not so. With their submissions, defendants submitted volumes of exhibits that, if stacked up, create a pile over fifteen inches high." (Cook County Jail, Illinois)

2010

U.S. District Court
BODY CAVITY SEARCHES
OPPOSITE SEX
PRIVACY

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 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
BODY CAVITY SEARCHES
PRETRIAL DETAINEE
STRIP SEARCHES

Cantley v. *West Virginia Regional Jail and Correctional Facility Authority*, 728 F.Supp.2d 803 (S.D.W.Va. 2010). A pretrial detainee who was strip searched and deloused brought a class action against a regional jail authority, challenging its strip search and delousing policies. The jail authority moved to dismiss. The district court denied the motion. The court held that the detainee stated a claim in regard to the strip search policy and in regard to the delousing policy. The court found that a jail authority official sued in his individual capacity was not entitled to qualified immunity. The detainee alleged that the jail had a blanket policy of conducting visual cavity strip searches of all pretrial detainees charged with misdemeanors or other minor crimes, regardless of

whether the detainees were intermingled with the general population of the jail, and that there was no reasonable suspicion that he harbored weapons or contraband. The court ruled that whether the jail's delousing policy, which allegedly applied to all pretrial detainees, was reasonable under the Fourth Amendment could not be decided on a motion to dismiss. The court noted that the detainee who brought the action against a regional jail authority for alleged civil rights violations was not required to exhaust his administrative remedies under the Prison Litigation Reform Act (PLRA), where he was no longer an inmate at the time he filed suit. (West Virginia Regional Jail and Correctional Facility Authority, Western Regional Jail)

U.S. Appeals Court
STRIP SEARCHES
PRETRIAL DETAINEE

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
CROSS GENDER
PAT DOWN SEARCH

Forde v. *Baird*, 720 F.Supp.2d 170 (D.Conn. 2010). A federal inmate petitioned for a writ of habeas corpus, alleging that she was being denied freedom of religious expression, in violation of the First Amendment and the Religious Freedom Restoration Act (RFRA). The district court granted summary judgment for the defendants, in part, and denied in part. The court held that the Muslim inmate's right to free exercise of religion was substantially burdened, as required to support her claim under RFRA, by a prison policy allowing for non-emergency pat searches of female inmates by male guards, despite prison officials' claim that the inmate's belief was not accurate. The court found that the choice offered the inmate, of violating her understanding of the precepts of Islam, or refusing a search and risking punishment, constituted a substantial burden. The court found that the prison's interest in maintaining safety and security of the female prison through the use of cross-gender pat searches was not compelling, as required to justify a substantial burden on the inmate's right of free exercise of religion under RFRA, where the prison's arguments regarding how and why the cross-gender pat searches promoted safety and security at the prison were actually related to the staffing of the facility, not to its safety and security. According to the court, the prison's interest in avoiding staffing and employment issues at the female prison through the use of cross-gender pat searches was not compelling, as required to justify a substantial burden on the inmate's right of free exercise of religion under RFRA. The court noted that even if the prison's interests in maintaining safety and security and avoiding staffing and employment issues were compelling, cross-gender pat searches were not the least restrictive means of addressing these interests, as required to justify the substantial burden on an inmate's right of free exercise of religion under RFRA, absent evidence that the prison considered and rejected less restrictive practices to cross-gender pat searches. (Federal Correctional Institution in Danbury, Connecticut)

U.S. Appeals Court
STRIP SEARCHES
USE OF FORCE

Forrest v. *Prine*, 620 F.3d 739 (7th Cir. 2010). A pretrial detainee brought a § 1983 action against a police officer alleging the officer used excessive force against him when he used a stun gun in a holding cell. The district court entered summary judgment for the officer. The detainee appealed. The appeals court affirmed. The court held that the officer did not violate the pretrial detainee's right to be free of illegal search and seizure when he used a stun gun on the detainee while attempting to conduct a strip search in a holding cell following the detainee's arrest. The court held that the officer's decision to use the stun gun on the detainee did not violate the detainee's due process guarantees, where the officer was aware that the detainee had attacked another officer earlier in the night, and the detainee appeared to be intoxicated. The court noted that the detainee was a relatively large man confined in an enclosed space of relatively small area, and he was facing the officer, pacing in the cell, clenching his fists, and yelling obscenities in response to orders to comply with the strip search policy. (Rock Island County Jail, Illinois)

U.S. District Court
CONTRABAND
USE OF FORCE

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
CELL SEARCHES

Harvey v. *Jordan*, 605 F.3d 681 (9th Cir. 2010). An inmate brought a suit alleging that prison officials' use of pepper spray to extract him from his cell during a building-wide search of all prisoners' cells constituted excessive force and that his right to due process was denied in connection with a disciplinary charge stemming from his refusal to comply with the search. The district court granted the defendants' motion to dismiss for failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA). The inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the inmate exhausted administrative process, as required by PLRA, for the claim that he was denied due process in connection with a disciplinary charge when prison officials purported to grant relief that resolved his grievance to his satisfaction, a hearing and access to a videotape. The court noted that the inmate was not required to appeal that decision. (Salinas Valley State Prison, California)

U.S. District Court
STRIP SEARCHES

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
PRIVACY
STRIP SEARCHES

Jones v. *Price*, 696 F.Supp.2d 618 (N.D.W.Va. 2010). A male inmate brought a § 1983 action against a correctional officer alleging that the officer violated his constitutional rights by requiring him to undergo a strip search in a non-private area in front of a female booking clerk. The district court denied the officer's motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to whether the correctional officer conducted the strip search in a reasonably necessary manner. The court noted that the inmate's right to keep his genitals private from unreasonable exposure to members of the opposite sex was clearly established at the time of the search. (Tygart Valley Regional Jail, West Virginia)

U.S. District Court
CELL SEARCHES
USE OF FORCE

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 an ADC employee's use of force against the inmate was justified by the inmate's disruptive behavior during the search of her cell and thus did not give rise to the ADC employee's liability on an excessive force claim. The inmate alleged that the ADC employee grabbed her by the arm, dragged her from her cell, and threw her into the shower. The court note that there was no medical evidence that the ADC employee's use of handcuffs caused any permanent injury to the inmate as required to support a claim that the employee used excessive force against the inmate. 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. District Court
CROSS GENDER
STRIP SEARCHES

McIllwain v. *Weaver*, 686 F.Supp.2d 894 (E.D.Ark. 2010). An arrestee brought a § 1983 action against a city, county, and law enforcement officers challenging his strip search. The defendants moved for summary judgment, and the arrestee moved for partial summary judgment. The district court granted the motions in part and denied in part. The court held that special circumstances justified the presence of a male sheriff's deputy during the strip search of the female arrestee who was being booked into jail, and thus, the male deputy's presence during the strip search did not violate the arrestee's Fourth Amendment rights. The court noted that the male deputy came to the cell in which the arrestee was being searched only after the arrestee began physically resisting the efforts of a female officer to perform the strip search, and the female officer called for help. The court found that summary judgment was precluded by genuine issues of material fact as to what the county policy or custom was with respect to strip searches of arrestees, and as to the adequacy of the county's training procedures for strip searches. (Sharp County Jail, Arkansas)

U.S. Appeals Court
STRIP SEARCHES

Nunez v. *Duncan*, 591 F.3d 1217 (9th Cir. 2010). A federal inmate brought a pro se *Bivens* action against prison officials, alleging he was subjected to a random strip search in violation of his First, Fourth, and Eighth Amendment rights. The district court entered summary judgment for the officials, and the inmate appealed. The appeals court affirmed, finding that the strip search of the inmate pursuant to a policy authorizing strip searches of inmates returning from outside work detail was reasonably related to a legitimate penological interest in controlling contraband within the prison, and thus did not violate the inmate's Fourth Amendment rights. (Federal Prison Camp, Sheridan, Oregon)

U.S. Appeals Court
VEHICLES

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)

U.S. District Court
BODY CAVITY
SEARCHES

U.S. v. *Ghailani*, 751 F.Supp.2d 508 (S.D.N.Y. 2010). A defendant, an alleged member of Al Qaeda charged with conspiring to kill Americans abroad, moved for an order directing the Bureau of Prisons (BOP) to cease from employing visual inspection of his rectal area when entering or leaving a correctional center for court appearances. The district court denied the motion, finding that the search policy was justified by a legitimate governmental interest in protecting the safety of prison and court personnel and other inmates. The court noted that the policy was adopted at the national level in recognition of the substantial danger that inmates will secrete

weapons or other contraband in body cavities, that the government made a credible showing that ready alternatives were not available to protect this important security interest, and that the defendant's Sixth Amendment rights would be protected adequately by existing procedures. (Metropolitan Correctional Center, Manhattan, New York)

2011

U.S. District Court
STRIP SEARCHES
PRETRIAL DETAINEES

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
CELL SEARCHES
USE OF FORCE

Bailey v. *Hughes*, 815 F.Supp.2d 1246 (M.D.Ala. 2011). A state prisoner brought an action against a county sheriff's department, a sheriff, corrections officers, and others, alleging unconstitutional deprivations of his rights while in custody in a county jail. The defendants moved to dismiss and for an award of attorney fees. The district court granted the motions. The district court held that: (1) neither the Fourteenth Amendment nor the Fourth Amendment's excessive force prohibition applied to the sentenced offender; (2) the sheriff and supervisory officials were entitled to qualified immunity; (3) allegations did not state an Eighth Amendment claim based on jail overcrowding; (4) the officers' alleged conduct in tasering the prisoner did not violate the Eighth Amendment; (5) allegations did not state a § 1983 claim for an unconstitutional strip search; (6) placement of the prisoner alone in closet-sized cell for eight hours after the alleged incident did not amount to unconstitutional confinement; and (7) the officers' alleged conduct in searching the prisoner's cell did not amount to retaliation for prisoner's prior lawsuit. The court noted that the prisoner admitted that he repeatedly refused the officers' verbal commands and fled his cell, he was repeatedly warned that he would be shocked if he did not comply with the officers' commands, and he was shocked by a taser only once before he fled his cell and then two to three times after he did so. (Houston County Jail, Alabama)

U.S. District Court
PRETRIAL DETAINEES
STRIP SEARCHES

Bame v. *Dillard*, 637 F.3d 380 (D.C.Cir. 2011). Arrestees, who were arrested while protesting International Monetary Fund (IMF) and World Bank policies in the District of Columbia, brought a *Bivens* action against a former United States Marshal, alleging that they had been subjected to unconstitutional strip searches upon being processed into holding cells at a courthouse. The arrestees moved for summary judgment as to liability, and the Marshal moved for summary judgment on the issue of qualified immunity. The district court denied those motions. On appeal, the appeals court reversed and remanded. The court held that there was no clearly established constitutional prohibition of strip searching arrestees without individualized, reasonable suspicion. According to the court, strip searching of all male arrestee demonstrators or protestors engaged in civil disobedience, in a locality that had a persistent problem with contraband being smuggled into a cellblock, prior to their commingled placement in holding cells, without individualized, reasonable suspicion had not been prohibited by the Fourth Amendment at the time of the incident, and therefore the supervising United States Marshal was entitled to qualified immunity. (U. S. Marshal for the Superior Court of the District of Columbia)

U.S. Appeals Court
EMPLOYEE

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. Appeals Court
OPPOSITE SEX
PRETRIAL DETAINEE
STRIP SEARCHES

Byrd v. *Maricopa County Sheriff's Dept*., 629 F.3d 1135 (9th Cir. 2011). A male pretrial detainee, proceeding pro se, brought a § 1983 action against a female cadet and a sheriff's department, alleging violations of the Fourth and Fourteenth Amendments. The district court entered judgment in favor of the defendants. The ruling was affirmed on appeal. After granting a rehearing en banc, the appeals court reversed and remanded. The appeals court held that the strip search of the male pretrial detainee by a female cadet was unreasonable in violation of the Fourth Amendment, where the cadet touched the detainee's inner and outer thighs, buttocks and genital area with her latex gloved hand through very thin boxer shorts, the female cadet moved the detainee's penis and scrotum in the process of conducting the search, the cadet wore only jeans and a white t-shirt without any identification other than a name printed on the back of the shirt, ten to fifteen non-participating officers watched the search, and at least one person videotaped the search. (Maricopa County Sheriff, Arizona)

U.S. District Court
STRIP SEARCHES

Johnson v. *Government of Dist. of Columbia*, 780 F.Supp.2d 62 (D.D.C. 2011). Female arrestees, who were arrested for non-drug and non-violent offenses, brought an action against the District of Columbia and a former United States Marshal for the Superior Court, among others, alleging that the defendants' blanket policy of subjecting them to "drop, squat, and cough" strip searches before presentment to a judicial official violated their rights to be free from unreasonable searches under the Fourth Amendment, and their rights to equal protection

under the Fifth Amendment. The marshal moved for summary judgment. The court granted the motion in part and denied in part. The court held that the Marshal was entitled to qualified immunity from the Fourth Amendment claim and that there was no evidence that the Marshal implemented a policy that directed the blanket practice of strip searching female arrestees, as would support a Fifth Amendment claim, nor that the Marshal knew of a blanket practice of strip searching female arrestees. The court noted that the law at the time of the searches did not clearly establish that strip searching female arrestees prior to presentment to a judicial official violated the Fourth Amendment. (U.S. Marshal for the Superior Court of the District of Columbia)

U.S. District Court
STRIP SEARCHES

Rattray 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 then 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 County Jail, Iowa)

2012

U.S. Appeals Court
STRIP SEARCHES

Beaulieu v. *Ludeman*, 690 F.3d 1017 (8th Cir. 2012). Patients who were civilly committed to the Minnesota Sex Offender Program (MSOP) brought a § 1983 action against Minnesota Department of Human Services (DHS) officials and Minnesota Department of Corrections (DOC) officials, alleging that various MSOP policies and practices relating to the patients' conditions of confinement were unconstitutional. The district court granted summary judgment in favor of the defendants and the patients appealed. The appeals court affirmed. The appeals court held that: (1) the MSOP policy of performing unclothed body searches of patients was not unreasonable; (2) the policy of placing full restraints on patients during transport was not unreasonable; (3) officials were not liable for using excessive force in handcuffing patients; (4) the officials' seizure of televisions from the patients' rooms was not unreasonable; (5) the MSOP telephone-use policy did not violate the First Amendment; and (6) there was no evidence that officials were deliberately indifferent to the patients' health or safety. (Minnesota Sex Offender Program)

U.S. Appeals Court
STRIP SEARCHES

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 Corr'l Facility, Michigan)

U.S. Appeals Court
CELL SEARCHES

Kendrick v. *Pope*, 671 F.3d 686 (8th Cir. 2012). A female state inmate brought a civil rights action against a corrections officer who allegedly confiscated religious items during a cell shakedown. The district court dismissed the inmate's claims and she appealed. The appeals court reversed and remanded, finding that genuine issues of material fact precluded summary judgment. According to the court, summary judgment was precluded by a genuine issue of material fact as to whether the corrections officer confiscated the inmate's Catholic Bible, rosary beads, and other religious materials during a cell shakedown, and subsequently failed to return those items. (McPherson Unit, Arkansas Department of Corrections)

U.S. District Court
PAT DOWN SEARCHES
PRIVACY
STRIP SEARCHES

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 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 Department of Corrections; Corrections Corporation of America; Crossroads Correctional Center)

U.S. District Court
PRETRIAL DETAINEES
STRIP SEARCHES

Rattray v. *Woodbury County, Iowa*, 908 F.Supp.2d 976 (N.D.Iowa 2012). Misdemeanor arrestees brought a civil rights action against a county and law enforcement officials, alleging that their Fourth Amendment rights were violated when they were searched pursuant to a "blanket" policy authorizing strip searches of all arrestees facing serious misdemeanor or more serious charges. Following the grant of summary judgment, in part, in favor of the arrestees, the county moved for reconsideration. The court granted the motion, in part. The court held that the recent Supreme Court decision in *Florence*, which held that reasonable suspicion was generally not required to strip search pretrial detainees, subject to possible exceptions, was an intervening change in the law, justifying reconsideration. According to the court, the county's strip search policy was reasonable under the Fourth Amendment, regardless of whether arrestees would be put into the general population. But the court found that summary judgment was precluded on the arrestee's claim that the manner of a strip search was unreasonable. (Woodbury County Jail, Iowa)

U.S. District Court
DNA- Deoxy Ribonucleic Acid
PRIVACY

U.S. v. *Fricosu*, 844 F.Supp.2d 1201 (D.Colo. 2012). A defendant moved for an order requiring that the DNA sample taken when she presented herself to the United States Marshal for processing and any DNA profiles developed from it be destroyed. The district court denied the motion. The court held that the defendant's Fourth Amendment rights were not violated when the sample was taken and was later furnished to the FBI for analysis and inclusion in a Combined DNA Index System. The court noted that although a vast amount of sensitive information could be mined from the defendant's DNA, the statute authorizing the taking of the sample specified for the limited purposes for which the DNA profile could be used. (United States Marshal, Denver, Colorado)

U.S. Appeals Court
PAT DOWN SEARCHES
STRIP SEARCHES
USE OF FORCE

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)

2013

U.S. Appeals Court
CELL SEARCHES
CONTRABAND
DRUG TEST

Chappell v. *Mandeville*, 706 F.3d 1052 (9th Cir. 2013). A state prison inmate brought a § 1983 action against prison officials, alleging violations of the Eighth and Fourteenth Amendments. The defendants moved for summary judgment on the ground of qualified immunity and the district court granted summary judgment as to some, but not all, of the claims. The defendants appealed. The appeals court reversed. The appeals court held that: (1) it was not clearly established that subjecting the prison inmate to a contraband watch violated the Eighth Amendment prohibition against cruel and unusual punishment, and thus prison officials were entitled to qualified immunity on the Eighth Amendment claim; (2) the contraband watch was not such an extreme change in conditions of confinement as to trigger due-process protection; and (3) it was not clearly established whether a state-created liberty interest existed with regard to the contraband watch, and thus officials were entitled to qualified immunity on the claim that the inmate's right to due process was violated because he was not provided with an opportunity to be heard by the official who ordered contraband watch.

The inmate's fiancée had visited him, and when she entered the prison she was wearing a ponytail hairpiece. The next day the hairpiece was discovered in a trash can near the visiting room. Prison officials then searched the entire visiting area and found spandex undergarments in the women's bathroom. Both the hairpiece and the undergarments tested positive for cocaine residue. Prison staff conducted a search of the inmate's cell, during which they notified him that they believed that someone had introduced drugs through a hairpiece. The officials discovered three unlabelled bottles of what appeared to be eye drops in the inmate's cell. The liquid in the bottles tested positive for methamphetamine. The inmate was then placed on a contraband watch. The contraband watch conditions included 24-hour lighting, mattress deprivation, taping the inmate into two pairs of underwear and jumpsuits, placing him in a hot cell with no ventilation, chaining him to an iron bed, shackling him at the ankles and waist, and forcing him to eat "like a dog." (California State Prison, Sacramento)

U.S. District Court
RETALIATION
PRETRIAL DETAINEES
STRIP SEARCHES
USE OF FORCE

Clay v. *Woodbury County, Iowa*, 982 F.Supp.2d 904 (N.D.Iowa 2013). A female arrestee brought a § 1983 action against a city, an arresting officer, county, county sheriff, and jail officers, alleging, among other things, that jail officers "strip searched" her without reasonable suspicion and in unconstitutional manner, and did so in retaliation for her vociferous complaints about her detention and the search of her purse and cell phone. The defendants moved for summary judgment, and the arrestee moved to exclude expert testimony. The district court held that the expert's reference to an incorrect standard for the excessive force claim did not warrant excluding his opinions in their entirety, although portions of the expert's report were inadmissible.

The court found that the incident in which male and female county jail officers forcibly removed the female

arrestee's under-wire bra and changed her into jail attire was not a "strip search" within the meaning of the Iowa law which defined a "strip search" as "having a person remove or arrange some or all of the person's clothing so as to permit an inspection of the genitalia, buttocks, female breasts or undergarments of that person or a physical probe by any body cavity," where there was no indication that the officers inspected the arrestee's private parts or physically probed any of her body cavities. The court also found that the arrestee whose clothing was forcibly removed in the presence of male and female county jail officers in a holding cell after the arrestee refused to answer questions during the booking process and to remove her clothing herself, was not subjected to a "strip search" requiring reasonable suspicion under the Fourth Amendment. According to the court, the officers did not violate the arrestee's privacy rights under the Fourth Amendment where the officers' reason for removing the arrestee's bra-- institutional safety-- was substantially justified, and the scope of the intrusion was relatively small. The court also found that the officers were entitled to qualified immunity from the female arrestee's § 1983 unlawful search claim, where the officers neither knew, nor reasonably should have known, that their actions would violate the arrestee's privacy rights. The court held that summary judgment was precluded by genuine issues of material fact as to whether the amount of force used by female county jail officers during the booking process to forcibly remove the female arrestee's under-wire bra and change her into jail attire after the arrestee refused to answer questions, became disruptive, and refused to remove her clothing herself, was reasonable. The officers allegedly threw the arrestee onto the cell bunk, causing her to bang her head against the bunk or cell wall. The court found that male county jail officers did not use excessive force, within the meaning of the Fourth Amendment, in restraining the female arrestee in a holding cell after the female officers had allegedly thrown the arrestee onto a cell bunk, causing her to bang her head against bunk or cell wall, in an effort to forcibly remove the arrestee's clothing and to change her into jail attire. (Woodbury County Jail, Iowa)

U.S. District Court
EVIDENCE
RETALIATION
SEARCH WARRANT

Donahoe v. *Arpaio*, 986 F.Supp.2d 1091 (D.Ariz. 2013). A former member of a county board of supervisors brought an action against the sheriff of Maricopa County, Arizona, a former county attorney, and deputy county attorneys, asserting claims under § 1983 and state law for wrongful institution of civil proceedings, malicious prosecution, false imprisonment and arrest, intentional infliction of emotional distress, and unlawful search. The parties cross-moved for summary judgment. The district court denied the plaintiff's motion, and granted in part and denied in part the defendants' motions. The court held that summary judgment for the defendants was precluded by fact issues: (1) with respect to the malicious prosecution claims; (2) as to whether misrepresentations and omissions of evidence in a search warrant affidavit were material; (3) as to unlawful search claims against the sheriff and deputy county attorneys; (4) with respect to the false arrest claim; and (5) with respect to the claim for wrongful institution of civil proceedings. The court noted that a reasonable magistrate would not have issued a search warrant based on the accurate and complete representation of known evidence. The court held that the retaliatory animus of the county sheriff and prosecutors would chill a person of ordinary firmness from criticizing the sheriff and prosecutors and from vigorously litigating against them. According to the court, fact issues as to whether the county sheriff and prosecutors acted outrageously and either intended the arrestee harm, or were recklessly indifferent to whether their actions would infringe on his rights and cause him severe distress, precluded summary judgment for the defendants with regard to the claim for punitive damages in the action for unlawful search, false arrest, malicious prosecution, and First Amendment violations. (Maricopa County Sheriff and County Attorneys, Arizona)

U.S. District Court
PAT DOWN SEARCH
USE OF FORCE

Gwathney v. *Warren*, 930 F.Supp.2d 1313 (M.D.Ala. 2013). An inmate filed a *Bivens* suit against a prison officer and others for use of excessive force during a pat-down search, alleging violation of the Eighth Amendment prohibition against cruel and unusual punishment, and other claims. All claims except the excessive use of force claim were dismissed. The officer filed a renewed motion to dismiss on the grounds of qualified immunity, or in the alternative for summary judgment. The district court granted summary judgment in favor of the officer. The court held that evidence did not create a fact issue as to whether the prison official maliciously or sadistically inflicted pain on the inmate while conducting a pat-down search, as required for the inmate to survive summary judgment on the defense of qualified immunity. According to the court, when the officer entered the inmate's cubicle, he observed the inmate rise from his bunk, turn, and place his hand down front of his pants, which typically signaled that an inmate was trying to conceal an object. The inmate was facing away from the officer when the officer began the pat-down and thus, the inmate could not observe any expression or movement suggesting that the officer had any malicious motive in touching the inmate's shoulders. Even after the inmate fell to his knees from post-surgery shoulder pain, the officer's statement "[o]h, you still can't raise your arm" did not indicate malice for the sole purpose of inflicting pain, but rather supported an inference that the officer still did not believe the inmate's assertion about shoulder surgery and that he could not raise his arm. (Federal Prison Camp, Montgomery, Alabama)

U.S. District Court
PRETRIAL DETAINEES
STRIP SEARCHES

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 Co.Jail, New Jersey)

U.S. District Court
PRETRIAL DETAINEES
STRIP SEARCH

In re Nassau County Strip Search Cases, 958 F.Supp.2d 339 (E.D.N.Y. 2013). Arrestees brought a class action against county officials and others, challenging a county correctional center's blanket strip search policy for newly admitted, misdemeanor detainees. The defendants moved for reconsideration and to vacate a prior order granting summary judgment in favor of the arrestees on the liability issue. The district court granted the motion in part and denied the motion in part. The court held that: (1) the defendants' concession of liability did not, in

and of itself, divest the court of discretion to reconsider its prior order granting summary judgment in favor of the arrestees on the issue of liability; (2) the *Florence v. Board of Chosen Freeholders* decision was an intervening change in the controlling federal law, justifying the district court's reconsideration of a prior order granting summary judgment in favor of the arrestees on their federal claim; and (3) the *Florence* decision did not justify reconsideration of a prior grant of summary judgment on the New York state constitutional claim. (Nassau County Correctional Center, New York)

U.S. Appeals Court
STRIP SEARCHES
QUALIFIED IMMUNITY

Johnson v. *Government of Dist. of Columbia*, 734 F.3d 1194 (D.C. Cir. 2013). Female arrestees who were forced to endure strip searches while awaiting presentment at hearings at the District of Columbia Superior Court filed a class action against the District of Columbia and a former United States Marshal for the Superior Court, alleging that such searches violated the Fourth Amendment. They also alleged a violation of the Fifth Amendment's equal protection guarantee, where men were not similarly strip searched. The district court granted summary judgment to the District and the Marshal. The arrestees appealed. The appeals court affirmed. The appeals court found that the former marshal who administered the Superior Court cellblock was at all times a federal official acting under the color of federal law, and, thus, the District of Columbia could not be held liable under § 1983 for the marshal's conduct. The court noted that the statutory scheme gave the District of Columbia no power to exercise authority over, or to delegate authority to, the marshal, and lacked the discretion to stop sending pre-presentment arrestees to the marshal. According to the court, any Fourth Amendment right that the former United States Marshal may have violated by subjecting detainees arrested on minor charges to blanket strip searches was not clearly established at the time of any violation, and therefore the marshal was entitled to qualified immunity on the detainees' claims alleging violations of their Fourth Amendment rights. The court also found no evidence that the marshal purposefully directed that women should be treated differently than men with respect to the strip-search policy at the Superior Court cellblock, in violation of the Fifth Amendment's equal protection guarantee. (District of Columbia, United States Marshal for the Superior Court)

U.S. Appeals Court
STRIP SEARCHES

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. Appeals Court
STRIP SEARCHES
PRIVACY

McCreary v. *Richardson*, 738 F.3d 651 (5th Cir. 2013). A Muslim state inmate brought an action against a prison captain in his individual capacity, alleging that the captain ordered an unconstitutional strip search and prevented him from attending religious services in violation of the Religious Land Use and Institutionalized Person's Act (RLUIPA), and the First, Fourth, and Fourteenth Amendments. The district court denied the inmate's motion for default judgment and granted the captain's motion for summary judgment. The inmate appealed. The appeals court affirmed. The appeals court held that: (1) the inmate was not entitled to monetary damages against a correctional officer under the provisions of RLUIPA; (2) the strip search did not violate the inmate's Fourth Amendment rights; (3) a reasonable officer would not know that a lengthy strip search in the presence of female officers violated clearly established law, and thus the captain was entitled to qualified immunity; and (4) the captain did not act in an objectively unreasonable manner by refusing to permit the inmate to attend a religious service after the search, where the inmate had created a disturbance during the search. According to the court, the inmate's potentially provocative questions in a public hallway constituted a disturbance, where during the strip search, the inmate asked the captain why he was singling out Muslims and subjecting them to harassment in a hallway with several other Muslim inmates who were waiting to attend a religious service. (H.H. Coffield Unit, Texas Department of Criminal Justice)

U.S. District Court
PAROLEES

Nelson v. *District of Columbia*, 953 F.Supp.2d 128 (D.D.C., 2013). A jury ruled in favor of an apartment resident in her and an arrestee's action against a police officer for false arrest and imprisonment and Fourth Amendment violations stemming from a search of the residence she shared with the arrestee. The officer moved for judgment as a matter of law (JMOL). The court held that the officer violated the resident's Fourth Amendment rights by detaining and handcuffing her for two hours while executing a weapons search of the apartment. According to the court, the evidence was sufficient to support the conclusion that the police officer lacked sufficient safety or efficacy concerns to justify under the Fourth Amendment detaining and handcuffing the resident's hands behind her back for two hours. The court noted that the officer did not assert that the arrestee was a gang member or express any concern that an armed cohort of the arrestee might be present, the arrestee was in jail at the time of the search, and the resident was at home alone and in underwear when the police arrived. (District of Columbia)

U.S. District Court
STRIP SEARCHES

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
OPPOSITE SEX
PRETRIAL DETAINEES
PRIVACY
QUALIFIED IMMUNITY
STRIP SEARCHES

Shaw v. *District of Columbia*, 944 F.Supp.2d 43 (D.D.C. 2013). A former pretrial detainee, a transgender woman, who underwent sex reassignment surgery and had her sex legally changed to female, brought an action against the United States Marshals Service (USMS), USMS marshals, District of Columbia, a police chief, and police officers, alleging under § 1983 that the defendants violated her Fourth Amendment rights in connection with her arrests, and asserting claims under the District of Columbia Human Rights Act and tort law. The police chief, officer, and USMS defendants moved to dismiss. The district court granted the motion in part and denied in part. The district court held that the USMS marshals were not entitled to qualified immunity from the unlawful search claim, where a reasonable officer would have known that a cross-gender search of a female detainee by male USMS employees that included intimate physical contact, exposure of private body parts, and verbal harassment, all in front of male detainees and male USMS employees, in the absence of an emergency, was unreasonable. The court also found that the USMS marshals and the police officer were not entitled to qualified immunity from a § 1983 Fifth Amendment conditions of confinement claim brought by the pretrial detainee, arising from the defendants' actions in holding the detainee with male detainees and otherwise treating her as if she were male. According to the court, a reasonable officer would know that treating the female detainee as the detainee was treated exposed her to a substantial risk of serious harm, and, therefore, would know that those actions violated the detainee's due process rights. (District of Columbia Metropolitan Police Department, Sixth District Police Station and MPD's Central Cellblock, and United States Marshals Service)

U.S. Appeals Court
STRIP SEARCHES

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.

According to the court, the prisoner established, for qualified immunity purposes, that the corrections officer violated her Fourth Amendment rights by conducting a strip search of her in her cell in view of other inmates and prison personnel. The court noted that the officer received a reprimand for violating Department of Corrections (DOC) rules by conducting the strip search in view of those not assisting in the search, the officer allegedly refused to tell the prisoner her reasons for initiating the search, and smirked during the search, which suggested personal animus and implicated the prisoner's dignitary interest. The court found that the female prisoner's right not to be subjected to a suspicionless strip search in full view of others absent a legitimate penological justification was clearly established, for purposes of the female corrections officer's qualified immunity defense. (Huron Valley Women's Correctional Facility, Michigan)

U.S. District Court
BODY CAVITY SEARCH
CONTRABAND
QUALIFIED IMMUNITY
STRIP 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
EMPLOYEE

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)

2014

U.S. District Court
STRIP SEARCHES
OPPOSITE SEX

Baggett v. *Ashe*, 41 F.Supp.3d 113 (D.Mass. 2014). A former female inmate and current female inmates brought a class action against a sheriff and an assistant superintendent pursuant to § 1983, alleging that the policy of permitting male officers to videotape female inmates being strip-searched violated the Fourth Amendment. The defendants moved for summary judgment and the plaintiffs moved for partial summary judgment. The district court granted the inmates' motion and denied the defendants' motion. The court held that strip searches of female inmates being transferred to a segregation unit while male officers conducted videotaping in the vicinity were unreasonable in violation of the Fourth Amendment, regardless of whether the officers actually viewed the inmates, where the inmate being searched was fully aware that a male officer was videotaping her, the officer was within the inmate's view just a few feet away, the inmate was required to strip and manipulate her body in the officer's presence, including lifting her breasts and spreading her legs, and the videotaping by male officers was not limited to urgent situations. The court found that the policy did not have a reasonable relationship with a legitimate penological interest, and therefore, the policy was unconstitutional in violation of the Fourth Amendment as applied to the inmates, regardless of whether the officers actually viewed the inmates. The court noted that the policy of using males to tape searches applied to all strip searches upon transfer, not just emergencies, the prison did not have staffing problems, permitting males to tape the searches did not enhance employment opportunities, and the policy did not provide for alternatives. According to the court, clearly established law prohibited male officers from viewing female inmates during a strip search, and therefore, the sheriff and assistant superintendent were not entitled to qualified immunity in female inmates' § 1983 class action. (Western Regional Women's Correctional Center, Massachusetts)

U.S. District Court
CELL SEARCHES

Ballard v. *Johns*, 17 F.Supp.3d 511 (E.D.N.C. 2014). A civil detainee being considered for certification as a sexually dangerous person brought an action against federal employees, in their official capacities and in their individual capacities under Bivens, challenging various conditions of his detention, including claims concerning due process violations and inability to attend religious services. The employees moved to dismiss or for summary judgment and the detainee moved to overrule objections to requests for document production. The district court granted the employees' motion and denied the detainee's motion. The court held that: (1) the detainee did not show that federal employees, by following Federal Bureau of Prisons (BOP) regulations and policies, violated his constitutional rights; (2) the detainee was properly subjected to restrictions and disciplinary consequences of the BOP commitment and treatment program; (3) denial of the detainee's request to attend or receive religious services while in disciplinary segregation did not unduly burden his free exercise of religion; and (4) the employees did not violate detainee's right to be free from unreasonable searches and seizures by searching his cell and seizing his property. (Federal Correctional Institution at Butner, North Carolina)

U.S. District Court
STRIP SEARCHES
JUVENILES

Benjamin v. *Fassnacht*, 39 F.Supp.3d 635 (E.D.Pa. 2014). The parents of a juvenile, who was arrested and charged with summary offenses and committed to a youth detention facility after he threatened several girls in his neighborhood, brought an action on his behalf against state troopers, a county, and county officials, asserting claims under § 1983 and state law. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that: (1) county officials did not have the right to conduct blanket strip searches of juveniles upon admission to detention facility; (2) detention facility officials who strip searched the juvenile were not entitled to summary judgment on the unreasonable search claims; (3) county officials were not entitled to qualified immunity from the unreasonable search claims; and (4) the county was not entitled to summary judgment on the unreasonable search claims. The court found that summary judgment of the Fourth Amendment claims were precluded by fact issues as to whether the county and the facility's director had a policy, practice, or custom of conducting blanket strip searches and acted with deliberate indifference to the rights of the juveniles being detained at the facility. (Lancaster County Youth Detention Center, Pennsylvania)

U.S. Appeals Court
STRIP SEARCHES
PRETRIAL DETAINEES

Cantley v. *West Virginia Regional Jail and Correctional Facility Authority*, 771 F.3d 201 (4th Cir. 2014). Two arrestees brought a § 1983 action for damages and declaratory and injunctive relief against a regional jail authority and three of its former or current executive directors, challenging the constitutionality of visual strip searches and delousing of the arrestees. The district court granted summary judgment to the defendants. An arrestee appealed. The appeals court affirmed. The court held that: (1) the post-arraignment visual strip search of one arrestee did not violate the Fourth Amendment; (2) the pre-arraignment visual strip search of the other arrestee did not violate a clearly established right where the arrestee was strip-searched in a private room, and he was to be held until the next morning in a holding cell where he might interact with up to 15 other arrestees; (3) delousing of the arrestees did not violate a clearly established right; and (4) declaratory and injunctive relief would be premature. The court noted that the delousing was done in a private room with only one officer, who was of the same sex as the arrestees, and it did not entail the officer himself touching either arrestee. (West Virginia Regional Jail and Correctional Facility Authority)

U.S. District Court
STRIP SEARCHES

Coley v. *Harris*, 30 F.Supp.3d 428 (D.Md. 2014). An inmate brought a pro se action under § 1983 against correctional facility officers in their individual capacities for common law battery and violations of his Fourth and Eighth Amendment rights after he was allegedly beaten following a disagreement with one of the officers. The officers moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a strip search of the inmate was reasonable or motivated by punitive intent. (Eastern Correctional Institution, Maryland)

U.S. District Court
STRIP SEARCHES

Hebshi v. *U.S.*, 32 F.Supp.3d 834 (E.D.Mich. 2014). After she was forcibly removed from an airliner, detained, and subjected to a strip-search, a passenger brought a civil rights action against federal agents and airport law enforcement officers, alleging discrimination based on race, ethnicity, or national origin, and violations of the Fourth, Fifth, and Fourteenth Amendments. The airline law enforcement officers moved for partial judgment on the pleadings. The district court denied the motion. The court held that the passenger stated claims for unreasonable seizure and unreasonable search, and that the officers were not entitled to qualified immunity. The court held that the passenger's allegations that she was forced off an airplane by armed officers, handcuffed, briefly questioned on the tarmac, transported to a jail, locked in a guarded cell under video surveillance, detained for four hours, and strip-searched, before being extensively questioned about her involvement in other passengers' alleged suspicious activity, were sufficient to allege that the seizure was a de facto arrest made without probable cause in violation of the Fourth Amendment. According to the court, the passenger's allegations that she was arrested, detained for four hours, strip-searched by airport law enforcement officers, based on her alleged involvement in suspicious activities by two other passengers, that the officers made no effort to verify her identity or corroborate any connection between her and the other passengers, and that the strip-search was not conducted promptly, were sufficient to state a claim for unreasonable search under the Fourth Amendment. (Frontier Airlines, Federal Law Enforcement Agents, Wayne County Airport Authority Law Enforcement Agents, Michigan)

U.S. District Court
STRIP SEARCHES
VISITOR SEARCHES

Hernandez v. *Montanez*, 36 F.Supp.3d 202 (D.Mass. 2014). A prison visitor brought a civil rights action against corrections officers, alleging that a strip-search violated § 1983, the Massachusetts Civil Rights Act (MCRA), and the Massachusetts Privacy Act (MPA). The corrections officers moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the officers did not have reasonable suspicion to strip-search the female prison visitor based on an anonymous tip by an inmate on the prison hotline that another inmate would be receiving drugs from an unidentified visitor. The court noted that the officers had no knowledge of the source of the single anonymous tip or how the source had received his information, and there was no evidence that the anonymous tipster or hotline had provided reliable information in the past. The court found that an objectively reasonable prison official would not have believed that he had reasonable suspicion to strip-search the visitor, and thus the prison official and the corrections officers were not entitled to qualified immunity from visitor's Fourth Amendment claim arising from the strip-search. The court noted that the officers knew that the inmate had enemies in the prison and that inmates often used the hotline to harass other prisoners, and there was no evidence that the visitor was involved in drug activity. (Souza–Baranowski Correctional Center, Massachusetts)

U.S. Appeals Court
DRUG/ALCOHOL TESTING

Holland v. *Goord*, 758 F.3d 215 (2nd Cir. 2014). A state inmate filed a § 1983 action alleging that prison officials burdened his religious exercise, in violation of Free Exercise Clause and Religious Land Use and Institutionalized Persons Act (RLUIPA), when they ordered him to provide a urine sample while he fasted in observance of Ramadan, breached his due process rights, and retaliated against him. The district court entered summary judgment in the officials' favor, and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that state prison officials substantially burdened the Muslim inmate's free exercise rights, in violation of the First Amendment, when they ordered him to drink water in order to provide a urine sample while he fasted in observance of Ramadan. The court noted that breaking his fast prior to sunset would have been a grave sin, regardless of whether atonement was possible.

The court found that a hearing officer at a prison disciplinary hearing did not violate the inmate's right to due process when he refused to permit the inmate to call his imam as a witness to establish that, as a practicing Muslim, the inmate was unable to drink water at the time he was ordered to provide a urine sample, where the inmate had already testified to that fact and the hearing officer did not discredit his statement. (Wende Correctional Facility, New York)

U.S. District Court
STRIP SEARCHES
PRETRIAL DETAINEES

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. District Court
CELL SEARCHES
PAT DOWN SEARCHES
STRIP SEARCHES

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. The court found that the patients stated a § 1983 unreasonable search and seizure claim under the

Fourth Amendment with allegations that, taken together with the patients' other allegations surrounding the punitive nature of their confinement, state officials violated their Fourth Amendment rights through their search policies, procedures, and practices, and that they were subjected to cell searches, window checks, strip searches, and random pat downs. (Minnesota Sex Offender Program)

U.S. District Court
CELL SEARCHES

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
DRUG TEST
OBSERVATION BY STAFF

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, Tennessee)

U.S. District Court
X-RAY

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. (Anna M. Kross Center, Rikers Island, N.Y. City Dept. of Correction)

U.S. Appeals Court
JUVENILE
STRIP SEARCHES

T.S. v. *Doe*, 742 F.3d 632 (6th Cir. 2014). Parents, on behalf of their minor children, brought a § 1983 action against the superintendent of a juvenile detention center, correctional officers, and other administrators, claiming that the suspicionless strip search of the juveniles, as part of the intake process of the detention center, violated the juveniles' Fourth Amendment rights. The district court granted summary judgment for the parents. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the right of juvenile detainees held on minor offenses to be free from suspicionless strip searches was not clearly established at time the two juveniles arrested for underage drinking were strip searched, and thus, correctional

officers who conducted searches were protected by qualified immunity from liability in the § 1983 action arising from the searches. The court noted that prior court decisions had recognized that a strip search of a person arrested for a minor offense was unreasonable, given that subsequent court decisions had found that state's enhanced responsibility for juveniles supported strip searches, and a recent Supreme Court decision had concluded that the Fourth Amendment did not prohibit strip search of all adult criminal detainees. The court found that under Kentucky law, the correctional officers' strip searches of the two juveniles, as part of the intake process of a juvenile detention center, were ministerial acts, and thus, the officers were not eligible for qualified official immunity from liability on the juveniles' claims of negligence, invasion of privacy, assault, false imprisonment, grossly negligent infliction of emotional distress, and arbitrary action in violation of state constitution, even if officers were both acting in good faith and within scope of their employment. (Breathitt Regional Juvenile Detention Center, Kentucky)

U.S. Appeals Court
STRIP SEARCHES
PRETRIAL DETAINEES

West v. *Murphy*, 771 F.3d 209 (4th Cir. 2014). Arrestees brought a civil rights action under the Fourth and Fourteenth Amendments against a mayor, municipal council, police department, and current and former wardens of a central booking and intake center for alleged mistreatment of persons arrested and taken to the center for booking and processing. The district court granted the defendants' motions for summary judgment on the grounds of qualified immunity. The arrestees appealed. The appeals court affirmed. The court held that the law on strip searches of arrestees in jail in a dedicated search room with compelling security justifications was not clearly established at the time that the searches were conducted. (Baltimore Central Booking/Intake Center, Md.)

2015

U.S. Appeals Court
EXCESSIVE FORCE
BODY CAVITY
SEARCH

Chavarriaga 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 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
DNA- Deoxy Ribonucleic Acid

Crabbs v. *Scott*, 786 F.3d 426 (6th Cir. 2015). An acquitted defendant brought an action against a sheriff in his official capacity under § 1983 for violation of the Fourth and Fourteenth Amendments, arising out of the sheriff's requiring him to submit to a cheek swab for a DNA sample before he could be released from jail, after he was acquitted of felony charges by a jury. The district court denied the sheriff's motion for summary judgment based on sovereign immunity and the sheriff appealed. The appeal court affirmed, finding that the sheriff was generally considered a county official and thus not afforded immunity as a state actor, and the sheriff was not required by state law to the collect defendant's DNA prior to releasing him from jail following his acquittal, and thus the sheriff was acting as a county official and not entitled to immunity. (Franklin Co., Ohio)

U.S. Appeals Court
STRIP SEARCHES
JUVENILE

J. B. ex rel. Benjamin v. *Fassnacht*, 801 F.3d 336 (3d Cir. 2015). Parents of a juvenile, who was arrested and charged with summary offenses and committed to a youth detention facility after he threatened several girls in his neighborhood, brought an action on his behalf against state troopers, a county, and county officials, asserting claims under § 1983 for false arrest, unreasonable search, false imprisonment, and violations of due process. The district court granted summary judgment in favor of the defendants, in part, and denied summary judgment on the unreasonable search claim. The officials appealed, challenging the denial of summary judgment as to the unreasonable search claim. The appeals court reversed and remanded. The court found that held that the strip searches conducted by the juvenile detention center as a standard part of the intake process for juvenile detainees before their admission to general population were reasonable. The searches required detainees to remove all clothing for close visual inspection, but did not involve any touching by an inspecting officer. According to the court, although the searches were intrusive and juvenile detainees had an enhanced right to privacy, the detainees' privacy interests were outweighed by the center's penological interests in addressing the risk of introducing contagious infections and diseases into the general population, detecting contraband, and identifying potential gang members. The court found that the searches promoted the center's responsibility to screen juvenile detainees for signs of abuse in their home and self-mutilation. (Lancaster County Juvenile Probation, Lancaster County Youth Intervention Center, Pennsylvania)

U.S. District Court
VISITOR SEARCH
STRIP SEARCH
PAT DOWN SEARCH

Knight v. *Washington State Department of Corrections*, 147 F.Supp.3d 1165 (W.D. Wash. 2015). A prison visitor who suffered from a seizure disorder, and was subjected to a strip search and pat-down searches, brought an action against the state Department of Corrections (DOC) and DOC officials, alleging that the searches violated the Americans with Disabilities Act (ADA). The defendants moved for summary judgment. The district court granted the motion, finding that: (1)the strip search and pat-down searches did not violate ADA; (2) guards did not act with deliberate indifference in conducting a strip search; (3) the prison was not a place of public

accommodation, under the Washington Law Against Discrimination, as to visitors participating in an extended family visitation program; (4) the guards' conduct was not sufficiently extreme to support an outrage claim; and (5) the guards' conduct did not support a claim for negligent infliction of emotional distress. According to the court, there was no showing that the guards proceeded in conscious disregard of a high probability of emotional distress when ordering the strip search, as the visitor suggested the strip search as an alternative to a pat search and the guards followed this suggestion, and all visitors were subjected to pat-down searches, which were justified on safety grounds. (Monroe Correctional Complex, Washington)

U.S. District Court
CELL SEARCH
RETALIATION

Quiroz v. *Horel*, 85 F.Supp.3d 1115 (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. 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 genuine issues of material fact as to: (1) whether the official had a retaliatory motive for issuing a Rules Violation Report (RVR) against the prisoner; (2) whether officials had a retaliatory motive when they searched the prisoner's cell; and (3) whether prison officials had an agreement to retaliate against the prisoner by searching his cell, confiscating his paperwork, and issuing a Rules Violation Report (RVR) against him. (Pelican Bay State Prison, California)

U.S. District Court
VISUAL BODY CAVITY
USE OF FORCE

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 also found fact issues as to whether the county sheriff's deputies' manner of conducting a visual body cavity search of the female pretrial detainee on three occasions exhibited exaggerated and excessive force, and was vindictive or harassing, precluding summary judgment on the detainee's § 1983 Fourth Amendment unlawful search claim against the deputies. (Century Regional Detention Facility, Los Angeles County, California)

U.S. Appeals Court
BODY CAVITY SEARCH
PRIVACY

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)

SECTION 42: SERVICES- PRISONER

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.

NOTE: Several separate chapters address topics that could also be considered to be prisoner "services." These include: 12. Exercise and Recreation; 28. Mail; 29. Medical Care; 34. Programs, Prisoner; 37. Religion; and 49. Visiting. Readers are encouraged to consult the topic index to locate other pertinent chapters.

1971

U.S. District Court
LIBRARY

Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Oh. 1971), aff'd, 456 F.2d 854 (6th Cir. 1972). Arrangements must be made for library services. No censorship of books or periodicals unless they are considered "pornographic." (Lucas County Jail, Ohio)

1972

U.S. District Court
COMMISSARY

Hamilton v. Landrieu, 351 F.Supp. 549 (E.D. La. 1972). The canteen, its price list, its rate of profit, the audit of its books, its contribution to the inmate welfare and the purchases made from that fund shall be under the supervision of the city chief administrative officer. Cash in the hands of inmates shall be deposited with prison authorities, and a credit system established that would permit limited daily purchases from the commissary. (Orleans Parish Prison, Louisiana)

U.S. District Court
RIGHT TO TREATMENT

Wyatt v. Stickney, 344 F.Supp. 373 (M.D. Ala. 1972). The constitutional "right to treatment" is affirmed by the court's decision to establish minimum standards of care and treatment which patients are granted by the U.S. Constitution. (Bryce Hospital, Tuscaloosa, Alabama)

1973

U.S. District Court
COMMISSARY

Goldsby v. Carnes, 365 F.Supp. 395 (W.D. Mo. 1973). Inmates will be permitted to buy underwear from the commissary at cost. Commissary purchases of up to seven dollars a week may be made. Inmates shall be allowed to order commissary items two days a week, unless they are on restrictions. (Jackson County Jail, Kansas City, Missouri)

1977

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. District Court
COMMISSARY

U.S. ex rel Wolfish v. Levi, 439 F.Supp. 114 (S.D. N.Y. 1977). The inmate's commissary requests are to be taken at least every other day, and the inmate is to be permitted to indicate his second choice of selection. (Metropolitan Correctional Center, New York)

1979

U.S. District Court
COMMISSARY

Jefferson v. Douglas 493 F.Supp. 13 (W.D. Okla. 1979). According to the U.S. District Court for the Western District of Oklahoma, prison officials' cancellation of an inmate's canteen privileges in order to insure that he remain within the bounds of a prescribed diabetic diet does not amount to cruel and unusual punishment. Halton Jefferson, an inmate at the Lexington, Oklahoma Assignment and Reception Center (LARC) filed a pro-se action under Section 1983 alleging that the decision of prison officials to refuse him canteen privileges amounted to cruel and unusual punishment.

Jefferson, a diabetic, cited medical journals which suggested that a diabetic should always carry sugar items to prevent the occurrence of a diabetic coma. Since he was restricted to nonsugar diet, Jefferson contended the canteen was the only source from which he could obtain sugar items to protect himself against a coma. A report, ordered by the trial judge in Jefferson's suit, revealed a different aspect of the matter. LARC, recognizing that Jefferson was a diabetic, had prepared a special diet for him, limiting his caloric intake to 1800 calories per day. Later, this figure was reduced to 1500 calories.

Nevertheless, Jefferson continued to gain weight. Canteen records and verbal reports showed that Jefferson made a habit of eating such items as ice cream, bread, peanut butter and jelly sandwiches, sweet rolls, Fritos, Cheetos, soda pop (sugared) and candy. The report termed Jefferson's conduct a "deliberate effort to violate the special diet ordered for him." Presented with these facts, the court noted that the decision of the LARC officials to eliminate Jefferson's canteen privileges was the type of administrative decision with which court should not interfere. Moreover, the court stated that the action falls far short of shocking the conscience, a showing which is essential to demonstrate cruel and unusual punishment. As a result of these findings, the court thus dismissed the inmate's complaint. (Assignment and Reception Center, Lexington, Oklahoma)

1980

U.S. Appeals Court
LIBRARY

Cruz v. Hauck, 627 F.2d 710 (5th Cir. 1980). For the third time in the same case, the United States Court of Appeals for the Fifth Circuit has reversed a lower court's decision concerning the lack of adequate library materials in the Bexar County Jail (San Antonio, Texas). Originally filed in 1970 by several pro se jail inmates, the action had been dismissed, appealed and reinstated on two previous occasions. The plaintiff-inmates, though seemingly representing all jail inmates in their request for adequate library facilities to provide meaningful access to the courts, were never certified as a class under Rule 23 of the Federal Rules of Civil Procedure. The most recent appeal arose when the district court, noting that none of the named plaintiffs were incarcerated in the jail at the time that class certification was finally sought (in 1976), dismissed the petition for lack of class certification. The district court also noted that a new law library had been constructed since the institution of the litigation. The appellate court reversed the dismissal, invoking the "capable of repetition, yet evading review" rule. The court found that even if none of the named plaintiffs was still incarcerated, the likelihood of the return to custody of any of them was present, and in addition, other persons not named might still be suffering from the alleged wrongs. In an attempt to guide the lower court in its ruling upon remand, the appellate court indicated that certain of plaintiff's allegations might have merit. Without actually ruling, the appellate court indicated sympathy with the following allegations:

(1) Visits to the library are limited to two or three hours weekly;

(2) The library does not stock the Federal Supplement;

(3) The library does not employ a trained librarian or paralegal capable of assisting inmates in their legal research;

(4) No assistance is given to inmates lacking the educational or linguistic skills necessary to use the library; and,

(5) Counsel is not available to assist in the preparation of habeas corpus petitions of civil rights actions.

(Bexar County Jail)

U.S. District Court
COMMISSARY

Epps v. Levine, 484 F.Supp. 474 (D. Md. 1980). Pretrial detainees transferred to the state penitentiary and classified to protective custody shall have regular commissary privileges. (State Penitentiary, Maryland)

U.S. District Court
COMMISSARY

Griffin v. Smith, 493 F.Supp. 129 (W.D. N.Y. 1980). Allegations of the proscription of radio earphones, limiting the commissary purchase to $5.00, and the denial of access to state issue tobacco for inmates in the Special Housing Unit fail to state a claim upon which relief can be granted. Allegations of inadequate out-of-cell exercise for inmates in the Special Housing Unit state a claim upon which relief can be granted. (Attica Correctional Facility, New York)

1982

State Appeals Court
COMMISSARY

Buchignani v. Lexington-Fayette Urban County Government, 632 S.W.2d 465 (Ky.App. 1982). A Kentucky county jailer cannot operate a commissary for profit. A jailer, as an elected officer of a county, may not use his office for personal profit or gain, the Court of Appeals of Kentucky ruled. Therefore, the court prohibited the jailer from operating a commissary within a county detention center for profit. The court did not level a monetary judgment against the jailer because he had relied on the advice of his own counsel and other government officials in operating the commissary. In addition to his work as the director of the detention center, the jailer ran a commissary within the Detention Center, retaining the profits from its operation. In October, 1980, the Kentucky attorney general issued an opinion stating that the jailer was prohibited from operating a commissary for profit. The jailer then filed an action seeking a declaratory judgment as to the rights of the parties. The trial court held that as a public official, the jailer could not profit from his office and awarded the county $22,397 that the plaintiff had made in past profits. The jailer appealed. The appeals court agreed with the lower court that a holder of public office may not use such office for personal gain. It disagreed, however, as to the award of monetary judgment. The court found the award inappropriate and inequitable, in view of the fact that the jailer had relied on the advice of his own counsel, the county attorney and the attorney general of the state, and upon the acquiescence and advice of county governmental officials.

1986

U.S. District Court
RIGHT TO TREATMENT

Morales Feliciano v. Romero Bercelo, 672 F.Supp. 591 (D. P.R. 1986). According to a federal court, prison overcrowding, inmate idleness, and the threat of violence among inmates, combined with the continuous frustrations of reasonable expectation produced by administrative incompetence, resulted in an ascertainable psychological deterioration in the Puerto Rican prison population. The psychological deterioration inflicted on inmates in the prison system was an unnecessary and wanton infliction of pain in violation of prisoners' eighth amendment protections against cruel and unusual punishment. Insofar as the Puerto Rican prison administration was under a statutory duty to provide rehabilitative programs through which inmates could earn time credits towards early release, unavailability of any form of useful work, study or even recreation, where none of the physical conditions of confinement met constitutional standards, combined with continuous frustrations of reasonable expectations produced by administrative incompetence, inflicted serious psychological harm on inmates, which was independently cognizable under the eighth amendment. (Commonwealth of Puerto Rico)

1990

U.S. District Court
IDLENESS

Griffin v. Coughlin, 743 F.Supp. 1006 (N.D.N.Y. 1990). Inmates in a protective custody unit brought a suit seeking injunctive relief to remedy allegedly unconstitutional conditions in the unit. The district court found that the conditions at the protective custody unit did not violate equal protection or Eighth Amendment guarantees. According to the court, the appropriate analysis for an equal protection claim is whether the unequal treatment bears a reasonable relationship to legitimate penological interests. The protective custody unit functions to protect inmates who cannot remain in the general prison population. Complaints of boredom, frustration and hostility arising out of the idleness of protective custody inmates did not amount to an Eighth Amendment violation; furthermore, neither the extent to which protective custody inmates were segregated from one another nor the noise level in the protective custody unit violated the Eighth Amendment, and protective custody inmates have no Eighth Amendment right to prison work and educational activities. (Clinton Correctional Facility, New York)

1993

U.S. District Court
COMMISSARY
COMMISSION

Griffin-El v. MCI Telecommunications Corp., 835 F.Supp. 1114 (E.D.Mo. 1993) affirmed 43 F.3d 1476. An inmate brought a Section 1983 suit against the state and a telephone services contractor. Adopting the report and recommendation of a U.S. Magistrate Judge, the district court found that the telephone services contractor's payment of a commission to the Department of Corrections' "general revenue fund" rather than the "inmate canteen fund" as contractually required did not give rise to Section 1983 liability to the inmate. The contractual obligation did not create a constitutionally protected property interest, prosecutable by the inmate, in the contractor's placing of money in the canteen fund. The inmate had no legitimate expectation that the local prison fund would ever receive any money from the contract. The telephone company which entered into a contract to provide telephone services for prisoners in state prisons was a "state actor," for Section 1983 purposes. The company and state had a symbiotic relationship for the purposes of the inmate's claim that commissions paid by the company to the state were being misallocated. (Potosi Correctional Center, Missouri)

1994

U.S. District Court
COMMISSARY
LIBRARY

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 a commissary with a list of particular items to be made available and an expanded law library. (Maximum Control Complex, Indiana Department of Corrections, Westville, Indiana)

1995

U.S. Appeals Court
HAIRCUT

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 court found that the inmate's claim to damages based on the denial of barber services was not barred. 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
COMMISSARY
INDIGENT

Austin v. Lehman, 893 F.Supp. 448 (E.D.Pa. 1995). An inmate filed a civil rights action against corrections officials alleging violation of his constitutional rights when his bi-weekly allotment of free cigarettes was denied to him while he was confined in disciplinary custody. The district court granted summary judgment for the defendants, finding that the denial did not violate the inmate's constitutional rights. The court noted that because the inmate had fully exploited the internal grievance procedures provided by the Department of Corrections, he had received all of the process he was due. (State Correctional Institution at Frackville, Pennsylvania)

U.S. District Court
LIBRARY

Campbell-El v. District of Columbia, 881 F.Supp. 42 (D.D.C. 1995). A prisoner brought a civil rights action against prison officials, alleging violation of his Eighth Amendment rights. The district court found that the prisoner's allegation that he was not allowed to engage in work was insufficient to state a claim for cruel and unusual punishment in violation of the Eighth Amendment, absent a showing of the extent and severity of the alleged deprivation. (Maximum Security Facility at Lorton, District of Columbia)

U.S. District Court
IDLENESS

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 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 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
COMMISSARY

May v. Baldwin, 895 F.Supp. 1398 (D.Or. 1995). An inmate brought an action against prison officials alleging violation of his civil rights. The court found that evidence did not support the inmate's claim that he was deprived of basic personal hygiene items while in a disciplinary segregation unit, where it was undisputed that when an inmate arrived in the unit he is provided with personal hygiene items that consisted of a towel, bar of handsoap, comb and toothbrush, and that baking soda and toilet paper are issued following meals. The inmate alleged that he was deprived of shampoo, conditioner, and body lotion. The court found that evidence did not support the inmate's claim that prison officials discriminated against him because he was black, despite his assertion that he was not given lotion for his dry skin problem when he was in a prison infirmary, while a white inmate was given vaseline for chapped lips. Officials stated that he was denied the lotion because his dry skin was not medically serious and he was not denied the opportunity to purchase lotion from the prison canteen. (Eastern Oregon Correctional Institution)

U.S. District Court
COMMISSARY

Robinson v. Il. State Corr. Ctr. (Stateville), 890 F.Supp. 715 (N.D.Ill. 1995). A prison inmate housed in a segregation unit sued prison officials alleging violation of his civil rights in connection with his conditions of confinement. The district court dismissed several elements of his suit, but found that his complaint that inadequate heating and cooling posed a risk to his health was actionable under § 1983. The court found that neither prison regulations nor state statutes established a protected right to commissary privileges, holding that restrictions placed on the types of commissary items that could be purchased by inmates in segregation did not violate any constitutional rights. (Stateville Correctional Center, Illinois)

1996

U.S. Appeals Court
LIBRARY

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 found that although the inmate had no right to leave his cell to go to a general reading library, his allegation of denial of access to reading materials and inadequate lighting for reading in the jail stated a § 1983 claim. (Cook County Jail, Illinois)

U.S. District Court
COMMISSION

Arney v. Simmons, 923 F.Supp. 173 (D.Kan. 1996). Inmates brought a § 1983 action against a state secretary of corrections, challenging expenditures from an "inmate benefit fund" for a victim notification program. The district court held that no reasonable reading of the statute defining the inmate benefit fund would give rise to a legitimate expectation that all expenditures from the fund were required in some way to directly benefit inmates, and therefore the inmates failed to establish a protected liberty interest in the funds in such a way that they were entitled to a preliminary or permanent injunction. The fund is comprised primarily of commissions paid by the long distance telephone company that provides service on inmate calls, and over $1 million currently comes into the fund each year. The corrections department used inmate benefit funds to pay for a victim notification program which notifies victims of any changes in an inmate's status; the cost of the program (for two employees) is between $40,000 and $80,000 per year. The department also used inmate benefit funds to pay for "capture stations" which are video imaging systems that cost approximately $25,000 each, which generate an inmate identification card with a photo and encoded information. (Lansing Correctional Facility, Kansas)

U.S. District Court
IDLENESS

Douglas v. DeBruyn, 936 F.Supp. 572 (S.D.Ind. 1996). An inmate who was assigned to the "idle unit" of a prison filed an in forma pauperis complaint alleging violation of § 1983. The district court found the complaint to be frivolous within the meaning of the in forma pauperis statute. The court held that the absence of a job, and the absence of vocational, educational and rehabilitation programs does not violate due process. The court noted that while such programs and activities might be useful and productive as a matter of correctional policy, the absence of them does not create any atypical and significant hardships on an inmate in relation to the ordinary incidents of prison life. According to the court, to sustain a viable Eighth Amendment violation the inmate would have to allege that conditions in the idle unit constituted an excessive risk to his health or safety. The court also noted that inmates have no constitutional right to recreation and that only the objective harm that can result from significant deprivation of movement implicates the Eighth Amendment. (Correctional Industrial Complex, Indiana)

U.S. District Court
COMMISSARY
INDIGENT

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. Appeals Court
COMMISSARY

Keenan v. Hall, 83 F.3d 1083 (9th Cir. 1996). An inmate brought a § 1983 action against prison officials and employees. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed in part and reversed in part, finding that summary judgment was precluded for several allegations. Indigent inmates have a right to personal hygiene supplies such as toothbrushes and soap, and disputed issues of material fact as to whether prison officers required the inmate to buy personal hygiene items precluded summary judgment. The inmate had no constitutional right to canteen products such as birthday cards and denial of such items did not constitute cruel and unusual punishment. (Oregon State Prison)

1997

U.S. Appeals Court
COMMISSARY

Thomas v. Ramos, 130 F.3d 754 (7th Cir. 1997). A prison inmate brought a § 1983 action against prison officials alleging violation of his due process rights in connection with his confinement for approximately 70 days in a segregated cell, and for the alleged denial of opportunities to exercise in a prison yard while he was in segregated confinement. The district court entered summary judgment for the officials and the appeals court affirmed. The appeals court held that the inmate's 70-day confinement in disciplinary segregation did not implicate liberty concerns within the meaning of the due process clause. The court also held that the official who allegedly refused to allow the inmate to exercise in the yard while he was in segregation was entitled to qualified immunity because the lack of exercise did not violate the inmate's clearly established rights. According to the court, there was evidence that the inmate could have engaged in some exercise in his cell, he may have missed some opportunities for yard time by choosing to visit the medical unit, and during part of his confinement all inmates were prevented from using the yard as part of a "lockdown" status. According to the court, a prison inmate's lack of exercise may rise to a constitutional violation in certain limited circumstances where movement is denied and muscles are allowed to atrophy and the health of the inmate is threatened. The court also found that the inmate did not have a protectible liberty interest in his loss of commissary privileges. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
INDIGENT

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 nor 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)

1998

U.S. District Court
PROBATION/REVOCATION

Lucas v. Parish of Jefferson, 999 F.Supp. 839 (E.D.La. 1998). A civil rights suit was filed by several offenders who had completed terms of probation but who had been arrested and incarcerated when an assistant district attorney filed motions to revoke probation after their terms had expired. The district court held that a Louisiana prosecutor is entitled only to qualified immunity rather than absolute immunity for his actions in seeking to revoke probation because he is performing the function of a probation officer. According to the court, an attempt to revoke probation after the probationary term had expired violated the clearly established rights of the offenders, of which the prosecutor should have known, so that the prosecutor was not entitled to qualified immunity. The plaintiffs had alleged false imprisonment and malicious prosecution. (Jefferson Parish, Louisiana)

U.S. District Court
COMMISSARY

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. 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
COMMISSARY

Denson v. Marshall, 44 F.Supp.2d 400 (D.Mass. 1999). A state prison inmate brought a civil rights action against prison officials claiming violation of the Free Exercise Clause of the First Amendment. Prison officials had denied the inmate's request to receive the equivalent of three days of food per month in the form of milk, bread, cereal, peanut butter, and jelly so that he could eat during particular hours of Muslim holidays. The district court denied the defendants' motion for summary judgment, noting that they apparently misunderstood the inmate's request and did not address it accurately in their presentation to the court. The court required the defendants to accommodate the inmate's request, or to file additional summary judgment materials with the court within sixty days. (Massachusetts Correctional Institution, Cedar Junction)

U.S. District Court
LIBRARY

Shabazz v. Cole, 69 F.Supp.2d 177 (D.Mass. 1999). An inmate who worked in a prison library sued the prison librarian and the prison superintendent challenging his treatment by the librarian and the propriety of a disciplinary proceeding. The district court held that there was no procedural due process violation regarding the inmate's loss of library privileges for one week, exclusive of privileges to use the law library. The court also found that the inmate failed to state a claim regarding his alleged constructive discharge from his library job. According to the court, the inmate had no vested or property interest in the right to maintain his position in the law library, and therefore failed to state a claim for alleged constructive discharge.(Bay State Correctional Center, Massachusetts)

2000

U.S. District Court
LIBRARY

Blagman v. White, 112 F.Supp.2d 534 (E.D.Va. 2000). A Muslim inmate who was participating in a boot camp program brought a civil rights action alleging denial of equal protection, violation of his free exercise rights, and intimidation. The district court granted summary judgment in favor of the defendants. The district court held that the defendants did not deny equal protection by treating Muslims less favorably than Christian inmates, where the Muslim inmates were given new space after the inmate complained, and officials made an exception to the camp schedule to permit weekly Islamic study sessions. The court noted that while Christian inmates are permitted to celebrate Thanksgiving and Christmas, certain aspects of Ramadan were irreconcilably inconsistent with the structure and regimen of the boot camp program. The court held that the Equal Protection Clause does not require prisons to ensure that their libraries adhere to numerical parity in books that are congenial to various religions. (Stafford Co. Det. Center, Virginia)

U.S. District Court
COMMISSARY

Bowman v. City of Middletown, 91 F.Supp.2d 644 (S.D.N.Y. 2000). An arrestee who was held for 19 days on suspicion of murder brought a § 1983 action alleging false arrest, malicious prosecution and civil rights violations while confined. The district court held that denial of commissary privileges for five days was not a due process violation, especially since the only deprivation suffered was the inability to order cigarettes, which was the sole item the detainee desired from the commissary. The court found that the jail superintendent was entitled to qualified immunity from liability for his decision to have the pretrial detainee shackled when outside of his cell based on the wording of the note that the detainee had sent to the superintendent complaining of his loss of commissary privileges, because the right to complain to prison administrators was not clearly established. The note asked "[who] do you think you are" and promised "I will see you or whomever in court." (Orange County Jail, New York)

2001

U.S. Appeals Court
COMMISSARY

Myrie v. Commissioner, N.J. Dept. of Corrections, 267 F.3d 251 (3rd Cir. 2001). Prison inmates challenged the application of a New Jersey statute that required them to pay a ten percent surcharge on their purchases from a prison or jail commissary to fund compensation of crime victims, alleging violations of their Double Jeopardy, Ex Post Facto, and Bill of Attainder rights. The district court granted summary judgment for the defendants and the inmates appealed. The appeals court affirm-ed, finding that the surcharge was not so punitive in purpose or effect that it could be viewed as a "punishment" in violation of the inmates' rights. The court held that the surcharge was not an ex-cessive fine and that it did not offend constitutional due process guarantees. The court noted that purchases outside the prison context would otherwise have been subject to a 6% sales tax. (New Jersey Department of Corrections)

U.S. Appeals Court
COMMISSARY

Nelson v. Heiss, 271 F.3d 891 (9th Cir. 2001). A state inmate brought a § 1983 action against corrections officials after holds were placed on his inmate trust account. The district court dismissed the action on the basis of qualified immunity and the appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the statute that provided for an exemption of veteran's benefits against the claims of creditors precluded officials from placing holds on the inmate's accounts, but that the officials were entitled to qualified immunity from liability because prior caselaw had not clearly established this exemption. The inmate's trust account was funded with payments of Veteran's Disability Benefits administered by the United States Veterans Administration. The court held that the officials' placement of a hold on the inmate's account, after the inmate authorized withdrawals for which he lacked funds and the officials provided the goods and services in expectation of future payments, did not violate the inmate's alleged due process right to predeprivation proceedings because the inmate knew, or should have known, that his account was depleted. (Calipatria State Prison, California)

2002

U.S. Appeals Court
COMMISSARY

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. Appeals Court
COMMISSARY

Love v. McKune, 33 Fed.Appx. 369 (10th Cir. 2002). Four prison inmates brought a civil rights action challenging their forced participation in a prison incentive level system that tied inmate privileges to participation in programs and good behavior. The district court dismissed the action and the appeals court affirmed. The appeals court held that forced participation did not violate the inmates' Fourteenth Amendment due process rights. The Internal Management Policy and Procedure (IMPP) system assigned inmates to one of four levels. Each level had a corresponding level of privileges, such as television ownership, handicrafts, participation in organizations, use of outside funds, canteen expenditures, incentive pay, and visitation. The system had been previously upheld by the state supreme court, which found that none of the restrictions denied to inmates on lower levels infringed on inmates' property or liberty interests and therefore did not implicate due process protection. The appeals court noted denying an inmate the use of certain electronic equipment does not impose a significant hardship, nor do restrictions on canteen purchases or the types of purchases and personal property allowed. (Lansing Correctional Facility, Kansas)

U.S. Appeals Court
INDIGENT
PRISONERS

Moore v. Chavez, 36 Fed.Appx. 169 (6th Cir. 2002). A state prisoner brought suits against a state corrections department and correctional officials, alleging that he was improperly denied indigent status after he dropped out of an educational course, and that the defendants denied him employment when he refused to take a qualifying exam. The district court entered judgments generally in favor of the defendants and the appeals court affirmed. The appeals court held that the denial of indigent status did not constitute cruel and unusual punishment, even though the prisoner alleged that as a result of losing his indigent status he could not receive a loan to purchase hygiene items. The court noted that the inmate did not allege that he suffered extreme discomfort or that he was completely denied the basic elements of hygiene. The appeals court held that the prisoner's claim that the defendants discriminated against him because he had to use a wheelchair and could not take tests under pressure, was barred by Eleventh Amendment immunity. (Mich. Dept. of Corrections)

U.S. Appeals Court
LIBRARY

Tarpley v. Allen County, Indiana, 312 F.3d 895 (7th Cir. 2002). A former inmate sued a county, alleging interference with his right to exercise his religion and denial of meaningful access to courts. The district court entered summary judgment for the county and the inmate appealed. The appeals court affirmed. The court held that the inmate's free exercise rights were not violated by the county's refusal to allow him to use his own Bible and requiring him to use the jail's Bible, even though his personal Bible had commentary that the jail Bible did not have. The court found the jail policy of not allowing inmates to keep personal books to be reasonably related to its interest in maintaining safe conditions and preventing disputes over lost or damaged items. The court noted that the inmate did not assert that the commentary in his personal Bible had become part of fundamental texts of his religion as a whole. (Allen County Jail, Indiana)

U.S. Appeals Court
COMMISSARY
INDIGENT INMATES

Thompson v. Gibson, 289 F.3d 1218 (10th Cir. 2002). A state inmate brought a § 1983 action against prison officials, seeking monetary damages and injunctive relief for alleged Eighth and Fourteenth Amendment violations. The district court dismissed the action as frivolous. The appeals court dismissed the appeal, finding that the inmate's claim that prison officials were deliberately indifferent to his serious medical need for adequate portions of food was not actionable under the Eighth Amendment. The court noted that the record established that the prison was providing the inmate with a nutritionally adequate diet and doctors disagreed as to whether the inmate should receive double food portions. The appeals court found no equal protection violation, as alleged by the inmate, because inmates with funds were able to supplement their diet with purchases from the prison commissary, while indigent inmates were not. (Oklahoma State Penitentiary)

2003

U.S. District Court
HAIRCUT

Gerber v. Sweeney, 292 F.Supp.2d 700 (E.D.Pa. 2003). State prison inmates brought a § 1983 action against prison officials, alleging that they were provided with a nutritionally inadequate diet, received inadequate medical care, and were subjected to the use of excessive force. The district court granted summary judgment in favor of the defendants. The court held that the denial of the inmates' request for hats and gloves, and for shoes instead of sandals, to wear during outdoor recreation in winter months did not violate their Eighth Amendment right to regular exercise. The court noted that the inmates failed to show that protracted periods of inclement weather, foreclosing outdoor activity, occurred with any frequency. The court found that the prison's use of unlicensed barbers to provide haircuts for inmates, and requiring inmates to share electric razors, did not place the inmates at a risk of serious or substantial harm absent any showing that the inmates were at any additional risk of contracting diseases. (Lehigh County Prison, Pennsylvania)

U.S. District Court
COMMISSARY
INDIGENT

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)

2004

U.S. District Court
LIBRARY

Cline v. Fox, 319 F.Supp.2d 685 (N.D.W.Va. 2004). A federal district court determined that a West Virginia Department of Corrections policy that prohibits inmates from receiving or possessing obscene material was not unconstitutional as it was applied to the inmate. The inmate then alleged that the policy on its face violated the First and Fourteenth Amendments because it was used to purge the prison library of certain books. The district court held that the inmate had standing to challenge the policy, and that the policy was not reasonably related to a legitimate penological interest in promoting security, preventing sexual assaults, and furthering rehabilitation. The court ordered the prison to amend its publication policy and screen purged books under the revised policy before restoring them to library shelves. According to the court, the policy did not define explicit sexual activity in terms of its capacity to sexually arouse. The court noted that the policy prohibited material that contained even one depiction of sexual intercourse, regardless of its context, while it allowed certain commercial pornography. (St. Mary's Correctional Center, West Virginia)

U.S. District Court
LIBRARY

Tyler v. McCaughtry, 293 F.Supp.2d 920 (E.D.Wis. 2003). A state prisoner filed a petition for a writ of habeas corpus, claiming that his due process rights were violated when a prison disciplinary committee revoked his good time credits. The state moved to dismiss and the district court denied the motion. The court held that the summary judgment was precluded by a genuine issue of material fact as to whether the correctional facility's legal resources were the cause for the petitioner's default of federal claims in state court. (Dodge Correctional Institution, Wisconsin)

2005

U.S. Appeals Court
TELEPHONE

Gilmore v. County of Douglas, State of Neb., 406 F.3d 935 (8th Cir. 2005). The relative of a former jail inmate brought a § 1983 action alleging that a 45% commission, paid to the county by the jail's telecommunications providers on surcharged collect telephone calls from inmates, constituted a tax on inmates' relatives that violated the Equal Protection Clause. The district court granted the county's motion to dismiss and the relative appealed. The appeals court affirmed, finding that the relative was similarly situated to recipients of collect calls from non-inmates. The court held that the contract which called for the commission was aimed at generating revenues to defray the costs of providing inmates with telephone service, not at treating the recipients of inmates' calls differently from others, and therefore had a rational basis. The court noted that a 15-minute inmate-initiated call from the jail cost $2.30. (Douglas County Corrections Center, Nebraska)

U.S. District Court
IDLENESS

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 praised the county, noting that it had adopted a focused, systemic and information-driven structural reform based on critical exert 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
COMMISSARY

Purcell ex rel. Estate of Morgan v. Toombs County, 400 F.3d 1313 (11th Cir. 2005). The mother of a county jail inmate who died after he was beaten and injured by three other inmates brought a § 1983 action against a sheriff and jail administrator. The district court denied qualified immunity for the defendants, and Eleventh Amendment immunity for the sheriff, and they appealed. The appeals court reversed. The court held that the conditions at the county jail did not pose a "substantial risk of serious harm" as required to show an Eighth Amendment violation. The inmate was beaten by three other inmates in his cell over an alleged money dispute. Inmates were allowed to keep money in their cells, play cards and gamble, the jail had a history of inmate-on-inmate assaults, and the jail's layout presented some difficulty in the continuous observation of inmates. But the court noted that inmates were segregated based on particularized factors, including the kind of crime committed and personal conflicts, the jail was not understaffed at the time of the attack, serious inmate-on-inmate violence was not the norm, fights that did occur were

not linked to any recurring specific cause, and jailers had a history of punishing inmate violence. The sheriff had directed that a new commissary system be instituted to manage inmate funds so that inmates would not have to keep money on their persons, but the system had not been put in place by the day of the incident. (Toombs County Jail, Georgia)

U.S. District Court
LIBRARY

Rickenbacker v. U.S., 365 F.Supp.2d 347 (E.D.N.Y. 2005). After pleading guilty to credit card fraud and being sentenced to 24 months of imprisonment, a defendant moved to vacate, set aside, or correct the sentence. The district court denied the motion. The court held that defense counsel was not deficient in failing to move for a downward departure of the defendant's sentence based on perceived hardships the defendant endured while being detained prior to sentencing. According to the court, the alleged substandard conditions, consisting of being served food that the defendant believed had been accessed by rodents, and not being provided with a fully stocked library, were not conditions that rose to the level that would warrant a downward departure. The defendant had been served bread that rodents had apparently partially eaten, and in one instance a mouse had created a tunnel inside of the bread. (Nassau County Correctional Center, New York)

2006

U.S. District Court
TELEPHONE

Harrison v. Federal Bureau of Prisons, 464 F.Supp.2d 552 (E.D.Va. 2006). A federal inmate brought an action against the federal Bureau of Prisons (BOP) and prison officials under *Bivens* and various federal statutes, challenging an increase in the long-distance telephone rate. The court granted summary judgment in favor of the defendants. The court held that: (1) the telephone rate increase did not implicate the inmate's First Amendment rights; (2) the inmate's procedural due process rights were not violated: (3) the inmate failed to state an equal protection violation; (4) BOP's increase in the telephone rates was not subject to judicial review; (5) the inmate failed to state a claim under the Federal Tort Claims Act (FTCA); and (6) the inmate's Freedom of Information Act (FIOA) claim would be transferred to another court. According to the court, prisoners have no per se First Amendment right to use a telephone and are not entitled to a specific rate for their telephone calls. The court found that the three-cent increase in the long-distance telephone rate charged to the federal inmate, from twenty cents per minute to twenty-three cents per minute, did not implicate the inmate's First Amendment rights. Although prisoners have a due process property interest in the funds held in their prison accounts, the court noted that the post-deprivation proceeding of the normal grievance process was available. The court also ruled that the Administrative Procedure Act (APA) precluded a judicial review of the BOP increase in telephone rates. (Federal Bureau of Prisons, Virginia)

U.S. Appeals Court
LIBRARY

Myron v. Terhune, 457 F.3d 996 (9th Cir. 2006). A state prisoner brought a § 1983 action against several correctional officers and medical personnel at a prison. The district court dismissed the action and the prisoner appealed. The appeals court affirmed. The court held that a state regulation governing the security classification of prisoners did not give the state prisoner a liberty interest, protected by the due process clause, in the security level to which he was classified, noting that the regulation provided that prison officials retained discretion in making placement decisions. The court found that a state regulation governing prison publications did not give the prisoner a liberty interest, protected by the due process clause, in participating in the publication and distribution of an inmate publication, where the regulation granted unfettered discretion to prison officials to restrict prisoner publications. According to the court, a regulation governing library services in prisons did not give the prisoner a liberty interest, protected by the due process clause, in library access hours. The court noted that while the regulation may have created a liberty interest in requiring prison officials to have a law library, the warden was vested with discretion to regulate access to library facilities. (Salinas Valley State Prison, California)

U.S. District Court
COMMISSARY

Pepper v. Carroll, 423 F.Supp.2d 442 (D.Del. 2006). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The court granted the officials' motion for summary judgment. According to the court, the prison officials' denials of several privileges while the inmate was voluntarily housed in a security housing unit, including extra visits, reading material, exercise, television, cleaning tools, boiling water, ice, razors, and additional writing utensils, were not a sufficiently serious deprivation to support the inmate's claim that the denials constituted cruel and unusual punishment under the Eighth Amendment. The court found that the inmate had no constitutionally protected right to purchase food or other items as cheaply as possible through the prison commissary, and therefore prison officials did not violate the inmate's Eighth Amendment rights by allegedly overcharging for commissary products. (Delaware Correctional Center)

U.S. District Court
TELEPHONE

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)

2007

U.S. Appeals Court
TELEPHONE

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)

2008

U.S. District Court
TELEPHONE

Bryant v. *Cortez*, 536 F.Supp.2d 1160 (C.D.Cal. 2008). A state inmate filed a § 1983 action alleging that prison officials violated his due process rights and state law by placing him in an administrative segregation unit (ASU) for eighteen months pending resolution of a disciplinary charge against him. The district court granted the officials' motion for summary judgment. The court held that the inmate's loss of telephone privileges did not constitute a due process violation, given the availability of alternative means of communication by mail or in person. (Calif. State Prison, Los Angeles County)

U.S. District Court
TELEPHONE

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. The court found that the deaf prisoner was not similarly situated to hearing inmates who could use inmate telephones, as required to support an equal protection claim based on failure to afford him the same access that hearing inmates received to the phone system.

The court concluded that the limited access provided to the deaf prisoner was rationally related to 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. (Orleans Parish Prison, Louisiana)

U.S. District Court
COMMISSARY

Kole v. *Lappin*, 551 F.Supp.2d 149 (D.Conn. 2008). A Jewish inmate filed a complaint against federal prison officials alleging that a reduction in the number of kosher-for-Passover food items available to inmates for purchase for the Passover holiday violated her First, Fifth, and Fourteenth Amendment rights. The district court entered judgment in favor of the defendants. The court held that the prison's limitation on the number of supplemental kosher-for-Passover foods available for purchase by Jewish inmates did not substantially burden the plaintiff's religious practice in violation of the First Amendment, where the prison provided her with two Seder dinners during Passover, and otherwise provided her with three kosher-for-Passover meals and a box of Matzoh each day during the eight days of the holiday. The court found that the differences between food available for inmate purchase on a special holiday list available between Thanksgiving and Christmas and the more limited list of kosher-for-Passover food available for purchase did not violate the plaintiff's right to equal protection. The court noted that the prison's stated penological interests in limiting a small group of inmates' access to special goods to avoid hoarding and illegal trade, and in the efficient financial operation of the prison commissary, were logically advanced by offering a smaller number of "best sellers" for sale on Passover. (Federal Correction Institution, Danbury, Connecticut)

U.S. Appeals Court
TELEPHONE

Tucker v. *Tennessee*, 539 F.3d 526 (6th Cir. 2008). Deaf and mute arrestees and their deaf mother sued a city and county, alleging that denial of an interpreter or other reasonable accommodations during criminal proceedings violated the Americans with Disabilities Act (ADA). The district court granted the county's motion for summary judgment and the plaintiffs appealed. The appeals court affirmed. The court held that the county's use of the deaf mother's services as an interpreter during her deaf sons' dispositional hearing on criminal charges did not violate Title II of the ADA, which prohibits discrimination in public services. The court noted that the mother voluntarily served as the interpreter and that her service was requested in light of her sign language skills, not for any discriminatory purpose. The court found that the deaf and mute arrestees were not denied a "service, program, or activity" when the city failed to provide an interpreter during a domestic disturbance call which resulted in their arrest, and the city thus was not liable under ADA's Title II. According to the court, the arrests were made not because the arrestees were disabled, but because the arrestees assaulted police officers, individual citizens, or attempted to interfere with a lawful arrest. The court concluded that the arresting officers were able to effectively communicate with the arrestees. The court held that the county did not violate Title II of the ADA, which prohibits discrimination in public services, by using relay operators to allow the deaf arrestees to communicate with their mother, rather than providing them with a teletypewriter (TTY) telephone. Jailers assisted the arrestees in making their requested phone call by utilizing relay operators, the phone call lasted nearly forty-five minutes, and the Department of Justice (DOJ) provisions did not mandate the presence of a TTY telephone. (City of Savannah Police Department , Hardin County Jail, Tennessee)

U.S. Appeals Court
TELEPHONE

U.S. v. *Novak*, 531 F.3d 99 (1st Cir. 2008). In an attorney's prosecution for endeavoring to obstruct justice and two counts of money laundering, he moved to suppress intercepted telephone calls with a prospective client, made while that client was in pretrial detention. The district court granted the motion, and the government appealed. The appeals court reversed. The court held that the Fourth Amendment was not violated by the jail's monitoring of the detainee's telephone calls to his attorney. According to the court, a telephone call can be monitored and recorded without violating the Fourth Amendment so long as one participant in the call consents to the monitoring. By placing the calls after being informed that they would be monitored and recorded, the detainee consented to such monitoring. The court decision begins by stating that "…the government in this case brings an extraordinary appeal: It asks us to reverse a district court ruling barring from evidence recordings of phone calls made between an attorney and his client. These calls were recorded in clear violation of state and federal regulations." The court noted that the attorney had not raised a Sixth Amendment challenge, and for Fourth Amendment purposes, his client consented to the monitoring of his calls. The court held that "On these narrow facts, we reverse the determination of the district court that the calls must be excluded." (Barnstable County Jail, Massachusetts)

2009

U.S. District Court
TELEPHONE

Cox v. *Ashcroft*, 603 F.Supp.2d 1261 (E.D.Cal. 2009). A prisoner brought a § 1983 action against the United States Attorney General, several federal prosecutors, and the owner and employees of a privately-owned federal facility in which the prisoner was incarcerated, alleging constitutional violations arising from his arrest, prosecution, and incarceration. The district court dismissed the action. The court held that the prisoner did not have any Fourth Amendment rights to privacy in his cell, and thus did not suffer any constitutional injury as a result of the search of his cell and the confiscation of another inmate's legal materials. According to the court, the prison facility's imposition of a 30-day suspension of the prisoner's telephone privileges related to a disciplinary action arising from the search of his cell and the confiscation of another inmates' legal papers, did not constitute an unreasonable limitation on the prisoner's First Amendment rights. The court noted that prisoners have a First Amendment right to telephone access, subject to reasonable limitations. (Taft Correctional Institution, Wackenhut Corrections Corporation, California)

U.S. District Court
COMMISSARY
COMMISSION
TELEPHONE

Harrison v. *Federal Bureau of Prisons*, 611 F.Supp.2d 54 (D.D.C. 2009). A federal prisoner brought an action against the Bureau of Prisons, alleging that the Bureau's conduct in adopting telephone rates and commissary prices violated his constitutional due process and equal protection rights. The district court granted the Bureau's motion to dismiss in part. The court noted that the prisoner had previously litigated claims against the Bureau of Prisons arising from an increase in telephone rates, and barred the prisoner from bringing additional claims based on that same cause of action, regardless of whether the prisoner's claim invoked different provision of the Administrative Procedure Act. The court held that the prisoner did not have a constitutionally protected property or liberty interest in commissary pricing, as required to state a claim for the violation of due process based on allegedly unfair prices. The court noted that an inmate has no federal constitutional right to purchase items from a prison commissary. According to the court, the Bureau of Prisons used the same mark-up guidelines in all of its institutions to set commissary prices, and thus there was no evidence that commissary prices violated the federal prisoner's equal protection rights. (Federal Bureau of Prisons, Virginia)

U.S. District Court
TELEPHONE

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. The court held that the prisoner stated a free exercise of religion claim under the First Amendment by alleging that detention center personnel prevented him from practicing the central tenet of his faith of regularly reading his Bible for 19 days while he was in protective custody. 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
LIBRARY

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 pris-

oner appealed. The appeals court affirmed. 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 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. (Northeast Corr'l Center, Missouri)

U.S. District Court
TELEPHONE

Shariff v. *Coombe*, 655 F.Supp.2d 274 (S.D.N.Y. 2009). Disabled prisoners who depended on wheelchairs for mobility filed an action against a state and its employees asserting claims pursuant to Title II of the Americans with Disabilities Act (ADA), Title V of Rehabilitation Act, New York State Correction Law, and First, Eighth, and Fourteenth Amendments. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. According to the court, the inaccessibility of telephones throughout a state prison, inaccessibility of a family reunion site, inaccessibility of a law library, and malfunctioning of a school elevator, that did not cause any physical harm or pain to disabled prisoners who depended on wheelchairs for mobility, were not the kind of deprivations that denied a basic human need. (New York State Department of Correctional Services, Green Haven Correctional Facility)

U.S. District Court
LIBRARY

Zulu v. *Botta*, 613 F.Supp.2d 391 (W.D.N.Y. 2009). A state inmate brought a pro se § 1983 suit against the director of a city library, who was not a state corrections department employee. The director moved for summary judgment and the district court granted the motion. The court held that the director was not involved in any of the alleged violations of the inmate's rights. The court found that while there were some issues over the inmate's excessive book requests, there was no evidence that the director had anything to do with that matter, and that there was no evidence that the director conspired with corrections employees to file a false misbehavior report against the inmate in retaliation for his filing of a grievance. (Geneva Free Library, Geneva, New York)

2010

U.S. District Court
LIBRARY

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
COMMISSARY

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
COMMISSARY
TELEPHONE

Harrison v. *Federal Bureau of Prisons*, 681 F.Supp.2d 76 (D.D.C. 2010). A federal prisoner brought an action against the Bureau of Prisons (BOP), alleging that BOP's adoption of telephone rates and commissary prices violated his due process and equal protection rights, as well as the Administrative Procedure Act (APA). He also alleged violations of the Freedom of Information Act (FOIA) and Privacy Act. After BOP's motion to dismiss and for summary judgment was granted in part and denied in part, the prisoner moved for reconsideration, and the BOP moved for summary judgment on remaining FOIA claims. The district court granted the BOP's motion. The court found no prejudicial error from the court's dismissal of his claims in connection with BOP's adoption of telephone rates and commissary prices, as would warrant reconsideration. The court held that an investigation memorandum prepared by a warden concerning a tort claim brought by the prisoner against the BOP was exempt from disclosure under the Freedom of Information Act (FOIA) exemption for inter-

agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. The court found that BOP conducted a reasonable and adequate search for records concerning the prisoner's disability checks, and for records concerning the cost of and profits from inmates' copy cards, as required under the Freedom of Information Act (FOIA). (Federal Bureau of Prisons, Washington, D.C.)

U.S. District Court
COMMISSARY

Hopkins v. *Grondolsky*, 759 F.Supp.2d 97 (D.Mass. 2010). A prisoner filed a petition for a writ of habeas corpus. The Federal Bureau of Prisons (BOP) filed a motion to dismiss. The district court dismissed the case, finding that the loss of 90 days of commissary privileges as a disciplinary action was not a loss of any protected liberty interest, and allegations were insufficient to plead prison regulations unreasonably burdened the prisoner's constitutional rights. (Federal Bureau of Prisons, Sex Offender Management Program, FMC Devens, Massachusetts)

U.S. District Court
COMMISSARY

Mitchell v. *Dodrill*, 696 F.Supp.2d 454 (M.D.Pa. 2010). A federal prisoner initiated a Bivens-type action against the Bureau of Prisons (BOP) employees, making several complaints about various conditions of his former place of confinement. The district court granted summary judgment for the defendants in part, and denied in part. The court held that, absent any evidence that the alleged conditions of the prisoner's cell caused harm to the prisoner, and that the Bureau of Prisons (BOP) defendants were deliberately indifferent to that harm, cell conditions did not violate the Eighth Amendment. The prisoner alleged that his cell was in poor condition, with poor welding and rust erosion present at the base of the walls, had inadequate plumbing, was infested with "cockroaches, spiders, worms, mice and other unknown insects," and lacked ventilation. The court found that the prisoner's allegation, that as a special management unit inmate, he was not given the same commissary privileges as a general population inmate, did not rise to the level of a sufficiently serious constitutional deprivation to give rise to an Eighth Amendment claim. The court held that double celling of the prisoner did not violate the Eighth Amendment where the prisoner did not allege that he was singled out for double-celling or that his health or life was endangered by the condition. The court noted that double celling inmates is not per se unconstitutional, and that considerations that are relevant in determining if double celling violates the Eighth Amendment include the length of confinement, the amount of time prisoners spend in their cells each day, sanitation, lighting, bedding, ventilation, noise, education and rehabilitation programs, opportunities for activities outside the cells, and the repair and functioning of basic physical facilities such as plumbing, ventilation, and showers. (Special Management Unit, United States Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
TELEPHONE

Paulone v. *City of Frederick*, 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)

2011

U.S. District Court
TELEPHONE

Aref v. *Holder*, 774 F.Supp.2d 147 (D.D.C. 2011). A group of prisoners who were, or who had been, incarcerated in communication management units (CMU) at federal correctional institutions (FCI) designed to monitor high-risk prisoners filed suit against the United States Attorney General, the federal Bureau of Prisons (BOP), and BOP officials, alleging that CMU incarceration violated the First, Fifth, and Eighth Amendments. Four additional prisoners moved to intervene and the defendants moved to dismiss. The district court denied the motion to intervene, and granted the motion to dismiss in part and denied in part. The court held that even though a federal prisoner who had been convicted of solicitation of bank robbery was no longer housed in the federal prison's communication management unit (CMU), he had standing under Article III to pursue constitutional claims against the Bureau of Prisons (BOP) for alleged violations since there was a realistic threat that he might be redesignated to a CMU. The court noted that the prisoner had originally been placed in CMU because of the nature of his underlying conviction and because of his alleged efforts to radicalize other inmates, and these reasons for placing him in CMU remained. The court found that the restrictions a federal prison put on prisoners housed within a communication management unit (CMU), which included that all communications be conducted in English, that visits were monitored and subject to recording, that each prisoner received only eight visitation hours per month, and that prisoners' telephone calls were limited and subjected to monitoring, did not violate the prisoners' alleged First Amendment right to family integrity, since the restrictions were rationally related to a legitimate penological interest. The court noted that prisoners assigned to the unit typically had offenses related to international or domestic terrorism or had misused approved communication methods while incarcerated. The court found that prisoners confined to a communication management unit (CMU), stated a procedural due process claim against the Bureau of Prisons (BOP) by alleging that the requirements imposed on CMU prisoners were significantly different than those imposed on prisoners in the general population, and that there was a significant risk that procedures used by the BOP to review whether prisoners should initially be placed within CMU or should continue to be incarcerated there had resulted in erroneous deprivation of their liberty interests. The court noted that CMU prisoners were allowed only eight hours of non-contact visitation per month and two 15 minute telephone calls per week, while the general population at a prison was not subjected to a cap on visitation and had 300 minutes of telephone time per month. The court also noted that the administrative review of CMU status, conducted by officials in Washington, D.C., rather than at a unit itself, was allegedly so vague and generic as to render it illusory. (Communication Management Units, Federal Correctional Inst. in Terre Haute, Indiana and Marion, Ill.)

U.S. District Court
TELEPHONE

Hill v. *Donoghue*, 815 F.Supp.2d 583 (E.D.N.Y. 2011). An inmate, proceeding pro se, brought an action against an Assistant United States Attorneys (AUSA) and the United States, asserting various claims under Bivens and the Wiretap Act in relation to his jailhouse phone calls. The defendants filed a motion for judgment on the pleadings, which the district court granted. The court held that the AUSAs were entitled to absolute immunity from claims relating to their use of the tapes. The but court found that an AUSA was not entitled to absolute immunity for ordering the recordings, where the

alleged order to make warrantless recordings of the inmate's jailhouse phone calls was investigative, rather than prosecutorial, and therefore, the AUSA was not entitled to absolute immunity from the inmate's Wiretap Act or Bivens Fourth Amendment claims. The court found that the inmate did not have a reasonable expectation of privacy in his jailhouse phone calls, and therefore, the warrantless recording of his calls did not violate his Fourth Amendment rights. The court noted that the jail telephones played a recorded warning that calls might be recorded and monitored, and the inmate's use of a jailhouse phone after hearing the warning constituted implied consent to the recording of his calls. (Eastern District of New York, Nassau County Correctional Center, New York)

U.S. District Court
IDLENESS

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 Institution, Florida)

U.S. Appeals Court
COMMISSARY

Tenny v. *Blagojevich*, 659 F.3d 578 (7th Cir. 2011). Seven inmates incarcerated at a state prison sued current and former officials in the Illinois Department of Corrections, and the former Governor, for marking up the price of commissary goods beyond a statutory cap. The district court dismissed the cases for failure to state a claim and the inmates appealed. The appeals court affirmed and remanded with instructions. According to the appeals court, even if a statutory cap on the mark-up of the price of prison commissary goods created a protected property interest, the prisoners did not state a procedural due process claim based on the Department of Corrections' alleged cap violation where they did not allege that post-deprivation remedies were inadequate to satisfy constitutional due process requirements. (Stateville Corr'l. Center, Ill.)

2012

U.S. Appeals Court
TELEPHONE

Beaulieu v. *Ludeman*, 690 F.3d 1017 (8th Cir. 2012). Patients who were civilly committed to the Minnesota Sex Offender Program (MSOP) brought a § 1983 action against Minnesota Department of Human Services (DHS) officials and Minnesota Department of Corrections (DOC) officials, alleging that various MSOP policies and practices relating to the patients' conditions of confinement were unconstitutional. The district court granted summary judgment in favor of the defendants and the patients appealed. The appeals court affirmed. The appeals court held that: (1) the MSOP policy of performing unclothed body searches of patients was not unreasonable; (2) the policy of placing full restraints on patients during transport was not unreasonable; (3) officials were not liable for using excessive force in handcuffing patients; (4) the officials' seizure of televisions from the patients' rooms was not unreasonable; (5) the MSOP telephone-use policy did not violate the First Amendment; and (6) there was no evidence that officials were deliberately indifferent to the patients' health or safety. The court found that the (MSOP) telephone-use policy did not violate the First Amendment free speech rights of patients who were civilly committed to MSOP. According to the court, the policy of monitoring patients' non-legal telephone calls and prohibiting incoming calls was reasonably related to MSOP's security interests in detecting and preventing crimes and maintaining a safe environment. The court upheld the 30-minute limit on the length of calls, finding it was reasonably related to the legitimate governmental interest of providing phone access to all patients, and that patients had viable alternatives by which they may exercise their First Amendment rights, including having visitors or sending or receiving mail, and patients had abused telephone privileges prior to implementation of the policy by engaging in criminal activity or other counter-therapeutic behavior by phone. (Minnesota Sex Offender Program)

U.S. Appeals Court
LIBRARY

Munson v. *Gaetz*, 673 F.3d 630 (7th Cir. 2012). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights by barring him from personally possessing books he had shipped to a prison. The district court dismissed the complaint, and the inmate appealed. The appeals court affirmed. The court held that the decision to prohibit the inmate from personally possessing books containing drug-related information did not violate the First Amendment, the Eighth Amendment or due process. According to the court, the state prison officials had a legitimate and neutral governmental objective of restricting prisoner access to drug-related information, despite the inmate's contention that he wanted the books to educate himself about his prescribed medications, where the prison officials made an individualized determination, and the books were available in prison library. (Illinois Department of Corrections)

U.S. Appeals Court
LIBRARY

Toston v. *Thurmer*, 689 F.3d 828 (7th Cir. 2012). A state prison inmate brought a pro se civil rights complaint under § 1983 against prison officials, alleging that his rights of free speech and due process were violated when a disciplinary proceeding found him guilty of possession of gang literature and sentenced him to 90 days confinement in segregation. The inmate's due process claim was dismissed, and the district court granted summary judgment for officials on the free speech claim. The inmate appealed. The appeals court affirmed in part and vacated in part. The appeals court held that the limitation of the state prison inmate's right of free speech, as a result of a disciplinary proceeding that found him guilty of possession of gang literature, was adequately justified by prison officials' legitimate concern that the inmate copied from a prison library book a ten-point program by the founder of a hate group's predecessor in order to show it to others that the inmate hoped to enlist in a prison gang, with the program to serve as the gang's charter. The court noted that a prison librarian's decision that on the whole a book is not gang literature does not preclude disciplinary proceedings against an inmate who copies incendiary passages from it. The inmate had purchased, with prison permission, "To Die for the People: The Writings of Huey P. Newton" the founder of the Black Panthers, and he had checked out two books from the prison library about the Black Panthers. The court vacated the district court decision regarding the alleged due process violation. The inmate alleged that his due process rights were violated because he had no notice that copying passages from prison library books or a book he had been allowed to purchase could subject him to a sentence of 90 days'

confinement in segregation for possessing gang literature. The appeal court ordered the district court to determine whether a 90–day sentence to segregation was, or was not, a deprivation of liberty. (Waupun Correctional Institution, Wisconsin)

2013

U.S. District Court
TELEPHONE

Berke v. *Federal Bureau of Prisons*, 942 F.Supp.2d 71 (D.D.C. 2013). A deaf federal inmate brought an action alleging that the Bureau of Prisons (BOP) and its director discriminated against him in violation of the Rehabilitation Act by failing to adequately accommodate his deafness. After the court granted, in part, the inmate's motion for a preliminary injunction, the inmate moved for attorney fees and costs. The district court granted the motion in part and denied in part. The court held that the inmate was the prevailing party, and that a forty percent reduction in the attorney fee award was warranted, where the court did not order the BOP to install videophones, only to investigate whether such a system could reasonably be installed, and the BOP had not yet decided whether the system was feasible. (Federal Bureau of Prisons, ADMAX Satellite Camp, Tucson, Arizona)

U.S. District Court
COMMISSARY

Borkholder v. *Lemmon*, 983 F.Supp.2d 1013 (N.D.Ind. 2013). A prisoner brought an action against state prison officials seeking declaratory and injunctive relief to challenge the officials' decision to revoke his vegan diet. Both parties moved for summary judgment. The district court denied the officials' motion, granted the prisoner's motion, and entered an injunction. The court held that the fact that the prisoner's vegan diet had been restored did not render moot his declaratory judgment action against state prison officials, in which he alleged that they violated his religious rights by revoking his vegan diet for purchasing chicken-flavored ramen noodles, because no vegetarian noodles were available to him, and his vegan diet was subject to revocation anytime he ordered ramen noodles, regardless of whether he consumed the seasoning packet containing chicken. The court found that the prisoner demonstrated a substantial burden to his religious practice, satisfying his initial burden under The Religious Land Use and Institutionalized Persons Act (RLUIPA), where the prisoner held a religious belief that required him to adhere to a vegan diet, he purchased chicken-flavored ramen noodles from the state prison commissary, the commissary did not carry a vegetarian noodle option, the prisoner did not eat the meat flavoring packet but instead discarded it, and the prisoner's vegan diet was revoked solely due to his noodle purchase. According to the court, prison officials' revocation of the prisoner's vegan diet was not the least restrictive means to further a compelling governmental interest, and thus the officials did not meet their burden under RLUIPA to justify such action,. The court noted that although the state prison policy dictated that personal preference diet cards could be confiscated if a prisoner abused or misused the privilege by voluntarily consuming self-prohibited foods, and such policy was legitimately geared toward weeding out insincere requests, the prisoner's purchase of noodles with a meat seasoning packet did not mean that his beliefs were insincere. The district court decision opened by stating: "It is not every day that someone makes a federal case out of ramen noodles. But unfortunately that's what Joshus Borkholder had to do." (Miami Correctional Facility, Indiana)

U.S. District Court
COMMISSARY

Johns v. *Lemmon*, 980 F.Supp.2d 1055 (N.D.Ind. 2013). An inmate, who was an Observant Jew, brought an action against a prison superintendent and a commissioner of the department of corrections (DOC), alleging that denial of food on Friday to consume on the Sabbath violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The parties cross-moved for summary judgment. The district court granted the plaintiff's motion and denied the defendants' motion. The court held that the prison's failure to provide food on Friday to the inmate was a substantial burden on his religious exercise, and that the practice did not serve a compelling governmental interest of food safety. The inmate sought to have food provided on Friday to consume on the Sabbath, and the prison's refusal required him to buy his Sabbath food from the commissary. The court noted that the inmate's preferred practice was permitted for a period of about five months and during that time the inmate stored meals in a cooler for a day, which other prisoners were permitted to do. (Miami Correctional Facility, Indiana Department of Corrections)

U.S. District Court
TELEPHONE

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
INDIGENT
INMATES

Wilbur v. *City of Mount Vernon*, 989 F.Supp.2d 1122 (W.D.Wash. 2013). Indigent criminal defendants brought a class action in state court against two cities, alleging the public defense system provided by the cities violated their Sixth Amendment right to counsel. The district court entered judgment for the plaintiffs, finding that the defendants were deprived of their Sixth Amendment right to counsel, and that the deprivation was caused by deliberate choices of the city officials who were in charge of the public defense system. The court noted that the cities were appointing counsel in a timely manner, but the public defenders were assigned so many cases that the defendants often went to trial or accepted plea bargains without meeting with counsel. The court required the cities to re-evaluate their public defender contracts and to hire a public defense supervisor to ensure indigent criminal defendants received their Sixth Amendment right to counsel. (City of Mount Vernon and City of Burlington, Washington)

2014

U.S. District Court
TELEPHONE

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. District Court
TELEPHONE
RIGHT TO
TREATMENT

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. The court found that the patients' allegations that, based on policies and procedures created and implemented by state officials, patients spent no more than six or seven hours per week in treatment, that their treatment plans were not detailed and individualized, that treatment staff was not qualified to treat sex offenders, and that staffing levels were often far too low, sufficiently stated a § 1983 substantive due process claim based on the officials' failure to provide adequate treatment.

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. District Court
COMMISSARY

Winder v. *Maynard*, 2 F.Supp.3d 709 (D.Md. 2014). An inmate, proceeding pro se, brought a § 1983 action against a prison official, asserting that the official hindered his religious practice. The official filed a motion to dismiss or, in the alternative, for summary judgment. The district court granted the motion. The district court held that denial of the inmate's request for pork products for a Wiccan ceremonial meal did not substantially impede the inmate's ability to practice his religious beliefs in violation of the Free Exercise Clause or the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court noted that the inmate's request for a religious ceremonial meal had been approved and he was directed that while the requested pork products could not be provided through the dietary department or prepared in Department of Corrections (DOC) kitchen facilities, pork products could nevertheless be purchased through the commissary and consumed at the ceremonial meal. According to the court, the prison's accommodation of other religious prisoners through the adoption of a religious diet while allegedly refusing to provide pork products for Wiccan practitioners did not violate the equal protection rights of the inmate because: (1) the kosher Jewish diet demanded certain food preparation and food choices not required for Wiccan inmates; (2) neither Jewish nor Muslim inmates received ritually slaughtered meat; (3) no pork was prepared in Department of Corrections (DOC) kitchens in order to respect the religious dietary requirements of Jewish and Muslim inmates; (4) the prison was unable to provide pork through dietary services due to legitimate penological goals regarding budget and security; (5) the prisoner was free to purchase pork products through the commissary; and (6) prison meal plans were created in order to see that the needs of all religious groups are accommodated. (Jessup Correctional Institution, Maryland)

2015

U.S. District Court
COMMISSARY

Carter v. *James T. Vaughn Correctional Center*, 134 F.Supp.3d 794 (D. Del. 2015). A state prisoner filed a pr se complaint under § 1983 seeking injunctive relief against a prison. The district court dismissed the action. The court held that the prisoner's claims that the prison's business office miscalculated and deducted incorrect sums of money from his prison account when making partial filing fee payments, that there was poor television reception, and that he was not allowed to purchase canteen items from the commissary, were not actionable under § 1983, where all of the claims were administrative matters that should be handled by the prison. The court found that the prisoner's claims that he was being electronically monitored through a "microwave hearing effect eavesdropping device" and electronic control devices were fantastical and/or delusional and therefore were insufficient to withstand screening for frivolity in filings by an in forma pauperis prisoner, in the prisoner's § 1983 action. (James T. Vaughn Correctional Center, Smyrna, Delaware)

U.S. District Court
LIBRARY

Crime, Justice & America, Inc. v. *Honea*, 110 F.Supp.3d 1027 (E.D. Cal. 2015). The publisher of a magazine intended for newly arrested county jail detainees awaiting trial brought an action against a county alleging violation of the right to free speech protected under the First Amendment after the county barred general distribution of unsolicited paper products to detainees. After a bench trial, the district court held that: (1) the county jail's policy of limiting written publications was rationally related to legitimate a penological interest in preventing inmates from using paper to conduct illicit activity; (2) electronic touch-screen kiosks that displayed the publisher's magazine in the jail were sufficient alternative means; (3) the impact of accommodating the asserted right weighed in favor of the county policy; and (4) the policy was not an exaggerated response. The court found that a corrections officer's testimony regarding the nefarious uses of paper in

county jails, including that he could not recall a time when the publisher's law-oriented magazine had been used by detainees for such purposes was not, without more, sufficient to refute the county's explanation that its policy limiting detainee's access to paper was rationally related to a legitimate penological interest. The court ruled that the publisher's proposal to provide two copies of the publisher's law-oriented magazine in the county jail law library, standing alone, was not a sufficient alternative means for the publisher to communicate the existence of the magazine to county jail detainees, where most inmates would likely have left the jail before they would receive it from the library. (Butte Co. Jail, Calif.)

U.S. Appeals Court
COMMISSARY
TELEPHONE

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. (Fed. Bur. of Prisons, Washington, D.C.)

U.S. District Court
LIBRARY

Koger v. *Dart*, 114 F.Supp.3d 572 (N.D. Ill. 2015). A county jail inmate brought a § 1983 action against a county and the county sheriff, alleging that the county jail's absolute ban on newspapers was unconstitutional under the First Amendment. The inmate moved for summary judgment. The district court granted the motion. The court held that the absolute ban on newspapers for inmates was rationally connected to jail security, where newspapers were flammable, they could cause sanitation problems because inmates could use them to clog toilets and they were issued with greater frequency than other publications, thus increasing the volume of material to be disposed, newspapers could be fashioned into weapons using paper mâché, and they could cause violence by informing inmates about the nature of other inmates' charges or outside gang activity. But the court held that the county jail's absolute ban on newspapers for inmates was not reasonably related to the jail's legitimate interest in security, and thus the ban violated the inmate's First Amendment free speech rights. According to the court, an absolute ban was the most extreme response available, as it completely extinguished the inmate's ability to exercise his right to read newspapers, and the ban was an exaggerated response to security concerns, as there were obvious, easy alternatives that would accommodate the inmate's right with de minimis impact on the jail, such as permitting newspapers only in the jail library to reduce waste generated, and not purchasing local papers to limit the risk of violence from inmates learning of local gang activity. (Cook County, Illinois)

U.S. District Court
COMMISSARY

Montalvo v. *Lamy*, 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. The court found that the inmate did not state a First Amendment retaliation claim against a sergeant who allegedly would not process the inmate's grievance related to his inability to purchase snacks from the prison commissary, where the sergeant was acting in compliance with a state regulation, which required him, as the Grievance Coordinator, to return grievances regarding issues outside the authority of the chief administrative officer to control, such as medical decisions made by health care professionals. The court held that the inmate adequately alleged that the food provided to him by the prison was not nutritionally adequate with respect to his status as a diabetic and that the diet he was provided presented an immediate danger to his health and well-being, and thus, the inmate met the objective component of an Eighth Amendment claim for medical indifference. (Erie County Holding Center, New York)

U.S. District Court
TELEPHONE
COMMISSION

Prison Legal News v. *U.S. Dept. of Homeland Sec*., 113 F.Supp.3d 1077 (W.D. Wash. 2015). A requester brought a Freedom of Information Act (FOIA) action against the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) for information related to prison telephone practices and policies, including those at ICE's federal immigration detention centers. The parties filed cross-motions for summary judgment. The district court granted the requestor's motion. The court held that the performance incentive rate of the phone services contractor for federal immigration detention centers was not exempt from disclosure. According to the court, the phone services contractor was not likely to suffer substantial competitive harm if the performance incentive rate from its successful bid for federal immigration detention centers was disclosed, and thus that rate, which reflected the percentage of revenue set aside in escrow and only paid to the contractor upon the government's determination that the contractor performed successfully, was not exempt from disclosure. (U.S. Department of Homeland Security, Immigration and Customs Enforcement)

U.S. District Court
TELEPHONE

Smith v. *Securus Technologies, Inc*., 120 F.Supp.3d 976 (D. Minn. 2015). Consumers brought a putative class action against the provider of inmate telephone services, alleging violations of the Telephone Consumer Protection Act (TCPA) and the Minnesota Automatic Dialing-Announcing Devices Law (ADAD), based on claims that the provider made automated calls with prerecorded messages to their cellular phones without their prior consent. The provider moved for summary judgment. The district court granted the motion, finding that the provider did not "make" calls as required to be liable under TCPA and ADAD and the platform used for inmates' calls was not an automatic telephone dialing system. The plaintiffs alleged that each call allegedly informed them about the name of the inmate trying to contact them, the name of the correctional facility from which the call was being made, and instructions on how to accept or decline the call. They argued that they did not consent to receiving any of these non-emergency calls. (Securus Technologies, Inc., and Minnesota ADAD Law)

U.S. Appeals Court
COMMISSARY

Sorrentino v. *Godinez*, 777 F.3d 410 (7th Cir. 2015). Two inmates purchased several items from a prison's commissary, but the prison later forbade the inmates to possess those items in their cells. Their property was removed, as the new rule required. They responded by filing a proposed class action in the district court, alleging that confiscation of their property was an unconstitutional taking and a breach of contract. The district court dismissed the action. The appeals court held that the district court was correct to dismiss the action, although the dismissal should have been without prejudice. One inmate had purchased a fan and signed a "personal property contract" which obligated him to follow all Department of Corrections (DOC) rules related to use, ownership, and possession of the fan. The other inmate purchased a typewriter and a fan, and he also signed a personal property contract for his fan. When a new policy banned these items from prisoners' cell, the new policy offered several options for inmates who owned the newly prohibited types of property. Inmates with typewriters could have them destroyed, give them to visitors, ship them to someone outside the prison at no cost, store them in "offender personal property" which is returned to inmates upon release from prison, or donate them to the prison library. Fans were simply placed in storage as "offender personal property." (Stateville Correctional Facility, Illinois)

SECTION 43: SENTENCES

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. Supreme Court
CONSECUTIVE SENTENCES

Peyton v. Rowe, 88 S.Ct. 1549 (1968). A prisoner serving consecutive sentences is "in custody" under any one of them for purposes of Section 2241 (C)(3) (allowing district courts to issue writs of habeas corpus on behalf of prisoners), and may in a federal habeas corpus proceeding challenge the constitutionality of a sentence scheduled for future service. Overruling McNally v. Hill, 243, U.S. 131 (1934), Discarding of "Prematurity Doctrine". (Virginia State Penitentiary)

1970

U.S. Supreme Court
INDIGENCY
EQUAL PROTECTION
FINES

Williams v. Illinois, 399 U.S. 235 (1970). The plaintiff was given the maximum sentence for petty theft under Illinois law of one year's imprisonment and a $500 fine, plus $5 in court costs. The judgment, as permitted by statute, provided that if, when the one-year sentence expired, he did not pay the monetary obligations, he had to remain in jail to work them off at the rate of $5 a day. While in jail the plaintiff, alleging indigency, unsuccessfully petitioned the sentencing judge to vacate that portion of the order confining him to jail after the sentence expired, because of nonpayment of the fine and costs. The Illinois Supreme Court rejected the plaintiff's claim that the state statutory provision constituted discriminatory treatment against those unable to pay a fine and court costs, and affirmed the lower court's dismissal of the plaintiff's petition, holding that "there is no denial of equal protection of the law when an indigent defendant is imprisoned to satisfy payment of the fine."

The United States Supreme Court **held**: Though a state has considerable latitude in fixing the punishment for state crimes and may impose alternative sanctions, it may not under the equal protection clause subject a certain class of convicted defendants to a period of imprisonment beyond the statutory maximum solely by reason of their indigency. Pp. 239-245. 244 N.E. 2d 197, vacated and remanded.

1971

U.S. Supreme Court
INDIGENCY
FINES
EQUAL PROTECTION

Tate v. Short, 401 U.S. 395 (1971). The petitioner, an indigent, was convicted of traffic offenses and fined a total of $425. Though Texas law provides only for fines for such offenses, it requires that persons unable to pay must be incarcerated for sufficient time to satisfy their fines, at the rate of $5 per day, which in the petitioner's case meant an 85-day term. The state courts denied his petition for habeas corpus. **Held**: It is a denial of equal protection to limit punishment to payment of a fine for those who are able to pay it but to convert the fine to imprisonment for those who are unable to pay it. Williams v. Illinois, 399 U.S. 235. Pp. 397-401. 445 S.W.2d 210, reversed and remanded.

1972

U.S. Supreme Court
CAPITAL PUNISHMENT

Furman v. Georgia, 408 U.S. 238 (1972), reh'g. denied, 409 U.S. 902. Several plaintiffs were convicted in Georgia and Texas and were sentenced to death. Certiorari was granted limited to the following question: "Does the imposition and carrying out of the death penalty in [these cases] constitute cruel and unusual punishment in violation of the eighth and fourteenth amendments?" 403 U.S. 952 (1971). The Court held that the imposition and carrying out of the death penalty in these cases constituted cruel and unusual punishment in violation of the eighth and fourteenth amendments.

1973

U.S. Supreme Court
PROBATION-
REVOCATION

Gagon v. Scarpelli, 411 U.S. 778 (1973). The plaintiff was a felony probationer who was arrested after committing a burglary. He admitted involvement in the crime but later claimed that the admission was made under duress and was false. The probation of the plaintiff, who was not represented by an attorney, was revoked without a hearing. After filing a habeas corpus petition, he was paroled. The district court concluded that revocation of probation without hearing and counsel was a denial of due process. The court of appeals affirmed. **Held:**

1. Due process mandates preliminary and final revocation hearings in the case of a probationer under the same conditions as are specified in Morrissey v. Brewer, 408 U.S. 471, in the case of a parolee. Pp. 781-782.

2. The body conducting the hearings should decide in each individual case whether due process requires that an indigent probationer or parolee be represented by counsel. Though the state is not constitutionally obligated to provide counsel in all cases, it should do so where the indigent probationer or parolee may have difficulty in presenting his version of disputed facts without the examination or cross-examination of witnesses or the presentation of complicated documentary evidence. Presumptively, counsel should be provided where, after being informed of his right, the probationer or parolee requests counsel, based on a timely and colorable claim that he has not committed the alleged violation or, if the violation is a matter of public record or uncontested, there are substantial reasons in justification or mitigation that make revocation inappropriate. Pp. 783-791.

3. In every case where a request for counsel is refused, the grounds for refusal should be stated succinctly in the record. P. 791.

U.S. Supreme Court
GOOD-TIME

Preiser v. Rodriguez, 411 U.S. 475 (1973). Rodriguez and two other New York state prisoners brought a 42 U.S.C. Section 1983 action, in conjunction with a habeas corpus action against Preiser, Correction Commissioner, seeking restoration of good-time credits allegedly unconstitutionally cancelled. The three inmates participated in a conditional release program by which an inmate serving an indeterminate sentence could earn up to ten days per month good behavior credit toward reduction of his maximum sentence. The credits earned were cancelled as a result of disciplinary proceedings. The requested relief, restoration of the good time credits, would have resulted in the immediate release from confinement of each of the inmates. Viewing the habeas corpus claim as an adjunct to the Section 1983 action, thereby removing the need for exhaustion of state remedies, the U.S. District Court ruled for each of the inmates entitling each to immediate release on parole. Following the Second Circuit Court of Appeal's decision affirming, Preiser sought certiorari from the United States Supreme Court. (Reversed.)

HELD: "[W]hen a state prisoner is challenging the very fact of duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." 411 U.S. at 500.

NOTE: A 42 U.S.C. Section 1983 action does not require that the plaintiff first seek redress in state courts. Where habeas corpus is the exclusive remedy allowed by federal laws, the plaintiff cannot seek the intervention of a federal court until he has first sought and been denied relief in the state courts, if a state remedy is available and adequate. 411 U.S. at 477, See, 28 U.S.C. Section 2254. (New York DOC)

1974

U.S. Supreme Court
INDIGENCY
LEGAL COSTS

Fuller v. Oregon, 417 U.S. 40 (1974). The plaintiff pleaded guilty to a crime and was given a probationary sentence, conditioned upon his complying with a jail work-release program permitting him to attend college and also upon his reimbursing the county for the fees and expenses of an attorney and investigator whose services had been provided to him because of his indigency. He attacked the constitutionality of Oregon's recoupment statute, which was upheld on appeal. That law requires convicted defendants who are indigent at the time of the criminal proceedings against them but who subsequently acquire the financial means to do so, to repay the costs of their legal defense. Defendants with no likelihood of having the means to repay are not even conditionally obligated to do so, and those thus obligated are not subjected to collection procedures until their indigency has ended and no manifest hardship will result. **Held:**

1. The Oregon recoupment scheme does not violate the Equal Protection Clause of the fourteenth amendment. Pp. 46-50.

(a) The statute retains all the exemptions accorded to other judgment debtors, in addition to the opportunity to show that recovery of legal defense costs will impose "manifest hardship." James v. Strange, 407 U.S. 128, distinguished. Pp. 46-48.

(b) The statutory distinction between those who are convicted, on the one hand, and those who are not or whose convictions are reversed, on the other, is not an invidious classification, since the legislative decision not to impose a repayment obligation on a

defendant forced to submit to criminal prosecution that does not end in conviction is objectively rational. Pp. 48-50.

2. The Oregon law does not infringe upon a defendant's right to counsel since the knowledge that he may ultimately have to repay the costs of legal services does not affect his ability to obtain such services. The challenged statute is thus not similar to a provision that "chill[s] the assertion of constitutional rights by penalizing those who choose to exercise them," United States v. Jackson, 390 U.S. 570, 581. Pp. 51-54.

12 Ore. App. 152, 504 P.2d 1393, affirmed.

1977

U.S. District Court
FURLOUGH

United States v. Raunazzi, 434 F.Supp. 619 (S.D. N.Y. 1977). The sentencing judge may order that a prisoner be permitted a furlough to attend the wedding of the prisoner's daughter, and officials have no formal recourse but to comply with the order. (Federal System)

1979

U.S. Supreme Court
ORIGINAL SENTENCE

United States v. Addonizio, 442 U.S. 178 (1979). **Held:** A federal prisoner's allegation that a postsentencing change in the policies of the United States Parole Commission has prolonged his actual imprisonment beyond the period intended by the sentencing judge will not support a collateral attack on the original sentence under 28 U.S.C. section 2255. Pp. 184-190.

(a) The claimed error that the judge was incorrect in his assumptions about the future course of parole proceedings does not meet any of the established standards of collateral attack, where there is no claim of a constitutional violation, the sentence imposed was within the statutory limits, and the proceeding was not infected with any error of fact or law of a "fundamental" character that renders the entire proceeding irregular and invalid. The change in Parole Commission policies involved here- considering the seriousness of the offense as a significant factor in determining whether a prisoner should be granted parole- affected the way in which the court's judgment and sentence would be performed but did not affect the lawfulness of the judgment itself, then or now; and there is no claim that the action taken by the sentencing judge was unconstitutional or was based on misinformation of constitutional magnitude. Davis v. United States, 417 U.S. 333, and United States v. Tucker, 404 U.S. 443, distinguished. Pp. 184-187.

(b) There is no basis for enlarging the grounds for collateral attack to include claims based not on any objectively ascertainable error but on the frustration of the subjective intent of the sentencing judge. Under the present statutory scheme, the judge has no enforceable expectations with respect to the actual release of a sentenced defendant short of his statutory term; and while the judge may have expectations as to when release is likely, the actual decision is not his to make, either at the time of sentencing or later if his expectations are not met. To require the Parole Commission to act in accordance with judicial expectations, and to use collateral attack as a mechanism for ensuring that these expectations are carried out, would substantially undermine the congressional decision to entrust release determinations to the Commission, not the courts, and nothing in Section 2255 supports- let alone mandates- such a frustration of congressional intent. Thus, subsequent actions taken by the Parole Commission- whether or not such actions accord with a trial judge's expectations at the time of sentencing- do not retroactively affect the validity of the final judgement itself, and do not provide a basis for collateral attack on the sentence pursuant to section 2255. Pp. 187-190. 573 F.2d 147, reversed.

U.S. Appeals Court
PROBATION-
REVOCATION

United States v. McLeod, 608 F.2d 1076 (5th Cir. 1979). The Court assumes that a sincere effort in good faith to comply with the conditions of probation would be a good defense against a revocation charge, but finds that this effort was not a good faith attempt to comply. It is not necessary that a violation be proved beyond a reasonable doubt.

1980

U.S. Appeals Court
PROBATION-
REVOCATION

Banks v. United States, 614 F.2d 95 (6th Cir. 1980). The United States District Court cannot delegate the conduct of a probation revocation hearing to a United States Magistrate.

U.S. District Court
PROBATION-
REVOCATION

Campbell v. Crist, 491 F.Supp. 586 (D. Mont. 1980). Revocation of probation or modification of the conditions or length of probation does not constitute double jeopardy to the underlying offense. The records indicated that the probationer did in fact receive notice of the proposed revocation and the alleged violations. Revocation of probation on the basis of a state criminal conviction is valid. The federal courts will not inquire into the validity of a criminal conviction when reviewing a state probation revocation. (Montana)

State Appeals Court
PROBATION-
CONDITIONS

Dearth v. State, 390 So.2d 108 (Ct. App. Fla. 1980). Conditions of probation which would require the probationer to voluntarily submit to reasonable searches by a probation officer or other law enforcement officers is an invalid waiver of the probationer's right to protection against warrantless searches where the only alternative to consent to such condition is incarceration.

State Appeals Court
PROBATION-
REVOCATION

Free v. State, 392 So.2d 857 (Ct. Crim. App. Ala. 1980), cert. denied, 451 U.S. 990 (1981), reh. denied, 452 U.S. 973. The record shows compliance by the court with the due process requirements in revoking applicant's probation and sufficient evidence to support the court's decision to revoke appellant's probation for possession of marijuana.

U.S. Appeals Court
PROBATION-
CONDITIONS

Higdon v. United States, 627 F.2d 893 (9th Cir. 1980). Probation conditions must be reasonably related to the rehabilitation of the offender. Punishment is not to be a primary purpose of probation. While probation conditions requiring forfeiture and public service are not per se invalid, the court must evaluate the offender physically, psychologically and financially and not order a work schedule which prohibits paid employment or substantially interferes with the maintenance of normal family life. The court suggests that the proper method of attacking an invalid probation condition is to seek the modification thereof; raising the issue as a defense to revocation would be accepted under the circumstances.

State Appeals Court
PROBATION-SEARCH
PROBATION-
REVOCATION

Lillard v. State, 274 S.E.2d 96 (Ct. App. Ga. 1980). The search of defendant by his probation officer was reasonable where probationer had been admitted to a diversion center, had signed a consent to search at the time he entered the center, and reliable information had been received and independently corroborated that defendant was involved in drugs. Therefore, revocation of probation based on evidence obtained in that search was proper.

Imposition of a sentence greater than the term of probation and denial of credit for probation time to be applied to that sentence was in error where the original probation order stated that, if probation is revoked, the court may order "execution of the sentence originally imposed or any portion thereof after deduction therefrom the amount of time served on probation."

State Appeals Court
PROBATION-
CONDITIONS
BANISHMENT

Parkerson v. State, 274 S.E.2d 799 (Ct. App. Ga. 1980). Banishment of a third party as a condition of probation unreasonably restricts an innocent person's freedom of travel and is a condition over which the probationer has no control. Therefore, banishing probationer's wife as a condition of his probation was improper.

U.S. District Court
PROBATION-
VIOLATION

Singleton v. Hoester, 505 F.Supp. 54 (E.D. Mo. 1980). Allegations that the individual's civil rights were violated by the failure of the probation staff to recommend that the individual's probation be continued after a violation of that probation failed to state a claim upon which relief could be granted.

State Court
PROBATION-
REVOCATION

State v. Maier, 423 A.2d 235 (Sup. Ct. Me. 1980). The standard of proof at a probation revocation proceeding is a preponderance of the evidence. Where the motion to revoke probation contained the offense alleged, the indicated property alleged to have been acquired through deception, identifies the lawful owner of the property, and alleged that the deception involved arrangements for payment and where the probationer made no request for continuance or adjournment, the variance as to which individual was actually deceived was not prejudicial. Therefore, reversal of the revocation order is denied.

U.S. Appeals Court
PROBATION-
VIOLATION
PROBATION-SEARCH

United States v. Basso, 632 F.2d 1007 (2nd Cir. 1980), cert. denied, 450 U.S. 965 (1981). A probation officer may arrest a probationer for a violation of probation on a showing of reasonably satisfactory proof of a violation, which is less than probable cause, because a probable cause hearing will soon follow. A search of a probationer can only be conducted on probable cause. Even assuming that the warrant for arrest for probation violation was inadequate and therefore invalid, that fact did not preclude the revocation of probation on the basis of the incident underlying the warrant.

U.S. Appeals Court
PROBATION-
REVOCATION

United States v. Caldera, 631 F.2d 1227 (5th Cir. 1980). Revocation of probation based upon possession of drugs which is proven by a lab test which was introduced without the testimony of the individual who performed the test, and a field test which is introduced by an officer who did not perform the test, is invalid because the probationer has been denied his right of confrontation and cross-examination.

U.S. Appeals Court
PROBATION-
CONDITIONS
PROBATION-
REVOCATION

United States v. Ferguson, 624 F.2d 81 (9th Cir. 1980). Revocation of probation is not automatic upon the admission of a violation of the terms and conditions of probation. The court must give the probationer the opportunity to present evidence of mitigating circumstances and must consider such evidence.

U.S. Appeals Court
PROBATION-
REVOCATION

United States v. McDonald, 611 F.2d 1291 (9th Cir. 1980). Where the court suspends the imposition of sentence and places the individual on probation, the court may, upon revocation of that probation, impose any sentence which it could originally have imposed. Where the court imposes a sentence of imprisonment and then suspends the execution of that sentence and places the individual on probation, upon revocation of that probation the court may only impose a sentence which is not more severe than that originally imposed. Where the court has imposed and then suspended the execution of a sentence under the Youth Corrections Act, and placed the individual on probation, revocation of that probation requires that the resulting sentence be under the Youth Corrections Act.

U.S. Appeals Court
PROBATION-
CONDITIONS

United States v. Smith, 618 F.2d 280 (5th Cir. 1980), cert. denied, 449 U.S. 868. Probation conditions must be reasonably related to the purposes served by probation, to the legitimate needs of law enforcement, and should accord probationers with the rights of law-abiding citizens. A condition that the individual refrain from making any statements advocating disobedience of the law was too broad and the court reformed it to making any statements advocating violation of the Internal Revenue Code, the provisions of which the defendant was convicted of violating.

U.S. Appeals Court
PROBATION-
CONDITIONS
PROBATION-
REVOCATION

United States v. Torrez-Flores, 624 F.2d 776 (7th Cir. 1980). It is proper to condition a grant of probation upon the accuracy of the individual's representation that he has no prior record, and where the statement proves to be untrue, to revoke the probation for violation of this condition.

U.S. Appeals Court
PROBATION-
CONDITIONS

United States v. Turner, 628 F.2d 461 (5th Cir. 1980), cert. denied, 451 U.S. 988. Neither attorney fees nor travel expenses may be ordered to be paid as a condition of probation.

U.S. Appeals Court
PROBATION-
REVOCATION

United States v. Workman, 617 F.2d 48 (4th Cir. 1980). Probation cannot be revoked on the basis of evidence through a warrantless search. Probationers are entitled to the protection of the Fourth Amendment. Where an eleven-month period of incarceration was due to the improper conduct to a revocation hearing, the probation period continued to run while the individual was incarcerated.

1981

State Court
PROBATION-
CONDITIONS

Commonwealth v. McBride, 433 A.2d 509 (Super. Ct. Pa. 1981). Where the defendant had been convicted of corrupting the morals of a minor, a condition of probation preventing the probationer from having contact or communication with such minors was proper.

U.S. Supreme Court
CAPITAL
PUNISHMENT

Estelle v. Smith, 451 U.S. 454 (1981). **Held:** The admission of the doctor's testimony at the penalty phase violated respondent's fifth amendment privilege against compelled self-incrimination, because he was not advised before the pretrial psychiatric examination that he had a right to remain silent and that any statement he made could be used against him at a capital sentencing proceeding. Pp. 461-469.

(a) There is no basis for distinguishing between the guilt and penalty phases of respondent's trial so far as the protection of the fifth amendment privilege is concerned. The state's attempt to establish respondent's future dangerousness by relying on the unwarned statements he made to the examining doctor infringed the fifth amendment just as much as would have any effort to compel the respondent to testify against his will at the sentencing hearing. Pp. 462-463.

(b) The fifth amendment privilege is directly involved here because the state used as evidence against respondent the substance of his disclosures during the pretrial psychiatric examination. The fact that the respondent's statements were made in the context of such an examination does not automatically remove them from the reach of that amendment. Pp. 463-466.

(c) The considerations calling for the accused to be warned prior to custodial interrogation apply with no less force to the pretrial psychiatric examination at issue here. An accused who neither initiates a psychiatric evaluation nor attempts to introduce any psychiatric evidence may not be compelled to respond to a psychiatrist if his statements can be used against him at a capital sentencing proceeding. When faced while in custody with a court-ordered psychiatric inquiry, the respondent's statements to the doctor were not "given freely and voluntarily without any compelling influences" and, as such, could be used as the state did at the penalty phase only if respondent had been apprised of his rights and had knowingly decided to waive them.
Miranda v. Arizona, 384 U.S. 436. Since these safeguards of the fifth amendment privilege were not afforded to the respondent, his death sentence cannot stand. Pp. 466-469.

Respondent's sixth amendment right to the assistance of counsel also was violated by the state's introduction of the doctor's testimony at the penalty phase. Such right already had attached when the doctor examined the respondent in jail, and that

interview proved to be a "critical stage" of the aggregate proceedings against the respondent. Defense counsel were not notified in advance that the psychiatric examination would encompass the issue of their client's future dangerousness, and respondent was denied the assistance of his counsel in making the significant decision of whether to submit to the examination and to what end the psychiatrist's findings could be employed. Pp. 469-471. 602 F.2d 694, affirmed.

State Appeals Court
PROBATION-CONDITIONS

Fletcher v. State, 405 So.2d 748 (Ct. App. Fla. 1981). Probation condition requiring that the probationer make restitution as determined by his probation officer is invalid as delegating a judicial duty to a nonjudicial officer. Further, it deprives the defendant of his right to be heard on the reasonableness of the amount of restitution. The defendant was entitled to make a motion to have the period of incarceration as part of a split sentence reduced to one year.

U.S. District Court
PRESENTENCE REPORT

Frank v. United States, 515 F.Supp. 703 (W.D. Pa. 1981). Statements made by the individual to a probation officer for inclusion in the presentence report can be considered in determining whether to grant parole. Failure of counsel to discuss the parole guidelines with the defendant prior to the defendant's entering a guilty plea did not constitute incompetence of counsel.

U.S. District Court
PROBATION-REVOCATION

Harris v. Powers, 520 F.Supp. 111 (W.D. Wis. 1981). Because the decision as to the location of a preliminary probation revocation hearing is not discretionary, in that it must be at or near the site of the alleged violation, the decision of the probation officer to conduct the revocation hearing some distance away was not adjudication and, therefore, was not subject to a claim of immunity. Further, the imposition of liability for conduct of the hearing at some distance from the site of the violation would not undermine the authority necessary for adjudication. Therefore, absolute judicial immunity was not appropriate.

U.S. Appeals Court
SENTENCE TO PAROLE

Hayward v. United States Parole Commission, 659 F.2d 857 (8th Cir. 1981), cert. denied, 102 S.Ct. 1991 (1982). Sentencing an individual to immediate parole eligibility does not require that institutional conduct be a major factor in determining whether he should be paroled, at least where the sentence is imposed after the last modification of the Parole Act clearly emphasizing the guidelines. Factors known to the court at the time of the imposition of sentence such as participation in a criminal enterprise or the sophisticated nature of the offense may constitute good cause for a release date above the guideline date. Because the law in effect at the time of the offense did not create any expectation that the individual would be paroled, the adoption of parole guidelines to constrain the board's discretion and their application to the plaintiff's parole does not constitute a violation of the prohibition against ex post facto laws.

State Appeals Court
PROBATION-CONDITIONS

In re Jonathan M., 172 Cal. Rptr. 833 (Ct. App. 1981). While the condition of probation that a juvenile attend school regularly is proper, the provision that for each class absence that is unexcused, the juvenile must serve one day in Juvenile Hall violates the juvenile's right to a hearing prior to imposition of detention.

State Court
PROBATION-REVOCATION

L.C. v. State, 625 P.2d 839 (Sup. Ct. Alaska 1981). Juvenile who is transferred from a closed institution to a halfway house is considered to be on administrative probation. Therefore, juvenile is entitled to a disposition hearing wherein she is given the opportunity to be heard prior to ordering reinstitutionalization for violating the rules of the halfway house.

State Appeals Court
PROBATION-REVOCATION

State v. Dawson, 282 S.E.2d 284 (Sup. Ct. App. W. Va. 1981). In the absence of any showing of bad faith, double jeopardy will not be applied to prohibit multiple proceedings for revocation of parole or probation based on a single incident.

State Court
PROBATION-REVOCATION

State v. Ryan, 429 A.2d 332 (Sup. Ct. N.J. 1981), cert denied, 454 U.S. 880 (1982). The individual was sentenced, commenced to serve his sentence and then the court modified the sentence to probation. Upon revocation of the probation, considerations of double jeopardy require that the new sentence imposed not exceed the original sentence and that the time served on the original sentence be credited against the new sentence.

State Appeals Court
PROBATION-REVOCATION
GOOD-TIME

Turner v. State, 395 So.2d 1242 (Ct. App. Fla. 1981). A probation restitution center is not restrictive enough to constitute incarceration for the purposes of granting credit for time spent at the center against the sentence imposed upon revocation of probation.

U.S. Appeals Court
PROBATION-REVOCATION

United States v. Brown, 656 F.2d 1204 (5th Cir. 1981), cert. denied, 454 U.S. 1156 (1982). Where there is a clearly legally sufficient basis for revocation of probation, i.e., conviction of a new offense, the court will not inquire into the sufficiency of other bases

for revocation. Withdrawal and then refiling of revocation charges does not violate due process where the obvious reasons for the procedure was to permit the individual an additional period in which to rehabilitate himself.

U.S. District Court
PROBATION-
REVOCATION

United States v. Fontana, 510 F.Supp. 158 (W.D. Pa. 1981), aff'd, 673 F.2d 1303 (3rd Cir. 1982), cert. denied, 102 S.Ct. 1468. 18 U.S.C. Section 3653 providing a 5 year statute of limitation for probation revocation proceedings permits the court to conduct a probation revocation proceeding within that limitation but after the expiration of the term of probation for acts occurring within the term of probation. The language of the statute indicated that the use of an arrest warrant to secure the attendance of the individual at the revocation proceeding is not mandatory and that habeas is an appropriate method of securing attendance.

U.S. Appeals Court
PROBATION-
CONDITIONS

United States v. Lowe, 654 F.2d 562 (9th Cir. 1981). Where the defendant was convicted of illegal entry into a military reservation, the court could as a condition of probation prevent the defendant from coming within 250 feet of the reservation fence, even though it would prevent the defendant from distributing anti-war literature at the main gate of the reservation and would prevent his attendance at anti-war meetings at a place adjacent to the reservation fence. The condition does not prohibit the defendant from engaging in anti-war activities in any manner and is reasonably directed towards preventing illegal entries.

U.S. Appeals Court
PROBATION-
CONDITIONS

United States v. Margala, 662 F.2d 622 (9th Cir. 1981). Probation conditions that an individual convicted of securities violation and mail fraud 1) forfeit all pension benefits acquired while with the corporation, 2) surrender all stock acquired in the corporation while an officer or director, and 3) that the corporation cancel a debt owed to the individual based on a loan are reasonably related to the offense and not unduly harsh.

U.S. Appeals Court
PROBATION-
REVOCATION

United States v. Martinez, 650 F.2d 744 (5th Cir. 1981). The revocation of probation is vacated and remanded because the court failed to adequately state the reasons and factual basis for the decision.

U.S. District Court
PROBATION-
CONDITIONS
RESTITUTION

United States v. McLaughlin, 512 F.Supp. 907 (D. Md. 1981). Restitution in excess of the amount involved in the crime to which the individual plead guilty may be required as a condition of probation under the language of 18 U.S.C. Section 3651 which provides for the ordering of restitution "for the crime for which conviction was had" where:

1) the amount of injury suffered and the injured party are both certain;
2) the defendant admits to causing the loss;
3) the defendant voluntarily and freely consents to make such restitution as a condition of probation.

U.S. District Court
PROBATION-
REVOCATION

United States v. Rea, 524 F.Supp. 427 (E.D.N.Y. 1981). No warrant is necessary to conduct a search of a probationer for supervisory purposes. Even if it were, the exclusionary rule does not apply to probation revocation proceedings. Failure to provide an attorney to a probationer being questioned by his probation officer does not require suppression of any statement for the purposes of the probation revocation hearing.

U.S. Appeals Court
PROBATION-
CONDITIONS

United States v. Roberts, 638 F.2d 134 (9th Cir. 1981), cert. denied, 452 U.S. 909 (1981). When suspending the sentence of an individual sentenced under the Youth Corrections Act, and placing the individual on probation, it is proper to require as a condition of probation that the individual serve a definite period of imprisonment.

U.S. District Court
PROBATION-
CONDITIONS
PROBATION-
REVOCATION

United States v. Stine, 521 F.Supp. 808 (E.D. Pa. 1981), cert. denied, 102 S.Ct. 3493. A condition of probation that the defendant submit to at least one year of psychological counseling is a condition that is reasonably related to the rehabilitation of the individual where it is based on the personal observation of the court. It does not interfere with the individual's right of privacy. An individual cannot defend against a probation revocation proceeding on the ground that the condition of probation (that the individual attend psychiatric counseling) is unconstitutional where he had not undertaken to appeal the imposition of the conditions.

1982

U.S. Supreme Court
CAPITAL
PUNISHMENT

United States v. Frady, 456 U.S. 152 (1982). In 1963, the respondent was convicted of first-degree murder and sentenced to death by a jury in the federal district court for the District of Columbia, which at that time had exclusive jurisdiction over local felonies committed in the District. The Court of Appeals for the District of Columbia Circuit, which then acted as the local appellate court, upheld the conviction but set aside the death sentence, and the respondent was then resentenced to a life term. The

respondent filed a motion in the district court under 28 U.S.C. Section 2255 seeking to vacate the sentence on the ground that he was convicted by a jury erroneously instructed on the meaning of malice, thus allegedly eliminating any possibility of a manslaughter verdict. The district court denied the motion because the respondent failed to challenge the instructions on direct appeal or in prior motions.

The court of appeals reversed, holding that the proper standard to apply to the respondent's claim was the "plain error" standard of Federal Rule of Criminal Procedure 52(b) governing relief on direct appeal from errors not objected to at trial, vacated the respondent's sentence and remanded the case for a new trial or entry of a manslaughter judgment. The United States Supreme Court disagreed with the appeals court, **holding**:

1. This Court has jurisdiction to review the decision below and is not required to refrain from doing so on the alleged ground that the decision of the court of appeals was based on an adequate and independent local ground of decision. There is no basis for concluding that the ruling below was or should have been grounded on local District of Columbia law, rather than on the general federal law applied to all Section 2255 motions. Equal protection principles do not require that a Section 2255 motion by a prisoner convicted in 1963 be treated as though it were a motion under the District of Columbia Code after 1970. Pp. 159-162.

2. The Court of Appeals' use of Rule 52(b)'s "plain error" standard to review respondent's Section 2255 motion was contrary to long-established law. Because it was intended for use on direct appeal, such standard is out of place when a prisoner launches a collateral attack against a conviction after society's legitimate interest in the finality of the judgment has been perfected by the expiration of time allowed for direct review or by the affirmance of the conviction on appeal. To obtain collateral relief a prisoner must clear a significantly higher hurdle than would exist on direct appeal. Pp. 162-166.

3. The proper standard for review of respondent's conviction is the "cause and actual prejudice" standard under which, to obtain collateral relief based on trial errors to which no contemporaneous objection was made, a convicted defendant must show "cause" excusing his double procedural default and "actual prejudice" resulting from the errors of which he complains. Pp. 167-169.

4. Respondent has fallen far short of meeting his burden of showing not merely that the errors at his trial created a **possibility** of prejudice but that they worked to his **actual** and substantial disadvantage, infecting his entire trial with error of constitutional dimensions. The strong uncontradicted evidence of malice in the record, coupled with respondent's utter failure to come forward with a colorable claim that he acted without malice, disposes of his contention that he suffered such actual prejudice that reversal of his conviction 19 years later could be justified. Moreover, an examination of the jury instructions shows no substantial likelihood that the same jury that found respondent guilty of first-degree murder would have concluded, if only the malice instructions had been better framed, that his crime was only manslaughter. Pp. 169-175.

204 U.S. App. D.C. 234, 636 F.2d 506, reversed and remanded.

1984

State Supreme Court

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)

1985

State Appeals Court

Longval v. Commissioner of Correction, 484 N.E.2d 112 (App.Ct. Mass. 1985). Certain inmates with long prison terms which they alleged exceeded their respective life expectancies brought a suit challenging the validity of a statute pursuant to which they were denied access to the whole of their funds. The Superior Court denied relief, and the prisoners appealed. The appeals court held that a "life term" within meaning of a statute establishing a system for compensating inmates who performed good and satisfactory work in certain work programs was limited to those prisoners who were sentenced to life imprisonment and did not apply to inmates whose aggregate sentences exceeded their statistical life expectancies. (M.C.I., Cedar Junction, Massachusetts)

U.S. Appeals Court

Ammirato v. Hanberry, 797 F.2d 961 (11th Cir. 1986). A decision of the United States Parole Commission did not violate due process because the Commission used the same reason, the prisoner's multiple offenses, to elevate his offense to the Greatest I category, and to set a release date beyond what the guidelines call for in Greatest I cases. Many of the 19 separate violations to which the prisoner pled guilty fell within the range of severity just below Greatest I, and his conduct went well beyond what was necessary to place his offense in that category. Moreover, the number of offenses showed that the prisoner was involved in sophisticated and continuing criminal activity. (Georgia)

U.S. Supreme Court
INSANITY

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. (Department of Corrections, Florida)

State Appeals Court
PROBATION-
CONDITIONS

Hill v. State, 721 S.W.2d 953 (Tex.App.- Tyler 1986). A probationer is not required to obtain personal loans secured by his home in order to pay probation fees or fines to avoid revocation of probation. (Texas)

State Appeals Court
PROBATION
CONDITIONS

People v. Roth, 397 N.W.2d 196 (Mich.App. 1986). The defendant pled guilty to obtaining a controlled substance by fraud in the Osceola Circuit Court. The defendant appealed the addition of conditions of probation. The court of appeals held that: (1) submission to urinalysis testing was a lawful condition of probation, and (2) restriction of the defendant's right to travel was not unconstitutional. (Michigan)

U.S. Appeals Court
CONSECUTIVE
SENTENCE

Rothgeb v. United States, 789 F.2d 647 (8th Cir. 1986). A sentence of 210 years was within the limits of a statute allowing the court to impose "any term of years or life imprisonment" for second-degree murder. Moreover, another statute permitted the court to extend the eligibility date for parole beyond ten years. Accordingly, the sentence requiring 69 years before parole eligibility was authorized. (Missouri)

State Appeals Court
PROBATION
REVOCATION

State v. Moot, 398 N.W.2d 21 (Minn. App. 1986). Appeal was taken by the probationer from an order of the district court, revoking probation and vacating a stay of execution of sentence. The court of appeals held that: (1) revocation of probation was justified when the probationer, though told on record and in writing that he must successfully complete treatment for chemical dependency and all recommended aftercare if he wished to remain on probation, admittedly took a job which interfered with his treatment schedule and thereafter refused to comply with the program and to participate in his recovery, and (2) the failure to specifically find that the need for confinement outweighed the policies favoring probation did not preclude revocation when the probationer refused to participate in treatment for chemical dependency, and the court made it clear that the presumptive sentence was commitment to prison, and that downward departure was solely to permit one last attempt to succeed at treatment. (Hennepin County Jail, Minnesota)

U.S. Appeals Court
PROBATION
REVOCATION

United States v. Bell, 785 F.2d 640 (8th Cir. 1986). Trial court in a probation revocation proceeding must balance the probationer's right to confront witness against grounds asserted by the government for not requiring confrontation. Good cause was shown for allowing the state to present urinalysis lab reports and police reports at the defendant's probation revocation hearing without producing the persons who prepared them. Both had been prepared by out-of-state officials and both were reliable. However, good cause was not shown for admitting hearsay testimony of the defendant's having been investigated for cocaine trafficking. There was no showing that to produce the live testimony of local officers involved in the investigation would have been difficult. Some of the evidence presented was actually double hearsay. (Arkansas)

U.S. District Court
PROBATION
VIOLATION

United States v. Cummings, 633 F.Supp. 38 (E.D.N.Y. 1986). A Probation Department official did not violate the defendant's fifth amendment rights when she questioned him without giving full **Miranda** warnings. Thus, evidence that the defendant gave an allegedly false name in response to the routine, noninvestigatory questioning was admissible in a prosecution for perjury or false statement. The form the defendant signed explicitly informed him of his right to a lawyer, and that a false statement could result in prosecution. (United States Probation Department, New York)

U.S. Appeals Court

United States v. Fahnbulleh, 796 F.2d 239 (8th Cir. 1986). Defendant's motion for correction or reduction of sentence was denied by the district court, and the defendant appealed. The court of appeals held that defendant's sentence was not affected by an erroneous estimate that he would be eligible for parole in twenty-four to thirty-six months, and thus, the defendant had no right to be resentenced on such ground.

The defendant, who was afforded full opportunity to point out any factual errors in the presentence report and failed to do so, was not denied due process by trial court's imposition of a $20,000 fine in addition to a prison sentence, allegedly in reliance upon erroneous information in the presentence report that he owned substantial assets abroad. (Arkansas)

U.S. Appeals Court
RESTITUTION

United States v. House, 808 F.2d 508 (7th Cir. 1986). The 7th U.S. Circuit Court of Appeals rejected a claim by a prison inmate that because he saved the federal government money by killing a fellow inmate, he should not have to make restitution for the victim's funeral expense. The $1,303 in funeral expenses "is peanuts" compared to the cost of feeding and housing the inmate for even one month, argued the inmate.

The inmate's principal argument was that the district court failed to comply with 18 U.S.C. Sec. 3580 (a), which requires a court to "consider the amount of the loss sustained by any victim as a result of the offense (and) the financial resources of the defendant" in deciding whether to award restitution.

Under 18 U.S.C. Sec. 3579(b)(3), the law specifically allows sentencing judges to award restitution for "the cost of necessary funeral and related services," of crimes resulting in death. (Illinois)

U.S. District Court
GOOD TIME

United States v. Lynch, 647 F.Supp. 1293 (D.S.C. 1986). The district ruled that if the plaintiff could support his claim that he was jailed by North Carolina authorities for the same offense embodied in the federal indictment, he may have been entitled to credit on his sentence for "jail time." However, such credit could not be ordered under 28 U.S.C.A. Section 2255. A challenge to the execution of a federal sentence must be brought under 28 U.S.C.A. Section 2241 in the judicial district which can acquire jurisdiction in personam over the complaining inmate or the inmate's custodian. (South Carolina)

U.S. Appeals Court
PROBATION
CONDITION

United States v. Williams, 787 F.2d 1182 (7th Cir. 1986). Assuming that the taking of a urine sample entails a search or seizure, a probation condition that required the probationer to submit to urinalysis at the direction of probation authorities was reasonable. Given the probationer's status as a repeat offender and his lengthy and substantial criminal record, authorities understandably did not view even his casual use of marijuana lightly. Even if the taking of a urine sample entails a search or seizure, imposition of condition of probation that the defendant undergo drug screening was permissible under the fourth amendment in view of prior urinalysis results. (Department of Corrections, Illinois)

1987

U.S. Appeals Court
PROBATION-
CONDITIONS
PROBATION-
REVOCATION

Clark v. Prichard, 812 F.2d 991 (5th Cir. 1987). A woman who agreed to work and support her children as a condition of probation can legally be required request a judicial change in her conditions of probation before she applies for Aid for Families with Dependent Children (AFDC). The plaintiff pleaded guilty to aggravated assault and agreed to obtain work and support her six children who were in the custody of her mother as a condition of probation. Her prison sentence was suspended. She later took custody of her children and applied for AFDC without informing the court. When she was told by her probation officer of the possible results of obtaining AFDC without prior court approval, she stopped receiving the aid, and filed suit stating that the court was denying public benefits to a probationer by not allowing her to apply for AFDC. The appeals court ruled that the judge's order did not automatically deny public benefits but rather required a probationer to come before the court to seek a change in conditions of probation before applying for AFDC. By requiring a hearing before a change in probation conditions, the plaintiff Clark had a chance to explain that working to support her dependents was a hardship and that she should not be held to that condition. The provision for a hearing to consider changed circumstances instead of automatic revocation for failure to meet a condition of probation safeguarded Clark's due process rights, according to the appeals court.

Wash. Supreme Court
GOOD TIME

Petition of Johnston, 745 P.2d 864 (Wash. 1987). The Washington Supreme Court concluded that a single positive result to an "EMIT" urinalysis test, conducted to detect the presence of marijuana, was sufficient evidence of marijuana use to uphold, on due process grounds, a revocation of prisoners' good time credits or the imposition of mandatory segregation time. The Centers for Disease Control had determined that the test in question was 97-99 percent accurate. (Washington State Department of Corrections)

U.S. Appeals Court
PRESENTENCE REPORT

Ochoa v. U.S., 819 F.2d 366 (2nd Cir. 1987). A federal prisoner was incarcerated upon conviction of criminal contempt for refusing to testify before a grand jury petitioned for writ of habeas corpus. The United States District Court denied the petition, and the prisoner appealed. The Court of Appeals held that: (1) the prisoner was not entitled to credit on the criminal contempt sentence for any time, prior to his indictment on that charge, that he spent in civil contempt, and (2) the Parole Commission was entitled to rely on hearsay statements contained in the presentence investigation reports. The court found that the federal statute governing credit for time spent in custody prior to the imposition of sentence does not require that a person sentenced to prison for criminal contempt be given credit on that sentence for any time, prior to his indictment on that charge, that he spent in civil contempt. Therefore, according to a federal appeals court, the statute did not require that a contemnor's criminal sentence be shortened by the period he spent in civil contempt in connection with the same refusal to testify that led to his indictment for criminal contempt. The court found that the Parole Commission could consider hearsay statements contained in the presentence investigation reports, in calculating the prisoner's presumptive date of release, although sentencing court disclaimed reliance on contested statements, where the Commission found information sufficiently accurate for its own purposes. (New York State)

U.S. Appeals Court
CONSECUTIVE SENTENCES

Scales v. Mississippi State Parole Bd., 831 F.2d 565 (5th Cir. 1987). A state prisoner incarcerated on two life sentences for two counts of murder filed a pro se complaint attacking denial of parole and asserting that he was being denied equal protection and due process of law under the Fourteenth Amendment in that Mississippi parole statute was unconstitutional. The federal appeals court held that (1) the Mississippi statute conferred absolute discretion on the Mississippi Parole Board, rather than mandating action by the Board, and thus afforded prisoner no constitutionally recognized liberty interest creating a due process entitlement; (2) the prisoner was not denied equal protection by fact that only one black person was member of the Mississippi Parole Board; and (3) to the extent the prisoner was seeking reduction of length of his sentence by asserting his state sentences should not run consecutively, the issue should be determined in first instance on application for habeas corpus. (Mississippi State Prison)

State Appeals Court
PROBATION-CONDITIONS

State v. Ferre, 734 P.2d 888 (Ore. App. 1987). A condition that a probationer not enter a county without the court's permission was unnecessarily broad according to an state appellate court. The court ruled that the trial judge could have accomplished the purpose of protecting the probationer's wife and her friends by restricting the probationer's access to a more limited geographical area. (Oregon Supervised Probation)

State Supreme Court
CREDIT

Tal-Mason v. State, 515 So.2d 738 (Fla. 1987). The Florida Supreme Court held that a prisoner was entitled to jail time credit for coercive detention in a mental institution. Granting of jail-time credit is not limited to time spent in institution formally designated as a "county jail." The prisoner was entitled to jail-time credit for preconviction coercive detention in a mental institution for incompetence to stand trial since the commitment was indistinguishable from pretrial detention in "jail." Denying him jail-time credit for this period, while granting it for pre-trial jail detention, was a violation of due process and equal protection. (Department of Health and Rehabilitative Services)

U.S. Appeals Court
PROBATION-REVOCATION

U.S. v. Bell, 820 F.2d 980 (9th Cir. 1987). The standards for release set forth in 18 U.S.C.A. Section 3143(b) of the Bail Reform Act of 1984 are not applicable to probation revocation proceedings. Rather, release pending appeal from an order revoking probation is proper only upon a showing of exceptional circumstances. Examples of exceptional circumstances include raising substantial claims upon which the appellant has a high probability of success, a serious deterioration of health while incarcerated, and any unusual delay in the processing of the appeal. (California)

U.S. Appeals Court
REDUCTION

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, a federal appeals court refused to reduce an 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
PROBATION-CONDITIONS

U.S. v. Duff, 831 F.2d 176 (9th Cir. 1987). A probation officer had the power to order a probationer to submit to drug testing, even though the court had not explicitly imposed such a condition. Under the conditions of probation, the probationer agreed to refrain from violating any law and to follow the probation officer's instructions. The probation officer's use of urinalysis to determine whether the probationer was using illegal drugs was consistent with the condition that he not violate the law and the deterrent effect of testing was calculated to improve the probationer's conduct. The drug testing did nothing more than monitor the probationer's compliance with the express terms ordered.

U.S. Appeals Court
CREDIT

U.S. v. Figueroa, 828 F.2d 70 (1st Cir. 1987). A defendant was not entitled to receive credit against his sentence for the time he spent on conditional release pending trial. "In custody" within the meaning of 18 U.S.C.A. section 3568 means detention or imprisonment in a place of confinement and does not refer to the stipulations imposed when a defendant is at large on conditional release.

U.S. Appeals Court
PROBATION-REVOCATION

U.S. v. Warner, 830 F.2d 651 (7th Cir. 1987). A defendant's probation could be revoked for his failure to file federal income tax returns for four tax years. The defendant, whose income was legitimately earned, could not invoke the Fifth Amendment's privilege against self-incrimination on grounds that he could be subject to further prosecution if he filed an inaccurate return. The federal appeals court ruled that a district court could revoke probation and reimpose remaining, unexecuted prison term for willful failure to file federal, individual, income tax returns, where probationer had 14 months following release from prison to file delinquent tax returns and to pay court costs as required by probation. (Illinois State Prison)

U.S. Appeals Court
PROBATION-CONDITION

United States v. Grant, 807 F.2d 837 (9th Cir. 1987). A defendant's probation could not be revoked for failure to make any payments on her $20,000 fine. The defendant had been convicted of three counts of failure to file income tax returns. The payment of the $20,000 fine was not a term or condition of probation, and the defendant had complied with all of the stated conditions of her probation. Absent a fair prior warning to the defendant that nonpayment of the fine could result in the loss of liberty, the nonpayment could not be construed as a "failure to rehabilitate." (California)

1988

U.S. Appeals Court
CREDIT

Boutwell v. Nagle, 861 F.2d 1530 (11th Cir. 1988), cert. denied, 109 S.Ct. 2452. A prison inmate filed for a writ of habeas corpus, seeking credit for 31 months spent in custody in the State of Washington prior to his extradition to Alabama. The U.S. District Court denied the petition and the inmate appealed. The appeals court found that the inmate, who had escaped from custody in Alabama and was recaptured in Washington, had no due process right to credit against the Alabama sentence for the time served in a Washington jail while challenging the extradition to Alabama. (King County Jail, Seattle, Washington)

U.S. Supreme Court
CAPITAL PUNISHMENT

Franklin v. Lynaugh, 108 S.Ct. 2320 (1988), reh'g. denied, 109 S.Ct. 25. The U.S. Supreme Court upheld the Texas death penalty law in a ruling that may encourage states to limit the kind of evidence capital defendants present to juries deciding their fate. In a 6 - 3 vote the affirmed the death sentence of Donald Gene Franklin, who received the death penalty for the July 1975 murder of Mary Margaret Moran, a nurse at the Audie Murphy Veterans Hospital in San Antonio. Moran was abducted from the hospital parking lot, raped, repeatedly stabbed and left for dead in a field. She was found five days later, lying nude atop an ant hill, too weak to move. She died the next day.

Justice Byron White, author of the majority opinion, could enlist the support of only three other justices for the section of the opinion that suggests states may limit the kind of "mitigating evidence" that may be considered by sentencing juries. "Given the awesome power that sentencing jury must exercise in a capital case, it may be advisable for a state to provide the jury with some framework for discharging those responsibilities," White wrote, "...and we have never held that a specific method for balancing mitigating and aggravating factors in a capital sentencing proceeding is constitutionally required."

The Supreme Court considered whether the Texas capital sentencing system complies with Supreme Court rulings that require juries to weigh both mitigating and aggravating factors before sentencing someone to die. Franklin's lawyers argued the law is unfair because it does not clearly state that jurors must consider mitigating evidence--factors that might sway the jury to impose a life sentence, such as a defendant's youthfulness, remorse or mental state. Under Texas law, a jury that finds a defendant guilty of capital murder is asked two questions: whether the defendant's conduct was committed deliberately with the expectation death would occur, and whether there is a probability the defendant would commit criminal acts again. Juries are not specifically asked whether the punishment should be life in prison or death.

Instead, if the answer to both questions is "yes," the defendant is sentenced to death. The Supreme Court noted that Texas is the only state, of 36 that impose the death penalty, that does not instruct jurors that they can consider mitigating circumstances. Although the jury was given no specific instruction in this case, the Supreme Court concluded that Franklin had a full opportunity to present mitigating evidence, including his earlier prison records that suggested that he posed no disciplinary problems while confined. According the White, Franklin was "...accorded a full opportunity to have his sentencing jury consider and give effect to any mitigating impulse that (his) prison record might have suggested to the jury as they proceeded with their task... The jury was surely free to weigh and evaluate (his) disciplinary record as it bore on his 'character' -- that is, his 'character' as measured by his likely future behavior." Justices John Paul Stevens, William Brennan and Thurgood Marshall dissented.

In its ruling, affirming the appeals court decision, the Supreme Court held that: (1) the prisoner did not have an eighth amendment right to an instruction that a jury could consider residual doubts about guilt as mitigating circumstances in the penalty phase; (2)the special issue on deliberateness did not limit jury's consideration of any residual doubts about the prisoner's responsibility for the victim's death and the extent to which he intended death; and (3)the sentencing court's denial of requested instructions did not deprive the jury of the opportunity to give independent, mitigating weight to the defendant's prison record. (Texas)

U.S. Appeals Court
CAPITAL
PUNISHMENT

Giarratano v. Murray, 836 F.2d 1421 (4th Cir. 1988). Death row inmates initiated a class action against the governor, executive secretary, director of the Department of Corrections, and the warden of the state penitentiary, stating that the defendants were required to automatically assign counsel to represent inmates in post-conviction proceedings. Although it ordered automatic appointment of counsel upon request for the preparation of state corpus petitions, the federal district court denied appointment of counsel for the preparation of federal habeas corpus petitions. The parties appealed. The appeals court held that: (1) death row inmates were not entitled to be automatically provided counsel upon request for preparing state or federal habeas corpus petitions; and (2) the district court lacked authority to order the Commonwealth to create an agency to handle post-conviction capital cases. (Richmond State Penitentiary)

U.S. Supreme Court
CAPITAL
PUNISHMENT

Maynard v. Cartwright, 108 S.Ct. 1853 (1988). Supreme Court Halts Execution, Finding Oklahoma Sentencing Procedures Unconstitutionally Vague. In this case, the Court examined a provision of Oklahoma law allowing a jury to find that an aggravating circumstance exists whenever the facts of a case are "especially heinous, atrocious or cruel." The Supreme Court said the provision was unconstitutionally vague. To be constitutional, the court said, a jury must be required to specifically identify factors that make the crime especially heinous. The respondent in this case, a disgruntled ex-employee of a married couple, entered the couple's home, shot the wife twice with a shotgun, shot and killed the husband, and then slit the wife's throat and stabbed her twice. He was tried in an Oklahoma court and found guilty of the first-degree murder of the husband. The jury imposed the death penalty upon finding that two statutory aggravating circumstances, including the circumstance that the murder was "especially heinous, atrocious, or cruel," had been established, and that these circumstances outweighed the mitigating evidence. The Oklahoma Court of Criminal Appeals affirmed a denial of state collateral relief. The federal district court then denied the respondent's habeas corpus petition, but the U.S. Circuit Court of Appeals reversed, holding that the statutory words "heinous," "atrocious," and "cruel" do not on their face offer sufficient guidance to the jury to escape the strictures of **Furman v. Georgia**, 92 S.Ct. 2726. The appeals court also ruled that the Oklahoma courts had not adopted a limiting construction that cured the infirmity, concluding that the construction utilized by the state appellate court, which simply declared that the facts of the case were so plainly "especially heinous, atrocious, or cruel" that the death penalty was warranted, was itself unconstitutionally vague under the eight amendment to the federal Constitution. The federal appeals court therefore enjoined the execution of the death sentence, but without prejudice to further state proceedings for redetermination of the sentence. The United States Supreme Court agreed with the appeals court ruling, finding that, as applied in this case, the statutory aggravating circumstance was unconstitutionally vague. The Supreme Court held that: (a) The State's contention that factual circumstances may, in themselves, plainly characterize the killing as "especially heinous, atrocious, or cruel" represents an improper, Due Process Clause approach to vagueness that fails to recognize the rationale of the Supreme Court's eighth amendment cases; (b) The State's complaint that the Court of Appeals erroneously ruled that torture or serious physical abuse is the only constitutionally acceptable limiting construction of the aggravating circumstance is unfounded, since, although the court noted cases in which such a requirement was held to be curative, it expressly refrained from directing the State to adopt any particular construction. (Oklahoma)

U.S. Supreme Court
CAPITAL
PUNISHMENT

Mills v. Maryland, 108 S.Ct. 1860 (1988). Supreme Court Finds Maryland Sentencing Procedures Inadequate and Reverses Appeals Court Decision. The United States Supreme Court, on a 5-4 vote, reversed the Court of Appeals of Maryland and vacated the death sentence of Ralph Mills, who was convicted of murdering a prison cellmate with a homemade knife. At issue in this case were jury instructions used during the sentencing phase that critics charged precluded a jury from taking into account "mitigating circumstances." Under Supreme Court precedents, a jury must weigh mitigating and aggravating factors before sentencing someone to die. Mitigating factors include such things as a defendant's youthfulness, remorse, mental illness or other sympathetic characteristics that might persuade a jury to show mercy.
Mills' appeal argued that, under Maryland law, a jury must unanimously agree that a certain mitigating circumstance exists, thus depriving a defendant of his right to have all such evidence taken into account. In his majority decision, Justice Harry Blackmun stated: "We conclude that there is a substantial probability that reasonable jurors, upon receiving the judge's instructions in this case, and in attempting to complete the verdict form as instructed, may well have thought they were precluded from considering any mitigating evidence unless all 12 jurors agreed on the existence of a particular such circumstance...Under our cases, the sentencer must be permitted to consider all mitigating evidence...The possibility that a single juror could block such consideration, and consequently require the jury to impose the death penalty, is one we dare not risk." Chief Justice William Rehnquist and Justices Sandra Day O'Connor, Antonin Scalia, and Anthony Kennedy dissented.

Mills was serving a 30-year sentence for murder at the Maryland Correctional Institution in Hagerstown when he stabbed his cellmate to death in 1984. Mills was tried by a state-court jury and convicted of the first-degree murder of his cellmate. In the sentencing phase of the trial, the same jury found that the State had established the one statutory aggravating circumstance it propounded, namely, that Mills "committed the murder at a time when he was confined in a correctional institution." Defense counsel sought to persuade the jury of the presence of certain mitigating circumstances, in particular, Mill's relative youth, his mental infirmity, his lack of future dangerousness, and the State's failure to make any meaningful attempt to rehabilitate him while he was incarcerated. The jury marked "no" beside each mitigating circumstance referenced on the verdict form, thereby requiring the imposition of the death penalty under Maryland's capital sentencing scheme. Mills challenged the sentence on the ground that the Maryland capital-punishment statute, as applied to him, was unconstitutionally mandatory. He asserted that the statute, as explained to the jury by the court's instructions and as implemented by the verdict form, required imposition of the death sentence if the jury unanimously found an aggravating circumstance, but could not agree unanimously as to the existence of any particular mitigating circumstance. Thus, even if some or all of the jurors were to believe that some mitigating circumstance or circumstances were present, unless they could unanimously agree on the existence of the same mitigating factor, the sentence necessarily would be death. The Maryland Court of Appeals concluded that the death sentence was constitutionally sound, interpreting the statute's unanimity requirement as applying to jury determinations of all critical issues, including the acceptance or rejection of mitigating circumstances. The court observed that the verdict form was to be regarded as requiring the jury to agree unanimously in order to mark "no" with respect to the existence of each mitigating circumstance, and that the trial judge's instructions stressed the need for unanimity on all issues presented.

The appeals court concluded that, when a jury could not agree unanimously to accept or reject a particular mitigating circumstance, the answer to that circumstance on the verdict form should be left blank and the jury should proceed to the balancing phase, where each juror should weigh the mitigating circumstances he or she found to be established and balance them against the aggravating circumstances unanimously found. On appeal to the United States Supreme Court, the lower court decision was reversed, and the Supreme Court held that: (1.) In a capital case, the sentencer may not be precluded from considering, as a mitigating factor, any relevant circumstance, including any aspect of the defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death; (2) There is a substantial probability that reasonable jurors, upon receiving the judge's instructions in this case, and in attempting to complete the verdict form as instructed, well may have thought they were precluded from considering any mitigating evidence unless all 12 jurors agreed on the existence of a particular mitigating circumstance; (a) With respect to findings of guilt, a jury's verdict must be set aside if it can be supported on one ground but not on another, and the reviewing court is uncertain which of the two grounds was relied upon by the jury in reaching the verdict. Review of death sentences demands even greater certainty that the jury's conclusions rested on proper grounds; (b) While the Court of Appeals' construction of the jury instructions and verdict form is plausible, it cannot be concluded, with any degree of certainty, that the jury did not adopt Mill's interpretation instead. Nothing in the verdict form or the judge's instructions even arguably is constructable as suggesting that the jury could leave an answer blank and proceed to the next step in

its deliberations. A jury following the instructions set out in the verdict form could be precluded from considering mitigating evidence if only a single juror adhered to the view that such evidence should not be so considered. (c) There is no extrinsic evidence of what the jury in this case actually thought, but the portions of the record relating to the verdict form and the judge's instructions indicate that there is at least a substantial risk that the jury was misinformed. Moreover, since the time when this case was decided below, the Court of Appeals has promulgated a new verdict form expressly covering the situation where there is a lack of unanimity... and providing for the consideration of all mitigating evidence... shows at least some concern on that court's part that juries could misunderstand the previous instructions as to unanimity and the consideration of mitigating evidence by individual jurors. As a result of Mills' case, the sentencing form used by juries in capital cases in Maryland has been changed to ensure that all mitigating evidence be taken into account. (Maryland)

U.S. Supreme Court
CAPITAL PUNISHMENT

Thompson v. Oklahoma, 108 S.Ct. 2687 (1988). Supreme Court Bans Execution of Juveniles for Crimes Committed When 15 or Younger. The Supreme Court overturned the death penalty of a convicted murderer who was 15 when he committed his crime. In a 5 to 3 decision, the Supreme Court effectively banned the execution of juveniles for crimes they commit when age 15 or younger because at this time no death penalty law in any state sets a minimum below 16. However, the decision left open the issue of whether states may execute those who commit offenses as 16- and 17-year-olds without violating the eighth amendment. The complicated decision does not completely ban as unconstitutional the execution of offenders who were under 16 at the time of their crimes; it leaves open the possibility that states can pass new laws that specifically allow execution of juveniles.

This was an appeal by a 21-year-old death row inmate who committed a murder at the age of 15. Justice John Paul Stevens wrote for four justices that, under "evolving standards of decency," it would be unconstitutional under any circumstances to apply the death penalty to someone who was 15 years of age at the time he committed an offense. In a separate opinion, Justice Sandra Day O'Connor agreed that states cannot execute persons for offenses they commit as juveniles "under the authority of a capital punishment statute that specifies no minimum age;" she provided the crucial fifth vote to overturn the death sentence. She stopped short, however, of accepting the conclusion of the Stevens opinion that a state may not ever execute a person for a crime he committed when he was under 16. Justice Stevens cited as evidence of "contemporary standards of decency" the facts that none of the states whose death penalty laws expressly set a minimum age allows executions for crimes committed by persons under age 16 and that most other Western nations and the Soviet Union have banned executions of juveniles altogether. He also concluded that, because teenagers have less experience and education than adults, they are less able to evaluate the consequences of their actions and are more likely to act from emotion or peer pressure. Thus, executing juveniles is unlikely to serve the state's objective of deterring crime by juveniles, he said.

In this case, the petitioner, when he was 15 years old, actively participated in a brutal murder. Because he was a "child" as a matter of Oklahoma law, the District Attorney filed a statutory petition seeking to have him tried as an adult, which the trial court granted. He was then convicted and sentenced to death, and the Court of Criminal Appeals of Oklahoma affirmed. The narrow majority concluded that the "cruel and unusual punishment" prohibition of the eighth amendment, made applicable to the States by the fourteenth amendment, prohibits the execution of a person who was under 16 years of age at the time of his or her offense. The court held that: "(a) In determining whether the categorical eighth amendment prohibition applies, this Court must be guided by the 'evolving standards of decency that mark the progress of a maturing society,' **Trop v. Dulles**, 356 U.S. 86, 101, 78 S.Ct. 590, 598, 2 L.Ed.2d 630, and, in so doing, must review relevant legislative enactments and jury determinations and consider the reasons why a civilized society may accept or reject the death penalty for a person less than 16 years old at the time of the crime." The Court noted that relevant state statutes--particularly those of the 18 States that have expressly considered the question of a minimum age for imposition of the death penalty, and have uniformly required that the defendant have attained at least the age of 16 at the time of the capital offense--support the conclusion that it would offend civilized standards of decency to execute a person who was less than 16 years old at the time of his or her offense: "That conclusion is also consistent with the views expressed by respected professional organizations, by other nations that share the Anglo-American heritage, and by the leading members of the Western European Community."

U.S. Appeals Court
PRESENTENCE REPORT

Turner v. Barry, 856 F.2d 1539 (D.C. Cir. 1988). An inmate brought an action against the mayor of the District of Columbia and probation officers employed by the superior court for the District of Columbia. The district court dismissed the complaint, and appeal was taken. The appeals court, affirming the decision, found that District of Columbia probation officers were absolutely immune from liability in a civil rights action under Section 1983 for alleged errors in the

investigation and preparation of presentence reports. The court of appeals found that probation officers enjoy the same absolute immunity from liability for damages in Section 1983 actions as that granted judges when: 1) their activities are integrally related to the judicial process, and 2) they exercise discretion comparable to that exercised by a judge. "The pre-sentence report is an integral part of the judicial function of sentencing," said the court. "When preparing pre-sentence reports, the probation officer acts at the specific request of the court and submits the results of the investigation to the sentencing court for its evaluation." In carrying out this duty, said the court, probation officers typically serve as an "arm of the sentencing judge." (Lorton Reformatory, District of Columbia)

U.S. Appeals Court
PROBATION-CONDITIONS

U.S. v. Terrigno, 838 F.2d 371 (9th Cir. 1988). A condition of probation did not violate a defendant's First Amendment rights according to a federal appeals court. The condition prohibited the defendant, during the period of probation, from receiving any financial remuneration or any other thing of value from any speaking engagements, written publications, movies, or any other media coverage dealing with her involvement in the offense. The trial court had not restricted the defendant's right to speak, but had merely forbidden her to receive money for speaking about her crime. The appeals court noted that a sentencing judge had broad discretion in setting probation conditions, and exercise of this discretion is reviewed carefully where probation conditions restrict fundamental rights, but such restriction is permissible. The test for validity of probation conditions, even where preferred rights are affected, is whether the conditions are primarily designed to meet the ends of rehabilitation and protection of the public. The mere fact that a condition of probation restricts probationer's freedom to perform otherwise lawful activities is not dispositive of reasonableness of the condition, unless conditions are drawn so broadly that they unnecessarily restrict those lawful activities.

U.S. Supreme Court
PRESENTENCE REPORT

U.S. Dept. of Justice v. Julian, 108 S.Ct. 1606 (1988). According to the United States Supreme Court, federal prisoners are allowed access to pre-sentence reports as a result of the freedom of information act. Federal Rule of Criminal Procedure 32 provides that when a federal defendant is given copies of his pre-sentence report it must be "returned to the probation officer immediately following the imposition of sentence [....] unless the court, in its discretion, otherwise directs." The Court held, that, under the federal Freedom of Information Act, 5 U.S.C.A. Section 552, once the report is transmitted to the Federal Bureau of Prisons and Parole Commission for determining the defendant's postsentence placement and parole, it can be obtained by the defendant. After examining Exemptions 3 and 4 under the Act, the Court concluded that the exemptions did not prevent disclosure of such reports directly to the defendant. Nonetheless, under the Parole Commission and Reorganization Act of 1976
and Federal Rule of Criminal Procedure 32(c), information in such reports pertaining to confidential sources can be withheld. It also seems clear that requests for such reports from persons other than the subject of the report can be denied. (Federal Prison, Arizona)

U.S. Appeals Court
CREDIT
EQUAL PROTECTION
PRETRIAL CONFINEMENT

Vasquez v. Cooper, 862 F.2d 250 (10th Cir. 1988). A defendant petitioned for federal habeas relief when the trial judge denied him credit against his sentence for time spent in pretrial custody. The U.S. District Court denied the defendant's petition, and the defendant appealed. The appeals court, affirming the decision, found that the sentencing practice that allegedly discriminated against those defendants unable to post bail, by denying them credit against their sentences for time spent in pretrial custody, did not interfere with any "fundamental right" or discriminate against any "suspect class." The defendant was not entitled to credit against his sentence for time spent in pretrial confinement, either as a matter of equal protection or procedural due process. (Colorado)

1989

U.S. Appeals Court
GOOD-TIME

Bergen v. Spaulding, 881 F.2d 719 (9th Cir. 1989). A prisoner has no constitutional or inherent right to be conditionally released before the expiration of a valid sentence, but state early release statutes can create a liberty interest protected by due process guarantees. A civil rights action was brought by a prisoner who alleged that his release more than 20 days after the "good behavior early release date" violated his right to due process. On appeal, the court found that the board charged with determining the prisoner's early release did not have discretion, under Washington law, to decide without a hearing that the prisoner should remain in prison beyond his good time release date. The prisoner's late release without a hearing would amount to deprivation of liberty interest without due process. Good behavior time credits cannot be denied, once they have been earned, without the benefit of minimal due process protections. (Washington State Prison)

U.S. Appeals Court
CREDIT
GOOD TIME

Lewis v. Attorney General of U.S., 878 F.2d 714 (3rd Cir. 1989). A youth offender who was sentenced as an adult during the service of the Youth Corrections Act sentence petitioned for habeas corpus relief, claiming entitlement to good time credits. The U.S. District Court denied relief, and appeal was taken. The appeals court, reversing and remanding, found that the petitioner was entitled to good time credits for a period starting from his sentencing as an adult, but not for the time allegedly served under conditions violating his youth sentence prior to adult sentencing. (Federal Correctional Institution, Petersburg, Virginia)

U.S. Appeals Court
EXPIRATION

Sample v. Diecks, 885 F.2d 1099 (3rd Cir. 1989). A former inmate brought a civil rights action against the Commissioner of Corrections and the senior records official to recover for a violation of civil rights which occurred when he was detained after the expiration of his sentence. The U.S. District Court entered a judgment in favor of the former inmate, and the defendants appealed. The appeals court, affirming in part, reversing in part and remanding in part, found that there was a violation of the inmate's eighth amendment rights. The records supervisor had a responsibility and the authority to direct the release of inmates whose time had expired. Evidence sustained a finding that the senior records clerk exhibited a deliberate indifference to the inmate's plight; but evidence was insufficient to impose liability on the Commissioner of Corrections for a violation of due process rights of the inmate. The court stated that imprisonment beyond one's term constitutes punishment for the purposes of the eighth amendment. (State Correctional Institution, Pittsburgh, Pennsylvania)

U.S. Appeals Court
CREDIT
ORIGINAL SENTENCE
REVOCATION

U.S. v. Flanagan, 868 F.2d 1544 (11th Cir. 1989). After the defendant pled guilty to one count of making a false statement to a firearms dealer, the U.S. District Court sentenced the defendant to a three-year term of incarceration, but suspended the sentence and ordered that the defendant serve six months in jail and the remainder of 30 months on probation. Thereafter, the district court revoked the probation, sentenced the defendant to three years'imprisonment and indicated that it was unlikely that the defendant would receive credit for the six months served on the split sentence. The defendant appealed. The appeals court, affirming the decision, found that the trial judge properly sentenced the defendant to a full three-year term after the violation of probation, notwithstanding that the defendant had served six months on the split sentence. The defendant's claim that he was entitled to credit for time served on the six-month sentence was not justifiable based on the defendant's failure to pursue administrative remedies within the Federal Bureau of Prisons. (Florida)

U.S. Appeals Court
CREDIT
GUIDELINES

U.S. v. Harris, 876 F.2d 1502 (11th Cir. 1989), cert. denied, 110 S.Ct. 417, 110 S.Ct. 569. The defendants were convicted in the U.S. District Court of conspiracy to possess with intent to distribute more than 50 grams of cocaine and possession with intent to distribute more than five grams of cocaine, and the defendants appealed. The appeals court, affirming the decision, found that the evidence supported the conviction of one defendant. It was also found that the restrictions on the judge's discretion in the Sentencing Guidelines do not violate due process in a noncapital case; and the pretrial incarceration of the defendants in state custody was to be credited against the sentence. When a convicted federal prisoner claims credit for time spent in a state jail or prison, the burden is on the prisoner to establish that the state confinement was exclusively a product of the action by federal law enforcement officials so as to justify treating the state jail as a practical equivalent to a federal one. (Florida State Jail)

U.S. Appeals Court
PROBATION-REVOCATION
PROBATION-SEARCH
FEDERAL PROBATION ACT

U.S. v. Schoenrock, 868 F.2d 289 (8th Cir. 1989). Defendants appealed from an order of the U.S. District Court, revoking their probation and requiring them to resume serving prison sentences received for violating drug laws. The appeals court, affirming the decision of the lower court, found that the probation term that allowed the warrantless searches of the defendant's premises, vehicles and persons for the presence of alcoholic or controlled substances was reasonably related to rehabilitation and protection of the public and did not violate the Federal Probation Act. The term was designed to help prevent the defendants' future alcohol and substance abuse, and only one search was carried out after the defendant had aroused suspicions of probation officers. It was also found by the court that the probation officers' warrantless search of the defendants' residence for drugs and alcohol was not unreasonable under the fourth amendment. The term was imposed only after the district court carefully evaluated the defendant's particular needs and concluded that only a condition authorizing warrantless searches would suffice to ensure the compliance with other probation terms. Even if a probation term authorizing warrantless searches of the defendant's premises, vehicles and persons for drugs and alcohol was facially overbroad, the probation officers acted reasonably in applying terms and did not violate the Federal Probation Act. The probation officers did not search the residence until the defendant aroused their suspicions by diluting his urine sample, submitting positive samples, smuggling drugs into his work release center, failing to cooperate in his treatment programs, and visiting a liquor store. (Nebraska)

1990

U.S. Appeals Court
CREDIT

Barden v. Keohane, 921 F.2d 476 (3rd Cir. 1990). A federal prisoner filed a petition for a writ of habeas corpus after the Bureau of Prisons failed to consider his request to designate a state prison as a place of confinement. The U.S. District Court denied the petition, and appeal was taken. The court of appeals found that the prisoner was entitled to have the Bureau of Prisons consider his request for the purpose of determining whether the prisoner was entitled to credit against a federal sentence for the time spent in state custody, and the Bureau had discretion to order concurrency where the federal sentence was imposed before the state sentence and the state judge clearly intended the sentences to be served concurrently. (U.S. Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
CREDIT
EQUAL PROTECTION
REDUCTION

Hattermann v. U.S., 743 F.Supp. 578 (C.D. Ill. 1990). A defendant filed a motion seeking credit toward service of his sentence for time he spent on bond between his arrest and sentencing. The district court found that the defendant's sentence, plus the time allegedly spent in presentence custody, totaled less than the maximum sentence provided for the defendant's offense and, thus, the defendant lacked a standing to assert that he was entitled to credit under a statute governing credit against a sentence for time spent in custody before imposition of a sentence. In addition, it was found that the defendant was not "in custody," within the meaning of the statute governing credit against a sentence for time spent in custody before imposition of a sentence, during the time the defendant was released on bond between his arrest and sentencing. The denial of the credit did not violate equal protection, despite the contention that a class of persons on bond had to be treated identically to the class of persons on probation or parole; equating those situations would require a finding that bond restrictions constitutionally amounted to a form of punishment, which would not have been permissible prior to conviction, but it was found that the restraints reasonably imposed for the purpose of insuring the detainee's presence at trial and reasonably related to that purpose does not rise to a level of "punishment," for the purposes of denial of liberty due process claims. (Fed. Prison, Terre Haute, Indiana)

U.S. Appeals Court
GOOD TIME

Jackson v. Thornburgh, 907 F.2d 194 (D.C. Cir. 1990), affirming, 702 F.Supp. 9 (D.D.C. 1988). Female prisoners who were housed in federal prisons after being convicted in District of Columbia courts sought a writ of habeas corpus and challenged the constitutionality of the District of Columbia Good Time Credits Act. The defendants moved for a summary judgment. The U.S. District Court granted the defendants' motion for a summary judgment, and the female prisoners appealed. The district court found that the Act, which reduces the minimum sentence of prisoners in District prisons, did not violate the equal protection rights of the female prisoners, even though long-term female offenders are housed in a federal facility and are not covered by the Act. (District of Columbia Penal Facilities)

U.S. Appeals Court
GOOD TIME
REDUCTION

Lee v. Dugger, 902 F.2d 822 (11th Cir. 1990). An inmate brought a civil rights action against a prison official, alleging that he was incarcerated longer than he should have been on a prior sentence because he was not credited with proper gain time. The U.S. District Court entered a summary judgment in favor of the official, and the inmate appealed. The appeals court found that the official was entitled to qualified immunity from the civil rights action brought by the former inmate who was allegedly not credited with proper gain time due to the official's misinterpretation of an amended gain-time statute, where only one decision by the intermediate appellate court had construed the new statute. (Per Curiam, with one Circuit Judge concurring specially.) (Florida State Prison)

U.S. District Court
CREDIT
GOOD-TIME

Stephens v. Muncy, 751 F.Supp. 1214 (E.D. Va. 1990), affirmed, 929 F.2d 694. A state prisoner filed a civil rights action in which he alleged constitutional violations in computation of parole eligibility. The district court found that the statute modifying Virginia's parole eligibility scheme with respect to repeat offenders was not "ex post facto" law, notwithstanding that it utilized offenses committed prior to its enactment to compute parole eligibility. The statute applied only to those convicted of a criminal offense after the statute's effective date. (Virginia State Prison)

1991

Brodheim v. Rowland, 783 F.Supp. 1245 (N.D. Cal. 1991), modified, 993 F.2d 716. A California prisoner filed an amended petition for writ of habeas corpus. The U.S. District Court, granting the writ, found that allowing habitual offenders to earn work time credits, but denying work time credits to prisoners convicted of murder, did not have a rational basis and violated the equal protection clause, since a murderer who had been convicted twice before of violent crimes would be better off than a murderer new to the prison system. The appeals court found that the prisoner had no due process right to continue to earn one-for-one work credits since he was ineligible for the program. (Vacaville State Prison, California)

U.S. District Court
CREDIT

Dougherty v. Crabtree, 812 F.Supp. 1089 (D. Or. 1991). A prisoner petitioned for a writ of habeas corpus, challenging a federal prison warden's refusal to credit time spent in a residential treatment center. The district court found that the prisoner was entitled to credit on his sentence for time previously spent as a resident of the treatment center as a condition of a probationary sentence. The time spent at the center was time served "in custody" in connection with crimes for which his sentences were imposed, for the purposes of the statute providing that credit shall be given for time spent "in custody," and the statute did not distinguish between time spent in custody before sentencing and time spent in custody while on probation as a condition of the sentence imposed. (Alpha House, Oregon)

U.S. Supreme Court
SENTENCE

Harmelin v. Michigan, 111 S.Ct. 2680 (1991). A petitioner was convicted of possessing more than 650 grams of cocaine and was sentenced to a mandatory term of life in prison without the possibility of parole. The court of appeals affirmed and certiorari was granted. The Supreme Court found that the sentence, without any consideration of mitigating factors, such as the fact that the petitioner had no prior felony convictions, did not constitute cruel and unusual punishment. Severe, mandatory penalties may be cruel, but they are not unusual in the constitutional sense. (State of Michigan)

U.S. Appeals Court
CREDIT
GOOD TIME
EQUAL PROTECTION

Lemieux v. Kerby, 931 F.2d 1391 (10th Cir. 1991). The petitioner sought habeas corpus relief from sentencing. The U.S. District Court dismissed the petition, and the petitioner appealed. The court of appeals found that the statute that authorizes sentencing credit for good time after sentencing, but not for good time in a county jail before sentencing, serves a rational purpose of rehabilitating criminals and complies with due process and equal protection clauses. (New Mexico State Prison System)

U.S. District Court
PROBATION-CONDITIONS
PROBATION-REVOCATION

Mace v. Amestoy, 765 F.Supp. 847 (D.Vt. 1991). Revocation of a defendant's probation on grounds that the defendant refused to admit he had sexual intercourse with his stepdaughter as required for completion of a sexual offender treatment program, which was a condition of probation, was affirmed by the Vermont Supreme Court. The defendant petitioned for writ of habeas corpus alleging that revocation of his probation violated his Fifth Amendment right against self-incrimination, his due process right to fair notice of his probation conditions, and his First Amendment right against coerced speech. The U.S. District Court adopted a recommendation and report of a magistrate judge, and found that the probationer received fair notice of his probation conditions, where the defendant was told at the beginning of his attendance at the sexual therapy group that he would have to take responsibility for all of his sexual conduct in order to successfully complete the program and the probation officer, as well as therapist, put the defendant on actual notice that his failure to admit sexual intercourse was interfering with successful completion of the treatment program. Thus, revocation of probation on such grounds was not a violation of due process. However, the probationer could not be forced to incriminate himself. If a state wishes to carry out rehabilitative goals and probation by compelling offenders to disclose their criminal conduct, it must grant them immunity from criminal prosecution. The revocation of probation on grounds that the probation refused to admit to sexual intercourse with his stepdaughter violated the defendant's Fifth Amendment rights against self-incrimination. (Orange County Mental Health, Randolph, Vermont)

U.S. Appeals Court
CREDIT
EQUAL PROTECTION

Moreland v. U.S., 932 F.2d 690 (8th Cir. 1991). The defendant's request that time spent at a halfway-house prior to trial and sentencing be credited against his sentence was denied by the Federal Bureau of Prisons, and the defendant petitioned for habeas relief. The U.S. District Court refused to grant relief, and the defendant appealed. The court of appeals found that the defendant was entitled to credit for the time spent at the halfway house since he was in official detention. It is not enough to be subject to some conditions, such as electronic monitoring, a requirement to live with one's parents, and a curfew; one must also be in an institution and be subject to that institution's jail-like rules. The defendant was ordered to reside at the halfway house and was subject to 24-hour supervision. The halfway house was acting as an agent of the criminal justice system, the defendant was physically incarcerated for a substantial part of each day spent there, and was subject to a curfew. Since restrictions placed on the defendant were similar to those imposed on jail prisoners who had work-release privileges, it cannot be contended that he was not in "official detention." (Reentry Services Community Treatment Center, Minnesota)

U.S. Appeals Court
GOOD TIME

Offet v. Solem, 936 F.2d 363 (8th Cir. 1991). An inmate who lost good-time credits as a result of disciplinary action brought a civil rights action against prison officials. The U.S. District Court entered judgment in favor of the officials, and the inmate appealed. The court of appeals found that the application of a South Dakota statute providing automatic forfeiture of one day of good-time credit for every day spent in punitive confinement to inmates convicted before the statute's effective date did not clearly violate constitutional ex post facto principles, entitling the prison officials to qualified immunity in the inmate's civil right action. (South Dakota State Penitentiary)

U.S. Appeals Court
CREDIT

Randall v. Whelan, 938 F.2d 522 (4th Cir. 1991). A federal prison inmate sought credit against a prison sentence for time spent in a drug rehabilitation center prior to entering the federal penitentiary. The credit was denied by the U.S. District Court, and the inmate appealed. The court of appeals found that the inmate was not entitled to credit against his prison sentence, both before and after the imposition of the sentence, though the release to the center was by judicial order under restrictive conditions. The inmate was not in "custody" within the meaning of a statute governing credits, where he was not subject to the authority of the Attorney General, nor was he committed to a place of detention to await transportation to prison. (Federal Bureau of Prisons)

U.S. Appeals Court
CREDIT

Travis v. Lockhart, 925 F.2d 1095 (8th Cir. 1991). A state prisoner appealed from an order entered in the U.S. District Court dismissing a habeas petition on the merits. The court of appeals found that the district court should not have interpreted the state crediting statute on the merits of a habeas proceeding. The state prisoner's claim that he was entitled to credit for jail time served prior to his second murder conviction required interpretation of the state crediting statute, which was a matter of state concern and not a proper function of the federal habeas court. (Arkansas Department of Corrections)

U.S. District Court
REDUCTION

Tritico v. U.S. Parole Com'n., 760 F.Supp. 154 (W.D. Mo. 1991). A former inmate brought an action to determine whether he was subject to the jurisdiction of the United States Parole Commission. On the government's motion for summary judgment, the U.S. District Court found that the inmate, who was subject to mandatory release after a deduction of "good time" from days he otherwise would have served before the end of his sentence, could properly be subjected to jurisdiction of the United State Parole Commission; the release, though mandatory, was conditioned upon compliance with terms of parole. (U.S. Parole Commission)

U.S. District Court
CREDIT

U.S. v. Browning, 761 F.Supp. 681 (C.D. Cal. 1991). An inmate filed a motion to correct an illegal sentence, challenging the decision of the Federal Bureau of Prisons refusing to give him credit against his sentence for 34 days he spent at home awaiting trial. Treating the motion as a petition for habeas corpus, the U.S. District Court found that the Bureau of Prisons properly determined that the inmate was not "in custody" for purpose of credits against his sentence while he was confined to his home awaiting trial, though the inmate was precluded from leaving his home except for court appearances, visits to his lawyer to assist in his defense, or other absences approved at least 24 hours in advance, and the inmate was required to wear an ankle bracelet electronically connected to a privately operated monitoring center in order to assure his compliance with conditions of release. (Federal Bureau of Prisons)

U.S. Appeals Court
GUIDELINES
REDUCTION

U.S. v. Gonzalez, 945 F.2d 525 (2nd Cir. 1991). A defendant was convicted of importing cocaine and the court departed downward from a minimum term proscribed by the sentencing guidelines. As a result, the government appealed. The court of appeals found that the trial court's conclusion that the defendant's overall appearance and demeanor made him unusually vulnerable to physical attack warranting a downward departure from the sentencing guidelines was not clearly erroneous. The defendant was extremely small and feminine looking and had an appearance of a 14 or 15-year-old making him unusually susceptible to prison abuse, even though the defendant was neither gay nor bisexual. (Federal Bureau of Prisons)

U.S. Appeals Court
ELECTRONIC
MONITORING
PROBATION-
REVOCATION
PROBATION-
CONDITIONS
PROBATION-
VIOLATION

U.S. v. Laughlin, 933 F.2d 786 (9th Cir. 1991). A defendant appealed an order of the U.S. District Court revoking his probation. The court of appeals found that the defendant's claim that he was denied effective assistance of counsel in a probation revocation proceeding would not be considered on direct appeal. It was also found that the defendant's probationary term commenced on the date the defendant was paroled from prison, where the sentencing order indicated that probation would begin upon the defendant's release from prison, not his release from detention or custody. In addition, a statute requiring the Bureau of Prisons to afford a prisoner a reasonable opportunity to adjust to and prepare for reentry into the community does not mandate that all prisoners pass through a community treatment center en route to free society. The Bureau's decision to release the defendant to his family and to supervise him through an electronic monitoring device fell within the options available to the Bureau under the statute. The court also found that the defendant whose probation was revoked based in part on attempted forgery received sufficient notice of conditions of probation so that the revocation satisfied due process standards. The district court instructed the defendant on conditions of probation at the time of sentencing, and the defendant had implied knowledge that criminal acts would violate the probation. As a result, even if the defendant's application for a credit card did not violate a condition of probation prohibiting the defendant from possessing credit cards, the defendant's forgery on a bank withdrawal slip provided independent and sufficient ground for the decision to revoke probation. (Federal Burueau of Prisons)

U.S. District Court
CREDIT
EQUAL PROTECTION
GOOD TIME

Wickliffe v. Clark, 783 F.Supp. 389 (N.D. Ind. 1991). A defendant whose murder conviction was affirmed by the Indiana Supreme Court petitioned for habeas corpus. The U.S. District Court found that there is no basic constitutional right to guarantee good time credit for good behavior while incarcerated, although states may create such statutory rights, and the denial of credit to "lifers" does not deny due process or equal protection. (Indiana State Prison)

1992

U.S. Appeals Court
CREDIT

Del Guzzi v. U.S., 980 F.2d 1269 (9th Cir. 1992). A prisoner brought a habeas corpus petition after federal prison officials denied him credit against his federal sentence for time spent in state custody. The U.S. District Court denied the petition, and the prisoner appealed. The appeals court, affirming the decision, found that the defendant was not "awaiting transportation" to federal prison while serving a state sentence, for the purposes of commencing his federal sentence. Although the state court sentenced him to a term concurrent with the federal sentence and recommended his transportation to the federal prison, federal officials refused to take custody of him until he completed his state sentence. Furthermore, the federal courts have no authority to violate a statutory mandate that federal authorities need only accept prisoners upon completion of their state sentence and need not credit prisoners with time spent in state custody. (California)

U.S. District Court
GUIDELINES

Huddleston v. Shirley, 787 F.Supp. 109 (N.D. Miss. 1992). A jail inmate brought a Section 1983 action against the county and sheriff, in his official capacity, alleging that the sheriff disregarded a provision of a state court order directing that the inmate be released during the day to go to work. The inmate moved for summary judgment. The district court found that the sheriff's actions violated the inmate's substantive due process rights; although the sheriff believed the order invalid, he never sought a definitive ruling on its validity through any formal means. As a result, the county and the sheriff were found liable. (Lee County Jail, Mississippi)

U.S. District Court
CREDIT

Medina v. Clark, 791 F.Supp. 194 (W.D. Tenn. 1992), affirmed, 978 F.2d 1259. An inmate filed a petition for a writ of habeas corpus seeking to obtain credit against his sentence. The district court denied the petition, finding that the prisoner was not entitled to credit against his sentence for a period of release from detention on unusually restrictive conditions. The governing statute excluded pretrial and posttrial release subject to house arrest where a defendant was not within the custody of the Attorney General or the United States Marshal. (Tennessee)

U.S. Appeals Court
CREDIT
GOOD TIME

Poole v. Kelly, 954 F.2d 760 (D.C. Cir. 1992). Inmates brought habeas petitions challenging the failure to award good time credit pursuant to a statute. The U.S. District Court granted one petition, and another district court denied another inmate's petition, and the losing parties appealed. The court of appeals found that the inmates were not entitled to good time credit under the statute. The District of Columbia Good Time Credit Act did not supersede a provision of a statute providing for a 20-year minimum year period of incarceration prior to parole eligibility for persons convicted of first-degree murder. (District of Columbia)

U.S. District Court
CREDIT

Ronchetti v. Rickards, 790 F.Supp. 117 (N.D. W.Va. 1992). A federal prisoner petitioned pro se for habeas corpus relief alleging credit should be given for presentencing time spent in a drug treatment program. The U.S. District Court found that the federal prisoner was not entitled to credit against his sentence for time spent in the drug treatment program before sentencing since he was not in "custody" or "official detention" when he was released on bond into the care of the treatment center. (Federal Correctional Institution, Morgantown, West Virginia)

U.S. Appeals Court
CREDIT

Starchild v. Federal Bureau of Prisons, 973 F.2d 610 (8th Cir. 1992). An inmate applied for a writ of habeas corpus. The U.S. District Court denied the application, and the inmate appealed. The court of appeals, affirming the decision, found that the inmate was not entitled to credit toward his sentence for time spent preconviction under house arrest no matter how restrictive conditions were, as a private home was not jail-type facility. (Federal Bureau of Prisons, Minnesota)

U.S. Appeals Court
ORIGINAL SENTENCE
REVOCATION

U.S. v. McGee, 981 F.2d 271 (7th Cir. 1992). The defendant was convicted of possession of heroine and was sentenced to twenty-seven months in prison followed by three years of supervised release. After the defendant completed his prison term, he was charged with violating conditions of his supervised release. The U.S. District Court revoked the defendant's supervised release and ordered the defendant to serve an additional two years in prison followed by five years of supervised release, and the defendant appealed. The court of appeals, vacating and remanding, found that once a court revokes a defendant's supervised release and reimprisons him, no residual term of supervised release survives

revocation; consequently, there is no way for a court to create or "extend" a second term of supervised release. The defendant could be ordered to serve the entire supervised release term in prison without credit for time previously served on postrelease supervision, but could not be given an additional supervised release term following that term in prison. (Illinois)

1993

U.S. District Court
CREDIT
SENTENCE

Alexander v. Perrill, 836 F.Supp. 701 (D. Ariz. 1993). A former prisoner brought a *Bivens* action against prison officials, claiming that he sustained damages because of improper credit for time spent in a foreign prison. The district court found that the prison officials were liable to the prisoner, because they failed to transmit to the proper authorities the prisoner's claim that his credits for time served in a German prison had been improperly taken into account in determining his sentence. The prisoner had repeatedly objected, but the defendants took no action with respect to his complaints except to state that the sentencing complied with a memorandum they had received from the Central Office, Bureau of Prisons in Washington, D.C. The court ruled that the prisoner was entitled to notice and a hearing before recalculation of his sentence could be put into effect. (Federal Correctional Institution, Tucson, Arizona)

U.S. Appeals Court
EXPIRATION

Calhoun v. New York State Div. of Parole Officers, 999 F.2d 647 (2nd Cir. 1993). An inmate filed a Section 1983 action against prison officials alleging that when prison officials extended the inmate's maximum expiration date by five days based upon a "declaration of delinquency," without affording the inmate a final parole revocation hearing, they violated due process and the Eighth Amendment. The U.S. District Court dismissed the action based upon qualified immunity, and appeal was taken. The appeals court, affirming the decision, found that without holding a final revocation hearing, the state could not constitutionally hold the defendant beyond his original, unadjusted, maximum expiration date unless a final hearing would have been impracticable. However, adding an extra five days of imprisonment on the defendant's sentence based upon a "declaration of delinquency" without holding a parole revocation hearing did not inflict harm of the magnitude that violated the inmate's Eighth Amendment rights. (Steuben County Jail, New York)

U.S. District Court
CREDIT
LIBERTY INTEREST

Chavis v. Smith, 834 F.Supp. 153 (D.Md. 1993). A Maryland inmate petitioned for writ of habeas corpus alleging that he was unconstitutionally deprived of liberty interest by Maryland's failure to credit toward the Maryland sentence time he spent in a Georgia prison. Adopting the report and recommendation of a U.S. Magistrate Judge, the district court found that the inmate was entitled to credit for time spent in the Georgia prison that was not credited to any valid conviction. (Eastern Corr. Institution, Westover, Maryland)

U.S. Appeals Court
CREDIT
HOUSE ARREST

Fraley v. U.S. Bureau of Prisons, 1 F.3d 924 (9th Cir. 1993). A federal prisoner's petition for habeas corpus was dismissed by the U.S. District Court and the prisoner appealed. The appeals court, affirming the decision, found that the conditions governing the defendant's pretrial house arrest did not approach those of incarceration. She was not entitled to credit for house arrest against her sentence, where she was allowed to live in her own house, though she was not permitted to leave without prior authorization from the probation office and was required to participate in an electronic monitoring program to ensure that she did not leave. (Washington)

U.S. Appeals Court
EXPIRATION

Moore v. Tartler, 986 F.2d 682 (3rd Cir. 1993). A former state prisoner brought a civil rights action against parole officials claiming violation of the Eighth Amendment due to a delay in releasing him. The U.S. District Court denied relief and the former inmate appealed. The appeals court, affirming the decision, found that evidence did not show that parole officials acted with deliberate indifference to the former inmate's rights. The inmate was not subjected to cruel and unusual punishment when he was held in prison for at least three months after the expiration of his term due to the alleged failure to investigate the parole board's misinterpretation of sentencing order. The parole board had not rejected his initial complaint outright or suspended its search, although the investigation had been slow and incompetent, and the record did not establish deliberate indifference. (State Correctional Institution, Graterford, Pennsylvania)

U.S. District Court
CREDIT
EQUAL
PROTECTION

Oses v. U.S., 833 F.Supp. 49 (D.Mass. 1993). A federal prisoner brought a habeas corpus action alleging that he was entitled to credit against a federal sentence for time served on that portion of a state sentence that was effectively nullified after determination that the state conviction violated the federal constitution. The district court denied the petition, finding that the prisoner was not entitled to credit against his federal sentence for time served on an unrelated, nonconcurrent state sentence. The statute which prohibited the credit did not violate equal protection. The federal government and states are separate sovereigns and the federal government does not have to treat time served under a federal sentence as the equivalent of time served under a preceding state sentence. (Federal Bureau of Prisons)

U.S. District Court
GUIDELINES
REDUCTION

Phillips v. U.S., 836 F.Supp. 965 (N.D.N.Y. 1993). A prisoner filed a postconviction petition to vacate, set aside or correct his sentence. The district court found that the sentence, that was within the guidelines range, did not become excessive merely because the prisoner's blindness allegedly increased the severity of his punishment. (New York)

U.S. Appeals Court
INVOLUNTARY
COMMITMENT

U.S. v. Evanoff, 10 F.3d 559 (8th Cir. 1993). An inmate appealed an order of the U.S. District Court committing him to the custody of the Attorney General when his prison term ended, based on a finding that he suffered from a mental disease or defect which rendered him dangerous. The appeals court, affirming the decision, found that the government met its burden of establishing dangerousness by clear and convincing evidence. Evidence indicated that the inmate, throughout his incarceration, suffered from auditory hallucinations which commanded him to harm people. Because of such hallucinations he requested seclusion on at least three occasions to regain control of himself and to avoid harming others. The inmate also consistently told a psychologist that he would refuse any prescribed psychotropic drugs and would take cocaine instead of prescribed drugs. (Federal Medical Center, Rochester, Minnesota; Seagoville, Texas; United States Medical Center for Federal Prisoners, Springfield, Missouri)

U.S. District Court
REDUCTION

U.S. v. Hillstrom, 837 F.Supp. 1324 (M.D. Pa. 1993). A defendant convicted of escape from federal custody appealed his sentence. The appeals court vacated and remanded the case to determine whether the prison camp from which the defendant escaped was a "similar facility" for the purposes of a guidelines provision allowing a four-point reduction in the base offense level for escape from nonsecure custody. On remand, the district court found that the minimum security federal prison camp from which the defendant escaped was not "similar" to a community corrections center, so that a four-point reduction in the offense level did not apply. (Federal Prison Camp at Allenwood, Montgomery, Pennsylvania)

U.S. Appeals Court
PROBATION-
REVOCATION

U.S. v. Paskow, 11 F.3d 873 (9th Cir. 1993). A defendant's supervised release was revoked when random drug testing revealed that he had used marijuana and cocaine. The U.S. District Court ruled that an amendment to a supervised release statute imposing a mandatory minimum penalty for violation of supervised release for possession of a controlled substance, as applied to the defendant, did not violate the ex post facto clause, and the defendant appealed. The appeals court, vacating and remanding, found that there is no difference for ex post facto purposes between parole and supervised release. The court found that the amendment to the supervised release statute, as applied to the defendant, violated the ex post facto clause. The underlying offense was committed before the amendment was adopted, but the conduct that led to the revocation of supervised release occurred afterwards. (California)

U.S. Appeals Court
GOOD-TIME

Woodson v. Attorney General, 990 F.2d 1344 (D.C.Cir. 1993). A prisoner sought a declaratory judgment to allow her to waive good time credits to which she was entitled and to serve the full remainder of her sentence for religious reasons. The U.S. District Court granted the prisoner's cross motion for summary judgment. On appeal, the court reversed the decision, finding that the commutation statute mandated that prisoners accumulate good time credits for months in which they have faithfully observed all rules and have not been subjected to punishment, thus creating a scheme in which a prisoner automatically accumulates credits for good conduct and is mandatorily released upon accumulation of a certain amount. (District of Columbia)

1994

U.S. Appeals Court
RESTITUTION

Beeks v. Hundley, 34 F.3d 658 (8th Cir. 1994). Inmates who recovered a money judgment against a Missouri prison official under Section 1983 sought relief from seizure of the judgment proceeds by Iowa prison officials to satisfy the inmates' obligations under Iowa's victim restitution act. The U.S. District Court entered a judgment against the inmates and they appealed. The appeals court found that seizure of the inmates' Section 1983 damage recovery to pay victim restitution was not preempted by federal statute. (Iowa State Penitentiary)

U.S. District Court
CREDIT
EQUAL PROTECTION

Brooks v. State of Okl., 862 F.Supp. 342 (W.D.Okl. 1994). An offender challenged the constitutionality of the Oklahoma Prison Overcrowding Emergency Powers Act. Adopting a report and recommendation of a U.S. Magistrate, the district court found that the effect that prosecutorial discretion in determining what offenses to charge had on an offender's eligibility for emergency time credits under the Oklahoma Prison Overcrowding Emergency Powers Act did not violate the offender's equal protection rights. The offender did not claim that any discriminatory purposes motivated prosecutors in charging him with the offense for which he was imprisoned, and the conjectural connection between the prosecutorial discretion and the classification system in the Act was too attenuated to present a viable legal theory under the equal protection clause. (Oklahoma Prison)

U.S. District Court
PAROLE

Canales v. Gabry, 844 F.Supp. 1167 (E.D. Mich. 1994). A state inmate brought a federal civil rights action alleging that the parole board violated his constitutional rights by extending the time between parole reviews. On the parole board chairman's motion to dismiss the district court adopting a report and recommendation of a U.S. Magistrate, found that the inmate did not have a protected liberty interest to be conditionally released before the expiration of his valid sentence. State-created parole procedures enacted after the inmate's incarceration that increased the time between parole hearings did not violate the inmate's procedural due process rights. The rules governing the parole hearing frequency were not "laws" within the meaning of the ex post facto clause. The possibility of parole was no more than a mere hope and such hope was not protected by due process. The parole board had the discretion to grant parole, and therefore the plaintiff did not have a protected liberty interest. Even to the extent that the state statute may create a "protectable expectation of parole," no more procedural due process is constitutionally required than an opportunity to be heard, and when parole is denied, to be informed of the reasons for failing to qualify for parole. (Saginaw Regional Correctional Facility, Saginaw, Michigan)

U.S. Appeals Court
CREDIT
EQUAL PROTECTION

Charry v. State of Cal., 13 F.3d 1386 (9th Cir. 1994). A juvenile brought an action against California, the California Youth Authority (CYA), and related parties, alleging that denial of sentence credit for time spent on parole violated his constitutional and statutory rights. The U.S. District Court entered summary judgment with respect to the sentence credit claim, and the juvenile appealed. The appeals court, affirming the decision, found that the denial of sentence credit did not cause the juvenile to serve a greater sentence than he would have served had he been sentenced as an adult and thereby violate his constitutional and statutory rights. (California Youth Authority)

U.S. Appeals Court
CREDIT
HOUSE ARREST
PRETRIAL
CONFINEMENT

Edwards v. U.S., 41 F.3d 154 (3rd Cir. 1994). A petitioner sought habeas corpus relief based on the Bureau of Prisons' refusal to grant sentencing credit to the petitioner for the period of pretrial home confinement he endured. The U.S. District Court denied relief and appeal was taken. The appeals court, affirming the decision, found that the terms of the petitioner's pretrial home confinement were not sufficiently demanding to approach jail like confinement. Therefore, the home confinement was not "official detention" within the meaning of the sentencing credit statute. The petitioner could not leave the house without permission from Pretrial Services, but he was frequently granted permission to leave home to attend church and social events. This totaled 30 hours per week during the last four months of confinement. (Pennsylvania)

U.S. District Court
CAPITAL
PUNISHMENT

Fierro v. Gomez, 865 F.Supp. 1387 (N.D. Cal. 1994). California inmates who had been sentenced to death brought an action on behalf of themselves and all others similarly situated, challenging the constitutionality of California's method of execution by lethal gas. The district court found that the California inmates who had been sentenced to death had standing to challenge the constitutionality of California's method of execution by lethal gas, even though they could have elected to be executed by lethal injection instead. Where inmates had refused to elect the method of execution, their executions, if carried out, would be by administration of lethal gas, and their challenge to the method of execution was therefore justifiable. The court also found that California's method of execution by lethal gas is unconstitutional cruel and unusual punishment under the Eighth Amendment. Evidence strongly suggests that a condemned inmate is likely to suffer intense physical pain during the period of consciousness, which is likely to continue anywhere from 15 seconds to one minute from the time the gas strikes the inmate's face, and that there is a substantial risk that consciousness will persist for up to several minutes. Evidence of pain, when coupled with the overwhelming evidence of societal rejection of lethal gas as a method of execution, renders its administration unconstitutional. (San Quentin State Prison, California)

U.S. Appeals Court
CREDIT
GOOD-TIME

Graham v. Lanfong, 25 F.3d 203 (3rd Cir. 1994). An inmate who had served a Virgin Islands sentence in a federal prison sought a writ of habeas corpus claiming that he was entitled to good time credits provided by federal law, rather than those applicable under a territorial statute against a concurrent eight-year territorial sentence. The U.S. District Court granted relief and the Government of the Virgin Islands appealed. The appeals court, affirming the decision, found that the inmate was entitled to good time credits provided by federal law, rather than those applicable under the territorial statute. The inmate was not entitled to good time credit under the Virgin Islands law for the same period. (Virgin Islands Bureau of Corrections)

U.S. Appeals Court
CREDIT
REDUCTION

Martinez v. U.S., 19 F.3d 97 (2nd Cir. 1994). A prisoner moved for an order granting him credit on his sentence for time he spent while released on bail following his arrest. The U.S. District Court denied the motion, and the prisoner appealed. The appeals court, affirming the decision, found that the prisoner was not entitled to sentencing credit for time spent during his release on bail. (New York)

U.S. District Court
CREDIT

Schmanke v. U.S. Bureau of Prisons, 847 F.Supp. 134 (D.Minn. 1994). A federal prisoner petitioned for credit against a federal sentence for days spent in federal custody while awaiting trial on federal charges. The district court found that the petitioner successfully challenged the state sentence while in federal custody. The only legitimate basis for the petitioner's confinement was a federal writ of ad prosequendum, and he was entitled to credit against the federal sentence for the period of time he spent in United State marshal keeping pursuant to the writ. (Federal Bureau of Prisons)

U.S. Appeals Court
GUIDELINES
PROBATION-
REVOCATION

U.S. v. Anderson, 15 F.3d 278 (2nd Cir. 1994). Following a finding that the defendant had violated her supervised release, the U.S. District Court revoked her supervised release and sentenced the defendant, and she appealed. The appeals court, affirming the decision, found that the court may consider the offender's correctional and medical needs, including drug treatment or rehabilitation, in determining the length of time an offender shall be required to serve in prison following revocation of a supervised release. Furthermore, the trial judge, in revoking the supervised release and sentencing the defendant, properly departed from the sentencing range suggested by the guidelines manual policy statements. The defendant's failure to adjust to supervision, failure to fulfill her obligations under her sentence of probation, and need for "intensive substance abuse and psychological treatment in a structured environment," were cited. (Federal District Court, Connecticut)

U.S. Appeals Court
CREDIT
GUIDELINES
REDUCTION

U.S. v. Daggao, 28 F.3d 985 (9th Cir. 1994). The U.S. District Court found that it lacked authority under the Sentencing Guidelines to grant a downward departure for time spent under in-house detention prior to sentencing. Appeal was taken. The appeals court, affirming the decision, found that the district court's determination that it lacked authority to depart downward was correct. The Attorney General has the sole authority to grant credit for time served in detention before sentencing except under exceptional circumstances such as when the defendant is sentenced erroneously and has served time under that erroneous sentence. (California)

U.S. District Court
GUIDELINES
PROBATION-
CONDITIONS

U.S. v. Humphress, 878 F.Supp. 168 (D.Or. 1994). A petition for habeas corpus relief was filed requesting that a federal district court vacate a court order which extended the petitioner's three-year term of probation. The district court found that the government did not provide any authority for extension of the three-year probationary term without a hearing and further findings by the court, given that the applicable probation guideline required that the habeas petitioner's probation term be no more than three years without an upward departure. The statute stating that if a defendant violated the conditions of probation at any time prior to the expiration of probation the court may continue him on probation was not applicable because there was no finding that the petitioner had violated a condition of probation. (Oregon)

U.S. District Court
PROBATION-
REVOCATION

U.S. v. McGregor, 866 F.Supp. 215 (E.D.Pa. 1994). After revocation of a defendant's probation and his resentencing to two-years imprisonment, the United States moved for reconsideration of the resentencing order. The district court found that the Sentencing Reform Act (SRA) provision for mandatory revocation of probation and resentencing applied to offenses committed before the effective date of the Act. The application of the SRA provision to the defendant did not violate the ex post facto clause where the defendant was a prospective probationer on the date of enactment of the provision, and the defendant was on notice that possession of narcotics would result in a mandatory term of reimprisonment. However, the defendant's two-year sentence imposed after revocation of his probation for possession of a controlled substance was reduced to one year, where the only count against him on which time remained carried a maximum of one-year imprisonment. (Pennsylvania)

U.S. Appeals Court
PROBATION-
REVOCATION
RESTITUTION

U.S. v. Webb, 30 F.3d 687 (6th Cir. 1994). A hearing was held to determine punishment for a defendant's violation of supervised release. The U.S. District Court revoked the supervised release and appeal was taken. The appeals court, affirming in part and remanding in part, found that the revocation of the defendant's supervised release for substantially ignoring reporting and monitoring requirements was not an abuse of discretion. The defendant had extensive contact with the criminal justice system and was aware of the importance of abiding by the conditions. The revocation of the defendant's supervised release did not affect his restitution obligation, where restitution was ordered as a separate component of the judgment of conviction and installments were ordered to be paid prior to the beginning of supervised release. However, the defendant could not be sentenced to an additional term of supervised release following his imprisonment upon revocation of his initial term of supervised release. (Kentucky)

U.S. District Court
CREDIT

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 the defendants refused to give him a 73-day credit against his grand theft conviction. The district court found that the proper remedy for possibility of error in a sentencing court's computation was either a direct appeal or motion for correction by the trial court. (Mansfield Corr. Institution, Ohio)

U.S. District Court
CREDIT

Burgos v. Thompson, 879 F.Supp. 37 (N.D.W.Va. 1995). A federal prisoner filed a petition challenging the decision of the U.S. Bureau of Prisons denying him credit for time served as the result of a prior detention order. The district court found that the prisoner was not entitled to credit for presentence time served at a community treatment center because the stay at the center was a condition of release on bond. (Federal Correctional Institution, Morgantown, West Virginia)

U.S. Appeals Court
CREDIT
PRETRIAL CONFINEMENT

Dawson v. Scott, 50 F.3d 884 (11th Cir. 1995). A defendant was convicted of cocaine distribution in the U.S. District Court and the defendant appealed the sentence. The appeals court, affirming the decision, found that the 104 days that the drug defendant spent in a halfway house awaiting trial, and the 384 days that he spent in a "safe house" after the sentencing and while cooperating with police in drug investigations, were not periods of "official detention" required by statute to be credited against his sentence. Credit applied only to time spent "in custody," and while the defendant was confined at night, he had freedom of movement during the day. (Federal Prison Camp, Talladega, Alabama)

U.S. District Court
REDUCTION OF PAROLE

Garvin v. U.S., 882 F.Supp. 68 (S.D.N.Y. 1995). A prisoner filed a pro se motion to vacate, set aside or correct his sentence for violating special parole conditions on the grounds that additional incarceration would constitute cruel and unusual punishment since the prisoner had contracted AIDS and had a short life expectancy. The district court denied the motion. It found that the prisoner's motion was untimely under the applicable rule, where the prisoner failed to file a motion within 120 days of the sentencing. In addition, the prisoner could not have his sentence reduced or vacated under a rule permitting correction of illegal sentences where his sentence was not found to be illegal. The sentence was neither in excess of the statutory provision nor otherwise contrary to the applicable sentencing statute. The special parole term imposed was mandated by an applicable statutory provision. The court also found that, despite his claim that additional incarceration would constitute cruel and unusual punishment because of his contracting AIDS, the prisoner was not entitled to relief from his sentence. The prisoner did not attack the imposition of the special parole term on direct appeal, did not claim that the sentence for violating parole conditions was illegal or unconstitutional, and did not inform the court that he had AIDS at his sentencing. (New York)

U.S. Appeals Court
EX POST FACTO

Gilbert v. Peters, 55 F.3d 237 (7th Cir. 1995). Several offenders who were convicted for sex offenses challenged an Illinois statute that was enacted after they had been convicted, requiring all incarcerated sex offenders to submit blood specimens to the Department of State Police prior to final discharge, parole or release. The district court dismissed the action with prejudice and the appeals court affirmed, finding that the statute did not violate the ex post facto clause. The court held that the ex post facto clause does not prohibit every alteration of a prisoner's confinement that may work to his disadvantage, but that only measures which are both retroactive and punitive fall within the purview of the clause. The court held that any sanctions that might result from an inmate's refusal to comply with the statute would be disciplinary measures and would not violate the ex post facto clause. (Dixon Correctional Center, Illinois)

U.S. District Court
CREDIT
LIBERTY INTEREST

Herring v. Singletary, 879 F.Supp. 1180 (N.D. Fla. 1995). A state inmate filed a habeas corpus action challenging the forfeiture of 1,540 days of provisional credit against his sentence. The district court found that the revocation of the credits did not constitute an ex post facto violation. The denial of the credit did not affect the original penalty assigned to the crime at the time or the ultimate punishment meted out, regardless of whether the credit was applied prospectively or the credits were canceled retroactively. The court also found that the retroactive legislation, canceling the provisional administrative sentence credits, did not violate the prisoner's due process liberty interest. The legislature had a conceivable rational basis for revocation of credits as the state had a legitimate interest in seeing that prisoners served their sentences, and had a legitimate interest in creating a mechanism to relieve prison overcrowding when it reached crisis proportions but also in ceasing that mechanism when it was no longer necessary. In addition, Florida statutes retroactively canceling provisionally granted administrative credits against a sentence which had been implemented to achieve a federally mandated reduction in prison overcrowding did not violate the prisoner's equal protection rights. (Florida Department of Corrections)

U.S. District Court
RESTITUTION

Karacsonyi v. Radloff, 885 F.Supp. 368 (N.D.N.Y. 1995). A federal inmate sued a prison official alleging violation of his constitutional rights by the official's decision to penalize him for not participating in the Inmate Financial Responsibility Program (IFRP). The district court granted summary judgment for the official on issues relating to the IFRP decision, but found that the inmate's placement in a four-person cell which measured approximately 115 square feet (roughly 29 square feet of living space per man) may have amounted to cruel and unusual punishment depending upon the duration of this living situation and whether it lead to deprivations of essential needs, such as sanitation. The inmate had refused to sign a required form which the court held constituted refusal to participate in the IFRP. The court found that the inmate was correctly categorized as refusing to participate in the program where his restitution was due and payable during his incarceration. As a penalty for refusing to participate, the inmate was placed in the lowest housing status (a four-man cell), was denied

the opportunity to work in Federal Prison Industries, and was denied the opportunity for a furlough. The court noted that prison officials have broad discretion in denying federal inmates the opportunity to participate in Federal Prison Industries. (Ray Brook Federal Correctional Institution, New York)

U.S. District Court
EX POST FACTO
PAROLE

Knox v. Lanham, 895 F.Supp. 750 (D.Md. 1995). A prisoner serving a life sentence with the possibility of parole brought an action against state corrections officials and parole commissioners alleging constitutional violations and seeking injunctive, declaratory, and monetary relief. The district court held that a corrections directive that moved inmates serving life sentences to higher security, combined with the parole commission's refusal to recommend parole unless inmates were on active work release--which required lower security classification, constituted retroactive "punishment" in violation of the ex post facto clause. The court noted that an unwritten policy of the parole commission requiring inmates to be on active work release was "law" for ex post facto purposes where the state had not disavowed the policy nor could the policy be deemed solely interpretive. The court found, however, that the removal of inmates from family leave and work release programs, their transfer from prerelease facilities, and their increased security levels did not violate equal protection. (Maryland Division of Corrections)

U.S. Appeals Court
CAPITAL
PUNISHMENT

Mann v. Reynolds, 46 F.3d 1055 (10th Cir. 1995). A class action was brought on behalf of death row and high-maximum security inmates, challenging a prison policy prohibiting barrier-free or contact visits between inmates and an examining psychologist, other health professionals, and legal counsel. The U.S. District Court determined that the policy violated the inmates' constitutional rights but that alterations of that policy unilaterally adopted by the prison during the course of the litigation were in compliance with constitutional requirements, and the court subsequently dissolved stays of execution previously ordered. The inmates appealed. The appeals court found that there were no proper grounds to stay executions of inmates challenging the prison's policy prohibiting contact visits with attorneys. Each of the plaintiffs would have ample opportunity to stay the execution upon filing of the appropriate proceeding in district court. (Oklahoma State Penitentiary)

U.S. Appeals Court
PROBATION-
REVOCATION
REVOCATION

McGrew v. Texas Bd. of Pardons & Paroles, 47 F.3d 158 (5th Cir. 1995). An inmate brought a civil rights action against the Texas Board of Pardons and Parole challenging the extension of his sentence for violating the terms of his mandatory supervision. The U.S. District Court dismissed the action and the inmate appealed. The appeals court found that the inmate failed to state a Section 1983 cause of action against the Board of Pardons and Parole challenging the Board's policy of extending his sentence after revoking his mandatory supervision, where he remained in custody and was not alleging that the sentence imposed as a result of the revocation proceedings was invalidated by state or federal court. The inmate's Section 1983 claim for damages against the Board was barred by the Eleventh Amendment. (Texas Department of Criminal Justice)

U.S. District Court
EX POST FACTO
FURLOUGH

Neal v. Shimoda, 905 F.Supp. 813 (D.Hawai'i 1995). An inmate brought a § 1983 action against prison officials alleging that their labeling of him as a "sex offender" violated his constitutional rights. The inmate had been compelled to participate in a sex offender treatment program, which required the inmate to admit his guilt. The inmate had refused to admit his guilt, affecting his chances for parole and preventing him from being transferred to a minimum security facility. The district court granted summary judgment for the defendants, finding that the inmate had no constitutional liberty interest in a furlough or in freedom from being classified as a sex offender. The court ruled that the prison's policies did not create a protected liberty interest and that placement of the inmate in the prison's sex offender treatment program did not violate equal protection or the Eighth Amendment. The court also found that classifying the inmate as a sex offender, and its affect on the inmate's potential transfer to a minimum security facility and granting of a furlough, were not improper ex post facto laws. The court noted that even if an inmate was not convicted of any sex offense, the state had a legitimate interest in denying untreated sex offenders parole, furlough and minimum security classification based on their high rate of recidivism. The sex offender treatment program was not overbroad by including inmates who engaged in sexual misconduct during the course of nonsexual offenses. Denying the inmate parole or transfer to a minimum custody facility because he refused to admit guilt, which was the first step necessary for completion of the sex offender treatment program, did not violate the inmate's right against self-incrimination as the program was not a proceeding in which the answers could incriminate the inmate in future criminal proceedings. The program's requirement that the inmate not be in denial about his crime did not violate his Fifth Amendment right to be free from compelled testimony in light of the recognition that rehabilitation, including acceptance of responsibility, is an important sentencing consideration. (Halawa Correctional Facility, Hawai'i)

U.S. Supreme Court
CREDIT

Reno v. Koray, 115 S.Ct. 2021 (1995). A prisoner sought a writ of habeas corpus claiming that he was entitled to credit toward his sentence for time he had spent at a community treatment center while released on bail. The United States District Court denied relief and the prisoner appealed. The U.S. Appeals Court reversed and the government's petition for certiorari was granted. The Supreme Court found that the time spent by a prisoner at a community treatment center while "released" on bail pursuant to the Bail Reform Act was not "official detention" within the meaning of the statute entitling the defendant to "credit toward

the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences." The phrase "official detention" did not refer to restrictive conditions of release on bail under an official order that significantly curtailed a defendant's liberty; rather, credit was available only to those defendants detained in a penal or correctional facility and subject to the control of the Bureau of Prisons. (Allenwood Federal Prison Camp, Pennsylvania)

U.S. Appeals Court
EX POST FACTO

Rise v. State, 59 F.3d 1556 (9th Cir. 1995). Prisoners filed a § 1983 suit alleging that collection of blood samples for a DNA data bank violated their Fourth Amendment rights and was a prohibited ex post facto punishment. The district court dismissed the case the appeals court affirmed. The appeals court held that the Oregon statute which required felons convicted of murder or specific sexual offenses to submit a blood sample for a DNA data bank was rationally related to the public's interest in preventing recidivism and in accurately identifying murderers and sex offenders. The court found that requiring a blood sample from felons, even if they were convicted before enactment of the statute, did not violate the ex post facto law because its purpose was not to punish convicted felons. The court also held that the felons' due process rights did not require a hearing before being required to submit a blood sample. The court noted that gathering genetic information for identification purposes from the blood of convicted murderers or sexual offenders does not constitute more than a minimal intrusion on their Fourth Amendment rights. (Oregon Department of Corrections)

U.S. Appeals Court
PROBATION-
REVOCATION

U.S. v. Flynn, 49 F.3d 11 (1st Cir. 1995). A probation officer petitioned for revocation of probation which had been imposed as part of a sentence, following guilty pleas to one count of conspiracy to commit mail fraud and two counts of mail fraud. The U.S. District Court revoked the probation and imposed a sentence. The probationer appealed, asserting that his probation had expired before the initiation of the revocation proceedings. The appeals court, affirming the decision, found that the sentencing order imposing the probation term consecutive to the sentence on another count delayed commencement of the probation until completion of the entire previous sentence, including the period of parole. (New Hampshire)

U.S. Appeals Court
PROBATION-
VIOLATION

U.S. v. Grimes, 54 F.3d 489 (8th Cir. 1995). Action was brought to revoke a supervised release. The U.S. District Court revoked the release and the defendant appealed. The appeals court, affirming the decision, found that the filing of false monthly supervision reports with a probation office constituted a grade "B" rather than a grade "C" violation of the terms of the supervised release, for the purpose of determining the appropriate sentence. The conduct violated a statute which provided for a term of imprisonment of up to five years. (Missouri)

U.S. Appeals Court
PROBATION-
REVOCATION
PROBATION-
VIOLATION

U.S. v. Hancox, 49 F.3d 223 (6th Cir. 1995). A motion of the United States for revocation of supervised release was denied by the U.S. District Court and the United States appealed. The appeals court found that the revocation of the defendant's supervised release and imposition of a prison sentence of one third of her supervised release term was mandatory when the defendant admitted consuming controlled substances during her supervised release in violation of that release. (Kentucky)

U.S. Appeals Court
SUPERVISED RELEASE
EX POST FACTO

U.S. v. Reese, 71 F.3d 582 (6th Cir. 1995). An offender who served a sentence for conspiring to distribute cocaine and subsequently had his supervised release revoked and had a new sentence term imposed appealed, alleging an ex post facto violation. The appeals court affirmed the new sentence, ruling that the application of a sentencing statute which was enacted after the offender's initial sentence was imposed was not an ex post facto violation. The offender had served his initial term of imprisonment and began his supervised release period and then tested positive thirteen separate times for use of a controlled substance. The new sentencing statute set forth a mandatory minimum sentence--one-third of the term of supervised release--for revocation of supervised release based on possession of a controlled substance. The court noted that the inherent difference between probation and supervised release is that when probation is revoked for a violation, rules set forth in the statute limit the term of resentencing to the term allowable under the original offense; however, violation of supervised release may result in cumulative punishment that exceeds the original sentence. (U.S. District Court for the Northern District of Ohio)

U.S. Appeals Court
PROBATION-
REVOCATION

U.S. v. Taylor, 47 F.3d 508 (2nd Cir. 1995). Action was brought to revoke a defendant's probation. The U.S. District Court revoked the probation and the defendant appealed. The appeals court, affirming the decision, found that the defendant's term of federal probation did not begin until he was released from the state's supervised home release program. He was still on probation when he tested positive for drug use, and his probation was properly revoked for such use. (Supervised Home Release Program, Connecticut State Department of Correction)

U.S. District Court
EX POST FACTO

Vargas v. Pataki, 899 F.Supp. 96 (N.D.N.Y. 1995). An inmate brought a § 1983 action against state officials alleging that a law prohibiting inmates convicted of homicide from participating in a work release program violated his right to equal protection. The district court held that the law was rationally related to the goal of minimizing the risk to public safety from such programs and the inmate was not denied equal protection by the law's application. The court held that the law was not an ex post facto law since participation in the program was a

privilege rather than a right and the law's purpose was not to increase punishment for a crime but to regulate participation in the program. The inmate had alleged that amendments to the law governing the Prisoner Work Release Program which were applied retroactively to him violated his rights. (Bare Hill Correctional Facility, New York)

1996

U.S. Appeals Court
REDUCTION

Downey v. Crabtree, 100 F.3d 662 (9th Cir. 1996). An inmate filed a petition for a writ of habeas corpus claiming he was improperly denied a sentence reduction by the Federal Bureau of Prisons following the completion of a drug treatment program. The district court granted the petition and the appeals court affirmed. The appeals court held that the inmate's conviction for possession of more than 100 grams of methamphetamine was a "nonviolent offense" for the purposes of a sentence reduction statute. The court affirmed the grant of a writ of habeas corpus and a sentence reduction order, rather than remanding the case. (Federal Correctional Institution, Sheridan, Oregon)

U.S. Supreme Court
CAPITAL PUNISHMENT

Felker v. Turpin, 116 S.Ct. 2333 (1996). An offender sentenced to death for capital murder petitioned the U.S. Supreme Court for a stay of execution and permission to file a second federal habeas corpus petition. The Court denied the offender's petition. The Court held that a provision of the Antiterrorism and Effective Death Penalty Act, enacted in April 1996, which prevents the Supreme Court from reviewing an appeals court order denying leave to file a second habeas petition, does not repeal the Supreme Court's authority to entertain original habeas petitions. The Court held that the Act's "gatekeeping" mechanism for appeals courts does not apply to do apply to the Supreme Court's consideration of original habeas petitions, but other restrictions in the Act do inform the Court's consideration of original habeas petitions. The Court held that the Act's new restrictions on successive habeas corpus petitions do not amount to an unconstitutional "suspension" of writ, and that the petitioner's claims in this case did not justify the issuance of a writ. (Georgia)

U.S. Appeals Court
GOOD-TIME

Hamlin v. Vaudenberg, 95 F.3d 580 (7th Cir. 1996). A prisoner filed a § 1983 suit alleging that a disciplinary proceeding deprived him of due process. The district court dismissed the complaint and the appeals court affirmed. The appeals court found that the loss of good-time credits was sufficient to allege a protectible liberty interest but that state postdeprivation remedies were adequate. (Green Bay Correctional Institute, Wisconsin)

U.S. District Court
REDUCTION OF SENTENCE

Hines v. Crabtree, 935 F.Supp. 1104 (D.Or. 1996). A prisoner brought a habeas corpus petition alleging that the Bureau of Prisons violated his rights by excluding him from eligibility for a sentence reduction despite his completion of a substance abuse program. The district court granted the petition, finding that the prisoner was entitled to a sentence reduction. The court held that the prisoner's conviction for being a felon in possession of a firearm was a "nonviolent" offense under the statute that permitted the prisoner to seek a sentence reduction. (Federal Correctional Institution, Sheridan, Oregon)

U.S. Appeals Court
CREDIT

Kass v. Reno, 83 F.3d 1186 (10th Cir. 1996). A prisoner who was transferred from Mexico to the United States under the terms of a prisoner exchange treaty filed a petition for habeas corpus relief challenging his Mexican conviction. The district court denied relief and the prisoner appealed. The appeals court affirmed the lower court decision. The court found that the requirement of the prisoner exchange treaty that the prisoner seeking the transfer must agree not to challenge the Mexican conviction in United States court was not unconstitutional because the prisoner relinquished no vested rights by consenting to the treaty terms; Americans incarcerated in Mexican prisons have no right to relief from United States courts and therefore they lose nothing by consenting to limit themselves solely to Mexican limits after they are transferred. The court also found that the prisoner forfeited potential early release under Mexican law when he agreed to transfer to the United States, and that Mexico had exclusive jurisdiction over the prisoner's claim that Mexican authorities miscalculated his work credits. (Federal Correctional Institution, La Tuna, Texas)

U.S. Appeals Court
RESTITUTION

Mahers v. Halford, 76 F.3d 951 (8th Cir. 1996). Corrections officials appealed a district court order that enjoined them from withholding court-ordered restitution deductions from funds inmates received from outside sources without providing individualized predeprivation hearings; the district court required the officials to repay the money that was previously deducted and the officials appealed. The appeals court reversed and remanded, finding that due process was satisfied by the notice and hearing procedures provided by the Department of Corrections when engaging in the across the board policy of deducting 20 percent from all money received from outside sources. The court found that inmates are not entitled to complete control over their money while in prison and that inmates are not absolutely deprived of the benefit of their money when part of it is applied toward their restitution debts. The court noted that when an inmate leaves prison, he leaves with his restitution debts and that any payment of those debts while the inmate is incarcerated will work to his ultimate benefit. (Iowa Department of Corrections)

U.S. District Court
REDUCTION OF SENTENCE

Piccolo v. Lansing, 939 F.Supp. 319 (D.N.J. 1996). A prisoner filed a habeas corpus petition alleging that he was improperly denied a reduction in his sentence even though he had completed a drug treatment program. The district court denied the petition, finding that the Bureau of Prisons was entitled to determine that possession of a firearm by a felon was not a "nonviolent offense" for the purpose of eligibility for a sentence reduction. The court noted that a prisoner who completes a treatment program does not have a due process liberty interest in receiving a sentence reduction. (Federal Correctional Institution at Fort Dix, New Jersey)

U.S. District Court
REDUCTION OF SENTENCE

Sesler v. Pitzer, 926 F.Supp. 130 (D.Minn. 1996). A prisoner petitioned for habeas corpus relief alleging that the Bureau of Prisons arbitrarily and capriciously denied him a reduction in sentence following successful completion of a drug rehabilitation program. The district court denied the petition, finding that the Bureau's regulation was authorized by a sentence reduction statute and that the prisoner lacked a due process right in a reduced sentence. (Federal Medical Center, Rochester, Minnesota)

U.S. Appeals Court
EX POST FACTO
PROBATION

Taylor v. State of Rhode Island, 101 F.3d 780 (1st Cir. 1996). Probationers who were sentenced prior to the effective date of a statute which imposed a monthly civil offender fee on probationers brought an action challenging the constitutionality of the statute and Department of Corrections application of it. The district court found that the statute violated the ex post facto clause and the Department appealed. The appeals court reversed, holding that the Department's interpretation of the statute did not exceed the scope of its delegated authority, and that the statute was not punitive in intent or effect and thus did not violate the ex post facto clause. The court found that the purpose of the fee, to "reimburse" the Department for costs associated with providing goods and services to supervised probationers in the community, was not punitive and its practical effect was neither retributive nor deterrent in nature. (Rhode Island Department of Corrections)

U.S. Appeals Court
SENTENCE

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)

1997

U.S. Appeals Court
DEATH PENALTY

Austin v. Bell, 126 F.3d 843 (6th Cir. 1997). After a federal district court issued a writ of habeas corpus for an inmate who was sentenced to death, state officials appealed. The appeals court affirmed in part, reversed in part, and remanded the case. The appeals court held that the defendant's counsel's failure to investigate and present mitigating evidence during the penalty phase of his case was ineffective assistance. The court held that the Antiterrorism and Effective Death Penalty Act (AEDPA) did not apply to the Tennessee habeas corpus petitioner absent evidence that Tennessee had complied with the statutory requirement that the state provide for the appointment and compensation of competent counsel and reasonable expenses for litigation of postconviction relief. (Tennessee)

U.S. Appeals Court
COMMUNITY SERVICE

Barry v. Bergen County Probation Dept., 128 F.3d 152 (3rd Cir. 1997). An offender who was convicted of dispensing drugs and sentenced to community service sought habeas corpus relief. The district court granted the petition and the appeals court reversed and remanded. The appeals court determined that as a matter of first impression, a community service obligation rendered the petitioner "in custody" under the habeas statute because he was subject to restraints on his liberty that were not shared by the public generally. (Bergen County Probation Department, New Jersey)

U.S. Appeals Court
REDUCTION

Cort v. Crabtree, 113 F.3d 1081 (9th Cir. 1997). Prisoners who had been convicted of unarmed robbery sought habeas corpus relief when the Federal Bureau of Prisons refused to allow a one-year sentence reduction upon completion of a substance abuse program. The district court denied the petition and the prisoners appealed. The appeals court reversed and remanded, finding that the Bureau's new definition of "nonviolent offense" could not be applied retroactively to prisoners who were already in a treatment program on the date of its adoption, or to prisoners who were already found to be eligible. (Federal Correctional Institute, Sheridan, Oregon)

U.S. District Court
REDUCTION

Egan v. Hawk, 983 F.Supp. 858 (D.Minn. 1997). An inmate petitioned for habeas corpus relief challenging the denial by the Federal Bureau of Prisons (BOP) of a one-year reduction in his sentence for completing a Residential Drug Abuse Program (RDAP). The district court found invalid a section of the BOP Program Statement that stated inmates convicted of drug-related offenses who received two-level sentencing enhancements were not eligible for sentencing reductions that were available to inmates who had been convicted of nonviolent offenses. The court noted that sentencing enhancements affected the sentence only and did not transform a drug-related offense into a violent offense. The court remanded the matter to the

BOP to determine eligibility because the court lacked the authority to declare the inmate automatically eligible for release. (Federal Medical Center, Federal Bureau of Prisons)

U.S. District Court
EX POST FACTO

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. Appeals Court
REDUCTION

Jacks v. Crabtree, 114 F.3d 983 (9th Cir. 1997). Inmates who were convicted of nonviolent offenses and who had completed a drug treatment program had applied for sentence reductions under a statute that gave the U.S. Bureau of Prisons discretion to give a one-year reduction to such inmates. The Bureau denied the applications and the inmates petitioned for writs of habeas corpus. The district court denied the petitions and the inmates appealed. The appeals court affirmed, finding that the Bureau had the discretion to promulgate a regulation that categorically denies a sentence reduction to an inmate who had a prior conviction for a violent offense. (United States Bureau of Prisons)

U.S. District Court
REDUCTION

Johnson v. Crabtree, 996 F.Supp. 999 (D.Or. 1997). An inmate filed a habeas petition challenging the denial of a sentence reduction by the Bureau of Prisons (BOP) following his completion of a drug and alcohol treatment program. The district court granted the motion, finding that the BOP should have regarded the inmate's crime of being in possession of explosives as a "nonviolent offense" for the purposes of a sentence reduction statute. The court held that if a crime has been held "nonviolent" by the Ninth Circuit for the purposes of Sentencing Guidelines, the BOP must also consider it "nonviolent" for the purposes of the statute that authorizes the BOP to grant a sentence reduction to prisoners who successfully complete drug and alcohol treatment programs. (Federal Correctional Institution, Sheridan, Oregon)

U.S. Appeals Court
FOREIGN COUNTRIES

Kleeman v. United States Parole Com'n., 125 F.3d 725 (9th Cir. 1997). A defendant convicted of simple intentional homicide in Mexico sought to serve her sentence in the United States under the terms of a transfer treaty. Under the terms of the treaty the Parole Commission was charged with the task of translating the foreign sentence into terms appropriate to domestic penal enforcement. The United States Parole Commission set the defendant's sentence and the defendant petitioned for review. The appeals court held that the comparable United States offense was voluntary manslaughter. (United States Parole Commission)

U.S. District Court
REDUCTION

Miller v. U.S., 964 F.Supp. 15 (D.D.C. 1997). A prisoner brought a § 1983 action alleging that the Federal Bureau of Prisons violated his rights by its restrictive interpretation of a statute that permits sentence reductions for nonviolent offenders who successfully complete substance abuse treatment programs. The district court held that the crime of being a felon in possession of a firearm was not a "crime of violence" for the purposes of the statute, as it does not include as an element the use of physical force and no violence need be used in the course of committing the offense. The court found that the prisoner was entitled to be considered for a sentence reduction. (Federal Bureau of Prisons)

U.S. District Court
REDUCTION
EX POST FACTO
EQUAL PROTECTION

Paydon v. Hawk, 960 F.Supp. 867 (D.N.J. 1997). An inmate filed an application for habeas corpus alleging that the Federal Bureau of Prisons improperly denied him eligibility for a reduction in his sentence. The district court found that the Bureau's determination that the inmate was ineligible for a sentence reduction was not arbitrary, capricious or an abuse of discretion. The court found that the inmate lacked a liberty interest in a sentence reduction for the purposes of a due process analysis, and that the Bureau's decision to classify possession of a firearm by a convicted felon as a crime of violence was rationally related to the Bureau's legitimate interests. The court noted that the Violent Crime Control and Law Enforcement Act of 1994 merely conferred additional benefits to certain inmates as an incentive for participating in drug treatment and rehabilitation, and thus did not violate the ex post facto clause. (Federal Correctional Institution, Fort Dix, New Jersey)

U.S. Appeals Court
REDUCTION

Roussos v. Menifee, 122 F.3d 159 (3rd Cir. 1997). A federal prison inmate filed a habeas corpus petition challenging a Federal Bureau of Prisons ruling that he was ineligible for a sentence reduction upon his completion of a drug treatment program. The district court

denied relief and the inmate appealed. The appeals court vacated and remanded, finding that a firearm enhancement under Sentencing Guidelines does not, by itself, make an inmate ineligible for a sentence reduction. According to the court, the Bureau of Prison's program statement under which the inmate was deemed to have committed a "crime of violence" was in conflict with the governing statute and implementing regulations because it categorized the inmate as ineligible due to his receipt of a two-level firearms enhancement under the Sentencing Guidelines. (United States Penitentiary, Allenwood, Pennsylvania)

U.S. Appeals Court
REDUCTION

Sesler v. Pitzer, 110 F.3d 569 (8th Cir. 1997). A prisoner petitioned for habeas corpus relief alleging that the Federal Bureau of Prisons had arbitrarily and capriciously denied a reduction in his sentence following his successful completion of a drug rehabilitation program. The district court denied the writ and the prisoner appealed. The appeals court affirmed, finding that the use of a firearm during and in relation to a drug trafficking crime is not a "nonviolent offense" within the meaning of a statute allowing reduction of sentence following the completion of a treatment program. (Federal Bureau of Prisons)

U.S. District Court
REDUCTION OF SENTENCE

Sisneros v. Booker, 981 F.Supp. 1374 (D.Colo. 1997). A prisoner brought a habeas proceeding challenging the denial of his sentence reduction. The district court granted the petition, finding that the Bureau of Prisons could not adopt a rule denying a one year reduction in sentence to a prisoner who committed a nonviolent crime but whose sentence had been enhanced for the possession of unused weapons. The court equitably estopped the Bureau from denying the prisoner the one year reduction in his sentence which he had earned by completing a drug treatment program. (FCI La Tuna, Texas)

U.S. Appeals Court
REDUCTION
EX POST FACTO
DOUBLE JEOPARDY

Stiver v. Meko, 130 F.3d 574 (3rd Cir. 1997). An inmate who had been convicted of a nonviolent offense sought a sentence reduction under the Violent Crime Control and Law Enforcement Act on the ground that he had successfully completed a drug treatment program during his prison term. The federal Bureau of Prisons (BOP) denied the sentence reduction because the inmate had previous convictions for violent offenses. The district court denied the petition and the appeals court affirmed. The appeals court held that the Bureau regulation reasonably construed "convicted of a nonviolent offense," as used in the Act, to mean all convictions, and not just the conviction for which the inmate is currently incarcerated. The appeals court also held that the regulation did not violate the ex post facto clause or double jeopardy. (Federal Bureau of Prisons)

U.S. Appeals Court
REDUCTION

Venegas v. Henman, 126 F.3d 760 (5th Cir. 1997) cert. denied 118 S.Ct. 1679.. A prisoner filed for a writ of habeas corpus seeking reduction of his sentence following completion of a drug treatment program. The district court granted relief and the appeals court affirmed in part and reversed in part. The appeals court held that the Bureau of Prisons did not exceed its statutory authority to reduce sentences for nonviolent offenders who complete substance abuse treatment by excluding from the category of "nonviolent" offenders those prisoners convicted of possession of a weapon by a felon and drug possession offenses enhanced under sentencing guidelines for possession of a weapon. The court noted that the statute left to the Bureau's discretion the determination of which other offenses would be eligible for consideration. (Federal Bureau of Prisons)

U.S. District Court
CAPITAL PUNISHMENT

Williams v. Hopkins, 983 F.Supp. 891 (D.Neb. 1997). A state prisoner filed a § 1983 action against a prison warden seeking injunctive relief and monetary damages for alleged violation of his civil rights arising out of his pending execution by electrocution. The district court dismissed the action, finding that neither electrocution nor multiple applications of current violated the Eighth Amendment. (Nebraska State Penitentiary)

U.S. Appeals Court
CAPITAL PUNISHMENT

Williams v. Hopkins, 130 F.3d 333 (8th Cir. 1997). A state prisoner sentenced to death by electrocution brought a civil rights action challenging the constitutionality of electrocution in general and Nebraska's method of electrocution in particular. The district court dismissed the action as frivolous and the appeals court affirmed, finding that the action was the functional equivalent of a successive habeas action, subject to the procedural requirements of successive habeas actions. The court held that passing of more than one current of electricity into the body of a prisoner to effect his death does not support a claim of cruel and unusual punishment under the Eighth Amendment, absent any suggestion of malevolence. (Nebraska)

U.S. Appeals Court
CAPITAL PUNISHMENT

Woodard v. Ohio Adult Parole Authority, 107 F.3d 1178 (6th Cir. 1997). A convicted murderer whose death penalty had been upheld brought a civil rights action challenging Ohio clemency procedures as unconstitutional and seeking injunctive relief. The district court entered judgment against the inmate and he appealed. The appeals court affirmed in part, vacated in part and remanded. The court held that the inmate did not have a protected life or liberty interest in clemency proceedings themselves, but when a state chooses to provide for clemency, the procedures used must comport with due process. The matter was remanded for determination by the district court regarding the inmate's claim that the clemency interview procedure violated his right against self-incrimination. The interview process provided for a private, uncounseled interview without a guarantee of immunity. (Ohio)

U.S. District Court
REDUCTION

Birth v. Crabtree, 996 F.Supp. 1014 (D.Or. 1998). An inmate filed a habeas petition claiming that he was improperly denied a sentence reduction by the Bureau of Prisons (BOP) following his completion of a drug and alcohol program. The district court denied the petition, finding that the BOP has the authority to promulgate program statements that deny inmates, including those with detainers lodged against them by the Immigration and Naturalization Service (INS), eligibility for drug and alcohol treatment programs if they are unable to complete the community-based phase of the treatment. The court noted that, regardless of whether they were convicted of a nonviolent offense, the BOP is not required to exempt a prisoner with an INS detainer from some of the requirements of a drug and alcohol treatment program. (Federal Correctional Institution, Sheridan, Oregon)

U.S. Appeals Court
PAROLE
EX POST FACTO

Blair-Bey v. Quick, 159 F.3d 591 (D.C.Cir. 1998). An inmate filed a habeas corpus petition challenging procedures for denying parole. The district court dismissed the petition. The appeals court affirmed in part and remanded the case for a hearing on the inmate's claim that the parole system, which was adopted after the inmate committed his crimes, amounted to an ex post facto law as applied to the inmate. The appeals court held that the inmate was entitled to a hearing so that he would have the opportunity to demonstrate that the parole board's discretion was totally or very substantially circumscribed in law or in fact, and yielded results materially harsher than those that ordinarily occurred under the prior regime. (District of Columbia Board of Parole)

U.S. District Court
PROFESSIONAL STANDARDS

Bolton v. Goord, 992 F.Supp. 604 (S.D.N.Y. 1998). Inmates brought a § 1983 suit claiming that New York's practice of housing two inmates in a prison cell previously used to house one inmate violated the Eighth and Fourteenth Amendments. The district court held that double celling under the conditions set forth at trial did not constitute cruel and unusual punishment and that New York had not conferred on inmates a protected liberty interest in single-cell housing. The court held that the application of the Eighth Amendment is guided by contemporary standards of decency, but while the opinions of experts and the standards established by concerned organizations may be helpful on some questions, they do not establish constitutional minima. According to the court, public attitudes toward certain punishment, or what society is willing to tolerate in its prisons, is the more appropriate gauge of contemporary standards. The court noted that when double-celling was researched prior to its implementation, officials considered whether an inmate was violent or victim-prone before placing him in a double cell, evidence did not establish a cause and effect relationship between double-celling and an increase in violence, and guidelines for double-celling took into account medical conditions. According to the court, double-celling was in effect in most other state prison systems and in the federal system at the time it was implemented in New York. Inmates had the same access to extensive programs and services after double-celling was implemented, and there was no evidence of "overcrowding" in the sense that the facility had to compromise its services in order to handle the additional number of inmates. The court also noted that disputes between cellmates were handled quickly and never rose to more than minor incidents of physical violence, the small cell size was not shown to have resulted in the deprivation of any basic human need, and there was no indication that natural ventilation was so inadequate as to cause injury. According to the court, the Eighth Amendment does not guarantee inmates a certain type of ventilation or a certain rate of air exchange. (Woodburne Correctional Facility, New York)

U.S. Appeals Court
REDUCTION

Byrd v. Hasty, 142 F.3d 1395 (11th Cir. 1998). An inmate sought habeas corpus relief after the federal Bureau of Prisons (BOP) denied him a sentence reduction based on his completion of a drug treatment program. The district court denied relief and the inmate appealed. The appeals court reversed and remanded, finding that the BOP could not rely on the inmate's firearm sentence enhancement to deny his application for a sentence reduction. The appeals court held that the BOP exceeded its authority when it categorically excluded from eligibility those inmates who were convicted of nonviolent offenses who received sentencing enhancements for possession of a firearm. (Federal Prison Camp at Pensacola, Florida)

U.S. District Court
LIBERTY INTEREST

Carter v. McCaleb, 29 F.Supp.2d 423 (W.D.Mich. 1998). A former inmate brought a § 1983 action against corrections officials and a county. The district court held that the inmate, who received a sentence that authorized him to participate in work release, did not have a liberty interest to participate in the work release program that would implicate procedural or substantive due process when the county failed to process him for work release. Although the sentencing judge indicated that he wanted the inmate to "work or seek work" the judge also cautioned the inmate "that you may be on work release, that's simply an okay that you may be put on that status. It's a sheriff's work release program. It belongs to the sheriff, not the court system. I have nothing to do with it." (Calhoun County, Mich.)

U.S. District Court
PROBATION VIOLATION

Duffy v. County of Bucks, 7 F.Supp.2d 569 (E.D.Pa. 1998). An individual who had been arrested and detained over a weekend brought a § 1983 action against the probation officer who had sought the warrant under which he was arrested, and

various county officials. The district court held that the arrest and detention of the probationer pursuant to a facially valid warrant did not violate his substantive due process rights, even though the individual had informed officials that the warrant was actually for a different person who had the same name. The court found that the officials did not have a duty to take every step to eliminate the possibility that they were holding an innocent person, and that they had no authority to ignore a bench warrant. The court also held that the individual's detention over a weekend did not violate his procedural due process rights.

The court found that although the probationer failed to allege that strip searches to which he was subjected had been performed pursuant to a pattern or practice, his allegations regarding strip searches were sufficient to state a due process claim against officers of the facility. The individual was subjected to strip searches at least once daily for no apparent reason, even though he had no access to contraband or visitors.

The court held that the probation officer was not entitled to qualified immunity because a reasonable probation officer could not have believed that his actions did not violate the individual's substantive due process rights. (Bucks County, Pennsylvania)

U.S. Appeals Court
CLEMENCY
CAPITAL PUNISHMENT
EQUAL PROTECTION

Duvall v. Keating, 162 F.3d 1058 (10th Cir. 1998). A state death row prisoner brought a § 1983 action against a governor and warden, alleging that the state's clemency procedures violated his due process rights. The prisoner sought injunctive relief. The district court denied the prisoner's request for a temporary restraining order and preliminary injunction and granted judgment in favor of the defendants. The prisoner appealed and moved for a stay pending appeal. The appeals court denied the motion for stay and affirmed the district court's decision. The appeals court found that minimal application of the due process clause is only needed to ensure that a death row prisoner receives the clemency procedures set forth by state law and that the clemency decision is not "wholly arbitrary, capricious or based on whim," because clemency proceedings involve acts of mercy that are not constitutionally required. The prisoner had asserted that the governor's statements, that he would not grant clemency for murderers, deprived him of due process, but the appeals court held that due process was not denied, where the governor's discretion was never invoked because the Pardon and Parole Board did not forward any recommendation for clemency to the governor. The court noted that there was no evidence that the Board did not conduct an impartial investigation and study of the prisoner's application for clemency, or utilize procedures that were arbitrary, capricious or whimsical. (Oklahoma State Penitentiary)

U.S. Appeals Court
REDUCTION OF SENTENCE
EX POST FACTO
LIBERTY INTEREST

Fristoe v. Thompson, 144 F.3d 627 (10th Cir. 1998). A prisoner who was denied a sentence reduction petitioned for a writ of habeas corpus. The district court denied the petition, but the appeals court reversed and remanded. The appeals court held that the federal Bureau of Prisons (BOP) violated the statute authorizing early release by considering sentencing factors when it determined whether a prisoner was convicted of a crime of violence. According to the court, the plain language of the statute referred directly to the offense for which the prisoner was convicted. The appeals court held that the BOP did not violate the ex post facto clause when it denied early release. (Federal Bureau of Prisons, Oklahoma)

U.S. Appeals Court
PRE-SENTENCE REPORT

Hili v. Sciarrotta, 140 F.3d 210 (2nd Cir. 1998). A state prisoner brought a § 1983 action against employees of a probation department alleging that they submitted an inaccurate presentence report in connection with his conviction. The district court dismissed the case and the appeals court affirmed, finding that under New York law the employees were entitled to absolute immunity from suits for damages in connection with their preparation and submission of presentence reports. (Department of Probation, Nassau County, New York)

U.S. Appeals Court
REDUCTION
PAROLE

James v. U.S. Parole Com'n, 159 F.3d 1200 (9th Cir. 1998). A prisoner who was convicted of a drug offense in a Mexican court, but was transferred to the United States under a prisoner exchange treaty appealed the decision of the United States Parole Commission which calculated his release date. The appeals court affirmed the Commission's calculation, finding that the prisoner was not entitled to a sentence reduction for acceptance of responsibility in view of the prisoner's "stonewalling" behavior, including affirmative denials of her guilt. The court also held that the Commission's alleged failure to follow its internal guidelines did not result in a denial of due process. The court noted that the guideline was not intended to have the force of law, but was instead used only as an interpretive, procedural rule to guide Commission practice. The guideline required the hearing examiner to warn the prisoner that if the prisoner continued to contest the conduct which was necessarily the basis of the foreign conviction, she would not qualify for the acceptance of responsibility adjustment. (United States Parole Commission)

U.S. District Court
CAPITAL PUNISHMENT

Jones v. McAndrew, 996 F.Supp. 1439 (N.D.Fla. 1998). Four inmates who were sentenced to death brought an § 1983 action against corrections officials seeking injunctive relief with respect to electrocution procedures. The district court granted summary judgment to the officials. According to the court, under the Farmer standard the duty to avoid inflicting serious injury at the hands of the executioner was at least as great as the duty to avoid

infliction of harm by fellow inmates. The inmates alleged that there was a risk of fire about the head of the person being executed, as occurred with a previous execution. The court found that the officials were not deliberately indifferent because after the execution during which fire broke out, the officials hired experts to analyze the problem and recommend solutions, took the experts' advice in changing the procedures, and obtained a favorable ruling from a state supreme court on the new procedures. (Florida State Prison)

U.S. Appeals Court
REDUCTION

Love v. Tippy, 133 F.3d 1066 (8th Cir. 1998). An inmate who was serving sentences for conspiring to distribute cocaine and carrying a firearm during a drug trafficking offense applied for a one-year reduction of his sentence following his successful completion of a drug treatment program. The Federal Bureau of Prisons (BOP) denied the reduction, finding that the inmate's firearm conviction was not a "nonviolent offense." The inmate petitioned for a writ of habeas corpus, which was denied by the district court. The appeals court affirmed. (FCI-Waseca, Minnesota)

U.S. Appeals Court
REDUCTION

Martin v. Gerlinski, 133 F.3d 1076 (8th Cir. 1998). Federal prisoners convicted of various drug offenses petitioned for writs of habeas corpus challenging determinations by the Federal Bureau of Prisons (BOP) that they were ineligible for early release because their offenses involved possessing dangerous weapons. The district courts denied relief but the appeals court reversed and remanded with instructions. The appeals court held that the BOP's authority to define eligibility for early release was reviewable and that the Bureau's policy of considering sentencing factors in determining whether a prisoner's offense was "nonviolent" was contrary to the early release statute. The court noted that the statute referred to prisoners "convicted" of nonviolent offenses and did not address sentencing or sentence enhancement factors. (Federal Bureau of Prisons Facilities in South Dakota and Minnesota)

U.S. Appeals Court
FINES

Montano-Figueroa v. Crabtree, 162 F.3d 548 (9th Cir. 1998). A federal prisoner petitioned for a writ of habeas corpus alleging that the Inmate Financial Responsibility Program (IFRP) impermissibly intruded upon the sentencing court's responsibility to determine the amount and timing of fine payments. The district court denied the petition and the appeals court affirmed. The appeals court held that the IFRP, which allowed a prison to withhold a prisoner's wages for payment of a court-ordered fine, was not an improper intrusion upon a court's statutory sentencing authority, and that the IFRP was neither a usurpation of a sentencing court's Article III powers nor a violation of the separation of powers doctrine. (Federal Correctional Institute-Sheridan, Oregon)

U.S. Supreme Court
CAPITAL PUNISHMENT
CLEMENCY

Ohio Adult Parole Authority v. Woodard, 118 S.Ct. 1244 (1998). A state prisoner under sentence of death filed a § 1983 action alleging that Ohio's clemency process violated his Fourteenth Amendment right to remain silent. The district court granted judgment to the state but the Sixth Circuit Court of Appeals affirmed in part and reversed in part. The United States Supreme Court held that Ohio's clemency procedures do not violate due process and that Ohio's voluntary clemency interview does not violate the Fifth Amendment privilege against compelled self-incrimination. (State of Ohio)

U.S. Appeals Court
REDUCTION

Orr v. Hawk, 156 F.3d 651 (6th Cir. 1998). A federal prisoner convicted of possession of a firearm by a previously convicted felon, and various drug charges, petitioned for a writ of habeas corpus seeking a reduction in his sentenced based on his completion of a drug treatment program. The district court dismissed the petition. The appeals court reversed and remanded, finding that an amendment to the Bureau of Prisons (BOP) regulation governing sentence reductions was applicable, even though it was not enacted until after the prisoner sought a reduction. The court found that the regulation was entitled to no greater deference than the BOP's internal interpretive rules, and that the felon-in-possession offense was a "nonviolent offense." (Federal Prison Camp, Millington, Tennessee)

U.S. Appeals Court
REDUCTION

Parsons v. Pitzer, 149 F.3d 734 (7th Cir. 1998). A federal inmate petitioned for a writ of habeas corpus challenging a federal Bureau of Prisons (BOP) determination that he was not eligible for early release after he completed a drug treatment program. The district court denied the petition and the appeals court affirmed. The appeals court held that possession of a firearm by a convicted felon was a "crime of violence" that rendered the inmate ineligible for early release. (Federal Correctional Institute, Oxford, Wisconsin)

U.S. Appeals Court
PAROLE-REVOCATION
PAROLE-CONDITIONS

Robles v. U.S., 146 F.3d 1098 (9th Cir. 1998). An inmate petitioned for a writ of habeas corpus, challenging the authority of the U.S. Parole Commission to impose a second term of special parole after it revoked the original special parole. The district court denied the petition, but the appeals court reversed and remanded with instructions. The appeals court held that the Parole Commission is not authorized to impose a second term of special parole, but is confined to the imposition of ordinary parole. (U.S. Parole Commission)

U.S. Appeals Court
REDUCTION

Royal v. Tombone, 141 F.3d 596 (5th Cir. 1998). An inmate petitioned for habeas corpus relief when he was found to be ineligible for a sentence reduction following his completion of a drug abuse treatment program. The district court denied the petition and the appeals court affirmed. The appeals court held that the federal Bureau of Prison's program statement, that

considered bank robbery as a crime of violence, was a permissible interpretation of a federal statute that authorized sentence reductions. (Federal Correctional Institution, Seagoville, Texas)

U.S. Appeals Court
EX POST FACTO

Shaffer v. Saffle, 148 F.3d 1180 (10th Cir. 1998). A state prisoner brought a pro se § 1983 action challenging the constitutionality of a state statute that required him to provide a deoxyribonucleic acid (DNA) sample for the compilation of a DNA Offender Database. The district court dismissed the action and the appeals court affirmed. The appeals court held that the prisoner's rights against unreasonable searches and seizures and self-incrimination had not been violated. The appeals court also held that the prisoner's rights under the Free Exercise Clause and the Ex Post Facto clause had not been violated. The court noted that the statute was neutral and generally applicable, and was not applied to him differently because of his religious belief. The court also noted that the legislature expressed its intent that the statute apply retroactively. (Mack Alford Center, Oklahoma)

U.S. Appeals Court
CONDITIONS

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 Correctional Facility and Attica Correctional Facility, New York)

U.S. District Court
CREDIT

U.S. v. Mahmood, 19 F.Supp.2d 33 (E.D.N.Y. 1998). A prisoner challenged the federal Bureau of Prisons' (BOP) computation of credit for time served during his pretrial confinement on state and federal charges. The district court held that the prisoner was not entitled to credit on his federal sentence for his pretrial confinement because that time had been fully credited toward his state sentence. (United States Bureau of Prisons)

U.S. District Court
SUPERVISED RELEASE

U.S. v. Sanchez, 30 F.Supp.2d 595 (E.D.N.Y. 1998). A defendant was charged with violation of his conditions of supervised released, citing a violation that had occurred four years earlier. The defendant asked the court to dismiss the summons because it violated his due process rights. The district court denied the defendant's motion, finding that a four-year delay between the violation of conditions and the summons did not violate due process. The court noted that revocation of supervised release entails the loss of liberty worthy of some due process protection. (Department of Probation, District of New Jersey)

U.S. Appeals Court
PAROLE TRANSFER

Verner v. U.S. Parole Com'n, 150 F.3d 1172 (10th Cir. 1998). A Canadian offender who was transferred to the United States pursuant to the Treaty Between the United States and Canada on the Execution of Penal Sentences appealed a decision of the United States Parole Commission sentencing him to life imprisonment with no opportunity for parole. The appeals court affirmed the Commission's sentence, finding that the translation of the Canadian sentence of parolable life imprisonment to nonparolable life did not violate the treaty nor the statute governing transfer of offenders serving a sentence of imprisonment. (U.S. Parole Commission)

U.S. Appeals Court
REDUCTION OF SENTENCE

Wottlin v. Fleming, 136 F.3d 1032 (5th Cir. 1998). An inmate who had completed a substance abuse program petitioned for habeas relief, challenging Federal Bureau of Prisons (BOP) regulations making him ineligible for early release. The district court dismissed the petition, the inmate appealed, and the appeals court affirmed. The appeals court held that the BOP regulation that excludes inmates who have a prior conviction for homicide, forcible rape, robbery, or aggravated assault from eligibility for early release following completion of a substance abuse treatment program was a reasonable interpretation of the Violent Crime Control and Enforcement Act of 1994. The court noted that the BOP Program Statement regarding substance abuse treatment programs did not mandate early release and inmates who completed the program did not have a due-process liberty interest in early release. (Federal Correctional Institution, Bastrop, Texas)

1999

U.S. District Court
RESTITUTION

Alevras v. Snyder, 49 F.Supp.2d 1112 (E.D.Ark. 1999). A prisoner petitioned for habeas corpus relief challenging the legality of the federal Bureau of Prisons (BOP) Inmate Financial Responsibility Program (IFRP). The district court held that IFRP did not violate a statutory subsection governing the time and method of payment of fines or Article III. The court noted that the sentencing court ordered restitution to be paid in installments, which allowed the prison to withhold wages to pay court-ordered restitution. The district court reviewed conflicting appeals court decisions regarding this issue and concluded that requiring participation in IFRP was

appropriate. (Federal Correctional Institution in Forrest City, Arkansas)

U.S. Appeals Court
SENTENCE REDUCTION

Bellis v. Davis, 186 F.3d 1092 (8th Cir. 1999). Ten federal prisoners petitioned for writs of habeas corpus, challenging the policy of the Bureau of Prisons (BOP) under which they were ineligible for an early-release incentive by voluntary participation in resident drug abuse treatment programs. The district court granted the petitions, but the appeals court reversed and remanded. The appeals court held that the BOP acted within its authority by adopting regulations under which inmates who were convicted of being a felon in possession of a firearm, or had received an enhancement under Sentencing Guidelines for possession of a dangerous weapon during the commission of a federal drug offense, were ineligible for the early-release incentive. (Federal Prison Camp, Yankton, South Dakota)

U.S. District Court
CREDIT

Drummer v. Luttrell, 75 F.Supp.2d 796 (W.D.Tenn. 1999). An inmate brought a § 1983 action against corrections officials alleging that a disciplinary action violated her due process and Eighth Amendment rights. The court found that the inmate did not have a constitutional right to receive sentence credits nor to parole or early release, upholding the disciplinary decision to deprive the inmate of sentence credits. (Shelby County Correctional Center, Tennessee)

U.S. District Court
CAPITAL PUNISHMENT

Faulder v. Johnson, 99 F.Supp.2d 774 (S.D.Tex. 1999). A prisoner filed a § 1983 action alleging that he had been subjected to psychological torture as the result of repeated stays of his execution and that his right to consult with consular officials had been violated. The district court held that the prisoner's twenty-two year wait on death row did not violate the Eighth Amendment. (Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
MINIMUM PRE-SENTENCE REPORT

Goldberg v. Beeler, 82 F.Supp.2d 302 (D.N.J. 1999). A prisoner filed a habeas corpus petition challenging the calculation of his minimum length of sentence. The district court denied the petition finding that even if the prisoner's pre-sentence report contained inaccuracies, the Parole Commission is required to consider the report when making parole determinations. (Federal Correctional Institution, Fort Dix, New Jersey)

U.S. District Court
CREDIT

Harris v. City of New York, 44 F.Supp.2d 510 (S.D.N.Y. 1999). A paroled state prison inmate sued city and state officials alleging that they failed to properly credit time served, resulting in an unconstitutional delay in his eligibility for parole. The district court dismissed the case, holding that the inmate was not entitled to credit for time served awaiting sentencing on a previous, unrelated charge. (New York Department of Correctional Services, New York City Department of Corrections)

U.S. District Court
PRESENTENCE REPORT

Hill v. Goord, 63 F.Supp.2d 254 (E.D.N.Y. 1999). An inmate sued various state and county officers and agencies under § 1983 alleging that they failed to amend an incorrect statement in a pre-sentence report that was contained in his prison records, resulting in the wrongful denial of hisrequest to be released on parole supervision. The district court dismissed the action, finding that under the "Heck rule," a prisoner must establish that his conviction or sentenced has been overturned or invalidated by an administrative board, a state court or a federal habeas proceeding as a prerequisite to maintaining a § 1983 action. (N.Y. Dept. of Corr'l Services, Co. of Suffolk, NY)

U.S. Appeals Court
SEX OFFENDER

Kirby v. Siegelman, 195 F.3d 1285 (11th Cir. 1999). In separate cases, state prisoners challenged the application of a sex offender community notification statute to them in § 1983 actions. The cases were dismissed by the district court and were consolidated on appeal. The appeals court affirmed in part, reversed in part and remanded in part. The appeals court held that one prisoner, who had not been convicted of a sex crime, was entitled to due process before being classified as a sex offender because of the stigmatizing effect of being classified as a sex offender. The prisoner was classified based on prior sex-related charges rather than a conviction. (Alabama's Community Notification Statute)

U.S. Appeals Court
REDUCTION OF SENTENCE

MacFarlane v. Walter, 179 F.3d 1131 (9th Cir. 1999). After their state habeas petitions were denied, state prisoners petitioned for federal habeas corpus relief, challenging two counties' "good conduct" and "good performance" policies as they were applied to them. The district court granted summary judgment for the respondent corrections officials, but the appeals court reversed and remanded. The appeals court held that there was an equal protection violation in the counties' allowance of lesser good time credits for defendants who were detained pretrial in county jails because of their financial inability to post bail, than that allowed for defendants who were able to wait to serve their sentences until after sentencing to a state correctional facility. The counties' early release policies limited presentence detainees to a maximum good-conduct credit of 15% of the sentence imposed; the court noted that persons who had posted bail and served their entire sentence at a state correctional facility could end up serving 23 days less on a five- to six-year sentence. The court upheld the policies under which pretrial detainees were not eligible for participation in work and other programs through which they could earn good-performance credit, finding the counties had established a strong rational connection between the legislative means and purpose of protecting community safety. (Pierce and Clark County Jails, Washington)

U.S. Appeals Court
FINES

McGhee v. Clark, 166 F.3d 884 (7th Cir. 1999). A federal prisoner sought an injunction against the Bureau of Prisons (BOP) to prevent the collection of further sums from him in payment of his fine and special assessment. His petition was denied by the district court and the appeals court affirmed. The prisoner had been fined $5,000 and a special assessment of $50 had been imposed by the sentencing court, all due "in full immediately." The appeals court held

that the sentencing court was not required to establish a schedule of installment payments, and the sentencing court did not impermissibly delegate to the BOP the timing of payment of the fine by ordering immediate payment. The appeals court held that the use of the BOP's Inmate Financial Responsibility Program (IFRP) to schedule payment was proper. The court found that IFRP regulations permitted the BOP to accelerate the prisoner's payment of his fine and to count as available resources funds that the prisoner obtained from outside sources. (U.S. Penitentiary, Terre Haute, Indiana)

U.S. Appeals Court
REDUCTION

McLean v. Crabtree, 173 F.3d 1176 (9th Cir. 1999). Federal prisoners filed petitions for habeas corpus challenging the federal Bureau of Prisons denial of their requests for early release. The district court denied the petitions and the appeals court affirmed. The court upheld the Bureau's rule that excluded prisoners with detainers from sentence reduction eligibility under a substance abuse treatment statute, and the Bureau's conditioning of sentence reduction on the completion of a community-based treatment program. The appeals court found that the Bureau's detainer policy did not violate equal protection by allegedly operating to the peculiar disadvantage of aliens. (Federal Correctional Institute, Sheridan, Oregon)

U.S. Appeals Court
CLEMENCY
CAPITAL PUNISHMENT

Moody v. Rodriguez, 164 F.3d 893 (5th Cir. 1999). After unsuccessful state and federal habeas challenges and after being denied clemency by the Board of Pardons and Paroles, an inmate filed a § 1983 action three hours before his scheduled execution. The district court granted summary judgment for the defendants, finding that "the Texas clemency procedure provides the minimal procedural safeguards required by federal law." The appeals court affirmed and denied a motion to stay the execution, holding that it lacked jurisdiction to consider the inmate's § 1983 action, the only purpose of which was to delay his imminent execution. (Texas Board of Pardons and Paroles)

U.S. District Court
RESTITUTION

Phillips v. Booker, 76 F.Supp.2d 1183 (D.Kan. 1999). A prisoner filed a habeas corpus petition challenging the execution of his sentence because the Bureau of Prisons had delegated payments of court-ordered restitution through the Inmate Financial Responsibility Program (IFRP). The court denied the petition, finding that even though restitution was ordered to be paid immediately by the court it did not become void because it could not be paid in full immediately. The court found that the federal prisoner did not possess a liberty or property interest in his Federal Prison Industries job assignment and therefore he could be presented with the choice of assigning one-half of his pay to satisfy his restitution obligation or losing his job, without any violation of his due process rights. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
EQUAL PROTECTION
SEX OFFENDER

Prevard v. Fauver, 47 F.Supp.2d 539 (D.N.J. 1999). Inmates serving indeterminate sentences under a former New Jersey sex offender statute sued the state alleging that denial of work and commutation credits available to defendants under a new criminal code was unconstitutional. The district court held that the denial of credits did not violate due process, equal protection, or prohibitions against ex post facto laws and cruel and unusual punishment. The court held that offenders serving indeterminate sentences under a former sex offender law were not similarly situated to persons serving determinate sentences under a new criminal code. The court noted that even if the state's denial of work and commutation credits to persons convicted of sex offenses affected a liberty interest, the state had a rational basis, consistent with due process, for denying the credits. (Adult Diagnostic and Treatment Center, New Jersey)

U.S. District Court
GOOD-TIME

Resnick v. Adams, 37 F.Supp.2d 1154 (C.D.Cal. 1999). A presentence detainee filed a habeas corpus petition alleging that 27 days of good time credit were unlawfully taken from him as a sanction for violating a prison regulation. He petitioned to have the 27 days restored. The district court dismissed the petition, finding that denial of good time credit as a sanction for violating a prison regulation during a detainee's presentence incarceration was not prohibited, if the sanction is not excessive in light of the seriousness of the violation. While detained in a federal detention center a routine drug screening had detected morphine in the detainee's urine. (Federal Detention Center at Dublin, California, and United States Penitentiary at Lompoc, California)

U.S. Appeals Court
SEX OFFENDERS
EX POST FACTO

Roe v. Marcotte, 193 F.3d 72 (2nd Cir. 1999). Inmates challenged a statute requiring convicted sex offenders who were incarcerated as of the statute's effective date to submit a blood sample for analysis and inclusion in a DNA data bank. The district court dismissed the case and the appeals court affirmed. The appeals court held that the statute did not violate the Fourth Amendment's prohibition against unreasonable searches and did not violate the equal protection clause. (Connecticut Department of Correction)

U.S. Appeals Court
CAPITAL PUNISHMENT
EQUAL PROTECTION

Sheppard v. Early, 168 F.3d 689 (4th Cir. 1999). A state inmate convicted of capital murder brought a § 1983 action challenging a state statute that prescribes the time for setting an execution. The district court dismissed the case and the appeals court affirmed. The appeals court held that a Virginia statute that required the state to set an execution date approximately 60 to 70 days after receiving written notice that a federal court of appeals had denied habeas corpus relief, did not violate equal protection by limiting an inmate's time to file a petition for certiorari with the United States Supreme Court. The court found that the statute was rationally related to a legitimate state interest in the finality of its criminal judgments and in executing sentence on those who are determined by state law to be the most serious offenders. (Commonwealth of Virginia)

U.S. Supreme Court
CAPITAL PUNISH.

Stewart v. LaGrand, 119 S.Ct. 1018 (1999). An inmate who was sentenced to death petitioned for a writ of habeas corpus challenging the use of lethal gas as a cruel and unusual

form of execution. The district court denied the petition but the appeals court granted a certificate of appealability and enjoined the state from executing the prisoner by means of lethal gas. The United States Supreme Court reversed the appeals court decision and vacated the injunction. The Court held that the inmate had waived his claim that execution by lethal gas violated the Eighth Amendment by choosing to be executed with lethal gas rather than by lethal injection. (Arizona)

U.S. Appeals Court
RESTITUTION

U.S. v. Ballek, 170 F.3d 871 (9th Cir. 1999). A defendant was convicted in federal court of willfully failing to pay child support in violation of the Child Support Recovery Act (CSRA) and he appealed. The appeals court affirmed the conviction, holding that a willfulness finding could be based on the defendant's failure to seek available employment which would have earned him enough money to meet his child support obligations. The court held that CSRA did not violate the constitutional prohibition against slavery, noting that not all forced employment is constitutionally prohibited. The offender had been sentenced to six months imprisonment and ordered to pay $56,916 in past due child support and restitution. (U.S. District Court, Alaska)

U.S. District Court
FINE
RELEASE

Zakiya v. Reno, 52 F.Supp.2d 629 (E.D.Va. 1999). An inmate petitioned for habeas corpus relief and his petition was granted by the district court. The court ruled that the inmate, who refused to agree to pay a fine, could not be held longer than his judicially imposed sentence. The court noted that the executive branch may cut a sentence short, but altering the actual terms of the sentence and imposing a sentence in the first place are solely judicial acts. The court held that a statute that prohibited the release of a prisoner on supervision if he or she does not agree to pay an imposed fine authorizes the Bureau of Prison to deny good time credits, but does not authorize continued incarceration once the prisoner has served the entire sentence. (Federal Correctional Institution at Morgantown, West Virginia)

2000

U.S. Appeals Court
EX POST FACTO
SEX OFFENDER

Burr v. Snider, 234 F.3d 1052 (8th Cir. 2000). After his conviction for violating North Dakota's sex offender registration statute was affirmed, an offender petitioned for habeas corpus relief in federal district court. The court denied the petition and the offender appealed. The appeals court affirmed, finding that North Dakota's sex offender registration statute did not violate the constitutional prohibition against ex post facto punishment. The offender had moved to a new address without notifying police, in violation of the statute. (North Dakota)

U.S. Appeals Court
REDUCTION

Cook v. Wiley, 208 F.3d 1314 (11th Cir. 2000). An inmate challenged a federal Bureau of Prison (BOP) decision to deny him a sentence reduction for having completed a program because he had been convicted of being a felon in possession of a firearm. The district court dismissed the action and the inmate appealed. The appeals court affirmed, finding that the BOP reasonably interpreted the statute allowing the sentence reduction. (Fed. Prison Camp, Talladega, Alabama)

U.S. Appeals Court
RESTITUTION
PAROLE

Hutchings v. U.S. Parole Com'n, 201 F.3d 1006 (8th Cir. 2000). A prisoner petitioned for habeas corpus relief challenging the revocation of his parole for failure to pay restitution. The district court denied the petition and the appeals court affirmed. The prisoner had been paroled three times and each time his parole was revoked by the U.S. Parole Commission for failure to pay his court-ordered restitution. (United States Parole Commission)

U.S. Appeals Court
PROBATION-
REVOCATION

Jones v. Johnson, 230 F.3d 825 (5th Cir. 2000). A prisoner's petition for habeas corpus relief was denied by the district court and the prisoner appealed. The appeals court affirmed, finding that a two year delay in filing a probation-revocation charge against the probationer based on his driving while intoxicated (DWI) arrest did not violate due process, where the first seven months of the delay was attributable to the probationer's misrepresentations regarding the existence of his DWI arrest. (Texas Department of Criminal Justice)

U.S. Appeals Court
EX POST FACTO
PAROLE

Metheny v. Hammonds, 216 F.3d 1307 (11th Cir. 2000). Four Georgia state prisoners who were convicted as recidivists brought a § 1983 action challenging the retroactive application of a recidivist statute by the Georgia Board of Pardons and Paroles. The district court granted summary judgment in favor of the prisoners. The appeals court vacated and remanded, finding that retroactive application of the statute did not violate the Ex Post Facto Clause or the due process clause. The statute required the Board to consider recidivists convicted of a fourth felony to be ineligible for parole. (Georgia Board of Pardons and Paroles)

U.S. Appeals Court
CLEMENCY

Roll v. Carnahan, 225 F.3d 1016 (8th Cir. 2000). State death row inmates brought a pro se civil rights lawsuit seeking to enjoin their executions. The federal district court dismissed the action and the inmates appealed. The appeals court affirmed, finding that neither the state governor's current candidacy for the United States Senate nor the state's failure to establish a board of inquiry denied the inmates due process or equal protection with respect to clemency proceedings. The inmates had noted that one of the campaign issues was the granting of clemency petitions. The court noted that the decision to grant or deny clemency is left to the discretion of the governor under Missouri law. (Missouri State Department of Corrections)

U.S. Appeals Court
SUPERVISED
RELEASE
REVOCATION
EX POST FACTO

U.S. v. Bermudez-Plaza, 221 F.3d 231 (1st Cir. 2000). A district court revoked the original term of supervised release for a defendant after a probation officer notified the court of the defendant's alleged violations of supervised release conditions. The court ordered the defendant to serve nine months of imprisonment and another year of supervised release. The defendant appealed and the appeals court affirmed, finding that the imposition of a prison term and a new term of supervised

release did not violate the Ex Post Facto Clause. (U.S. District Court, District of Puerto Rico)

U.S. Appeals Court
CAPITAL
PUNISHMENT

U.S. v. Hammer, 226 F.3d 229 (3rd Cir. 2000). After an appeal was initiated on behalf of an offender who had been sentenced to death, the offender attempted to stop the appeal. The appeals court dismissed the appeal, ruling that the Federal Death Penalty Act did not preclude an offender from waiving the right to appeal the death sentence and that the determination that the offender could waive the right to appeal did not violate the Eighth Amendment. (United States Penitentiary, Allenwood, Pennsylvania)

U.S. Appeals Court
GUIDELINES
SENTENCE

U.S. v. Serafini, 233 F.3d 758 (3rd Cir. 2000). A state legislator who was convicted in federal district court of perjury appealed his conviction and sentence. The appeals court held that the district court's recommendation that the defendant's term of imprisonment be served in community confinement was not a final, reviewable order because a federal district court has no power to dictate or impose any place of confinement for the imprisonment portion of a defendant's sentence. (U.S. District Court, Middle District, Pennsylvania)

U.S. Appeals Court
REDUCTION

Warren v. Miles, 230 F.3d 688 (5th Cir. 2000). An offender convicted for drug charges petitioned for habeas corpus relief and was denied by the district court. The appeals court affirmed, finding that a revised federal Bureau of Prisons program statement that prohibits inmates convicted of drug-related conspiracy from receiving early release based on the completion of a drug abuse program if they were serving enhanced sentences for a possession of a weapon, did not violate the Ex Post Facto clause. The appeals court also held that the Bureau did not abuse its discretion by relying on the prisoner's sentence enhancement to categorically deny him consideration for early release. (Federal Correctional Institute at Bastrop, Texas)

U.S. Appeals Court
CLEMENCY
CAPITAL
PUNISHMENT

Young v. Hayes, 218 F.3d 850 (8th Cir. 2000). A prisoner under the sentence of death filed a habeas corpus petition alleging that the actions of a district attorney who threatened to fire an attorney under her supervision if she provided information to the Governor in connection with a clemency petition the prisoner wished to file, violated his due process rights. The district court granted summary judgment to the defendant but the appeals court reversed and remanded, granting a stay of execution. The appeals court held that the Due Process Clause does not require that a state have a clemency procedure, but does require that if such a procedure is created the state's own officials, must refrain from frustrating it by threatening the job of a witness. (Potosi Corr. Center, Missouri)

2001

U.S. Appeals Court
EXPIRATION

Diaz v. Kinkela, 253 F.3d 241 (6th Cir. 2001). A prisoner applied for habeas corpus relief, challenging his incarceration for the "bad time" portion of his sentence. The district court dismissed the application and the appeals court affirmed, finding that the application was moot because the prisoner had been released, and that the prisoner was not entitled to a sentence reduction. The prisoner's sentence had been extended in response to his bad behavior while confined, under the provisions of a state statute that was subsequently found to be unconstitutional. (Southern Ohio Correctional Facility)

U.S. Appeals Court
CLEMENCY

Gilreath v. State Bd. of Pardons and Paroles, 273 F.3d 932 (11th Cir. 2001). A capital murder defendant moved for a preliminary injunction seeking to stay his execution. The district court denied the motion, finding that the clemency proceeding in which the defendant had unsuccessfully sought relief did not result in the violation of his due process rights, even though two members of the clemency board were knowingly under investigation by the state attorney general's office, and one member of the board was absent from the meeting of the board at which people spoke on behalf of clemency. (Georgia Board of Pardons and Parole)

U.S. Appeals Court
EX POST FACTO
FINES

Myrie v. Commissioner, N.J. Dept. of Corrections, 267 F.3d 251 (3rd Cir. 2001). Prison inmates challenged the application of a New Jersey statute that required them to pay a ten percent surcharge on their purchases from a prison or jail commissary, in order to fund compensation of crime victims, alleging violations of their Double Jeopardy, Ex Post Facto, and Bill of Attainder rights. The district court granted summary judgment for the defendants and the inmates appealed. The appeals court affirmed, finding that the surcharge was not so punitive in purpose or effect that it could be viewed as a "punishment" in violation of the inmates' rights. The court held that the surcharge was not an excessive fine and that it did not offend constitutional due process guarantees. The court noted that purchases outside the prison context would otherwise have been subject to a 6% sales tax. (New Jersey)

U.S. District Court
CREDIT

Russo v. Johnson, 129 F.Supp.2d 1012 (S.D.Tex. 2001). A state prisoner petitioned for habeas corpus relief and the district court denied the petition. The court found that absent a state statute, the prisoner had no federal constitutional right to credit for time spent in out-of-state custody while he was an absconder from the state's criminal justice system. (Texas Department of Criminal Justice, Institutional Division)

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. Supreme Court
PROBATION-CONDITIONS

United States v. Knights, 121 S.Ct. 1955 (2001). A sheriff's deputy, acting with reasonable suspicion, searched a probationer's apartment and found evidence later used to indict him for conspiracy to commit arson, for possession of an unregistered destructive device, and for being a felon in possession of ammunition. A federal appeals court ruled that the evidence gathered in this manner had to be suppressed, even with reasonable suspicion, because the search was for an investigatory rather than probationary purpose. The U.S. Supreme Court unanimously reversed the appeals court, finding that a warrantless search in this case, supported by reasonable suspicion and authorized by a probation condition, satisfied the Fourth Amendment. According to the Court, the judge in the probationer's criminal case had "reasonably concluded" that the condition of submitting to searches would further the two primary goals of probation--rehabilitation and protecting society from future criminal violations. No more than a reasonable suspicion, the Court found, was required to search the probationer's house, and a warrant is unnecessary. (California)

U.S. Appeals Court
SUPERVISED RELEASE

U.S. v. Loy, 237 F.3d 251 (3rd Cir. 2001). An offender challenged the conditions of his supervised release prior to his release from a 36-month term of imprisonment. The district court entered an order amending the sentence and reimposing other conditions of release and the defendant appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the condition of supervised release that prohibited the defendant from possessing "all forms of pornography, including legal adult pornography" was unconstitutionally vague, but that a condition that prohibited the defendant from having unsupervised contact with minors was supported by evidence. (United State District Court for the Western District of Pennsylvania)

U.S. District Court
PROBATION-CONDITIONS

U.S. v. Replogle, 176 F.Supp.2d 960 (D.Neb. 2001). In a prosecution for drug possession, the defendant moved to suppress evidence found in his house. The district court denied the motion, finding that while the defendant had a legitimate expectation of privacy in his house and the search was not voluntary, the warrantless search was valid because it was conducted pursuant to a valid probation order. The court noted that the defendant's probation officer was authorized to conduct warrantless searches and the probation order stated that the probationer "shall consent" to such searches. The probation officer knew that the defendant had violated a condition of his probation and a judge had advised the officer that she could visit the probationer and conduct a search. (U.S. District Court, Nebraska)

U.S. District Court
CLEMENCY

Workman v. Summers, 136 F.Supp.2d 896 (M.D.Tenn. 2001). A Tennessee death row inmate brought a § 1983 action against state officials alleging he was denied due process in the state's clemency process. The district court denied the inmate's motion for a temporary restraining order staying his execution. The district court held that the inmate had received minimum due process in his clemency proceeding, and that the decision to grant clemency was a decision for the governor and was not reviewable by the federal district court. (Tennessee)

2002

U.S. Appeals Court
CLEMENCY

Anderson v. Davis, 279 F.3d 674 (9th Cir. 2002). An inmate who had been sentenced to death and who had exhausted his appeals brought an action against a state governor seeking a temporary restraining order and a permanent injunction against his execution. The district court rejected the requests and the inmate appealed. The appeals court denied the inmate's motion for an injunction. According to the appeals court, there was no evidence that showed that the governor made clemency decisions for prisoners sentenced to death on the basis of inappropriate considerations or capriciousness, as might constitute a due process violation. (California)

U.S. Appeals Court
FINES

Higgins v. Beyer, 293 F.3d 683 (3rd Cir. 2002). A state inmate brought a pro se § 1983 action against prison officials and employees, alleging violation of his statutory and due process rights arising from seizure of money derived from his veteran's disability benefits check to pay a court-ordered fine without a predeprivation hearing. The district court dismissed the case. The appeals court vacated and remanded, finding that a federal statute that prohibits attachment, levy or seizure of a veteran's disability benefits provides a federal right that is enforceable under § 1983. (ATDC, Avenel, New Jersey)

U.S. Appeals Court
SEX OFFENDER

Leamer v. Fauver, 288 F.3d 532 (3rd Cir. 2002). A state prisoner filed a § 1983 action challenging his placement on a prison's restricted activities program (RAP). The district court dismissed the case and the prisoner appealed. The appeals court reversed and remanded, finding that the state's unique former statutory scheme for sex offenders, which predicated the term of sentence on a prisoner's response to treatment, created a liberty interest in treatment and a right to treatment for the purposes of both procedural and substantive due process analyses. (Adult Diagnostic Treatment Center, New Jersey)

U.S. Appeals Court
FINES

Matheny v. Morrison, 307 F.3d 709 (8th Cir. 2002). Two defendants appealed a district court decision that dismissed their habeas actions in which they claimed that the federal Bureau of Prisons, through its Inmate Financial Responsibility Program (IFRP), illegally set the amount and timing of payments toward the financial obligations that were a part of their federal criminal

sentences. The appeals court affirmed, finding that the Bureau of Prisons had the discretion to place the inmates in the IFRP because the sentencing courts had ordered immediate payment of court-imposed fines. (Federal Correctional Institution, Forrest City, Arkansas)

U.S. Appeals Court
RESTITUTION
PROBATION-CONDITIONS

U.S. v. Braxtonbrown-Smith, 278 F.3d 1348 (D.C. Cir. 2002). An offender convicted in federal court appealed her conviction and sentence. The appeals court affirmed in part and remanded, finding that the offender's sentence could not give the Probation Office the authority to modify the monthly amount of restitution that the offender would be required to pay upon release from custody. (District of Columbia)

U.S. Appeals Court
SUPERVISED RELEASE
SUPER. RELEASE-CONDITIONS

U.S. v. Guagliardo, 278 F.3d 868 (9th Cir. 2002). A defendant convicted of possession of child pornography was sentenced to fifteen months imprisonment and three years of supervised release. The offender challenged the conditions of his supervised release and the appeals court affirmed in part, reversed in part and remanded for sentencing. The appeals court held that two provisions of the offender's supervised release—prohibiting him from possessing any pornography, and prohibiting him from residing in "close proximity" to places frequented by children—were unconstitutionally vague. (U.S. District Court, Central District of California)

U.S. District Court
SUPER. RELEASE-CONDITIONS

U.S. v. Mills, 186 F.Supp.2d 965 (E.D.Wis. 2002). An offender filed an emergency motion for modification of his conditions of supervised release. The district court held that the court was not authorized to impose halfway house confinement as a supervised release condition. The sentencing judge had ordered the offender to be imprisoned for forty-six months, followed by three years of supervised release, the first three months of which was to be spent in a halfway house. The court reconsidered its sentence and concluded that it did not have the authority under federal law to order halfway house confinement as a condition of supervised release. (Eastern District, Wisconsin)

U.S. Appeals Court
SUPERVISED RELEASE

U.S. v. Reyes, 283 F.3d 446 (2nd Cir. 2002). A federal offender who was serving a term of supervised release appealed denial of his motion to suppress evidence that was identified during a home visit by probation officers. The appeals court held that the offender had a severely diminished expectation of privacy, making it reasonable and lawful for probation officers to walk on to his driveway during a required home visit and to observe what they may see in plain view. The court noted that terms of the offender's supervised release mandated home visits "at any time." (U.S. District Court, Northern District of New York)

U.S. Appeals Court
SUPER. RELEASE-CONDITIONS

U.S. v. Warden, 291 F.3d 363 (5th Cir. 2002). A defendant appealed his sentence and the appeals court affirmed the original sentence. According to the appeals court, the addition of a special condition of supervised release requiring the defendant to contribute to the costs of drug and other treatment did not create a conflict with the oral pronouncement of sentence, and the district court could delegate to a probation officer the authority to determine the defendant's ability to pay the costs. (U.S. District Court for the Southern District of Texas)

2003

U.S. District Court
CREDIT

U.S. Ex Rel. Moore v. Conner, 284 F.Supp.2d 1092 (N.D.Ill. 2003). A federal prisoner filed a petition for a writ of habeas corpus, challenging the revocation of his parole based on his alleged use of drugs, commission of murder, and possession of a firearm. The district court denied the petition, finding that the prisoner was not prejudiced by a delay in his parole revocation hearing, and that he was not entitled to receive federal sentence credit and good time credit for time he spent in state custody. (U.S. District Court, Northern District, Illinois)

U.S. District Court
PROBATION- REVOCATION

U.S. v. Stegman, 295 F.Supp.2d 542 (D.Md. 2003). The government filed a notice of violation of conditions of supervised release after an offender refused to comply with a probation officer's order to submit a blood specimen pursuant to the DNA Analysis Backlog Elimination Act. The offender moved to dismiss the case and the district court denied the motion. The court held that the application of the Act did not violate the Ex Post Facto Clause, did not violate the Fourth Amendment, did not violate the separation of powers doctrine, and did not violate the offender's double jeopardy rights. (Maryland)

2004

U.S. District Court
SEX OFFENDERS
DOUBLE JEOPARDY

Atwood v. Vilsack, 338 F.Supp.2d 985 (S.D.Iowa 2004). Pretrial detainees who were awaiting hearings on their sexually violent predator (SVP) petitions, brought a class action against a state corrections department alleging denial of speedy justice. The district court granted summary judgment for the defendants in part and denied it in part. The court held that the failure of the corrections department to initiate proceedings for civil commitment of sexually violent predators until immediately prior to discharge of their criminal sentences did not violate their speedy trial rights, because the department was under no duty to minimize time in custody by ensuring that commitment proceedings overlapped substantially with criminal incarceration. The court found that a seven-month average time for trying an SVP case after appointment of defense counsel was not presumptively prejudicial. According to the court, a civil commitment candidate does not have a speedy trial right, until such time as he is identified by the statutory process to be a candidate for commitment. The court held that even though the SVP Act stated that the purpose of pretrial detention was for evaluation, and the detainees were held for periods exceeding the time needed for evaluation, the Act also provided for a safekeeping component. The court concluded that denial

of bail for the detainees did not violate their due process rights, where the detention was premised upon a judge's probable cause finding and a determination of mental abnormality and dangerousness was made at the outset of confinement. The court held that the conditions of the detainees' confinement violated their due process rights because the conditions were not reasonably related to the government's objective of preventing them from harming themselves or others. The detainees were kept in lockdown the majority of the day, denied reasonable access to visitors, telephones, educational programming, mental health treatment, recreation, exercise, religious services, medical care, and hygiene. The court noted that when the detainees' conditions are harsher than the conditions of criminal inmates, due process cannot be satisfied unless the conditions are reasonably related to the purpose of confinement. The court found that the implementation of the act, which resulted in an additional period of "dead time" incarceration, violated the double jeopardy rights of detainees who had previously served criminal sentences. (Iowa Department of Corrections)

U.S. District Court
CREDIT

Hughes v. Slade, 347 F.Supp.2d 821 (C.D.Cal. 2004). A prisoner convicted for attempted extortion petitioned for habeas corpus relief, challenging the denial of sentence credit for time served in a Mexican jail while awaiting extradition to the United States. The district court granted the petition, finding that the prisoner was entitled to credit for time served in the Mexican jail. The court held that the prisoner was not required to have been exclusively in on federal charges relating to his sentence for extortion in order to be eligible for sentence credit. (Federal Correctional Institute, Victorville, California)

U.S. Appeals Court
PAROLE
EX POST FACTO

Mickens-Thomas v. Vaughn, 355 F.3d 294 (3rd Cir. 2004). After remand from the appeals court, a district court denied a prisoner's petition for habeas corpus relief and the prisoner appealed. The appeals court vacated and remanded. The appeals court held that a parole board's use of known but hitherto uncounted historical factors in denying the prisoner's parole application, after the prisoner brought legal actions challenging the board, created a sufficient appearance of vindictiveness to justify voiding any consideration of those newly-added factors. The court found that unconditional habeas corpus relief was the appropriate remedy for the parole board's willful failure to comply with the court's mandate not to consider factors found to be in violation of ex post facto prohibitions. (Pennsylvania Board of Pardons)

U.S. District Court
PROBATION-
CONDITIONS

Pelland v. Rhode Island, 317 F.Supp.2d 86 (D.R.I. 2004). A sex offender probationer challenged Rhode Island's enforcement of a policy that curtailed the right of sex offender probationers to travel interstate. The district court entered judgment for the state, finding that the probationer had no right to travel interstate, and the policy did not violate equal protection nor result in an Ex Post Facto violation. The court noted that the policy did not proscribe interstate travel altogether, but merely imposed various conditions that the Department of Corrections had deemed useful for monitoring the movement of sex offenders who were on probation (Rhode Island Department of Corrections)

U.S. District Court
CREDIT

Royal v. Durison, 319 F.Supp.2d 534 (E.D.Pa. 2004). A state inmate filed a § 1983 action alleging he was detained in excess of the statutorily prescribed maximum for the crimes for which he was convicted, and that prison officials failed to consider his request for adjustment of his pre-commitment time. The district court granted summary judgment in favor of the defendants, finding that the director of classification for a city prison system was not deliberately indifferent to the inmate's claim, that the clerk responsible for keeping records used to determine pre-commitment time had no authority to calculate the inmate's sentence, and officials had meaningfully and expeditiously considered the inmate's claim. The court noted that the director investigated the circumstances around the inmate's multiple arrests after he was notified of a possible miscalculation, and notified the inmate in two separate correspondences that he was unable to change the period of the sentence by crediting time served. (Philadelphia Prison System, Pennsylvania)

U.S. Appeals Court
GUIDELINES

U.S. v. Cuello, 357 F.3d 162 (2nd Cir. 2004). A defendant convicted of being a felon in possession of a firearm challenged his sentence. The appeals court affirmed, finding that the defendant's youthful offender adjudication under state law counted as a prior adult conviction in determining the base offense level under the Sentencing Guideline for weapons convictions. (United States District Court for the Southern District of New York)

U.S. Appeals Court
PROBATION-
CONDITIONS

U.S. v. Garcia-Mejia, 394 F.3d 396 (5th Cir. 2004). A defendant appealed a condition of supervised release that prohibited him from possessing dangerous weapons, claiming it was vague and overly broad. The appeals court affirmed, finding that the defendant would only violate the condition if he possessed a "dangerous weapon" in a context that, by the dictates of common sense, had no legitimate everyday use. The court noted that the condition would not prevent the defendant from having a steak knife to cut meat when he was eating in a restaurant, but that it would prevent him from carrying a steak knife in his pocket for protection. (U.S. District Court, Southern District, Texas)

U.S. Appeals Court
SUPER. RELEASE-
CONDITIONS

U.S. v. Gementera, 379 F.3d 596 (9th Cir. 2004). An offender who pled guilty to mail theft was sentenced to supervised release and he appealed his sentence. The appeals court affirmed, finding that a supervised release condition that required the offender to spend a day standing outside a post office wearing a signboard that stated "I stole mail. This is my punishment" was reasonably related to the legitimate statutory objective of rehabilitation. The court also held that the

condition did not violate the Eighth Amendment's prohibition against the infliction of cruel and unusual punishment. (Northern District of California)

U.S. Appeals Court
RESTITUTION

U.S. v. Patrick V., 359 F.3d 3 (1st Cir. 2004). A juvenile was adjudicated delinquent under the Federal Juvenile Delinquency Act (FJDA) after he pleaded guilty to the charge of arson causing extensive property damage. The district court sentenced the juvenile to 30 months detention followed by 27 months supervised release, and made the juvenile jointly liable for restitution in the amount of $728,142. The juvenile appealed. The appeals court affirmed in part and remanded. The appeals court held that the imposition of restitution in the amount $728,142 was not an abuse of discretion. The court instructed the district court to determine the appropriateness of the detention facility based on a more developed record. (United States District Court for the District of Maine)

U.S. Appeals Court
PROBATION-
CONDITIONS

U.S. v. Williams, 356 F.3d 1045 (9th Cir. 2004). A defendant appealed a condition of supervised released imposed by the district court, which required him to take psychotropic and other medications prescribed for him by physicians treating his mental illness. The appeals court vacated in part and remanded, finding that the district court abused its discretion in imposing mandatory medication without making findings on a medically-informed record to support its condition. (U.S. District Court, Oregon)

2005

U.S. Appeals Court
DELAY

Bonebrake v. Norris, 417 F.3d 938 (8th Cir. 2005). An offender appealed her state conviction of possession of a controlled substance with the intent to deliver. The federal court granted her habeas corpus petition. The state appealed and the appeals court reversed. The court held that the state's four-year delay in incarcerating the offender did not amount to a waiver of incarceration under the Due Process Clause. Neither the district attorney's office nor law enforcement personnel took any steps to take the offender into custody after the state appellate court affirmed her conviction and sentence, and the prisoner was not in hiding. (Yell County Jail, Arkansas)

U.S. District Court
EX POST FACTO
RECOMMENDATIONS

Castellini v. Lappin, 365 F.Supp.2d 197 (D.Mass. 2005). A federal prisoner sued the director of the federal Bureau of Prisons seeking a preliminary injunction to bar the termination of the "boot camp" shock incarceration program until the Bureau complied with administrative regulations, and asking to be considered for inclusion in the program. The district court issued a preliminary injunction, enjoining the Bureau from terminating the program until it complied with the Administrative Procedures Act (APA) and instructing the Bureau to consider the prisoner's eligibility for the program in good faith. The court found that the Bureau had the discretionary authority to close the program because Congress did not make a specific appropriation covering the program. The court noted that the Bureau complied with the notice and comment requirements of APA when it created the program and when it made numerous changes in program regulations. The court found that failing to consider the prisoner for the program was a violation of the ex post facto clause because the prisoner had requested consideration before termination was announced. The prisoner's sentence included a "boot camp" recommendation. (Shock Incarceration Program, Federal Bureau of Prisons)

U.S. Appeals Court
PROBATION-
REVOCATION
PAROLE

Dawson v. Newman, 419 F.3d 656 (7th Cir. 2005). A former probationer brought a state court § 1983 action against a county superior court judge, county clerk of court, state corrections department and parole officials, alleging that his incarceration was wrongfully continued and he that he was wrongfully placed on parole supervision after his probation revocation was overturned on appeal. The district court dismissed the action and the probationer appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the district court could not dismiss claims against the clerk, who had not moved for dismissal. The court found that a county superior court judge's failure to transmit a release order to the state department of corrections for the probationer whose probation was improperly revoked, was a judicial act and was not administrative or ministerial in nature, entitling the judge to absolute judicial immunity. The court held that parole officials were not entitled to absolute judicial immunity because their acts did not involve acts analogous to those performed by judges, but involved performance of their day-to-day duties in supervising parolees. The court noted that absolute judicial immunity is not limited to government officials with the title of judge. (Indiana Department of Corrections, Madison County Superior Court)

U.S. Appeals Court
PARDON

Hirschberg v. Commodity Futures Trading, 414 F.3d 679 (7th Cir. 2005). A former commodities broker whose registration had been revoked after he was convicted of mail fraud challenged the denial of his registration by the Commodity Futures Trading Commission (CFTC) following his presidential pardon. The appeals court held that the CFTC did not violate the presidential pardon power by denying the broker's post-pardon application for registration, noting that a presidential pardon does not wipe out the lack of honesty and integrity inherent in the factual predicates that supported the broker's mail fraud conviction. (Commodities Futures Trading Commission)

U.S. District Court
SENTENCE

Moss v. Apker, 376 F.Supp.2d 416 (S.D.N.Y. 2005). A prisoner brought a habeas corpus action to challenge the application of the federal Bureau of Prisons (BOP) policy that categorically restricted prisoner transfers to community corrections centers (CCCs) to the last ten percent of their sentences, not to exceed six months. The district court denied the petition. The court held that the challenge to an earlier version of the policy was mooted, and that the new policy complied

with the notice and comment rulemaking requirements of the Administrative Procedures Act (APA). The court found that the BOP reasonably interpreted the statutes as giving it discretion to limit transfers to a statutory minimum period. The court found that the retroactive application of the policy did not violate the Ex Post Facto Clause. (Federal Corr'l Institution, Otisville, N.Y.)

U.S. District Court
SENTENCE

Rickenbacker v. *U.S.*, 365 F.Supp.2d 347 (E.D.N.Y. 2005). After pleading guilty to credit card fraud and being sentenced to 24 months of imprisonment, a defendant moved to vacate, set aside, or correct the sentence. The district court denied the motion. The court held that defense counsel was not deficient in failing to move for a downward departure of the defendant's sentence based on perceived hardships the defendant endured while being detained prior to sentencing. According to the court, the alleged substandard conditions, consisting of being served food that the defendant believed had been accessed by rodents, and not being provided with a fully stocked library, were not conditions that rose to the level that would warrant a downward departure. The defendant had been served bread that rodents had apparently partially eaten, and in one instance a mouse had created a tunnel inside of the bread. (Nassau County Correctional Center, N.Y.)

U.S. Appeals Court
CREDIT

U.S. v. *Barfield*, 396 F.3d 1144 (11th Cir. 2005). A defendant appealed a district court order that lifted a stay on the execution of her sentence. The district court affirmed, finding that the defendant was not entitled to credit for time spent erroneously at liberty when there was a delay in executing her sentence, and that an eight-year delay in the enforcement of her sentence did not violate due process. The court noted that the government was acting under the belief, based on representations by the defendant, that her death was imminent when it delayed enforcement to allow her to spend time with her family. (U.S. District Court, Middle District, Florida)

U.S. District Court
PLACE OF IMPRISONMENT
RECOMMENDATION

U.S. v. *Guerrette*, 289 F.Supp.2d 10 (D.Me. 2005). An offender was designated to be incarcerated at a certain facility and he moved to amend the judgment and to recommend incarceration at another facility that would be closer to his family. The district court denied the motion, finding that a sentencing court's recommendation to the Bureau of Prisons regarding the place of imprisonment is both non-binding and non-reviewable. The court noted that the federal Bureau of Prisons retains the statutory authority and responsibility to choose the place of imprisonment of a federal prisoner. (Federal Prison Camp, Fort Dix, New Jersey)

U.S. District Court
RECOMMENDATION

U.S. v. *Paige*, 369 F.Supp.2d 1257 (D.Mont. 2005). A federal prisoner filed a habeas petition challenging the Bureau of Prisons (BOP) policy that precluded his placement in a community corrections center, as recommended by the sentencing court. The district court granted the petition, finding that the prisoner was not required to first exhaust his administrative remedies before the court could consider the petition, because by the time the inmate exhausted every available administrative remedy he would nearly be done serving his entire sentence. The court held that the statutes governing placement of inmates in prerelease custody did not authorize the BOP policy, under which inmates were designated to a community corrections center only for the lesser of six months or ten percent of their sentence. The court ordered the BOP to consider the appropriateness of transferring the inmate to a community confinement center. (Federal Correctional Center, Florence, Colorado)

U.S. Appeals Court
LIBERTY INTEREST
GOOD-TIME

Wilson v. *Jones*, 430 F.3d 1113 (10th Cir. 2005). A state inmate petitioned for a writ of habeas corpus, challenging on due process grounds a misconduct conviction that caused him to be demoted to a non-credit-earning prisoner. The district court denied the petition and the inmate appealed. The appeals court reversed and remanded, ordering the issuance of a writ on remand. The court held that the misconduct conviction reduced the inmate's credit-earning class in a manner that inevitably affected the direction of his sentence and therefore deprived the inmate of a liberty interest. According to the court, officials violated the inmate's due process rights by convicting him without any evidence. (Great Plains Correctional Facility, Oklahoma)

2006

U.S. District Court
PAROLE
EX POST FACTO

Michael v. *Ghee*, 411 F.Supp.2d 813 (N.D.Ohio 2006). Ohio "old law" inmates serving indeterminate sentences brought a § 1983 action, alleging that the state's parole system was unconstitutional. The state moved to dismiss and for summary judgment. The district court granted summary judgment for the state. The court held that the inmates had no valid procedural due process claim and that the state had rational reasons, satisfying equal protection, for requiring "old law" inmates to continue to serve their indeterminate sentences, subject to parole board determinations, after the law was changed to provide for exact sentences and the elimination of parole. According to the court, the parole guidelines promulgated in 1998 had a rational basis and the parole guidelines were not laws, subject to the ex post facto clause. The court noted that state law makes parole discretionary, and therefore inmates do not have a due process liberty interest in parole under state law. Since the inmates did not have a liberty interest in parole itself, they could not have a liberty interest in parole consideration or other aspects of parole procedures, and thus had no procedural due process claim. The court found that the state had several rational reasons, satisfying equal protection, for requiring so-called "old law" inmates to continue to serve their indeterminate sentences. The reasons included the desire to avoid retroactive legislation and alteration of sentences, to give "old law" inmates an incentive to obey prison regulations, and to acknowledge the seriousness of the convicted offenses. (Ohio Adult Parole Authority and Chillicothe Correctional Institution)

U.S. District Court
EX POST FACTO
PAROLE
EQUAL PROTECTION

Pennsylvania Prison Society v. *Rendell*, 419 F.Supp.2d 651 (M.D.Pa. 2006). An advocacy group brought an action in state court challenging the legality of proposed changes to the state constitution with regard to pardoning powers and the state Board of Pardons. Following approval of the changes by the electorate, the defendants removed the action to federal court. After state-law claims were remanded and the defendants prevailed on appeal before the state supreme court, the group filed an amended complaint, alleging that the constitutional amendments violated the Due Process Clause, the Ex Post Facto Clause, the Equal Protection Clause, the Eighth Amendment, and the Guarantee Clause. The parties cross-moved for summary judgment. The district court held that including a crime

victim on a state pardon board, even when the recommendation for a pardon or commutation must be unanimous before it may be considered by the governor, does not violate due process. The court found that the retroactive application of the amendments providing for the inclusion of a crime victim on the Board of Pardons did not violate the Ex Post Facto Clause, but the court held that the retroactive application of the amendments requiring a unanimous vote for the Board of Pardons to recommend a commutation violated the Ex Post Facto Clause. The ballot question that proposed the amendments read: *Shall the Pennsylvania Constitution be amended to require a unanimous recommendation of the Board of Pardons before the Governor can pardon or commute the death sentence of an individual sentenced in a criminal case to death or life imprisonment, to require only a majority vote of the Senate to approve the Governor's appointments to the Board, and to substitute a crime victim for an attorney and a corrections expert for a penologist as Board members?* (Penn. Board of Pardons)

U.S. District Court
GUIDELINES

U.S. v. *Shelton*, 431 F.Supp.2d 675 (E.D.Tex. 2006). An inmate was convicted of forcibly assaulting a correctional officer, and a sentencing hearing was held. The district court held that a sentence of 36 months' imprisonment, exceeding the sentencing guidelines range of 12 to 18 months, was warranted for the inmate's conviction for forcibly assaulting a correctional officer by throwing feces and urine that struck the officer in the head, face, and chest. The court noted that the inmate's conduct was more than mere physical contact, and subjected the officer to the risk of a host of infectious diseases. The officer had to be treated with a cocktail of drugs to protect against such diseases, and the court held that the need for adequate deterrence was important due to prevalence of such assaults by prisoners. (Texas)

U.S. Appeals Court
SEX OFFENDERS
EX POST FACTO

Weems v. *Little Rock Police Dept,*, 453 F.3d 1010 (8th Cir. 2006). A registered sex offender brought a civil rights suit challenging the provisions of the Arkansas Sex Offender Registration Act that required sex offenders to register, and the provision of the statute that prohibited certain registered sex offenders from living within two thousand feet of a school or a daycare center. The district court denied the offenders' motion for class certification and dismissed the suit for failure to state a claim. The offender appealed. The appeals court affirmed. The court held: (1) the residency restriction did not violate substantive due process; (2) the residency restriction did not violate equal protection by treating the high-risk offenders who did not own property differently from the property-owning high risk offenders or from low-risk offenders; (3) the restrictions did not violate a constitutional right to travel; (4) the restriction did not constitute an unconstitutional ex post facto law as applied to the offenders who sustained convictions prior to the enactment of the statute; and (5) the offenders were not deprived of any liberty interest in avoiding a risk assessment without procedural due process. The court held that the statute rationally advanced a legitimate government purpose of protecting children from the most dangerous sex offenders by reducing their proximity to the locations frequented by children, that the statute was intended to be regulatory and non-punitive, and was not punitive in effect. (Arkansas General Assembly, Sex and Child Offender Registration Act)

2007

U.S. District Court
EX POST FACTO
PAROLE

Edwards v. *Pa. Bd. of Prob. & Parole,* 523 F.Supp.2d 462 (E.D.Pa. 2007). A prisoner filed a § 1983 suit, seeking injunctive and declaratory relief against a Board of Probation and Parole, claiming violations of the Ex Post Facto Clause and Eighth Amendment, and asserting that his parole was denied in retaliation for exercising his constitutional rights. The district court granted summary judgment in favor of the board. The court noted that the Ex Post Facto Clause applies to a statute or policy change that alters the definition of criminal conduct or increases the penalty by which a crime is punishable. Under Pennsylvania law, although parole is an alteration of the terms of confinement, a parolee continues to serve his unexpired sentence until its conclusion. According to the court, under Pennsylvania law, a "parole" is not an act of clemency but a penological measure for the disciplinary treatment of prisoners who seem capable of rehabilitation outside of prison walls; parole does not set aside or affect the sentence, and the convict remains in the legal custody of the state and under the control of its agents, subject at any time for breach of condition to be returned to the penal institution. The court held that denial of the prisoner's re-parole by Board of Probation and Parole, after his conviction as a parole violator, was not re-imposition of the prisoner's unexpired life sentence, in violation of the Ex Post Facto Clause, but rather, under Pennsylvania law, the prisoner's sentence was not set aside by his parole. According to the court, the prisoner remained in the legal custody of the warden until expiration of his sentence, and the prisoner had no protected liberty interest beyond that of any other prisoner eligible to be considered for parole while serving out the remainder of a maximum sentence. The court held that changes to the Pennsylvania Parole Act did not create a significant risk of increasing the prisoner's punishment in violation of the Ex Post Facto Clause, based on the Board of Probation and Parole's denial of the prisoner's re-parole due to factors of prior parole failures and lack of remorse, since the relative weight of such factors in the parole calculus of amendments to the Parole Act did not change, and the prisoner produced no evidence that the change in the Parole Act had any effect on the Board's decision. (Pennsylvania Board of Probation and Parole)

U.S. Appeals Court
EX POST FACTO
EQUAL PROTECTION

Michael v. *Ghee,* 498 F.3d 372 (6th Cir. 2007). Inmates in Ohio correctional facilities who were sentenced prior to Ohio's enactment of a revised sentencing system on July 1, 1996, brought an action in state court claiming that lack of retroactivity of the new sentencing scheme and the implementation of the 1998 parole guidelines violated the Ex Post Facto, Due Process, and Equal Protection Clauses of the Constitution, as well as various provisions of state law. After the case was removed to federal district court, the court granted the state defendants' motion for dismissal and for summary judgment. The inmates appealed. The appeals court affirmed. The court held that the state's decision not to apply the new sentencing law retroactively and to adopt new parole guidelines had a rational basis, and the retroactive application of the 1998 Ohio parole guidelines did not violate the Ex Post Facto Clause.(Ohio Adult Parole Authority)

U.S. Appeals Court
PARDON

Pennsylvania Prison Soc. v. ***Cortes***, 508 F.3d 156 (3rd Cir. 2007). State prisoners, several non-profit advocacy and prisoner rights groups, and several state voters and qualified taxpayers brought an action challenging amendments to the Pennsylvania constitution changing the composition of Board of Pardons and voting requirements for obtaining a pardon or commutation of sentence. The district court granted in part and denied in part the parties' cross-motions for summary judgment. The parties appealed. The appeals court dismissed and remanded. The court held that the parties did not have standing. According to the court, evidence tended to show that the absolute number of Board of Pardon recommendations for commutations had decreased after amendments to the Pennsylvania constitution changed the composition of the Board and voting requirements for obtaining a pardon or commutation of sentence, but this failed to meet the causation element for standing to challenge the constitutionality of amendments, where the decrease had begun two years prior to the amendments. (Pennsylvania Board of Pardons)

U.S. Appeals Court
FINES
INDIGENCY

Powers v. ***Hamilton County Public Defender Com'n***, 501 F.3d 592 (6th Cir. 2007). A former prisoner filed a putative § 1983 class action, alleging that his constitutional rights were violated by the county public defender's policy or custom of failing to seek indigency hearings on behalf of criminal defendants facing jail time for unpaid fines. The district court granted the motion for class certification, and granted summary judgment in favor of the arrestee on the issue of liability. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that: (1) the alleged automatic incarceration of the arrestee for his failure to pay fine, without conducting an indigency hearing to determine his ability to pay the fine, violated due process; (2) the public defender's failure to request an indigency hearing was the moving force behind prisoner's failure to receive an indigency hearing; (3) the public defender acted under the color of state law; and (4) fact issues precluded summary judgment. (Hamilton County Public Defender Office and Hamilton County Public Defender Commission, Ohio)

U.S. District Court
CREDIT
ORIGINAL SENTENCE
PROBATION-
REVOCATION

Thompson v. ***District of Columbia Dept. of Corrections***, 511 F.Supp.2d 111 (D.D.C. 2007). A federal prisoner filed a petition for a writ of habeas corpus alleging that his custody, based on a parole violator warrant issued by the United States Parole Commission, unlawfully extended his sentence beyond the expiration date. The district court denied the petition. The court held that the prisoner's custody did not unlawfully extend his sentence beyond the expiration date. According to the court, the Commission did not usurp a judicial function in violation of the separation of powers when it rescinded the prisoner's street-time credit upon each of his parole revocations. The court noted that the number of days he spent on parole was properly rescinded for each of his revocations, and therefore the days no longer counted towards the service of his prison term. (District of Columbia Department of Corrections)

U.S. Appeals Court
SUPERVISED RELEASE-
CONDITIONS

U.S. v. ***Betts***, 511 F.3d 872 (9th Cir. 2007). A defendant appealed the sentence imposed by the district court for conspiracy, challenging various conditions of supervised release. The appeals court vacated the sentence and remanded the case. The court held that the conditions of supervised release improperly delegated to a probation officer the decision as to how much of any windfall received by defendant would be applied to his restitution obligation. The court also found that the condition of supervised release prohibiting the defendant from drinking alcohol was improper, where there was nothing in the record to suggest that the judge thought there was any past abuse of alcohol or any relationship between alcohol and the defendant's crime. (United States District Court for the Central District of California)

U.S. Appeals Court
SUPERVISED RELEASE

U.S. v. ***Kriesel***, 508 F.3d 941 (9th Cir. 2007). The government petitioned to revoke supervised release of a felon who refused to submit a DNA sample. In response, the convicted felon challenged the constitutionality of the Justice for All Act, which expanded coverage of the DNA Act to require DNA samples from all convicted felons on supervised release. The felon also challenged the regulation issued pursuant to the Justice for All Act. The district court upheld the constitutionality of the Justice for All Act and the validity of the regulation. The felon appealed. The appeals court affirmed. The court held that requiring a convicted felon on supervised release to provide a DNA sample, even through drawing of blood, did not constitute an illegal search. The court found that the government's significant interests in identifying supervised releasees, preventing recidivism, and solving past crimes outweighed the diminished privacy interests of the convicted felon. (United States District Court for the Western District of Washington)

U.S. District Court
RESTITUTION

U.S. v. ***Young***, 533 F.Supp.2d 1086 (D.Nev. 2007). A federal prisoner who had been ordered to pay restitution in the amount of $457,740 and a penalty assessment in the amount of $3,300 moved to set aside the schedule of payments. The district court denied the motion. The court held that the defendant's participation in the federal Bureau of Prison's (BOP) Inmate Financial Responsibility Program (IFRP), which allowed the BOP to withhold $50 per month from the defendant's account, was not under duress, and that withholding 21 percent of the defendant's monthly income was not egregious or unreasonable. The court noted that the prisoner earns approximately $57 while imprisoned and that he typically receives a bonus of approximately $28 per month, bringing his total monthly earnings to approximately $85. The prisoner also receives approximately $150 per month from family members, making his total monthly income $235. (Nevada)

2008

U.S. District Court
PAROLE
CREDIT

Garner v. ***Caulfield***, 584 F.Supp.2d 167 (D.D.C. 2008). A parolee filed a habeas petition to challenge his detention following revocation of his parole. The district court denied the petition. The court held that the parolee was not entitled to credit toward service of his sentence for his stay at a residential program akin to placement in a halfway house, which was a condition of parole. The court found that the Parole Commission

issued a valid parole violator warrant before the date on which the petitioner would have reached his full-term expiration date, and therefore it was authorized to revoke the petitioner's parole. (United States Parole Commission, District of Columbia)

U.S. District Court
CREDIT
EXPIRATION

Huff v. ***Sanders***, 632 F.Supp.2d 903 (E.D.Ark. 2008). A federal prison inmate brought a habeas corpus petition, challenging the government's designation of the date of commencement of his sentence, and seeking additional presentence detention credit. The district court granted the petition in part and denied in part. The court held that: (1) the inmate satisfied the administrative exhaustion requirement even though he failed to comply with the Bureau of Prisons' (BOP) demands as to the form of the documents; (2) the federal sentence commenced on the date that the inmate was sentenced for federal charges and remanded to the custody of United States Marshal; (3) the inmate was entitled to credit against his federal sentence for all of his presentence incarceration; but (4) the inmate was not entitled to presentence detention credit for time spent in a residential drug treatment center. (Federal Detention Center, Houston, Texas, and Federal Correctional Institution, Oakdale, Louisiana)

U.S. Appeals Court
LIBERTY INTEREST
ORIGINAL SENTENCE

Jenkins v. ***Currier***, 514 F.3d 1030 (10th Cir. 2008). A state prisoner brought a pro se § 1983 action against state officials alleging that the officials violated his constitutional rights and state law when they took him into custody without a warrant or a probable cause hearing, and transferred him to a correctional facility in order for him to serve his previously imposed sentence. The district court dismissed the prisoner's claims with prejudice. The prisoner appealed. The appeals court affirmed. The court noted that under Oklahoma law, a convicted defendant who is at liberty without having served his sentence may be arrested as on escape and ordered into custody on the unexecuted judgment. According to the court, state officials did not violate the Fourth Amendment when they seized the state prisoner without a warrant, after having been released from federal custody erroneously, so that he could serve the remainder of his unfinished state sentence. The court noted that the officials had reason to believe that the prisoner had not completed serving his state sentences and there were no special circumstances that would have made his otherwise permissible arrest unreasonable. The court also found that the prisoner had no due process right to a hearing when he was taken back into custody. (Oklahoma)

U.S. District Court
RESTITUTION

Johnson v. ***Bredesen***, 579 F.Supp.2d 1044 (M.D.Tenn. 2008). Convicted felons who had served their sentences brought an action against state and local officials seeking to invalidate portions of a Tennessee Code that conditioned the restoration of their voting rights upon their payment of certain financial obligations, including restitution and child support. The district court granted judgment on the pleadings to the defendants. The court held that the statutory provision: (1) did not create a suspect classification; (2) did not violate equal protection; (3) did not violate the Twenty-Fourth Amendment; and (4) did not violate the Ex Post Facto Clause. According to the court, the state had an interest in protecting the ballot box from felons who continued to break the law by not abiding by enforceable court orders, the state had a strong public policy interest in encouraging the payment of child support and thereby promoting the welfare of children, and the state had a legitimate interest in encouraging convicted felons to complete their entire sentences, including the payment of restitution. The court also noted that there was no evidence that the state of Tennessee's re-enfranchisement scheme for convicted felons had traditionally been regarded as punitive, rather than civil, so as to violate the federal or Tennessee Ex Post Facto Clause. (Tennessee)

U.S. District Court
EX POST FACTO
PAROLE

Sellmon v. ***Reilly***, 551 F.Supp.2d 66 (D.D.C. 2008). District of Columbia inmates, each of whom committed his crime and was sentenced prior to the date when the United States Parole Commission (USPC) took over responsibility from the District of Columbia Parole Board for conducting parole hearings for D.C. Code offenders, brought a § 1983 action against the USPC chairman and its commissioners. The inmates alleged that USPC retroactively applied its own parole guidelines and practices in violation of the Ex Post Facto Clause of the Constitution. The district court held that the inmates established a prima facie case of an ex post facto violation resulting from the retroactive application of the USPC parole regime, rather than the D.C. parole regime, to their parole applications. But the court held that only those inmates who demonstrated that the practical effect of the new policies was to substantially increase the risk that they each would serve lengthier terms of incarceration were entitled to relief on their ex post facto claims. (District of Columbia)

U.S. District Court
REDUCTION OF
SENTENCE

Sheppard v. ***U.S.***, 537 F.Supp.2d 785 (D.Md. 2008). A detainee brought an action against the federal Bureau of Prisons (BOP) claiming negligence pursuant to the Federal Tort Claims Act (FTCA) for his illegal detention for over nine months. The district court denied the government's motion to dismiss for lack of jurisdiction or, in the alternative, for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to the role and duties of BOP personnel who were allegedly responsible for the continued confinement of the detainee during his false imprisonment. The BOP asserted that the employees were "investigative or law enforcement officers" for the purposes of the government's waiver of sovereign immunity. The detainee had been sentenced to 121 months of incarceration in a federal prison in Leavenworth, Kansas. The district court granted the request of the United States Attorney for the District of Columbia to reduce his sentence to time served and ordered his release. The detainee was not released for approximately ten months after the court's order. (District of Columbia, and U.S. Penitentiary, Leavenworth, KS)

U.S. Appeals Court
COMMUTATION
EX POST FACTO
LIBERTY INTEREST

Snodgrass v. ***Robinson***, 512 F.3d 999 (8th Cir. 2008). A state prisoner brought a suit against the Iowa Board of Parole, the Board's members and the governor of Iowa alleging that her constitutional rights were violated by applying laws and regulations governing commutation requests, even though the laws were passed after her conviction. The district court granted a motion to dismiss and the prisoner appealed. The appeals court affirmed. The court held that the retroactive application of an amendment to the Iowa commutation provisions did not violate the Ex Post Facto Clause and that the state prisoner had no liberty interest in commutations. The court noted that the retroactive application of the amendment to Iowa Code did not raise a significant risk that the state prisoner would be denied a commutation she otherwise would have received from the governor given the

unpredictability of the wholly discretionary grant of a governor's commutation. The court noted that the new provisions limited a Class A felon serving a life sentence to commutation applications no more frequently than once every ten years rather than previous standards which provided for regular review. (Iowa Board of Parole)

U.S. District Court
RESTITUTION

Stern v. *Federal Bureau of Prisons*, 537 F.Supp.2d 178 (D.D.C. 2008). A federal inmate brought an action against the federal Bureau of Prisons (BOP), challenging the BOP's statutory authority to promulgate a regulation through which it had established restitution payment schedules. The district court denied the BOP motion to dismiss. The court held that the inmate stated a cognizable claim under the Administrative Procedure Act (APA). The court held that the Mandatory Victims Restitution Act (MVRA) rendered invalid the BOP regulation that established payment schedules for orders of restitution, because only the courts could set payment schedules for restitution. (Federal Correctional Institution, Jesup, Georgia)

U.S. Appeals Court
GOOD-TIME

Tablada v. *Thomas*, 533 F.3d 800 (9th Cir. 2008). A federal inmate sought a writ of habeas corpus, challenging the Bureau of Prisons' (BOP) calculation of good time credits in determining the length of time left to serve on his 20-year sentence. The district court denied the petition and the inmate appealed. The appeals court affirmed. The court held that the BOP's program statement, calculating good time credits based on time served rather than the sentence imposed, reasonably interpreted the good time credit statute, despite the invalidity of a regulation with an identical methodology. According to the court, the inmate's good time credits were required to be calculated based on time served rather than the sentence imposed. (Fed. Correctional Institute, Sheridan, Oregon)

2009

U.S. District Court
EQUAL PROTECTION
SENTENCE

Bowdry v. *Ochalla*, 605 F.Supp.2d 1009 (N.D.Ill. 2009). A former state prison inmate brought a § 1983 action against attorneys employed by a county public defender's office, alleging that the attorneys' respective failure to notice and correct a mittimus error had resulted in the inmate's incarceration for an extra three months, asserting violations of due process, equal protection, and the Eighth Amendment's prohibition against cruel and unusual punishment. The district court dismissed the action. The court held that the attorneys had not acted under the color of state law in failing to correct the mittimus error, where the review of mittimus fell within the scope of a lawyer's traditional functions, contrary to the defendant's contention that it was "essentially administrative." (Cook County Public Defenders, Illinois)

U.S. Appeals Court
CONSECUTIVE
SENTENCES

Espinoza v. *Sabol*, 558 F.3d 83 (1st Cir. 2009). A federal prisoner convicted for drug offenses petitioned for a writ of habeas corpus. The district court denied the petition and the prisoner appealed. The appeals court affirmed. The court held that the prisoner was not entitled to credit for the 14-month period that he was at liberty after federal authorities inadvertently released him prior to the expiration of his sentence, and that the prisoner's sentence for escape, imposed approximately 10 years after he was sentenced on federal drug charges, was subject to the statutory presumption that the sentence should run consecutively. The court noted that the erroneous release happened only because the prisoner had escaped from his halfway house, causing the need to process him again when he was apprehended, and there was no showing that the government acted arbitrarily or intentionally to prolong the prisoner's sentence. According to the court, giving the prisoner credit for the time he was free would amount to rewarding him for his escape. (Federal Bureau of Prisons, Massachusetts)

U.S. District Court
PRESENTENCE REPORT
SEX OFFENDERS

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 Probation and Parole, Huttonsville Correctional Center, West Virginia)

U.S. Appeals Court
EXPIRATION

Hart v. *Hodges*, 587 F.3d 1288 (11th Cir. 2009). A former federal prisoner brought an action against a state prosecutor, the general counsel of the Georgia Department of Corrections (DOC) and the warden of a Georgia prison, alleging violations of his constitutional rights by having him transferred from federal to state custody at the end of his federal sentence. The district court granted the defendants' motion for judgment on the pleadings on the ground they were entitled to absolute immunity. The plaintiff appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prosecutor was entitled to absolute immunity for his role in the plaintiff's transfer. But the court held that the general counsel of the Georgia Department of Corrections (DOC) and the warden of a Georgia prison were not entitled to absolute immunity from liability under § 1983 and state law for causing the issuance of a second state warrant against the prisoner prior to his release from federal prison, and issuing a notice of surrender to the prisoner and threatening further prosecution following his release. The court noted that the general counsel's role as legal advisor to the DOC and the warden's role as chief jailer of the prison where the prisoner was incarcerated were not roles intimately associated with the judicial phase of the criminal process. (Jackson State Prison, Georgia Department of Corrections)

U.S. District Court
EX POST FACTO
GUIDELINES
SENTENCE TO PAROLE

Smith v. *Reilly*, 604 F.Supp.2d 124 (D.D.C. 2009). An inmate brought a § 1983 suit against members of the United States Parole Commission (USPC), asserting an ex post facto challenge to the application of the USPC's parole guidelines. The district court granted the summary judgment for the defendants. The court held that the Ex Post Facto Clause barred application of the new parole guidelines, which increased the risk that the inmate would serve a longer period of incarceration. According to the court, the new USPC guidelines, but not the old ones, prevented a candidate who, like the inmate, had committed a crime of violence resulting in death, from even being found suitable for parole when he first became eligible after serving a minimum sentence. The new guidelines also translated disciplinary infractions directly into additional months of incarceration, and considered all disciplinary infractions were considered. (District of Columbia Board of Parole)

U.S. Appeals Court
REVOCATION
SUPERVISED RELEASE

U.S. v. *Anderson*, 583 F.3d 504 (7th Cir. 2009). The Government separately petitioned to revoke the supervised release of three defendants. The district court entered revocation orders and imposed new terms of imprisonment with recommendations to the Bureau of Prisons (BOP) that each defendant be placed in a halfway house during the last six months of his sentence. The defendants appealed, and the cases were consolidated for appeal. The appeals court remanded. The appeals court held that the district court had the authority to impose halfway-house confinement as a condition of supervised release. According to the court, the district courts had the authority to impose halfway-house confinement as a condition of supervised release under the catch-all provision of the supervised release statute which conferred broad discretion on district courts to fashion appropriate conditions of supervised release that complied with the broad goals of sentencing, notwithstanding the exclusion of halfway-house confinement from the statutory list of permissible conditions of supervised release. (Illinois)

U.S. Appeals Court
SUPERVISED RELEASE-
CONDITIONS

U.S. v. *Bender*, 566 F.3d 748 (8th Cir. 2009). Following revocation of supervised release, the district court imposed an 18-month sentence and special conditions on a 10-year supervised release term. The defendant appealed. The appeals court reversed and remanded. The appeals court held that: (1) the district court did not abuse its discretion by imposing a special condition of supervised release banning the defendant's use of computers and internet access; (2) the district court did not abuse its discretion by imposing a special condition requiring the defendant to submit to "lifestyle restrictions" imposed by a therapist; (3) the district court did not provide sufficient individualized findings to support the imposition of a special condition banning sexually stimulating materials; (4) as a matter of first impression, the district court abused its discretion by imposing a special condition banning the defendant from entering any library; and (5) a special condition barring the defendant from frequenting places where minors were known to frequent without prior approval and then only in the presence of a responsible adult, imposed a greater deprivation of liberty than was reasonably necessary. (Missouri)

U.S. Appeals Court
SUPERVISED RELEASE

U.S. v. *Perez*, 565 F.3d 344 (7th Cir. 2009). Following violation of his conditions of supervised release, the district court imposed sentence. The defendant appealed. The appeals court vacated and remanded. The court held that the district court judge lacked jurisdiction to reopen the revocation of supervised release proceedings to make a substantive change to the sentence, and remand was required since the sentence was unclear as to whether the judge intended to impose a sentence of 12 months imprisonment regardless of the sentence imposed by another judge, or whether the judge intended the defendant to stay in jail for a total of 36 months in light of the other judge's sentence. (United States Attorney, Chicago, Illinois)

2010

U.S. Appeals Court
EX POST FACTO
HOUSE ARREST
LIBERTY INTEREST

Gonzalez-Fuentes v. *Molina*, 607 F.3d 864 (1st Cir. 2010). A class of prisoners convicted of murder, who had been released pursuant to an electronic supervision program (ESP), filed a complaint under § 1983, seeking a preliminary injunction against their re-incarceration pursuant to a regulation which became effective after their releases. The district court granted a preliminary injunction and the Commonwealth of Puerto Rico appealed. Another class of prisoners who had been re-incarcerated filed a separate petition for a writ of habeas corpus and the district court granted the petition. The district court consolidated the two cases, and denied the Commonwealth's motion to dismiss. The commonwealth appealed. The appeals court reversed in part, vacated in part, and remanded. The court held that re-incarceration of the prisoners convicted of murder under a new regulation eliminating the ESP program for prisoners convicted of murder, did not violate the ex post facto clause, where the prisoners had committed their crimes of conviction at times predating the creation of the ESP, so that Puerto Rico's decision to disqualify prisoners from participating in the ESP had no effect on the punishment assigned by law. The court also held the re-incarceration of the prisoners convicted of murder did not violate substantive due process. The court found that although the impact of re-incarceration on the prisoners was substantial, Puerto Rico had a justifiable interest in faithfully applying the new statute which barred prisoners convicted of murder from the ESP program. According to the court, there was no showing that Puerto Rico acted with deliberate indifference or that re-imprisonment was conscience-shocking.

But the court found that the prisoners convicted of murder, who had been released for several years pursuant to the ESP, had a protected due process liberty interest in their continued participation in the ESP program, despite the fact that their releases were premised on lower court determination, which was later overturned, that the statute eliminating such prisoners from the program violated the ex post facto clause. The prisoners were serving out the remainder of their sentences in their homes, where they lived either with close relatives, significant others, or spouses and children, and although they were subject to monitoring with an electronic tracking anklet, and routine drug and alcohol testing, they were authorized to work at a job or attend school.

The court also found that the re-incarceration of the prisoners deprived them of procedural due process, where the prisoners were not given any pre-hearing notice as to the reason their ESP status was revoked, and the prisoners had to wait two weeks after their arrest before receiving any opportunity to contest it.

The court concluded that the prisoners whose procedural due process rights were violated by their re-incarceration or their imminent future re-incarceration after determination that they had been unlawfully

admitted into the ESP were not entitled to either habeas relief, for those already re-imprisoned, or preliminary injunctive relief for those yet to be re-imprisoned, where the subsequent Puerto Rico statute provided a valid, independent, constitutional basis for the prisoners' re-incarceration. (Puerto Rico Department of Justice, Puerto Rico Administration of Corrections)

U.S. Appeals Court
PARDON

PA Prison Soc. v. *Cortes*, 622 F.3d 215 (3rd Cir. 2010). State prisoners, several non-profit advocacy and prisoner rights groups, and several state voters and qualified taxpayers brought an action challenging an amendment to the Pennsylvania constitution changing the composition of the Board of Pardons and the voting requirements for obtaining a pardon or commutation of sentence. The district court granted in part, and denied in part, the parties' cross-motions for summary judgment, and they appealed. The appeals court remanded. On remand, the district court ruled that one of the groups had standing to challenge the constitutionality of the amendment and reinstated its prior summary judgment ruling, and appeal was again taken. The appeals court reversed and remanded. The appeals court held that the prisoner advocacy group had organization standing to challenge the constitutionality of the amendment, but the amendment did not violate the ex post facto clause. The court noted that allegations that the changes in the law have produced some ambiguous sort of disadvantage, or affected a prisoner's opportunity to take advantage of provisions for early release, are not sufficient grounds for bringing an ex post facto claim. According to the court, there is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. (Pennsylvania Board of Pardons)

U.S. Appeals Court
SEX OFFENDER
LIBERTY INTEREST

Renchenski v. *Williams*, 622 F.3d 315 (3rd Cir. 2010). A state inmate, who was serving a life sentence without the possibility of parole for first-degree murder, brought a pro se § 1983 action against prison officials and personnel, alleging that his forced participation in sex offender treatment therapy violated his constitutional rights. The district court granted summary judgment for the defendants. The inmate appealed. The appeals court affirmed in part and reversed in part. The court held that sex offender conditions may be imposed on an inmate who has not been convicted of a sexual offense only after due process has been afforded. The court found that the inmate had an independent liberty interest in not being labeled as a sex offender and forced into treatment, and thus was entitled to adequate process before prison officials took such actions. (Pennsylvania's Sex Offender Treatment Program, State Correctional Institution at Coal Township, Pennsylvania)

2011

U.S. Appeals Court
REVIEW

Alston v. *Read*, 663 F.3d 1094 (9th Cir. 2011). A former state prisoner brought a § 1983 action against corrections officials, alleging that he was over-detained in violation of his due process rights and the Eighth Amendment. The district court denied the officials' motion for summary judgment on the basis of qualified immunity and the officials appealed. The appeals court reversed and remanded. The court held that the officials did not have a clearly established duty to seek out court records in response to the prisoner's unsupported assertion that he was being over-detained, and thus, the officials were entitled to qualified immunity. The court noted that the officials relied on state law and the prisoner's institutional file in calculating the prisoner's sentence, the prisoner offered no documentation to put officials on notice that his sentence had been miscalculated, and no caselaw established that the officials were required to examine any other records. (Offender Management Office of Hawaii's Department of Public Safety)

U.S. Appeals Court
SEX OFFENDER
PROBATION-
CONDITIONS
EQUAL PROTECTION

Brown v. *Montoya*, 662 F.3d 1152 (10th Cir. 2011). A probationer, who had been convicted of false imprisonment under New Mexico law, brought § 1983 claims against a probation officer and the New Mexico Secretary of Corrections, alleging that he was wrongly directed to register as a sex offender and was wrongly placed in a sex offender probation unit, in violation of his rights to substantive due process, procedural due process, and equal protection. The district court denied the defendants' motion to dismiss and the defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the complaint was insufficient to overcome the Secretary's qualified immunity defense, but the probation officer's alleged actions, if proven, denied the probationer of a liberty interest protected by the Due Process Clause. According to the court, the probation officer's alleged actions of placing the probationer in a sex offender probation unit and directing him to register as a sex offender, after the probationer had been convicted of false imprisonment under New Mexico law, if proven, denied the probationer of a liberty interest protected by the Due Process Clause. The court noted that false imprisonment was not a sex offense in New Mexico unless the victim was a minor. (New Mexico Department of Corrections)

U.S. District Court
CLEMENCY
LEGAL COSTS

Link v. *Luebbers*, 830 F.Supp.2d 729 (E.D.Mo. 2011). After federal habeas proceedings were terminated, federally-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
HOUSE ARREST
LIBERTY INTEREST

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. Appeals Court
LIBERTY INTEREST
ORIGINAL SENTENCE
PROBATION

Persechini v. *Callaway*, 651 F.3d 802 (8th Cir. 2011). A state prisoner filed a § 1983 action against prison officials for alleged deprivation of his due process rights by terminating him from long-term substance abuse treatment program that resulted in the mandatory execution of his 15-year sentence and his ineligibility for probation. The district court dismissed the claim for failure to a state claim. The prisoner appealed. The appeals court affirmed. The court held that the prisoner lacked a liberty interest in: (1) the outcome of a disciplinary proceeding; (2) the outcome of the action taken by a program review committee; and (3) the outcome of termination from a treatment program. The court noted that the sanction imposed by the disciplinary committee for stealing a towel, confinement to his room for ten days and referral to program review committee, was neither atypical nor significant hardships in relation to ordinary incidents of prison life. (Ozark Corr'l Center, Missouri)

U.S. Appeals Court
GUIDELINES
LIBERTY INTEREST
ORIGINAL SENTENCE

Stein v. *Ryan*, 662 F.3d 1114 (9th Cir. 2011). A former prisoner brought an action in state court against the state and prison officials, alleging claims for negligence and violations of his civil rights, and seeking damages for the time he spent in prison pursuant to an illegal sentence. Following removal to the federal court, the district court dismissed the complaint. The former prisoner appealed. The appeals court affirmed, holding that the officials had no duty to discover that an Arizona court imposed an illegal sentence, they did not violate the former prisoner's right to due process, and the officials were not deliberately indifferent to the prisoner's liberty interest, as would violate his Eighth Amendment rights. (Arizona Department of Corrections)

U.S. District Court
MINIMUM SENTENCE

U.S. v. *Dresbach*, 806 F.Supp.2d 1039 (E.D.Mich. 2011.) A defendant moved for reduction in his sentence. The district court held that the federal Bureau of Prisons (BOP) properly exercised its discretion in considering the medical condition of the defendant's wife and daughter in denying his request for compassionate release. According to the court, the BOP had noted that the sentencing court was aware of the developing medical conditions of the prisoner's wife and daughter at the time of sentencing, and that the prisoner was presumably eligible for home confinement in eight months and release six months thereafter. According to the court, the BOP has the authority to consider reasons other than a defendant's own medical condition in determining whether compassionate release is warranted. (Federal Bureau of Prisons, Michigan)

U.S. Appeals Court
DELAY

U.S. v. *Ferreira*, 665 F.3d 701 (6th Cir. 2011). After denial of a motion to dismiss an indictment based on violation of his Sixth Amendment speedy trial right, a defendant pled guilty in district court to conspiracy to distribute 500 grams or more of methamphetamine. The defendant appealed. The appeals court reversed and remanded. The court held that a thirty-five month delay between an indictment charging conspiracy to distribute 500 grams or more of methamphetamine and the defendant's guilty plea was sufficient to trigger an analysis of the defendant's claim that his Sixth Amendment speedy trial rights were violated. The court found that the thirty-five month delay was caused solely by the government's gross negligence, for the purposes of determining whether such a delay violated the defendant's Sixth Amendment right to speedy trial. The defendant was serving a term of imprisonment of 110 months following his guilty plea. (U.S. Marshals Service, Bartow County, Cobb County, Georgia)

U.S. Appeals Court
GUIDELINES
SUPERVISED RELEASE-
CONDITIONS

U.S. v. *Mike*, 632 F.3d 686 (10th Cir. 2011). A defendant, who was sentenced for assault resulting in serious bodily injury, appealed a district court order that overruled his objections to special conditions of supervised release based on his prior sex offense. The appeals court affirmed in part, reversed in part, and remanded. The court held that the condition calling for monitoring of the defend ant's computer usage did not constitute an abuse of discretion, but the condition was impermissibly vague. The court also found that a condition prohibiting the defendant from engaging in an occupation with access to children was improper, where the court failed to make findings required by the Sentencing Guidelines that an occupational restriction was the minimum restriction necessary. (U.S. District Court, New Mexico)

2012

U.S. Appeals Court
SEX OFFENDERS
DOUBLE JEOPARDY
EX POST FACTO

American Civil Liberties Union of Nevada v. *Masto*, 670 F.3d 1046 (9th Cir. 2012). The United States District Court for the District of Nevada, issued a permanent injunction prohibiting the retroactive application of an Assembly Bill expanding the scope of sex offender registration and notification requirements, and a Senate Bill imposing, among other things, residency and movement restrictions on certain sex offenders. The State of Nevada appealed. The appeals court affirmed in part, reversed in part, dismissed as moot in part, and remanded. The court held that the requirements of the Nevada law expanding the scope of sex offender registration and notification requirements did not constitute retroactive punishment in violation of the Ex Post Facto Clause or the Double Jeopardy Clause. The court noted that the intent of the Nevada legislature in passing the law was to create a civil regulatory regime with the purpose of enhancing public safety, and the law was not so punitive in effect or purpose that it negated the Nevada legislature's intent to enact a civil regulatory scheme. The court found that the question of the constitutionality of retroactive application to sex offenders of the residency and movement restrictions of the Nevada law was moot. (State of Nevada)

U.S. District Court
REVIEW
SUPERVISED RELEASE

Bentley v. *Dennison*, 852 F.Supp.2d 379 (S.D.N.Y. 2012). Parolees, on behalf of themselves and a presumed class, brought a § 1983 action against officials at a state's department of corrections and department of parole, alleging that the officials subjected them to unlawful custody by continuing to impose terms of post-release supervision (PRS) that had been declared unlawful, and arresting and re-incarcerating them for technical violations of those terms. The defendants moved to dismiss. The district court denied the motion, finding that the

officials were not entitled to qualified immunity at the motion to dismiss stage, and that the parolees stated a § 1983 claim against each individual official. The officials' contended that the appeals court decision that found the practice to be unlawful created confusion about the appropriate remedy for parolees who had been given the terms unlawfully. The court held that the appeals court decision clearly established that the administrative imposition of mandatory PRS was unconstitutional, that the court clearly explained that the remedy for such a legal infirmity was that the term of PRS should be vacated and the state should be given the opportunity to seek appropriate resentencing, and the officials had an obligation to treat the appeals court decision as binding on all terms of administratively imposed PRS. (New York State Dept. of Correctional Services, Department of Parole)

U.S. District Court
PLACE OF IMPRISONMENT

Shah v. *Danberg*, 855 F.Supp.2d 215 (D.Del. 2012). A state inmate who pled guilty but mentally ill to a charge of first degree murder filed a § 1983 action against a state judge and prison officials alleging that his placement in a correctional center, rather than in a psychiatric center, violated his constitutional rights. The court held that the state judge was entitled to absolute judicial immunity from liability in inmate's § 1983 action despite the inmate's contention that the judge's incorrect application of a state statute resulted in violation of his constitutional rights, where there were no allegations that the judge acted outside the scope of her judicial capacity, or in the absence of jurisdiction. The could ruled that the state inmate failed to establish the likelihood of success on the merits of his claim and thus was not entitled to a preliminary injunction ordering his transfer, despite the inmate's contention that he was mentally unstable and had repeatedly caused himself physical injury during his suicide attempts, where medical records the inmate submitted were ten years old, and a state supreme court recognized that prison officials had discretion to house inmates at facilities they chose. The court ordered the appointment of counsel, noting that the inmate was unable to afford legal representation, he had a history of mental health problems, and the matter presented complex legal issues. (James T. Vaughn Corr'l. Center, Smyrna, Delaware)

U.S. Appeals Court
CREDIT

Sudler v. *City of New York*, 689 F.3d 159 (2nd Cir. 2012). Inmates of state and city prison systems brought an action against corrections defendants, alleging violations of their due process rights when they were imprisoned for periods of time longer than their judicially imposed sentences. The district court dismissed the claims against some defendants, and granted summary judgment as to the remaining defendants. The prisoners appealed. The appeals court affirmed, finding that state prison officials were entitled to qualified immunity on the inmates' claim that their procedural due process rights were violated when prison officials failed to promptly afford them PJT (parole jail time) credits for the time served in local custody on sentences ordered to run concurrently with undischarged parole revocation sentences. (New York State, New York City prisons)

U.S. District Court
GUIDELINES ORIGINAL SENTENCE

Sweat v. *Grondolsky*, 898 F.Supp.2d 347 (D.Mass. 2012). An inmate filed a petition for a writ of habeas corpus against a warden, alleging that the Federal Bureau of Prisons (BOP) had failed to give him credit for time he served in state custody. The warden moved for summary judgment. The district court granted the motion. The court held that the BOP was bound by a federal court's express designation that the inmate's federal sentence should run consecutively to the state sentence, and the inmate's claim that the sentencing judge incorrectly construed the facts of his case, and therefore misapplied the provisions of a sentencing guideline, had to be brought in a motion to vacate the sentence before the sentencing court. (Federal Medical Center, Devens, Massachusetts)

U.S. District Court
RESTITUTION

U.S. v. *Beulke*, 892 F.Supp.2d 1176 (D.S.D. 2012). After a defendant was convicted of embezzlement, sentenced to prison, and ordered to pay restitution, the Government moved to enforce collection and to order the defendant to apply all of his pension payments while in prison to the restitution order. The district court granted the motion in part. The court held that, pursuant to the Mandatory Victims Restitution Act (MVRA), the Government could seize the defendant's interest in his 401(k) and that any interest the defendant's wife had in his 401(k) account was subject to the Government's perfected lien. The court decided to exercise its statutory discretion so as to allow garnishment of 25% of the defendant's net monthly pension, while allowing his estranged wife to continue to receive half of the pension payments during the pendency of their divorce. (South Dakota)

U.S. Appeals Court
SEX OFFENDERS PROBATION-CONDITIONS

U.S. v. *Juvenile Male*, 670 F.3d 999 (9th Cir. 2012). Three juvenile defendants, each of whom was a member of an Indian tribe and who pleaded true to a charge of aggravated sexual abuse with children in the district court, appealed their conditions of probation or supervision requiring registration under the Sex Offender Registration and Notification Act (SORNA). The appeals court affirmed. The court held that the SORNA registration requirement as applied to certain juvenile delinquents in cases of aggravated sexual abuse superseded the conflicting confidentiality provisions of the Federal Juvenile Delinquency Act (FJDA), and that the SORNA registration requirement did not violate the juveniles' constitutional rights. (Fort Peck Tribes, Montana)

U.S. Appeals Court
GUIDELINES SUPERVISED RELEASE CONDITIONS

U.S. v. *Taylor*, 679 F.3d 1005 (8th Cir. 2012). Following release from prison, the district court sentenced a defendant to 24 months in prison after he admitted to violating two conditions of supervised release. The defendant appealed. The appeals court vacated and remanded, finding that consideration of the defendant's eligibility to participate in a rehabilitation program for sentencing purposes was plain error. The district court had considered the defendant's eligibility to participate in a 500–hour drug program available from the Bureau of Prisons when sentencing the defendant to 24 months for violation of supervised release. The appeals court held that this affected the defendant's rights in a manner that seriously affected fairness, integrity, or public reputation of judicial proceedings, and thus amounted to plain error. The court noted that the advisory guideline range was 6 to 12 months, and the district court may have imposed a lesser sentence if it had not focused on a particular drug treatment program within a federal institution. The defendant had failed to report to a residential facility where he was to spend 120 days and admitted to consuming alcohol. (Nebraska)

U.S. Appeals Court
INSANITY

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)

U.S. Appeals Court
ORIGINAL SENTENCE

U.S. v. *Tyerman*, 701 F.3d 552 (8th Cir. 2012). A defendant was convicted in district court of being a felon in possession of a firearm and he appealed. The appeals court reversed and remanded. After a trial, the defendant was convicted in the district court of being a felon in possession of a firearm and ammunition, and possession of a stolen firearm. His motion for acquittal or new trial was denied and the defendant appealed. The appeals court affirmed. The court held that the government's passive conduct in receiving information regarding the location of the defendant's gun, from the defendant's counsel, did not violate the defendant's Sixth Amendment right-to-counsel. The court found that the defendant's conduct in creating handcuff keys and practicing the use of them constituted a substantial step, as an element of attempt, with respect to escaping from pretrial incarceration, for purposes of using attempted escape as the basis for a sentence enhancement for obstruction of justice. At sentencing, a U.S. Marshal testified that prison guards discovered two homemade handcuff keys in the defendant's cell. According to the Marshal, during the investigation, other inmates revealed the defendant's plans to escape from jail and his use of the law library (which lacked surveillance) to practice removing handcuffs. Finding the Marshal credible, the district court applied a two-level adjustment for obstruction of justice based on the attempted escape, sentencing the defendant 72 months' imprisonment. (U. S. District Court, Iowa)

U.S. Appeals Court
EX POST FACTO
GOOD- TIME

Waddell v. *Department of Correction*, 680 F.3d 384 (4th Cir. 2012). A district court dismissed a prisoner's habeas petition as time-barred, and, in the alternative, denied the petition on its merits, and the petitioner appealed. The appeals court affirmed. The appeals court held that the state corrections department's practice of applying earned good time credits for certain identified purposes, but not for the purpose of reducing a prisoner's life sentence did not give rise to a due process protected liberty interest in a life sentence reduced by good time credits. The court also held that the corrections department's failure to utilize the prisoner's good time credits to reduce his life sentence under the eighty-year rule did not give rise to an ex post facto claim. (North Carolina Department of Correction)

U.S. District Court
INVOLUNTARY COMMITMENT REVIEW

Wiley v. *Buncombe County*, 846 F.Supp.2d 480 (W.D.N.C. 2012). A pretrial detainee brought an action under § 1983 and § 1985 against a county, sheriff, jail, and court official, alleging that the defendants unlawfully subjected him to multiple periods of involuntary commitment and failed to take proper action on a state habeas corpus petition that he filed challenging the periods of commitment. The defendants moved to dismiss. The district court granted the motion. The court held that: (1) the detainee could not maintain a § 1983 action challenging the terms of his confinement; (2) the clerk had quasi-judicial immunity from the pretrial detainee's § 1983 claim; (3) the jail was not a "person" subject to suit under § 1983; (4) the county could not be liable to the pretrial detainee under § 1983 for the actions of the sheriff; and (5) the county could not be liable to the pretrial detainee under § 1983 for the actions of the county clerk. The court noted that under North Carolina law, the county had no control over the sheriff's employees and/or control over the jail, and therefore county could not be liable to the detainee under § 1983 for the actions of the sheriff or those of his detention officers for events that occurred at a jail operated by the sheriff. (Buncombe County Detention Facility, North Carolina)

2013

U.S. District Court
LIBERTY INTEREST
SEX OFFENDERS

Allen v. *Clements*, 930 F.Supp.2d 1252 (D.Colo. 2013). Inmates in the Colorado Department of Corrections (CDOC) who had been sentenced to indeterminate terms of imprisonment under the Colorado Sex Offender Lifetime Supervision Act (SOLSA) brought a class action against CDOC officials, alleging under § 1983 that the officials were arbitrarily denying them sex offender treatment and interfering with their access to counsel and courts. The officials moved to dismiss for failure to state a claim. The district court granted the motion. The court held that: (1) the inmates failed to state an Eighth Amendment claim; (2) terminating one inmate's treatment because of polygraphs did not violate due process; (3) denial of re-enrollment requests did not implicate the inmates' liberty interests; (4) termination procedures comported with procedural due process; and (5) the inmates failed to state a substantive due process claim. The court found that terminating two inmates' treatment because one had a rash and the other reported a telephone call in which his cousin mentioned seeing his children implicated the inmates' liberty interests protected by due process because the reasons for termination were not reasonably related to the goals of their treatment. But the court noted that there was no indication that the alleged deprivation extended the inmates' sentences, and that procedures providing for a treatment waitlist and for state judicial review of CDOC termination decisions existed, and the two inmates had already been able to re-enroll in treatment multiple times. (Colorado Department of Corrections)

U.S. District Court
SEX OFFENDERS
SENTENCE

Armato v. *Grounds*, 944 F.Supp.2d 627 (C.D.Ill. 2013). A former inmate, a sex offender, brought an action against Illinois Department of Corrections (IDOC) employees, alleging under § 1983 that the employees violated his rights under Eighth and Fourteenth Amendment by allowing him to be held beyond the term of his incarceration, and asserting a claim for false imprisonment under state law. The employees moved for summary judgment. The district court allowed the motion. The court held that the employees complied with the terms of a state court judge's handwritten sentencing order and the employees were not deliberately indifferent in allegedly allowing the inmate to be held beyond his release date. (Lake County Jail, Robinson Correctional Center, Illinois Department of Corrections)

U.S. Appeals Court
REVIEW
CONSECUTIVE
SENTENCES

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
GUIDELINES
REDUCTION OF
SENTENCE

In re Morgan, 713 F.3d 1365 (11th Cir. 2013). A prisoner serving a life sentence without parole, based on conduct committed while he was a juvenile, filed an application for leave to file a second or successive motion to vacate, set aside, or correct the sentence. The appeals court denied the motion. The appeals court held that although a decision of the Supreme Court established a new rule of constitutional law, in that it determined for the first time in *Miller* that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders, the rule was not made retroactive to cases on collateral review, as would warrant granting leave to the prisoner to file a second or successive motion to vacate, set aside, or correct his sentence. (Florida)

U.S. Appeals Court
ORIGINAL SEN-
TENCE
REVIEW

In re Pendleton, 732 F.3d 280 (3rd Cir. 2013). Prisoners who were convicted as juveniles applied for leave to file second or successive habeas petitions based on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable. The appeals court granted the applications. The court held that prisoners made a prima facie showing that the new constitutional rule regarding imposition of life sentences on juvenile offenders was retroactive. (Pennsylvania Department of Corrections)

U.S. District Court
EX POST FACTO
PROBATION-CONDI-
TIONS
SEX OFFENDERS

John Does 1-4 v. *Snyder*, 932 F.Supp.2d 803 (E.D.Mich. 2013). Sex offenders filed suit challenging the constitutionality of the Michigan Sex Offender Registry Act (SORA). The state defendants moved to dismiss the complaint. The district court granted the motion in part and denied in part. The court held that: (1) SORA did not violate the Ex Post Facto Clause; (2) SORA's quarterly reporting requirement did not offend due process or substantially burden registrants' rights to interstate or intrastate travel; (3) SORA did not implicate registrants' due process right to engage in common occupations of life; (4) the registrants satisfactorily alleged that SORA's loitering prohibition, which did not contain any exemption for parental activities, could be proven to infringe upon their fundamental due process right to direct and participate in their children's education and upbringing; (5) a jury question was presented as to whether retroactively extending the registration period of sex offenders from twenty-five years to life was justified by a legitimate legislative purpose; and (6) jury questions were presented as to whether provisions of SORA requiring sex offenders to report information about their online accounts and activities violated their First Amendment rights. (Mich. Sex Offender Registry Act)

U.S. Appeals Court
CLEMENCY
CAPITAL PUNISH-
MENT

Mann v. *Palmer*, 713 F.3d 1306 (11th Cir. 2013). A death row inmate filed a civil rights action, challenging the method of execution in Florida as cruel and unusual under the Eighth Amendment. The district court dismissed the complaint for failure to state a claim. The inmate moved for a stay of execution and expedited consideration of his appeal of the dismissal of his complaint. The appeals court denied the motions. The court held that the inmate failed to establish the likelihood of success on the merits of his Eighth Amendment claim, and that the process which the inmate received in his clemency hearing satisfied due process. The court noted that Florida's substitution of pentobarbital for sodium pentothal in its method of execution did not constitute a significant alteration to the method of execution in Florida so as to commence running of a new period of limitations on the death row inmate's claim challenging the method of execution in Florida. (Florida State Prison)

U.S. Appeals Court
CLEMENCY
DEATH PENALTY

Schad v. *Brewer*, 732 F.3d 946 (9th Cir. 2013). A prisoner scheduled for execution moved to enjoin his clemency hearing and stay his execution, alleging that the Arizona Clemency board was biased and subject to undue pressure by the Governor, in violation of due process. The district court denied the motion. The prisoner appealed. The appeals court affirmed. The court held that due process concerns were not implicated in Arizona's clemency proceedings. According to the court, the fact that members of Arizona's Clemency Board who had recommended clemency were not reappointed by the governor did not raise due process concerns. (Arizona Board of Executive Clemency)

U.S. Appeals Court
SEX OFFENDERS
SUPERVISED
RELEASE

U.S. v. *Crowder*, 738 F.3d 1103 (9th Cir. 2013). The United States District Court for the District of Montana revoked an offender's supervised release, imposed for failure to register under the Sex Offender Registration and Notification Act (SORNA), and sentenced the offender to two terms of 14 months' imprisonment to run concurrently, and to a lifetime term of supervised release. The defendant appealed. The appeals court affirmed, finding that reduction of a renewed lifetime term of supervised release by the length of time spent in prison for the violation was not warranted. (Montana)

2014

U.S. District Court
SEX OFFENDER
PROBATION-CONDITIONS
PAROLE-CONDITIONS

Reinhardt v. *Kopcow*, 66 F.Supp.3d 1348 (D.Colo. 2014). Inmates, parolees, and probationers, as well their family members, brought a § 1983 action against various employees of the Colorado Department of Corrections (CDOC) and members of the state's Sex Offender Management Board, alleging that the state's treatment of persons convicted of sex crimes violated their rights under the First, Fourth, Fifth, and Fourteenth Amendment. The plaintiffs sought monetary damages and injunctive and declaratory relief. The defendants moved to dismiss. The district court granted the motion in part and a denied in part. The court held that the potential penalty resulting from a Colorado policy that requires inmates in the state's sex offender treatment program to admit to prior acts, was so severe as to constitute compulsion to testify, and would violate their privilege against self-incrimination. The court noted that inmates who chose to participate in the program would be compelled to make incriminating statements that could be used against them during any retrial. The court found that individuals classified as sex offenders, both imprisoned and on probation, sufficiently alleged that Colorado policies restricting their contact with family members, and particularly with their children, were not rationally related to any legitimate penological interest, as required to support their claims that these policies violated their First and Fourteenth Amendment rights related to familial association and due process. The court noted that some of these individuals were not convicted of sex offenses involving children, and some of them were not convicted of any sex offense at all. The court held that CDOC employees were entitled to qualified immunity from liability, where the rights of individuals classified as sex offenders that were purportedly violated by Colorado policies restricting their contact with family members were not clearly established at the time of the alleged violation. (Colorado Dept. of Corrections, Sex Offender Management Board)

U.S. Appeals Court
HOUSE ARREST

Thornton v. *Brown*, 757 F.3d 834 (9th Cir. 2014). A state parolee filed a civil rights action against the Governor of the State of California, Secretary of Corrections, and parole personnel to challenge the imposition and enforcement of a residency restriction and a requirement that he submit to electronic monitoring using a Global Positioning System (GPS) device as conditions of his parole. The district court dismissed the action. The parolee appealed. The appeals court reversed and remanded. The court held that: (1) neither absolute nor qualified immunity barred the parolee's civil rights claims against the State of California, Secretary of Corrections, and parole personnel that were limited to injunctive relief; (2) absolute immunity barred the state parolee's civil rights claims for damages against his parole officers for imposing allegedly unconstitutional parole conditions; (3) absolute immunity did not extend to the state parolee's civil rights claim that parole officers enforced conditions of his parole in an unconstitutionally arbitrary or discriminatory manner; and (4) the parolee could challenge a condition of parole under § 1983 if his or her claim, if successful, would neither result in speedier release from parole nor imply, either directly or indirectly, the invalidity of criminal judgments underlying that parole term. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
REDUCTION

U.S. v. *Batts*, 758 F.3d 915 (8th Cir. 2014). A defendant pleaded guilty in the district court to escape of a prisoner in custody. He appealed. The appeals court affirmed, finding that the prison camp from which the defendant walked away was not a non-secure facility, as required in order to make the defendant eligible for a sentence reduction on such basis at sentencing. (Federal Correctional Institution, Forrest City, Arkansas)

U.S. Appeals Court
CLEMENCY
CAPITAL PUNISHMENT

Winfield v. *Steele*, 755 F.3d 629 (8th Cir. 2014). A death row inmate filed a § 1983 action alleging that state actors violated his right to due process of law by obstructing efforts to secure a grant of clemency from the governor. The district court stayed execution, and the state appealed. The appeals court vacated the stay, finding that the inmate failed to demonstrate a significant possibility of success on his claim, where the Department of Corrections furnished staff member's signed declaration in support of clemency to the governor. (Potosi Correctional Center, Missouri)

2015

U.S. Appeals Court
EX POST FACTO

Hinojosa v. *Davey*, 803 F.3d 412 (9th Cir. 2015). A state prisoner petitioned for federal habeas relief, challenging a state statutory amendment modifying the credit-earning status of prison-gang members and associates in segregated housing, so that such prisoners could no longer earn any good-time credits that would reduce their sentences. The district court denied the petition and the prisoner appealed. The appeals court reversed and remanded with instructions to the district court. The court held that the amendment disadvantaged the offenders it affected by increasing the punishment for their crimes, an element for an ex post facto violation. The court noted that even if a prisoner could easily opt out of his prison gang, a prisoner who continued doing what he was doing before the statute was amended would have his prison time effectively lengthened. (Special Housing Unit, Corcoran State Prison, California)

U.S. District Court
GOOD TIME
EQUAL PROTECTION

Linton v. *O'Brien*, 142 F.Supp.3d 215 (D. Mass. 2015). An inmate brought a § 1983 action against the Commissioner of the Massachusetts Department of Corrections and prison officials, alleging that prison personnel violated his due process, equal protection, and 8th Amendment rights by not providing rehabilitative educational programs that awarded good time credits. The defendants moved to dismiss. The district court granted the motion, dismissing the complaint. The court held that prison officials' refusal to allow the inmate, who was housed in a disciplinary unit, an opportunity to participate in educational and rehabilitative programs in order to earn good time credits to reduce his sentence, did not violate the inmate's due process rights. According to the court, the inmate did not demonstrate that the officials' exercise of discretion to not provide good time credit opportunities to inmates in a disciplinary unit constituted an imposition of an atypical and significant hardship not normally within range of confinement expected for an inmate serving an indeterminate term. The court noted that the exercise of discretion by the Department of Corrections in imposing different classifications upon inmates, with respect to restricting the ability of an inmate housed in a prison disciplinary unit to earn good

time credits to reduce his sentence, did not lack a rational basis, was not otherwise based on suspect classification, and thus did not violate the inmate's equal protection rights. The court found that the DOC had a legitimate public purpose in allocating limited resources available for earned good time credit programs to inmates who were motivated to make best use of them by improving their chances for successful return to society and as an inducement to control and reduce those inmates' tendencies towards violence. (MCI—Cedar Junction, Massachusetts)

U.S. District Court
SUPERVISED RELEASE REVOCATION

Malloy v. *Gray*, 79 F.Supp.3d 53 (D.D.C. 2015). A District of Columbia felony offender brought a *Bivens* action in the District of Columbia Superior Court against the District of Columbia's mayor, the District's contractor for operation of a correctional mental health treatment facility, and the United States Parole Commission (USPC). The offender sought damages for an Eighth Amendment violation based on allegations that the offender was detained beyond the USPC-imposed term of imprisonment following revocation of his supervised release. The case was moved to federal court and the defendants filed motions for dismissal or summary judgment. The district court granted the motions, finding that the mayor and the contractor lacked statutory authority to participate in the proceedings for revocation of supervised release, and a 12-month term of imprisonment, upon revocation of supervised release, was within the authority of the USPC. (District of Columbia, Corrections Corporation of America, Correctional Treatment Facility)

U.S. District Court
RESTITUTION

Ngemi v. *County of Nassau*, 87 F.Supp.3d 413 (E.D.N.Y. 2015). A father brought a § 1983 action against a county, alleging he was denied due process in violation of the Fourteenth Amendment in being arrested and incarcerated for failing to meet his child support obligations. The county moved to dismiss for failure to state a claim. The district court granted the motion, finding that the father received ample process prior to his arrest. The court noted that father was present at the hearing where his failure to comply with the order of support was addressed, an order of disposition was mailed to his home after the hearing and warned him that failure to comply would result in imprisonment, the order afforded the father the opportunity to object, the order of commitment was also mailed to the father and advised him of his ability to appeal, the father never contested the orders, and the father never claimed over the course of four years that he could not pay his child support arrears. (Nassau County Family Court, Nassau County Correctional Center, New York)

SECTION 44: STANDARDS

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.

1970

U.S. District Court
STANDARDS

Palmigiano v. Travisono, 317 F.Supp. 776 (D. R.I. 1970). Federal courts must articulate permissible standards where there exists deprivation of prisoners' constitutional rights. (Adult Correctional Institution, Rhode Island)

1972

U.S. District Court
STATE STATUTES

Taylor v. Sterrett, 344 F.Supp. 411 (N.D. Tex. 1972), reh'g denied, 420 U.S. 983 (1974). Where conditions of confinement do not meet the minimum requirements of state statutes, the court need not reach the subjective criteria of cruel and unusual punishment. The court found that the Dallas county sheriff and commissioners were not complying with existing state law. The court ordered the county to bring its facilities and practices in line with Texas statutes. (Dallas County Jail, Texas)

1974

U.S. District Court
STATE STANDARDS

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. (Brazos County Jail, Texas)

1975

U.S. District Court
STATE REGULATIONS

Padgett v. Stein, 406 F.Supp. 287 (M.D. Penn. 1975). While the federal courts will take action to protect the constitutional rights of inmates, the traditional policy of judicial restraint with respect to matters of penal administration has not been abandoned. A federal court may not direct the expenditure of funds to build new facilities, but may order the release of prisoners held in unconstitutional facilities. The federal courts' inability to compel action by state courts does not preclude enjoining judges who are acting in a non judicial capacity by managing a jail. Where state fire and safety regulations were incorporated in the consent decree, judgment would be reserved pending administrative interpretation of regulations under doctrines of comity and primary jurisdiction. (York County Prison, Pennsylvania)

1976

U.S. District Court
STATE STATUTES

Lucas v. Wasser, 425 F.Supp. 955 (S.D. N.Y. 1976). Federal court should not abstain from deciding detainee's Section 1983 claim against Commission of Correction, even though there has been no state court interpretation of the new statute, expanding the power of the commission, because the issue is essentially one of fact and not law. Failure of Commission of Correction to inspect and appraise jails in matters of health, a duty delegated to it by state law, raised Section 1983 claim. (Sullivan County Jail, New York)

1977

U.S. District Court
STANDARDS

Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. Citation of a tentative draft or of finally approved American Bar Association standard, or the citation and approval of standards promulgated by other professional groups or

organizations does not mean that the principles of law stated are the law of the land until and unless those principles are fully and directly accepted by a court deciding a particular case. In this case, the various standards set forth by professional groups are relevant and material. Evidence of failure of county jail to meet a standard promulgated by the National Sheriffs' Association is relevant and material to question of whether conditions of the jail constitute cruel and unusual punishment. (Platte County Jail, Missouri)

1978

U.S. District Court
STANDARDS

Burks v. Walsh, 461 F.Supp. 454 (W.D. Missouri, 1978). Actions were brought seeking injunctive and declaratory relief on behalf of inmates at the Missouri State Penitentiary. After a trial limited to the issues of overcrowding and unsanitary conditions, the district court held that: (1) triple celling inmates in 59.2-square-foot cells in the diagnostic center, in 65-square-foot cells in the administrative segregation unit, and in 66-square-foot cells in the adjustment unit, as well as double celling of inmates in 47.18-square-foot cells in the special treatment unit, constituted cruel and unusual punishment in violation of the eighth amendment, but (2) except in such instances, the conditions in the aggregate which presently existed at the State Penitentiary did not violate the cruel and unusual punishment clause of the eighth amendment. In examining conditions of state penitentiary, the court's inquiry had to be limited to determining whether conditions at the penitentiary caused inmates to suffer deprivations of constitutional dimensions. The eighth amendment's prohibition against cruel and unusual punishment is not limited to specific acts directed at selected individuals, but is equally pertinent to general conditions of confinement. Confinement itself will result in a finding of cruel and unusual punishment, however, only where confinement is characterized by conditions and practices so bad as to be shocking to the conscience of reasonably civilized people. In determining whether conditions at the state penitentiary constituted cruel and unusual punishment, the district court had to be cautious not to place undue emphasis upon "design capacities" and minimum square footage mandates of other courts, nor were minimum square footage standards of various professional associations dispositive; furthermore, in applying the "totality of circumstances" approach to Missouri Penitentiary conditions, the relaxed amicable atmosphere generated by the prison administration had to tip scales in favor of the state in areas of doubtful constitutionality. In the aggregate, and with certain exceptions regarding overcrowding in certain units, all conditions presently existing at Missouri State Penitentiary, including but not limited to conditions and qualities of individual cells, showers, toilets, dining halls, kitchen, windows, temperature, noise level, canteen, recreational areas, laundry service, ventilation systems, visiting room, pest control program, prison industries and other activities, are not intolerable in light of the modern conscience, or shocking to the conscience of the court, and thus do not violate cruel and unusual punishment clause of the eighth amendment. The Missouri State Penitentiary is overcrowded but, because it has so much acreage within the walls, because of the many and varied activities available to inmates, and because of the relative freedom enjoyed by inmates to utilize recreational areas and the many activities available to them, the penitentiary, viewed as a whole, is not now so overcrowded as to be intolerable, inhumane, totally unreasonable in light of the modern conscience, or shocking to the conscience of the court. (Missouri State Penitentiary)

U.S. District Court
STANDARDS

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 celling 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.

An equal protection challenge to a policy under which inmates undergoing classification and placement at state institutions were single-celled in contrast to double celling during classification at one institution involved neither suspect classification nor fundamental interest, and a heavy burden rested with plaintiff prisoners to demonstrate that no rational justification existed for separate classification programs.

Nothing in the constitution requires prison officials to treat all inmate groups alike where differentiation may avoid institutional disruption or violence. (Massachusetts Correctional Institution, Concord)

1979

U.S. District Court
STATE STATUTES

Holly v. Rapone, 476 F.Supp. 226 (E.D. Penn. 1979). Prisoner underwent withdrawal symptoms and receives 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)

1980

U.S. District Court
STATE STANDARD

Hluchan v. Fauver, 482 F.Supp. 1155 (D. N.J. 1980). In October 1979, the district court for New Jersey declared unconstitutional a state standard which denied eligibility for minimum custody status to inmates who had been convicted of more than one "sex offense." Guidelines were set forth in the opinion to help in revising the standard. Within the time allotted, the defendants submitted proposed revisions to the standard. The court first stated that the definition of "sex offense" by reference to specific section of the New Jersey Criminal Code was entirely proper. Furthermore, the court agreed with the categories from which the offenses included in the standard were selected: (1) minors; (2) violence or the threat of violence; or (3) the sale of prohibited sexual goods and services in the course of a business for profit.

The court stated that the standard failed, however, because of the inclusion of certain phrases in the definition of "sex offense." One section, which provided for the hiring out or employing of minors for mendicant or immoral purposes, the court found to be irrational. This section referred to the disposing "of the child for any mendicant or slandering business." The court pointed out that "mendicant" is defined as "practicing beggary" or "begging" and that wandering business is not necessarily concerned with sex or immorality. The court stated that if such terms were applied to the definition of "sex offenders," the classification would violate the equal protection clause of the fourteenth amendment. The court then discussed other sections of the proposed standard which listed criminal conduct constituting a "sex offense." The court found it impossible to determine the meanings of these paragraphs. The court also stated that defining sexual offenses by reference to specific sections of the New Jersey code would render the standard violative of the equal protection clause since the New Jersey code differs in structure from other state codes. The court thus found the proposed standard to be unconstitutional, but granted the commissioner thirty days to make revisions. (New Jersey Department of Corrections)

1981

U.S. District Court
STANDARDS

Heitman v. Gabriel, 524 F.Supp. 622 (W.D. Mo. 1981). Standards not necessarily a constitutional minima. When jail conditions are found to be unconstitutional, as in this case, the court has the power to order correction of conditions and costs are not to deter these orders. The court must order correction of conditions falling below decent minimums; published jail standards establish goals but do not reflect constitutional minima. (Buchanan County Jail, Missouri)

U.S. Appeals Court
STANDARDS

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 154 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. Appeals Court
STATE REGULATIONS

Ramos v. Lamm, 639 F.2d 559 (10th Cir. 1980), cert. denied, 450 U.S. 1041. While the state health code does not establish a constitutional minimum for the conditions of a kitchen, it is substantial evidence of what constitutes the humane conditions required by the eighth amendment. The record indicates that the conditions of the kitchen constitute a substantial hazard to the health of the inmates and that they, therefore, violate the eighth amendment. (State Penitentiary, Canon City, Colorado)

U.S. District Court
STATE REGULATIONS

Vazquez v. Gray, 523 F.Supp. 1359 (S.D. N.Y. 1981). Court outlines a response to overcrowding. The United States District Court found the Westchester County Jail overcrowded and determined that the proper method of determining a remedy was to examine the causes of the overcrowding. The court considered and rejected orders which reduce bail or set a population limit for the institution. Instead, it ordered:

1) that no mattresses be placed on the floor for sleeping,
2) that no more than two persons be confined in a cell,
3) that the use of day rooms for housing for more than five days be prohibited, and that the court be advised where individuals are kept in such housing for more than forty-eight hours.

The court approved using dormitories as long as the use complied with state regulations and as long as the use of the dormitories did not deviate from the plan which they provided to the court. The court refused to enter a comprehensive order regarding the general conditions of the institution until the provisions of the initial order had time to be implemented. (Westchester County Jail, New York)

1982

U.S. District Court
STATE STANDARDS

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. District Court
PROFESSIONAL STANDARDS

Grubbs v. Bradley, 552 F.Supp. 1052 (M.D. Tenn. 1982). Professional standards are desirable goals, not constitutional minima. While guidelines of professional organizations such as the American Correctional Association standards represent desirable goals for penal institutions, neither they nor operations experts can be regarded as establishing constitutional minima. Rather, constitutional standards are also dependent upon contemporary standards of civilized decency that currently prevail in society. (Tennessee Correctional System)

State Court
STANDARDS

Hickson v. Kellison, 296 S.E.2d 855 (W.Vir. 1982). County jail conditions are unconstitutional. General conditions at the Pocahontas County Jail were found to violate constitutional standards by a federal district court, noting that the jail failed to provide the inmates with personal hygiene supplies, bedding and towels, adequate clean clothing, communication materials for writing, visitation facilities, adequate medical care and outdoor exercise. The court stated that the legislature required counties to maintain jails at reasonable and acceptable standards. (Pocahontas County Jail, West Virginia)

1985

U.S. District Court
PROFESSIONAL
STANDARDS

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. 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. (Federal Correctional Institution at Danbury, Connecticut)

1986

U.S. District Court
STATE STANDARDS

Strandell v. Jackson County, Ill., 634 F.Supp. 824 (S.D.Ill. 1986). The parents of a pretrial detainee who committed suicide brought a civil rights action against the county and the prison officials. The district court held that: (1) the parents stated a claim that the detainee was deprived of due process right to be free from punishment; (2) the parents stated cause of action under Illinois statutes and regulations; (3) the county was not immune from liability; (4) the county sheriff, jailor and superintendent were not immune from liability; (5) parents could not recover punitive damages or prejudgment interest; and (6) the district court would retain pendent jurisdiction over state law claims. Mandatory language of Illinois county jail standards providing that detainee shall be assigned to suitable quarters, that emotionally disturbed detainee shall be kept under constant supervision, and that suspected disturbed detainee shall be immediately examined by a physician creates a protected liberty interest and an expectation of certain minimal standards and treatment.

The parents of a pretrial detainee who committed suicide stated a civil rights cause of action under the fourth and fourteenth amendments by alleging that prison officials violated the detainee's liberty interest and expectation of certain minimal standards for the physical condition of the jail facility, as established by Illinois regulations, and an expectation of treatment that protects safety, health, and well-being of pretrial detainees.

No protected liberty interest could be premised on state jail standards relating to the physical condition of the jail, with respect to action based on the suicide of a pretrial detainee while confined in the county jail, where state jail standards did not require the county jail which had been built in 1926 to comply with standards regarding physical conditions until January 1986, and the death occurred in March 1984.

The fact that the individual inmate could not, under state law, demand compliance with state jail standards, did not establish that inmates had no claim of entitlement to have those standards followed, where state Department of Corrections was given right to enforce compliance with state jail standards. (Jackson County Jail, Illinois)

1987

U.S. District Court
STATE STANDARDS

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 County Jail, Illinois)

U.S. Appeals Court
PROFESSIONAL
STANDARDS

Cody v. Hillard, 830 F.2d 912 (8th Cir. 1987), cert. denied, 108 S.Ct. 1078. An inmate brought a class action under a civil rights statute complaining of overcrowding and substandard living conditions. The United States District Court for the District of South Dakota ordered an end to the practice of double-celling of inmates; prison officials appealed. The Court of Appeals initially affirmed (799 F.2d 447).
After granting a petition for rehearing en banc, the U.S. Court of Appeals, Eighth Circuit, held that the practice of double-celling did not evince the "wanton and unnecessary infliction of pain" necessary to constitute a violation of the Eighth Amendment. On appeal, prison officials contended that the trial court erred in finding that double-celling of inmates at the South Dakota State Prison (SDSP) violates the eighth and fourteenth amendments to the United State Constitution. They also claimed that the district court erred in using the "rated capacities" of the American Corrections Association (ACA) as a reference for measuring the permissible capacity of the prison under the eighth amendment. The appellate court noted that the district court's remedy in its final order was based on compliance with ACA rated capacities, which in turn were based on recommendations by the South Dakota penitentiary authorities. "The Supreme Court has explicitly rejected the proposition that such standards establish a constitutional norm. In **Bell v. Wolfish**, the Court stated that 'while the recommendations of these various groups [such as ACA] may be instructive in certain cases, they simply do not establish the constitutional minima. Rather, they establish goals recommended by the organization in question.' 441 U.S. 520, 543-44 n. 27, 99 S.Ct. 1861, 1876 n. 27, 60 L.Ed.2d 447 (1979). In **Rhodes**, the court quoted the foregoing statement from **Wolfish** and further observed in regard to eighth amendment claims that 'generalized opinions of experts cannot weigh as heavily in determining contemporary standards of decency as "the public attitude toward a given sanction.'...We need not consider the propriety of the district court's final order mandating relief and its reference to ACA rated capacities in view of our conclusion that on the record before us double-celling at SDSP does not violate the eighth amendment." The appeals court reversed the order of the district court concerning double-celling, left undisturbed the affirmance of the district court's order rejecting the protective custody inmates' challenge to the additional restrictions attendant to their protective custody, and remanded the case to the district court and directed it to vacate its order requiring SDSP to cease double-celling and to bring its inmate population within ACA guidelines. (South Dakota State Penitentiary)

State Appeals Court
STATE
STANDARDS

DeBow v. City of East St. Louis, 510 N.E.2d 895 (Ill. App. 1987), cert. denied, 116 Il2d 552. A detainee was injured during his confinement in a city lockup. He was arrested for illegal transportation of alcohol and he was placed in the same cell with a man arrested for aggravated assault. The plaintiff was later found unconscious on the floor of the cell with a severe head injury. Blood was found on one of the boots that were in the possession of the other occupant of the cell. The injured detainee sued the city and its police chief alleging that pre-trial detainees were inadequately supervised, that officers failed to monitor their conduct and failed to segregate violent detainees from other detainees. The inmate suffered permanent brain injury from the assault and a jury initially awarded $3.4 million in damages. On appeal, the court upheld this award, noting that "specific intent" to deprive the detainee of his rights was not required. The state appeals court found that the plaintiff had established that the defendants had received numerous notices of noncompliance with minimum jail safety standards, including a warning that detainees were being inadequately supervised. Hourly visual checks of detainees were not being conducted and no one understood it to be their official duty to conduct such routine checks. According to the court, it is sufficient that the defendants acted recklessly by disregarding detainee safety. This disregard can be demonstrated either by both deliberate acts or by the failure to act. Since the repeated notices of noncompliance with safety standards provided notice of unsafe conditions, the appeals court agreed that the jury could conclude that the failure to act to correct the situation was reckless. (City of East St. Louis, Illinois)

1988

State Appeals Court
STATE STANDARDS

N.Y. State Com'n of Correction v. Ruffo, 530 N.Y.S.2d 469 (Sup. 1988). The New York State Commission of Correction went to court seeking an order compelling a county and its sheriff to build an outdoor recreation area for inmates of the county jail and totransport inmates to the county's other jail facility for daily recreation while the new outdoor recreation area is being built. New York regulations, the Commission argued, provide that inmates be allowed to use recreation areas for a minimum of one hour a day and further requires that county jails provide an outdoor play area of a minimum of 1500 square feet to enable prisoners to engage in basketball, jogging, handball, weightlifting, calisthenics and other active recreation. The court found that the Commission had no authority to compel the county to construct a new facility. Further, the sheriff was not authorized by law to build a new jail or to raise taxes to fund a major renovation of the old one. The court did, however, grant the Commission an order directing the sheriff to transport prisoners to the county's other jail each day and allow each inmate one hour of outdoor recreation, not including travel time. (Broome County Jail, Binghamton, New York)

1989

U.S. District Court
PROFESSIONAL STANDARDS

Carapellucci v. Town of Winchester, 707 F.Supp. 611 (D. Mass. 1989). The administratix 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. District Court
PROFESSIONAL STANDARDS

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." (Lorton Correctional Complex)

1992

U.S. Appeals Court
STATE REGULATIONS

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. (Wilson County Jail, Texas)

U.S. District Court
STATE REGULATIONS
STATE STATUTES

McCoy v. Chesapeake Correctional Center, 788 F.Supp. 890 (E.D. Va. 1992). A pro se plaintiff brought a Section 1983 action against a city jail, alleging that he received inadequate medical treatment in violation of the Eighth Amendment. On the jail's motion for summary judgment, the district court found that the degree of state involvement in the administration of local jails in Virginia mandates that local jails be considered "arms of state" for Eleventh Amendment purposes and, thus, not "persons" under Section 1983; part of the cost of judgments against employees of local jails is born by the state, local jails receive substantial state funding, members of sheriff's office who administer jails are state officers, and state regulations sharply curtail local autonomy to run jails. (Chesapeake Correctional Center, Virginia)

1995

U.S. District Court
PROFESSIONAL
STANDARDS

Alexander S. v. Boyd, 876 F.Supp. 773 (D.S.C. 1995). Juveniles incarcerated at a correctional institution brought an action challenging conditions of confinement. The district court found that the Fourteenth Amendment due process clause governed, rather than the Eighth Amendment. The court found that the American Correctional Association standards are not constitutional minima for incarcerated juveniles. (South Carolina Department of Juvenile Justice)

U.S. Appeals Court
STANDARDS

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." (Philadelphia Prison System, Pennsylvania)

U.S. District Court
STATE REGULATIONS

Masonoff v. DuBois, 899 F.Supp. 782 (D.Mass. 1995). Prison inmates filed a class action suit against prison officials alleging that conditions of confinement violated their rights under the Eighth Amendment. The district court granted summary judgment, in part, for the inmates. The court denied summary judgment for the prison officials with regard to fire safety issues raised by the inmates. Inmates alleged fire hazards caused by the lack of a functioning sprinkler system and the lack of automatic locks on cell doors, which are required by a state building code. Prison officials responded that the facility had implemented a rigorous fire safety program which mitigated any dangers imposed by these deficiencies. The court noted that while it may look to state codes in its effort to determine society's standard of decency, such standards do not necessarily reflect constitutional minima. (Southeast Correctional Center, Massachusetts)

1997

U.S. District Court
PROFESSIONAL
STANDARDS

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.

Despite some efforts to reduce noise in the jail, the detainees established a constitutional violation in noise levels which ranged between 73 and 96 decibels, exceeding acceptable levels, and caused increased risk of psychological harm and safety concerns due to officers' inability to hear calls for help. The extent to which noise continued to exceed maximum standards suggested that previous noise reduction efforts were merely cosmetic and that far more could be

done. The court found due process violations from poor lighting where correctional standards mandated lighting of at least 20 foot-candles in living areas, and some health standards required 30 foot-candles, but readings in the jail ranged from 0.28 to 5 foot-candles. (San Francisco Jail No. 3, California)

U.S. Appeals Court
PROFESSIONAL STANDARDS
STATE STATUTES

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. The court noted that the district court failed to recognize that it had the discretion to apportion all expert witness costs to one side, and cautioned against a narrow reading of Rule 706(b) that would hinder the court from appointing an expert witness whenever one of the parties is indigent. (Dodge Correctional Institution, Wisconsin)

U.S. District Court
PROFESSIONAL STANDARDS
ACCREDITATION

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 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
STATE STATUTES

Faulcon v. City of Philadelphia, 18 F.Supp.2d 537 (E.D.Pa. 1998). A pretrial detainee who had been stabbed by another inmate sued city officials and correction officers alleging failure to protect, failure to supervise and failure to train under the Eighth Amendment. The district court granted summary judgment to the defendants, finding that the facility's policy of keeping pretrial detainees in the same housing unit as convicted inmates did not constitute deliberate indifference to a substantial risk of harm. The court also held that the lack of guidelines or training procedures regarding segregation of convicted inmates was insufficient to support claims for failure to supervise or failure to train. According to the court, a state statutory provision that indicated that sentenced prisoners should be housed separately from detainees was merely a recommended guideline rather than a mandatory requirement. (Philadelphia Industrial Correctional Center, Pennsylvania)

U.S. District Court
ACCREDITATION
PROFESSIONAL STANDARDS

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 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
STATE STANDARDS

Zimmerman v. Hoard, 5 F.Supp.2d 633 (N.D. Ind. 1998). A state prisoner brought a § 1983 action concerning events that occurred while he was a pretrial detainee at a

county jail. The district court held that state directives and recommendations did not provide the basis for § 1983 claims. The inmate had alleged that the county officials failed to implement the Indiana Jail Standards and Rules and comply with the recommendations of the State Jail Inspector. (Carroll County Jail, Indiana)

1999

U.S. District Court
STATE REGULATIONS

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. Appeals Court
PROFESSIONAL STAND.
ACCREDITATION

Grayson v. Peed, 195 F.3d 692 (4th Cir. 1999). The administrator for the estate of a deceased detainee sued officers and county officials under § 1983 asserting constitutional violations, negligence, gross negligence, negligent training and negligent supervision. The district court granted summary judgment for the defendants on all § 1983 claims and declined to assume supplemental jurisdiction over state law claims. The appeals court affirmed. The detainee had been arrested and transported to the county detention center and the following day was declared brain dead. During his booking the detainee was acting irrationally, his speech was slurred, and he kept repeating in an intoxicated manner "I can't believe this is all over a traffic ticket." He was then taken to a cell and strip searched, but at the conclusion of the search attempted to crawl out of the cell and a struggle ensued. Officers used pepper spray to subdue him. Early the next morning the detainee began acting belligerent again. He resisted being moved to another cell and a five-man cell extraction team pinned him face down. During the struggle he was sprayed with pepper spray and he was punched several times. Once restrained, he was carried face down to another cell and was placed in four-point restraints. A few minutes later he appeared to be unconscious and was checked by medics and was found to be "okay." Another officer then noticed that the detainee was not breathing, CPR was initiated and he was taken to a local hospital where he was found to be brain dead. The appeals court held that officers at the county detention center were not deliberately indifferent to the medical needs of the deceased detainee, either when the detainee was booked or during his custody. A trained medic was on hand in the booking area and discerned no sign of a medical problem. According to the court, the failure to clean pepper spray off of the detainee in a timely manner was, in the first instance, due to the detainee's violent response to the officer's offer to wash the spray off, and in the second instance was due to the need to rush the detainee to a hospital for emergency care. The appeals court held that the officers did not use excessive force against the detainee, but rather that they applied the force necessary in a good faith effort to restore discipline. The court also found that there were no actionable deficiencies in the sheriff's policies, customs or training. According to the court, "...the appellant's own expert penologist conceded that [sheriff] Peed's policies met the standards of both the Virginia Board of Corrections and the American Correctional Association." The court also concluded, "...claims that [sheriff] Peed provided inadequate training for his employees must also fail. As of the time of this incident, the ADC had been accredited for more than ten years by both the American Correctional Association and the National Commission on Correctional Health Care, two organizations whose training requirements often surpass minimal constitutional standards." (Fairfax County Adult Detention Center, Virginia)

U.S. District Court
FAILURE TO SUPERVISE
INADEQUATE SUPERVISION

Newby v. District of Columbia, 59 F.Supp.2d (D.D.C. 1999). A female inmate brought a § 1983 action alleging that she had been forced to participate in sex shows. The district court held that the District of Columbia violated the inmate's rights by failing to actively supervise improper sexual activities involving the entire prison population. The court noted that the District had a duty not only to train its officers in matters related to sexual contact between prison officers and inmates, but also to actively devise and implement a system of supervision of its first level of correctional officers in accordance with law. The inmate and other female inmates were forced to participate in strip-shows and exotic dancing on three occasions over a one month period. (District of Columbia Jail)

U.S. District Court
FAILURE TO SUPERVISE

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. (Schuylkill Co. Prison, Penn.)

2000

U.S. Appeals Court
STATE STANDARDS

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. 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
PROFESSIONAL
STANDARDS

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 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
STATE STANDARDS

Frake v. City of Chicago, 210 F.3d 779 (7th Cir. 2000). The administrator for the estate of a pretrial detainee who committed suicide in a police lockup sued the city in state court and under § 1983. After removing the action the city moved for summary judgment, which the district court granted. The appeals court affirmed, finding that the city was not deliberately indifferent to the welfare of pretrial detainees. According to the court, even though the city continued to place detainees in cells containing horizontal metal bars despite past suicides by detainees using the bars, there was no evidence that anyone had knowledge that this detainee was suicidal. The court noted that the facility used a thorough screening process and took precautions to protect detainees from the risk of suicide, facility personnel received suicide awareness training, cells were checked every fifteen minutes--which "far exceeds" the hourly checks required in state municipal jail standards, dangerous items were removed the detainees' possession, and cell construction was authorized by state standards. (District 12 Chicago Police Department lockup)

U.S. District Court
STATE STATUTE

Gambino v. Gerlinski, 96 F.Supp.2d 456 (M.D.Pa. 2000). A prisoner petitioned for a writ of habeas corpus claiming that he had a right to spend a reasonable period of time in a halfway house or in home confinement before his sentence expired. The district court denied the petition, finding that a state statute that called for such transitional arrangements merely expressed a non-binding guideline and did not create a liberty interest. (Low Security Correctional Institution, Allenwood, Penn.)

U.S. District Court
STATE REGULATIONS

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 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 offiials on the issue of whether the jail's dormitory violated state fire and sanitation codes. The detainee alleged that the dormitory was overcrowded and had only eight sinks, commodes and showers for 72 pretrial detainees that were housed in the dormitory. (Avoyelles Parish Jail, Louisiana)

U.S. District Court
STATE REGULATIONS
STATE STANDARDS

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)

2001

U.S. Appeals Court
STATE STANDARDS

Boncher ex rel. Boncher v. Brown County, 272 F.3d 484 (7th Cir. 2001). The estate of a prisoner who had committed suicide brought a § 1983 action against jail officials alleging deliberate indifference to the risk of the prisoner's suicide. The district court granted summary judgment for the jail officials and the appeals court affirmed. The appeals court held that evidence was insufficient that jail officials were deliberately indifferent, even though intake officers had little training and relied on a checklist that was deficient in several areas. The court noted that the officers were making a judgment that was not likely to be assisted by special training and that the jail was in compliance with the state's minimum standards for suicide prevention. The appeals court also held that the evidence offered by an expert witness was "useless" and should have been excluded. The criminologist had testified that the rate of suicide in the jail (five suicides in the preceding five years) was unusually high. (Brown County Jail, Wisconsin)

2002

U.S. District Court
PROFESSIONAL STANDARDS
ACCREDITATION

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." The court complimented the Special Master for his "wise guidance in overseeing the rehabilitation of the Metropolitan Government's jail system." (Metropolitan Government of Nashville, Tennessee)

U.S. District Court
STATE STANDARDS
PROFESSIONAL STANDARDS

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 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)

2003

U.S. Appeals Court
STATE STATUTES

Hurst v. Snyder, 63 Fed.Appx. 240 (7th Cir. 2003) [unpublished]. A state prison inmate brought an action against prison officials, alleging that he was deprived of adequate living space. The district court dismissed the case as frivolous and the inmate appealed. The appeals court affirmed. The appeals could held that a former state statute that required prison facilities to provide at least 50 square feet of cell space per person did not give the inmate a protected liberty interest in having 50 square feet of cell space. The court found that the amendment of the statute, to delete the express reference to a "per person" space requirement, did not violate the ex post facto clause. (Menard Correctional Center, Illinois)

2004

U.S. Appeals Court
PROFESSIONAL STANDARDS
ACCREDITATION

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. The court held that evidence supported findings that the probability of heat-related illness was extreme at the death row unit in which the class members were housed, and that corrections officials had displayed deliberate indifference. (Mississippi Department of Corrections, Unit 32-C, State Penitentiary in Parchman)

U.S. District Court
STATE STANDARDS

Thompson v. Spears, 336 F.Supp.2d 1224 (S.D.Fla. 2004). A prisoner brought an action against a county and a jail official, alleging deliberate indifference to his safety, negligent supervision, and negligent infliction of emotional distress. The district court granted summary judgment in favor of the defendants. The court held that a lack of monitoring devices in jail cells did not pose an objectively substantial risk of harm to the inmate, particularly in light of the fact the state Model Jail Standards did not require cameras. The court found that the inmate presented no evidence that the officer posts were located so far that officers could not hear calls for help. The court held that the county was not liable under § 1983, even if jail officers did not actually follow the county policy of making hourly walk-throughs to monitor cells, where there was no evidence that the county had officially sanctioned or ordered the officers to disregard the county policy. The prisoner had been temporarily transferred from a state prison to the county jail in order to be involved in a family court matter. The inmate, who was from Jacksonville, Florida, alleged that he was severely beaten by other inmates for over two hours, after the Miami Dolphins beat the Jacksonville Jaguars in a football game. (Pretrial Detention Center, Miami-Dade County, Florida)

2005

U.S. District Court
PROFESSIONAL STANDARDS
ACCREDITATION

Harvey v. County of Ward, 352 F.Supp.2d 1003 (D.N.D. 2005). The surviving spouse of a jail inmate who died after a suicide attempt brought an action under § 1983 and state law, alleging deliberate indifference to the inmate's known risk of suicide. The district court granted summary judgment in favor of the defendants. The district court held that the plaintiff failed to establish that the sheriff and jail administrator knew of the inmate's potential risk of suicide. According to the court, evidence of conversations between the spouse and jail employees about the inmate's suicide risk, an officer's note that the inmate's wife thought that they should keep an eye on the inmate, and another officer's report that the inmate may have been trying to save up some of his medications to take at another time, was insufficient to establish that the sheriff and jail administrator knew of the inmate's potential risk of suicide. The court found that the county was not deliberately indifferent to the training of its employees on inmate suicide prevention. The court held that the jail's suicide prevention policy appeared reasonable and comprised an effort to prevent suicides, even if the policy had not been updated in recent years, and the jail was not accredited by the American Correctional Association (ACA). The court noted that the policy set forth a detailed list of factors to identify potentially suicidal inmates, set forth a procedure for identification and screening of inmates, and required ongoing training in the implementation of suicide prevention and intervention for all staff. (Ward County Jail, North Dakota)

U.S. Appeals Court
STATE STATUTES

Nicholas v. Goord, 430 F.3d 652 (2nd Cir. 2005). Convicted felons brought a § 1983 action against state officials and others, arguing that a state DNA-database statute violated their Fourth Amendment rights. The district court dismissed the action and the felons appealed. The appeals court affirmed. The court held that the extraction and analysis of convicted felons' blood for DNA-indexing purposes constituted a search that implicated the Fourth Amendment, but that this search was justified under the "special needs" exception. (New York State Department of Correctional Services)

U.S. District Court
STATE STATUTES

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
STATE REGULATIONS
STATE STANDARDS

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)

2006

U.S. District Court
STATE REGULATIONS

Blankenship v. Virginia, 432 F.Supp.2d 607 (E.D.Va. 2006). The mother of a ward of a juvenile correction center who was permanently disabled after being beaten by two fellow inmates, brought a § 1983 civil rights action against the center's former superintendent, former assistant superintendent, and former counselor for failing to protect the ward. The defendants filed a motion for summary judgment. The district court held that: (1) the superintendent and assistant superintendent could not be held liable under § 1983 based on constructive knowledge of the threat against ward; (2) the fact that the juvenile correction center had been decertified by the Virginia Board of Juvenile Justice, standing alone, did not necessarily confer on the superintendents the knowledge as to the ongoing and substantial risk of harm to residents, as was required to hold them liable under § 1983; (3) evidence indicating a deficiency in the center's record management capabilities did not suggest a willful disregard for the safety of the wards; and (4) a counselor responded reasonably to ensure the ward's safety when the ward was moved to the more secure isolation pod. (Beaumont Juvenile Correction Center, Virginia)

U.S. District Court
ACCREDITATION
PROFESSIONAL
STANDARDS

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. (State Correctional Institution at Mahanoy, Pennsylvania)

U.S. District Court
STATE STATUTES

Fox v. Lappin, 409 F.Supp.2d 79 (D.Mass. 2006). A federal prisoner brought suit against the Director of the Federal Bureau of Prisons and a warden, seeking declaratory judgment that his classification as a sex offender based on a 1981 state sexual assault conviction was improper. The prisoner also challenged the Bureau's failure to consider him for community center placement based on his failure to participate in a sex offender program. The district court held that a federal prisoner cannot be designated as a sex offender based on a state sex offense for purposes of the federal statute requiring that notice be given to state and local authorities of an inmate's release if the inmate has been designated as a sex offender, and that designated sex offender register in the state in which he will reside, because the Attorney General's authority under the statute is limited to designating federal offenses as sex offenses. The court found that as a matter of inmate classification, a prisoner's classification as a sex offender on basis of state sexual assault conviction was not an abuse of discretion. The court held that the BOP policy that categorically excludes inmates with sex offender safety factors from placement in community corrections centers is a permissible interpretation of the rule and that the BOP did not abuse its discretion in denying an inmate designated as a sex offender placement in a community corrections center based on his failure to participate in a mandatory sex offender program. The court noted that the federal statute governing pre-release custody of a federal prisoner does not create a liberty interest in the prisoner's transfer to the less restrictive environment of community center placement, as the statute does not mandate community center placement nor any placement in a less restrictive environment, it merely insures placement under pre-release conditions except where no such placement is practicable. (Federal Medical Center, Devens, Massachusetts)

U.S. District Court
STATE STATUTES

Giarratano v. Johnson, 456 F.Supp.2d 747 (W.D.Va. 2006). An inmate brought a § 1983 action against the director of a state corrections department, challenging the constitutionality of a statutory exclusion of prisoners from making requests for public records under the Virginia Freedom of Information Act (VFOIA). The district court dismissed the action. The court held that the statutory exclusion of prisoners from making requests for public records under the Virginia Freedom of Information Act (VFOIA) was rationally related to a legitimate state interest, and thus, it did not violate the inmate's right to equal protection. The court noted that the Virginia General Assembly, in passing the exclusion, could have believed that inmates were intrinsically

prone to abusing VFOIA request provisions and that such frivolous requests would unduly burden state resources, or that inmates had less need to access public records because their confinement greatly limited the amount of contact they had with state government. (Red Onion State Prison, Virginia)

U.S. Appeals Court
STATE STANDARDS

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. Appeals Court
STATE STANDARDS

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 Stapylococcus 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. (Bucks County Correctional Facility, Pennsylvania)

U.S. District Court
STATE STATUTES

Michael v. *Ghee*, 411 F.Supp.2d 813 (N.D.Ohio 2006). Ohio "old law" inmates serving indeterminate sentences brought a § 1983 action, alleging that the state's parole system was unconstitutional. The state moved to dismiss and for summary judgment. The district court granted summary judgment for the state. The court held that the inmates had no valid procedural due process claim and that the state had rational reasons, satisfying equal protection, for requiring "old law" inmates to continue to serve their indeterminate sentences, subject to parole board determinations, after the law was changed to provide for exact sentences and the elimination of parole. According to the court, the parole guidelines promulgated in 1998 had a rational basis and the parole guidelines were not laws, subject to the ex post facto clause. The court noted that state law makes parole discretionary, and therefore inmates do not have a due process liberty interest in parole under state law. Since the inmates did not have a liberty interest in parole itself, they could not have a liberty interest in parole consideration or other aspects of parole procedures, and thus had no procedural due process claim. The court found that the state had several rational reasons, satisfying equal protection, for requiring so-called "old law" inmates to continue to serve their indeterminate sentences. The reasons included the desire to avoid retroactive legislation and alteration of sentences, to give "old law" inmates an incentive to obey prison regulations, and to acknowledge the seriousness of the convicted offenses. (Ohio Adult Parole Authority and Chillicothe Correctional Institution)

U.S. District Court
STATE STATUTES

Rentz v. *Spokane County*, 438 F.Supp.2d 1252 (E.D.Wash. 2006). The personal representatives of the estate of a pretrial detainee, who was murdered by two fellow pretrial detainees in a county jail, sought recovery of damages from county defendants under Washington's wrongful death and survival statutes. Parents and siblings, as beneficiaries of the estate, also sought recovery of damages. The court granted partial summary judgment for the defendants. The court held that neither the parents nor the siblings could recover under Washington's wrongful death and survival statutes, but that the parents could seek recovery from the county defendants under § 1988 for violations of the detainee's constitutional rights. The court also held that the parents were entitled to assert Fourteenth Amendment substantive due process causes of action against the county defendants to vindicate their constitutional rights for loss of companionship with their adult son, but the siblings were not. The court allowed the plaintiffs to amend their complaint to include the jail officers and a jail nurse because they were allegedly involved with the placement of the detainee in the same jail dormitory as the individuals who murdered him. (Spokane County Jail, Washington)

U.S. District Court
STATE STATUTES

Sickles v. *Campbell County, Kentucky*, 439 F.Supp.2d 751 (E.D.Ky. 2006). Inmates, former inmates, and relatives and friends of inmates brought a § 1983 action against counties, alleging that the methods used by the counties to collect fees imposed on prisoners for the cost of booking and incarceration violated the Due Process Clause. The district court granted summary judgment in favor of the defendants. The court held that the Kentucky statute authorizing county jailers to adopt prisoner fee and expense reimbursement policies did not require that prisoners be sentenced before fees could be imposed, and that due process did not require a pre-deprivation hearing before prison

fees were assessed. According to the court, the First Amendment rights of non-prisoners who contributed funds to prisoners' accounts were not violated. The court noted that the statute authorized jails to begin to impose fees, and to deduct them from prisoners' canteen accounts, as soon as prisoners' were booked into the jail. (Campbell County and Kenton County, Kentucky)

2007

U.S. District Court
STATE REGULATIONS

Edwards v. *Pa. Bd. of Prob. & Parole*, 523 F.Supp.2d 462 (E.D.Pa. 2007). A prisoner filed a § 1983 suit, seeking injunctive and declaratory relief against a Board of Probation and Parole, claiming violations of the Ex Post Facto Clause and Eighth Amendment, and asserting that his parole was denied in retaliation for exercising his constitutional rights. The district court granted summary judgment in favor of the board. The court noted that the Ex Post Facto Clause applies to a statute or policy change that alters the definition of criminal conduct or increases the penalty by which a crime is punishable. Under Pennsylvania law, although parole is an alteration of the terms of confinement, a parolee continues to serve his unexpired sentence until its conclusion. According to the court, under Pennsylvania law, a "parole" is not an act of clemency but a penological measure for the disciplinary treatment of prisoners who seem capable of rehabilitation outside of prison walls; parole does not set aside or affect the sentence, and the convict remains in the legal custody of the state and under the control of its agents, subject at any time for breach of condition to be returned to the penal institution. The court held that denial of the prisoner's re-parole by Board of Probation and Parole, after his conviction as a parole violator, was not re-imposition of the prisoner's unexpired life sentence, in violation of the Ex Post Facto Clause, but rather, under Pennsylvania law, the prisoner's sentence was not set aside by his parole. According to the court, the prisoner remained in the legal custody of the warden until expiration of his sentence, and the prisoner had no protected liberty interest beyond that of any other prisoner eligible to be considered for parole while serving out the remainder of a maximum sentence. The court held that changes to the Pennsylvania Parole Act did not create a significant risk of increasing the prisoner's punishment in violation of the Ex Post Facto Clause, based on the Board of Probation and Parole's denial of the prisoner's re-parole due to factors of prior parole failures and lack of remorse, since the relative weight of such factors in the parole calculus of amendments to the Parole Act did not change, and the prisoner produced no evidence that the change in the Parole Act had any effect on the Board's decision. (Pennsylvania Board of Probation and Parole)

U.S. District Court
STATE STATUTES

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
STATE STATUTES

Jackson v. *Russo*, 495 F.Supp.2d 225 (D.Mass. 2007). A prisoner brought a suit against prison officials claiming that compensation and good time credits awarded to him for participation in a barber program violated his due process and equal protection rights. The prisoner moved for summary judgment, and the defendants moved to dismiss for failure to state a claim. The district court granted the motions in part and denied in part as moot. The court held that the prisoner had no constitutionally created right to conduct business while incarcerated or to receive payment by the prison for services he provided to other inmates as part of a barber vocational program. According to the court, Massachusetts statutes that authorize the corrections commissioner to provide for education, training and employment programs and to establish a system of inmate compensation did not create a protected property interest for inmates in any job or in compensation for a job, for the purposes of a due process claim. The court noted that authorization was dependent on several contingencies, including appropriation of funds, and conferred complete discretion upon the commissioner over programs. The court held that the corrections commissioner's refusal to award additional good time credits to the inmate who enrolled in the barber school, beyond awards granted in 2.5 day increments for participation in various programs, did not create an atypical prison hardship, so as to give rise to an interest protected by due process. The court noted that the prisoner was not unfairly denied the opportunity to participate in other prison activities that might have earned him more credits. According to the court, the prisoner had no constitutional, statutory, or regulatory right to good time credits. The court found that a rational basis existed for differences in levels of compensation received by state prison barbers and kitchen workers in prison vocational programs, based on difficulties in recruiting prisoners, hours, and the demanding nature of the culinary arts program, such that the lesser compensation received by the prisoner enrolled in the barber training program and providing services to other inmates did not violate equal protection. (Souza Baranowski Correctional Center, Massachusetts)

U.S. Appeals Court
STATE STATUTES

Pennsylvania Prison Soc. v. *Cortes*, 508 F.3d 156 (3rd Cir. 2007). State prisoners, several non-profit advocacy and prisoner rights groups, and several state voters and qualified taxpayers brought an action challenging amendments to the Pennsylvania constitution changing the composition of Board of Pardons and voting requirements for obtaining a pardon or commutation of sentence. The district court granted in part and denied in part the parties' cross-motions for summary judgment. The parties appealed. The appeals court dismissed and remanded. The court held that the parties did not have standing. According to the court, evidence tended to show that the absolute number of Board of Pardon recommendations for commutations had decreased after amendments to the Pennsylvania constitution changed the

composition of the Board and voting requirements for obtaining a pardon or commutation of sentence, but this failed to meet the causation element for standing to challenge the constitutionality of amendments, where the decrease had begun two years prior to the amendments. (Pennsylvania Board of Pardons)

U.S. Appeals Court
STATE STATUTES

Pruett v. ***Harris County Bail Bond Bd.***, 499 F.3d 403 (5th Cir. 2007). Bail bondsmen brought a civil rights action challenging a Texas statute restricting solicitation of potential customers, claiming it was a denial of their First Amendment rights. The district court granted partial summary judgment in favor of the bondsmen and awarded $50,000 in attorney fees. The defendants appealed and the bondsmen cross-appealed the award of fees, requesting more. The appeals court affirmed in part, reversed in part, vacated in part, and remanded. The court held that: (1) the court could consider evidence generated after enactment of the statute; (2) the provision of the statute that restricted solicitation by bail bondsmen of persons subject to an unexecuted arrest warrant by preventing solicitation unless the bondsman had a prior relationship with the party violated the First Amendment; (3) the provision of the statute that prohibited bail bondsmen from calling potential customers for 24 hours after an offender's arrest violated the First Amendment; (4) the provision of the statute that prohibited bail bondsmen from contacting potential customers between 9:00 p.m. and 9:00 a.m. did not violate the First Amendment; (5) the provision of the statute that prohibited bail bondsmen from contacting potential customers between 9:00 p.m. and 9:00 a.m. was not unconstitutionally vague; and (6) the defendants failed to show special circumstances warranting reduction or preclusion of the attorney fee award. (Harris County Bail Bond Board, Texas)

U.S. District Court
FEDERAL STATUTES

U.S. v. ***Carta***, 503 F.Supp.2d 405 (D.Mass. 2007). The government sought an order against federal inmates whose sentences had expired, finding that they were sexually dangerous and committing them to the custody of the Attorney General. The inmates moved to dismiss, arguing that the commitment regime was facially unconstitutional. The district court dismissed the motions, finding that the statute was a valid exercise of legislative power, did not violate the Equal Protection Clause, was civil rather than criminal in nature, and did not violate the Due Process Clause. (Federal Bureau of Prisons)

U.S. District Court
STATE STATUTES

Wilson v. ***Wilkinson***, 608 F.Supp.2d 891 (S.D.Ohio 2007). A state prisoner brought a § 1983 action against state officials, challenging the constitutionality of a state statute requiring the collection of DNA specimens from convicted felons. The parties cross-moved for summary judgment. The district court held that the collection of a DNA specimen was not an unreasonable search and seizure, and that a DNA sample did not implicate the prisoner's Fifth Amendment privilege against self-incrimination. The court noted that law enforcement's interest in obtaining DNA for a database to solve past and future crimes outweighed the prisoner's diminished privacy rights. According to the court, the prisoner did not have a fundamental privacy interest protected by substantive due process in the information contained in a DNA sample and the profile obtained pursuant to the state statute. The court noted that the prisoner, as a convicted felon, did not enjoy the same privacy rights as did ordinary citizens. (Ross Correctional Institution, Ohio Department of Rehabilitation and Correction)

2008

U.S. District Court
STATE STATUTES

Bullock v. ***Sheahan***, 568 F.Supp.2d 965 (N.D.Ill. 2008). Two county inmates who were ordered released after being found not guilty of the charges against them brought an action individually and on behalf of a class against a county sheriff and county, challenging the constitutionality of a policy under which male inmates, in the custody of the Cook County Department of Corrections (CCDC), were subjected to strip searches upon returning to CCDC after being ordered released. The district court held that male inmates in the custody of CCDC who were potentially discharged were similarly situated to female potential discharges, as supported the male inmates' claim that the county's policy of strip searching all male discharges and not all female discharges violated the Equal Protection Clause. The court held that the CCDC exhibited discriminatory intent in strip searching all male inmates who were potentially discharged and not all female discharges, as supported the male inmates' claim that the county's strip search policy violated the Equal Protection Clause. The court held that summary judgment was precluded by a genuine issue of material fact as to whether delays of eight and eight-and-a-half hours in releasing inmates from CCDC after they received court-ordered discharges were reasonable. The court noted that an Illinois Administrative Code (IAC) provision stating that "detainees permitted to leave the confines of the jail temporarily, for any reason, shall be thoroughly searched prior to leaving and before re-entering the jail" did not mandate strip searches, just that inmates be "thoroughly searched." (Cook County Department of Corrections, Illinois)

U.S. District Court
STATE STATUTES

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. Appeals Court
STATE STATUTE

Giarratano v. Johnson, 521 F.3d 298 (4th Cir. 2008). A state prisoner brought a § 1983 action against the director of a state Department of Corrections challenging the constitutionality of the statutory exclusion of prisoners from making requests for public records under the Virginia Freedom of Information Act (VFOIA). The district court dismissed the action and the prisoner appealed. The appeals court affirmed, finding that the allegations were insufficient to state a claim for facial violation of the equal protection clause and were insufficient to state a claim for an "as-applied" violation of the equal protection clause. According to the court, denial of the prisoner's request for records did not violate his right to access the courts. (Red Onion State Prison, Virginia)

U.S. District Court
STATE STANDARDS

Hall v. ***Eichenlaub***, 559 F.Supp.2d 777 (E.D.Mich. 2008). A federal prisoner filed a § 2241 petition for a writ of habeas corpus, challenging the Parole Commission's decision to impose successive terms of special parole after the prisoner's original special term of parole was revoked. The district court granted the petition, finding that the Parole Commission could not reimpose a successive term of special parole. The court noted that special parole is different from regular parole in three aspects: (1) it follows the term of imprisonment, while regular parole entails release before the end of the prison term; (2) it is imposed, and its length is selected by the sentencing judge, rather than by the Parole Commission; and (3) if the conditions of special parole are violated, the parolee is returned to prison to serve the entire parole term, and he does not receive credit for the time spent in non-custodial supervision. (Federal Correctional Institution in Milan, Michigan)

U.S. Appeals Court
STATE REGULATIONS

Hervey v. ***County of Koochiching***, 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 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
STATE REGULATIONS

Jenkins v. ***Currier***, 514 F.3d 1030 (10th Cir. 2008). A state prisoner brought a pro se § 1983 action against state officials alleging that the officials violated his constitutional rights and state law when they took him into custody without a warrant or a probable cause hearing, and transferred him to a correctional facility in order for him to serve his previously imposed sentence. The district court dismissed the prisoner's claims with prejudice. The prisoner appealed. The appeals court affirmed. The court noted that under Oklahoma law, a convicted defendant who is at liberty without having served his sentence may be arrested as on escape and ordered into custody on the unexecuted judgment. According to the court, state officials did not violate the Fourth Amendment when they seized the state prisoner without a warrant, after having been released from federal custody erroneously, so that he could serve the remainder of his unfinished state sentence. The court noted that the officials had reason to believe that the prisoner had not completed serving his state sentences and there were no special circumstances that would have made his otherwise permissible arrest unreasonable. The court also found that the prisoner had no due process right to a hearing when he was taken back into custody. (Oklahoma)

U.S. District Court
STATE STATUTES

Johnson v. ***Bredesen***, 579 F.Supp.2d 1044 (M.D.Tenn. 2008). Convicted felons who had served their sentences brought an action against state and local officials seeking to invalidate portions of a Tennessee Code that conditioned the restoration of their voting rights upon their payment of certain financial obligations, including restitution and child support. The district court granted judgment on the pleadings to the defendants. The court held that the statutory provision: (1) did not create a suspect classification; (2) did not violate equal protection; (3) did not violate the Twenty-Fourth Amendment; and (4) did not violate the Ex Post Facto Clause. According to the court, the state had an interest in protecting the ballot box from felons who continued to break the law by not abiding by enforceable court orders, the state had a strong public policy interest in encouraging the payment of child support and thereby promoting the welfare of children, and the state had a legitimate interest in encouraging convicted felons to complete their entire sentences, including the payment of restitution. The court also noted that there was no evidence that the state of Tennessee's re-enfranchisement scheme for convicted felons had traditionally been regarded as punitive, rather than civil, so as to violate the federal or Tennessee Ex Post Facto Clause. (Tennessee)

U.S. District Court
STATUTES

Jones v. ***Oakland County***, 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 Co. Jail, Michigan)

U.S. District Court
ACCREDITATION
PROFESSIONAL
STANDARDS

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. 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)

U.S. District Court
STATE STATUTES

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. (Nevada Department of Corrections)

U.S. District Court
STATE STATUTES

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
STATE STATUTE

Snodgrass v. *Robinson*, 512 F.3d 999 (8th Cir. 2008). A state prisoner brought a suit against the Iowa Board of Parole, the Board's members and the governor of Iowa alleging that her constitutional rights were violated by applying laws and regulations governing commutation requests, even though the laws were passed after her conviction. The district court granted a motion to dismiss and the prisoner appealed. The appeals court affirmed. The court held that the retroactive application of an amendment to the Iowa commutation provisions did not violate the Ex Post Facto Clause and that the state prisoner had no liberty interest in commutations. The court noted that the retroactive application of the amendment to Iowa Code did not raise a significant risk that the state prisoner would be denied a commutation she otherwise would have received from the governor given the unpredictability of the wholly discretionary grant of a governor's commutation. The court noted that the new provisions limited a Class A felon serving a life sentence to commutation applications no more frequently than once every ten years rather than previous standards which provided for regular review. (Iowa Board of Parole)

U.S. Appeals Court
STATE STATUTE

Wilson v. Collins, 517 F.3d 421 (6th Cir. 2008). A state prisoner brought a § 1983 action against state officials challenging the constitutionality of Ohio's DNA Act that required the collection of DNA specimens from convicted felons. The district court granted summary judgment to the defendants and the prisoner appealed. The appeals court affirmed. The court held that collection of a DNA specimen pursuant to the statute was not an unreasonable search and seizure and that the prisoner did not have a fundamental privacy interest in the information contained in a DNA specimen. (Ohio Department of Rehabilitation and Correction)

2009

U.S. District Court
STATE STATUTES

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 the for supervision of offenders. (Allegheny County, Pennsylvania)

U.S. Appeals Court
STATE STATUTES

Roubideaux v. *North Dakota Dept. of Corrections and Rehabilitation*, 570 F.3d 966 (8th Cir. 2009). North Dakota prison inmates, representing a certified class of female inmates, brought a sex discrimination suit under § 1983 and Title IX, alleging that a state prison system provided them with unequal programs and facilities as compared to male inmates. The district court granted summary judgment in favor of the defendants and the inmates appealed. The appeals court affirmed. The court held that North Dakota's gender-explicit statutes, allowing the Department of Corrections and Rehabilitation to place female inmates in county jails and allowing the Department to place female inmates in "grade one correctional facilities" for more than one year, was substantially related to the important governmental objective of providing adequate segregated housing for female inmates, and thus the statutes were facially valid under heightened equal protection review. According to the court, even if the decision to house them at the women's center was based on economic concerns, where the female prison population as a whole was much smaller than the male population, sufficient space to house the female prisoners was becoming an issue as the entire prison population increased. Female inmates were in need of a separate facility to better meet their needs, and statutes expressly required the Department to contract with county facilities that had adequate space and the ability to provide appropriate level of services and programs for female inmates. The court held that the female inmates, by expressing an assertion before the district court that they were not challenging the programming decisions made by Department of Corrections and Rehabilitation upon transfer to county jails for housing, abandoned an "as-applied" challenge to the gender-explicit statutes facilitating such transfers. The court held that North Dakota's "prison industries" program offered at a women's correction and rehabilitation center, under contract between several counties and the state, was not an "educational program" subject to Title IX protections, even though the program provided on-the-job training. The court noted that the program was primarily an inmate work or employment program, providing female inmates with paying jobs and enabling them to make purchases, pay restitution, or support their families, and the contract between the counties and state distinctly separated inmate employment and educational programs.

According to the court, vocational training offered at the center was not discriminatorily inferior to those offered to male inmates at state facilities, as required for a claim under Title IX. Although locational differences existed, like male inmates, female inmates had access to a welding class and classes in basic parenting, social skills, speech, and healthy lifestyles. (Southwest Multi-County Correctional Center, North Dakota)

U.S. Appeals Court
STATE STATUTES

Simmons v. *Galvin*, 575 F.3d 24 (1st Cir. 2009). Incarcerated felons brought an action challenging the validity of an amendment to the Massachusetts constitution disqualifying currently incarcerated inmates from voting in all Massachusetts elections. The district court denied the Commonwealth's motion for the entry of judgment on the pleadings on the inmates' Voting Rights Act (VRA) claim but granted the Commonwealth's motion for summary judgment on the inmates' Ex Post Facto Clause claim. Both the Commonwealth and inmates appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that the vote denial claim challenging the amendment that would disenfranchise incarcerated felons was not cognizable under the Voting Rights Act (VRA). According to the court, the Act was not meant to proscribe the authority of states to disenfranchise imprisoned felons. The court found that the amendment did not violate the Ex Post Facto Clause where the amendment did not impose any affirmative disability or restraint, physical or otherwise, and felon disenfranchisement had historically not been regarded as punitive in the United States. The court noted that there was a rational non-punitive purpose for the disenfranchisement. (Massachusetts)

U.S. Appeals Court
STATE STATUTES

Straley v. *Utah Bd. of Pardons*, 582 F.3d 1208 (10th Cir. 2009). A prisoner brought a habeas petition challenging the constitutionality of Utah's indeterminate sentencing scheme. The district court dismissed the petition and the prisoner appealed. The appeals court affirmed. The appeals court held that Utah's indeterminate sentencing scheme did not violate the prisoner's due process rights and Utah parole statutes did not create a liberty interest entitling the prisoner to federal due process protections. (Utah Board of Pardons)

2010

U.S. Appeals Court
STATE STATUTES

El-Tabech v. *Clarke*, 616 F.3d 834 (8th Cir. 2010). A Muslim inmate, who was awarded attorney fees in a civil rights action in which he prevailed on his request for kosher meals, moved for an order directing prison officials to pay the fee award and to increase the post-judgment interest rate payable on that award. The district court granted the motion and the state appealed. The appeals court reversed and remanded. The court held that the award of post-judgment interest at a punitive rate of 14% on the attorney fees awarded to the inmate's counsel in the civil rights suit was an abuse of discretion, where most of the delay in the state's payment of the fee award was due to the inmate's refusal to file a claim under state statutes governing payment of federal court judgments. According to the court, there were no extraordinary circumstances warranting departure from the statutory post-judgment interest rate. (Tecumseh State Correctional Institution, Nebraska)

U.S. Appeals Court
STATE STATUTES

Farrakhan v. *Gregoire*, 623 F.3d 990 (9th Cir. 2010). Convicted felons filed a suit challenging the State of Washington's felon disenfranchisement law, alleging that it violated the Voting Rights Act (VRA) by denying the right to vote on account of race. The district court granted Washington summary judgment, and the felons appealed. The appeals court affirmed in part, reversed in part, and remanded. On remand, the district court again granted Washington summary judgment. The felons appealed again. The appeals court found that a VRA challenge to the felon disenfranchisement law requires intentional discrimination in the criminal justice system, and Washington's disenfranchisement law did not violate the VRA. (State of Washington)

U.S. District Court
STATE STATUTES

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
STATE STATUTE

Gonzalez-Fuentes v. *Molina*, 607 F.3d 864 (1st Cir. 2010). A class of prisoners convicted of murder, who had been released pursuant to an electronic supervision program (ESP), filed a complaint under § 1983, seeking a preliminary injunction against their re-incarceration pursuant to a regulation which became effective after their releases. The district court granted a preliminary injunction and the Commonwealth of Puerto Rico appealed. Another class of prisoners who had been re-incarcerated filed a separate petition for a writ of habeas corpus and the district court granted the petition. The district court consolidated the two cases, and denied the Commonwealth's motion to dismiss. The commonwealth appealed. The appeals court reversed in part, vacated in part, and remanded. The court held that re-incarceration of the prisoners convicted of murder under a new regulation eliminating the ESP program for prisoners convicted of murder, did not violate the ex post facto clause, where the prisoners had committed their crimes of conviction at times predating the creation of the ESP, so that Puerto Rico's decision to disqualify prisoners from participating in the ESP had no effect on the punishment assigned by law.

The court also held the re-incarceration of the prisoners convicted of murder did not violate substantive due process. The court found that although the impact of re-incarceration on the prisoners was substantial, Puerto Rico had a justifiable interest in faithfully applying the new statute which barred prisoners convicted of murder from the ESP program. According to the court, there was no showing that Puerto Rico acted with deliberate indifference or that re-imprisonment was conscience-shocking.

But the court found that the prisoners convicted of murder, who had been released for several years pursuant to the ESP, had a protected due process liberty interest in their continued participation in the ESP program, despite the fact that their releases were premised on lower court determination, which was later overturned, that the statute eliminating such prisoners from the program violated the ex post facto clause. The prisoners were serving out the remainder of their sentences in their homes, where they lived either with close relatives, significant others, or spouses and children, and although they were subject to monitoring with an electronic tracking anklet, and routine drug and alcohol testing, they were authorized to work at a job or attend school.

The court also found that the re-incarceration of the prisoners deprived them of procedural due process, where the prisoners were not given any pre-hearing notice as to the reason their ESP status was revoked, and the prisoners had to wait two weeks after their arrest before receiving any opportunity to contest it.

The court concluded that the prisoners whose procedural due process rights were violated by their re-incarceration or their imminent future re-incarceration after determination that they had been unlawfully admitted into the ESP were not entitled to either habeas relief, for those already re-imprisoned, or preliminary injunctive relief for those yet to be re-imprisoned, where the subsequent Puerto Rico statute provided a valid, independent, constitutional basis for the prisoners' re-incarceration. (Puerto Rico Dept. of Justice, Puerto Rico Administration of Corrections)

U.S. Appeals Court
STATE STATUTES

Johnson v. *Bredesen*, 624 F.3d 742 (6th Cir. 2010). Several convicted felons brought action against Tennessee's governor and secretary of state, state coordinator of elections, and several county elections administrators, alleging that, by conditioning restoration of felons' voting rights on payment of court-ordered victim restitution and child support obligations, Tennessee's voter re-enfranchisement statute violated the Equal Protection Clause, the Twenty-Fourth Amendment, and the Ex Post Facto and Privileges and Immunities Clauses of the federal and state constitutions. The district court granted the defendants' motion for judgment on the pleadings and the felons appealed. The appeals court affirmed. The court held that Tennessee had rational basis for the challenged provisions of the state's re-enfranchisement statute, the challenged provisions of the state's re-enfranchisement statute did not violate the Twenty-Fourth Amendment or Privileges and Immunities Clause, and the challenged provisions were not punitive in nature, and thus did not violate the state's Ex Post Facto Clause. The court noted that the felons, having lost their voting rights upon being convicted of felonies, lacked any fundamental interest in their right to vote, and wealth-based classifications did not constitute discrimination against any suspect class. According to the court, Tennessee's interests in encouraging payment of child support and compliance with court orders, and in requiring felons to complete their entire sentences, including paying victim restitution, supplied a rational basis sufficient for the challenged provisions to pass equal protection muster. (Shelby County, Madison County, and Davidson County, Tennessee)

U.S. Appeals Court
STATE STATUTES

PA Prison Soc. v. *Cortes*, 622 F.3d 215 (3rd Cir. 2010). State prisoners, several non-profit advocacy and prisoner rights groups, and several state voters and qualified taxpayers brought an action challenging an amendment to the Pennsylvania constitution changing the composition of the Board of Pardons and the voting requirements for obtaining a pardon or commutation of sentence. The district court granted in part, and denied in part, the parties' cross-motions for summary judgment, and they appealed. The appeals court remanded. On remand, the district court ruled that one of the groups had standing to challenge the constitutionality of the amendment and reinstated its prior summary judgment ruling, and appeal was again taken. The appeals court reversed and remanded. The appeals court held

that the prisoner advocacy group had organization standing to challenge the constitutionality of the amendment, but the amendment did not violate the ex post facto clause. The court noted that allegations that the changes in the law have produced some ambiguous sort of disadvantage, or affected a prisoner's opportunity to take advantage of provisions for early release, are not sufficient grounds for bringing an ex post facto claim. According to the court, there is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. (Pennsylvania Board of Pardons)

U.S. Appeals Court
FEDERAL STANDARDS
INTERNATIONAL STANDARDS
UNITED NATIONS STANDARDS

Serra v. *Lappin*, 600 F.3d 1191 (9th Cir. 2010). Current and former federal prisoners brought an action against various prison officials, alleging that the low wages they were paid for work performed in prison violated their rights under the Fifth Amendment and international law. The district court granted the defendants' motion to dismiss, and the prisoners appealed. The appeals court affirmed. The court held that current and former federal prisoners did not have a legal entitlement to payment for work performed while incarcerated for federal crimes, and thus prison officials did not violate the prisoners' Fifth Amendment due process rights by allegedly paying them inadequate wages for work performed in prison, absent an allegation that wages paid were less than applicable regulations required.

The court found that the International Covenant on Civil and Political Rights (ICCPR) conferred no judicially enforceable rights, and thus did not provide current and former federal prisoners a legal claim or remedy against prison officials in their action alleging that low wages inmates were paid for work performed in prison violated their rights under international law. The court noted that ICCPR was ratified on the express understanding that it was not self-executing. Similarly, the court held that the United Nations' document entitled Standard Minimum Rules for the Treatment of Prisoners conferred no judicially enforceable rights, and thus did not provide current and former federal prisoners a legal claim or remedy against prison officials in their action. The court noted that the document was not binding on the United States, did not purport to serve as a source of private rights, and even if it were a self-executing treaty, did not specify what wages would qualify as equitable remuneration of prisoners' work.

According to the court, the current and former federal prisoners failed to establish that any statute conferred jurisdiction over their claim that customary international law entitled them to higher wages for work performed in prison, and thus the district court did not have jurisdiction over prisoners' “law of nations” claim. The court held that the current and former federal prisoners had no constitutional right to be paid for work performed while in prison, as would be required to state a claim against prison officials in their individual capacities for money damages based on alleged inadequacy of the prisoners' earnings. (Fed. Prison Industries, Fed. Bureau of Prisons)

U.S. District Court
STATE STATUTES

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
STATE STATUTES

Ward v. *Ryan*, 623 F.3d 807 (9th Cir. 2010). A state inmate who was serving a 197-year sentence brought a § 1983 action against the director of the Arizona Department of Corrections, alleging the Department's withholding of a portion of his prison wages for “gate money,” to be paid to him upon his release from incarceration, violated his Fifth and Fourteenth Amendment rights since it was unlikely he would be released from prison prior to his death. The appeals court reversed the dismissal of the claim. The district court subsequently denied the inmate injunctive relief and granted summary judgment in favor of the director. The inmate appealed. The appeals court held that the inmate did not have a current possessory property interest in wages withheld in a dedicated discharge account, as required to establish a violation of the Takings Clause. The court noted that Arizona statutes creating a protected property interest in prison inmate wages did not give inmates full and unfettered right to their property. (Arizona Department of Corrections)

2011

U.S. District Court
STATE STATUTES

Cryer v. *Massachusetts Dept. of Correction*, 763 F.Supp.2d 237 (D.Mass.2011). A Native American inmate brought a civil rights action against the Massachusetts Department of Correction and officials, challenging denial of access to ceremonial tobacco to be used for religious purposes. The court held that summary judgment was precluded by genuine issues of material fact, regarding whether the correctional anti-smoking policy which banned tobacco in all forms including ceremonial tobacco, created a substantial burden on the Native American inmate's religious practice, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court found that the conduct of state correctional officials in denying the Native American inmate's access to ceremonial tobacco did not violate a clearly established federal right of which a reasonable officer would have known, entitling the officials to qualified immunity on the inmate's § 1983 claim under the Free Exercise Clause of the First Amendment. The court

noted that the policy of state correctional officials in denying the Native American inmate's access to ceremonial tobacco did not contravene a Massachusetts statute governing smoking in public workplaces, since the provision stated that smoking "may be permitted" in specifically enumerated places and circumstances, including religious ceremonies where smoking was part of a ritual. (Souza–Baranowski Correctional Center, Massachusetts)

U.S. Appeals Court
STATE STATUTES

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. Appeals Court
STATE STATUTES

Gilman v. *Schwarzenegger*, 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)

U.S. Appeals Court
FEDERAL STATUTES

Jordan v. *Sosa*, 654 F.3d 1012 (10th Cir. 2011). A federal inmate brought an action against Federal Bureau of Prisons (BOP) officials challenging the constitutionality of a statutory and regulatory ban on the use of federal funds to distribute to federal prisoners commercially published materials that were sexually explicit or which featured nudity. The district court entered judgment in the government's favor and the inmate appealed. The appeals court dismissed the action, finding that the action was rendered constitutionally moot by the inmate's transfer to another facility and the action was rendered prudentially moot by the transfer. (Administrative Maximum Security Facility, Federal Bureau of Prisons, Florence, Colorado)

U.S. District Court
STATE STANDARDS

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 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. (Bertie–Martin Regional Jail, North Carolina)

U.S. Appeals Court
STATE STATUTES

Tenny v. *Blagojevich*, 659 F.3d 578 (7th Cir. 2011). Seven inmates incarcerated at a state prison sued current and former officials in the Illinois Department of Corrections, and the former Governor, for marking up the price of commissary goods beyond a statutory cap. The district court dismissed the cases for failure to state a claim and the inmates appealed. The appeals court affirmed and remanded with instructions. According to the appeals court, even if a statutory cap on the mark-up of the price of prison commissary goods created a protected property interest, the prisoners did not state a procedural due process claim based on the Department of Corrections' alleged cap violation where they did not allege that post-deprivation remedies were inadequate to satisfy constitutional due process requirements. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
FEDERAL STATUTES

U.S. v. *Broncheau*, 645 F.3d 676 (4th Cir. 2011). Former federal prisoners, who had been certified, pursuant to the Adam Walsh Child Protection and Safety Act, as sexually dangerous persons and were being detained pending hearings on the government's petitions for their commitment, moved to dismiss those petitions. The district court granted the motions and denied the government's motion for a stay. The government appealed. The appeals court vacated and remanded. The appeals court held that the district court improperly ordered the government to release from the Bureau of Prisons (BOP) custody prisoners who had upcoming terms of supervised release, and whom the government had certified as sexually dangerous under the civil commitment provisions of the Adam Walsh Child Protection and Safety Act, and that the district court further improperly required the government to first seek a commitment order under a competency statute before seeking civil commitment under the Adam Walsh Act. The court noted that although the prisoners' sentences included terms of supervised release, they fell within the class of persons in the custody of the BOP subject to certification as being sexually dangerous, and the competency statute did not provide for a commitment on the basis of the prisoners' sexual dangerousness. (Federal Bureau of Prisons, Adam Walsh Child Protection and Safety Act of 2006)

U.S. Appeals Court
FEDERAL STANDARDS

U.S. v. *Franco*, 632 F.3d 880 (5th Cir. 2011). An inmate in a privately owned and operated county jail, who had paid a corrections officer to bring contraband into a county correctional facility, was convicted after a district court jury trial of aiding and abetting in the bribery of a public official. The defendant appealed. The appeals court affirmed. The court held that it was constitutional to apply the federal bribery statute to the defendant, even though he used his own money, and not federal funds, to pay the corrections officer. The officer had been paid a total of $425 over a period of time to bring peanut butter, tuna fish, and other small food items, a cell phone, enchiladas and a box containing marijuana. (Ector County Correctional Center, Texas)

2012

U.S. District Court
STATE STATUTES

Blalock v. *Eaker*, 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. Appeals Court
STATE STATUTES

Burnette v. *Fahey*, 687 F.3d 171 (4th Cir. 2012). State prisoners filed an action against members of the Virginia Parole Board in their official capacities, contending that the Board had adopted policies and procedures with respect to parole-eligible inmates imprisoned for violent offenses that violated the Due Process and Ex Post Facto Clauses. The district court dismissed the action and denied a motion to amend. The plaintiffs appealed. The appeals court affirmed. The appeals court held that Virginia had created a limited due process liberty interest in being considered for parole at a specified time, and in being furnished with a written explanation for denial of parole, through passage of its parole statute. But the court held that the prisoners' complaint supported an inference, at most, that the parole board was exercising its discretion, but that in doing so the board was taking a stricter view towards violent offenders than it had in past, which did not implicate the Ex Post Facto Clause. According to the court, the mere fact that the parole board had implemented procedural changes during the same multi-year period that the rate of release decreased did not produce a plausible inference of a causal connection to an alleged Ex Post Facto Clause violation due to a significant risk of extended punishment. (Virginia Parole Board)

U.S. District Court
STATE STATUTES

Doe v. *Caldwell*, 913 F.Supp.2d 262 (E.D.La. 2012). Offenders convicted of violating Louisiana's Crime Against Nature by Solicitation statute filed a class action against state officials, challenging the enforcement of Louisiana's sex offender registry law. State officials moved to dismiss, and the offenders moved for class certification and for summary judgment. The district court denied the defendants' motion to dismiss. The court held that allegations that a provision of the sex offender registry law requiring individuals convicted of violating Louisiana's Crime Against Nature by Solicitation statute to register as sex offenders, but not requiring individuals convicted under the Louisiana Prostitution statute to register as sex offenders, was without any rational basis, and stated a § 1983 equal protection claim. (Louisiana Crime Against Nature by Solicitation Statute)

U.S. District Court
STATE STATUTES

Doe v. *Jindal*, 851 F.Supp.2d 995 (E.D.La. 2012). Individuals convicted of violating Louisiana's Crime Against Nature by Solicitation (CANS) statute brought a § 1983 action against Louisiana's Governor, Attorney General, and other state and municipal officials, challenging the statute's requirement that they register as sex offenders under Louisiana's sex offender registry law. The individuals moved for summary judgment and the district court granted the motion. The court held that the individuals were treated differently than those convicted of engaging in the same conduct under the solicitation provision of Louisiana's prostitution statute, which did not require registration as sex offender, and thus the provision of the sex offender registry law requiring individuals convicted of CANS to register as sex offenders deprived the individuals of equal protection of laws in violation of the Fourteenth Amendment. (Crime Against Nature by Solicitation Statute, Louisiana)

U.S. District Court
STATE STATUTES

Doe v. *Jindal*, 853 F.Supp.2d 596 (M.D.La. 2012). Registered sex offenders brought an action seeking a declaration that the Louisiana statute precluding registered sex offenders from using or accessing social networking websites, chat rooms, and peer-to-peer networks was unconstitutional, and seeking injunctive relief. The district court entered judgment in favor of the plaintiffs, finding that the statute was facially overbroad and the statute was void for vagueness. The court found that a department of corrections regulation did not cure deficiencies in the statute where the regulation only applied to sex offenders who were under supervision by state probation officers, which was a limited segment of the class of persons otherwise subject to the statute. The court concluded: "Although the Act is intended to promote the legitimate and compelling state interest of protecting minors from internet predators, the near total ban on internet access imposed by the Act unreasonably restricts many ordinary activities that have become important to everyday life in today's world. The sweeping restrictions on the use of the internet for purposes completely unrelated to the activities sought to be banned by the Act impose severe and unwarranted restraints on constitutionally protected speech. More focused restrictions that are narrowly tailored to address the specific conduct sought to be proscribed should be pursued." (Louisiana)

U.S. District Court
STATE STATUTES

Doe v. *Nebraska*, 898 F.Supp.2d 1086 (D.Neb. 2012). Sex offenders who were required to register under the Nebraska Sex Offender Registration Act and the offenders' family members brought an action against a state alleging that portions of the Act violated the First Amendment, the Due Process Clause, the Ex Post Facto Clause, and the Fourth Amendment. The district court held that: (1) the statute criminalizing registrants' use of social networking web sites, instant messaging, and chat room services accessible by minors was not narrowly tailored; (2) the statute criminalizing registrants' use of web sites was overbroad; (3) the statute requiring registrants' disclosure of domain names and blog sites used was not narrowly tailored; (4) the statute criminalizing registrants' use of web sites was vague under the Due Process Clause; and, (5) the statutes violated the Ex Post Facto Clause. The court

noted that a statute is "narrowly tailored" to regulate content-neutral speech under the First Amendment, if it targets and eliminates no more than the exact source of the evil it seeks to remedy. The district court opened its opinion with the following: "Earlier I paraphrased Justice Oliver Wendell Holmes and observed that if the people of Nebraska wanted to go to hell, it was my job to help them get there. By that, I meant that it is not my prerogative to second-guess Nebraska's policy judgments so long as those judgments are within constitutional parameters. Accordingly, I upheld many portions of Nebraska's new sex offender registration laws even though it was my firm personal view that those laws were both wrongheaded and counterproductive. However, I had serious constitutional concerns about three sections of Nebraska's new law…. I have decided that the remaining portions of Nebraska's sex offender registry laws are unconstitutional." (Nebraska)

U.S. District Court
STATE STATUTES

Doe v. *Raemisch*, 895 F.Supp.2d 897 (E.D.Wis. 2012). Two offenders, one from Connecticut and one from Florida, who were subject to Wisconsin's sex offender registration and notification statutes, sued the Wisconsin Department of Corrections (DOC), its Secretary, and the Director of the DOC's Sex Offender Program, alleging that application and enforcement of registration requirements violated their constitutional and statutory rights. The parties cross-moved for summary judgment. The district court granted the motions in part and denied in part. The court held that: (1) the registration requirement was not punitive; but, (2) a provision authorizing the imposition of a $100 annual fee violated the Ex Post Facto Clause; (3) the statutes did not violate the offenders' constitutional equal protection rights; (4) the statutes did not violate the offenders' equal protection or substantive due process rights by denying them an individualized, risk-determination-based judicial system; (5) the registration law did not constitute an unconstitutional legislative impairment of the offenders' plea agreements; (6) the offenders had no First Amendment cause of action regarding requirements to provide e-mail addresses and websites they maintained; and (7) the defendant officials were entitled to qualified immunity. The court noted that, except for an annual fee requirement, Wisconsin's sex offender registration law was reasonable in light of its non-punitive objective, and thus did not violate the Ex Post Facto Clause, and the fact that the registration law might deter sex offenders from violating the law did not establish that the registration requirement itself was punitive, and the fact that offenders had to travel to specified law enforcement facilities to have their photographs taken and to be fingerprinted was not sufficiently severe to transform an otherwise non-punitive measure into a punitive one. (Wisconsin Department of Corrections)

U.S. District Court
STATE STATUTES

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 thhhattt 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. Appeals Court
STATE STATUTES

Fields v. *Henry County, Tenn*., 701 F.3d 180 (6th Cir. 2012). An arrestee filed a civil rights action alleging that a county had violated his Eighth Amendment right to be free from excessive bail and his Fourteenth Amendment right to procedural due process. The district court granted summary judgment for the county and the arrestee appealed. The appeals court affirmed. The appeals court held that setting the arrestee's bail at the same amount as other defendants facing domestic-assault charges through the county's use of a bond schedule without particularized examination of his situation did not violate the arrestee's Eighth Amendment right to be free from excessive bail. The court noted that the mere use of a bond schedule does not itself pose a constitutional problem under the Eighth Amendment's prohibition of excessive bail, since a schedule is aimed at assuring the presence of a defendant, and the

bond schedule represents an assessment of what bail amount would ensure the appearance of the average defendant facing such a charge. The court found that a liberty interest protected by due process had not been implicated by the county's policy of automatically detaining domestic-assault defendants for 12 hours without bail. The court noted that a Tennessee statute providing that a person could not "be committed to prison" until he had a hearing before a magistrate did not create a liberty interest, and release on personal recognizance under Tennessee law lacked explicitly mandatory language needed to create a liberty interest. (Henry County Sherriff's Office and Henry County Jail, Tennessee)

U.S. District Court
STATE STATUTES

Hampton v. *Sabie*, 891 F.Supp.2d 1014 (N.D.Ill. 2012). A former inmate at a juvenile correctional facility brought a § 1983 action against a correctional officer and the facility superintendent, alleging that the officer sexually assaulted him and that the superintendent was deliberately indifferent to the inmate's constitutional rights by failing to protect him from the assault. The superintendent moved to dismiss. The district court granted the motion. The court held that the inmate's § 1983 claim was governed by the state's general two-year limitations period for personal injury claims, rather than the state's six-year statute applicable to sexual assaults against a child. (Illinois Youth Center)

U.S. Appeals Court
STATE
REGULATIONS

Moussazadeh v. *Texas Dept. of Criminal Justice*, 703 F.3d 781 (5th Cir. 2012). A Jewish state prisoner brought an action against the Texas Department of Criminal Justice, alleging that the defendant denied his grievances and requests for kosher meals in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Texas Religious Freedom Restoration Act. The district court entered summary judgment for the defendant and the prisoner appealed. The appeals court reversed and remanded. The court held that the state Jewish prisoner exhausted his administrative remedies with respect to his claim that a prison's failure to provide him with kosher meals violated RLUIPA, where the prisoner went through the state's entire grievance process before filing suit. The court found that sufficient evidence established that the prisoner's religious beliefs were sincere, as required to support a claim against state's department of criminal justice for violation of RLUIPA, where the prisoner stated that he was born and raised Jewish and had always kept a kosher household, the prisoner offered evidence that he requested kosher meals from the chaplain, kitchen staff, and the department, and while at another prison, he ate kosher meals provided to him from the dining hall. The court noted that the prisoner was harassed for his adherence to his religious beliefs and for his demands for kosher food, and that the department transferred the prisoner for a time so he could receive kosher food. The court held that the prisoner was denied a generally available benefit because of his religious beliefs, and thus, the state's department of criminal justice imposed a substantial burden on the prisoner's religious exercise under RLUIPA, where every prisoner in the department's custody received a nutritionally sufficient diet, every observant Jewish prisoner at the designated prison received a kosher diet free of charge, and the Jewish prisoner at issue was forced to pay for his kosher meals. The court found that there was no evidence of a compelling government interest in forcing the Jewish prisoner to pay for all of his kosher meals. The court also found that summary judgment was precluded by a general dispute of material fact as to whether the state's department of criminal justice employed the least restrictive means of minimizing costs and maintaining security by forcing the Jewish prisoner to pay for all of his kosher meals. (Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division)

U.S. Appeals Court
STATE
REGULATIONS

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. District Court
STATE STATUTES

Shah v. *Danberg*, 855 F.Supp.2d 215 (D.Del. 2012). A state inmate who pled guilty but mentally ill to a charge of first degree murder filed a § 1983 action against a state judge and prison officials alleging that his placement in a correctional center, rather than in a psychiatric center, violated his constitutional rights. The court held that the state judge was entitled to absolute judicial immunity from liability in inmate's § 1983 action despite the inmate's contention that the judge's incorrect application of a state statute resulted in violation of his constitutional rights, where there were no allegations that the judge acted outside the scope of her judicial capacity, or in the absence of jurisdiction. The could ruled that the state inmate failed to establish the likelihood of success on the merits of his claim and thus was not entitled to a preliminary injunction ordering his transfer, despite the inmate's contention that he was mentally unstable and had repeatedly caused himself physical injury during his suicide attempts, where medical records the inmate submitted were ten years old, and a state supreme court recognized that prison officials had discretion to house inmates at facilities they chose. The court ordered the appointment of counsel, noting that the inmate was unable to afford legal representation, he had a history of mental health problems, and the matter presented complex legal issues. (James T. Vaughn Correctional Center, Smyrna, Delaware)

U.S. District Court
PROFESSIONAL
STANDARDS

Wilkins v. *District of Columbia*, 879 F.Supp.2d 35 (D.D.C. 2012). A pretrial detainee in a District of Columbia jail who was stabbed by another inmate brought an action against the District. The district court entered judgment as a matter of law in favor of the District and the detainee moved for reconsideration. The district court granted the motion and ordered a new trial. The court held that the issue of whether the failure of District of Columbia jail personnel to follow national standards of care for inmate access to storage closets and monitoring of inmate movements was the proximate cause of the detainee's stabbing by a fellow inmate was for the jury, in the detainee's negligence action, under District of Columbia law. Another inmate who was being held at the D.C. Jail on charges of first-degree murder attacked the detainee. The inmate had received a pass to go to the jail's law library, unaccompanied. Apparently he did not arrive at the library but no one from the library called the inmate's housing unit to report that he had not arrived. An expert retained by the detainee asserted that failure to monitor inmate

movements violated national standards for the operation of jails. En route to the jail mental health unit, the detainee saw the inmate enter a mop closet. The inmate, along with another inmate, approached the detainee and stabbed him nine times with a knife. During court proceedings there was testimony that the inmates had hidden contraband in the mop closets. The closets are supposed to be locked at all times, other than when the jail is being cleaned each afternoon. But there was evidence from which the jury could infer that all inmates except those who did not have jobs cleaning in the jail had access to them. According to the detainee's expert witness, keeping mop closets locked at times when the general inmate population is permitted to be in the vicinity of the closets is in accordance with national standards of care for the operation of detention facilities. According to the district court, "In sum, the circumstantial evidence of Mr. Foreman's [inmate who attacked the detainee] freedom of movement is enough to have allowed a jury to conclude that the District's negligence was a proximate cause of Mr. Wilkins's injury…". (District of Columbia Central Detention Facility)

2013

U.S. District Court
STATE STATUTE

Ayotte v. *Barnhart*, 973 F.Supp.2d 70 (D.Me. 2013). A state inmate filed a § 1983 action alleging that prison officials failed to protect him from a padlock assault by a fellow prisoner, and retaliated against him for filing complaints about prison conditions. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the decision by state prison officials to provide inmates with padlocks to secure their personal belongings did not demonstrate deliberate indifference to a substantial risk of serious harm, as required to establish an Eighth Amendment violation, despite the history of padlocks being used as weapons by some prisoners. The court noted that a state statute required officials to provide inmates with a reasonably secure area for their personal belongings, and there were generally only one or two padlock assaults per year. The court found that verbal abuse, threats, and two strip-searches of the inmate by a prison guard were not de minimis, and thus were sufficiently adverse to support the inmate's First Amendment retaliation claim against the guard. Because inmates; rights against retaliatory action by prison officials for filing complaints about their treatment were clearly established, the court ruled that the prison guards were not entitled to qualified immunity from liability in the inmate's § 1983 First Amendment retaliation action. (Maine State Prison)

U.S. District Court
ACCREDITATION
PROFESSIONAL
STANDARDS

Davidson v. *Bureau of Prisons*, 931 F.Supp.2d 770 (E.D.Ky. 2013). A federal prisoner brought a Freedom of Information Act (FOIA) suit against the federal Bureau of Prisons (BOP) seeking the results of an audit of his prison that had been conducted by the American Correctional Association. Following dismissal of his suit, the prisoner moved for reconsideration and for an award of costs. The court held that the prisoner was not entitled to judicial relief given that the BOP had compiled the responsive documents and was awaiting only payment of the $33 copying charge. The court found that the prisoner had substantially prevailed and was thus eligible to recover his litigation costs, and that the prisoner was only entitled to recover his $350 filing fee. There had been a two-year delay in the BOP's response. (Federal Medical Center, Lexington, Kentucky)

U.S. District Court
STATE STATUTE

Ezell v. *Darr*, 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 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)

U.S. District Court
STATE STATUTE

John Does 1-4 v. *Snyder*, 932 F.Supp.2d 803 (E.D.Mich. 2013). Sex offenders filed suit challenging the constitutionality of the Michigan Sex Offender Registry Act (SORA). The state defendants moved to dismiss the complaint. The district court granted the motion in part and denied in part. The court held that: (1) SORA did not violate the Ex Post Facto Clause; (2) SORA's quarterly reporting requirement did not offend due process or substantially burden registrants' rights to interstate or intrastate travel; (3) SORA did not implicate registrants' due process right to engage in common occupations of life; (4) the registrants satisfactorily alleged that SORA's loitering prohibition, which did not contain any exemption for parental activities, could be proven to infringe upon their fundamental due process right to direct and participate in their children's education and upbringing; (5) a jury question was presented as to whether retroactively extending the registration period of sex offenders from twenty-five years to life was justified by a legitimate legislative purpose; and (6) jury questions were presented as to whether provisions of SORA requiring sex offenders to report information about their online accounts and activities violated their First Amendment rights. (Mich. Sex Offender Registry Act)

U.S. Appeals Court
FEDERAL
STANDARDS

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 detention 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. Appeals Court
PROFESSIONAL STANDARDS

Smith v. *Sangamon County Sheriff's Dept*., 715 F.3d 188 (7th Cir. 2013). A pretrial detainee filed suit under § 1983 against a sheriff's department to recover for injuries sustained when he was severely beaten by another inmate housed in a maximum-security cellblock. The district court entered summary judgment for the sheriff's department, and the detainee appealed. The appeals court affirmed. The court held that the detainee failed to establish that the security classification policy used by the sheriff's department to assign inmates to cellblocks within the jail was deliberately indifferent to inmate safety in violation of his due-process rights. The court noted that: (1) the detainee presented no evidence that the classification policy created a serious risk of physical harm to inmates, much less that the sheriff's department knew of it and did nothing; (2) the attack by the detainee's cellmate was not enough to establish that the policy itself systematically exposed inmates like the detainee to a serious risk of harm; and (3) it was unclear that a policy strictly segregating those accused of nonviolent crimes from those accused of violent crimes would do a better job of ensuring inmate safety than the multiple-factor classification system used by the sheriff's department. The detainee claimed that the Department's approach to classifying inmates for cellblock placement ignored serious risks to inmate safety because the security classification policy fails to separate "violent" from "nonviolent" inmates and thus fails to protect peaceful inmates from attacks by inmates with assaultive tendencies. The appeals court described the classification practices: "A classification officer interviews each new detainee and reviews a range of information, including the inmate's age, gender, gang affiliation, medical concerns, current charge, criminal history, behavioral and disciplinary history within the jail, and any holds due to parole violations. Pursuant to standards recommended by the American Correctional Association, the classification policy assigns point values within these categories, with higher point values corresponding to lower security risks." (Sangamon County Detention Facility, Illinois)

U.S. Appeals Court
STATE STATUTE

Vuncannon v. *U.S*., 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)

2014

U.S. District Court
STANDARDS

Alvarado v. *Westchester County*, 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 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
STATE STATUTE

Amos v. *Higgins*, 996 F.Supp.2d 810 (W.D.Mo. 2014). Fiancees of prisoners brought an action against a county recorder of deeds, in her official capacity, asserting that a state law's requirement that a marriage license applicant must sign the application in the presence of a recorder was unconstitutional, as applied in instances when one or both applicants could not appear in person, or when an applicant was incarcerated. The fiancees moved for a preliminary injunction prohibiting the recorder from requiring prisoners to execute or sign their marriage license applications in her presence. The district court granted the motion. The court held that the Missouri statute requiring both applicants to execute and sign a marriage license in presence of the issuing recorder was unconstitutional as applied, and an

issuance of a permanent injunction was warranted. The court noted that the "in presence" statutory requirement significantly interfered with the fiancees' exercise of their fundamental right to marry, and it was not closely tailored to solely effectuate a sufficiently important state interest, given that the identity of incarcerated marriage license applicants could be verified through other means without requiring them to sign a marriage license application in the recorder's physical presence. (Moniteau County Recorder of Deeds, Tipton Correctional Center, Missouri)

U.S. District Court
STATE STATUTES

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. Appeals Court
STATE STATUTE

Morris v. *Livingston*, 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)

U.S. Appeals Court
STATE STATUTE

Mueller v. *Raemisch*, 740 F.3d 1128 (7th Cir. 2014). Two convicted sex offenders brought an action challenging Wisconsin's statutory scheme of sex offender registration, notification, and monitoring, alleging violation of the prohibition against states enacting ex post facto laws. The district court ruled that the act's $100 annual registration fee was unconstitutional, but upheld other provisions of the act. The parties appealed. The appeals court affirmed in part, modified in part, and reversed in part. The appeals court held that: (1) the sex offenders had standing to challenge the registration requirement, even though they did not intend to ever return to the state; (2) the sex offenders did not have standing to challenge provisions of a monitoring requirement relating to working with and photographing minors because the offenders no longer resided in the state; (3) the sex offenders did not have standing to challenge Wisconsin's prohibition against a sex offender changing his name, where neither offender had expressed the intent to change his name; (4) the sex offenders had standing to challenge monitoring of the act's requirements of continual updating of information supplied to the sex offender registry; (5) the monitoring act's requirements that sex offenders continually update information supplied to the sex offender registry were not punitive and therefore did not trigger the constitutional prohibition of ex post factor laws; (6) the $100 annual registration fee was not punitive; and (7) allowing the sex offenders to litigate pseudonymously was not warranted where the sex offenders' convictions were matters of public record and both sex offenders were currently registered in Wisconsin, making their names and other information freely available. The court noted that the annual fee was intended to compensate the state for the expenses of maintaining the sex offender registry, and since the offenders were responsible for the expense, there was nothing "punitive" about making them pay for it. (Wisconsin)

U.S. Appeals Court
STATE STATUTE

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. 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)

2015

U.S. District Court
STATE STANDARDS

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
STATE STATUTES

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
PROFESSIONAL
STANDARDS

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 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)

U.S. Appeals Court
STATE STATUTES

Hubbs v. *Suffolk County Sheriff's Dept.*, 788 F.3d 54 (2nd Cir. 2015). A county jail detainee brought a § 1983 action against a county sheriff's department, and sheriff's deputies, alleging that he was severely beaten by the deputies while in a holding cell at a courthouse. The district court granted summary judgment in favor of the defendants based on the detainee's failure to exhaust administrative remedies. The detainee appealed. The appeals court vacated and remanded, finding that the affidavit of a county jail grievance coordinator, along with a handbook detailing a grievance procedure, did not establish that the detainee had an available administrative remedy, and neither the handbook nor the affidavit demonstrated that the county or sheriff's department, or any official, handled grievances arising from occurrences in the courthouse holding cells or whether remedies for such grievances were actually available. According to the court, the deputies forfeited any arguments that statutory remedies were available to the county jail detainee where the deputies failed to identify in the district court or on appeal any statutes or regulations showing that administrative remedies were available for events that took place in the courthouse holding facility. (Suffolk County Correctional Facility, New York)

U.S. District Court
STATE STATUTES

Jamal v. *Kane*, 105 F.Supp.3d 448 (M.D. Pa 2015). Inmates who engaged in written and oral advocacy, prisoner advocacy groups, and entities that relied on prisoners' speech brought an action seeking a declaratory judgment that the Pennsylvania Revictimization Relief Act, which authorized civil actions seeking injunctive and other relief when an offender engaged in any conduct which perpetuated the continuing effect of the crime on the victim, violated the First and Fifth Amendment. The plaintiffs also sought preliminary and permanent injunctive relief. The actions were consolidated. After a bench trial the district court granted the requested relief. The court held that: (1) the Act was content based; (2) the Act impermissibly infringed on free speech; (3) the Act was unconstitutionally vague; (4) the

Act was unconstitutionally overbroad; and (5) a permanent injunction enjoining enforcement of the Act was warranted. The court noted that the Act did not define the term "offender," and the public thus could not know whose conduct the Act regulated. According to the court, the Act's prohibition on "conduct that causes a temporary or permanent state of mental anguish" offered no guidance to state courts in determining whether a victim was entitled to relief, and did not specify whether reactions to such conduct would be measured by an objective or subjective standard, or what level of anguish would constitute a violation. (Revictimization Relief Act, Commonwealth of Pennsylvania Attorney General)

U.S. District Court
ACCREDITATION
PROFESSIONAL
STANDARDS

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. 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
STANDARDS

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)

SECTION 45: SUPERVISION

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.

1971

U.S. District Court
STAFFING LEVELS
FEMALE STAFF

Hamilton v. Love, 328 F.Supp. 1182 (E.D. Ark. 1971). The only legitimate purpose served by pretrial detention is assuring defendants' presence at trial. Minimally, a detainee ought to have the reasonable expectation that he would survive his period of detainment with his life; that he would not be assaulted, abused, or molested during his detainment; and that his physical and mental health would be reasonably protected during this period. Detainees may not be subjected to any punishment, "cruel and unusual" or not. Conditions of incarceration for detainees must, cumulatively, add up to the least restrictive means of assuring appearance at trial. One female staff member must be on duty twenty-four hours a day. There should be one staff member patrolling on each cell floor in the immediate area of every detainee on a twenty-four hour basis. (Palaski County Jail, Arkansas)

1973

U.S. District Court
STAFFING LEVELS
FEMALE STAFF

Hamilton v. Love, 358 F.Supp. 338 (E.D. Ark. 1973). Jail officials ordered to hire six additional correctional officers within one week. Female prisoners are always to be accompanied by matron in the jail.

U.S. District Court
STAFFING LEVELS

Johnson v. Lark, 365 F.Supp. 289 (E.D. Mo. 1973). Sufficient guard supervision will be maintained to correct promptly any situation which could result in injury to a federal prisoner. (St. Louis County Jail, Missouri)

U.S. Supreme Court
SURVEILLANCE

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 Jail, Corpus Christi, Texas)

1974

U.S. Appeals Court
STAFFING LEVELS

Gates v. Collier, 501 F.2d 1291 (5th Cir. 1974). Where the plaintiff is able to show that inmates are being subjected to physical assaults and abuses by other inmates, the court may order injunctive relief, including the hiring of additional guards and classification of prisoners. (Mississippi State Penitentiary, Parchman)

U.S. District Court
STAFFING LEVELS

Rhem v. Malcolm, 371 F.Supp. 594 (S.D. N.Y. 1974). Where the lack of staff causes violations of the right to be free from mistreatment and to be protected from harm, the court may order a staff increase. (Manhattan House of Detention, New York)

1975

U.S. District Court
STAFFING LEVELS

Alberti v. Sheriff of Harris Co., 406 F.Supp. 649 (S.D. Tex. 1975). Sufficient jail staff shall be hired to provide one jailer for every twenty inmates. The number of jail guards must be increased when additional guards are required for the safekeeping of prisoners and the security of the jail. (Harris County Jail, Texas)

State Court
ELECTRONIC
SURVEILLANCE

Daniels v. Anderson, 237 N.W.2d 397 (Neb. Sup. Ct. 1975). The court rules that the use of audiovisual monitors by the jail is ineffective and is not an adequate substitute for the physical presence of jail staff to assure inmate safety. (Omaha Police Department, Nebraska)

U.S. District Court
SURVEILLANCE

Giampetruzzi v. Malcolm, 406 F.Supp. 836 (S.D. N.Y. 1975). Closer surveillance of the cells of inmates in administrative segregation, such as cell inspection and shakedown does not violate the fourth amendment, equal protection, or due process. During shakedown, inmates must be permitted to watch the correctional officer search their cells. (New York City House of Detention for Men)

1977

U.S. District Court
STAFFING LEVELS
FEMALE STAFF

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. District Court
CELL CHECKS
PRISONER CHECKS

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. Living units should be observed at least every thirty minutes, twenty-four hours a day, and cells in a tank should be visually checked four times while inmates are locked in at night. Whenever the population permits, the last cell in a tank shall be closed due to limited visual access. (Jackson County Jail, Kansas City, Missouri)

U.S. Appeals Court
STAFFING LEVELS

William v. Edwards, 547 F.2d 1206 (5th Cir. 1977). The court recognizes that institution officials must provide enough guards to "assure a constitutional level of inmate safety," and approves an order requiring the presence of two guards in open dormitories at all times. (Louisiana State Penitentiary, Angola)

1978

U.S. District Court
STAFFING LEVELS

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)

1979

U.S. Appeals Court
PRISONER CHECKS

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. Evidence indicating that the guards failed to patrol the cell block more than once a day is sufficient for a jury to find that this omission was the cause of an attack on the plaintiff by other inmates, and that the failure to supervise violated the plaintiff's civil rights. The Court rejects the argument that the plaintiff's failure to seek assistance is fatal to his cause of action. (Laramie Co. Jail)

U.S. Appeals Court
FAILURE TO
SUPERVISE

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
INADEQUATE SUPERVISION

Redmond v. Baxley, 475 F.Supp. 1111 (E.D. Mich. 1979). A jury award of $130,000 from damage sustained in a homosexual rape resulting from inadequate supervision is sustained. The guard on the ward was aware of threats against the inmate who was already placed in a protective custody because of threats. (Southern Michigan Prison)

1980

U.S. District Court
PRISONER CHECKS

Griffin v. Smith, 493 F.Supp. 129 (W.D. N.Y. 1980). Allegations that the sergeant on the early morning shift in the Special Housing Unit makes one round, and that it is impossible to summon guards during the early morning shift fail to state a claim upon which relief can be granted. (Attica Correctional Facility, New York)

1982

U.S. District Court
STAFFING LEVELS

Campbell v. McGruder, 554 F.Supp. 562 (D.C. D.C. 1982). Double celling of pretrial detainees is allowed but additional guards are ordered to be placed in each cellblock in which double-celling occurs. (D.C. Jail)

State Court
STAFFING LEVELS

Jackson v. Hendrick, 446 A.2d 226 (Penn. 1982) The court finds that the shortage of guards led to constitutional and statutory violations. Jail officials shall fill and maintain sufficient staff positions to assure jail security and the protection of inmates.

1983

State Appeals Court
STAFFING LEVELS

Delaware County Prison v. Com. Unemp. Comp. Bd., 455 A.2d 790 (Penn. App. 1983). Guard quits job because of hazardous working conditions; he 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)

1984

U.S. District Court
STAFFING LEVELS
PRISONER CHECKS
COMMUNICATION SYSTEMS

Alberti v. Heard, 600 F.Supp. 443 (S.D. Tex. 1984). Federal district court orders minimum staffing plan for Texas jail. After establishing the existence of constitutional violations, resulting in the lack of protection for prisoners housed at the Harris County Central Jail in Houston, the court ordered the sheriff to implement a new staffing plan requiring a minimum of two staff per quadrant and visual inspections at least every hour. The county had been previously ordered to correct the deficiencies at the jail, and the court did not accept their defense that there were no funds for additional staff. The plaintiffs cited high levels of violence and sexual assaults at the jail as a result of the condition and design of the facility: inadequate supervision, unreliable communication systems and lack of staff. (Harris County Jail, Texas)

State Appeals Court
ELECTRONIC SURVEILLANCE

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
FEMALE OFFICERS ASSIGNMENT

Grummett v. Rushen, 587 F.Supp. 913 (N.D. Ca. 1984). Federal court upholds female officers viewing of male prisoners in housing areas. Inmates at the San Quentin State Prison (California) brought suit in federal district court against the prison, claiming that the policy of assigning female correctional officers to prisoner areas which allowed them to view male inmates in states of partial or total nudity while dressing, showering, being strip searched or using toilet facilities, violated their constitutional rights for privacy.

Prison officials argued that reasonable efforts had been made to provide privacy, but that security considerations and the equal opportunity rights of female correctional officers supported current practices. While female officers are assigned to work in male housing units, they are prohibited from working in positions which would require close and direct view of unclad inmates.

The Federal Court agreed with prison officials, ruling in their favor. The Court noted that there were many situations and types of assignments involving female correctional officers which would be constitutionally impermissible. After examining the situation at the prison, the conduct of the female officers, and the volatile environment of the facility, the court found that current practices were reasonable. (San Quentin State Prison, California)

State Court
FAILURE TO SUPERVISE

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)

1985

U.S. District Court
STAFFING LEVELS

Alberti v. Klevenhagen, 606 F.Supp. 478 (S.D. Tex. 1985). Court finds county in contempt; orders more staff to be hired and trained. In 1984, the U.S. District Court for the Southern District of Texas ordered Houston jail officials to hire and train additional staff according to a detailed plan which was devised by the court. The original order responded to eighth amendment deficiencies (unsafe living conditions). In 1985 the court found that officials had not hired all additional personnel, and had made it clear that they do not intend to hire staff while an appeal of the original decision is pending. The court ordered a conditional fine and payments to the court to pay for monitoring. (Harris County Jail, Texas)

U.S. Appeals Court
INADEQUATE SUPERVISION

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)

1986

U.S. Appeals Court
STAFFING LEVELS
STAFF ASSIGNMENT

Alberti v. Klevenhagen, 790 F.2d 1220 (5th Cir. 1986). Appeals court upholds remedial measures of district court, finding levels of violence and sexual assault violated inmates' eighth amendment rights and ordering increased staffing. In a case initiated in 1972, the United States Court of Appeals for the Fifth Circuit agreed with the sweeping corrective measures ordered by a federal district court. The original class action suit was brought under 42 U.S.C. Section 1983, alleging that the facilities and operations of the Harris County detention system violated inmate constitutional and statutory rights. In February, 1975, a consent judgment was entered in the district court, calling for upgrading of existing facilities, construction of a new central jail, and committing the county to provide sufficient and adequately trained guards and other staff to assure the security of inmates.

In December, 1975, the county's compliance with the consent judgment was challenged. Following hearings, a broad remedial order was issued. The court ordered adequate training and pay increases for jail personnel and ordered that staffing be increased to provide one jailer for every twenty inmates. In 1978 the court reluctantly approved plans for a new central jail. The plaintiffs had argued against the planned use of multiple occupancy cells, and the court expressly conditioned occupancy of the new facility on the provision of adequate staff. In 1982 and 1983 the district court held hearings to determine if adequate staffing was provided for the newly-opened detention facility. The court ordered the county to prepare a plan which complied with Texas Commission on Jail Standards (TCJS) requirements of one officer to forty-five inmates, eventually approving such a plan. When the county failed to meet a June, 1983, deadline for full staffing, the plaintiffs filed a motion for contempt.

The county was granted TCJS approval in October for an alternative poststaffing plan, which provided less staff than the previous "one to forty-five" plan. After extensive hearings in 1984, and the presentation of evidence and testimony on violence

in the facilities, the court ordered the implementation of a staffing plan which was similar to one proposed by the plaintiffs' experts, calling for approximately the same number of staff as the original "one to forty-five" plan, but incorporating a different assignment scheme.

On appeal, the county argued that the evidence presented in the 1984 hearings was not sufficient to support the district court finding of constitutional violations, and that the new staffing plan ordered by the court exceeded what should be required to remedy any such violations. The appeals court affirmed all aspects of the district court corrective orders, stating that "....it is more regrettable that after thirteen years conditions in the jails are still in contravention of constitutional standards. Despite the efforts of the parties and the court, inmates continue to be beaten, raped, abused, and assaulted. The district court has acted properly in fashioning new relief for an old malady." (Harris County Detention Facilities, Texas)

State Appeals Court
INADEQUATE SUPERVISION

Dizak v. State, 508 N.Y.S.2d 290 (A.D. 3 Dept. 1986). An inmate brought action against the state alleging that it was guilty of negligence in permitting a second inmate to have access to a pick axe used to attack the inmate. The court of claims entered judgment in favor of the state, and the inmate appealed. The Supreme Court held that the inmate attacked by a second inmate failed to establish that the state knew or should have known of the inmate's tendency toward violent behavior, or that the supervision provided was not sufficient. The inmate failed to demonstrate that supervision by a guard who continuously patrolled the work area checking on each member was insufficient, despite evidence that the attacking inmate had been the subject of eleven or twelve misbehavior reports, all but two of which concerned minor nonviolent violations. The correction officer who had made an earlier misbehavior report on the inmate who attacked the second inmate did not have training or education to qualify him as an expert to render his opinion that the inmate could cause a major incident on the floor at any time, and that the inmate had almost caused two incidents, so that portion of the report containing such a statement was clearly inadmissible. (Adirondack Correctional Facility, New York)

U.S. District Court
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)

U.S. District Court
SURVEILLANCE
STAFFING LEVELS

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. 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. There was no disagreement among the expert penologists that inmates should be engaged in some productive enterprise, properly supervised. Nonetheless, enforced idleness presents a major problem at Occoquan. The correctional officers do not supervise properly the sleeping areas of the dormitories. Correctional officers do not make patrols on a frequent and regular basis, nor are officers stationed in the rear of each dormitory so as to facilitate supervision of the living area when inmates are present. (Lorton Correctional Complex, District of Columbia)

U.S. Appeals Court
INADEQUATE SUPERVISION

Thomas v. Booker, 784 F.2d 299 (8th Cir. 1986). Damages awarded to prisoner against city jail employees as a result of prisoner-on-prisoner beating. The plaintiff was placed in the St. Louis City Jail as a detainee in May, 1980. After being assaulted by another prisoner, he was returned to the same cell which he had occupied earlier, where he was later involved in a fight with another prisoner. He suffered a

broken hand and injuries which eventually produced blindness in one eye. The plaintiff sued the chief of security, the supervisor of correctional officers, and a correctional officer. The appeals court affirmed a $3,000 award 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)

1987

U.S. Appeals Court
INADEQUATE SUPERVISION

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
INADEQUATE SUPERVISION
STAFFING LEVELS

Hossie v. U.S., 682 F.Supp. 23 (M.D. Pa. 1987). A federal prisoner failed to prove that prison overcrowding or an insufficient number of guards proximately caused the injuries the prisoner sustained as a result of an altercation with fellow inmates. To support the prisoner's expert's conclusion that one more guard would have prevented the assault would have required the placement of a guard at the shower/bathroom at all times. This situation would make the government an insurer of a prisoner's safety, a standard that was not required. (United States Penitentiary, Lewisburg, Pennsylvania)

1988

U.S. Appeals Court
INADEQUATE SUPERVISION

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
INADEQUATE 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)

U.S. Appeals Court
STAFFING LEVELS INADEQUATE SUPERVISION

McGhee v. Foltz, 852 F.2d 876 (6th Cir. 1988). An inmate who was stabbed by a fellow prisoner brought a civil rights suit against the warden of the medium security prison alleging a violation of his constitutional right to be free of cruel and unusual punishment under the eighth amendment. Following a bench trial, the U.S. District Court found in the inmate's favor, and the warden appealed. The court of appeals, reversing and remanding with directions, found that evidence did not support the determination that the warden failed to respond to the pervasive risk of harm in prison by providing adequate staffing, so as to constitute deliberate or wanton indifference to the plaintiff's constitutional rights. Evidence in the damage suit against the warden did not support a determination that there was pervasive risk of harm in the prison at the time of the stabbing, even though there had been a recent increase in the number of assaults within the entire prison. A great majority of the assaults did not result in serious injury. There was no evidence that the rate of serious assaults exceeded that of similar prisons, and no evidence that the plaintiff was a member of any identifiable group that had been targeted for an attack. Even assuming there was possible departure from a proper level of staffing in the inmate's cell block at the time of the incident, the warden had no notice or knowledge of any danger to the inmate or of any particular problems in his cell block, and there was no evidence of a pervasive risk of harm to prisoners at the time of the incident. (State Prison of Southern Michigan)

U.S. District Court
STAFFING LEVELS

Thomas v. Benton County, Ark., 702 F.Supp. 737 (W.D. Ark. 1988). The parents of an arrestee who committed suicide in a county jail brought a civil rights action against the county. On June 22, 1983, the plaintiffs' decedent, their son, was incarcerated in the Benton County, Arkansas, jail. Late on the evening of that day he tore strips from his bedding and fashioned a "rope". He hung himself from a light fixture in his cell, also occupied at the time by two other inmates. These two individuals declined to come to his aid, because, as expressed by them at the trial, they did not want to become involved and perhaps be charged with a "murder rap." Instead of doing the obviously humanitarian thing of coming to his aid, they claimed that they began to bang on the cell bars and yell at the jailers that Thomas had hung himself. Although there was a dispute in the evidence about how long it took the jailers to respond, it is clear that several minutes elapsed before a jailor came to the scene. Upon arriving at the scene, the jailor saw Thomas hanging from the fixture but did not enter the cell to aid him because of a jail rule that prohibited jailers from entering occupied cells on felony row unless at least two jailers were present. The night of this occurrence, only two jailers, a male and female, were on duty. The female jailer also served in the capacity of despatcher, and another rule prohibited her from leaving the radio. The plaintiffs, his parents and personal representatives, claim that the existence of harmful conditions and practices and the lack of appropriate procedures in the operation of the Benton County Jail denied the decedent his constitutional right of due process. They sought damages from the defendant, Benton County, Arkansas, for pain and suffering, mental anguish, and the loss of their son's companionship. After a verdict was entered against the parents, the parents moved for a new trial. The district court, denying the motion, found that the jury finding that the county did not violate the civil rights of the arrestee and did not treat him with deliberate indifference was not against clear weight of evidence. (Benton County Jail, Arkansas)

U.S. District Court
PRISONER CHECKS FAILURE TO SUPERVISE STAFFING LEVELS

Vega v. Parsley, 700 F.Supp. 879 (W.D. Tex. 1988). Parents of a juvenile who committed suicide while in a juvenile detention facility brought a civil rights action against the county, the sheriff, and the director of the facility. On the defendants' motion for summary judgment, the district court found that there was no eighth amendment violation with respect to conditions in the facility, including the presence of a shower curtain rod on which the juvenile hung himself. No constitutional violation was shown on the theory that the juvenile was denied treatment. No claim was stated on the theory of failure to staff, train and supervise the facility. No due process violation was established on the theory of summary judgment which caused the juvenile's death; and the defendants were entitled to qualified immunity.

The plaintiffs failed to state a claim of violation of the eighth and fourteenth amendments in the alleged failure of the county, as a matter of official policy, to staff, train and supervise the facility, where the plaintiffs failed to allege or establish what specific areas of training were inadequate or to establish any other specific incident where the prisoner or child committed or attempted to commit suicide, or that any policy or custom of the detention facility caused or contributed to any suicide. Even assuming that the action by the deputy in leaving the juvenile unattended in a cell for

15 or 20 minutes, during which time the juvenile committed suicide, was negligence or gross negligence, the conduct could not be imputed to the county for purposes of liability under the civil rights statute. Not allowing the parents to visit their juvenile son during the period of two or three hours on the morning following his placement in the juvenile detention facility, during which time he committed suicide, did not rise to a constitutional deprivation. (Gonzales County Detention Facility, Texas)

1989

U.S. District Court
CELL CHECKS

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
FAILURE TO SUPERVISE
INADEQUATE SUPERVISION

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
FAILURE TO SUPERVISE

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. Appeals Court
ASSIGNMENT
STAFFING LEVELS

Fisher v. Koehler, 718 F.Supp. 1111 (S.D.N.Y. 1989), aff'd., 902 F.2d 2 (2nd Cir. 1990). Prison inmates brought a class action against prison officials and others, challenging conditions of confinement as violative of their rights under the federal constitution. Following a finding, 692 F.Supp. 1519 (S.D.N.Y. 1988), that violence at the prison reached a level which violated the eighth amendment, the defendants were given the opportunity to submit a reasonable plan for the court's consideration. The district court found that the proposed plan to reduce violence by staff and inmates against inmates to comply with the eighth amendment would be adopted, with some modifications. The prison officials were entitled to an opportunity to establish that periodic, rather than permanent, presence of an officer would prove sufficient to prevent violence in dormitories consisting of inmates with little or no history of assaultive behavior. The appeals court found that conditions at the prison violated the eighth amendment, and the district court's remedy was properly formulated. (Correctional Institute for Men, New York City, New York)

U.S. District Court
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)

1990

U.S. Appeals Court
ELECTRONIC SURVEILLANCE
PRISONER CHECKS

Popham v. City of Talladega, 908 F.2d 1561 (11th Cir. 1990). The administratrix of the estate of a deceased jail inmate brought a civil rights action against the city and jail officials. During the celebration of his wedding, Ronald Popham was arrested for public intoxication. In addition to being intoxicated, he was emotional, depressed, and angry at the time of his arrest. Popham's belt, shoes, socks, and pocket contents were removed by jail personnel who placed him in a holding cell and at 9:30 p.m., ordered the cell monitored. Monitoring was accomplished by closed circuit television located on another floor of the jail where the camera was operated by a radio dispatcher. Popham was last checked on physically when the shift ended at 11:00 p.m., after which there were no guards or jailers on duty. Sometime later, in a small space within the cell unviewed by the camera, Ronald Popham hanged himself from the bars by his blue jeans. He was discovered at 5:15 a.m. Christmas morning. Mrs. Popham claimed several constitutional violations, in effect, that her husband had a right to be protected from committing suicide while incarcerated, that he was not properly monitored after being placed in a cell by himself, and that his jailers were not properly trained to identify prisoners who might show a tendency to suicide. The U.S. District Court denied relief and the administratrix appealed. The appeals court affirmed the decision and found that evidence did not show a deliberate indifference by jailers to the inmate where they were unaware of any suicidal tendencies. Because jail

suicides are analogous to the failure to provide medical care, deliberate indifference is the barometer by which suicide cases involving convicted prisoners as well as pretrial detainees are tested. The deliberate indifference standard applicable to civil rights actions arising out of jail suicides requires a strong likelihood, rather than a mere possibility, that the self-infliction of harm will occur, and deliberate indifference will not be found to exist in the face of only negligence. The failure to train jail personnel to screen detainees for suicidal tendencies did not provide a basis for imposing civil rights liability following the inmate's suicide. Standard procedures followed by the jail inmate's custodians prior to the inmate's suicide, which included the removal of shoelaces, belts, socks, and pocket contents, as well as closed circuit cell monitoring, demonstrated a lack of deliberate indifference to his safety, even though the closed circuit camera could not pick up every corner of his cell. (Talladega City Jail, Alabama)

U.S. Appeals Court
FEMALE STAFF

Timm v. Gunter, 917 F.2d 1093 (8th Cir. 1990), cert. denied, 111 S.Ct. 2807. Prisoners at an all-male Nebraska state penitentiary brought a class action alleging that allowing female guards to perform pat searches and see them nude or partially nude violated their right to privacy, and the female guards asserted equal employment claims. The U.S. District Court granted the prisoners partial relief, and the male prisoners and female guards appealed. The court of appeals found that allowing female guards to pat search male prisoners on the same basis as male guards was a reasonable regulation as applied at the Nebraska State Penitentiary, and so did not violate any privacy rights which the prisoners retained. In addition, the surveillance of male prisoners by female guards performed on the same basis as surveillance of prisoners by male guards did not violate any privacy interests which prisoners might retain. The sex-neutral visual surveillance of prisoners and the goal of the prison security was rationally connected, the prisoners had alternative means available to retain their privacy, and prison administrators were in the best position to balance competing interests present in the context of visual surveillance techniques. It was also found that the differences in privacy protections afforded male and female prisoners in the Nebraska penal system did not violate the Fourth Amendment equal protection, although female prisoners were afforded more privacy protections at an all-female institution than male prisoners were afforded at the all-male institution. The male and female prisoners were found to be not similarly situated due to differences in security concerns at the two institutions that reflected differences in the number and age of prisoners, the kinds of crimes committed by them, the length of sentences, and the frequency of incidents involving violence, escape, or contraband. (Nebraska State Penitentiary)

1991

U.S. District Court
FEMALE STAFF

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 inmate's Fourth and Fourteenth Amendment right to privacy was not violated on grounds that female correctional officers had an opportunity to view inmates in various stages of nudity while they showered, used the toilet, or during strip searches. The prison rules prohibited female guards from conducting strip searches except in emergency situations, privacy screens precluded full view of inmates while they showered, and brief observations which may have revealed inmates in various stages of undress during periodic tier checks were a necessary part of the correctional officer's duties and essential to maintain security of the institution. (Washington State Penitentiary, Walla Walla, Washington)

1992

U.S. District Court
DELIBERATE INDIFFERENCE
INADEQUATE SUPERVISION

Lile v. Tippecanoe County Jail, 844 F.Supp. 1301 (N.D. Ind. 1992). The district court found that allegations that pretrial detainees were asked to watch another inmate who had allegedly been brought to the jail because of mental problems, that another inmate twice attempted to commit suicide, and that the detainees were required to clean up after an initial suicide attempt, failed to state a Section 1983 claim against any of the county jail officials under the prevailing standard of deliberate indifference. The court found that there was no evidence that the actions of the officials were intended to punish the detainees, or that their conduct toward the detainees amounted to criminal recklessness. (Tippecanoe County Jail, Indiana)

1993

U.S. District Court
FAILURE TO SUPERVISE
PRISONER CHECKS
SURVEILLANCE

Bragado v. City of Zion/Police Dept., 839 F.Supp. 551 (N.D.Ill. 1993). A suit was brought under the Section 1983 civil rights statute, the Illinois Survival Act, and the Illinois Wrongful Death Act seeking damages for the city's failure to personally inspect and prevent the suicide of a jail prisoner. After the jury returned a verdict in favor of the plaintiff, posttrial motions were made in which the plaintiff sought funeral expenses and the defendant sought judgment notwithstanding the verdict. The district court found that evidence supported a finding that jail officials acted with deliberate indifference to the

prisoner's rights. Inadequate personal inspections of the prisoner were done despite the knowledge of the prisoner's suicidal tendencies. Audio and video monitoring were also insufficient. In addition, the on-duty officer knew of the prisoner's threat of suicide, as well as her intoxication and injuries to her wrists. The court also found that the jury's verdict awarding damages for the city's wrongful failure to prevent the prisoner's suicide, in the amount of $5,000 under the Illinois Survival Act and approximately $232,000 under the Illinois Wrongful Death Act as well as nominal damages for Section 1983 civil rights violation, was supported by evidence and was reasonable. (City of Zion Police Station, Zion, Illinois)

U.S. District Court
FEMALE STAFF

Canell v. Armenikis, 840 F.Supp. 783 (D.Or. 1993). Penitentiary inmates brought a Section 1983 action against prison officials, challenging female guards' viewing of unclothed male inmates. The defendants moved to dismiss for failure to state a claim. The district court found that the Constitution does not prohibit a female guard from viewing an unclothed male inmate under circumstances in which identical viewing would be proper if the viewer were a male guard. According to the court, the gender of the guard is irrelevant as long as there would be justification for the guard to view the unclothed male inmate and the guard behaves appropriately. (Oregon State Penitentiary)

U.S. District Court
PRISONER CHECKS
STAFFING LEVELS

Russell v. Knox County, 826 F.Supp. 20 (D.Me. 1993). A Section 1983 action was brought against a county, the sheriff and county corrections department officials' for an inmate's death by suicide. On the defendants' motion for judgment as a matter of law at the close of the plaintiff's case, the district court found that the county was not liable for the inmate's death, based on an alleged county policy of allowing all involuntary detainees to retain their shoelaces. In addition, the actions of a line corrections officer at the county jail, in allegedly delaying his inspection of the inmate's cell as part of a suicide watch for four minutes while he went to the bathroom, did not manifest any "deliberate indifference" to the inmate's constitutional rights, such as might support a Section 1983 action against the officer when the inmate hanged himself in his cell. The officer had never been told anything by the inmate suggesting that he intended to commit suicide, and the officer was surprised that the inmate committed suicide. (Knox County Jail, Maine)

1994

U.S. Appeals Court
FEMALE STAFF

Canedy v. Boardman, 16 F.3d 183 (7th Cir. 1994). An inmate sued a prison for Section 1983 violations resulting from invasion of privacy where female prison guards were routinely allowed to conduct strip searches and observe his naked body. During a shakedown search of his housing unit, two female prison guards searched him. The U.S. District Court dismissed the suit, and the inmate appealed. The appeals court found that the inmate was entitled to reasonable accommodations to prevent unnecessary observations of his naked body by female guards. The court noted that while all forced observations or inspections of a naked body implicate privacy concerns, it is generally considered a greater invasion to have one's naked body viewed by a member of the opposite sex. (Columbia Correctional Institution, Portage, Wisconsin)

U.S. Appeals Court
INADEQUATE
SUPERVISION
PRISONER CHECKS
SURVEILLANCE

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. District Court
FAILURE TO
SUPERVISE

Huffman v. Fiola, 850 F.Supp. 833 (N.D. Cal. 1994). A prisoner filed a federal civil rights complaint against prison officials and police officers and sought to proceed in forma pauperis. The district court found that the prisoner stated a cognizable claim against police officers who allegedly watched and refused to assist or prevent an alleged sexual assault of the prisoner in a booking cell. (Pacific Grove Police Department and Monterey County Sheriff's Department, California)

U.S. Appeals Court
STAFFING LEVELS

Taylor v. Freeman, 34 F.3d 266 (4th Cir. 1994). State prison inmates filed an action alleging that overcrowding and understaffing exposed inmates to an unconstitutionally unacceptable risk of physical violence. On the inmates' motion for a preliminary injunction, the U.S. District Court issued a mandatory preliminary injunction ordering prison officials to reduce the total inmate population by 30 percent of operating capacity in two months, in addition to ordering officials to take other remedial actions. The defendants appealed. The appeals court found that, in issuing the mandatory preliminary injunction, the district court exceeded the limited remedial authority vested in federal courts to direct the way in which state prison officials meet the dictates of the Eighth Amendment. The court's assumption of

extensive managerial control over the prison was premised upon conclusory findings regarding the inmates' allegations that overcrowding and understaffing exposed the inmates to an unacceptable risk of physical violence. (North Carolina's Morrison Youth Institution)

1995

U.S. District Court
ELECTRONIC SURVEILLANCE
INADEQUATE SUPERVISION

Abrams v. Hunter, 910 F.Supp. 620 (M.D.Fla. 1995). An inmate filed a civil rights suit against a jail officer and sheriff for injuries he received in a beating by other inmates while he was confined. The district court granted the defendants' motion for summary judgment, finding that the inmate failed to show that the jail officer knew about the assault or that there was a causal connection with the sheriff or a history of widespread abuse. The inmate had alleged that he was placed in a general population cell which had four video cameras for security purposes, and that while in the cell he was attacked by three inmates for a period of fifteen minutes but that no staff responded to stop the fight. (Collier County Jail, Florida)

U.S. District Court
STAFFING LEVELS

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. Appeals Court
CELL CHECKS
INADEQUATE SUPERVISION

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. District Court
PRISONER CHECKS

Mullins v. Stratton, 878 F.Supp. 1016 (E.D. Ky. 1995). Action was brought against jailers under a civil rights statute and state law for failing to take action to prevent an inmate's suicide. On a motion of the defendants for summary judgment, the district court found that no policy or custom amounting to deliberate indifference was shown to have caused the inmate's suicide for purposes of liability of jail officials in their official capacities under Section 1983. The county detention center had in effect a policy and procedure manual which provided for the care and treatment of suicidal inmates, providing for administrative segregation and observation on 20 minute intervals. In addition, the county jailer testified that he had received 40 hours of inmate care training and all correction officers were required to receive 16 hours of training annually. (Pike County Jail, Kentucky)

U.S. District Court
CELL CHECKS
STAFFING LEVELS

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. (Cummins Unit, Arkansas Department of Correction)

U.S. District Court
FAILURE TO SUPERVISE

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. (Field Unit #30, Virginia)

U.S. District Court
FAILURE TO SUPERVISE
PROBATION

Weinberger v. State of Wis., 906 F.Supp. 485 (W.D.Wis. 1995). The father of a murder victim brought a civil rights action against the state, a probation officer, and state employees alleging that their mishandling of a probationer's supervision caused his son's death. The The district court granted summary judgment for the defendants, finding that a suit against the state and the probation officer in her official capacity was barred and that the probation officer was immune from liability under state law. The court also ruled that the probation officer's actions did not deprive the victim or the father of their due process rights. The father had alleged that the probation officer was reckless in accepting an unreasonably heavy caseload, failing to make a home visit, and failing to recognize the probationer's worsening mental condition. The plaintiff's son was one of Jeffrey Dahmer's victims. (Wisconsin)

1996

U.S. District Court
FAILURE TO SUPERVISE
STAFF ASSIGNMENT

Byrd v. Abate, 945 F.Supp. 581 (S.D.N.Y. 1996). An inmate brought a § 1983 action against a correction officer, commissioner of correction and city mayor after he was injured during an incident at a city correctional facility. The district court denied summary judgment for the defendants, finding that the inmate had satisfied the objective element of his Eighth Amendment claim by demonstrating that he was blinded in his left eye when a fellow inmate stabbed him with an unknown instrument. The court found that a genuine issue of material fact remained concerning whether the correction officer acted with deliberate indifference to the inmate's safety when he left his assigned post to relieve another officer. The court held that the inmate's claim may rest on the assertion that the inmate faced an excessive risk of attack shared by other inmates in his situation, and that he need not show that he faced an excessive risk of attack for reasons unique to him. The court noted evidence presented established that the officer responsible for watching the inmate's area left his assigned post and relieved another officer without supervisory permission or proper relief, and that the inmate and others incarcerated in the area were receiving services from the facility's mental health center. (Anna M. Kross Correctional Facility, Rikers Island, New York City)

U.S. District Court
CELL CHECKS
INADEQUATE SUPERVISION
SURVEILLANCE

Clark v. McMillin, 932 F.Supp. 789 (S.D.Miss. 1996). A wrongful death suit alleging state law and federal civil rights claims was brought against a sheriff, a county, and an unnamed defendant seeking damages for the death of a pretrial detainee who was assaulted and killed by his cellmate. The district court remanded the state law claims and dismissed the federal claims. The court found that the sheriff's policy of checking cells containing pretrial detainees on suicide watch every 15 minutes was not deliberate indifference, even though 15 minutes was more than enough time for one inmate to kill another. The court found that although the sheriff did have constructive knowledge of the perpetrator's violent propensities from county records, the sheriff did not have actual knowledge of a substantial risk of serious harm to the victim. The plaintiffs had alleged that the county had no policy to safeguard inmates from attacks from other inmates, that the sheriff failed to place the perpetrator in a unit for violent felons, that the county failed to properly screen inmates for violent propensities, and that the county failed or refused to provide adequate medical care to the victim after the assault. (Hinds County Detention Center, Mississippi)

U.S. Appeals Court
STAFFING LEVELS

Smith v. Arkansas Dept. of Correction, 103 F.3d 637 (8th Cir. 1996). A district court granted injunctive relief in response to an inmate's claims of unconstitutionally dangerous prison conditions, and in response to another inmate's allegations that officials had failed to protect him from an attack by another prisoner. The court applied collateral estoppel in favor of a third inmate's estate. Prison officials' appeals were consolidated. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that it was within the district court's discretion to grant injunctive relief for insufficient supervision of an open barracks at a prison after the court concluded that the threat of harm to inmates from other prisoners violated the Eighth Amendment. Although one guard remained in the barracks hallway, the guard was prohibited from entering the barracks if an altercation was in progress. Two inmates were violently stabbed while asleep in their beds and evidence indicated that violence, robbery, rape, gambling and the use of weapons by inmates were prevalent in the open barracks. The court

also determined that the solutions adopted by the district court to respond to overcrowding and supervision problems in a previous unrelated case could be used to measure the officials' conduct and knowledge when determining if the officials were entitled to qualified immunity. (Cummins Unit, Arkansas Department of Correction)

1997

U.S. District Court
STAFFING LEVELS INADEQUATE

Earrey v. Chickasaw County, Miss., 965 F.Supp. 870 (N.D.Miss. 1997). An inmate detained in a county jail as the result of an alleged parole violation sued the county because he was beaten by other inmates while detained. The court denied summary judgment for the county, finding it was precluded by genuine issues of material fact as to the existence of subjective knowledge of risk on the part of the jail and the sheriff. The parolee and most other persons housed at the jail were allowed to leave the jail during the day to work and returned in the evenings. According to jail policy, only one jailer was provided for the facility, and he was required to be present at the jail twenty-four hours a day, seven days a week. The jailer was only allowed to leave the jail when deputy sheriffs were present at the facility. Policy required the jailer to check on prisoners every hour during the day, but nighttime checks were not made. The jailer could monitor inmates electronically in two ways: an intercom and an emergency switch available to inmates. The parolee alleged he was severely beaten by other inmates, who prevented him from reaching the emergency switch. (Chickasaw Co. Jail, Okolona, Mississippi)

U.S. District Court
FAILURE TO SUPERVISE INADEQUATE SUPERVISION

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 countynoting 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
STAFFING LEVELS

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 detainees were exposed to excessive risks of harm from earthquakes in violation of their due process rights, where the jail lay a quarter mile from the San Andreas fault and faced a 50% chance of experiencing a high magnitude earthquake over the next 50 years. The jail appeared structurally unable to withstand substantial seismic activity andhad a malfunctioning bar locking system and inadequate staffing that further augmented risk by potentially leaving inmates trapped in their cells during and after an earthquake. The court rejected the government's contention that more than 30 public buildings in the area had the same seismic rating as the jail. The court noted that the public's alleged tolerance of risk associated with entering a poorly-constructed library or museum for an hour did not equate to tolerance for spending 100 days continuously trapped in such a facility.

The court found deliberate indifference to the risk of earthquakes despite the defendants' contention that it would cost more than $33 million to upgrade the jail and efforts to gain voter approval for funding for a new facility had failed. The court noted that the city could have attempted other funding methods and did have some funds allocated for seismic repairs but diverted that money to other projects. (San Francisco Jail No. 3, California)

U.S. District Court
SUPERVISORY LIABILITY

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. Appeals Court
STAFFING LEVELS
FAILURE TO SUPERVISE
FEMALE OFFICERS

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, 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. 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 Dept., Texas)

1998

U.S. Appeals Court
STAFF LEVELS
STAFF ASSIGNMENT

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
STAFFING LEVELS

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
FAILURE TO SUPERVISE

Faulcon v. City of Philadelphia, 18 F.Supp.2d 537 (E.D.Pa. 1998). A pretrial detainee who had been stabbed by another inmate sued city officials and correction officers alleging failure to protect, failure to supervise and failure to train under the Eighth Amendment. The district court granted summary judgment to the defendants, finding that the facility's policy of keeping pretrial detainees in the same housing unit as convicted inmates did not constitute deliberate indifference to a substantial risk of harm. The court also held that the lack of guidelines or training procedures regarding segregation of convicted inmates was insufficient to support claims for failure to supervise or failure to train. According to the court, a state statutory provision that indicated that sentenced prisoners should be housed separately from detainees was merely a recommended guideline rather than a mandatory requirement. (Philadelphia Industrial Correctional Center, Pennsylvania)

U.S. Appeals Court
STAFFING LEVELS

Liebe v. Norton, 157 F.3d 574 (8th Cir. 1998). A detainee's wife and the administrator of his estate sued a county, sheriff and jailer for damages under § 1983, after the detainee committed suicide while incarcerated in a county jail. The district court dismissed the case and the appeals court affirmed, finding that the jailer who classified the detainee as a suicide risk, took preventive measures by placing the detainee in a temporary holding cell and removing his shoes and belt, and periodically checked on the detainee, did not act with deliberate indifference to the detainee's health or safety. The court found the jailer was entitled to qualified immunity because the steps taken by the jailer were affirmative, deliberate steps to prevent suicide. The court held that the county could not he held liable on a § 1983 claim of failure to supervise, based on the on-the-job training received by the jailer, the county's failure to test the jailer on his knowledge of a manual outlining suicide prevention policies, and the county's decision to leave the jailer in charge. The appeals court found that this did not rise to the level of deliberate indifference. The court also found that the county was not liable for failing to train jailers on the risks of inmate suicides, when the county had in place policies intended to prevent suicides and no suicides had occurred at the jail before the detainee's. The court found that failing to lead the jailer, step by step, through policies in the manual did not amount to failure to train. The detainee had been arrested and taken to the jail and was intoxicated at the time of his admission. The admitting jail officer classified the detainee as a "suicide risk" because he admitted to previously attempting suicide and was on both clonazepam and valium. The officer checked on the detainee at intervals ranging from 7 minutes to 21 minutes, but did not turn on the audio system in the holding cell. The detainee used his long-sleeved shirt to hang himself on a metal-framed electrical conduit in the cell. The jailer was the only staff member on duty at the time. Before being assigned to work by himself he was given on-the-job training for 2½ weeks. The jailer was scheduled to attend a jailer training course but it was not offered for another month. At the time of the suicide the jailer had worked full-time for approximately two months. (Fall River County Jail, South Dakota)

U.S. Appeals Court
STAFF ASSIGNMENT
SURVEILLANCE

Steidl v. Gramley, 151 F.3d 739 (7th Cir. 1998). A prisoner brought a § 1983 action against a warden for failing to protect him from an attack by fellow inmates. The district court dismissed the case and the appeals court affirmed. The appeals court held that the warden could not be held liable based on the allegation that he knew or should have known that the chances of inmate-on-inmate violence were greatly enhanced by the disappearance of a razor blade. The court also held that the alleged absence of guards in towers and a catwalk overlooking the prisoner's unit at the time of the attack did not give rise to liability on the warden's part, as the warden was not responsible for such aspects of the day-to-day operations at the prison. According to the court, a warden is not responsible for the failure of his subordinates to carry out prison policies unless the subordinates are acting, or failing to act, on the warden's instructions. (Pontiac Correctional Center, Illinois)

1999

U.S. Appeals Court
FAILURE TO SUPERVISE

Giroux v. Somerset County, 178 F.3d 28 (1st Cir. 1999). A jail inmate who had been assaulted by another inmate sued a jail employee, sheriff and county alleging violations of § 1983. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court vacated and remanded, finding that summary judgment was precluded by a factual dispute about the scope of the jail shift supervisor's responsibility and whether he abdicated his responsibility. The inmate was threatened by a cellmate when he left his cell to meet with a detective. After the meeting the inmate was moved to a different cell,

apparently in response to the threat. The inmate was threatened again the next day when he was escorted past his former cell, and was allegedly threatened by other inmates while dining. The inmate requested protective custody. Although he was not moved, he was placed on "cell feed" status which eliminated his contact with other inmates in the common dining area. Several days later the inmate was involved with a visit which required him to use a common visiting area. While in the visiting area he was assaulted by his former cellmate who was also involved with a visit. The inmate suffered a broken nose, torn shoulder ligaments and a head laceration which required stitches. (Somerset County Jail, Maine)

U.S. District Court
CROSS GENDER SUPERVISION

Cain v. Rock, 67 F.Supp.2d 544 (D.Md. 1999). A female prisoner brought a § 1983 action against county officials. The district court held that the county's policy of allowing cross-gender supervision did not violate the prisoner's rights. The court also found that a random sexual assault by a correctional officer, where there was no history of assaults on prisoners by employees and the county had moved quickly to investigate the officer's actions, was not "punishment" for Eighth Amendment purposes. The prisoner claimed that the officer had performed oral sex on her in her cell. (Anne Arundel County Detention Center, Maryland)

U.S. Appeals Court
STAFFING LEVELS
FAILURE TO SUPERVISE

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 court noted that a suit against the sheriff in his official capacity is the equivalent of a suit against the county. The appeals court found that fact issues precluded summary judgment for the sheriff in his individual and official capacities on the detainee's failure to protect claims. 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
CELL CHECKS
FAILURE TO SUPERVISE
PRISONER CHECKS

Sanders v. Howze, 177 F.3d 1245 (11th Cir. 1999). The administrix of a detainee's estate sued jailers alleging violation of the detainee's Eighth and Fourteenth Amendment rights arising from the detainee's suicide in jail. The district court denied summary judgment for the jailers and they appealed. The appeals court reversed and remanded with directions. The appeals court held that the jailers were entitled to qualified immunity, absent any preexisting Eleventh Circuit caselaw clearly establishing that the suicide prevention measures taken by the jailers were so inadequate as to constitute deliberate indifference. Several weeks after he was arrested and placed in the jail, the detainee removed a razor blade from a disposable razor and cut his left wrist. Following jail policies, staff transported the detainee to a local hospital's emergency room for treatment and evaluation. He was then transferred to a state hospital where he remained for several months. He returned to the jail and was placed in the general population where two days later he used a pencil to reopen his wrist wound. He was treated at the local hospital and returned to the jail the same day, where he was placed in an isolation cell near the jailers' office to prevent his access to items that might be used to injure himself. The next day he reopened the wound, was treated at the hospital, and returned to the isolation cell. He was transferred to a state hospital for several weeks and was placed in an isolation upon his return. The state hospital gave no special instructions concerning his care. The county petitioned the court for a psychiatric evaluation of the detainee but before the evaluation could be conducted the detainee was found dead, hanging from a light fixture in his cell by a bedsheet. Two jailers were on duty the night the detainee died but they did not detect his death for four to six hours after it occurred, despite a jail policy requiring lights in isolation cells to remain on at all times and for inmates in isolation are to be visually monitored every 30 minutes. (Dougherty County Jail, Georgia)

U.S. District Court
CELL CHECKS
FAILURE TO SUPERVISE

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 is 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
FAILURE TO SUPERVISE

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)

2000

U.S. District Court
CROSS GENDER SUPERVISION

Ashann-Ra v. Com. Of Virginia, 112 F.Supp.2d 559 (W.D.Va. 2000). A prisoner sued state officials alleging various constitutional violations. The court found that the correctional defendants were not entitled to qualified immunity when sued in their personal capacities for violation the male prisoner's privacy rights, because female officers could and did regularly view his genitals and other private areas of his body while he showered. The court held that there were fact issues as to whether the defendants reasonably believed that they were not violating one of the prisoner's clearly established rights. But the court found that the Prison Litigation Reform Act (PLRA) barred the prisoner's claims of emotional distress and sexual dysfunction, allegedly caused by the corrections officials' actions, because such psychosomatic injuries did not qualify as a "physical injury" under the provisions of PLRA. (Red Onion State Prison, Virginia)

U.S. Appeals Court
FAILURE TO SUPERVISE

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
FAILURE TO SUPERVISE

Craw v. Gray, 159 F.Supp.2d 679 (N.D.Ohio 2001). An arrestee sued law enforcement officers under § 1983 asserting claims for use of excessive force. The district court granted partial summary judgment in favor of the officers, finding that the allegations did not support a claim for inadequate training of an officer and that past "use of force" incident reports did not support the claim for inadequate supervision of the officer. According to the court, the assertion that a particular officer may be unsatisfactorily trained does not alone "suffice to fasten § 1983 liability" on a municipality for failure to train. The court noted that none of the reports showed that the deputy acted improperly. The officer had brought the arrestee to a county jail and during the booking process an altercation between the arrestee and the officer resulted in a right hip fracture and dislocation for the arrestee. (Mercer County Jail, Ohio)

U.S. District Court
FAILURE TO SUPERVISE

Miller v. McBride, 259 F.Supp.2d 738 (N.D.Ind. 2001). A pro se state prisoner sued corrections officials under § 1983, challenging his transfer from protective custody following an altercation with a fellow inmate. The district court granted summary judgment in favor of the officials, finding that the prisoner had no constitutional right to a hearing on his transfer from protective custody. (Pendleton Correctional Facility, Indiana)

U.S. Appeals Court
CELL CHECKS
FAILURE TO SUPERVISE

Sanville v. McCaughtry, 266 F.3d 724 (7th Cir. 2001). The mother of a mentally ill inmate who committed suicide while incarcerated in a state prison brought an action against prison physicians, wardens and officers. The district court dismissed the case and the appeals court affirmed in part, and reversed and remanded in part. The appeals court held that the allegations stated a claim that the officers were aware of a substantial risk of harm that the inmate would commit suicide and failed to take reasonable steps to prevent the inmate's suicide. According to the appeals court, the officers were not entitled to qualified immunity on the § 1983 individual liability claims. The mother alleged that the inmate had recently lost nearly one-third of his body weight, had written letters to her contemplating his death, had written a last will and testament, had told officers that he planned to commit suicide, and had covered his cell openings with toilet paper so that it was difficult to see inside. The mother also alleged that the inmate was last seen alive by officers at 10:00 a.m. and that in the following five hours before his suicide was discovered his cell window was covered with toilet paper, there was no apparent attempt to determine if the inmate was stable. (Waupun Correctional Institution, Wisconsin)

2002

U.S. Appeals Court
FAILURE TO SUPERVISE

Calderon-Ortiz v. Laboy-Alvarado, 300 F.3d 60 (1st Cir. 2002). A former pretrial detainee brought a § 1983 action against officials, alleging failure to protect him from other inmates. The district court dismissed the action. The appeals court reversed and remanded, finding that the detainee's complaint sufficiently stated a claim. The detainee alleged he had been forcibly sodomized by other inmates, that officials were aware that inmates were being housed without adequate regard to their custody and security needs, and that staff did not provide adequate supervision. (Bayamon Regional Metropolitan Detention Center, Puerto Rico)

U.S. District Court
INADEQUATE SUPERVISION

Drake v. Velasco, 207 F.Supp.2d 809 (N.D.Ill. 2002). An inmate sued county corrections officials and a food service company under § 1983, alleging failure to provide him with sanitary meals. The district court denied the defendants' motion to dismiss. The court held that the inmate's allegations supported Fourteenth Amendment claims and a claim of deliberate indifference under § 1983. The court found that the inmate sufficiently alleged sufficient injury. The inmate alleged that the food service company's preparation was so unsanitary as to pose both an immediate risk to the inmate's health, and that the food served hindered his recovery from his ulcer, cirrhosis of the liver, and Hepatitis B and C. The inmate alleged that unsanitary conditions included serving meals on trays that contained spoiled food from previous meals, and inadequate supervision of employees that resulted in improper handling, preparation and sterilization of equipment. (Cook County Jail, Illinois, and Aramark Food Services)

U.S. District Court
CELL CHECKS

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
STAFFING LEVELS

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. (Fulton County Jail, Georgia)

U.S. Appeals Court
CROSS GENDER
SUPERVISION

Hill v. McKinley, 311 F.3d 899 (8th Cir. 2002). A prisoner brought § 1983 action alleging jail officers and a sheriff violated her Fourth Amendment right to privacy, and her privacy rights under state law. The prisoner had been marched down a hallway naked, escorted by staff members of the opposite sex, and was then strapped face down to a restrainer board in a spread-eagle position. The district court denied the defendants' request for judgment as a matter of law, refused to reduce damages, and granted attorney fees to the prisoner. The appeals court affirmed in part, reversed in part, and remanded with directions. The appeals court held that the use of male officers in an otherwise justified transfer of an unruly and naked female prisoner did not violate the Fourth Amendment. The court held that the prisoner's Fourth Amendment rights were violated when she was allowed to remain completely exposed to male officers on a restrainer board for a substantial period of time after the threat to security and safety had passed. But the court found that the officers were entitled to qualified immunity because their actions did not violate clearly established law, noting that prisoners were entitled to very narrow zones of privacy. The court found that evidence supported the verdict for the prisoner on her state law privacy claim and the $2,500 compensatory damage award for invasion of privacy. (Story County Jail, Iowa)

U.S. Appeals Court
CROSS GENDER
SUPERVISION
FEMALE STAFF

Oliver v. Scott, 276 F.3d 736 (5th Cir. 2002). A male prisoner brought a civil rights suit against a prison warden, correctional officers, and private contractors who operated a state jail facility, alleging constitutional violations arising from cross-gender surveillance and strip searches, and the absence of partitions in male shower areas. The district court dismissed a portion of the complaint for failure to state a claim and entered summary judgment in favor of the defendants for the remaining issues. The prisoner appealed and the appeals court affirmed. The appeals court held that any minimal right to bodily privacy possessed by the male prisoner did not preclude cross-gender surveillance and that such surveillance, in the absence of partitions in the male shower area, did not violate the prisoner's equal protection rights. The court noted that fundamental implied rights—marriage, family procreation, and the right of bodily integrity—do not include a right of prisoners to avoid surveillance by members of the opposite sex. According to the court, the existence of privacy partitions in female inmates' showers and the absence of male guard surveillance of female inmates did not violate the equal protection rights of the male prisoner because male prisoners were not similarly situated to female prisoners due to their conviction for more violent crimes, larger numbers, and higher incidence of violent gang activity and sexual predation. The court found that the prisoner's complaint did not identify a specific unconstitutional policy that correctional officers allegedly violated by engaging in cross-gender strip searches and monitoring of prisoners. (Dawson State Jail Facility, Texas)

U.S. District Court
STAFFING LEVELS

Rapier v. Kankakee County, Ill., 203 F.Supp.2d 978 (C.D.Ill. 2002). The wife of a detainee who committed suicide while in jail filed a § 1983 suit individually, and as the special administrator of the detainee's estate. The district court granted summary judgment for the defendants, finding that the county was not liable for alleged deliberate indifference toward the prevention of suicide by detainees. The court found that the county's policy of placing potentially suicidal detainees in a special needs cell, along with its policy to require checks of these inmates every 15 minutes, was an effective way to prevent suicides. The court also found that the county's failure to adequately

deal with the problem of understaffing at the jail was not the cause of the detainee's suicide, because an officer saw or spoke to the detainee 15 to 20 minutes prior to the time he was found hanging in his cell. The sheriff has stated that seven staff members were working at the jail at the time of the suicide, the jail's census was lower than usual at the time, and that he did not think that having additional staff would have made a tremendous difference. (Kankakee Co. Detention Ctr., Illinois)

U.S. Appeals Court
FAILURE TO SUPERVISE

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 Corr'l Inst. for Women)

U.S. District Court
FAILURE TO SUPERVISE

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. Appeals Court
PROBATION

U.S. v. Reyes, 283 F.3d 446 (2nd Cir. 2002). A federal offender who was serving a term of supervised release appealed denial of his motion to suppress evidence that was identified during a home visit by probation officers. The appeals court held that the offender had a severely diminished expectation of privacy, making it reasonable and lawful for probation officers to walk on to his driveway during a required home visit and to observe what they may see in plain view. The court noted that terms of the offender's supervised release mandated home visits "at any time." (U.S. District Court, Northern District of New York)

2003

U.S. Appeals Court
CELL CHECKS
ELECTRONIC SURVEILLANCE
STAFFING LEVELS

Cagle v. Sutherland, 334 F.3d 980 (11th Cir. 2003). The personal representative of the estate of a pretrial detainee who hung himself in his cell brought a § 1983 action, alleging that officials failed to prevent his suicide. The district court denied summary judgment in favor of the defendants and they appealed. The appeals court vacated and remanded. The appeals court held that the county's violation of a consent decree that arose out of a voluntary settlement of a prior jail conditions lawsuit, did not establish a violation of the pretrial detainee's constitutional rights actionable under § 1983. The consent decree required the county to provide a second nighttime jailer to staff the jail during the hours that the detainee committed suicide, but the court noted that the prior lawsuit was not concerned with the risk of prisoner suicides. According to the court, the county's failure to fund the second jailer did not rise to the level of deliberate indifference to the strong likelihood that a suicide would result. The court also found no deliberate indifference on the part of the jailer who waited for one hour and forty-six minutes after his last cell check, even though the detainee had expressly threatened suicide. The court noted that the jailer was aware that the detainee's belt, shoelaces and the contents of his pockets had been confiscated, the cell had been stripped of implements that might assist suicide, and the jailer regularly observed the detainee through a closed circuit monitor that viewed the majority of the cell. The detainee

was able to commit suicide by tearing the elastic band from his underwear, tying it around his neck, and hanging himself from the top bunk. (Winston County Jail, Alabama)

U.S. Appeals Court
CELL CHECKS
FAILURE TO SUPERVISE

Cavalieri v. Shepard, 321 F.3d 616 (7th Cir. 2003). The mother of a pretrial detainee who attempted suicide brought a § 1983 action against a police officer, alleging deliberate indifference to the detainee's risk of attempting suicide. The district court denied summary judgment for the officer and the officer appealed. The appeals court affirmed. The appeals court held that summary judgment was precluded by an issue of fact as to whether the officer was aware that the detainee was on the verge of trying to commit suicide and whether the officer was deliberately indifferent to the detainee's safety. The court noted that the detainee's right to be free from deliberate indifference to the risk that he would attempt suicide was clearly established. The detainee was transferred to a county facility after a brief period of detention in a city jail. When he was admitted to the county facility he was not placed on suicide watch, but he did ask to speak to a mental health advisor. He was assigned to a holding cell that contained a telephone with a strong metal cord. When the police officer called the county facility to complain about calls from the inmate, county employees found the detainee unconscious, hanging from the wire telephone cord. The detainee remained in a vegetative state after his unsuccessful suicide attempt. (Champaign County Correctional Facility, Illinois)

U.S. Appeals Court
FAILURE TO SUPERVISE
INADEQUATE SUPERVISION

Cottone v. Jenne, 326 F.3d 1352 (11th Cir. 2003). The personal representative of the estate of a pretrial detainee who was killed by a mentally-ill co-inmate, brought a § 1983 action. The district court denied qualified immunity for the defendants and they appealed. The appeals court affirmed in part and reversed in part. The appeals court held that officers were not entitled to qualified immunity because they failed to monitor a known violent inmate that was housed in a unit for mentally ill inmates. The court held that supervisory officials were entitled to qualified immunity from § 1983 liability for their failure to train and supervise officers on duty at the time of the murder, absent an allegation of a constitutional violation on their part. (North Broward Detention Center, Florida)

U.S. District Court
SURVEILLANCE
ELECTRONIC SURVEILLANCE

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 held that the alleged conduct of the county in failing to equip the jail with audiovisual equipment to monitor inmates failed to support a claim against the county, absent an allegation that the failure caused, or in any way contributed to, the inmate's death. (Choctaw Co. Jail, Ala.)

U.S. District Court
FAILURE TO SUPERVISE
SURVEILLANCE

Govan v. Campbell, 289 F.Supp.2d 289 (N.D.N.Y. 2003). An inmate filed a pro se action alleging that county officials violated his Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants. The court held that the inmate's alleged conditions, consisting of unclean shower stalls with rust bubbles, cockroaches that crawled into his orifices while he slept, wild birds that were flying free through the facility, and an unsafe condition that resulted from the on-duty officer's inability to see directly into his cell at all times, did not rise to the level of a constitutional violation. The inmate also alleged that a correctional officer was sleeping while he was supposed to be supervising recreation in a gym. The court noted that the inmate did not assert how he was actually harmed by the conditions. (Albany County Correctional Facility, New York)

U.S. District Court
PRISONER CHECKS

Gray v. Tunica County, Mississippi, 279 F.Supp.2d 789 (N.D.Miss. 2003). The estate of a jail inmate and his relatives brought a suit against a county and a jailer, alleging federal civil rights claims and state law claims. The inmate had committed suicide in a jail holding cell. The district court granted summary judgment, in part, for the defendants. The court held that the county had no civil rights liability for jail conditions or policies related to the suicide of the pretrial detainee who was placed in a new "lunacy" cell under a suicide watch. The detainee apparently managed to strangle himself with a ripped-off piece of his jail jumpsuit. The court found that the holding cell was new and safe and that the method of suicide was unforeseeable. The court noted that it was doubtful that the detainee could have been helped, even if a jailer had entered the cell immediately upon noticing that the detainee had removed his jumpsuit and was lying nude in a peculiar position. According to the court, the jail policies involving intermittent checks were reasonably related to the legitimate purpose of protecting inmates from harm. The jailer had decided to finish feeding other inmates before he returned to check on the welfare of the detainee in the holding cell. The detainee had been checked about an hour after being placed in the new holding cell, and the jailer returned 30 minutes later to discover the detainee unconscious in the cell. (Tunica County Jail, Mississippi)

U.S. District Court
STAFFING LEVELS
FAILURE TO SUPERVISE
INADEQUATE SUPERVISION

Robinson v. U.S. Bureau of Prisons, 244 F.Supp.2d 57 (N.D.N.Y. 2003). The mother of a federal prisoner who died after he was stabbed by another inmate, brought § 1983 and Federal Tort Claims Act actions against prison officials. The district court held that prison officials were not deliberately indifferent to the serious medical needs of the inmate, and that the officials were not negligent under state law. The mother had alleged inadequate supervision and staffing practices, citing an instance in which one corrections officer supervised 219 inmates who had violent proclivities during a facility-wide move. The court noted that the mother did not offer any expert testimony or other evidence to establish that the officials were aware of an excessive risk to the inmate's safety, or to establish a breach of the officials' duty of care. (Raybrook Federal Correctional Facility, New York)

2004

U.S. Appeals Court
FEMALE OFFICERS
CROSS GENDER SUPERVISION

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. District Court
STAFFING LEVELS

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
FAILURE TO SUPERVISE

Stiltner v. Crouse, 327 F.Supp.2d 667 (W.D.Va. 2004). The father of a pretrial detainee who committed suicide in jail brought a § 1983 action against jailers. The district court granted summary judgment in favor of the jailers. The court held that the jailers were not deliberately indifferent to the substantial risk of harm to the detainee, and that they were not negligent in their handling of the detainee. The 39-year-old detainee had been arrested for suspicion of operating a vehicle under the influence of drugs and was waiting for her bond to be posted at a county jail. She was placed in a holding cell. Several hours later jailers discovered that she was unconscious. After attempts to resuscitate her were unsuccessful she was transported to a local hospital where she was pronounced dead. An autopsy showed that her death was caused by either self-hanging or strangulation by another person. According to the court, the detainee did not request medical aid from the jail nurse who saw her initially, and there was no indication to jailers that she might be a danger to herself. (Buchanan County Jail, Virginia)

U.S. District Court
ELECTRONIC SURVEILLANCE
FAILURE TO SUPERVISE
STAFFING LEVELS
PRISONER CHECKS

Thompson v. Spears, 336 F.Supp.2d 1224 (S.D.Fla. 2004). A prisoner brought an action against a county and a jail official, alleging deliberate indifference to his safety, negligent supervision, and negligent infliction of emotional distress. The district court granted summary judgment in favor of the defendants. The court held that a lack of monitoring devices in jail cells did not pose an objectively substantial risk of harm to the inmate, particularly in light of the fact the state Model Jail Standards did not require cameras. The court found that the inmate presented no evidence that the officer posts were located so far that officers could not hear calls for help. The court held that the county was not liable under § 1983, even if jail officers did not actually follow the county policy of making hourly walk-throughs to monitor cells, where there was no evidence that the county had officially sanctioned or ordered the officers to disregard the county policy. The prisoner had been temporarily transferred from a state prison to the county jail in order to be involved in a family court matter. The inmate, who was from Jacksonville, Florida, alleged that he was severely beaten by other inmates for over two hours, after the Miami Dolphins beat the Jacksonville Jaguars in a football game. (Pretrial Detention Center, Miami-Dade County, Florida)

U.S. Appeals Court
STAFFING LEVELS
CELL CHECKS

Turney v. Waterbury, 375 F.3d 756 (8th Cir. 2004). A mother brought a civil rights action to recover damages related to the in-custody suicide of her son. The district court granted summary judgment in favor of the defendants and the mother appealed. The appeals court affirmed in part, and reversed in part and remanded. The appeals court held that the sheriff was not entitled to qualified immunity, where the sheriff knew of, but did not investigate, the arrestee's earlier suicide attempt at a jail from which he was transferred, did not permit a jailer to complete the arrestee's intake form, placed the arrestee in a cell alone with a bed sheet and exposed ceiling

bars, and ordered the jailer not to enter the arrestee's cell without backup and yet left the jailer as the only staff member on duty at the jail. Before the arrestee was transferred to the jail in which he committed suicide, he had told jail staff that "he was going to hang it up" and shortly thereafter he was found in his cell with a bed sheet tied around his neck. During his processing into the next jail he told staff he did not want to return to prison, and that he would die and take someone with him if he received more than a 15 year sentence. The court found that training provided to county officials was not inadequate, where the county provided manuals that informed police officers how to recognize and respond to suicide risks. (Bennett Co. Jail, S.D.)

U.S. Appeals Court
FAILURE TO SUPERVISE

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)

2005

U.S. District Court
FAILURE TO SUPERVISE

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
STAFFING LEVELS

Crow v. Montgomery, 403 F.3d 598 (8th Cir. 2005). A pretrial detainee brought a § 1983 and a § 1988 action against officials at a county detention center, alleging violations of the Fifth, Eighth and Fourteenth Amendments. The district court denied the officials' motion for summary judgment based on qualified immunity, and the officials appealed. The appeals court reversed and remanded. The court held that the detainee failed to establish that officials disregarded any known risks to the detainee's health or safety while he was incarcerated. According to the court, the detainee's allegations regarding inadequate records, overcrowding, poor supervision, and understaffing showed at most that the officials were negligent, and did not rise to the level of deliberate indifference. (Faulkner County Detention Center, Arkansas)

U.S. District Court
ELECTRONIC MONITORING
FAILURE TO SUPERVISE

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 INDIFFERENCE
FAILURE TO SUPERVISE
CELL CHECKS

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 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
CELL CHECKS
STAFFING LEVELS

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
CELL CHECKS
FAILURE TO SUPERVISE

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. Appeals Court
CELL CHECKS
FAILURE TO SUPERVISE

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
STAFFING LEVELS
FAILURE TO SUPERVISE

Fisher v. Lovejoy, 414 F.3d 659 (7th Cir. 2005). A pretrial detainee brought a pro se § 1983 Fourteenth Amendment action against a corrections officer, alleging that the officer failed to protect the detainee from assault by other inmates of the facility. The district court entered summary judgment for the officer and the detainee appealed. The appeals court affirmed. The court held that the fact that the officer witnessed the stabbing of the detainee by another inmate did not render the officer deliberately indifferent to a second assault on the detainee that was perpetrated minutes later by several inmates. The court noted that the officer entered the room where the stabbing had occurred and attempted to restore order, found and confiscated a knife

near the spot where he had observed the stabbing, which permitted the inference that the first assailant was unarmed. The officer did not identify the inmates who mounted the second attack as participants in the first attack. The court held that the officer reasonably responded when he witnessed the stabbing of the detainee, precluding liability. At the time of the assaults, the officer had been assigned to "cross-watch" two separate housing units, one of which housed 48 inmates. He was required to walk back and forth between the two units' dayrooms. When the first assault began the victim ran toward the locked dayroom door and saw the officer outside. He pushed an intercom button near the door and summoned help. The officer immediately called for assistance but was not able to enter the dayroom until it was unlocked by a central control post. By the time the door opened, approximately twenty officers were waiting to enter. (Cook County Department of Corrections)

U.S. Appeals Court
INADEQUATE SUPERVISION

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
INADEQUATE SUPERVISION
FAILURE TO SUPERVISE

Hart v. Sheahan, 396 F.3d 887 (7th Cir. 2005). Female pretrial detainees brought an action against a county and jail superintendent alleging deprivation of liberty without due process. The district court dismissed the case and the detainees appealed. The appeals court reversed and remanded, finding that the detainees stated a claim upon which relief could be granted. The detainees alleged that during monthly lockdown searches of the jail, they were confined for 48 to 50 hours at a time to their cells, where they were not under observation or within hailing distance of correctional officers. The detainees alleged that serious injuries resulted from their inability to get the officers' attention during a crisis. The court noted that an alternative procedure was available to the jail that would allow inmates in each locked tier to be released from their cells after that tier was searched, resulting in shorter lockdown periods. (Cook County Jail, Illinois)

U.S. Appeals Court
FAILURE TO SUPERVISE

Hearns v. Terhune, 413 F.3d 1036 (9th Cir. 2005). A state prison inmate brought a § 1983 action alleging violation of his Eighth Amendment rights related to an attack in prison, and inhumane conditions in a disciplinary segregation unit. The district court dismissed the action and the inmate appealed. The appeals court reversed and remanded. The court held that the inmate's allegations stated a claim that prison officials failed to protect him from attacks by other inmates. The inmate had been beaten and stabbed in a prison chapel by inmates who belonged to another Muslim group. The inmate alleged that the officials knew that: numerous Muslim inmates had been subject to attack by a ruling Muslim group in the prison chapel; the chaplain knew that the ruling Muslim group was trying to steal prayer oil from other Muslim inmates; the chaplain informed the ruling group that he had secretly delivered the oil to another inmate; and the chaplain told the ruling group that the inmate did not follow the teachings of Muhammad. The inmate alleged that an officer was not present when he was attacked even though inmates were not allowed in the chapel without supervision. (Calipatria State Prison, California)

U.S. District Court
FAILURE TO SUPERVISE
STAFFING LEVELS

Mann ex rel. Terrazas v. Lopez, 404 F.Supp.2d 932 (W.D.Tex. 2005). Representatives of the estates of two detainees who had committed suicide while confined brought an action against a sheriff and jail officers, alleging failure to supervise and failure to train. The district court found that the sheriff was entitled to qualified immunity for failing to prevent the detainees' suicides, where there was no evidence that the sheriff was personally aware of any suicidal thoughts the detainees might have had and did not personally direct any actions involving the detainees during their incarceration. The court ordered further proceedings to determine if the sheriff's failure to modify his policies regarding potentially suicidal detainees was an intentional choice, or merely unintentionally negligent oversight. One inmate was known to have mental health problems and was housed in a mental health unit that provided a 1 to 18 officer to inmate ratio, compared to the 1 to 48 ratio required by state standards. The inmate hanged himself using a torn-up bed sheet. The other inmate was being held in a new detox cell and was founding hanging four minute after she had been visually observed by an officer. She also used a bed sheet to hang herself. (Bexar County Adult Detention Center, Texas)

U.S. District Court
CELL CHECKS
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 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 the 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
INADEQUATE SUPERVISION

Rivera-Quinones v. Rivera-Gonzalez, 397 F.Supp.2d 334 (D.Puerto Rico 2005). Relatives of an inmate who died while incarcerated in a Puerto Rico state prison brought a § 1983 claim alleging failure to provide the inmate with adequate protection from attacks by other inmates. The district court denied the defendant prison officials' motion to dismiss. The court held that the Prison Litigation Reform Act (PLRA) exhaustion requirement did not apply to the § 1983 action brought by relatives of the inmate, since the inmate was no longer confined for the purposes of PLRA. The court held that the relatives stated a § 1983 claim based on deliberate indifference to the inmate's security and medical needs. The inmate was forcibly intoxicated with morphine by fellow prisoners that eventually caused his death by overdose. According to the court, prison officials' failure to classify prisoners to avoid harm, and inadequate supervision, allowed practices that resulted in danger to the lives and body integrity of prisoners. The officials allegedly had sufficient information from which an inference of substantial risk of serious harm to prisoners could be drawn, and there was a shortage of medical staff and equipment. (Puerto Rico)

U.S. Appeals Court
CELL CHECKS
DELIBERATE INDIFFERENCE
ELECTRONIC SURVEILLANCE

Velez v. Johnson, 395 F.3d 732 (7th Cir. 2005). A county jail detainee brought a § 1983 action against a county correctional officer, alleging that the officer failed to protect him from an assault by another inmate by failing to adequately respond and investigate the situation when the detainee pushed the emergency call button in his cell. The detainee had unsuccessfully attempted to alert the officer who checked the cell during his rounds, but his cellmate was holding a razor to his neck at the time. After the officer left the area, the detainee pushed the emergency call button in his cell, hoping for help. The detainee had to choose his words carefully and said he was "not getting along" with his cellmate. The officer did not investigate the situation nor ask the other officers to do so. The detainee was raped by his cellmate, bitten on his back several times, and cut on his neck. The district court denied the officer's motion for summary judgment on the basis of qualified immunity and the officer appealed. The appeals court affirmed, finding that the detainee need not show that the officer had a specific awareness that an assault would occur, but that it was sufficient to show that the officer failed to act despite his knowledge of a substantial risk of harm. The court held that the detainee had a clearly established Fourteenth Amendment right to be free from the officer's deliberate indifference to an assault by another inmate. (Milwaukee County Jail, Wisconsin)

2006

U.S. Appeals Court
CELL CHECKS

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
INADEQUATE SUPERVISION

Herrin v. Treon, 459 F.Supp.2d 525 (N.D.Tex. 2006). The mother of a prisoner who committed suicide while imprisoned brought suit against multiple corrections officers pursuant to § 1983, alleging multiple Eighth and Fourteenth Amendment violations. On defendants' motion for summary judgment the district court held that: (1) fact issues precluded summary judgment for corrections officers in the Eighth Amendment deliberate indifference claim alleging that officers failed to properly react when finding the inmate hanging or attempting to hang himself; (2) there was no evidence that indicated that any corrections officer was responsible for the initial decision to send the inmate to administrative segregation, where the inmate subsequently committed suicide; (3) there was no evidence that corrections officers actually intentionally murdered the inmate; (4) there was no evidence that the prison warden and executive director were in any way responsible for promulgating or enforcing a do-not-enter policy with respect to the inmate; (5) claims could not be brought under the Fourteenth Amendment due process clause; and (6) there was no evidence that corrections officers were personally involved in any policy-making or training, or that the officers had any special knowledge concerning the inmate and his suicidal propensities. The mother alleged that, in spite of the inmate's threats of suicide, he was placed in an improperly equipped administrative segregation cell in violation of the Eighth Amendment. (Allred Unit, Texas Department of Criminal Justice)

U.S. Appeals Court
FAILURE TO SUPERVISE

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. Appeals Court
CELL CHECKS
ELECTRONIC SURVEILLANCE

Short v. Smoot, 436 F.3d 422 (4th Cir. 2006). The wife and administrator of the estate of a detainee who committed suicide in jail brought a § 1983 action against a county and sheriff's deputies alleging deliberate indifference to a substantial risk that the detainee would commit suicide. The district court denied summary judgment for the defendants and they appealed. The appeals court held that jailers who placed the detainee in a cell under video surveillance were entitled to qualified immunity, but the jailer who observed the detainee in the cell by video surveillance was not entitled to qualified immunity. According to the court, the jailers who placed the detainee in a cell under video surveillance were entitled to qualified immunity even though they did not remove the detainee's clothing and shoelaces, because the detainee did not have the right to have his jailers take precautions against his suicide beyond placing him in a cell under video surveillance. The court found that the jailer who observed the detainee in his cell by video surveillance was not entitled to qualified immunity because the jailer observed the detainee remove his shoelaces, tie them to a bar, place a noose around his neck, and test the weight of his rope. The jail policy and procedures manual in effect at the time addressed the proper treatment of potentially suicidal inmates and required custodial officers to remove all potential tools such as sheets, blankets, and shoelaces, to conduct inmate checks at random intervals at least twice per hour, and to make reports of any unusual occurrences. The jail used surveillance cameras to monitor inmate activity. The court reviewed the videotape taken from the surveillance camera that recorded the detainee's activity and it showed the detainee removing the laces from his shoes, tying them together and climbing from his bed to the bars of his cell. (Warren Co. Jail, Va.)

U.S. District Court
STAFFING LEVELS

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
PRISONER CHECKS

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. Appeals Court
INADEQUATE SUPERVISION
STAFFING LEVELS

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 Correctional Institution at Ray Brook, New York)

U.S. District Court
FAILURE TO SUPERVISE
INADEQUATE SUPERVISION
STAFFING LEVELS

Wilson v. *Maricopa County,* 463 F.Supp.2d 987 (D.Ariz. 2006). In a civil rights suit arising from a fatal assault on a county jail inmate by other inmates, the county defendants filed motions for summary judgment on all claims. The plaintiffs filed a motion for reconsideration of the court's order that had dismissed the county sheriff's office. The summary judgment motions were granted in part and denied in part; the motion for reconsideration was denied. The court held that summary judgment on Eighth Amendment liability for the fatal assault on the inmate was precluded by genuine issues of material fact as to: (1) whether the county, through its final policy maker the sheriff, implemented policies, customs, and practices with the requisite subjective intent of deliberate indifference; (2) whether the county, through the sheriff, failed to act in the face of obvious omissions and likely constitutional violations; and (3)

whether that failure to act caused a constitutional violation. The court held that the estate sufficiently alleged a § 1983 claim against the sheriff in his individual capacity by alleging that the sheriff was directly liable under § 1983 for being deliberately indifferent in failing to supervise and train jail officers in appropriate, lawful, and constitutional policies and procedures for providing a safe environment for inmates. The court also found that the estate sufficiently alleged a claim that the sheriff was deliberately indifferent in fostering, encouraging, and knowingly accepting formal and informal jail policies condoning brutality among the inmates and indifference to proper supervision. According to the court, a jail supervisor could be found to have been deliberately indifferent to the safety of the inmate if he knew that not having an officer on the ground in the jail yard posed a risk of violence among the inmates and nonetheless allowed an officer to cover both the yard and another post, which required the officer to leave the yard unattended for a significant period of time. (Maricopa County Facility, known as "Tent City", Phoenix, Arizona)

U.S. District Court
STAFFING LEVELS
FAILURE TO SUPERVISE

Wilson v. *Maricopa County*, 484 F.Supp.2d 1015 (D.Ariz. 2006). Survivors of an inmate who had died after being assaulted by other inmates while they were held in a jail known as "Tent City," brought a § 1983 action against a sheriff, alleging Eight Amendment violations. Following denial of the survivors' motion for summary judgment and denial of the sheriff's motion for summary judgment based on qualified immunity, and following appeal by the sheriff, the sheriff moved to stay the litigation and the survivors moved to certify the appeal as frivolous. The district court granted the survivors' motion, finding that the sheriff's appeal was frivolous. The court held that, for purposes of qualified immunity, the law was clearly established in July 2003 that the sheriff's alleged conduct of housing inmates in tents without adequate staffing, while being deliberately indifferent to the danger of inmate-on-inmate assaults, would violate the Eighth Amendment. The survivors presented evidence that the sheriff had for many years been aware that the conditions at Tent City were likely to create a substantial risk of serious harm to inmates. The conditions include a lack of security inherent in the use of tents, inadequate staffing, officers abandoning their posts and making off-yard shift changes, intentionally harsh inmate living conditions, and a lack of officer training. The survivors' asserted that these problems were known to the sheriff through a variety of sources, including consultant reports, concerns expressed by a county risk manager, and a prior state court case in which the county and sheriff were held liable under § 1983 for an inmate assault at Tent City. The state court case affirmed a jury verdict against the sheriff and held that the lack of supervision and security measures at Tent City supported the jury's finding of deliberate indifference. (Maricopa County jail known as "Tent City," Arizona)

2007

U.S. District Court
CELL CHECKS
INADEQUATE SUPER-VISION

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
DELIBERATE INDIFFERENCE
STAFFING LEVELS

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. Appeals Court
CELL CHECKS

Forgan v. *Howard County, Tex*., 494 F.3d 518 (5th Cir. 2007). The family of a county jail inmate who committed suicide brought an action against the county, county sheriff's department, and various jail officers, alleging deliberate indifference under § 1983 and claims under the Texas Tort Claims Act (TTCA). The inmate was arrested for driving while intoxicated and possession of marijuana. During the booking process, the inmate indicated that he was medicated for a number of mental ailments, including depression, but that he was not thinking about killing himself at the time. Based on this and other information, a jail officer classified the inmate as a "risk" for suicide, meaning that he would be checked every fifteen minutes. The inmate was issued a pair of trousers and a shirt to wear, and he was placed in a holding cell. After approximately one hour, the inmate was found hanging from his jail-issued trousers. The district court granted summary judgment in favor of defendants and the family appealed. The appeals court affirmed. The appeals court held that providing a county jail inmate with non-defective trousers, which the inmate later used to commit suicide, did not equate to "use of property"

by the county, within the meaning of the TTCA, and that the county was not liable under § 1983. According to the court, the county was not liable in the § 1983 deliberate indifference claim absent a showing that the county lacked an adequate suicide prevention policy for jail inmates, or that the county failed to adequately train its jail officials in suicide prevention. The court noted that proof of a single incident generally will not support a finding of inadequate training as a matter of custom or policy, for the purpose of establishing § 1983 municipal liability. (Howard County Jail, Texas)

U.S. District Court
STAFF ASSIGNMENT
STAFFING LEVELS

Jurado Sanchez v. *Pereira*, 525 F.Supp.2d 248 (D.Puerto Rico 2007). A prisoner's next of kin brought a civil rights action under § 1983 against prison officials, seeking to recover damages for the prisoner's death while he was incarcerated, and alleging constitutional rights violations, as well as state law claims of negligence. The officials moved for summary judgment on the cause of action under § 1983. The district court denied the motion, finding that summary judgment was precluded by the existence of genuine issues of material fact on the failure to protect claim and as to whether the officials had qualified immunity. According to the court, genuine issues of material fact existed as to whether there were enough guards at the prison when the prisoner was killed by another inmate, and whether officials were mandated to perform weekly or monthly searches of cells, which could have prevented the accumulation of weapons used in the incident in which the prisoner was killed. Bayamon 308, an intake center, was considered minimum security with some limitations. The inmate capacity at Bayamon 308 is 144. Although the capacity was not exceeded, some cells, despite being originally built for one inmate, housed two inmates. According to the court, Bayamon 308 does not comply with the 55 square footage minimum requirements for each cell in a continuing federal consent order. Therefore, the individual cell gates are left continuously open, like an open dormitory. At the time of the incident officials did not take gang affiliation into consideration when segregating prisoners. The prisoner did not identify himself as a gang member, nor inform officials that he feared for his life. The facility was under court order to follow a staffing plan that stated the minimum amount of staff, the optimum amount, the fixed positions and the movable positions, pursuant to a lawsuit. Fixed positions, such as control units, cannot be changed under any circumstances, but the movable positions may be modified depending on necessity due to the type of inmate at the facility. The plaintiffs alleged that the defendants did not comply with the staffing plan, while the defendants insisted that they did comply. (Bayamon 308 Facility, Puerto Rico)

U.S. District Court
ELECTRONIC
SURVEILLANCE

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
CROSS GENDER
SUPERVISION

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
CELL CHECKS
FAILURE TO SUPERVISE

Rigano v. *County of Sullivan*, 486 F.Supp.2d 244 (S.D.N.Y. 2007). An inmate brought § 1983 and negligence claims against a county, county sheriff, jail administrator, corrections officers and fellow inmates, alleging that he was harassed and beaten by the inmate defendants while serving his sentence at the county jail, in violation of the Eighth Amendment. The district court granted summary judgment for the defendants. The court held that the county jail's procedure for determining where and in what manner new inmates were to be housed did not amount to deliberate indifference to the inmate's safety, as would violate the Eighth Amendment, despite the fact that the inmate was allegedly harassed and physically assaulted by other inmates in the cell block where he was placed. The court noted that, pursuant to the jail's placement procedure, corrections officers asked each inmate a series of questions to assist in placing them, including questions about any enemies the inmate had in the current prison population, the inmate failed to indicate when asked any reason why he should not be placed in the general prison population, and the officers had no reason to know that the inmate would be harassed and assaulted by other inmates. The court found that physical checks of the jail inmate by corrections officers were adequate and did not amount to "deliberate indifference" to the inmate's safety, as would violate Eighth Amendment, despite the fact that the inmate was allegedly harassed and physically assaulted by other inmates in the cell block where he was placed. The officers made visual inspections from outside the cell tier every fifteen minutes and conducted head counts. The inmate never informed the officers of the harassment, and once the officers knew the inmate was being assaulted, they immediately removed him from the tier and provided him with medical attention. The court noted that the Eighth Amendment does not guarantee an assault-free prison environment; it promises only reasonable good faith protection. (Sullivan County Jail, New York)

U.S. District Court
CELL CHECKS
ELECTRONIC SUR-VEILLANCE
STAFFING LEVELS

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. 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. Appeals Court
FEMALE STAFF

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)

2008

U.S. Appeals Court
INADEQUATE SUPERVISION

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
INADEQUATE SUPERVISION

Douglas v. *Yates*, 535 F.3d 1316 (11th Cir. 2008). A prisoner brought a § 1983 action against prison officials alleging his Fifth, Eighth, and Fourteenth Amendment rights were violated. 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 district court had the authority under the Prison Litigation Reform Act (PLRA) to dismiss without prejudice the prisoner's § 1983 complaint against prison officials requesting damages for emotional injury, where the complaint disclosed that the prisoner was requesting damages for emotional injury without a prior showing of a physical injury. The court found that the prisoner's allegations that his family had informed a prison supervisor of ongoing misconduct by the supervisor's subordinates, and that the supervisor failed to stop the misconduct, supported the prisoner's § 1983 claim of retaliation against the supervisor. According to the court, the allegations allowed a reasonable inference that the supervisor knew that the subordinates would continue to engage in the unconstitutional misconduct but failed to stop them from doing so. (Bay Correctional Facility, Florida)

2009

U.S. District Court
DELIBERATE INDIFFERENCE
INADEQUATE SUPERVISION
STAFFING LEVELS

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
INADEQUATE SUPERVISION

Estate of Gaither ex rel. Gaither v. *District of Columbia*, 655 F.Supp.2d 69 (D.D.C. 2009). The personal representative of the estate of a prisoner, who was killed while incarcerated, brought a § 1983 action against the District of Columbia and several individual officials and jail employees, alleging negligence, deliberate and reckless indifference to allegedly dangerous conditions at a jail, and wrongful death. The district court granted summary judgment in part and denied in part. The court found that summary judgment was precluded by genuine issues of material fact as to: (1) whether the District of Columbia's inmate and detainee classification policies, procedures, and practices were inadequate; (2) whether the District of Columbia's jail staffing policies, procedures, and practices were inadequate; (3) whether the security policies, procedures, and practices were inadequate; (4) whether the District of Columbia adequately trained Department of Corrections officials; and (5) whether officials provided adequate supervision of inmates. (District of Columbia Central Detention Facility)

U.S. District Court
STAFFING LEVELS

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. (Taycheedah Correctional Institution, Wisconsin)

U.S. District Court
DELIBERATE INDIFFERENCE
INADEQUATE SUPERVISION
STAFFING LEVELS

Hardy v. *District of Columbia*, 601 F.Supp.2d 182 (D.D.C. 2009). Pretrial detainees, allegedly assaulted by fellow inmates, brought a suit against the former Director of the District of Columbia Department of Corrections and a former jail warden in both their official and individual capacities, and against the District of Columbia. The detainees sought damages under § 1983 for alleged Fifth and Eighth Amendment violations. The district court dismissed the case in part. The court held that the detainees' § 1983 official capacity claims against the former Director and former jail warden were redundant to the claims against the District of Columbia, warranting dismissal. The court noted that claims brought against government employees in their official capacity are treated as claims against the employing government and serve no independent purpose when the government is also sued. The detainees alleged that before the scalding attacks that injured them, one of the very assailants had committed a similar scalding attack using water heated in an unguarded microwave, and that the locations where their assaults occurred were inadequately staffed with corrections officers and resulted in the assaults taking place without any officers in the vicinity. The court held that these allegations were sufficient to plead conditions of detention that posed a substantial risk of serious harm, as required to state a failure-to-protect claim against the Director of the District of Columbia Department of Corrections and the jail warden. The detainees alleged that on the day of one of their scalding assaults by a fellow inmate, officials were present at a council hearing at which testimony described significant and multiple instances of violence in unguarded locations occurring in the jail, that the previous scalding assaults had occurred by the same inmate in question, and that despite such knowledge, the officials refused to take measures to protect inmates. The court found that the detainees' allegation that the Director and jail warden were deliberately indifferent to negligent supervision of correctional officers and lack of staff training, was sufficient to state a § 1983 failure to train claim violative of their due process rights. The detainees alleged that the warden and Director were at the top of the “chain of command” at the jail, that they had been aware of violence issues for many years, and that they had been instructed to take action against violence on numerous occasions. The district court denied qualified immunity for the Director and jail warden, noting that the detainees' due process rights against deliberate indifference were clearly established at the time of violent scalding attacks by fellow inmates. (District of Columbia Jail)

U.S. Appeals Court
INADEQUATE SUPERVISION
STAFFING LEVELS

Mosher v. *Nelson*, 589 F.3d 488 (1st Cir. 2009). The administrator of the estate of a pretrial detainee who was killed at a state mental health hospital by another patient brought an action against the superintendent of the hospital, the commissioner of the state department of corrections (DOC), and other state officials, alleging civil rights violations and state-law claims. The district court granted summary judgment in favor of the defendants. The administrator appealed. The appeals court affirmed. The court held that the superintendent of the state mental health hospital and the commissioner of the state department of corrections were entitled to qualified immunity from § 1983 liability on the deliberate indifference claim. According to the court, although the patient was able to strangle the detainee while the detainee was visiting the patient in his room, the hospital had a long-standing policy that allowed patients to visit in each others' rooms during the short period during the end of the morning patient count and lunch. The court noted that there was no history of violence or individualized threats made by any patient, and reasonable officials could have believed that allowing the visiting policy to continue and maintaining the current staffing levels at the hospital would not cause a substantial risk of harm. (Bridgewater State Hospital, Massachusetts)

U.S. District Court
INADEQUATE SUPERVISION

Rodriguez-Borton v. *Pereira-Castillo*, 593 F.Supp.2d 399 (D.Puerto Rico 2009). Relatives of a deceased pretrial detainee brought a § 1983 action against prison officials, requesting damages for constitutional violations culminating in the detainee'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 fact issues as to the lack of adequate inmate supervision and malfunctioning cell locks and cell lights. The court also found an issue of material fact as to whether the Administrator of the Puerto Rico Administration of Corrections (AOC) failed to act with regard to security risks, including malfunctioning door locks, in the annex within which the pretrial detainee was found hanged. The court also found a genuine issue of material fact as to the prison annex superintendent's failure to remedy supervision problems in housing units where he knew inmates were able to and did move freely in and out of their cells due to malfunctioning door locks. The court held that summary judgment was precluded by a genuine issue of material fact as to a correctional officer's failure to patrol the living area of the annex within which the pretrial detainee was found hanged while he knew inmates were able to freely move around. The court denied qualified immunity to the defendants because it was clearly established at the time of the alleged inaction, and a reasonable prison official working in the system would have known that a lack of supervision, combined with the knowledge that cell locks did not function, would create an obvious and undeniable security risk. (Administration of Corrections of the Commonwealth of Puerto Rico, and Annex 246)

U.S. District Court
DELIBERATE INDIFFERENCE
INADEQUATE SUPERVISION

Zimmerman v. *Schaeffer*, 654 F.Supp.2d 226 (M.D.Pa. 2009). Current and former inmates at a county jail brought a § 1983 action against the county, corrections officers, and prison officials, alleging that they were abused by officials during their incarceration 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 summary judgment was precluded by genuine issues of material fact as to: (1) whether corrections officers and prison officials knew or should have known that an officer would apply excessive force to the inmate by shocking him when he was restrained and whether they could have prevented the officer's excessive use of force; (2) whether the inmates exhausted administrative remedies by filing grievances regarding use of a restraint chair, lack of mattresses, inability to shower, cell conditions, and issues with mail; (3) whether the use of mechanical restraints

against the inmates constituted wanton infliction of pain in violation of the Eighth Amendment; (4) whether an inmate complied with officials when extracted from a cell, rendering the use of oleoresin capsicum spray excessive and unjustified; (5) whether cell conditions posed a substantial risk of harm to inmates and whether corrections officers and prison officials were deliberately indifferent to that risk; and (6) whether the warden of the county jail was aware of and condoned the use of excessive force against inmates at jail. (Mifflin County Correctional Facility, Lewistown, Pennsylvania)

2010

U.S. District Court
CROSS GENDER SUPERVISION

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
DELIBERATE INDIFFERENCE
FAILURE TO SUPERVISE

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. Appeals Court
CELL CHECKS

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 Co. Martinez Det. Facility, California)

U.S. District Court
DELIBERATE INDIFFERENCE
FAILURE TO SUPERVISE

Cummings v. *Harrison*, 695 F.Supp.2d 1263 (N.D.Fla. 2010). A Black Muslim state prisoner brought a civil rights action against a prison warden and correctional officers, alleging, among other things, that the defendants used excessive force against him in violation of the Eighth Amendment and retaliated against him, in violation of First Amendment, for submitting grievances. 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 correctional officers' repeated verbal threats, including death threats, combined with physical assaults, against the Black Muslim prisoner caused the prisoner extreme psychological harm, and as to whether the officers maliciously and sadistically used force against the prisoner because he was black or because he practiced the Muslim faith. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether the prison warden had the ability to remove the Black Muslim prisoner from the supervision of the correctional officer who was allegedly verbally and physically abusing him, but refused to do so, and denied the prisoner's request for protective custody. (Taylor Correctional Institution, Florida)

U.S. District Court
STAFFING LEVELS

Forde v. *Baird*, 720 F.Supp.2d 170 (D.Conn. 2010). A federal inmate petitioned for a writ of habeas corpus, alleging that she was being denied freedom of religious expression, in violation of the First Amendment and the Religious Freedom Restoration Act (RFRA). The district court granted summary judgment for the defendants, in part, and denied in part. The court held that the Muslim inmate's right to free exercise of religion was substantially burdened, as required to support her claim under RFRA, by a prison policy allowing for non-emergency pat searches of female inmates by male guards, despite prison officials' claim that the inmate's belief was not accurate. The court found that the choice offered the inmate, of violating her understanding of the precepts of Islam, or refusing a search and risking punishment, constituted a substantial burden.

The court found that the prison's interest in maintaining safety and security of the female prison through the use of cross-gender pat searches was not compelling, as required to justify a substantial burden on the inmate's right of free exercise of religion under RFRA, where the prison's arguments regarding how and why the cross-gender pat searches promoted safety and security at the prison were actually related to the staffing of the facility, not to its safety and security. According to the court, the prison's interest in avoiding staffing and employment issues at the female prison through the use of cross-gender pat searches was not compelling, as required to justify a substantial burden on the inmate's right of free exercise of religion under RFRA. The court noted that even if the prison's interests in maintaining safety and security and avoiding staffing and employment issues were compelling, cross-gender pat searches were not the least restrictive means of addressing these interests, as required to justify the substantial burden on an inmate's right of free exercise of religion under RFRA, absent evidence that the prison considered and rejected less restrictive practices to cross-gender pat searches. (Federal Correctional Institution in Danbury, Connecticut)

U.S. District Court
FAILURE TO SUPERVISE

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
DELIBERATE INDIFFERENCE
FAILURE TO SUPERVISE

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
VIDEO SURVEILLANCE

Pourmoghani-Esfahani v. *Gee*, 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.

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)

U.S. District Court
DELIBERATE INDIFFERENCE
STAFF ASSIGNMENT

Qasem v. *Toro*, 737 F.Supp.2d 147 (S.D.N.Y. 2010). A female inmate brought a § 1983 suit against corrections officials regarding injuries suffered by the inmate at the hands of a corrections officer alleged to have sexually assaulted the inmate. The superintendent and deputy superintendent for security moved to dismiss claims that they were deliberately indifferent to the inmate's personal safety. The district court denied the motion. The court held that the inmate's allegations against the superintendent and deputy superintendent for security, claiming that they were deliberately indifferent to her rights and were responsible for creating or maintaining policies or practices that failed to prevent her from being repeatedly raped and assaulted by a corrections officer, stated a claim for Eighth and Fourteenth Amendment violations. The court noted that the complaint alleged that the officials were responsible for determining where inmates were to be housed and the assignment of guards, and in conjunction with another official, investigation and response to complaints of staff misconduct. The court found that the superintendent and deputy superintendent for security were not entitled to qualified immunity, given the extent of the alleged sexual abuse, the numerous warning signs alleged, and the number of questionable, if not unintelligible, decisions made with respect to the inmate during the course of an investigation. (Taconic Correctional Facility, New York)

U.S. District Court
ELECTRONIC SURVEILLANCE

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. District Court
DELIBERATE INDIFFERENCE
PRISONER CHECKS

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. District Court
ELECTRONIC SURVEILLANCE

Silverstein v. *Federal Bureau Of Prisons*, 704 F.Supp.2d 1077 (D.Colo. 2010). A federal inmate brought a civil rights action against the Bureau of Prisons and correctional officers, challenging conditions of his confinement. The district court denied the defendants' motion to dismiss in part. The court held that the allegation that the inmate was indefinitely placed in solitary confinement, isolated from other inmates and correctional facility staff, and subjected to continuous lighting and camera surveillance, was sufficient to allege a liberty interest in conditions of his confinement. The court found that the allegation that the inmate was subjected to solitary confinement for more than two decades was sufficient to state claim under the Eighth Amendment against the Bureau. But, according to the court, the inmate did not have a liberty interest in avoiding transfer to administrative segregation facility. (U.S. Penitentiary, Administrative Maximum facility, Florence, Colorado)

U.S. Appeals Court
CELL CHECKS
INADEQUATE 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. District Court
CELL CHECKS
FAILURE TO SUPERVISE

Teague v. *St. Charles County*, 708 F.Supp.2d 935 (E.D.Mo. 2010). The mother of a detainee who committed suicide in a cell in county detention center brought an action against the county and corrections officials, asserting claims for wrongful death under § 1983 and under the Missouri Wrongful Death Statute. The county and the commanding officer moved to dismiss for failure to state a claim. The district court granted in the motion, in part. The court held that the mother failed to allege that the detention center's commanding officer personally participated. The court found that the mother's allegations that her son was demonstrating that he was under the influence of narcotics at the time of his detention, that her son had expressed suicidal tendencies, and that jail employees heard or were told of choking sounds coming from her son's cell but took no action, were sufficient to state a Fourteenth Amendment deliberate indifference claim under § 1983.

The court held that the mother's allegation that the county unconstitutionally failed to train and supervise its employees with respect to custody of persons with symptoms of narcotics withdrawal and suicidal tendencies was sufficient to state a failure to train claim against the county, under § 1983, arising out of the death of her son who committed suicide while housed as a pretrial detainee. The detainee had used a bed sheet to hang himself and the mother alleged that the county failed to check him every 20 minutes, as required by jail policy. (St. Charles County Detention Center, Missouri)

U.S. District Court
DELIBERATE INDIFFERENCE
PRISONER CHECKS

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
PRISONER CHECKS

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)

2011

U.S. District Court
FAILURE TO SUPERVISE

Bridgewater v. *Taylor*, 832 F.Supp.2d 337 (S.D.N.Y. 2011). A New York state prisoner brought a § 1983 action against prison officials and correctional officers, alleging excessive force, failure to protect, and failure to supervise and properly train in violation of the Eighth Amendment. After the prisoner's motion for summary judgment against an officer was preliminarily denied, the prisoner moved for reconsideration and the former prison superintendent and another officer moved to dismiss. The district court denied the motion for reconsideration and granted the motion to dismiss. The court held that the prisoner did not properly serve the complaint on the officer or superintendent and that the prisoner failed to state a failure to protect claim against the officer. The court held that summary judgment was precluded by genuine issues of material fact as to whether the correctional officer acted with malice or wantonness toward the prisoner necessary to constitute an Eighth Amendment violation, or whether he was applying force in a good–faith effort to maintain discipline. The court also found that summary judgment was precluded by genuine issues of material fact as to whether the correctional officer's use of physical force against the prisoner was more than de minimus. (Sing Sing Correctional Facility New York)

U.S. District Court
DELIBERATE INDIFFERENCE
STAFFING LEVELS

Estate of Gaither ex rel. Gaither v. *District of Columbia*, 833 F.Supp.2d 110 (D.D.C. 2011). The personal representative of a detainee's estate brought a § 1983 action against the District of Columbia, department of corrections officials, and corrections officers, seeking damages in connection with the detainee's fatal stabbing while he was incarcerated pending sentencing for felony distribution of cocaine. The corrections officers moved for summary judgment. The district court granted the motion, finding that the officers were entitled to qualified immunity. According to the court, at the time of the detainee's death it was not clearly established that

corrections officers were acting with deliberate indifference by exposing inmates, including the detainee, to a substantial threat of inmate-on-inmate attack by understaffing a unit, and thus corrections officers were entitled to qualified immunity. (District of Columbia, Central Detention Facility)

U.S. District Court
PRISONER CHECKS
INADEQUATE SUPERVISION

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
INADEQUATE SUPERVISION

Pauls v. *Green*, 816 F.Supp.2d 961 (D.Idaho 2011). A female pretrial detainee brought an action against a county, county officials, and a jail guard, alleging that she was coerced into having inappropriate sexual contact with the guard. The defendants moved to dismiss and for summary judgment, and the plaintiff moved to compel discovery and for sanctions. The district court granted the motions, in part. The court held that the detainee was not required to file grievances after being transferred to a state prison before filing her § 1983 action, in order to satisfy the administrative exhaustion requirement under the Prison Litigation Reform Act (PLRA). The court noted that the county jail grievance procedures were not available to detainees after they transferred, and the county did not offer any assistance to the detainee after learning of the alleged assaults. The court found that neither the county nor the county sheriff was deliberately indifferent in failing to train or supervise county jail guards to not sexually assault jail detainees, and thus, the female detainee could not demonstrate that the county or sheriff was liable under § 1983. According to the court, the guards did not need specific training to know that they should refrain from sexually assaulting detainees, and there was no showing that the general training program for guards was deficient or that there was a pattern of prior abuses at county jail. The court held that the summary judgment affidavit of the pretrial detainee's expert, containing the opinion that county officials exhibited deliberate indifference to the rights and safety of jail detainees in training or supervising jail staff, and that sexual improprieties on the part of staff were easily accomplished and rarely punished, was insufficient to avoid summary judgment, where the affidavit was conclusory, and without factual predicate. The court found that the detainee was entitled to the sanction of an adverse jury instruction against the county for the destruction of recordings of interviews conducted by police during the investigation of the county jail guard's contact with the detainee. (Adams County Jail, Idaho)

U.S. District Court
PRISONER CHECKS
INADEQUATE SUPERVISION

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 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
FAILURE TO SUPERVISE

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
CROSS GENDER SUPERVISION
FEMALE STAFF

Ard v. *Rushing*, 911 F.Supp.2d 425 (S.D.Miss. 2012). A female inmate brought an action against a sheriff and a deputy asserting claims under § 1983 and § 1985 for violation of the Fourth, Fifth and Eighth Amendments, and also alleging a state law claim for negligence, relating to an incident in which she was sexually assaulted by the deputy while she was incarcerated. The sheriff moved for summary judgment. The district court granted the motion. The court held that the sheriff was not deliberately indifferent to a substantial risk of harm to the female jail inmate as would have violated the Eighth Amendment, where the sheriff had established safeguards to ensure the safety of female prisoners, including a female-only, camera-monitored area in which female inmates were housed, a policy that male jailers could not enter the female-only area without a female jailer, and a policy that a female jailer was to cover each shift. The court noted that past allegations that the deputy had engaged in unwanted sexual contact with female inmates had been investigated and found not to be substantiated. The court found that the inmate failed to show that the sheriff had knowledge of the deputy's disregard of the sheriff's policy to ensure the safety of female prisoners, which included a requirement that male jailers could not enter the female-only area without a female jailer, or to show that the sheriff was deliberately indifferent to the need for more or different training, as required to establish an Eighth Amendment failure to train/supervise claim. (Lincoln County Jail, Mississippi)

U.S. District Court
INADEQUATE SUPERVISION

Edmond v. *Clements*, 896 F.Supp.2d 960 (D.Colo. 2012). A parolee brought a civil rights action alleging that his constitutional rights were violated when he failed to receive a $100 cash payment upon his release from a state prison to parole, and by state corrections officials' failure to perform a proper sex offender evaluation, which resulted in the parolee being improperly ordered to participate in sex offense treatment that included a requirement that he have no contact with his children. The defendants moved to dismiss. The district court granted the motion. The district court held that: (1) the private sex offender treatment program that contracted with the state and its employees did not qualify as "state actors," and thus, could not be liable in the parolee's § 1983 claim; (2) the claim against the executive director of the state department of corrections in his official capacity for recovery of a cash payment was barred by the Eleventh Amendment; (3) the executive director was not personally liable for the cash payable to the parolee upon release; (4) the officials were not liable under § 1983 for their alleged negligent supervision, failure to instruct or warn, or failure to implement proper training procedures for parole officers; (5) the parolee's equal protection rights were not violated; and (6) the allegations stated a due process claim against corrections officials. According to the court, allegations by the parolee that Colorado department of corrections officials failed to perform a proper sex offender evaluation prior to releasing him on parole, as required by Colorado law, which allegedly resulted in a parole condition that he have no contact with his children, stated a due process claim against the corrections officials. (Bijou Treatment & Training Institute, under contract to the Colorado Department of Corrections)

U.S. Appeals Court
PRISONER CHECKS

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
FAILURE TO SUPERVISE

Facey v. *Dickhaut*, 892 F.Supp.2d 347 (D.Mass. 2012). A prisoner at a state correctional institution filed a pro se § 1983 action against the prison and officials alleging his Eighth Amendment right to be free from cruel and unusual punishment was violated when officials knowingly placed him in danger by assigning him to a housing unit where he was violently attacked by members of a rival gang. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the complaint stated a claim against the deputy superintendent and an assistant for violation of the Eighth Amendment, by alleging that officials were aware of the feud between two rival prison gangs, that the prisoner was a known member of one of the gangs, that despite this knowledge officials had assigned the prisoner to a section of the prison where a rival gang was housed, and as a result he was violently attacked and sustained permanent injuries. The court found that the official who had instituted the gang housing policy could not be held personally liable, since he did not implement the policy, nor was he deliberately indifferent in supervising or training those who did. According to the court, state prison officials who had placed the prisoner known to be a gang member in danger by assigning him to a housing unit where he was violently attacked by members of a rival gang, were not entitled to qualified immunity in the prisoner's § 1983 suit. The court noted that clearly established law provided that the Eighth Amendment was violated if officials disregarded a known, substantial risk to an inmate's health or safety, and the

officials had disregarded this risk, as well as violated a prison policy, by placing rival gang members in same housing unit. (Souza Baranowski Correctional Center, Massachusetts)

U.S. District Court
DELIBERATE INDIFFERENCE
PRISONER CHECK
VIDEO SURVEILLANCE

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 thhhattt 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
DELIBERATE INDIFFERENCE
INADEQUATE SUPERVISION

Harris v. *Hammon*, 914 F.Supp.2d 1026 (D.Minn. 2012). A prisoner brought a § 1983 action against a county and various officials with the state department of corrections (DOC), alleging violations of the Eighth and Fourteenth Amendments, as well as state law claims for false imprisonment, intentional infliction of emotional distress (IIED), and negligent infliction of emotional distress (NIED). The defendants moved for summary judgment and for judgment on the pleadings. The district court granted the motion in part and denied in part. The court held that there was no evidence of a continuing, widespread pattern of misconduct on account of county employees in not releasing prisoners pursuant to court orders, as required for the prisoner's § 1983 failure-to-train claims against the county for alleged violations of the Eighth and Fourteenth Amendments. The prisoner had been held for more than five days after a judge ordered his release pending his appeal.

According to the court, the former prisoner's allegations were sufficient to plead that department of corrections (DOC) employees were deliberately indifferent to the prisoner's liberty rights under the Fourteenth Amendment, as required to state a § 1983 claim for violations of his due process rights based on his continued detention after a court ordered his release. The prisoner alleged that he had a court order for his release but he was returned to prison, that a judge faxed and mailed the release order to the prison after being contacted by the prisoner's attorney the next day, that the judge's clerk also telephoned employees to inform them that the prisoner was to be released, that one employee did not respond to calls from the prisoner's attorney, that another employee told the attorney he would have to hand deliver a certified copy of order by the end of her shift in three minutes so that the prisoner could be released before the weekend, and that employees told the attorney several days later that they might not be able to release the prisoner because the order could be invalid. The court also held that the prisoner's allegations were sufficient to plead that his continued detention, after his release was ordered by a judge, violated a clearly established right, as required to overcome qualified immunity for department of corrections (DOC) employees. (Lino Lakes Correctional Facility, Ramsey County Jail, Minnesota)

U.S. District Court
CELL CHECKS
DELIBERATE INDIFFERENCE
PRISONER CHECKS

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
PRISONER CHECKS

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 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 fact-finder 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
FAILURE TO SUPERVISE

Rogers v. *District of Columbia*, 880 F.Supp.2d 163 (D.D.C. 2012). A former prisoner brought an action against the District of Columbia, alleging he was over-detained and asserting claims for negligent training and supervision. The district 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 when the prisoner was to be released. The district court began its opinion as follows: "Our saga begins with the tale of plaintiff's numerous arrests. Plaintiff was arrested on four different charges in 2007: two felony charges for violating the Bail Reform Act, one felony charge for Possession with Intent to Distribute a Controlled Substance and one misdemeanor charge for carrying an open can of alcohol without a permit." During the prisoner's time in jail he was sentenced for all of the remaining charges. The prisoner claimed he was over-detained by approximately two months, and that this was the direct result of the D.C. Jail's negligent training and supervision of its employees with regard to calculating jail credits. (District of Columbia Jail)

U.S. Appeals Court
PRISONER CHECKS

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
FAILURE TO SUPERVISE

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 County Jail, Illinois)

U.S. Appeals Court
DELIBERATE INDIFFERENCE

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
INADEQUATE SUPERVISION
VIDEO SURVEILLANCE

Solivan v. *Dart*, 897 F.Supp.2d 694 (N.D.Ill. 2012). A pretrial detainee brought a § 1983 action against a county, corrections officers, and a sheriff, alleging deliberate indifference to undue punishment. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee's § 1983 complaint stated a claim against a correctional officer for deliberate indifference to a serious need in violation of the Fourteenth Amendment, where the complaint alleged facts that indicated that the officer left inmates visually and audibly unsupervised for hours, knowing that a substantial risk of harm was present. The complaint further alleged that there were no light bulbs in the detainee's cell, no intercoms or emergency call buttons in cells, and no overhead cameras on his tier of the jail. According to the court, the complaint stated that the harm the detainee suffered at the hands of other inmates was significant, including severe injuries to his right eye and bleeding from his ear, and the complaint alleged that the detainee was the only person of Hispanic origin housed in the maximum security tier, while a significant majority of other inmates were African American, and that these circumstances put the detainee in an identifiable group of prisoners who were singled out for attack. (Division One, Cook County Department of Corrections, Illinois)

U.S. District Court
CELL CHECKS
VIDEO SURVEILLANCE

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 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 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
STAFFING LEVELS

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
FAILURE TO SUPERVISE FEMALE OFFICERS

Wood v. *Beauclair*, 692 F.3d 1041 (9th Cir. 2012). A male state prisoner filed a civil rights action alleging sexual abuse by a female prison guard in violation of the First, Fourth, and Eighth Amendments. The district court granted summary judgment to the defendants and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that: (1) the prisoner established non-consent; (2) sexual abuse of the prisoner by a prison guard constituted malicious and sadistic use of force; (3) the sexual assault on the prisoner by the prison guard was deeply offensive to human dignity and was completely void of penological justification; (4) supervisory prison officials were not on notice that the prison guard presented a substantial risk to the prisoner through sexual abuse; and (5) prison officials did not retaliate against the prisoner for filing a grievance. According to the court, the prisoner established non-consent for purposes of surviving summary judgment, where the prisoner and guard were in a consensual relationship that involved hugging and kissing, then they were involved in a disagreement and the prisoner told the guard to "back off" and that they had to "stop" seeing each other for a while, and then the initial sexual encounter that gave rise to the action occurred. (Idaho Correctional Institution of Orofino)

2013

U.S. Appeals Court
VIDEO SURVEILLANCE
ELECTRONIC SURVEILLANCE

Arnzen v. *Palmer*, 713 F.3d 369 (8th Cir 2013). Patients at a state Civil Commitment Unit for Sex Offenders (CCUSO) brought a § 1983 complaint against CCUSO administrators, challenging placement of video cameras in CCUSO restrooms, and moved for a preliminary injunction to stop their use. The district court denied the motion as to cameras in "dormitory style restrooms" but granted an injunction ordering that cameras in "traditional style bathrooms" be pointed at a ceiling or covered with lens cap. The appeals court affirmed. The appeals court held that CCUSO conducted a "search" by capturing images of patients while occupying single-user bathrooms, and that CCUSO did not conduct a reasonable search by capturing patients' images, thereby constituting a Fourth Amendment violation. The appeals court found that the district court did not abuse its discretion in issuing preliminary injunctive relief. The court noted that the patients had a reasonable expectation of privacy in a single-person bathroom when there was no immediate indication it was being used for purposes other than those ordinarily associated with bathroom facilities, and that involuntarily civilly committed persons retain the Fourth Amendment right to be free from unreasonable searches that is analogous to the right retained by pretrial detainees. According to the court, the facility did not conduct a reasonable search of its involuntarily committed patients by capturing images of patients while they occupied single-user bathrooms in a secure facility, thereby constituting a violation of Fourth Amendment, where the cameras did not provide administrators with immediate alerts concerning patient safety or prevent assaults or dangerous acts, and less intrusive methods were available for administrators to use to prevent illicit activities by patients. (Iowa Civil Commitment Unit for Sex Offenders)

U.S. District Court
PRISONER CHECKS
STAFFING LEVELS

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. Appeals Court
PRISONER CHECKS

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. District Court
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 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. 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. Appeals Court
INADEQUATE SUPERVISION
CELL CHECKS
AUDIO COMMUNICATION

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
INADEQUATE 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
DELIBERATE INDIFFERENCE

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. Appeals Court
FAILURE TO SUPERVISE
INADEQUATE SUPERVISION

Junior v. *Anderson*, 724 F.3d 812 (7th Cir. 2013). A pretrial detainee brought a suit under § 1983 against a guard who allegedly failed to protect him from an attack by other inmates. The district court granted summary judgment in favor of the guard, and the detainee 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 guard acted with a conscious disregard of a significant risk of violence to the detainee, when she noted that two cells in the corridor where she was posted were not securely locked, but only noted that this was a "security risk" in her log. The guard then let several of the inmates who were supposed to remain locked up out of their cells, let them congregate in a darkened corridor, and then left her post, so that no guard was present to observe more than 20 maximum-security prisoners milling about. The court found that the detainee was entitled to appointed counsel in his § 1983 suit against a prison guard. According to the court, although the case was not analytically complex, its sound resolution depended on evidence to which detainee in his distant lockup had no access, and the detainee needed to, but could not, depose the guard in order to explore the reason for her having left her post and other issues. (Cook County Jail, Illinois)

U.S. Appeals Court
DELIBERATE INDIFFERENCE
VIDEO SURVEILLANCE

Keith v. *Koerner*, 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)

U.S. District Court
STAFFING LEVELS

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 Department of Correction, Idaho Correctional Center)

U.S. District Court
STAFFING LEVELS

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. Appeals Court
FAILURE TO SUPERVISE
STAFF ASSIGNMENT

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
VIDEO SURVEILLANCE
ELECTRONIC SURVEILLANCE

Royer v. *Federal Bureau of Prisons*, 933 F.Supp.2d 170 (D.D.C. 2013). A federal prisoner brought an action against Bureau of Prisoners (BOP), alleging classification as a "terrorist inmate" resulted in violations of the Privacy Act and the First and Fifth Amendments. The BOP moved for summary judgment and to dismiss. The district court granted the motion in part and denied in part. The court held that BOP rules prohibiting contact visits and limiting noncontact visits and telephone time for federal inmates labeled as "terrorist inmates", more than other inmates, had a rational connection to a legitimate government interest, for the purpose of the inmate's action alleging the rules violated his First Amendment rights of speech and association. According to the court, the prison had an interest in monitoring the inmate's communications and the prison isolated inmates who could pose a threat to others or to the orderly operation of the institution. The court noted that the rules did not preclude the inmate from using alternative means to communicate with his family, where the inmate could send letters, the telephone was available to him, and he could send messages through others allowed to visit.

The court found that the inmate's assertions that the prison already had multiple cameras and hypersensitive microphones, and that officers strip searched inmates before and after contact visits, did not establish ready alternatives to a prohibition on contact visits for the inmate and limits on phone usage and noncontact visits due to being labeled as a "terrorist inmate." The court noted that increasing the number of inmates subject to strip searches increased the cost of visitation, and microphones and cameras did not obviate all security concerns that arose from contact visits, such as covert notes or hand signals.

The court held that the inmate's allegations that he was segregated from the prison's general population for over six years, that he was subject to restrictions on recreational, religious, and educational opportunities available to other inmates, that contact with his family was limited to one 15 minute phone call per week during business hours when his children were in school, and that he was limited to two 2-hour noncontact visits per month, were sufficient to plead harsh and atypical conditions, as required for his Fifth Amendment procedural due process claim. According to the court, the inmate's allegations that he was taken from his cell without warning, that he was only provided an administrative detention order that stated he was being moved due to his classification, that he was eventually told he was classified as a "terrorist inmate," that such classification imposed greater restrictions upon his confinement, and that he was never provided with a hearing, notice of criteria for release from conditions, or notice of a projected date for release from conditions were sufficient to plead denial of due process, as required for his claim alleging violations of the Fifth Amendment procedural due process. (Special Housing Units at FCI Allenwood and USP Lewisburg, CMU at FCI Terre Haute, SHU at FCI Greenville, Supermax facility at Florence, Colorado, and CMU at USP Marion)

U.S. District Court
INADEQUATE SUPERVISION

Spicer v. *District of Columbia*, 916 F.Supp.2d 1 (D.D.C. 2013). A prisoner in the District of Columbia detention center brought an action against correctional officers and a supervisor, alleging that he was assaulted by the officers while in custody. The supervisor moved to dismiss, and the defendants moved for partial judgment on the pleadings. The district court denied the supervisor's motion and granted the defendant's motion. The court held that allegations by the prisoner that the supervising lieutenant was negligent in failing to adequately supervise the other correctional officers who allegedly assaulted the prisoner and that due to the lack of adequate supervision, the officers attacked the prisoner and broke his foot, stated a negligent supervision claim against the lieutenant. (Central Detention Facility, District of Columbia)

U.S. Appeals Court
DELIBERATE INDIFFERENCE
FAILURE TO SUPERVISE

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. 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. Appeals Court
CROSS GENDER 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. District Court
INADEQUATE SUPERVISION
CROSS GENDER SUPERVISION
DELIBERATE INDIFFERENCE

Castillo v. *Bobelu*, 1 F.Supp.3d 1190 (W.D.Okla. 2014). Five female inmates brought a § 1983 action against state officials and employees, alleging they were subjected to sexual abuse while working outside a community corrections center in which they were housed, in violation of the Eighth Amendment. The inmates were participating in the Prisoner Public Works Program ("PPWP") that allowed offenders to work off-site at different state offices. They were working during the day doing grounds maintenance at the Oklahoma Governor's Mansion, where they were supervised by a groundskeeper and his immediate supervisor. When inmates work at places such as the Governor's Mansion, the DOC does not have a guard stay with the women at the work site. Instead, they are supervised by state workers employed at the work site, who function like guards. These individuals go through an eight hour training program. The inmate claimed that they were sexually harassed and sexually assaulted by the groundskeeper and by a cook employed at the Governor's Mansion. 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 prison guards were deliberately indifferent. The court held that: (1) the prison district supervisor did not have knowledge of a substantial risk of harm to the inmates because the supervisor did not know that the inmates were working only with males while off-site; (2) the supervisor was not deliberately indifferent; (3) the prison supervising case manager was not deliberately indifferent; and (4) there was no evidence that the employee had supervisory authority over the inmate. The court noted that the inmate did not return to the work assignment where she was allegedly abused by state employees or have contact with the alleged abusers, as required for the continuing violation doctrine to apply to her § 1983 action that alleged violations of the Eighth Amendment. According to the court, despite the supervisor being aware of misconduct by a groundskeeper under his supervision, the supervisor was aware that the groundskeeper violated certain policies, but did not have knowledge of the sexual assaults, and he investigated the groundskeeper's conduct and counseled the groundskeeper. The court also found that the prison supervising case manager, who oversaw the off-site public works program, was not deliberately indifferent to the excessive risk of sexual assaults of female inmates working at the governor's mansion as part of the program, where the inmates did not complain to the manager and the manager was never informed of misconduct. (Hillside Comm. Corr. Center, Oklahoma City, Oklahoma)

U.S. Appeals Court
FAILURE TO SUPERVISE

Danser v. *Stansberry*, 772 F.3d 340 (4th Cir. 2014). A federal inmate who was attacked in a recreation cage brought a Bivens action alleging that officials were deliberately indifferent to his safety. The district court denied the officials' motion for summary judgment based on qualified immunity. The officials appealed. The appeals court vacated and remanded with instructions. The court held that a corrections officer did not disregard an excessive risk to the safety of the inmate in violation of the Eighth Amendment when he placed the inmate, a convicted sex offender, in a recreation cage with a fellow inmate, a violent gang member, and left the recreation area unsupervised, during which time the gang member attacked the inmate. According to the court, the officer was not aware that the inmate was a sex offender or that he was required to check prison databases in which that information was contained, there were no orders issued requiring that the inmate and gang member be separated from each other, and the officer's dereliction of duty in leaving the recreation area did not constitute anything other than negligence. (Federal Correctional Institution, Butner, North Carolina)

U.S. Appeals Court
INADEQUATE SUPERVISION
ELECTRONIC SURVEILLANCE

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. District Court
CROSS GENDER SUPERVISION

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, N. C.)

U.S. District Court
FAILURE TO SUPERVISE

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. 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. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
CELL CHECKS

Grenning v. *Miller-Stout*, 739 F.3d 1235 (9th Cir. 2014). A state prisoner brought an action against prison officials, claiming that exposing him to constant lighting for 13 days violated the Eighth Amendment's bar against cruel and unusual punishment. The district court granted summary judgment for the officials and the prisoner appealed. The appeals court reversed and remanded. The court found that summary judgment was precluded by factual issues as to: (1) the brightness of the continuous lighting in the prisoner's special management unit cell; (2) the effect on the prisoner of the continuous lighting; and (3) whether prison officials were deliberately indifferent. The inmate was housed in the Special Management Unit (SMU), an administrative segregation unit with single-cells that are continuously illuminated for twenty-four hours a day. Each cell in the SMU has three, four-foot-long fluorescent lighting tubes in a mounted light fixture. A cell occupant can use a switch inside the cell to turn off two of the tubes, but the center tube is always on. The tube is covered by a blue light-diffusing sleeve. Institution policy requires welfare checks in the SMU to be conducted every thirty minutes, which is more frequent than checks for the general prison population. Officials asserted that continuous illumination allows officers to "assess the baseline behavior of offenders to ensure they are not at risk of harming themselves or making an attempt to harm staff, cause property damage or incite problem behavior from other offenders." The officials stated that turning the cell lights on and off every thirty minutes would be disruptive to the cell occupants. The prisoner alleged that the light was so bright he could not sleep, even with "four layers of towel wrapped around his eyes." He alleged that the lighting gave him "recurring migraine headaches" and that he could not distinguish between night and day in the cell. (Airway Heights Corrections Center, Washington)

U.S. Appeals Court
INADEQUATE SUPERVISION
DELIBERATE INDIFFERENCE

Harrison v. *Culliver*, 746 F.3d 1288 (11th Cir. 2014). A state prisoner brought a § 1983 action against prison officials, relating to an inmate-on-inmate assault with a box cutter, and asserting an Eighth Amendment violation based on deliberate indifference to a substantial risk of serious harm. The district court granted summary judgment to the prison officials and denied the prisoner's motion to proceed in forma pauperis. The prisoner appealed. The appeals court affirmed. The appeals court held that: (1) past incidents of inmate-on-inmate violence involving weapons did not constitute a substantial risk of serious harm; (2) the prison's policies for monitoring a back hallway in which the prisoner was attacked did not create a substantial risk of serious harm; (3) lack of oversight of the prison's hobby craft shop did not create a substantial risk of serious harm; and (4) prison officials were not deliberately indifferent with respect to oversight of the hobby shop. (W.C. Holman Correctional Facility, Alabama)

U.S. District Court
STAFFING LEVELS

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. Appeals Court
INADEQUATE SUPER-VISION

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. Appeals Court
CELL CHECKS
INADEQUATE SUPER-VISION

Laganiere v. *County of Olmsted*, 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. (Olmstead County Adult Detention Center, Minnesota)

U.S. Appeals Court
VIDEO SURVEILLANCE

Maus v. *Baker*, 747 F.3d 926 (7th Cir. 2014). A pretrial detainee filed a § 1983 action against personnel at a county jail, alleging that they had used excessive force against him. The detainee alleged that the defendants used excessive force in response to him covering the lens of the video camera in his jail cell. In the first incident, the detained alleged that his arms were twisted, he was pinned against the wall, and he was choked. In the second incident, the detainee alleged that a taser was used to gain his compliance in transferring him to a separate cell. Following a jury trial, the district court entered judgment for the defendants and denied the detainee's motions for new trial. The detainee appealed. The appeals court reversed and remanded, finding that the court's errors in failing to conceal the detainee's shackles from jury, and in requiring the detainee to wear prison clothing while the defendants were allowed to wear uniforms were not harmless. According to the court there was no indication that concealment of the restraints would have been infeasible, and visible shackling of the detainee had a prejudicial effect on the jury. The court noted that there would have been no reason for the jury to know that the plaintiff was a prisoner, and being told that the plaintiff was a prisoner and the defendants were guards made a different impression than seeing the plaintiff in a prison uniform and the defendants in guard uniforms. (Langlade County Jail, Wisconsin)

U.S. District Court
FAILURE TO SUPERVISE

Morales v. *U.S*., 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)

U.S. District Court
INADEQUATE SUPER-VISION
FAILURE TO SUPERVISE
PRISONER CHECKS

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. District Court
INADEQUATE SUPERVISION
STAFFING LEVELS

Poore v. *Glanz*, 46 F.Supp.3d 1191 (N.D.Okla. 2014). A juvenile female held as an inmate in the medical unit of a county jail brought an action against the county and the county sheriff in his individual capacity under § 1983 alleging deliberate indifference to her health in violation of the Eighth Amendment prohibition of cruel and unusual punishment, based on an alleged failure to prevent a detention officer's repeated sexual assaults. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine disputes of material fact as to whether the county sheriff was aware of the risk of sexual assault by detention officers as to female inmates housed in the medical unit of the county jail, and whether he failed to take steps to alleviate that risk. The court also found a genuine dispute of material fact as to whether the county jail had a policy and practice of housing juvenile female inmates in a wing of the medical unit which was not under direct supervision and was frequently single-staffed, such that it placed those inmates at a substantial risk of sexual assault by jail staff. (Tulsa County Jail, also called the David L. Moss Criminal Justice Center, Oklahoma)

U.S. District Court
VIDEO SURVEILLANCE
PRISONER CHECKS
DELIBERATE INDIFFERENCE
FAILURE TO SUPERVISE

Rogge v. *City of Richmond, Tex*., 995 F.Supp.2d 657 (S.D.Tex. 2014). The parents of an arrestee who committed suicide while in police custody brought a § 1983 and state law action in state court against the city and two police officers. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motion. The court held that the arresting police officer was unaware of the arrestee's risk of self harm. The arrestee committed suicide in a police station holding cell, and thus, by not checking on the arrestee for several hours, the officer did not act with deliberate indifference to the arrestee's obvious need for protection from self harm, so as to violate his due process rights. The court noted that the arrestee was calm and that he cooperated with the officer during their interaction, and although he said he was terminated from his job, admitted drinking, and said he was on medication for anxiety, he did not express an interest in hurting himself or appear distraught. The message that the officer received from the arrestee's father did not raise suspicion of a risk of suicide, and the officer believed that all dangerous personal items had been taken from the arrestee and that the dispatch officer would monitor him via a video feed. The court found that the police dispatch officer who was monitoring the video feed from the police station holding cell was unaware of the arrestee's risk of self harm, and thus, the officer did not act with deliberate indifference to the arrestee's obvious need for protection from self harm, so as to violate his due process rights. The arrestee slept on bench in the cell for most of the two and a half hours he was in the cell before hanging himself, and the officer did not observe on the video monitor any behavior on the arrestee's part that suggested he was a suicide risk. The officer observed that the arrestee did not have items of personal property considered to be suicide implements, and although the arrestee's father came to the station and told the officer that he and his wife were worried, he did not indicate the arrestee might be suicidal. (Richmond City Jail, Texas)

U.S. District Court
INADEQUATE SUPERVISION

Shepherd v. *Powers*, 55 F.Supp.3d 508 (S.D.N.Y. 2014). An inmate at a county jail brought a § 1983 action against a first correction officer, a second correction officer, and a county, asserting excessive force in violation of the Eighth Amendment, malicious prosecution, and denying or interfering with the inmate's religious rights. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by a genuine dispute of material fact as to whether the force a correction officer at the county jail used in grabbing and squeezing the inmate's testicles was applied maliciously or sadistically to cause harm, in violation of the Eighth Amendment. The court also found fact issues as to whether the correction officer's conduct, including throwing the inmate to the floor, was objectively malicious and sadistic. According to the court, fact issues existed as to whether the county had a custom and practice of using excessive force or failed to adequately train or supervise correction officers in the use of force, precluding summary judgment on the inmate's § 1983 claim against the county. (Westchester County Jail, New York)

U.S. District Court
INADEQUATE SUPERVISION

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 court held that it was objectively reasonable for the prisoner, to conclude that no administrative mechanism existed through which to obtain remedies for the alleged attack, and thus the prisoner was not required under the Prison Litigation Reform Act (PLRA) to exhaust administrative remedies before bringing his claim. The court noted that the jail's grievance policy stated that "allegation of assault…by either staff or inmates" was non-grievable, the policy stated that an inmate complaint "is grievable unless it constitutes assault, harassment or criminal misconduct," the prisoner alleged that officials committed criminal misconduct in acting with deliberate indifference toward him, and although the prisoner did not complain of the assault by officials, the prisoner would not have been required to name a defendant in filing a grievance. According to the court, even if city jail officials would have accepted the prisoner's failure-to-protect grievance, the prisoner's mistake in failing to exhaust administrative procedures was subjectively reasonable. 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. District Court
ELECTRONIC SURVEILLANCE

Carter v. *James T. Vaughn Correctional Center*, 134 F.Supp.3d 794 (D. Del. 2015). A state prisoner filed a pr se complaint under § 1983 seeking injunctive relief against a prison. The district court dismissed the action. The court held that the prisoner's claims that the prison's business office miscalculated and deducted incorrect sums of money from his prison account when making partial filing fee payments, that there was poor television reception, and that he was not allowed to purchase canteen items from the commissary, were not actionable under § 1983, where all of the claims were administrative matters that should be handled by the prison. The court found that the prisoner's claims that he was being electronically monitored through a "microwave hearing effect eavesdropping device" and electronic control devices were fantastical and/or delusional and therefore were insufficient to withstand screening for frivolity in filings by an in forma pauperis prisoner, in the prisoner's § 1983 action. (James T. Vaughn Correctional Center, Smyrna, Delaware)

U.S. District Court
CELL CHECKS
PRISONER CHECKS

Cavanagh v. *Taranto*, 95 F.Supp.3d 220 (D. Mass. 2015). A pretrial detainee's son brought an action under § 1983 against correctional officers who were on duty the day of the detainee's suicide, alleging the officers violated the detainee's due process rights. The officers moved for summary judgment. The district court granted the motion. The court held that the officers were not deliberately indifferent to the detainee's mental health history and safety, to her safety through inadequate cell checks, or to her safety by failing to remove a looped shoelace from her cell. The court noted that the detainee was not identified as a suicide risk, the officers did not have access to the detainee's medical records, the officers were not trained to make suicide assessments, and the detainee's risk of suicide was not so obvious that someone other than a professional could have recognized the risk. (Suffolk County House of Correction, Massachusetts)

U.S. District Court
STAFFING LEVELS
STAFF ASSIGNMENT
FAILURE TO SUPERVISE

Cotta v. *County of Kings*, 79 F.Supp.3d 1148 (E.D.Cal. 2015). An inmate's mother, individually and as representative of the inmate's estate, as well as the prisoner's two daughters, brought an action against a county, and county jail officials, alleging that inadequate safety at the jail violated the inmate's constitutional rights and ultimately led to his death when he was killed by a cellmate. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) the inmate's due process right to protection from violence was violated; (2) the jail's staffing policy on the night the inmate was murdered was not lacking, such that any need to remedy the staffing policy was not obvious; (3) an official's decision to house the inmate together with the cellmate was a ministerial determination that was not entitled to immunity; (4) an official did not breach her duty of care to protect the inmate from any foreseeable harm; and (5) summary judgment was precluded by genuine issues of material fact as to whether the county's lack of a policy requiring its employees to report safety risks was the cause of the inmate's murder and whether the county's conduct shocked the conscience. (Kings County Jail, California)

U.S. District Court
SUPERVISION
MONITORING
VIDEO
INADEQUATE SUPERVISION
CELL CHECKS
ELECTRONIC SURVEILLANCE

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
ELECTRONIC SURVEILLANCE

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. The court found that the juvenile detainees' challenges to particular conditions of confinement at the jail were mooted by changes, which included elimination of a "holding cage," elimination of the holding area for even temporary suicide watches, installation of cameras in each sleeping cell with monitors posted above each dorm, updating of the physical facility, relocation of the classrooms, a 48-hour review for juveniles in isolation, and installation of a radio frequency identification (RFID) system. (Polk County Central County Jail, Florida, and Corizon Health, Inc.)

U.S. Appeals Court
INADEQUATE SUPER-VISION
VIDEO SURVEILLANCE
CELL CHECKS

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 chance, 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. District Court
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
FAILURE TO SUPERVISE
STAFFING LEVELS

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. (Hansford County Jail, Texas)

U.S. Appeals Court
STAFFING LEVELS

U.S. v. *Sanchez-Gomez*, 798 F.3d 1204 (9th Cir. 2015). Defendants filed challenges to a federal district court policy, adopted upon the recommendation of the United States Marshals, to place defendants in full shackle restraints for all non-jury proceedings, with the exception of guilty pleas and sentencing hearings, unless a judge specifically requests the restraints be removed in a particular case. The district court denied the challenges. The defendants appealed. The appeals court vacated and remanded. The appeals court found that the defendants' challenges to the shackling policy were not rendered moot by the fact that they were no longer detained. The court held that there was no adequate justification of the necessity for the district court's generalized shackling policy. According to the court, although the Marshals recommended the policy after some security incidents, coupled with understaffing, created strains in the ability of the Marshals to provide adequate security for a newly opened, state-of-the-art courthouse, the government did not point to the causes or magnitude of the asserted increased security risk, nor did it try to demonstrate that other less restrictive measures, such as increased staffing, would not suffice. (Southern District of California, United States Marshals, San Diego Federal Courthouse)

U.S. District Court
CELL CHECKS
INADEQUATE SUPER-VISION

Woodson v. *City of Richmond, Virginia*, 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 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. Appeals Court
ELECTRONIC SURVEILLANCE

Belleau v. *Wall*, 811 F.3d 929 (7th Cir. 2016). A citizen, who had previously been convicted of second degree sexual assault of a child but was no longer under any form of court-ordered supervision, brought an action against Wisconsin state officials, alleging that a Wisconsin statute, requiring certain persons who had been convicted of serious child sex offenses to wear global positioning system (GPS) tracking devices for the rest of their lives, violated his rights under the Ex Post Facto Clause and the Fourth Amendment. The district court entered summary judgment in the citizen's favor. The appeals court reversed the decision. The court held that the statute did not violate the Fourth Amendment, where the loss of privacy from the requirement to wear the device-- that the Department of Corrections used device to map the wearer's whereabouts so that police would be alerted to the need to conduct an investigation if the wearer was present at a place where a sex crime was committed-- was very slight compared to the societal gain of deterring future offenses by making persons who were likely to commit offenses aware that they were being monitored. According to the court, the statute did not impose punishment, and thus did not violate the Ex Post Facto Clause. (Wisconsin Department of Corrections)

45.56

SECTION 46: TRAINING

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.

1975

U.S. District Court
TRAINING

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
SCREENING

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
TRAINING

Jones v. Wittenberg, 440 F.Supp. 60 (N.D. Oh. 1977). Staff training and psychological screening of staff are ordered. (Lucas County Jail, Ohio)

1979

U.S. Appeals Court
FAILURE TO TRAIN

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

U.S. District Court
FAILURE TO TRAIN

LeBlanc v. Foti, 487 F.Supp. 272 (E.D. La. 1980). Failure of the chief administrative officer to establish procedures for the use of mace and tear gas does not state a claim for violation of civil rights in favor of an inmate on which it was used. The use of these is in the sound discretion of the institutional administration, and their use to quell a disturbance is quite proper. (Orleans Parish Prison, Louisiana)

U.S. District Court
MEDICAL CARE

Nicholson v. Choctaw Co., Ala., 498 F.Supp. 295 (S.D. Ala. 1980). The jail personnel are to be trained in emergency medical care. 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. (Choctaw County Jail, Alabama)

1981

U.S. District Court
FAILURE TO TRAIN

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. Supreme Court
TRAINING

Rhodes v. Chapman, 101 S.Ct. 2392 (1981). Level of staff training tied to Court's decision on double-celling. In a remarkable 8 to 1 decision, the Supreme Court upheld double celling at the Southern Ohio Correctional Facility at Lucasville. The maximum security facility was built in the early 1970's with gymnasiums, workshops, school rooms, day room, two chapels, a hospital ward, a commissary, a barber shop and a library. Outdoors, there is a recreation field, visitation area and library. The physical plant itself is a top flight first-class facility. Each cell is sixty-three square feet in area and contains a bed or bunk bed measuring thirty-six by eighty inches, a cabinet nightstand, a wall-mounted sink with hot and cold water, a flushable toilet and a built-in radio. One wall of each cell is barred. Day rooms are open from 6:30 a.m. until 9:30 p.m., and inmates may pass between these rooms and their cells for a ten minute period each hour. At the time of the trial, the facility housed 2,300 inmates, two-thirds of whom were serving life or long-term sentences. Some 1,400 men were double celled. Despite the favorable nature of the plant's design, the district court found that double celling constituted cruel and unusual punishment. The Supreme Court reversed, noting: "No static test can exist by which courts determine whether conditions of confinement are cruel and unusual, for the Eighth Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Applying those principles to this institution, the court found that the evidence did not support a conclusion that the eighth amendment was violated. The majority said:

> "The double celling made necessary by the unanticipated increase in prison population did not lead to deprivations of essential food, medical care or sanitation. Nor did it increase violence among inmates or create other conditions intolerable for prison confinement. Although job and educational opportunities diminished marginally as a result of double celling, limited work hours and delay before receiving education do not inflict pain, much less unnecessary and wanton pain. Deprivations of this kind simply are not punishment."

The Court continued, "We would have to wrench the eighth amendment from its language and history to hold that delay of these desirable aids to rehabilitation violates the Constitution." Three justices, Brennen, Blackmun and Stevens, authored a concurring opinion. It attempted to list some of the things which would determine whether a facility has such poor conditions as to violate the eighth amendment. Those conditions are:

-Physical plant conditions: lighting, heat, plumbing, ventilation, living space, noise levels, and recreation space.
-Sanitation: control of vermin and insects, food preparation, medical facilities, lavatories and showers, clean places for eating, sleeping and working.
-Safety: protection from violent, deranged or diseased inmates, fire protection and emergency evacuation.
-Staffing: trained and adequate guards and other staff, and avoidance of placing inmates in positions of authority over other inmates.

This majority of justices cautioned that sixty-three square feet of cell space is not enough for two men. Such conditions, they noted, are a clear signal to legislative officials that additional facilities must be constructed or inmate populations reduced by other means. The justices did state, however, that cramped facilities are not unconstitutional per se.

NOTE: This decision dealt with long-term convicted inmates, not short-term persons in county and city jails. In some circumstances, pretrial detainees who are still

presumed innocent until convicted have greater rights, such as access to lawyers and courts. On the other hand, because of the short periods of confinement, a jail facility does not need as elaborate areas for recreation, libraries, exercise and other services, as required for the longer term population of prisons. (Southern Ohio Correctional Facility, Lucasville)

U.S. District Court
FAILURE TO TRAIN

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)

1984

U.S. Appeals Court
FAILURE TO TRAIN

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

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)

State Court

Hake v. Manchester Tp., 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)

U.S. Appeals Court
FAILURE TO TRAIN

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)

1986

U.S. Appeals Court
TRAINING

Alberti v. Klevenhagen, 790 F.2d 1220 (5th Cir. 1986). Appeals court upholds remedial measures of district court, finding levels of violence and sexual assault violated inmates' eighth amendment rights and ordering increased staffing. In a case initiated in 1972, the United States Court of Appeals for the Fifth Circuit agreed with the sweeping corrective measures ordered by a federal district court. The original class action suit was brought under 42 U.S.C. Section 1983, alleging that the facilities and operations of the Harris County detention system violated inmate constitutional and statutory rights. In February, 1975, a consent judgment was entered in the district court, calling for upgrading of existing facilities, construction of a new central jail, and committing the county to provide sufficient and adequately trained guards and other staff to assure the security of inmates.

In December, 1975, the county's compliance with the consent judgment was challenged. Following hearings, a broad remedial order was issued. The court ordered adequate training and pay increases for jail personnel and ordered that staffing be increased to provide one jailer for every twenty inmates. In 1978 the court reluctantly approved plans for a new central jail. The plaintiffs had argued against the planned use of multiple occupancy cells, and the court expressly conditioned occupancy of the new facility on the provision of adequate staff. In 1982 and 1983 the district court held hearings to determine if adequate staffing was provided for the newly-opened detention facility. The court ordered the county to prepare a plan which complied with Texas Commission on Jail Standards (TCJS) requirements of one officer to forty-five inmates, eventually approving such a plan. When the county failed to meet a June, 1983, deadline for full staffing, the plaintiffs filed a motion for contempt.

The county was granted TCJS approval in October for an alternative poststaffing plan, which provided less staff than the previous "one to forty-five" plan. After extensive hearings in 1984, and the presentation of evidence and testimony on violence in the facilities, the court ordered the implementation of a staffing plan which was similar to one proposed by the plaintiffs' experts, calling for approximately the same number of staff as the original "one to forty-five" plan, but incorporating a different assignment scheme.

On appeal, the county argued that the evidence presented in the 1984 hearings was not sufficient to support the district court finding of constitutional violations, and that the new staffing plan ordered by the court exceeded what should be required to remedy any such violations.

The appeals court affirmed all aspects of the district court corrective orders, stating that "....it is more regrettable that after thirteen years conditions in the jails are still in contravention of constitutional standards. Despite the efforts of the parties and the court, inmates continue to be beaten, raped, abused, and assaulted. The district court has acted properly in fashioning new relief for an old malady." (Harris County Detention Facilities, Texas)

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)

State Appeals Court
FAILURE TO TRAIN

Dizak v. State, 508 N.Y.S.2d 290 (A.D. 3 Dept. 1986). An inmate brought action against the state alleging that it was guilty of negligence in permitting a second inmate to have access to a pick axe used to attack the inmate. The court of claims entered judgment in favor of the state, and the inmate appealed. The Supreme Court held that the inmate attacked by a second inmate failed to establish that the state knew or should have known of the inmate's tendency toward violent behavior, or that the supervision provided was not sufficient.

The inmate failed to demonstrate that supervision by a guard who continuously patrolled the work area checking on each member was insufficient, despite evidence that the attacking inmate had been the subject of eleven or twelve misbehavior reports, all but two of which concerned minor nonviolent violations.

The correction officer who had made an earlier misbehavior report on the inmate who attacked the second inmate did not have training or education to qualify him as an expert to render his opinion that the inmate could cause a major incident on the floor at any time, and that the inmate had almost caused two incidents, so that portion of the report containing such a statement was clearly inadmissible. (Adirondack Correctional Facility, New York)

U.S. Supreme Court
FAILURE TO TRAIN
NEGLIGENCE

Malley v. Briggs, 106 S.Ct. 1092 (1986). A police officer is not entitled to absolute immunity from a civil rights claim based on an allegedly false arrest even when he makes the arrest pursuant to a warrant which he has sought out. As a matter of public policy, qualified immunity provides ample protection to all but the plainly incompetent or those who knowingly violate the law. If a reasonably well trained officer in the position of the officer in question would have known that his affidavit failed to establish probable cause for the arrest or that he should not have applied for the warrant, then his application for the warrant was not objectively reasonable because it created the unnecessary danger of an unlawful arrest. (State Police, Rhode Island)

State Court
FAILURE TO TRAIN

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
FAILURE TO TRAIN

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 shakedowns 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)

1988

U.S. District Court
FAILURE TO TRAIN

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
FAILURE TO TRAIN

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
MEDICAL SCREENING

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. District Court
FAILURE TO TRAIN

Vega v. Parsley, 700 F.Supp. 879 (W.D. Tex. 1988). Parents of a juvenile who committed suicide while in a juvenile detention facility brought a civil rights action against the county, the sheriff, and the director of the facility. On the defendants' motion for summary judgment, the district court found that there was no eighth amendment violation with respect to conditions in the facility, including the

presence of a shower curtain rod on which the juvenile hung himself. No constitutional violation was shown on the theory that the juvenile was denied treatment. No claim was stated on the theory of failure to staff, train and supervise the facility.

The plaintiffs failed to state a claim of violation of the eighth and fourteenth amendments in the alleged failure of the county, as a matter of official policy, to staff, train and supervise the facility, where the plaintiffs failed to allege or establish what specific areas of training were inadequate or to establish any other specific incident where the prisoner or child committed or attempted to commit suicide, or that any policy or custom of the detention facility caused or contributed to any suicide. (Gonzales County Detention Facility, Texas)

1989

U.S. District Court
FAILURE TO TRAIN

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 court awarded the prisoner's children $100,000 in compensatory damages against the county and the sheriff. (Warren County Jail, Tennessee)

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

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
FAILURE TO TRAIN

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 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 TRAIN
MEDICAL CARE

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. District Court
FAILURE TO TRAIN

Ryan Robles v. Otero de Ramos, 729 F.Supp. 920 (D.Puerto Rico 1989). An inmate's father brought a Section 1983 action against a prison guard, administrator, and supervisors to recover for the shooting death of an escaping inmate. The defendants moved for summary judgment. The district court granted the motion and found that using deadly force against a convicted, escaping inmate was not an unnecessary and wanton infliction of pain, did not violate the eighth amendment, and was within the guard's qualified immunity from Section 1983 liability. The guard tried to physically prevent the escape, and was prevented from doing so by the inmate's spear. He warned the inmate to desist, fired a warning shot, and fired the

revolver after the inmate had jumped to the street outside the prison and started to run. The inmate's father failed to establish in the Section 1983 action that the training of guards and the use of firearms caused the death of the escaping inmate, that the policy on the use of deadly force deprived the inmate of constitutional rights, or that the administrator and supervisors were grossly negligent or deliberately indifferent. (Young Adults Institution, Miramar, Puerto Rico)

1990

U.S. Appeals Court
FAILURE TO TRAIN
MEDICAL 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 TRAIN

Estate of Cartwright v. City of Concord, Cal., 856 F.2d 1437 (9th Cir. 1988). A mother of a pretrial detainee who committed suicide by hanging himself in a city jail brought a Section 1983 action against the city and city employees for alleged violation of constitutional rights. The United States District Court entered judgment for the defendants following a bench trial, and the mother appealed. The appeals court, affirming the decision, found that the city jail employees did not violate the constitutional rights of the pretrial detainee in failing to prevent him from committing suicide. Although the jailers overheard him speaking of suicide, none of the detainee's other statements gave them reason to believe that he needed preventive care. The jailers took reasonable steps to safeguard him by taking away all his possessions except "soft clothing," and placed him in a cell with another detainee. He was also checked periodically. In addition, the city jailers did not violate the constitutional rights of the detainee or his surviving mother by allegedly failing to give him cardiopulmonary resuscitation during the five to seven minute interval between the time he was found hanging from his jail cell and the time the ambulance crew arrived. The actions of the jailers in cutting the detainee down, checking his vital signs and giving him aid, were not negligent or made in deliberate indifference to his distress. Finally, the city could not be held separately liable on the basis of its policies, customs and practices. The city's training program complied with relevant state laws and standards and there was no practice or pattern showing the city investigated jail deaths inadequately or destroyed evidence in a manner inconsistent with established policies. (Concord City Jail, Concord, California)

U.S. Appeals Court
FAILURE TO TRAIN

Popham v. City of Talladega, 908 F.2d 1561 (11th Cir. 1990). The administratrix of the estate of a deceased jail inmate brought a civil rights action against the city and jail officials. During the celebration of his wedding, Ronald Popham was arrested for public intoxication. In addition to being intoxicated, he was emotional, depressed, and angry at the time of his arrest. Popham's belt, shoes, socks, and pocket contents were removed by jail personnel who placed him in a holding cell and at 9:30 p.m., ordered the cell monitored. Monitoring was accomplished by closed circuit television located on another floor of the jail where the camera was operated by a radio dispatcher. Popham was last checked on physically when the shift ended at 11:00 p.m., after which there were no guards or jailers on duty. Sometime later, in a small space within the cell unviewed by the camera, Ronald Popham hanged himself from the bars by his blue jeans. He was discovered at 5:15 a.m. Christmas morning.

Mrs. Popham claimed several constitutional violations, in effect, that her husband had a right to be protected from committing suicide while incarcerated, that he was not properly monitored after being placed in a cell by himself, and that his jailers were not properly trained to identify prisoners who might show a tendency to suicide.

The U.S. District Court denied relief and the administratrix appealed. The appeals court affirmed the decision and found that evidence did not show a deliberate indifference by jailers to the inmate where they were unaware of any suicidal tendencies. Because jail suicides are analogous to the failure to provide medical care; deliberate indifference is the barometer by which suicide cases involving convicted prisoners as well as pretrial detainees are tested. The deliberate indifference standard applicable to civil rights actions arising out of jail suicides requires a strong likelihood, rather than a mere possibility, that

the self-infliction of harm will occur, and deliberate indifference will not be found to exist in the face of only negligence. The failure to train jail personnel to screen detainees for suicidal tendencies did not provide a basis for imposing civil rights liability following the inmate's suicide. Standard procedures followed by the jail inmate's custodians prior to the inmate's suicide, which included the removal of shoelaces, belts, socks, and pocket contents, as well as closed circuit cell monitoring, demonstrated a lack of deliberate indifference to his safety, even though the closed circuit camera could not pick up every corner of his cell. (Talladega City Jail, Alabama)

U.S. District Court
FAILURE TO TRAIN

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 TRAIN

Walker v. Norris, 917 F.2d 1449 (6th Cir. 1990). The administratrix of an inmate's estate brought action against prison guards and the guards' supervisors after the guards allegedly failed to prevent the inmate's stabbing death. The U.S. District Court entered judgment in favor of the plaintiff, and the defendants appealed. The court of appeals found that the prison guards violated the inmate's Eighth Amendment rights and could be held liable in the civil rights action when they failed to prevent the inmate's stabbing by another inmate, where the guards had an opportunity to prevent the stabbing, but failed to do so, and instead looked on while the inmate was attacked. The failure of the prison guards' supervisors to instruct the guards with regard to operation of the unit doors and use of mace did not render the prison's training program "deliberately indifferent" to the rights of the inmates, precluding the supervisors from being held liable under a failure to train theory when the inmate was stabbed by another inmate after the guards failed to allow the inmate to escape through a unit door or restrain the other inmate. (Tennessee State Penitentiary)

1991

U.S. District Court
FAILURE TO TRAIN

Andujar v. City of Boston, 760 F.Supp. 238 (D. Mass. 1991). A person arrested based on mistaken identity brought a Section 1983 action against an individual police officer and a city. On the city's motion to dismiss, the U.S. District Court found that the allegations that the claimant was arrested and detained for 12 days based upon misidentification that the warrant on which the claimant was arrested was three years old, and that the defendant was arrested a second time on the same warrant and detained for four and one-half hours, were sufficient to state a Section 1983 action against the municipality based on inadequate police training and a policy of failing to properly investigate the identification of individuals. The claimant, however, failed to state a cause of action against the city for violation of a state civil rights law; the allegation of the city's failure to train officers did not involve "threats, intimidation or coercion" required to state a violation of state law. (Boston, Massachusetts)

U.S. Appeals Court
DELIBERATE INDIFFERENCE

Elliott v. Cheshire County, N.H., 940 F.2d 7 (1st Cir. 1991). The father of a detainee who committed suicide while in a county jail brought a civil rights action against the county, individual correctional officers, and the arresting officer. The U.S. District Court entered summary judgment in favor of all defendants and the father appealed. The court of appeals found that fact issues existed on the question of whether jail personnel knew or reasonably should have known of the detainee's suicidal tendencies. The detainee made suicide threats to fellow inmates, and whether inmates reported such threats to jail personnel in such a manner as to be taken seriously, and whether jail personnel responded reasonably or with deliberate indifference, precluded summary judgment for them. The arresting officer was not deliberately indifferent to the detainee's medical needs; although the officer was informed of the detainee's mental illness, he was not informed that the detainee had previously threatened suicide, and there was no reason to suspect from the detainee's demeanor or actions that such danger existed. The county could not be held liable absent an indication of inadequately training its officers or maintaining an unsafe jail. (Cheshire County House of Corrections, New Hampshire)

U.S. District Court
FAILURE TO TRAIN
MEDICAL
SCREENING

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
FAILURE TO TRAIN
MEDICAL CARE

Holmes v. Sheahan, 930 F.2d 1196 (7th Cir. 1991). 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. District Court
FAILURE TO TRAIN

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. Appeals Court
ARREST AND
DETENTION
FALSE
IMPRISONMENT
FAILURE TO TRAIN

Rivas v. Freeman, 940 F.2d 1491 (11th Cir. 1991). A detainee brought a civil rights action against a sheriff, deputies, and other officials, for an arrest and incarceration resulting from his misidentification as probationer. The U.S. District Court awarded the detainee $100,000 in compensatory damages, holding all officials liable jointly and severally. All officials settled the case except the sheriff and deputies, who appealed. The court of appeals found that qualified immunity was not available to the sheriff and deputies being sued in their official capacities for violating the detainee's constitutional rights. In addition, the detainee's civil rights action against the sheriff and deputies in their official capacities, was not barred by the Eleventh Amendment as the sheriff and deputies were county officials and funds used to satisfy assessments of liability against them would not be paid from Florida's treasury. It was further found that the sheriff's failure to train his officers adequately regarding reliable techniques for identifying arrestees, along with his failure to account for incarcerated suspects, subjected the sheriff to liability for violation of the civil rights of the detainee, who was misidentified as probationer and was unnecessarily detained for six days for an alleged probation violation, where there was evidence that the sheriff knew of prior instances of mistaken identity, but failed to establish appropriate policies and continued to allow his deputies to detain persons even when discrepancies existed. However, the deputies' arrest and detention of the detainee, despite having information demonstrating that the detainee's identity was different from that of the probationer thought to be violating probation, did not amount to gross negligence or deliberate indifference to the detainee's constitutional rights, as was necessary for the deputies to be liable under Section 1983. The deputies' actions flowed from lack of policies, procedures, and training, and amounted at most to simple negligence. (Florida)

U.S. Appeals Court
FAILURE TO TRAIN

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 Dist., Philadelphia, Pennsylvania)

1992

U.S. Appeals Court
FAILURE TO TRAIN
MEDICAL SCREEN-
ING

Barber v. City of Salem, Ohio, 953 F.2d 232 (6th Cir. 1992). An administrator of a pretrial detainee's estate brought a Section 1983 action against police officers and a city based on the detainee's suicide. The United States District Court granted summary judgment in favor of the police officers and the city, and the administrator appealed. The appeals court, affirming the decision, found that there was no clearly established right to suicide prevention screening or facilities in 1982 when the pretrial detainee hanged himself; therefore, the law enforcement officers were entitled to qualified immunity from liability in the action. The city could not be held liable for any failure to better train personnel to detect and deter jail suicides. Although the pretrial detainee expressed concern over his job, his engagement, and his ability to obtain custody of his young son due to his arrest, such a reaction to arrest for driving under the influence of alcohol could not be considered abnormal and would not have alerted jail authorities to a strong likelihood that the detainee would commit suicide in such a manner that failure of the city to take precautions amounted to deliberate indifference to the detainee's serious medical needs. (Salem City Jail, Salem, Ohio)

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

Manarite v. City of Springfield, 957 F.2d 953 (1st Cir. 1992). The estate and minor daughter of a detainee who committed suicide while in protective custody sued the police chief and the city under Section 1983 for their alleged failure to prevent the suicide. The U.S. District Court granted summary judgment for the defendants, and the plaintiffs appealed. The court of appeals found that the police chief's failure to insist that officers who implemented the suicide prevention policies remove shoelaces from persons in protective custody was not "deliberate indifference" that would permit holding the chief liable for suicide of a person in protective detention. Although four detainees tried to hang themselves with shoelaces in the preceding nine months, the chief's conduct might have been negligent, but not deliberately indifferent. In addition, the city's failure to provide training and education for police officers in suicide detection and prevention was not "deliberate indifference" in violation of Section 1983, as the city's training and policies regarding suicide prevention were in accord with requirements of state law at the time of the detainee's suicide, and there was no basis for finding that his suicide was closely related to the city's failure to train officers in suicide prevention. (Springfield Police Station, Springfield, Massachusetts)

1993

U.S. District Court
FAILURE TO TRAIN

Herman v. Clearfield County, PA, 836 F.Supp. 1178 (W.D. Pa. 1993) affirmed 30 F.3d 1486. 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. The officials did receive training regarding detention of suicidal detainees and appropriate responses. (Clearfield County Prison, Pennsylvania)

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

Hood v. Itawamba County, Miss., 819 F.Supp. 556 (N.D. Miss. 1993). In an action arising out of a suicide by a detainee, the county moved for summary judgment on Section 1983 claims. The district court found that, assuming that the detainee had shown suicidal tendencies, the county was not liable under Section 1983 for the detainee's suicide on the theory of inadequate training, where the sheriff's office did have a policy regarding custodial confinement of detainees who exhibited a possible inclination to self-injury. The negligence of a county law officer in not adhering to a county policy for custodial care of the detainee did not support county liability under Section 1983. It was the deviation from policy and standard practice that contributed to the detainee's suicide, not the policy or practice itself. (Itawamba County Jail, Mississippi)

U.S. Appeals Court
FAILURE TO TRAIN

Knight v. Gill, 999 F.2d 1020 (6th Cir. 1993). An inmate who was assaulted by a cellmate brought a civil rights action against prison officials. The U.S. District Court denied the officials' motion for summary judgment on qualified immunity grounds, and they appealed. The appeals court found that the prison official did not act with deliberate indifference to the inmate's safety when he denied the inmate's request for transfer to another cell, and was entitled to qualified immunity. The inmate had refused protective supervision pending a hearing to decide whether to assign him to a different cell, and the official did not have knowledge that the cellmate was a threat to the inmate's safety. Also, prison officials did not act with deliberate indifference to the safety of the inmate in allegedly failing to properly train and supervise the activity of prison personnel, entitling the officials to qualified immunity. It was noted that the prison had the second lowest assault rate in the state prison system. (Luther Luckett Correctional Complex, Oldham County, Kentucky)

1994

U.S. Appeals Court
FAILURE TO TRAIN

Belcher v. City of Foley, Ala., 30 F.3d 1390 (11th Cir. 1994). An arrestee's estate sued a city, the chief of police, and three police officers under Section 1983 and the Alabama wrongful death statute, after the arrestee committed suicide while in jail at the police station. The U.S. District Court denied the individual defendants' motions for summary judgment based on qualified immunity in their individual capacities and they appealed. The appeals court, reversing and remanding, found that the police chief's actions and inactions with respect to policies and training in handling of suicidal inmates did not constitute deliberate indifference, thus entitling the chief to qualified immunity. It was noted that a previous suicide in the jail occurred seven years before the arrestee's, and steps had been taken after that to prevent future suicides. (Foley Police Station, Alabama)

U.S. District Court
FAILURE TO TRAIN

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 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. 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)

1995

U.S. District Court
FAILURE TO TRAIN
MEDICAL CARE

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. District Court
FAILURE TO TRAIN
SCREENING

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 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. (California Department of Corrections)

U.S. Appeals Court
FAILURE TO TRAIN

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. 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. District Court
FAILURE TO TRAIN
MEDICAL CARE
SCREENING

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 8h Amendment. (Pelican Bay State Prison, Cal.)

U.S. District Court
FAILURE TO TRAIN

McGuinness v. Dubois, 891 F.Supp. 25 (D.Mass. 1995). An inmate filed a § 1983 action against corrections officials challenging his confinement in a disciplinary unit. The district court granted summary judgment for the defendants in part, and denied it in part. The court found that a regulation authorizing placement in the Departmental Disciplinary Unit (DDU) for up to ten years did not violate a statute limiting confinement in the isolation unit to 15 days. The court found that denial of the inmate's request for a prison officer to testify in his disciplinary hearing violated his right to procedural due process; however, corrections officials were entitled to qualified immunity for failure to train and supervise because mere negligence is insufficient to impose § 1983 liability on supervisors. The court also ruled that the inmate was denied a state created liberty interest in educational programs without due process because his rights were violated in the disciplinary hearing that resulted in his placement in DDU, where inmates in DDU were prohibited from participating in any educational programs or activities. (Massachusetts Correctional Institution-Cedar Junction)

U.S. District Court
TRAINING

Mullins v. Stratton, 878 F.Supp. 1016 (E.D. Ky. 1995). Action was brought against jailers under a civil rights statute and state law for failing to take action to prevent an inmate's suicide. On a motion of the defendants for summary judgment, the district court found that no policy or custom amounting to deliberate indifference was shown to have caused the inmate's suicide for purposes of liability of jail officials in their official capacities under Section 1983. The county detention center had in effect a policy and procedure manual which provided for the care and treatment of suicidal inmates, providing for administrative segregation and observation on 20 minute intervals. In addition, the county jailer testified that he had received 40 hours of inmate care training and all correction officers were required to receive 16 hours of training annually. (Pike County Jail, Kentucky)

U.S. District Court
FAILURE TO TRAIN
MEDICAL SCREENING

Pyka v. Village of Orland Park, 906 F.Supp. 1196 (N.D.Ill. 1995). The estate of an arrestee who committed suicide while in detention brought a civil rights action against a village and police officers. An eighteen-year-old youth in police custody committed suicide by hanging himself from the bars of his cell with his t-shirt. The court found that the defendants were entitled to qualified immunity on claims against them in their official capacity, but the officer who put the arrestee in a chokehold was not entitled to immunity on the claim of excessive force, nor was immunity available for an officer who failed to intervene in the first officer's takedown of the arrestee. The court also found that the officers were not entitled to immunity on the claim that they struck the arrestee in violation of his right to be free from pretrial detention that constituted punishment; a videotape showed no sign of aggression or violence by the arrestee before the officer grabbed him and placed him in a chokehold. The court found that the officers were entitled to immunity on the claim of failure to provide medical care and that the village had no policy of deliberate indifference as to measures to prevent suicide. The municipality was not liable for the suicide of the arrestee based on its alleged failure to train police officers regarding suicide awareness absent any evidence that the municipality had a large suicide problem which it was ignoring or that statutes or regulations required officers either to perform CPR upon the arrestee after he was discovered hanging in his cell or to take suicide awareness classes. The court ruled that the arrestee's sister lacked standing and could not recover under § 1983 for loss of society and companionship. The court left the proximate cause issue to be determined by a jury. The court ruled that the officers were entitled to qualified immunity on

the claim that they failed to process the arrestee for bail or allow bail to be posted in a timely fashion, because the right to bail was not a clearly established right at the time of the incident. (Overland Park Police Department, Illinois)

U.S. District Court
FAILURE TO TRAIN
MEDICAL SCREENING

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 decendant'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
FAILURE TO TRAIN
MEDICAL SCREENING

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 TRAIN

Grimsley v. MacKay, 93 F.3d 676 (10th Cir. 1996). A prisoner brought a civil rights action against prison officers and administrators after his eye was injured by another prisoner during an altercation. The district court awarded damages to the prisoner but the appeals court reversed, finding that prison administrators who were not personally involved with the altercation could not be held liable for the prisoner's injuries, even though they had helped to develop training programs used at the prison in the years preceding the incident. The court also found that the prisoner was not incarcerated under conditions that posed a substantial risk of serious harm as required to establish an Eighth Amendment claim; the prisoner was securely locked by himself in a maximum security cell. (Utah State Prison)

U.S. District Court
FAILURE TO TRAIN

Harrell v. Sheahan, 937 F.Supp. 754 (N.D.Ill. 1996). A prisoner brought a false imprisonment and § 1983 action against a county sheriff alleging violation of his due process and Eighth Amendment rights. The district court granted summary judgment to the sheriff, finding that the prisoner's erroneous detention did not violate the due process clause where state remedies were available. The prisoner had asserted that he was entitled to "day for day" good time credits under the terms of his sentence and that the sheriff failed to release him in a timely manner. The prisoner had alleged that the county prison policy of inadequately training its employees to interpret court orders resulted in their failure to award him good time credit. (Cook County Department of Corrections, Illinois)

U.S. District Court
REQUIREMENTS

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)

1997

U.S. Supreme Court
FAILURE TO TRAIN

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
FAILURE TO TRAIN

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
FAILURE TO TRAIN

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. Appeals Court
FAILURE TO TRAIN

Mathis v. Fairman, 120 F.3d 88 (7th Cir. 1997). A detainee's mother brought a civil rights action against jail personnel following the detainee's suicide while in custody. The district court entered summary judgment for the personnel and the mother appealed. The appeals court affirmed, finding that personnel did not exhibit deliberate indifference to the threat of suicide. The court noted that jail staff were concerned enough about the detainee's strange behavior to have a paramedic speak with him, to have him evaluated psychologically, and in deference to his fear that someone was trying to kill him, to place him in a single cell. After a mental health specialist concluded that the detainee did not pose a threat to himself, he was returned to the general jail population. The mother had alleged that the jail failed to adequately staff the facility, and to adequately train its employees. A newly-hired officer was responsible for supervising the 25 inmates on the non-aggressive protective custody tier on which the detainee was housed. The officer, on his first day on the job, initially noticed the detainee's strange behavior and alleges that he reported it to his supervisor. The officer was hired less than a week earlier, and had just completed a four or five-day orientation. The appeals court noted that while cadets like the officer may not have been trained in suicide prevention, the jail maintained a psychiatric unit for that purpose. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
FAILURE TO TRAIN

Swain v. Spinney, 117 F.3d 1 (1st Cir. 1997). A female arrestee brought a § 1983 action against police officials alleging that a female officer's strip search of her, under orders from a lieutenant, violated her federal and state rights. The district court granted summary judgment for the defendants and the arrestee appealed. The appeals court reversed and remanded, finding that issues of fact as to the basis for the search precluded summary judgment on the issues of reasonableness and qualified immunity. The appeals court affirmed the district court's finding that § 1983 liability was not established based on the city's alleged failure to properly train the police force as to its uniform policy on strip searches. According to the court, police officers were supplied with policy guidelines, and there was no evidence of any other incidents which would have put the city on notice that its approach was inadequate. The plaintiff was arrested for shoplifting and was suspected of having possessed a small baggie of marijuana. (North Reading Police Station, Massachusetts)

1998

U.S. District Court
TRAINING

Adewale v. Whalen, 21 F.Supp.2d 1006 (D.Minn. 1998). An arrestee sued a police officer and the city that employed him under federal civil rights laws and state tort claims. The district court found that the officer was entitled to qualified immunity from liability for his decision to jail the arrestee, but found that genuine issues of material fact precluded summary judgment on the grounds of official immunity on allegations of assault, battery and false imprisonment. The court held that the officer's decision to detain the arrestee for a misdemeanor did not violate her federal rights and was objectively reasonable, given the arrestee's admission that she had been drinking and intended to drive. The court held that the arrestee failed to show that the city improperly trained its officers to arrest noncooperative persons for obstruction of legal process, based only on the decision of a deputy director of police that it was proper to arrest someone for refusing to open a security door for the police. The arrestee suffered a broken arm which she alleged was the result of excessive force used by the officer during a pat-down search. (City of Richfield Police Department, Minnesota)

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. (Box Elder County Jail, Utah)

U.S. District Court
TRAINING LEVELS

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
FAILURE TO TRAIN

Farabee v. Rider, 995 F.Supp. 1398 (M.D.Fla. 1998). An arrestee sued a county sheriff and deputies alleging negligence and malicious prosecution. The district court found that the sheriff owed a duty to protect the arrestee from the risk of use of excessive force created by his alleged failure to train and supervise deputies. The court held that the sheriff was not entitled to qualified immunity. The arrestee was pushed to the ground and handcuffed while a deputy put his knee in her back. She was transported to the county jail where she was incarcerated for at least 12 hours and she was suffering from back and arm injuries inflicted by the deputy while confined. (Glades County Jail, Florida)

U.S. District Court
FAILURE TO TRAIN

Faulcon v. City of Philadelphia, 18 F.Supp.2d 537 (E.D.Pa. 1998). A pretrial detainee who had been stabbed by another inmate sued city officials and correction officers alleging failure to protect, failure to supervise and failure to train under the Eighth Amendment. The district court granted summary judgment to the defendants, finding that the facility's policy of keeping pretrial detainees in the same housing unit as convicted inmates did not constitute deliberate indifference to a substantial risk of harm. The court also held that the lack of guidelines or training procedures regarding segregation of convicted inmates was insufficient to support claims for failure to supervise or failure to train. According to the court, a state statutory provision that indicated that sentenced prisoners should be housed separately from detainees was merely a recommended guideline rather than a mandatory requirement. (Philadelphia Industrial Correctional Center, Pennsylvania)

U.S. Appeals Court
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 County Sheriff's Department, Massachusetts)

U.S. Appeals Court
FAILURE TO TRAIN
TRAINING

Liebe v. Norton, 157 F.3d 574 (8th Cir. 1998). A detainee's wife and the administrator of his estate sued a county, sheriff and jailer for damages under § 1983, after the detainee committed suicide while incarcerated in a county jail. The district court dismissed the case and the appeals court affirmed, finding that the jailer who classified the detainee as a suicide risk, took preventive measures by placing the detainee in a temporary holding cell and removing his shoes and belt, and periodically checked on the detainee, did not act with deliberate indifference to the detainee's health or safety. The court found the jailer was entitled to qualified immunity because the steps taken by the jailer were affirmative, deliberate steps to prevent suicide. The court held that the county could not he held liable on a § 1983 claim of failure to supervise, based on the on-the-job training received by the jailer, the county's failure to test the jailer on his knowledge of a manual outlining suicide prevention policies, and the county's decision to leave the jailer in charge. The appeals court found that this did not rise to the level of deliberate indifference. The court also found that the county was not liable for failing to train jailers on the risks of inmate suicides, when the county had in place policies intended to prevent suicides and no suicides had occurred at the jail before the detainee's. The court found that failing to lead the jailer, step by step, through policies in the manual did not amount to failure to train. The detainee had been arrested and taken to the jail and was intoxicated at the time of his admission. The admitting jail officer classified the detainee as a "suicide risk" because he admitted to previously attempting suicide and was on both clonazepam and valium. The officer checked on the detainee at intervals ranging from 7 minutes to 21 minutes, but did not turn on the audio system in the holding cell. The detainee used his long-sleeved shirt to hang himself on a metal-framed electrical conduit in the cell. The jailer was the only staff member on duty at the time. Before being assigned to work by himself he was given on-the-job training for 2½ weeks. The jailer was scheduled to attend a jailer training course but it was not offered for another month. At the time of the suicide the jailer had worked full-time

for approximately two months. (Fall River County Jail, South Dakota)

U.S. District Court
FAILURE TO TRAIN

Moore v. Hosier, 43 F.Supp.2d 978 (N.D.Ind. 1998). A former pretrial detainee sued a county sheriff's department and individual law enforcement officers alleging civil rights violations arising out of his treatment while he was being held in county confinement. The district court held that the restraint of the detainee by officers for the purposes of decontaminating him after a pepper spray cannister malfunctioned did not amount to assault and battery under state law. The detainee alleged that officers strapped him to a chair with his arms tied behind his back and beat him about his face and body, and placed his face and mouth in front of a shower. The court held that even if these allegations were true, they did not amount to an invasion of privacy under Indiana law. The court denied summary judgment for officers who did not participate in the beating of the detainee but witnessed it and had the opportunity to stop it. The court held that the sheriff's department did not negligently train its employees in the use of force, where the department had developed and maintained detailed procedures for training incoming officers in handling inmates, and the department policy specifically stated that officers were expected to use force only in a lawful and justifiable manner. The detainee admitted that he was intoxicated when officers arrived at the scene and that he fled on foot when they arrived. The detainee was involved with altercations with officers at a detention center, and was strapped into a restraining chair and was sprayed with pepper spray. (Allen County Confinement Center, Indiana)

U.S. District Court
FAILURE TO TRAIN

Owens v. City of Philadelphia, 6 F.Supp.2d 373 (E.D.Pa. 1998). The administratrix of a pretrial detainee's estate and his surviving children brought a § 1983 action against prison guards and officials and the City of Philadelphia to recover for the detainee's suicide. The district court found that fact questions precluded summary judgment in favor of the guards on questions of qualified immunity, deliberate indifference and the adequacy of the City's training program. According to the court, the detainee's statement to a guard that he felt "schizy" and that he was "going to hurt myself" raised questions of fact on issues of knowledge and deliberate indifference. According to the court, it was not necessary to show that a guard believed that harm would actually befall the detainee; rather, the detainee's children only needed to show that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. The guard called a psychiatrist knowing she intended to issue a pass for the detainee to go to the psychiatric unit but failed to note in the prison log the detainee's statement about hurting himself in order to inform the incoming officers and his superiors. There was nothing in the record that indicates that the pass was ever issued. The court also found that the officials' alleged conduct as policy-makers with respect to inadequate training to prevent suicide by pretrial detainees was actionable under § 1983 in a suit against them as individuals. The court held that whether the jail guards acted with objective reasonableness after they learned that the pretrial detainee was hanging in his cell involved questions of fact, precluding summary judgment. (Philadelphia Detention Center, Pennsylvania)

U.S. District Court
FAILURE TO TRAIN

Sanders v. Howze, 50 F.Supp.2d 1364 (M.D.Ga. 1998). The estate of a prisoner who committed suicide while in a county jail brought a § 1983 action against jail officials. The district court denied summary judgment for the officials finding it was barred by fact issues as to whether the officials were deliberately indifferent to the prisoner's known suicidal propensity and whether the county had adequate policies for dealing with potential suicides. The court also found a material issue of fact as to whether county jail officials were properly trained in dealing with potential suicides. After being confined in the jail for six weeks the prisoner removed a razor blade from a disposable razor and cut his wrists. He was transferred to a state hospital for a psychological evaluation but returned to the jail two months later. He was placed in an isolation cell near the jailer's office, where he hung himself a week later from a light fixture with a bed sheet. A few days earlier a judge had ordered a psychiatric evaluation which was in the process of being arranged by the sheriff. (Dougherty County Jail, Georgia)

U.S. District Court
FAILURE TO TRAIN

Vinson v. Clarke County, Ala., 10 F.Supp.2d 1282 (S.D.Ala. 1998). A § 1983 action was brought by the administrator of the estate of an intoxicated arrestee who had committed suicide while being held in a county jail. The district court granted summary judgment in favor of the defendants, finding that the sheriff and jailer acted within the scope of their discretionary authority and did not violate clearly established law. The court held that the county was not deliberately indifferent to the risks of suicide. According to the court, it was not clearly established in October 1994 that a county sheriff's failure to train jail personnel in the care of intoxicated inmates amounted to deliberate indifference. The court found that the risk of suicide among a class of intoxicated detainees at the county jail was not so obvious that the county's failure to remedy conditions of confinement which gave detainees the opportunity to commit suicide could be seen as showing deliberate indifference. The detainee committed suicide within 30 minutes of his admission by hanging himself from the bars of his jail cell. An autopsy revealed that the detainee's blood contained .205 percent alcohol, which was well over the maximum of .1 allowed under state DUI law. (Clarke County Jail, Alabama)

U.S. District Court
FAILURE TO TRAIN

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. Appeals Court
FAILURE TO TRAIN

Ellis v. Washington County and Johnson City, Tenn., 198 F.3d 225 (6th Cir. 1999). A mother and a minor child of a deceased pretrial detainee brought a wrongful death action under § 1983 against a city, county, and jailers after the detainee committee suicide in a county jail. The district court entered summary judgment for all defendants except for one jailer and the plaintiffs and jailer appealed. The appeals court affirmed, finding that the county's alleged failure to train jailers on suicide prevention was not the proximate cause of the detainee's injury absent any circumstances from which a reasonable jailer would have foreseen the suicide. The appeals court also found that one of the jailers was entitled to qualified immunity even though he made a mistake in assessing the detainee's suicidal tendencies because he was not deliberately indifferent toward the detainee and exhibited a genuine concern for the detainee's welfare while confined. But the appeals court refused to grant summary judgment for one jailer because of his alleged delay in informing an emergency medical team of his alleged observation of the detainee tying a noose in his cell. The detainee committed suicide by handing himself in a county jail three hours after his transfer from a city jail. The cell in which the detainee hung himself had a monitor camera at one end but was not designed as a suicide prevention cell. The detainee had been held overnight at a city jail after he was arrested because he was believed to be drunk or under the influence of drugs. After his arraignment the following morning he was taken to the county jail where, during the three hours preceding his suicide, "nothing occurred that would put reasonable jailors on notice of a possible suicide attempt" according to the appeals court. The detainee was asked about possible suicidal tendencies when he was admitted to the jail and responded that he "loved life." A few minutes later a jailer who had gone to high school with the detainee came on duty and was concerned about his mental health. The jailer found the detainee talking on the phone to his mother and seemingly crying. After the call the jailer asked the detainee if he was feeling suicidal and the detainee responded "Hell no, I've got a baby on the way that I've got to take care of." But most persuasive to the court was the statement iof the mother n a letter two months after the death of her son that her son was "not suicidal at 11:30 when I talked to him [on the phone]...knew he was getting out [of jail.]" The detainee's mother was an experienced, practicing, licensed clinical psychologist who held a Ph.D., and the court considered her statement to be an expert opinion. The appeals court held that it was "unreasonable to attribute fault to the County or its jailors for failing to predict suicide." (Johnson City Jail and Washington County Jail, Texas)

U.S. District Court
FAILURE TO TRAIN

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 Department of Corrections)

U.S. Appeals Court
FAILURE TO TRAIN

Grayson v. Peed, 195 F.3d 692 (4th Cir. 1999). The administrator for the estate of a deceased detainee sued officers and county officials under § 1983 asserting constitutional violations, negligence, gross negligence, negligent training and negligent supervision. The district court granted summary judgment for the defendants on all § 1983 claims and declined to assume supplemental jurisdiction over state law claims. The appeals court affirmed. The appeals court held that the officers did not use excessive force against the detainee, but rather that they applied the force necessary in a good faith effort to restore discipline. The court also found that there were no actionable deficiencies in the sheriff's policies, customs or training. According to the court, "...the appellant's own expert penologist conceded that [sheriff] Peed's policies met the standards of both the Virginia Board of Corrections and the American Correctional Association." The court also concluded, "...claims that [sheriff] Peed provided inadequate training for his employees must also fail. As of the time of this incident, the ADC had been accredited

for more than ten years by both the American Correctional Association and the National Commission on Correctional Health Care, two organizations whose training requirements often surpass minimal constitutional standards." (Fairfax County Adult Detention Center, Virginia)

U.S. District Court
FAILURE TO TRAIN

Hardy v. Town of Hayneville, 50 F.Supp.2d 1176 (M.D.Ala. 1999). An arrestee brought a § 1983 suit against an arresting officer, chief of police, mayor and town, alleging false imprisonment and use of excessive force. The court found that the arrestee's allegations that the police officer arrested him and detained him in a county jail without informing him of the nature and cause of the accusations against him were sufficient to state a Sixth Amendment claim. The court also found that allegations that the police chief and town failed to provide police officers with adequate training on the lawful use of force, and that the unlawful use of force would be condoned by their superiors, were sufficient to state a Fourth Amendment claim. The arrestee had been preaching the gospel and greeting people as they came into a store, with the permission of the owner. A police officer instructed the arrestee to leave the store and then allegedly followed the arrestee to the back of the store when he attempted to protest to the owner. The officer allegedly assaulted the arrestee and battered him about the head and back, threw him to the ground and struck his wrists repeatedly with unopened handcuffs. (Town of Hayneville, Alabama)

U.S. Appeals Court
FAILURE TO TRAIN

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 court noted that a suit against the sheriff in his official capacity is the equivalent of a suit against the county. The appeals court found that fact issues precluded summary judgment for the sheriff in his individual and official capacities on the detainee's failure to protect claims. 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. District Court
FAILURE TO TRAIN

Newby v. District of Columbia, 59 F.Supp.2d (D.D.C. 1999). A female inmate brought a § 1983 action alleging that she had been forced to participate in sex shows. The district court held that the District of Columbia violated the inmate's rights by failing to actively supervise improper sexual activities involving the entire prison population. The court noted that the District had a duty not only to train its officers in matters related to sexual contact between prison officers and inmates, but also to actively devise and implement a system of supervision of its first level of correctional officers in accordance with law. The inmate and other female inmates were forced to participate in strip-shows and exotic dancing on three occasions over a one month period. (District of Columbia Jail)

U.S. District Court
FAILURE TO TRAIN

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. District Court
FAILURE TO TRAIN

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 is 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
FAILURE TO TRAIN

Thornton v. City of Montgomery, 78 F.Supp.2d 1218 (M.D.Ala. 1999). The relatives of a jail inmate who committed suicide while in custody filed a wrongful death action. The district court granted summary judgment for the defendants, finding that the jail officials' failure to prevent the suicide did not violate sections 1985 and 1986 and that the city could not be held liable under § 1983. The court found that whether the jail officials handled the inmate under a mental health policy or under their suicide risk policy, they were no less diligent and were adequately trained in both policies. The court found that the city and the jail officials were not deliberately indifferent to the detainee's medical needs. The court held that the officials were not liable for failing to train jail officers and staff. The detainee died of asphyxiation and a spoon was found in his mouth. He had been placed in a cell reserved for inmates with mental health problems after he repeatedly claimed he was going to die during the admission process. (Montgomery City Jail, Alabama)

U.S. District Court
FAILURE TO TRAIN

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)

2000

U.S. District Court
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
FAILURE TO TRAIN

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)

2001

U.S. District Court
FAILURE TO TRAIN

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. District Court
FAILURE TO TRAIN

Craw v. Gray, 159 F.Supp.2d 679 (N.D.Ohio 2001). An arrestee sued law enforcement officers under § 1983 asserting claims for use of excessive force. The district court granted partial summary judgment in favor of the officers, finding that the allegations did not support a claim for inadequate training of an officer and that past "use of force" incident reports did not support the claim for inadequate supervision of the officer. According to the court, the assertion that a particular officer may be unsatisfactorily trained does not alone "suffice to fasten § 1983 liability" on a municipality for failure to train. The court noted that none of the reports showed that the deputy acted improperly. The officer had brought the arrestee to a county jail and during the booking process an altercation between the arrestee and the officer resulted in a right hip fracture and dislocation for the arrestee. (Mercer County Jail, Ohio)

U.S. District Court
FAILURE TO TRAIN

Gailor v. Armstrong, 187 F.Supp.2d 729 (W.D.Ky. 2001). The estate of a deceased pretrial detainee brought a § 1983 action against a county and correctional officers for the beating death of the detainee by officers. The district granted summary judgment in favor of the county, finding that there was insufficient evidence to hold the county liable, but denied summary judgment for the officers. The court held that fact issues remained as to whether the officers' use of force was excessive. The court ruled that the officers and their supervisor were not entitled to qualified immunity. The court held that the county was not liable under § 1983 because evidence that the officers failed to follow the county's use of force policy, officials allegedly falsified reports, and evidence that some officers received only limited use of force training, did not demonstrate custom or usage necessary to support a § 1983 claim. The court denied summary judgment for a supervisor who allegedly failed to intervene when she saw excessive force being used against the detainee. (Jefferson County Department of Corrections, Kentucky)

U.S. District Court
FAILURE TO TRAIN

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.(Sedgwick County Adult Detention Facility, Kansas)

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

Watkins v. City of Battle Creek, 273 F.3d 682 (6th Cir. 2001). The personal representative of the estate of a prisoner who died in jail custody, after denying that he had ingested cocaine and refusing medical treatment, brought a federal civil rights suit against a city, county and various officials and employees. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court held that the arresting officers and jail personnel were not deliberately indifferent to the detainee's rights in violation of the Fourteenth Amendment, and that the detainee was not punished in violation of the Fifth Amendment. The court found that the city and county could not be held liable for failure to train, in the absence of a constitutional violation by individual defendants. According to the court, jail personnel were not deliberately indifferent to the medical needs of the detainee even though he exhibited some behavioral symptoms at the time of intake, where the personnel asked the detainee whether he had swallowed drugs, stated that they would get him medical help if he had and that he would not face additional charges, and generally kept him under observation even though one officer failed to do so. (Battle Creek Police Department, Calhoun County Jail, Michigan)

U.S. Appeals Court
FAILURE TO TRAIN

Young v. City of Mount Ranier, 238 F.3d 567 (4th Cir. 2001). The parents of a boy who died in custody brought state law negligence, wrongful death claims, and constitutional claims under § 1983. Following removal from state court, the federal district court dismissed the complaint and the parents appealed. The appeals court affirmed in part and dismissed in part. The appeals court held that the conduct of officers who took the boy into custody for emergency psychiatric evaluation fell within the "middle range of culpability," between gross negligence and intentional misconduct, noting that the boy was owed the same duties owed to a more typical pretrial detainee. The appeals court held that the conduct of the officers fell short of deliberate indifference, as needed to establish § 1983 liability. The boy had resisted when officers tried to take him into custody. The officers used pepper spray to subdue him and then handcuffed him and placed him face down in the back seat of their police car. He was transported to a local hospital where he was found to have no pulse and efforts to resuscitate him failed. (Mount Ranier Police Dept., Maryland)

2002

U.S. District Court
FAILURE TO TRAIN

Bobbitt v. Detroit Edison Co., 216 F.Supp.2d 669 (E.D.Mich. 2002). An arrestee filed a § 1983 action in state court alleging that city police officers violated her constitutional rights in connection with her arrest for disorderly conduct. The district court granted summary judgment in favor of the defendants. The court held that the arrestee failed to establish liability with her allegations that a city jail was not clean, did not provide sufficient seating, and did not provide ready access to a telephone. According to the court, the arrestee's assertions that the city maintained inadequate policies for training and hiring its police officers, and that an arresting officer had been involved in one other incident of alleged misconduct, were insufficient to subject the city to liability under § 1983 for failing to provide adequate training. The arrestee alleged she was forced to stand for approximately five hours in a police holding cell, that the cell contained only a 4-inch concrete slab on which to sit, and that the slab was too low. (Eighth Precinct, Detroit Police Department, Michigan)

U.S. District Court
FAILURE TO TRAIN

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. 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. (Montgomery County Detention Facility, Alabama)

U.S. District Court
FAILURE TO TRAIN

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. (Fulton County Jail, Georgia)

U.S. District Court
FAILURE TO TRAIN

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
FAILURE TO TRAIN

McCurry v. Moore, 242 F.Supp.2d 1167 (N.D.Fla. 2002). A former state inmate brought a pro se § 1983 action against prison officials, individually and in their official capacity, alleging that he was held in prison beyond the expiration of his sentence. The inmate sought nominal, compensatory and punitive damages. The district court held that prison officials could not be held liable for failure to train or adequately supervise a classification officer who denied the former inmate's informal grievance. But the court found that fact issues precluded summary judgment on the claim that the classification officer violated the former inmate's right to timely release from prison. The court also found that other prison officials were not entitled to qualified immunity. (Florida Department of Corrections)

U.S. District Court
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
FAILURE TO TRAIN
MEDICAL CARE
MEDICAL SCREENING

Smith v. Lejeune, 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. (Laramie County Detention Facility, Wyoming)

U.S. Appeals Court
FAILURE TO TRAIN

Tucker v. Evans, 276 F.3d 999 (8th Cir. 2002). The estate of a prisoner who was killed in an attack by fellow inmates brought a § 1983 action against a prison employee and others, claiming they failed to protect him and that prison officials failed to properly train prison staff. The district court denied summary judgment to the defendants and they appealed. The appeals court reversed, finding that the prison officer did not show callous indifference to the prisoner and was therefore entitled to qualified immunity, and that the prison warden and supervisor did not violate the Eighth Amendment by filing to-train the officer. The court noted that the officer had no warning that the prisoner was at risk because he did not know about an argument between the prisoner and another inmate, and he observed the two watching television together later in the evening. According to the court, the officer received proper training by having completed a six-week training course at the state's corrections training academy and receiving subsequent on-the-job training. (East Arkansas Regional Unit, Arkansas Department of Correction)

2003

U.S. Appeals Court
FAILURE TO TRAIN

Cottone v. Jenne, 326 F.3d 1352 (11th Cir. 2003). The personal representative of the estate of a pretrial detainee who was killed by a mentally-ill co-inmate, brought a § 1983 action. The district court denied qualified immunity for the defendants and they appealed. The appeals court affirmed in part and reversed in part. The appeals court held that officers were not entitled to qualified immunity because they failed to monitor a known violent inmate that was housed in a unit for mentally ill inmates. The court held that supervisory officials were entitled to qualified immunity from § 1983 liability for their failure to train and supervise officers on duty at the time of the murder, absent an allegation of a constitutional violation on their part. (North Broward Detention Center, Florida)

U.S. District Court
FAILURE TO TRAIN

Thomas v. City of Clanton, 285 F.Supp.2d 1275 (M.D.Ala. 2003). A detainee brought a § 1983 action alleging that he was subjected to an unconstitutional strip search, and that he had been subjected to sexual harassment while confined. The district court granted summary judgment in favor of the defendants. The court held that the strip search violated the detainee's Fourth Amendment rights, but that officials were not liable for the unwarranted strip search conducted by an officer. The court also held that a single complaint of sexual misconduct against an officer did not put the police department on notice of the need for increased supervision of the officer. The detainee was a passenger in a car in which marijuana was found, but the driver's wife had told the arresting officer that the marijuana belonged to the driver. There was no reasonable suspicion that the detainee was concealing a weapon, but he was subjected to a strip search anyway. The detainee had been taken to the police station where he was never booked, but was subjected to a strip search that was conducted in a bathroom. The detainee was then taken to the officer's home where the officer discussed oral sex. The detainee fled from the officer's home. The court noted that the officer's violation of the detainee's rights was deliberate, and that no amount of training would have prevented the violation. The court also noted that the police chief had attempted to investigate an earlier complaint of sexual misconduct lodged against the officer. (City of Clanton, Alabama)

2004

U.S. District Court
MEDICAL CARE
FAILURE TO TRAIN

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 sheriff was 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. (Richmond City Jail, Virginia)

U.S. Appeals Court
FAILURE TO TRAIN

Gatlin ex rel. Gatlin v. Green, 362 F.3d 1089 (8th Cir. 2004). The estate of a cooperating witness in a murder investigation brought an action against a police officer and city. The witness was murdered after police allegedly released a prisoner's letter that identified the witness. The district

court entered summary judgment for the defendant and the estate appealed. The appeals court affirmed, finding that the city's failure to provide more training to police officers in witness and informant protection or the regulation of jail correspondence, was inadequate to support civil rights liability of the city under a failure-to-train theory. During a routine mail inspection, jail officials discovered that an accused murderer attempted to mail a transcript of the witness' police statement to a fellow gang member with a handwritten note that stated "Check this out. Something must be done about this." After consulting with the police, the transcript was eventually mailed, and the witness was subsequently murdered. (Carver County Detention Center, Minnesota)

U.S. District Court
FAILURE TO TRAIN
MEDICAL SCREENING
MEDICAL 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
FAILURE TO TRAIN

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
FAILURE TO TRAIN
SCREENING

Turney v. Waterbury, 375 F.3d 756 (8th Cir. 2004). A mother brought a civil rights action to recover damages related to the in-custody suicide of her son. The district court granted summary judgment in favor of the defendants and the mother appealed. The appeals court affirmed in part, and reversed in part and remanded. The appeals court held that the sheriff was not entitled to qualified immunity, where the sheriff knew of, but did not investigate, the arrestee's earlier suicide attempt at a jail from which he was transferred, did not permit a jailer to complete the arrestee's intake form, placed the arrestee in a cell alone with a bed sheet and exposed ceiling bars, and ordered the jailer not to enter the arrestee's cell without backup and yet left the jailer as the only staff member on duty at the jail. Before the arrestee was transferred to the jail in which he committed suicide, he had told jail staff that "he was going to hang it up" and shortly thereafter he was found in his cell with a bed sheet tied around his neck. During his processing into the next jail he told staff he did not want to return to prison, and that he would die and take someone with him if he received more than a 15 year sentence. The court found that training provided to county officials was not inadequate, where the county provided manuals that informed police officers how to recognize and respond to suicide risks. (Bennett County Jail, South Dakota)

U.S. Appeals Court
FAILURE TO TRAIN

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
FAILURE TO TRAIN

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 time 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
FAILURE TO TRAIN

Ziemba 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
FAILURE TO TRAIN

Davis ex rel. Davis v. Borough of Norristown, 400 F.Supp.2d 790 (E.D.Pa. 2005). A parent and minor child brought a § 1983 action against a borough and police officers, alleging constitutional violations in connection with the child's arrest and detention after the child dropped bottles of beer that he was holding and fled. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that fact issues existed as to whether the borough had a policy or custom of detaining juveniles for underage drinking. The court also found fact issues as to whether officers' conduct was reckless or callous with respect to the force used in the arrest. The child alleged that he was tackled into cement steps, punched in the face, kicked in the face and that his arm was pulled so hard that it broke his shoulder. According to the court, the plaintiffs failed to establish that the borough had a custom or policy of inadequately training its officers in the use of force. (Borough of Norristown, Pennsylvania)

U.S. District Court
FAILURE TO TRAIN

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. Appeals Court
FAILURE TO TRAIN

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. District Court
FAILURE TO TRAIN

Harvey v. County of Ward, 352 F.Supp.2d 1003 (D.N.D. 2005). The surviving spouse of a jail inmate who died after a suicide attempt brought an action under § 1983 and state law, alleging deliberate indifference to the inmate's known risk of suicide. The district court granted summary judgment in favor of the defendants. The district court held that the plaintiff failed to establish that the sheriff and jail administrator knew of the inmate's potential risk of suicide. According to the court, evidence of conversations between the spouse and jail employees about the inmate's suicide risk, an officer's note that the inmate's wife thought that they should keep an eye on the inmate, and another officer's report that the inmate may have been trying to save up some of his medications to take at another time, was insufficient to establish that the sheriff and jail administrator knew of the inmate's potential risk of suicide. The court found that the county was not deliberately indifferent to the training of its employees on inmate suicide prevention. The court held that the jail's suicide prevention policy appeared reasonable and comprised an effort to prevent suicides, even if the policy had not been updated in recent years, and the jail was not accredited by the American Correctional Association (ACA). The court noted that the policy set forth a detailed list of factors to identify potentially suicidal inmates, set forth a procedure for identification and screening of inmates, and required ongoing training in the implementation of suicide prevention and intervention for all staff. (Ward County Jail, North Dakota)

U.S. District Court
FAILURE TO TRAIN

Jeanty v. County of Orange, 379 F.Supp.2d 533 (S.D.N.Y. 2005). A county jail inmate whose arm was broken in an altercation with corrections officers sued the officers and the county, alleging excessive use of force. 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 by fact issues as to whether excessive force was applied when the officers allegedly beat the prisoner in his cell to the point of breaking his arm, and wantonly ignored his cries of pain and pleas that they desist. The court also found that summary judgment was precluded by issues of fact as to whether the officers were entitled to qualified immunity. According to the court, the conviction of the inmate for assaulting an officer, arising out of the same incident, did not preclude the inmate's claim. The court held that the Eighth Amendment, not the Fourteenth Amendment, applied to this action because the inmate had been convicted of arson and was awaiting sentencing. (Orange County Jail, New York)

U.S. District Court
FAILURE TO TRAIN

Mann ex rel. Terrazas v. Lopez, 404 F.Supp.2d 932 (W.D.Tex. 2005). Representatives of the estates of two detainees who had committed suicide while confined brought an action against a sheriff and jail officers, alleging failure to supervise and failure to train. The district court found that the sheriff was entitled to qualified immunity for failing to prevent the detainees' suicides, where there was no evidence that the sheriff was personally aware of any suicidal thoughts the detainees might have had and did not personally direct any actions involving the detainees during their incarceration. The court ordered further proceedings to determine if the sheriff's failure to modify his policies regarding potentially suicidal detainees was an intentional choice, or merely unintentionally negligent oversight. One inmate was known to have mental health problems and was housed in a mental health unit that provided a 1 to 18 officer to inmate ratio, compared to the 1 to 48 ratio required by state standards. The inmate hanged himself using a torn-up bed sheet. The other inmate was being held in a new detox cell and was founding hanging four minute after she had been visually observed by an officer. She also used a bed sheet to hang herself. (Bexar County Adult Detention Center, Texas)

U.S. Appeals Court
MEDICAL CARE
MEDICAL SCREENING

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
TRAINING

Niemyjski v. City of Albuquerque, 379 F.Supp.2d 1221 (D.N.M. 2005). An arrestee brought a state court action against a city, alleging that police officers committed a civil rights violation in connection with his arrest and detention. The action was removed to federal court, where the district court granted summary judgment for the city and remanded state law claims. The court held that the arrestee failed to show that a municipal custom or policy contributed to the alleged violations. The court noted that the city's policy manual stated that staff were required to received training in the legitimate use of force and restraints, and that no correctional officer was permitted to work with inmates until and unless such training was successfully completed. The arrestee had been placed in a holding cell. When he was denied the opportunity to make a telephone call he protested by refusing to have his photograph taken. Because of his resistance, jail officers used force to position him to take his photograph. The arrestee and the officers later traded racial insults. He was taken up stairs rather than an elevator, and he fell down and alleged that officers punched and kicked him resulting in an injury to his ribs. He was released less than 24 hours after his arrest on a warrant. (Bernalillo County Det. Center, New Mexico)

U.S. Appeals Court
FAILURE TO TRAIN
MEDICAL SCREENING

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. Appeals Court
FAILURE TO TRAIN

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
FAILURE TO TRAIN

Buchanan v. Maine, 417 F.Supp.2d 24 (D.Me. 2006). The personal representative of a mentally ill suspect who had been fatally shot by a deputy sheriff brought an action against a state, county, and various officials and officers, alleging civil rights violations. The county and officers moved for summary judgment, which the district court granted. The court held that the deputy sheriffs' warrantless entry of a mentally ill suspect's home was reasonable under the Fourth Amendment, pursuant to the emergency doctrine. According to the court, the deputies had reasonable belief that the suspect posed an immediate threat to his own safety, and developing circumstances at the scene, the late time of day, winter conditions, and the remote location of the suspect's residence made it more reasonable for deputies to enter the home immediately instead of obtaining a warrant. The court found that the personal representative failed to establish that a reasonable officer would have understood his conduct in entering the suspect's home without a warrant contravened clearly established law, and thus the deputies were entitled to qualified immunity as to the Fourth Amendment claim. The court concluded that the deputies would have had reasonable grounds to believe that the protective custody criteria under state law were met. According to the court, a deputy sheriff's shooting of a mentally ill suspect after he had stabbed another deputy did not constitute excessive force, and thus was reasonable under the Fourth Amendment. The other deputy was attacked after attempting to take the suspect into protective custody, and the deputy who shot the suspect had reasonable belief that the other deputy was threatened with death or serious physical injury. The court held that the personal representative

failed to demonstrate that the county had a custom or policy relating to mentally ill persons that resulted in deprivation of Fourth Amendment rights, as required to establish the county's municipal liability under § 1983. According to the court, there was no evidence that the county's alleged failure to train officers constituted a well-settled and widespread custom or practice, and that there was no need for increased training in proper methods for making warrantless arrests or for engaging mentally ill and potentially combative persons when the deputy was hired. (Lincoln County, Maine)

U.S. Appeals Court
FAILURE TO TRAIN
MEDICAL CARE

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. Appeals Court
FAILURE TO TRAIN

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
FAILURE TO TRAIN

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. Appeals Court
FAILURE TO TRAIN

Walker v. City of Orem, 451 F.3d 1139 (10th Cir. 2006). Two separate actions were brought against a county and individual officers arising out of a police shooting and the subsequent detention of witnesses to the shooting. The district court granted the officers' motion for summary judgment based on qualified immunity. The appeals court held that the 90-minute detention of witnesses to a police shooting was not reasonable for investigative purposes under the Fourth Amendment, but that the constitutional rights of the witnesses to a police shooting to not be detained for 90 minutes following the shooting was not clearly established at the time. According to the court, the witnesses to the shooting failed to establish the county's policy or custom to train its officers concerning the constitutional limitations on detention of witnesses in connection with the police shooting investigations. (Utah County Sheriff's Office, Utah)

U.S. District Court
FAILURE TO TRAIN

Wilson v. *Maricopa County*, 463 F.Supp.2d 987 (D.Ariz. 2006). In a civil rights suit arising from a fatal assault on a county jail inmate by other inmates, the county defendants filed motions for summary judgment on all claims. The plaintiffs filed a motion for reconsideration of the court's order that had dismissed the county sheriff's office. The summary judgment motions were granted in part and denied in part; the motion for reconsideration was denied. The court held that summary judgment on Eighth Amendment liability for the fatal assault on the inmate was precluded by genuine issues of material fact as to: (1) whether the county, through its final policy maker the sheriff, implemented policies, customs, and practices with the requisite subjective intent of deliberate indifference; (2) whether the county, through the sheriff, failed to act in the face of obvious omissions and likely constitutional violations; and (3) whether that failure to act caused a constitutional violation. The court held that the estate sufficiently alleged a § 1983 claim against the sheriff in his individual capacity by alleging that the sheriff was directly liable under § 1983 for being deliberately indifferent in failing to supervise and train jail officers in appropriate, lawful, and constitutional policies and procedures for providing a safe environment for inmates. The court also found that the estate sufficiently alleged a claim that the sheriff was deliberately indifferent in fostering, encouraging, and knowingly accepting formal and informal jail policies condoning brutality among the inmates and indifference to proper supervision. According to the court, a jail supervisor could be found to have been deliberately indifferent to the safety of the inmate if he knew that not having an officer on the ground in the jail yard posed a risk of violence among the inmates and nonetheless allowed an officer to cover both the yard and another post, which required the officer to leave the yard unattended for a significant period of time. (Maricopa County Facility, known as "Tent City", Phoenix, Arizona)

2007

U.S. District Court
FAILURE TO TRAIN

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 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 appeals court found that the detainee's allegation that policies or practices of the District of Columbia Department of Corrections (DOC) pertaining to training, supervision and discipline of employees responsible for the detainees' release from DOC custody resulted in his untimely release from jail, in violation of his constitutional rights, stated a claim for municipal liability under § 1983. 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 the 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
FAILURE TO TRAIN
MEDICAL CARE
MEDICAL SCREENING

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
FAILURE TO TRAIN

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 theform 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
MEDICAL SCREENING

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 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 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. (Cook County Jail, Illinois).

U.S. District Court
MEDICAL CARE

Thomas v. *Sheahan*, 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
FAILURE TO TRAIN
MEDICAL CARE

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 found that the county did not act with deliberate indifference in its training and supervision of county jail personnel in dealing with inmates' medical needs, absent a showing of a pattern or a recurring situation of tortuous conduct by inadequately trained employees. (Montgomery County Jail, Texas)

2008

U.S. District Court
FAILURE TO TRAIN
MEDICAL CARE

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 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
FAILURE TO TRAIN
MEDICAL CARE

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
FAILURE TO TRAIN

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. District Court
FAILURE TO TRAIN

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
FAILURE TO TRAIN

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 the 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. Appeals Court
MEDICAL CARE
NEGLIGENCE

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 found there was no question that some dispersal of pepper spray was warranted in carrying out the extraction. But the officer's final burst of pepper spray was deployed after the inmate had laid down on the floor, and the officer and members of the extraction team never changed the inmate's clothing or removed the spit mask covering his nose and mouth and never secured medical treatment for the inmate. Although the inmate proffered his hands through the door pursuant to the officer's order, albeit in front of rather than behind him, the officer deployed several additional bursts of pepper spray even after the inmate attempted to comply with the order, and the inmate never reacted violently. 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
FAILURE TO TRAIN

Jones v. *Taylor*, 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 attened 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)

U.S. District Court
FAILURE TO TRAIN

Parker v. *Bladen County*, 583 F.Supp.2d 736 (E.D.N.C. 2008). The administratrix of a detainee's estate brought a § 1983 action in state court against county defendants, alleging that they used excessive force when they used tasers on her. The defendants removed the action to federal court. The county and sheriff's department moved to dismiss. The district court granted the motion. According to the court, under North Carolina law, the sheriff, not the county encompassing his jurisdiction, has final policymaking authority over hiring, supervising, and discharging personnel in the sheriff's office. The court found that the sheriff's deputies' alleged use of excessive force in attempting to control the detainee by use of tasers, and the sheriff's department's alleged failure to train and supervise its employees as to the use of tasers, could not be attributed to the county, so as to subject it to § 1983 liability for the detainee's death. The court held that the county sheriff's department lacked the legal capacity, under North Carolina law, to be sued under § 1983 liability for the detainee's death. (Bladen County Sheriff's Department, North Carolina)

U.S. Appeals Court
FAILURE TO TRAIN
MEDICAL CARE
MEDICAL
SCREENING
NEGLIGENCE

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 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. 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
FAILURE TO TRAIN

Walker v. *Sheahan*, 526 F.3d 973 (7th Cir. 2008). A pretrial detainee brought a § 1983 action against county correctional officers, a county sheriff, and a county, alleging that the officers used excessive force against him, deprived him of access to medical care, and retaliated against him. The district court granted summary judgment in favor of the defendants. The detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the sheriff's office was not liable under § 1983 because the detainee failed to demonstrate that the sheriff's office had a pattern of widespread use of excessive force, inadequate investigation and training regarding use of force, or a code of silence. The court noted that although 783 complaints of excessive force were made against the sheriff's office over a five-year period, none resulted in an indictment, the the training the officers received imposed limitations on the amount of force they could use, and that officers weredisciplined for the use of excessive force. The court held that summary judgment for the officers was precluded by a genuine issue of material fact as to whether the injuries sustained by the detainee were consistent with his account of the restraint incident involving county corrections officers. (Cook County Jail, Illinois)

U.S. Appeals Court
FAILURE TO TRAIN

Whitt v. *Stephens County*, 529 F.3d 278 (5th Cir. 2008). The father of a pretrial detainee who purportedly hanged himself while incarcerated at a county jail brought a § 1983 action against a county, the county sheriff, and unknown jail officials. The district court granted summary judgment in part in favor of jail officials and the sheriff in their individual capacities. The father appealed. The appeals court affirmed. The district court denied the father's motion for leave to amend the complaint to identify the unknown jail officials, and granted summary judgment in favor of the defendants on remaining claims. The father again appealed. The appeals court affirmed. The court held that the amended complaint to substitute named county jail officials for unknown jail officials did not relate back to the original complaint, for the purpose of avoiding a statute of limitations bar. The court held that the county was not liable under § 1983 for the detainee's purported suicide, where the county had adequate policies and procedures for detainees who posed an obvious risk of suicide, the detainee did not indicate that he was suicidal on an intake form or otherwise exhibit obvious suicidal tendencies, and the county was not deliberately indifferent in failing to train or supervise county jail officials. The court noted that in the specific context of jail suicide prevention, municipalities must provide custodial officials with minimal training to detect the obvious medical needs of pretrial detainees with known, demonstrable, and serious medical disorders, but a failure to train custodial officials in screening procedures to detect latent suicidal tendencies does not rise to the level of a constitutional violation. The court found that in the absence of manifest signs of suicidal tendencies, a city may not be held liable for a pretrial detainee's jailhouse suicide in a § 1983 suit based on a failure to train. (Stephens County Jail, Texas)

2009

U.S. District Court
FAILURE TO TRAIN

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

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. District Court
FAILURE TO TRAIN

Estate of Gaither ex rel. Gaither v. *District of Columbia*, 655 F.Supp.2d 69 (D.D.C. 2009). The personal representative of the estate of a prisoner, who was killed while incarcerated, brought a § 1983 action against the District of Columbia and several individual officials and jail employees, alleging negligence, deliberate and reckless indifference to allegedly dangerous conditions at a jail, and wrongful death. The district court granted summary judgment in part and denied in part. The court found that summary judgment was precluded by genuine issues of material fact as to: (1) whether the District of Columbia's inmate and detainee classification policies, procedures, and practices were inadequate; (2) whether the District of Columbia's jail staffing policies, procedures, and practices were inadequate; (3) whether the security policies, procedures, and practices were inadequate; (4) whether the District of Columbia adequately trained Department of Corrections officials; and (5) whether officials provided adequate supervision of inmates. (District of Columbia Central Detention Facility)

U.S. District Court
FAILURE TO TRAIN

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
FAILURE TO TRAIN
MEDICAL 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. District Court
FAILURE TO TRAIN

Hardy v. *District of Columbia*, 601 F.Supp.2d 182 (D.D.C. 2009). Pretrial detainees, allegedly assaulted by fellow inmates, brought a suit against the former Director of the District of Columbia Department of Corrections and a former jail warden in both their official and individual capacities, and against the District of Columbia. The detainees sought damages under § 1983 for alleged Fifth and Eighth Amendment violations. The district court dismissed the case in part. The court held that the detainees' § 1983 official capacity claims against the

former Director and former jail warden were redundant to the claims against the District of Columbia, warranting dismissal. The court noted that claims brought against government employees in their official capacity are treated as claims against the employing government and serve no independent purpose when the government is also sued. The detainees alleged that before the scalding attacks that injured them, one of the very assailants had committed a similar scalding attack using water heated in an unguarded microwave, and that the locations where their assaults occurred were inadequately staffed with corrections officers and resulted in the assaults taking place without any officers in the vicinity. The court held that these allegations were sufficient to plead conditions of detention that posed a substantial risk of serious harm, as required to state a failure-to-protect claim against the Director of the District of Columbia Department of Corrections and the jail warden. The court found that the detainees' allegation that the Director and jail warden were deliberately indifferent to negligent supervision of correctional officers and lack of staff training, was sufficient to state a § 1983 failure to train claim violative of their due process rights. The detainees alleged that the warden and Director were at the top of the "chain of command" at the jail, that they had been aware of violence issues for many years, and that they had been instructed to take action against violence on numerous occasions. The district court denied qualified immunity for the Director and jail warden, noting that the detainees' due process rights against deliberate indifference were clearly established at the time of violent scalding attacks by fellow inmates. (District of Columbia Jail)

U.S. District Court
FAILURE TO TRAIN

Jackson v. *Gerl*, 622 F.Supp.2d 738 (W.D.Wis. 2009). A prisoner brought a § 1983 action against a warden and other prison officials, alleging that the use of a stinger grenade to extract him from his cell constituted excessive force in violation of the Eighth Amendment, and that an abusive strip search following the deployment of the grenade also violated the Eighth Amendment. The defendants moved for summary judgment and the district court granted the motion in part and denied in part. The court held that a prison lieutenant's extraction of the prisoner from inside his cell by means of a stinger grenade, which when detonated created a bright flash of light, emitted a loud blast accompanied by smoke, and fired rubber balls, was not "de minimis," as would bar a claim for excessive force under the Eighth Amendment. The court found that summary judgment was precluded by genuine issues of material fact as to whether the extraction of the prisoner from his cell by means of a stinger grenade was malicious and sadistic, or whether the use was in a good-faith effort to maintain or restore discipline. The court held that the prison security director's authorization of the prisoner's extraction by means of a stinger grenade was not malicious and sadistic, as required to establish excessive force under the Eighth Amendment. According to the court, the director was aware that the prisoner was refusing to cooperate, the prisoner had invited officials to "suit up" to "come in and play," and had covered his window and had put water on the floor. The director knew that tasers and incapacitating agents could not be used against the prisoner, and relied on the lieutenant's statements that she had been trained and was certified in the use of the grenade, having never used one himself. According to the court, the prison's training captain and the commander of the emergency response unit did not provide inadequate training on the use of a stinger grenade, with a deliberate or reckless disregard to the prisoners' Eighth Amendment rights against excessive force, as required to subject the captain to § 1983 liability, even though the captain advised trainees that stinger grenades could be used in a cell and did not tell them of the danger of using the grenade in the presence of water. The captain lacked knowledge that using the grenade in a cell or in the presence of water would likely be an excessive use of force even where immediate weapons would otherwise be justified. (Wisconsin Secure Program Facility)

U.S. Appeals Court
FAILURE TO TRAIN

Lewis v. *City of West Palm Beach, Fla*., 561 F.3d 1288 (11th Cir. 2009). The survivor of a detainee who had died in police custody brought a § 1983 action against a city and against individual officers, alleging use of excessive force. The district court granted summary judgment for the defendants and the survivor appealed. The appeals court affirmed. The court held that the detainee's right not to be restrained via "hobbling" and being "hogtied" was not clearly established. The detainee became unconscious and died during detention. According to the court, the officers' conduct was not so egregious as to be plainly unlawful to any reasonable officer, given the detainee's agitated state when first detained and given his continued uncooperative and agitated state, presenting a safety risk to himself and others, during restraint. After handcuffing the detainee did not prevent his continued violent behavior, the officers attached an ankle restraint to the handcuffs with a hobble cord (also known as "TARP," the total appendage restraint position). The hobble was tightened so that Lewis's hands and feet were close together behind his back in a "hogtied" position. The court held that the city was not potentially liable for failure to train officers in the use of restraints, where the need for training in the application of "hobble" restraints did not rise to the level of obviousness that would render the city potentially liable under § 1983 for deliberate indifference based on the failure to administer such training. The court noted that hobble restraints did not have the same potential flagrant risk of constitutional violations as the use of deadly firearms. (West Palm Beach Police Department, Florida)

U.S. District Court
FAILURE TO TRAIN
MEDICAL CARE

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
FAILURE TO TRAIN
MEDICAL CARE
SCREENING

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 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. District Court
FAILURE TO TRAIN

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)

2010

U.S. District Court
FAILURE TO TRAIN
MEDICAL CARE

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 TRAIN
MEDICAL CARE

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
MEDICAL CARE

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. Appeals Court
FAILURE TO TRAIN

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. 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
FAILURE TO TRAIN
MEDICAL CARE

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
FAILURE TO TRAIN

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. District Court
FAILURE TO TRAIN

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
FAILURE TO TRAIN
MEDICAL
SCREENING

Teague v. *St. Charles County*, 708 F.Supp.2d 935 (E.D.Mo. 2010). The mother of a detainee who committed suicide in a cell in county detention center brought an action against the county and corrections officials, asserting claims for wrongful death under § 1983 and under the Missouri Wrongful Death Statute. The county and the commanding officer moved to dismiss for failure to state a claim. The district court granted in the motion, in part. The court held that the mother failed to allege that the detention center's commanding officer personally participated. The court found that the mother's allegations that her son was demonstrating that he was under the influence of narcotics at the time of his detention, that her son had expressed suicidal tendencies, and that jail employees heard or were told of choking sounds coming from her son's cell but took no action, were sufficient to state a Fourteenth Amendment deliberate indifference claim under § 1983. The court held that the

mother's allegation that the county unconstitutionally failed to train and supervise its employees with respect to custody of persons with symptoms of narcotics withdrawal and suicidal tendencies was sufficient to state a failure to train claim against the county, under § 1983, arising out of the death of her son who committed suicide while housed as a pretrial detainee. The detainee had used a bed sheet to hang himself and the mother alleged that the county failed to check him every 20 minutes, as required by jail policy. (St. Charles County Detention Center, Missouri)

U.S. District Court
MEDICAL CARE
MEDICAL SCREENING

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)

2011

U.S. Appeals Court
FAILURE TO TRAIN
MEDICAL SCREENING

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)

U.S. District Court
FAILURE TO TRAIN

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 TRAIN
MEDICAL CARE
MEDICAL SCREENING

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 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
MEDICAL CARE
FAILURE TO TRAIN

Palmer v. *Board of Com'rs for Payne County Oklahoma*, 765 F.Supp.2d 1289 (W.D.Okla. 2011). A former pretrial 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. District Court
FAILURE TO TRAIN

Pauls v. *Green*, 816 F.Supp.2d 961 (D.Idaho 2011). A female pretrial detainee brought an action against a county, county officials, and a jail guard, alleging that she was coerced into having inappropriate sexual contact with the guard. The defendants moved to dismiss and for summary judgment, and the plaintiff moved to compel discovery and for sanctions. The district court granted the motions, in part. The court held that the detainee was not required to file grievances after being transferred to a state prison before filing her § 1983 action, in order to satisfy the administrative exhaustion requirement under the Prison Litigation Reform Act (PLRA). The court noted that the county jail grievance procedures were not available to detainees after they transferred, and the county did not offer any assistance to the detainee after learning of the alleged assaults. The court found that neither the county nor the county sheriff was deliberately indifferent in failing to train or supervise county jail guards to not sexually assault jail detainees, and thus, the female detainee could not demonstrate that the county or sheriff was liable under § 1983. According to the court, the guards did not need specific training to know that they should refrain from sexually assaulting detainees, and there was no showing that the general training program for guards was deficient or that there was a pattern of prior abuses at county jail. (Adams County Jail, Idaho)

U.S. Appeals Court
FAILURE TO TRAIN
TRAINING

Porter v. *Epps*, 659 F.3d 440 (5th Cir. 2011). A prisoner who was detained for 15 months beyond his release date as the result of a mistake by employees of the Mississippi Department of Corrections (MDOC) brought suit under § 1983 to recover for alleged violation of his due process rights. The district court denied a motion for judgment as a matter of law filed by the Commissioner of the MDOC on a qualified immunity theory, and the Commissioner appealed. The appeals court reversed, finding that the prisoner did not satisfy the burden of showing that failure on the part of the Commissioner of the MDOC to promulgate a policy to prevent such mistakes by his subordinates was objectively unreasonable in light of clearly established law. The court found that the prisoner failed to satisfy burden of showing that failure on the part of the Commissioner of the MDOC to train employees to prevent such mistakes was objectively unreasonable in light of clearly established law, and the Commissioner was qualifiedly immune from liability under § 1983 on a failure-to-train theory, given evidence that the employees of the MDOC's records department had all attended training sessions with a lawyer to ensure that they better understood court orders. According to the court, the fact that an employee erred in one instance did not show that the Commissioner's alleged actions in failing to train were objectively unreasonable. (Mississippi Department of Corrections, Intensive Supervision Program)

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

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
FAILURE TO TRAIN
MEDICAL CARE

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)

2012

U.S. District Court
FAILURE TO TRAIN
NEGLIGENCE

Ard v. *Rushing*, 911 F.Supp.2d 425 (S.D.Miss. 2012). A female inmate brought an action against a sheriff and a deputy asserting claims under § 1983 and § 1985 for violation of the Fourth, Fifth and Eighth Amendments, and also alleging a state law claim for negligence, relating to an incident in which she was sexually assaulted by the deputy while she was incarcerated. The sheriff moved for summary judgment. The district court granted the motion. The court held that the sheriff was not deliberately indifferent to a substantial risk of harm to the female jail inmate as would have violated the Eighth Amendment, where the sheriff had established safeguards to ensure the safety of female prisoners, including a female-only, camera-monitored area in which female inmates were housed, a policy that male jailers could not enter the female-only area without a female jailer, and a policy that a female jailer was to cover each shift. The court noted that past allegations that the deputy had engaged in unwanted sexual contact with female inmates had been investigated and found not to be substantiated. The court found that the inmate failed to show that the sheriff had knowledge of the deputy's disregard of the sheriff's policy to ensure the safety of female prisoners, which included a requirement that male jailers could not enter the female-only area without a female jailer, or to show that the sheriff was deliberately indifferent to the need for more or different training, as required to establish an Eighth Amendment failure to train/supervise claim. (Lincoln County Jail, Mississippi)

U.S. District Court
FAILURE TO TRAIN
NEGLIGENCE

Edmond v. *Clements*, 896 F.Supp.2d 960 (D.Colo. 2012). A parolee brought a civil rights action alleging that his constitutional rights were violated when he failed to receive a $100 cash payment upon his release from a state prison to parole, and by state corrections officials' failure to perform a proper sex offender evaluation, which resulted in the parolee being improperly ordered to participate in sex offense treatment that included a requirement that he have no contact with his children. The defendants moved to dismiss. The district court granted the motion. The district court held that: (1) the private sex offender treatment program that contracted with the state and its employees did not qualify as “state actors,” and thus, could not be liable in the parolee's § 1983 claim; (2) the claim against the executive director of the state department of corrections in his official capacity for recovery of a cash payment was barred by the Eleventh Amendment; (3) the executive director was

not personally liable for the cash payable to the parolee upon release; (4) the officials were not liable under § 1983 for their alleged negligent supervision, failure to instruct or warn, or failure to implement proper training procedures for parole officers; (5) the parolee's equal protection rights were not violated; and (6) the allegations stated a due process claim against corrections officials. According to the court, allegations by the parolee that Colorado department of corrections officials failed to perform a proper sex offender evaluation prior to releasing him on parole, as required by Colorado law, which allegedly resulted in a parole condition that he have no contact with his children, stated a due process claim against the corrections officials. (Bijou Treatment & Training Institute, under contract to the Colorado Department of Corrections)

U.S. District Court
FAILURE TO TRAIN

Facey v. *Dickhaut*, 892 F.Supp.2d 347 (D.Mass. 2012). A prisoner at a state correctional institution filed a pro se § 1983 action against the prison and officials alleging his Eighth Amendment right to be free from cruel and unusual punishment was violated when officials knowingly placed him in danger by assigning him to a housing unit where he was violently attacked by members of a rival gang. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the complaint stated a claim against the deputy superintendent and an assistant for violation of the Eighth Amendment, by alleging that officials were aware of the feud between two rival prison gangs, that the prisoner was a known member of one of the gangs, that despite this knowledge officials had assigned the prisoner to a section of the prison where a rival gang was housed, and as a result he was violently attacked and sustained permanent injuries. The court found that the official who had instituted the gang housing policy could not be held personally liable, since he did not implement the policy, nor was he deliberately indifferent in supervising or training those who did. According to the court, state prison officials who had placed the prisoner known to be a gang member in danger by assigning him to a housing unit where he was violently attacked by members of a rival gang, were not entitled to qualified immunity in the prisoner's § 1983 suit. The court noted that clearly established law provided that the Eighth Amendment was violated if officials disregarded a known, substantial risk to an inmate's health or safety, and the officials had disregarded this risk, as well as violated a prison policy, by placing rival gang members in same housing unit. (Souza Baranowski Correctional Center, Massachusetts)

U.S. District Court
FAILURE TO TRAIN

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 for violations of the musician's First, Fourth, and Fourteenth Amendment rights.

The court found that the musician's allegations that the county sheriff was, at all times relevant to the musician's claims related to his arrest and imprisonment, a commissioned law enforcement officer and the duly-elected sheriff and chief policy maker for county sheriff's office, that the deputy sheriff was a commissioned law enforcement officer acting as a marshal for Cherokee Nation and a deputy sheriff for the county's sheriff's office, and that the deputy sheriff was acting as the sheriff's employee during events giving rise to the musician's claims, were sufficient to demonstrate that the sheriff was responsible for the deputy's training and supervision, as required for the musician's § 1983 inadequate training claim against county sheriff in his official capacity. The court held that the musician's allegations that the seizure and search of his person were unconstitutional because the underlying conduct for which he was seized was legal and did not provide lawful grounds upon which to base his arrest and the subsequent searches of his person, stated a § 1983 claim against the county sheriff in his official capacity. (Cherokee Casino, Rogers County Jail, Oklahoma)

U.S. District Court
FAILURE TO TRAIN
NEGLIGENCE

Harris v. *Hammon*, 914 F.Supp.2d 1026 (D.Minn. 2012). A prisoner brought a § 1983 action against a county and various officials with the state department of corrections (DOC), alleging violations of the Eighth and Fourteenth Amendments, as well as state law claims for false imprisonment, intentional infliction of emotional distress (IIED), and negligent infliction of emotional distress (NIED). The defendants moved for summary judgment and for judgment on the pleadings. The district court granted the motion in part and denied in part. The court held that there was no evidence of a continuing, widespread pattern of misconduct on account of county employees in not releasing prisoners pursuant to court orders, as required for the prisoner's § 1983 failure-to-train claims against the county for alleged violations of the Eighth and Fourteenth Amendments. The prisoner had been held for more than five days after a judge ordered his release pending his appeal. According to the court, the former prisoner's allegations were sufficient to plead that department of corrections (DOC) employees were deliberately indifferent to the prisoner's liberty rights under the Fourteenth Amendment, as required to state a § 1983 claim for violations of his due process rights based on his continued detention after a court ordered his release. The prisoner alleged that he had a court order for his release but he was returned to prison, that a judge faxed and mailed the release order to the prison after being contacted by the prisoner's attorney the next day, that the judge's clerk also telephoned employees to inform them that the prisoner was to be released, that one employee did not respond to calls from the prisoner's attorney, that another employee told the attorney he would have to hand deliver a certified copy of order by the end of her shift in three minutes so that the prisoner could be released before the weekend, and that employees told the attorney several days later that they might not be able to release the prisoner because the order could be invalid. The court also held that the prisoner's allegations were sufficient to plead that his continued detention, after his release was ordered by a judge, violated a clearly established right, as required to overcome qualified immunity for department of corrections (DOC) employees. (Lino Lakes Correctional Facility, Ramsey County Jail, Minnesota)

U.S. Appeals Court
FAILURE TO TRAIN

Livers v. *Schenck*, 700 F.3d 340 (8th Cir. 2012). Two pretrial detainees, who were arrested for murder, but who were subsequently released after their charges were dropped, brought a § 1983 action against a county sheriff and investigating officers, alleging violations of their Fourth, Fifth, and Fourteenth Amendment rights. The district court entered an order denying the defendants' motions for summary judgment, and they appealed. The appeals court affirmed in part, denied in part, and remanded. The court held that summary judgment was precluded by fact issues as to whether a detainee's confession was coerced, and whether officers fabricated evidence. The court held that the sheriff could not be liable under § 1983 for his alleged failure to train investigating officers not to fabricate evidence, since any reasonable officer would know that fabricating evidence was unacceptable. (Cass County Sheriff's Office, Nebraska)

U.S. Appeals Court
FAILURE TO TRAIN
MEDICAL CARE

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. District Court
FAILURE TO TRAIN
MEDICAL CARE

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 Department, Illinois)

U.S. District Court
FAILURE TO TRAIN
MEDICAL CARE

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. District Court
FAILURE TO TRAIN
NEGLIGENCE

Rogers v. *District of Columbia*, 880 F.Supp.2d 163 (D.D.C. 2012). A former prisoner brought an action against the District of Columbia, alleging he was over-detained and asserting claims for negligent training and supervision. The district 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 when the prisoner was to be released. The district court began its opinion as follows: "Our saga begins with the tale of plaintiff's numerous arrests. Plaintiff was arrested on four different charges in 2007: two felony charges for

violating the Bail Reform Act, one felony charge for Possession with Intent to Distribute a Controlled Substance and one misdemeanor charge for carrying an open can of alcohol without a permit." During the prisoner's time in jail he was sentenced for all of the remaining charges. The prisoner claimed he was over-detained by approximately two months, and that this was the direct result of the D.C. Jail's negligent training and supervision of its employees with regard to calculating jail credits. (District of Columbia Jail)

U.S. District Court
FAILURE TO TRAIN

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. 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
FAILURE TO TRAIN
MEDICAL CARE

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
FAILURE TO TRAIN
MEDICAL CARE

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 detainee's claim was based on little more than the argument 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)

U.S. Appeals Court
DELIBERATE INDIFFERENCE
MEDICAL CARE
MEDICAL SCREENING

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. 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
FAILURE TO TRAIN
MEDICAL CARE
RESTRAINTS

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 TRAIN

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
FAILURE TO TRAIN
MEDICAL CARE

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 county 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)

U.S. District Court
FAILURE TO TRAIN

Konah v. *District of Columbia*, 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 environment 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
MEDICAL CARE

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
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 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
FAILURE TO TRAIN

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
MEDICAL CARE
FAILURE TO TRAIN

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 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.(Grundy County Jail, Illinois)

U.S. Appeals Court
FAILURE TO TRAIN
MEDICAL CARE

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. District Court
FAILURE TO TRAIN
MEDICAL CARE

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 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. Appeals Court
FAILURE TO TRAIN

Kitchen v. *Dallas County, Tex.*, 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. According to the court, the widow failed to establish that the county failed to provide proper training to personnel located in the facility's North tower, where the detainee was being held when he died, where the widow pointed to no pattern of past constitutional violations bearing a sufficient resemblance to the events surrounding the death of detainee. (Dallas County Jail, Texas)

U.S. District Court
MEDICAL CARE

Nam Dang v. *Sheriff of Seminole County, Fla.*, 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)

U.S. District Court
FAILURE TO TRAIN

Robinson v. *Keita*, 20 F.Supp.3d 1140 (D.Colo. 2014). An arrestee brought an action against a city, city police officers, a county, and sheriff's deputies, alleging under § 1983 that he was unreasonably arrested and incarcerated for a 12-day period. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) a front desk officer was entitled to qualified immunity from unlawful arrest claim; (2) the deputies who transported the arrestee from a police station across the street to a detention facility, and assisted in the arrestee's booking, were entitled to qualified immunity from a substantive due process claim; (3) there was no evidence that the city's alleged policy of relying on the state court to schedule a hearing after promptly being advised of a warrant arrest was substantially certain to result in a constitutional violation; but (4) summary judgment was precluded by fact issues as to whether the city had actual or constructive notice that its failure to train as to how to process conflicting information during the process of "packing" an arrest warrant for distribution was substantially certain to result in a constitutional violation, and as to whether the city substantially chose to disregard the risk of harm. (City and County of Denver, Colorado)

U.S. District Court
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
FAILURE TO TRAIN

Shepherd v. *Powers*, 55 F.Supp.3d 508 (S.D.N.Y. 2014). An inmate at a county jail brought a § 1983 action against a first correction officer, a second correction officer, and a county, asserting excessive force in violation of the Eighth Amendment, malicious prosecution, and denying or interfering with the inmate's religious rights. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by a genuine dispute of material fact as to whether the force a correction officer at the county jail used in grabbing and squeezing the inmate's testicles was applied maliciously or sadistically to cause harm, in violation of the Eighth Amendment. The court also found fact issues as to whether the correction officer's conduct, including throwing the inmate to the floor, was objectively malicious and sadistic. According to the court, fact issues existed as to whether the county had a custom and practice of using excessive force or failed to adequately train or supervise correction officers in the use of force, precluding summary judgment on the inmate's § 1983 claim against the county. (Westchester County Jail, New York)

U.S. Appeals Court
FAILURE TO TRAIN

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)

2015

U.S. Appeals Court
MEDICAL CARE
FAILURE TO TRAIN

Brauner v. *Coody*, 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 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. Appeals Court
FAILURE TO TRAIN

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 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. (Lucas County Jail, Ohio)

U.S. District Court
FAILURE TO TRAIN

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 County Correctional Facility and Vineland Police Department, New Jersey)

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

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
MENTAL HEALTH
MEDICAL CARE

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
FAILURE TO TRAIN

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)

SECTION 47: TRANSFERS

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.

1976

U.S. Supreme Court
DUE PROCESS

Meachum v. Fano, 427 U.S. 215 (1976), reh'g denied, 429 U.S. 873 (1976).
Fano and other sentenced inmates confined in the Massachusetts Correctional Institute at Norfolk brought this 42 U.S.C. Section 1983 action against Meachum, the prison superintendent, the State Commissioner of Corrections, and the Acting Deputy for Classification and Treatment, alleging that by being transferred to a less favorable institution without an adequate fact-finding hearing, the inmates are being denied liberty without due process of law. The inmates sought injunctive and declaratory relief, as well as damages. The U.S. District Court, interpreting Wolff v. McDonnell, 418 U.S. 539 (1974) granted relief, and a divided First Circuit Court of Appeals affirmed. The prison official's petition for writ of certiorari was granted.

HELD: Absent a state law or practice conditioning such transfers on proof of serious misconduct or the occurrence of other events, the due process clause of the fourteenth amendment does not entitle a state prisoner to a hearing when he is transferred to a prison where the conditions are substantially less favorable to the prisoner. 427 U.S. at 216.

REASONING: a. [G]iven a valid conviction, the criminal defendant has been constitutionally deprived of his liberty to the extent that the state may confine him and subject him to the rules of its prison system so long as the conditions of confinement do not otherwise violate the Constitution.

b. The Constitution does not require that the state have more than one prison for convicted felons; nor does it guarantee that the convicted inmate will be placed in any particular prison if, as is likely, the state had more than one correctional institution. The initial decision to assign the convict to a particular institution is not subject to audit under the due process clause, although the degree of confinement in one prison may be quite different from that in another. 427 U.S. at 224.

c. Confinement in any of the state's institutions is within the normal limits or range of custody which the conviction has authorized the state to impose. That life in one prison is much more disagreeable than in another does not in itself signify that a fourteenth amendment liberty interest is implicated when a prisoner is transferred to the institution with more severe rules.

d. [T]o hold... that any substantial deprivation imposed by prison authorities triggers the procedural protections of the due process clause would subject to judicial review a wide spectrum of discretionary actions that traditionally have been the business of prison administrators rather than of the federal courts. 427 U.S. at 225.

e. Whatever expectation the prisoner may have in remaining at a particular prison so long as he behaves himself, it is too ephemeral and insubstantial to trigger procedural due process protections as long as prison officials have discretion to transfer him for whatever reason, or for no reason at all. 427 U.S. at 228.

NOTE: This case was distinguished from Wolff in that in Wolff a state created right--good time credits--involved a liberty interest necessitating due process protection. In this case, no such state-created right was present. Thus, the Wolff due process procedures are not applicable. (Massachusetts Correctional Institute, Norfolk)

U.S. Supreme Court
REPRISAL
DUE PROCESS

Montayne v. Haymes, 427 U.S. 236 (1976). Following his removal from assignment as inmate clerk in the Attica Correctional Facility law library, Haymes circulated a petition signed by eighty-two inmates addressed to a federal judge alleging that his removal denied them access to adequate legal assistance. Prison officials seized the petition and Haymes was transferred to another maximum security institution.

Haymes initiated this 42 U.S.C. Section 1983, 28 U.S.C. 2 1343 action against Montayne, superintendent at Attica, contending his transfer was in reprisal for having rendered legal assistance to other inmates as well as having sought redress in the courts. The U.S. District Court dismissed the complaint, but the Second Circuit Court of Appeals reversed and remanded for determination whether in fact the transfer was reprisal. Montayne sought certiorari from the U.S. Supreme Court. (Reversed.) HELD: "We...disagree with the...general proposition that the due process clause by its own force requires hearings whenever prison authorities transfer a prisoner to another institution because of his breech of prison rules, at least where the transfer may be said to involve substantially burdensome consequences. As long as the conditions or the degree of confinement to which the prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the Constitution, the due process clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight. The clause does not require hearings in connection with transfers whether or not they are the result of the inmate's misbehavior or may be labeled as disciplinary or punitive." 427 U.S. at 242.

NOTE: Under New York law, convicted adults are committed to the custody of the Commissioner of Corrections who initially assigns them to specific institutions and may subsequently transfer them from one correctional facility to another. The transfer is not conditioned upon or limited to the occurrence of misconduct. 427 U.S. at 243. (Attica Correctional Facility, New York)

1977

U.S. District Court
FACILITY

Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. Inmates transferred from unconstitutional jail must be housed in a constitutional facility within thirty-five miles of the county. Juveniles may not be housed in the jail for longer than it takes to arrange to transfer them. Women may not be housed in the jail for longer than it takes to arrange their transfer. (Platte County Jail, Missouri)

U.S. District Court
NOTIFICATION

United States ex rel Wolfish v. Levi, 439 F.Supp. 114 (S.D. N.Y. 1977). The recently announced policy of the defendants requiring that prisoners be notified of transfers twenty-four hours in advance except in emergency situations is sufficient and meets all constitutional objections. (Metropolitan Correctional Center, New York)

U.S. District Court
DUE PROCESS

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 the prisoner's claims that he was unjustly transferred from one state prison to another, that his transfer was accomplished without approval of a central classification board, that his personal property was sent to his home and he had to purchase similar items from the prison commissary and that he was defamed by a correctional officer and threatened by a correctional officer, failed to state any claim cognizable in federal court. States, not federal courts are supervisors of state prisons, and federal court will intervene only to protect constitutional interests. Under Virginia law, prisoners have no liberty interest in remaining in particular prison. (Virginia Department of Corrections)

1978

U.S. District Court
DUE PROCESS

Mingo v. Patterson, 455 F.Supp. 1358 (D. Colo. 1978). Transfer between jails did not deny the prisoner the right to see his attorney or require due process. (State Penitentiary, Canon City, Colorado)

U.S. District Court
DUE PROCESS

Shakur v. Bell, 447 F.Supp. 958 (S.D. N.Y. 1978). The transfer of an individual to another state where there is a detainer for trial is within the sound discretion of prison officials, and the officials need not provide procedural due process in such a transfer. (Rikers Island, New York)

1979

U.S. District Court
RIGHT TO COUNSEL

Mayberry v. Somner, 480 F.Supp. 833 (E.D. Penn. 1979). Mere transfer to another institution while legal proceedings are pending does not state a claim for interference with the right of counsel. To state a claim, the inmate must allege and demonstrate actual interference. (Pennsylvania State Correctional Institution)

1980

U.S. District Court
PRETRIAL
DETAINEES

Epps v. Levine, 484 F.Supp. 474 (D. Md. 1980). Pretrial detainees transferred to the state penitentiary and classified to protective custody shall have regular commissary privileges. (State Penitentiary, Maryland)

U.S. Appeals Court
DENIAL

Ferranti v. Moran, 618 F.2d 888 (1st Cir. 1980). Denial of transfer, harassment for seeking legal redress, allegations of tampering with the inmate's legal mail, and allegations of a refusal to permit the inmate to bring his legal papers to conferences with his attorney state claim for interference with the right of access to the court. (Rhode Island Adult Correctional Institution)

U.S. Appeals Court
PURPOSE

Howe v. Civiletti, 625 F.2d 454 (2d Cir. 1980), aff'd, 101 S.Ct. 2468. A transfer of an inmate from the state to the federal system may be for custody or security and need not only be for the purpose of treatment not available in the state system and available in the federal system. (St. Albans Correctional Facility, Vermont)

State Appeals Court
STATE STATUTE

State v. Grey, 602 S.W.2d 259 (Tenn. Crim. App. 1980). A pretrial detainee, about whom rumors of escape were abundant, could not be transferred to the state penitentiary under the Tennessee safekeeping statute. Barry Grey was incarcerated in the Davidson, Tennessee County Jail, unable to post bond after an arrest. Shortly after his arrest, based upon alleged rumors of an imminent escape attempt, the state sought to transfer him. The statute involved, (T.C.A. 41-1125) provides: In all cases where the jail in which a prisoner is confined becomes insufficient from any cause, any circuit or criminal judge, upon the application of the sheriff and proof of the fact, may order the prisoner, by mittimus or warrant, to be removed to the nearest sufficient jail.

Based upon the above statute the trial judge before whom the motion was presented allowed the transfer, and an immediate appeal was taken. On appeal, the Court of Criminal Appeals of Tennessee held that the state penitentiary was not a "jail" as defined by the statute. The court noted that the stigma attached to confinement in the state penitentiary should not be imposed upon a pretrial detainee without specific statutory authorization. The court then ruled that this statute did not provide such authorization. (Davidson County Jail, Tennessee)

U.S. Appeals Court
COURT TRANSFER

Streeter v. Hopper, 618 F.2d 1178 (5th Cir. 1980). Racial tensions were purportedly running high at the Georgia State Prison, and an inmate committee was formed to negotiate with officials to bring about changes. The two plaintiffs, Ron Streeter and Dwight Lindsey, were named to the committee. Subsequently, negotiations broke down, and the prison chapel was set on fire. Officials at the prison later received information that Streeter and Lindsey had ordered the fires, and they were placed in administrative segregation. The two inmates filed a lawsuit challenging their segregation. They later asked the court to transfer them to another prison, allegedly because their lives were in danger.

The district court ordered their transfer, and in this opinion, the trial court's judgment was affirmed. The U.S. Fifth Circuit Court of Appeals stated that in cases like this, trial courts should proceed with caution. In this case, however, there was testimony that a prison officer with a reputation for violence among the inmates had threatened the two plaintiffs. The two men also claimed to have received threats from other inmates and from other officers.

The appellate court ruled that under these circumstances, the transfer was proper. However, the appellate court emphasized the fact that under the terms of the lower court order, the inmates were to be returned upon their request or if the officials could demonstrate at a hearing that the conditions of endangerment had been eliminated. (State Prison, Reidsville, Georgia)

U.S. Supreme Court
MENTAL
INSTITUTION
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."

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.

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.

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
PRETRIAL
DETAINEES
DUE PROCESS

Cobb v. Atych, 643 F.2d 946 (3rd Cir. 1981). The U.S. Court of Appeals for the Third Circuit, sitting en banc, held that the sixth amendment right to counsel prohibits the transference of pretrial detainees to distant state prisons without first affording them notice and an opportunity to be heard in court. Such transfers, the court found, severely interfere with the inmates' access to counsel. A majority of the court also relied heavily on the speedy trial clause in its argument. Eighty percent of the pretrial detainees involved in the suit were represented by the public defenders, who were financially unable to make long trips to the state institutions. Due to the prolonging of the pretrial period due to continuances and other factors associated with the distance to the detention facility, some transferred inmates spent more time incarcerated pretrial than the eventual length of their sentences. Three of the judges also concluded that the right to counsel, speedy trial provisions and the bail clause of the eighth amendment create a federally protected interest in reducing pretrial incarceration and minimizing interference with a pretrial detainee's liberty. "The eighth amendment's prohibition against excessive bail bears plainly and directly upon the ability of charged persons to prepare for trial and upon the presumption of a right to be free from restraint which those persons enjoy. It should also be read as preventing not merely the fact of detention, but also those forms of detention that unnecessarily interfere with those liberty interests." The case also involved the transfer of sentenced prisoners and those who have been convicted but are still awaiting sentencing. The court found that no federally protected interests were involved for the sentenced population, but unsentenced prisoners have speedy-trial and counsel rights similar to those of pretrial detainees. (Philadelphia Prison System, Pennsylvania)

State Appeals Court
DUE PROCESS

State v. Berger, 618 S.W.2d 215 (Ct. App. Mo. 1981). Transfer to another jail does not violate due process. Appeals court held that the trial court was correct in finding that the defendant was not prejudiced by transfer to another jail which was not as centrally located. (Polk County Jail, Missouri)

1982

U.S. District Court
TRANSFER

Lyons v. Papantoniou, 558 F.Supp. 4 (E.D. Tenn. 1982), aff'd, 705 F.2d 455 (6th Cir. 1982). Transfer from one county jail to another does not violate constitutional rights. Since the federal constitution did not secure the right of an inmate to be confined in any particular jail, the federal district court did not have reason to review the transfer. The inmate's temporary twenty-four hour confinement in the latter jail in a cell lacking adequate bathroom facilities and cigarettes did not amount to cruel and unusual punishment. (Carter County Jail, Tennessee)

State Court
LAW LIBRARY

Portis v. Evans, 297 S.E.2d 248 (Sup. Ct. Ga. 1982). Court has discretion to transfer an inmate to a prison with a law library. It was within the discretion of the superior court to grant Portis' request for meaningful access to the courts under Bounds by ordering him transferred to a prison with a law library. (Metropolitan Correctional Institution, Georgia)

1983

U.S. District Court
PRETRIAL
DETAINEES

Black v. Delbello, 575 F.Supp. 28 (S.D. N.Y. 1983). Pretrial detainee's transfer left within the discretion of jail officials. A pretrial detainee was transferred to another jail by administrators who cited overcrowding as the reason for the transfer. The detainee sued, alleging that since there were many empty beds in the facility, there was no need for the transfer.

The federal district court found that the transfer was authorized by New York statutes and an order by the New York State Commission of Corrections. Relying on Meachum v. Fano, 427 U.S. 215, 96 S.Ct. 2532 (1976), the court refused to interfere, finding that this matter was properly left within the discretion of jail officials. (Westchester County and Orange County, New York)

U.S. District Court
LIBERTY INTEREST

Breest v. Moran, 571 F.Supp. 343 (D. R.I. 1983). A New Hampshire inmate may be transferred to Rhode Island. Challenging his transfer from a New Hampshire prison to a prison in Rhode Island, an inmate filed a petition for a writ of habeas corpus. The district court found that under New Hampshire law, a prisoner had no continuing right to remain incarcerated at a specific facility. Since he had no such right under state law, he had no protectable liberty interest under the federal Constitution that would have prevented his transfer to Rhode Island. The prisoner's petition was denied and dismissed. (Adult Correctional Facility, Cranston, Rhode Island)

U.S. Supreme Court
LIBERTY INTEREST

Olim v. Wakinekona, 461 U.S. 238 (1983). Petitioner were members of a prison "Program Committee" who investigated a breakdown in discipline and the failure of certain programs within the maximum control unit of the Hawaii State Prison outside Honolulu and singled out the respondent and another inmate as troublemakers. After a hearing, the respondent having been notified thereof and having retained counsel to represent him, the same committee recommended that the respondent's classification as a maximum security risk be continued and that he be transferred to a prison on the mainland.

The administrator of the prison accepted the Committee's recommendation, and the respondent was transferred to a California state prison. He then filed suit against the petitioners in federal district court, alleging that he had been denied procedural due process because the Committee that recommended his transfer consisted of the same persons who had initiated the hearing, contrary to a Hawaii prison regulation, and because the Committee was biased against him.

The district court dismissed the complaint, holding that the Hawaii prison regulations governing prison transfers did not create a substantive liberty interest protected by the due process clause of the fourteenth amendment. The court of appeals disagreed and reversed.

The United States Supreme Court **held**: 1. An interstate prison transfer does not deprive an inmate of any liberty interest protected by the due process clause in and of itself. Just as an inmate has no justifiable expectation that he will be incarcerated in any particular prison within a state so as to implicate the due process clause directly when an intrastate prison transfer is made, Meachum v. Fano, 427 U.S. 215; Montanye v. Haymes, 427 U.S. 236, he has no justifiable expectation that he will be incarcerated in any particular state. Statutes and interstate agreements recognize that, from time to time, it is necessary to transfer inmates to prisons in other states. Confinement in another state is within the normal limits or range of custody which the conviction has authorized the transferring state to impose. Even when, as here, the transfer involves long distances and an ocean crossing, the confinement remains within constitutional limits. Pp. 244-248.

2. Nor do Hawaii's prison regulations create a constitutionally protected liberty interest. Although a state creates a protected liberty interest by placing substantive limitations on official discretion, Hawaii's prison regulations place no substantive limitations on the prison administrator's discretion to transfer an inmate. For that matter, the regulations prescribe no substantive standards to guide the Program Committee whose task is to advise the administrator. Thus no significance attaches to the fact that the prison regulations require a particular kind of hearing before the administrator can exercise his unfettered discretion. Pp. 248-251. 664 F.2d 708, reversed. (Hawaii State Prison)

U.S. District Court
ACCESS TO ATTORNEY

Pino v. Dalsheim, 558 F.Supp. 673 (S.D. N.Y. 1983). Access to legal counsel does not have to be ideal. Inmates are not entitled to special consideration in consulting their attorneys, the Federal District Court for the Southern District of New York has held. The plaintiff in this case, Wilfred Pino, Jr. filed a pro se (representing himself) action in federal district court in New York alleging violation of his due process rights as a result of disciplinary action taken against him while he was an inmate at the Downstate Correctional Facility. At his request, counsel was appointed for him. He was then transferred to the Clinton Correctional Facility in Dannemore, New York, which is more than 300 miles from the offices of Pino's court appointed counsel. Pino did not contend that his transfer was retaliation against him for filing the complaint. Prison officials agreed to transfer him back to Downstate sixty days before trial to afford him an opportunity to prepare.

Regulations of the Clinton facility allowed unlimited, uncensored correspondence between inmates and their attorneys, private visits with their attorneys as often as they wish, but only two, eight minute telephone calls each month. The telephone calls include those with family members. Calls to attorneys are counted against the limit. Only under emergency circumstances are inmates allowed to receive telephone calls. (Clinton Correctional Facility, Dannemore, New York)

1985

State Court
ACCESS TO COURT

Cleveland v. Goin, 703 P.2d 204 (Ore. Sup. Ct., 1985). Prisoner ordered back to jail in county of trial. The plaintiff was transferred to a jail in another county because, according to the sheriff, his jail was overcrowded. After examining records and logs, the court determined that jail occupancy had not exceeded the limit set by federal court. As a result, the prisoner was ordered housed in the jail in which his upcoming trial would be held. (Clatsop County Jail, Oregon)

1986

U.S. District Court
DUE PROCESS

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
LIBERTY INTEREST

Beard v. Livesay, 798 F.2d 874 (6th Cir. 1986). A prison inmate brought an action challenging his reclassification without a hearing from minimum security to medium security as violating his liberty interest and his security status. The United States District Court granted summary judgment to the inmate, and the prison officials appealed. The court of appeals held that: (1) Tennessee regulations (requiring elaborate procedures for security reclassification of prison inmates and imposing limitations that the inmate must merit reduction or enhancement of security designation) create a protectable liberty interest; (2) the inmate was not entitled to have his transfer records expunged; and (3) the inmate's reclassification from minimum to medium security would be expunged from record. Prison officials may create liberty interests protected by due process clause by policy statements, regulations, or other official promulgations; inmates, however, must have a legitimate claim of entitlement to interest, not merely a unilateral expectation. (Bledsoe County, Tennessee Regional Correctional Facility)

U.S. District Court
ACCESS TO COURT

Blake v. Berman, 625 F.Supp. 1523 (D. Mass. 1986). Prisoner housed for state in federal system raises issues of access to courts. An inmate brought action against former and present commissioners of the Massachusetts Department of Correction alleging his constitutional right of access to courts was violated during the time he was incarcerated in the federal penitentiary system as a state contract prisoner. The inmate moved for summary judgment on the issue of liability, and defendants moved

for partial summary judgment. The federal district court held that existence of Kansas defender project did not by itself provide adequate access to courts for Massachusetts state prisoners in federal custody at Leavenworth.

The court found that there is no duty to provide prisoners with state law libraries if they choose not to avail themselves of adequate alternative services. However, when prison officials choose to rely solely on trained legal assistance to fulfill constitutional mandates that inmates be given adequate access to courts, aid must be available in preparation of initial pleadings in habeas corpus and civil rights suits. Thus, those providing legal assistance cannot interpose a screening process between the inmate and courts. (Massachusetts Department of Corrections)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST

James-Bey v. Freeman, 638 F.Supp. 758 (D.D.C. 1986). Prison officials did not violate a prisoner's due process rights, even though they considered his unadjudicated offenses in deciding to transfer him to another facility. The due process clause alone did not protect against transfer, even if confinement conditions at the new institution were substantially more severe. Because incarceration at the new facility was within the prisoner's sentence, and because prison regulations placed no substantive limits on the transfer decision, the prisoner had no liberty interest to assert under the due process clause. (United States Penitentiary, Marion, Illinois)

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

Olynick v. Taylor County, 643 F.Supp. 1100 (W.D. Wis. 1986). A former prisoner in a county jail brought a civil rights action, claiming that she was a victim of sexual discrimination and was denied due process when she was not allowed to exercise work release privileges during her jail sentence. On cross motions for summary judgment, the district court held that: (1) the plaintiff was denied liberty without due process when she was denied the right to exercise work release privileges because of her transfer to another county jail; (2) the plaintiff's inability to exercise work release privilege outside of county to whose jail she was transferred did not constitute false imprisonment under Wisconsin law; and (3) the sheriff was entitled to qualified immunity because the prisoner's constitutional right to exercise work release privileges was not clearly established. Changes in condition of confinement, even those with a substantial impact, are not alone enough to invoke due process protections as long as the conditions or degree of confinement to which the prisoner is subjected is within the sentence imposed upon him. (Taylor County Jail, Wisconsin)

U.S. District Court
LIBERTY INTEREST

Paoli v. Lally, 636 F.Supp. 1252 (D.Md. 1986). The actions of Maryland's Commissioner of Corrections in transferring a prisoner from a minimum security facility to a maximum security institution and in denying minimum security classification did not violate the provisions of Maryland statutes or regulations and did not contravene liberty interests, if any, established by them in favor of persons such as the prisoner. The prisoner suffered from a physiological defect, a testosterone level approximately twice that of a normal male, which gave rise to his criminal behavior. It was an appropriate concern of the commissioner that the prisoner posed a danger to others if he should escape from minimum security and failed to continue to receive regularly scheduled Depo-Provera injections. (Maryland Penitentiary)

U.S. District Court

Ross v. United States, 641 F.Supp. 368 (D.D.C. 1986). The District of Columbia, its mayor, and a corrections director were not liable for the alleged negligent transfer of an inmate into the federal prison system at Marion, Illinois. The inmate was killed by other inmates. The inmate was transferred into the federal system at the request of District of Columbia officials after he seized hostages in an escape attempt. The District of Columbia officials did not request that the inmate be transferred to any particular federal prison. (United States Prison at Marion, Illinois)

U.S. Appeals Court

Webb v. Keohane, 804 F.2d 413 (7th Cir. 1986). A prisoner who requested a transfer either to federal prison or to another Indiana jail waived any objection to his subsequent Indiana conviction under the "anti-shuttling" provision of the Interstate Agreement on Detainers (IAD). The provision required the dismissal of an indictment with prejudice if a prisoner, transferred pursuant to the IAD, was returned to his original place of imprisonment prior to trial. The fact that the prisoner included the possibility of a transfer to another Indiana prison did not affect the waiver. (U.S. Penitentiary, Indiana)

1987

U.S. Appeals Court
DUE PROCESS
MENTAL HEALTH

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)

U.S. District Court
LIBERTY INTEREST

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. Simple negligence in the transfer of an inmate from one correctional institution to another did not violate the inmate's rights. It was necessary that there be deliberate indifference or reckless disregard to the inmate's rights analogous to obligation under the eighth amendment. 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 be present throughout hearings, except during deliberations; he was permitted to speak on his own behalf and present evidence, call witnesses and have lay advocate; and he was in fact assisted by lay advocate of his choice. (Indianapolis, Indiana)

1986

State Court
DUE PROCESS

Jenkins v. Fauver, 530 A.2d 790 (N.J. Super. A.D. 1986). According to a state court, inmates do not have a protectable interest arising from a due process clause along in residing in a particular environment. Inmates who, prior to reclassification, had been assigned to "full minimum" custodial status, filed a lawsuit claiming they were denied due process when they were transferred from a minimum security camp to the main prison and had their custodial classification changed to "full minimum, inside only" or "gang minimum." The action was taken in response to a series of escapes of inmates convicted of violent crimes. However, the appeals court, 528 A.2d 563, ruled against the "nonindividualized reclassification" of prison camp inmates with prior homicide convictions. (Rahway State Prison, New Jersey)

1987

U.S. District Court
ACCESS TO COURT

Cooper v. Sumner, 672 F.Supp. 1361 (D.Nev. 1987). A Nevada prisoner who was incarcerated in Arizona pursuant to a western interstate corrections compact brought a 42 U.S.C.A. Section 1983 action contesting that placement and also other aspects of his confinement. After reviewing the magistrate's report, the district court held that: (1) the prisoner had no protectable liberty interest in earning work time credit and a Section 1983 claim based on his placement in a segregation unit and resultant deprivation of an opportunity to work was frivolous; (2) the prisoner's claim that lack of access to the Nevada statutes and case law prevented him from seeking postconviction relief, states a viable Section 1983 claim based on lack of access to the courts; and (3) the prisoner would be permitted time to file amended complaint with regard to the challenge to his initial transfer and other claims. (Arizona State Prison)

U.S. Appeals Court
DUE PROCESS
PURPOSE

Maldonado Santiago v. Velazguez Garcia, 821 F.2d 822 (1st Cir. 1987). While a federal appeals court upheld the transfer of an inmate following a disturbance, it ruled that prison officials' violated a prison rule which required that the inmate be afforded a post-transfer hearing within seven working days after her transfer--and that this violated the her due process rights. The court ruled that she was entitled to damages,

to be determined on remand, for four extra days she spent in the maximum security prison to which she was transferred. The court found that evidence that prison officials were faced with an angry crowd of over 20 prisoners, and that the plaintiff inmate played a predominant role in the activity, was sufficient to support the finding in the civil rights action that the prison officials' decision to transfer the inmate to another prison was in compliance with prison rules. (Vega Alta Women's Correctional Institution)

U.S. District Court
DISTANCE

Pitts v. Meese, 684 F.Supp. 303 (D. D.C. 1987). Female inmates who were incarcerated in a federal facility because of a lack of facilities within the District of Columbia filed an action challenging the constitutionality of such confinement. The federal district court held that female offenders failed to establish that programs at the federal facility were inferior to programs provided at the District of Columbia facility for male offenders and although the location of the facility posed certain hardships on the female offenders, it did not violate their constitutional rights.

U.S. District Court
LIBERTY INTEREST

Salahuddin v. Coughlin, 674 F.Supp. 1048 (S.D.N.Y. 1987). Prison regulations specified that inmates transferred involuntarily (such as for purposes of distribution of population) would retain the same wage grade they had achieved. The regulations did not provide this guarantee to those transferred upon their own request. An inmate who participated in a job training program sued prison officials, alleging he was entitled to maintain his wage grade following a voluntary transfer. Prior to his transfer he had progressed from a compensation level of Wage Grade I ($.90 per day) to Wage Grade 4.2 ($2.19 per day). He requested a transfer to another prison in order to be closer to his family. The transfer was approved, but the inmate found that he was paid $1.30 a day in the lower wage grade when he was placed in at the new institution. The court found that the inmate had no legitimate claim of entitlement of retaining the same wage grade from one facility to the next and therefore had no due process right to either notice or hearing before his wage grade was reduced following transfer. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS

Trapnell v. Ralston, 819 F.2d 182 (8th Cir. 1987) A federal prisoner who was transferred from a penitentiary to a medical center, allegedly for a physical and psychiatric evaluation, but returned to prison within 48 hours, after refusing to allow anyone to examine, evaluate, medicate or treat him, brought a civil rights action alleging the transfer deprived him of his rights to procedural due process and access to courts with respect to his pending habeas corpus actions. Finding that the transfer had no impact on the pending lawsuits and that the government officials sued, including the warden, an associate warden and a Regional Director for the Bureau of Prisons, were all entitled to qualified immunity as to any damage claims against them in their individual capacity arising out of the transfer, the federal appeals court ordered the prisoner's complaint dismissed. (United States Penitentiary, Leavenworth, Kansas)

1988

U.S. Appeals Court
DUE PROCESS

Bruscino v. Carlson, 854 F.2d 162 (7th Cir. 1988), cert. denied, 109 S.Ct. 3193. In a class action suit brought against the Marion Penitentiary in Illinois by inmates held in the Control Unit, the inmates claimed use of excessive force and other charges because they were subjected to rectal searches every time they left or re-entered the unit. The appeals court ruled that because inmates in the Control Unit require greater supervision than other prisoners, rectal searches can be legally performed on such inmates. Use of physical restraints during attorney visitation and limited out-of-cell time was also upheld by the federal district court. The court found that extraordinary security measures employed in a maximum security federal prison, such as limitation of time spent outside cells, denial of opportunities for socialization, handcuffing, shackling, spread-eagling and rectal searches were reasonable measures in view of the history of violence at the prison and the incorrigible character of the inmates and thus it did not constitute cruel and unusual punishment. Further, the court found that the transfer of prisoners to a maximum security federal prison did not result in incremental deprivation so great as to constitute actionable deprivation of natural liberty and thus require a hearing. (The United States Penitentiary in Marion, Illinois)

U.S. Appeals Court
DISTANCE

Davis v. Carlson, 837 F.2d 1318 (5th Cir. 1988). A prisoner and his wife filed a pro se complaint seeking declaratory judgment regarding the manner in which the prison was administered. The federal district court dismissed the case. The prisoner and his wife appealed. The appeals court held that: (1) the prisoner's complaint was properly dismissed for failure to exhaust administrative remedies; (2) the Bureau of Prisons had no duty to transfer the prisoner to a prison near the wife's residence; (3) the wife had no right to conjugal visits; and (4) the prisoner's incarceration did not violate the wife's rights against cruel and unusual punishment. (U.S. Bureau of Prisons)

U.S. Appeals Court
ACCESS TO COURT

Gassler v. Rayl, 862 F.2d 706 (8th Cir. 1988). An inmate who had provided legal assistance to fellow prisoners brought a suit against prison officials who had participated in the decision to transfer him to another facility. The U.S. District Court granted the defendants' motion for summary judgment, and the inmate appealed. The appeal court found that the prison inmate had no constitutional right to provide his fellow inmates with legal assistance, and could not maintain action on his own behalf against the prison officials even assuming that he was transferred to another facility for providing legal assistance to inmates. The transfer to another facility did not violate the prisoners' constitutional right of access to courts, where two jailhouse lawyers remained at the prison and were employed full-time in the prison's law library. An inmate's right of access to courts includes the right to receive legal assistance from fellow inmates, unless prison officials provide reasonable alternative assistance.

An inmate has no right to receive legal assistance from a jailhouse lawyer independent of the right of access to courts. (North Dakota State Penitentiary)

U.S. District Court
DENIAL
PRETRIAL
DETAINEES

Getch v. Rosenbach, 700 F.Supp. 1365 (D. N.J. 1988). A state prisoner brought a civil rights action against the prison superintendent. The superintendent moved for summary judgment. The district court found that the state prisoner did not have a liberty interest in being confined to a county facility after his conviction was overturned and he became a pretrial detainee while awaiting a second trial. The Governor's executive order, which provided that only a person sentenced to a prison or committed to the custody of the Commissioner of the Department of Corrections could be confined in the state prison, did not give the state prisoner, whose conviction was overturned and who became a pretrial detainee while awaiting a second trial, a liberty interest in begin confined in a county jail. The prisoner was not a pretrial detainee at the time he was sent to the state prison but was a duly convicted and sentenced prisoner, and the executive order was not explicitly mandatory in prescribing the confinement of a prisoner who acquired the status of a pretrial detainee while incarcerated in the state prison. (Rahway State Prison, New Jersey)

U.S. Appeals Court
DUE PROCESS

Matiyn v. Henderson, 841 F.2d 31 (2nd Cir. 1988), cert. denied, 108 S.Ct. 2876. A federal appeals court ruled that an inmate had no constitutionally based liberty interest which was subject to due process protection with respect to his being transferred between prisons. Even if his four-day confinement in a special housing unit prior to the transfer deprived him of a protected liberty interest, corrections officials were protected from liability by the doctrine of qualified immunity. Finally, even if he was placed in the special housing unit partly for punitive reasons, he was not entitled to the procedures normally associated with disciplinary confinement, because the confinement would have been undertaken in any event for administrative purposes alone. The court also found that prison inmates generally have no liberty interest in remaining within the general prison population and out of administrative segregation, unless the state has chosen to create such an interest by enacting certain statutory or regulatory measures. The prisoner, who was a leader of the Sunni Muslim sect, had been prevented from attending communal religious services and claimed his first amendment rights had been violated. The court held that these actions were permissible because the reasons were related to legitimate penological objections and there were rumors of impending trouble among fractions of the Muslim community of prisoners. Also, weapons were found in a folder thought to belong to the inmate. 108 S.Ct. 2876 writ of certiorari denied. (Auburn Correctional Facility)

1989

U.S. District Court
DUE PROCESS
TRANSFER

Baptist v. Lane, 708 F.Supp. 920 (N.D. Ill. 1989). The U.S. District Court ruled that inmates' due process rights were not violated when they were transferred from a minimum security farm at a correctional center back into general population of the maximum security unit. According to the court, no state prisoner has an inherent due process right either to serve his sentence in a particular prison or section of prison or to receive a particular security classification. The state regulation governing inmate transfers effectively allows prison officials to reassign inmates for any reason. Therefore, inmates did not have a justifiable expectation of remaining on the farm to support a due process challenge to their transfer. Their due process claims were frivolous, and they were not entitled to file a civil rights action in forma pauperis. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
PURPOSE

Baraldini v. Thornburgh, 884 F.2d 615 (D.C. Cir. 1989). A federal district court's determination that female inmates' first amendment rights were being violated was appealed by the defendants. Reversing and remanding the decision of the lower court, the appeals court found that there was sufficient merit to the placement of the inmates in the Federal Bureau of Prisons' highest security confinement institution for women. It was shown that the female inmates had associated with gangs and had access to dangerous weapons. They had helped in prison escapes, and had personally taken part in violent and criminal activities of those groups before their federal incarceration. It

was also determined by the court that placement of inmates in the stated institution "solely" because of their "subversive statements and thoughts" was clearly erroneous. While inmates have a constitutional right to hold violent or revolutionary views and to maintain memberships in revolutionary organizations, prison administrators are not required to ignore those views and memberships when assessing dangers of their escapes from custody with outside help from those who hold like views and/or memberships. (Federal Correctional Institution, Lexington, Kentucky)

U.S. Appeals Court
TRANSFER
LIBERTY INTEREST

Barfield v. Brierton, 883 F.2d 923 (11th Cir. 1989). A state prisoner brought a civil rights action against state corrections officials, alleging a violation of his constitutional rights through his transfer to an adult prison facility in violation of his liberty interest as a youthful offender. The prisoner appealed after the district court granted summary judgment for correctional officials. The court of appeals reversed the lower court and remanded the case. The court stated that the prisoner had raised genuine issues of material fact regarding the existence of liberty interest in him as a youthful offender, and whether the transfer violated his liberty interest as a youthful offender. (Florida State Prison)

U.S. Appeals Court
LIBERTY INTEREST
STATE STATUTE

Chitwood v. Dowd, 889 F.2d 781 (8th Cir. 1989), cert. denied, 110 S.Ct. 2219. A prisoner filed a petition for a writ of habeas corpus and the U.S. District Court granted a petition for which appeal was taken. The appeals court found that the transfer of the prisoner to Oklahoma was the only course of action that would insure that the Oklahoma sentence would run concurrently with Missouri, as ordered by a Missouri court. The prisoner had a legitimate expectation that the Missouri Department of Corrections would transfer him to Oklahoma, in which that the expectation was a liberty interest which was protected by due process and enforceable by way of habeas corpus.

It was also found by the court that the unconditional release of the prisoner from serving any time remaining on either Missouri sentence may not have been an appropriate remedy. The complete exhaustion of state remedies prior to bringing a habeas corpus petition was excused by special circumstances, including the petitioner's continual good-faith effort to bring his petition before the proper forum and the state officials' failure to take any action to rectify the petitioner's predicament. (Farmington Correctional Center, Missouri)

U.S. Appeals Court
DUE PROCESS
LIBERTY INTEREST

Coakley v. Murphy, 884 F.2d 1218 (9th Cir. 1989). When a state prison inmate was approved for work release, he was transported to a center where work release inmates live. He informed a counselor, upon his arrival, that he would not sign a copy of the work release agreement, which stipulated the conditions under which the inmates participated in the program. He was warned that if he failed to sign the agreement, he would be sent back to the penitentiary. He persisted in refusing to sign, stating that the agreement was illegal, that he was "civilly dead" as a prisoner under state law, and that he was therefore precluded from entering into contracts. He also said that if he signed, the agreement would be void because it was signed under duress. As a result of this persistent refusal, the inmate was returned to the penitentiary. He brought a Section 1983 action to challenge the denial of a hearing upon the transfer from the work release program to the penitentiary. The U.S. District Court dismissed the action, and the inmate appealed. The appeals court affirmed the lower court decision, ruling that the case was analogous to transfer from one institution to another within a state prison system; Idaho law placed no restrictions on transfers from work release centers, and there was no constitutional right to rehabilitation. The court of appeals found that the inmate had no due process liberty or property interest limiting the transfer from a work release program to the penitentiary upon the inmate's failure to sign a work release agreement and that the requirement that the inmate sign a work release agreement was rationally related to the legitimate interest in insuring that the inmate understand the obligations and therefore equal protections were not violated. (Idaho State Penitentiary, Boise)

State Appeals Court
LIBERTY
INTEREST
STATE STATUTE

Dudley v. Shaver, 770 S.W.2d 712 (Mo.App. 1989). A prisoner brought an action against prison officials and others based on his transfer to another facility which did not offer courses he needed to complete his paralegal training which he had begun at transferor facility. The 14th Judicial Circuit Court dismissed the petition for failure to state a claim, and the prisoner appealed. The appeals court, affirming the decision, found that the prisoner was not denied of a potential liberty interest in remaining in a particular state penal institution, and the petition failed to state a claim. The prisoner did not have a potential liberty interest in remaining in a particular state penal institution which would have supported his civil rights action arising out of a transfer to a different facility which did not offer college level paralegal training courses he had been enrolled in at that other prison, and for which he had received a partial scholarship. (Missouri State Penitentiary)

U.S. Appeals Court
PAYMENT OF EXPENSES

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. Appeals Court
DUE PROCESS
LIBERTY INTEREST

Lanier v. Fair, 876 F.2d 243 (1st Cir. 1989). An inmate sued the Massachusetts Parole Board alleging that his due process rights were violated by his removal from a halfway house program and by the rescission of his previously established reserve parole date. The district court rendered a summary judgment for the defendants, and the inmate appealed. The appeals court found that the inmate established a liberty interest in remaining at the halfway house but the procedure he received following his transfer was adequate for due process purposes. Although the inmate established a liberty interest in his reserve parole date, the defendants were entitled to qualified immunity on that claim; and the Parole Board's decision to rescind the reserve parole date was based on sufficient evidence. Regulations governed specific instances in which inmates could be terminated from halfway house program participation, and inmates had a legitimate expectation that they would be removed only for violating those regulations. The inmate objected to the timeliness of his hearing arguing that he was entitled to meet with the reclassification committee prior to his transfer from the halfway house or, in any event, at a time earlier than three months following his removal. Contrary to these assertions, the court found that the inmate was not entitled to a hearing prior to his removal from the halfway house, nor did they feel that three months constituted an unreasonably long delay so as to violate Lanier's constitutional rights. (Massachusetts Department of Corrections)

U.S. District Court
DUE PROCESS
NOTIFICATION
TRANSFER

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)

U.S. District Court
DENIAL
DUE PROCESS
FOREIGN COUNTRIES

Scalise v. Meese, 891 F.2d 640 (7th Cir. 1989). American prisoners sentenced in England sought transfer from a foreign prison to an American prison pursuant to the Transfer of Offenders To and From Foreign Countries Act. Upon the Attorney General's denial of request, the prisoners sought writ of mandamus ordering the Attorney General to establish regulations which would govern the grant or denial of the request as well as order a finding of the Attorney

General's refusal to be a violation of the prisoners' due process rights. On the prisoners' motion for summary judgment, the district court, granting the writ, found that the Attorney General violated his duty under the Act to promulgate regulations setting forth standards and guidelines to govern requests of Americans incarcerated abroad to be transferred to American prisons. According to the lower court, the Attorney General acted arbitrarily and capriciously, and abused his discretion in denying the requests; he also deprived the prisoners of due process of law in denying the requests without sufficient explanation and elaboration of a decision and without an opportunity to rebut. The Seventh Circuit Court of Appeals reversed the lower court ruling, finding that the prisoners did not have a liberty interest and that the lower court had improperly issued its writ of mandamus. (Prisoners Held in England)

U.S. Appeals Court
DUE PROCESS

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
TRANSFER
DENIAL
HABEAS CORPUS

Abdul-Hakeem v. Koehler, 910 F.2d 66 (2nd Cir. 1990). A prisoner appealed the dismissal of his suit in which he sought a transfer out of the city system into a state or federal prison system because of alleged brutality by prison guards and police officers. The federal district court dismissed the suit on the grounds that a petition for habeas corpus was the prisoner's exclusive avenue for that relief, and that he could not obtain that relief because he failed to exhaust his remedies in the State courts. The appeals court reversed the judgment, dismissing his suit, and remanded it to the district court for further proceedings. The court ruled that a Section 1983 action is the proper remedy for a state prisoner who is making a constitutional challenge to conditions of his prison life, but not to the fact or length of his custody. (Rikers Island, New York)

U.S. District Court
DISTANCE
ACCESS TO COURT
LIBERTY INTEREST

Ali v. U.S., 743 F.Supp. 50 (D. D.C. 1990). An inmate convicted of murder under District of Columbia Code brought a civil rights action challenging his transfer from Virginia to California for allegedly punitive reasons. The district court found that once legally convicted, an inmate had no constitutionally protected right to incarceration in any particular facility. The prisoner was one of many prisoners transferred from the D.C. prison system to the federal system to free up room in the local prisons. The plaintiff's designation to Lompoc "was based upon objective criteria including sentence length, history and violence and severity of the current offense." The plaintiff was transferred solely for administrative reasons and because he satisfied their objective criteria for determining transfer eligibility. Although the transfer meant that the distance was much greater between the plaintiff and the courts in which he was litigating, the plaintiff had the same constitutional right of meaningful access to courts. (D.C. Department of Corrections Facility in Lorton, Virginia)

U.S. District Court
TRANSFER

Brown v. Cunningham, 730 F.Supp. 612 (D. Del. 1990). An inmate filed a civil rights action alleging his constitutional rights were violated when he was transferred from general population to administrative segregation without being given a notice of opportunity to argue against the transfer. The district court found that the transfer of the inmate did not implicate any liberty interest and the case was dismissed. Neither the prison code of penal discipline nor the administrative regulations contained language concerning administrative segregation but, rather, vested discretion in the Delaware Department of Corrections to determine the inmate's classification and, thus, did not create a liberty interest in the inmate's right to be free from administrative segregation. (Delaware Correctional Center)

U.S. Appeals Court
DUE PROCESS
REPRISAL

Frazier v. Dubois, 922 F.2d 560 (10th Cir. 1990). A prisoner brought an action alleging that he was transferred to another institution in retaliation for his activities as chairman of the "Afrikan Cultural Society" in violation of his First Amendment rights. The complaint was dismissed as frivolous by the U.S. District Court, and the inmate appealed. The court of appeals found that while a prisoner enjoys no constitutional right to remain

in a particular institution and generally is not entitled to due process protections prior to a transfer, the prison officials do not have discretion to punish the inmate for exercising his First Amendment rights by transferring him to a different institution, and the prisoner's complaint was not frivolous. It was also found that, in evaluating a claim by a prison inmate that he was transferred to another institution in retaliation for exercise of his First Amendment rights, the court must determine whether a prison action is reasonably related to legitimate penological interests, which requires the weighing of the following factors: Whether there is a valid, rational connection between the prison action and the legitimate government interest put forward to justify it; whether there are alternative means of exercising the right that remains open to prison inmates; and the impact of the accommodation of the asserted constitutional right on guards and other inmates and on allocation of prison resources generally, but it is not necessary to show that the least restrictive alternative has been adopted, and substantial deference is to be accorded to the prison authorities. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
REPRISAL

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. Appeals Court
DENIAL

Joihner v. McEvers, 898 F.2d 569 (7th Cir. 1990). A civil rights action was brought against prison officials after an inmate's request to be transferred to a work camp was denied. The U.S. District Court entered a summary judgment in favor of the officials, and the inmate appealed. The appeals court affirmed the decision, finding that the Illinois prison officials did not violate a protectible liberty interest when they denied the inmate's request to be transferred to a work camp. State statutes and administrative regulations gave officials discretion over job assignment decisions and did not contain mandatory language directing that a certain outcome be reached. (Logan Correctional Center, Illinois)

U.S. District Court
DENIAL
FAILURE TO PROTECT

Mullen v. Unit Manager Weber, 730 F.Supp. 640 (M.D. Pa. 1990). A prison inmate filed a Bivens claim against prison officials, alleging that he was assaulted by fellow inmates after his repeated requests for a transfer to another unit were denied. Prison officials moved to dismiss or for summary judgment. The district court found that prison officials did not act with deliberate or reckless indifference or callous disregard when they denied the inmate's transfer request. The inmate had to prove intentional conduct, deliberate or reckless indifference to his safety, or callous disregard on the part of the prison officials, not bad faith on the officials' part, in order to prevail on a Bivens action. Although the inmate indicated to officials that he feared for his life, he did not disclose the identity of the alleged perpetrators or indicate that they threatened him and the inmate's exclamation of fear, without more information, could lead officials to deduce that the inmate was attempting to manipulate the transfer. (U.S.P.- Lewisburg, Pennsylvania)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST

Ortiz Gonzalez v. Otero De Ramos, 737 F.Supp. 9 (D. Puerto Rico 1990). A prisoner brought an action against officials in the correctional administration of the Puerto Rico penal system, claiming that his transfer from one facility to another deprived him of civil rights in violation of Section 1983 and the fourteenth amendment of the constitution. The defendants moved for a dismissal. The district court denied the motion, finding that the prisoner's due process liberty interests were implicated by the transfer from one facility to another. Although authorities contended that the prisoner has no interest to remain at the facility of his choice, the transfer in question was apparently disciplinary in nature, and regulations required a pre or posttransfer hearing to investigate the incident leading to the transfer. Regulations governing the administrative decisions within the Puerto Rico penal system grant prisoners an expectation that they will be given some procedure to investigate an allegedly improper transfer. (El Zarzal Camp, Puerto Rico)

1991

U.S. District Court
PURPOSE

Armstrong v. Lane, 771 F.Supp. 943 (C.D. Ill. 1991). An inmate brought a civil rights action challenging the constitutionality of the Illinois Department of Corrections' "Circuit Rider" program, in which difficult-to-control inmates were transferred from segregation unit to segregation unit among various state prisons. The district court found that the program did not subject the inmate to conditions of confinement so brutal as to implicate the Eighth Amendment. The inmate had no right to a hearing or any other procedures

with respect to prison officials' decision to place him on the Circuit Rider program. First, due to the absence of regulations concerning the program, the court found that the plaintiff had no protected interest in not being a circuit rider. Furthermore, the undisputed facts showed that the inmate posed a great security risk and requires close supervision, thus justifying placement in the tightly-controlled program. Placement was also justified in light of the inmate's extensive criminal history and lack of institutional adjustment. (Illinois Department of Corrections)

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. (New York State Southport Correctional Facility)

U.S. Appeals Court
ACCESS TO COURT
LIBERTY INTEREST
STATE STATUTE

Covino v. Vermont Dept. of Corrections, 933 F.2d 128 (2nd Cir. 1991). A former pretrial detainee brought a Section 1983 action, challenging both his transfer within the prison population and his transfer between prisons. The United States District Court dismissed the action, and appeal was taken. The appeals court, vacating and remanding, found that the district court should have analyzed state law to determine whether it prescribed mandatory procedures governing administrative segregation so as to create a liberty interest in remaining in the general population. In addition, the district court should have considered whether the interprison transfer unconstitutionally impaired the detainee's Sixth Amendment right of access to his trial counsel. (Northwest State Correctional Facility, Swanton, Vermont)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST

Daniels v. Aikens, 755 F.Supp. 239 (N.D. Ind. 1991). An inmate brought a pro se Section 1983 action against Indiana Department of Corrections officials alleging a violation of due process rights when he was transferred without notice or a hearing from a lower-security assignment to maximum security. The officials moved to dismiss or for summary judgment. The district court found that the inmate did not have a liberty interest in not being transferred to maximum security assignment without notice or a hearing. The inmates' reassignment was based solely upon the fact that he no longer met the criteria for assignment to the lower-security and the transfer was not based upon institutional conduct or misconduct. A transfer from one prison to another did not deprive the prisoner of liberty or property within the meaning of the due process clause, and therefore did not require notice and an opportunity for a hearing. The court also found that prison regulations and Indiana statutes did not create a protectable liberty interest; the statute merely called for periodic review of offenders' classification and assignment. The establishment of such a review procedure, however, cannot itself give rise to a protected liberty interest. (Indiana State Prison)

U.S. Appeals Court
DUE PROCESS
FACILITY
PURPOSE

Grayson v. Rison, 945 F.2d 1064 (9th Cir. 1991). A former federal prisoner brought an action against three prison officials, seeking damages for an allegedly unlawful transfer between prison facilities. The U.S. District Court granted summary judgment for the officials based on a finding of qualified immunity, and the former prisoner appealed. The court of appeals found that the transfer of the prisoner from a less restrictive section to a more restrictive section did not deny the prisoner due process, and the federal prisoner was not entitled to notice and a hearing. Placement was a direct result of the prisoner's holdover status, and the federal prisoner, transferred to the institution for civil depositions, was not entitled to memorandum and formal review otherwise required. The transfer did not deny the prisoner due process, although the transfer from one section to another was made without procedural safeguards. When prison officials have a legitimate administrative authority, such as discretion to move inmates from prison to prison or from cell to cell, the due process clause imposes few restrictions on the use of that authority, regardless of what motives are claimed to exist for the transfer. (Terminal Island Federal Correctional Institution, California)

U.S. Appeals Court
COURT TRANSFER

Inmates of Suffolk County Jail v. Kearney, 928 F.2d 33 (1st Cir. 1991). A class of inmates sued a sheriff, claiming that the sheriff's refusal to transfer female prisoners to a newly constructed prison built in accord with a consent decree violated that decree. The U.S. District Court ordered the sheriff to transfer female prisoners to the jail, and the sheriff appealed. The court of appeals found that the decree required the sheriff to house both males and females in the new jail. The sheriff could not use the new jail to house only

men, even though the sheriff would be required to set aside an entire cell block for women, whether or not he could find enough female prisoners to fill that block. (Suffolk County Jail, Massachusetts)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST

Klein v. Pyle, 767 F.Supp. 215 (D. Colo. 1991). A pro se inmate brought a Section 1983 action against prison officials alleging a violation of due process and equal protection rights. The prison officials moved to dismiss for failure to state a claim. The district court found that, absent a state-created interest, neither a change in a prisoner's security classification nor a prisoner's transfer from one prison to another implicates a liberty interest within the meaning of the due process clause. However, it was improper to dismiss the prisoner's civil rights complaint based on the prisoner's placement in a segregation unit of the medium security facility before correctional officials had answered the prisoner's allegations that the segregation served no valid administrative purpose and the record failed to disclose whether the prisoner was placed in segregation for administrative or supervisory reasons. In addition, the prisoner stated a cause of action based on denial of equal protection by alleging that his case manager told him that several prisoners with similar sentences were housed in the medium security prison, where, under the Colorado Department of Corrections regulation the prisoners received a notice of the segregation and a hearing but the prisoner had received neither. Under the department regulation, prisoners and their case managers were also allowed to participate in the reclassification process but the prisoner and his case manager had not been allowed to do so. (Colorado Department of Corrections)

U.S. District Court
DUE PROCESS
NOTIFICATION

Lato v. Attorney General of the U.S., 773 F.Supp. 973 (W.D. Tex. 1991). Deportable aliens brought an action against the Attorney General and others to challenge a transfer, without notice, to the county's contract detention facility. The U.S. District Court found that the transfer complied with due process and equal protection clauses; deportable aliens shared common needs and concerns and had less need for extensive work and educational programs. (Contract Confinement Facilities, Bureau of Prisons)

U.S. District Court
LIBERTY INTEREST

Lipscombe v. Ridley, 780 F.Supp. 16 (D.D.C. 1991). An inmate brought a Section 1983 suit, alleging that a transfer to a maximum security facility violated due process. The district court found that the inmate did not have a protected liberty interest with regard to his transfer to a maximum security facility, where prison regulations placed no substantive limitations on official discretion, and set forth no particularized criteria to guide discretion in making a determination. (Maximum Security Facility, Lorton Correctional Complex, District of Columbia)

U.S. District Court
HABEAS CORPUS

Miller v. Thornburgh, 755 F.Supp. 980 (D.Kan. 1991). A federal prisoner petitioned for writ of habeas corpus, claiming his transfer from the District of Columbia to a federal penal institution was not constitutionally authorized. The district court found that the prisoner did not have to exhaust all available administrative remedies before petitioning for federal habeas relief. As administrative remedies had to be exhausted when issues involving control and management of a federal prison were involved, whereas the petitioner was challenging the underlying constitution validity of the basis for his incarceration in a federal prison. It was also found that the transfer was statutorily authorized and did not violate the compact clause. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
DUE PROCESS
REPRISAL
TRANSFER

Ponchik v. Bogan, 929 F.2d 419 (8th Cir. 1991). A prison inmate brought a *Bivens* type action against prison officials, claiming that he was transferred from a federal medical center in retaliation for his exercise of First Amendment rights. The U.S. District Court dismissed some defendants and granted summary judgment to remaining defendants, and the inmate appealed. The court of appeals found that although the prisoner's filing of two lawsuits against prison officials was a factor in requesting his transfer, the district court correctly applied the "but for" test in determining that the transfer would have been requested, even had he not filed the suits, because of his serious and repetitive misconduct. In addition, the inmate was afforded procedurally sound disciplinary hearings prior to the transfer, thus satisfying due process. (F.M.C., Rochester, Minnesota)

U.S. Appeals Court
DUE PROCESS

Smith v. Massachusetts Dept. of Correction, 936 F.2d 1390 (1st Cir. 1991). A prison inmate brought a civil rights action against the Massachusetts Department of Corrections and various correctional officials. The complaint was dismissed by an order of the U.S. District Court and the inmate appealed. The court of appeals found that there was no due process violation in the inmate's initial transfer to another institution and detention there on awaiting action status, where he was not denied the protections required by the awaiting action status regulations, and the superintendent's view that he posed an immediate threat to institutional safety provided the requisite substantive predicate for placing him on awaiting action status. (North Central Correctional Institution, Gardner, Massachusetts and Massachusetts Correctional Institution, Cedar Junction)

U.S. Appeals Court
HABEAS CORPUS
STATE STATUTE

Stevenson v. Thornburgh, 943 F.2d 1214 (10th Cir. 1991). A prisoner who was transferred from a state prison to a federal prison petitioned for habeas corpus relief. The U.S. District Court denied the petition, and the prisoner appealed. The court of appeals found that the transfer of the prisoner from the state prison to the federal prison pursuant to an agreement between the federal Bureau of Prisons and the Commonwealth of Pennsylvania did not violate the "compact clause" of the United States Constitution. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
LIBERTY INTEREST

Stuck v. Aikens, 760 F.Supp. 740 (N.D. Ind. 1991). An inmate sued prison officials, claiming that his transfer to a prison with greater security and restrictions violated his constitutional rights. The officials moved for summary judgment. The district court found that the inmate had no protectable interest in his security classification while in confinement. In addition, the inmate failed to state a claim of invidious discrimination under Sections 1985 and 1986 and the Thirteenth Amendment with respect to his transfer to a prison with greater security and restrictions, as he did not claim to be a member of a racially protected group, and his status as an inmate was not a substitute for evidence of such a class membership. It was also found that the transfer did not violate his right under the Eighth and Fourteenth Amendments to be free from cruel and unusual punishment. (Indiana State Prison)

U.S. District Court
HABEAS CORPUS
STATE STATUTE

Tyson v. Tilghman, 764 F.Supp. 251 (D. Conn. 1991). A prisoner filed a civil rights complaint and petitioned for writ of habeas corpus, alleging that his transfer to an out-of-state prison was illegal and resulted in false imprisonment. The district court found that the petition for writ of habeas corpus had to be dismissed, where the prisoner did not allege that the issue had been presented to appropriate state courts. In addition, the prisoner maintained no right or justifiable interest in remaining in a Connecticut correctional facility, and therefore the prisoner's challenge under a federal civil rights statute to the authenticity of a state contract regarding the transfer of prisoners to an out-of-state prison failed to state a cognizable constitutional claim, where no Connecticut statute, rule or regulation substantively limited the discretion of the Commissioner of Correction to transfer prisoners. (Connecticut Department of Corrections)

U.S. District Court
HABEAS CORPUS

Venable v. Thornburgh, 766 F.Supp. 1012 (D. Kan. 1991). A petition was filed for writ of habeas corpus in which an inmate complained that he was wrongfully withheld by federal authorities because his transfer from a District of Columbia prison to a federal prison was not authorized. The district court found that the inmate was not required to exhaust administrative remedies before bringing a habeas petition challenging a transfer from a District of Columbia prison to a federal prison. The inmate challenged the underlying constitutional validity of the basis for his incarceration in the federal prison and relief through a federal prison administrative grievance procedure would have been so unlikely that to require exhaustion would serve only as an obstructive formality. In addition, the court found that the custody of state offender statute, which authorizes the Attorney General to contract with proper officials of a state or territory for custody of those convicted of criminal offenses in court of a state or territory, provided lawful authority for the District of Columbia to transfer the inmate to federal custody. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
DENIAL
TRANSFER
FAILURE TO
PROTECT

Williams v. McGinnis, 755 F.Supp. 230 (N.D. Ill. 1991). A state prisoner brought an action to compel a transfer to another facility. On motion for preliminary injunction, the U.S. District Court found that the prisoner did not have a constitutional right to be transferred. He was not entitled to an injunction requiring his transfer to another facility based on allegations that he was endangered at the prison where he was being confined, where the only attack upon him happened more than a year earlier and, since then, prison officials had taken steps to secure his safety by placing him in protective custody. His desire to be transferred to another facility so that he could participate in programs there was not sufficient for him to prevail on the merits because prison officials are not required by the constitution to provide educational, rehabilitative, or vocational programs. (Menard Correctional Center, Illinois)

1992

U.S. District Court
RETALIATION

Adams v. James, 797 F.Supp. 940 (M.D. Fla. 1992). A civil rights action was brought alleging that the transfer in job and institutional assignments of inmate law clerks unconstitutionally infringed on their right to file law suits and help other inmates. On motion of the defendants for summary judgment, the district court found that the inmate law clerks did not have unique personal rights to hold particular jobs as law clerks or to be assigned to a particular institution on the grounds that they were moving for social change in that institution by filing suits against officers of the institution concerning conditions of confinement. No such personal right protected by the First Amendment existed on the grounds that the law clerks were more visible than other inmates in instituting legal action against the correctional institution. In addition, the inmates failed

to establish their claims of retaliatory transfer. The prison officials' action of reassigning the inmate law clerks, based on suspicions that the clerks were charging for their services, was reasonable. In addition, it was rationally and validly connected to the government's interest in protecting inmates from exploitation by one another. (Polk Correctional Institution, Florida).

U.S. District Court
RETALIATION

Candelaria v. Coughlin, 787 F.Supp. 368 (S.D.N.Y. 1992), affirmed, 979 F.2d 845. A paraplegic inmate was not entitled to a preliminary injunction against an alleged retaliatory transfer to a new institution without a paraplegic facility, as his request was not properly directed to the defendants named in the action. However, the court noted that the plaintiff may bring a new action, including one for injunctive relief directed against the proper defendants. (Clinton Correctional Facility, New York)

U.S. District Court
FACILITY
TRANSFER

Falcon v. Knowles, 807 F.Supp. 1531 (S.D. Fla. 1992). Prisoners who were transferred from a Miami prison to the Federal Correctional Institute (FCI) in Talledega, Alabama due to damage to the Miami prison caused by a hurricane, petitioned for a writ of habeas corpus, seeking immediate transfer to the Federal Detention Center in Tallahassee, Florida. The district court denied the petition, finding that the prison officials did not purposely and intentionally discriminate against the prisoners in ordering the transfer. Other prisoners were also transferred to Alabama, and there was no information to suggest that the transfer was punitive or arbitrary and capricious. (Metropolitan Correctional Center, Florida)

U.S. District Court
ACCESS TO COURT

Story v. Morgan, 786 F.Supp. 523 (W.D. Pa. 1992). On report of a magistrate judge recommending dismissal of an inmate's in forma pauperis complaint, the district court found that the inmate's claim that his transfer from a state correctional facility in Pennsylvania to a federal facility in Indiana violated his right of access to the courts because the federal facility lacked Pennsylvania legal material was sufficient to state a cause of action under Section 1983. (Federal Correctional Facility, Terre Haute, Indiana)

U.S. District Court
POLYGRAPH
SEGREGATION
TRANSFER
REPRISAL

Wright v. Caspari, 779 F.Supp. 1025 (E.D. Mo. 1992). An inmate brought a civil rights action against prison officials. The district court found that there was sufficient evidence to support a finding of disciplinary violation by the inmate, and he was not entitled to take a lie detector test in connection with the disciplinary proceedings. In addition, the refusal of the prison disciplinary board to call the inmate's witnesses to the disciplinary hearing did not deprive him of due process where the witnesses had been interviewed and it was determined that they were character witnesses rather than fact witnesses. It was also found that the impending transfer of the inmate to another penal institution following disciplinary proceedings did not rise to the level of an Eighth Amendment violation. A prisoner does not have a constitutional right to pick and choose his prison, although he cannot be transferred for exercising his constitutional rights. (Missouri Department of Corrections)

1993

U.S. Appeals Court
RETALIATION

Brookins v. Kolb, 990 F.2d 308 (7th Cir. 1993). A prisoner transferred to another prison filed a civil rights action against prison officials, alleging retaliation. The U.S. District Court found no constitutional rights were violated, and the inmate appealed. The court of appeals found that the inmate, who was a co-chairman of an approved prisoners' committee that helped inmates with legal research, failed to meet his burden of presenting substantial evidence at the summary judgment stage to show that prison officials, in reacting to his letter on the committee's official stationery, exaggerated their response to preserving legitimate penological objectives of the prison environment. The First Amendment rights the inmate had in his capacity as co-chairman were associational rights to act on behalf of another inmate being helped with legal research. Furthermore, the transfer of the inmate was not in retaliation for the exercise of his constitutional rights, but because he ignored an established prison policy governing the sending of prison committee and group correspondence, and thus there was no violation of his civil rights. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
RETALIATION

Cooper v. Ellsworth Correctional Work Facility, 817 F.Supp. 84 (D.Kan. 1993), affirmed, 2 F.3d 1160. An inmate brought a Section 1983 action alleging that the use of excessive force was cruel and unusual punishment in violation of the Eighth Amendment and that his transfer was retaliatory. The district court found that correctional officers' use of force on the inmate was not excessive. Refusal to allow the inmate to attend a doctor's appointment and correctional officers' use of force to escort the inmate to the guard captain's office did not violate the Eighth Amendment's prohibition against cruel and unusual punishment. The inmate was not allowed to attend the doctor's appointment because he refused to put his pants on. Use of force occurred only after the inmate attempted to use his cane on one correctional officer and several officers came to his

assistance to escort the inmate to the captain's office. Furthermore, the inmate did not allege that he sustained any injuries in the altercation. The court also found that the decision to transfer the inmate because of the episode in which several correctional officers were required to restore order clearly advanced legitimate correctional concerns and was not in retaliation for the inmate's conduct. (Ellsworth Correctional Facility, Kansas)

U.S. Appeals Court
DENIAL
DUE PROCESS
LIBERTY INTEREST

Crane v. Logli, 992 F.2d 136 (7th Cir. 1993), cert. denied, 114 S.Ct. 245. A prisoner sued prison officials under Section 1983 for violation of his due process rights. The U.S. District Court dismissed the complaint, and the prisoner appealed. The appeals court found that the prisoner's continued incarceration in a maximum security prison, after reversal of his conviction for murder but before the reviewing court issued its mandate, did not violate due process, as he did not have a liberty interest in the type of prison for his incarceration. He continued to be a convicted prisoner and had not become a "pretrial detainee." Furthermore, the decision of Illinois Department of Correction officials to hold the prisoner at the maximum security prison until the Supreme Court issued its mandate following reversal of the conviction did not violate any of the prisoner's constitutional rights. The decision was a management decision within the scope of the officials' discretion. (Joliet Correction Center, Illinois)

U.S. Appeals Court
DISTANCE
DUE PROCESS
LIBERTY INTEREST

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 the detainee was not denied due process when he was transferred to a jail in a different judicial district. An Arkansas statute providing that a sheriff, where there is no jail or the jail of the county is insufficient, may commit a person in his custody to the nearest jail in another county in the same judicial district, did not contain mandatory language and, thus, did not create a protectable liberty interest in favor of the pretrial detainee challenging his transfer. (Crittenden County Jail, Arkansas)

U.S. Appeals Court
MENTAL
INSTITUTION

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
RETALIATION

Goff v. Burton, 7 F.3d 734 (8th Cir. 1993) U.S. cert. denied 114 S.Ct. 2684. A prisoner sued officials for allegedly transferring him to a maximum security facility in retaliation for his participation in a lawsuit against prison officials. The U.S. District Court found for the prisoner and awarded damages. The defendants appealed. The court of appeals, reversing and remanding, found that the fact that an impermissible retaliatory motive may have played a factor in the transfer would not establish a claim absent proof that discipline would not have been imposed "but for" the unconstitutional retaliatory motive. The court also found that the standard of "some evidence" for reliability of a confidential informant did not require an independent assessment of the credibility of witnesses. (John Bennett Correctional Center, Fort Madison, Iowa)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST

Harrison v. Raney, 837 F.Supp. 875 (W.D. Tenn. 1993). A prison inmate brought a civil rights action asserting claims that he was transferred and reclassified without a hearing. On motion of defendants for summary judgment, the district court found that Tennessee Department of Corrections (TDOC) regulations did not create a liberty interest requiring state officials to afford any due process under the Fourteenth Amendment before either reclassification or transfer of inmates. Even if the regulations required hearings to follow certain procedures, they lacked any mandatory language that would require the warden to base a decision on any particular criteria, and unlimited discretion was explicitly conferred on the warden. Even if some types of transfers of inmates required security reclassification and due process protections, population management transfers did not, under the Tennessee regulation. (Lake County Regional Correctional Facility, Tiptonville, Tennessee)

U.S. Appeals Court
CRUEL AND
UNUSUAL
PUNISHMENT
FAILURE TO
PROTECT

King v. Fairman, 997 F.2d 259 (7th Cir. 1993). An inmate sued corrections officials under Section 1983 for failing to prevent injuries inflicted by other inmates. The U.S. District Court entered judgment notwithstanding the verdict for the prison officials, and the inmate appealed. The appeals court found that the transfer of the inmate to a correction facility that housed members of a gang to which the inmate had once belonged, despite a known threat to the inmate's safety, was not "cruel and unusual punishment" for the

purpose of the inmate's Section 1983 action. The transfer was necessary because the inmate's admitted liaison with a female staff member had compromised security at the prison from which he was transferred. As a result, prison officials were not "deliberately indifferent" to the inmate's safety. (Illinois Department of Corrections)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST

Klos v. Haskell, 835 F.Supp. 710 (W.D.N.Y. 1993) affirmed 48. F.3d 81. A New York state inmate brought a Section 1983 action challenging the constitutionality of his removal from a shock incarceration program. The district court found that the inmate's removal from the shock incarceration program did not implicate the inmate's procedural due process rights because the inmate did not have a protected liberty interest in remaining in the program. The inmate's removal was based not on his behavior while in the program, but on new information regarding circumstances of the inmate's crimes. Regulations concerning removal provided for a hearing only when the removal was premised on conduct while in the program. (Monterey Shock Incarceration Facility, New York)

U.S. District Court
ACCESS TO COURT
DENIAL

Lashley v. Stotts, 816 F.Supp. 676 (D.Kan. 1993). An inmate brought a Section 1983 action seeking retransfer to a Kansas correctional facility. The district court found that the inmate had no constitutional right to incarceration in any particular facility or state. The inmate, therefore, had no constitutional right to retransfer to the Kansas correctional facility to gain access to Kansas legal materials and programming required by Kansas for parole consideration. (Kansas Department of Corrections)

U.S. District Court
ACCESS TO ATTORNEY
ACCESS TO COUNSEL
ACCESS TO COURT
TRANSFER

U.S. v. Smith, 826 F.Supp. 1282 (D. Kan. 1993). A defendant who was imprisoned in Kentucky filed a motion for recommendation to be confined near the place of her Kansas trial. The district court denied the motion, finding that the cost to house the defendant in Kansas would be great. In addition, the defendant made no particularized showing of a need to be in constant contact with her attorneys in order to perfect her appeal. (Federal Prison for Women, Lexington, Kentucky)

1994

U.S. District Court
RETALIATION

Gaston v. Coughlin, 861 F.Supp. 199 (W.D.N.Y. 1994). An inmate filed a Section 1983 civil rights claim against various prison hearing officers, prison administrators, and New York state corrections officials. Motions for summary judgment were filed by both parties. The district court found that evidence that the inmate was transferred to another correctional facility because of a belief that the inmate had been the chief organizer of a food strike precluded the Section 1983 civil rights claim by the inmate alleging that the transfer occurred solely because of the inmate's race, in violation of the inmate's right to equal protection. (Attica Correctional Facility, New York)

U.S. Appeals Court
PURPOSE

Hazen v. Reagen, 16 F.3d 921 (8th Cir. 1994). An inmate at the Iowa State Penitentiary (ISP) who was nominated to serve on an elected inmate advisory council at ISP, and whom prison officials subsequently transferred to a Florida prison, moved for an order to show cause why prison officials should not be held in contempt of a consent decree pursuant to which the council was created. The inmate alleged that the transfer was intended to frustrate his nomination to the council. The U.S. District Court denied the motion, and the inmate appealed. The appeals court, affirming the decision, found that the inmate's transfer did not violate the consent decree. The Prisoners' Advisory Council (PAC) bylaws did not prohibit the legitimate transfer of the inmate to another institution, even if he had been selected as a PAC representative. In addition, the inmate's First Amendment rights were not violated, where the reason for the transfer was not because the inmate sought redress of grievances, but because of the authorities' reasonable belief of the inmate's troublesome, manipulative character. (Iowa State Penitentiary)

U.S. Appeals Court
HABEAS CORPUS
TRANSFER

Hunter v. Samples, 15 F.3d 1011 (11th Cir. 1994). An inmate brought a suit for habeas corpus relief alleging that a federal warden violated the Interstate Agreement on Detainers Act (IADA) when he was transferred from one federal district to another. The U.S. District Court denied the petition, and the inmate appealed. The appeals court, affirming the decision, found that the IADA is an agreement among governments of member states and the United States. Transfers of prisoners within the federal system do not apply. (Federal Prison, Marianna, Florida)

U.S. District Court
RETALIATION

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 evidence showed that repeated transfers of the inmate from prison to prison, searches of his cell, and his placement in segregative confinement were in retaliation for his exercise of First Amendment free speech and religion rights. (Green Haven Correctional Facility, and other facilities, New York)

U.S. Appeals Court
DISTANCE
DUE PROCESS

Stigall v. Madden, 26 F.3d 867 (8th Cir. 1994). A pretrial detainee brought a Section 1983 action alleging that his rights had been violated when he was transferred to a different jail outside of the judicial district in which he was originally held. The U.S. District Court ruled for the defendants and the detainee appealed. The appeals court, affirming the decision, found that the transfer of the detainee to a jail in another judicial district did not violate the detainee's due process rights. An Arkansas statute providing that a person in custody could be committed to the nearest jail in the same judicial district did not contain mandatory language limiting the discretion of prison officials, and therefore that was no right to be free from a transfer. (Monroe County Jail, Arkansas)

1995

U.S. Appeals Court
DUE PROCESS
LIBERTY INTEREST

Beo v. District of Columbia, 44 F.3d 1026 (D.C. Cir. 1995). An inmate filed a Section 1983 action against prison officials, asserting that a transfer to another prison breached a settlement agreement in violation of the inmate's due process rights. The U.S. District Court entered judgment in favor of the inmate and the prison officials appealed. The appeals court, reversing and remanding, found that the settlement agreement allegedly entitling the inmate to a permanent transfer to a particular prison did not implicate any fundamental right. In addition, the settlement agreement was a mere contract applicable to a particular inmate, which thus could not create a due process liberty interest. (Occoquan Facility, District of Columbia)

U.S. District Court
MENTAL HEALTH
RECORDS

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 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 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. Appeals Court
ACCESS TO COURT
REPRISALS
PURPOSE

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
RETALIATION

Hall v. Griego, 896 F.Supp. 1043 (D.Colo. 1995). An inmate brought an action against prison officials alleging violation of his rights under the Religious Freedom Restoration Act (RFRA). The district court found that the inmate stated a claim for violation of his rights under RFRA in being prohibited from wearing headgear and being transferred after

conducting religious services. The court held that material questions of fact precluded summary judgment on whether the inmate's transfers were retaliatory. The court noted that if a second correctional facility offers fewer or inferior opportunities for religious practice, the transfer of an inmate to that facility may be punitive, so as to be impermissible retaliation. The court found that reclassification of the inmate's security status did not trigger constitutional due process. (Colorado State Penitentiary)

U.S. District Court
RETALIATION

Ishaaq v. Compton, 900 F.Supp. 935 (W.D.Tenn. 1995). An inmate filed a § 1983 suit against state prison officials seeking damages for violation of his constitutional rights which allegedly resulted from denial of his grievances, a disciplinary conviction, verbal threats and a transfer. The district court dismissed the case, finding that denying the inmate's request to telephone his attorney did not deny him the right of access to courts. The court held that the inmate's transfer to another facility following threats by another inmate did not violate due process, regardless of the motivation of prison officials, given that the transfer did not produce a significant change in the conditions of his sentence. The court also found that the inmate's substantive due process rights were not violated even if the transfer was in retaliation for the inmate's habit of filing numerous grievances. (West Tennessee High Security Facility)

U.S. District Court
OTHER STATE
EQUAL PROTECTION

Johnson v. Texas Dept. of Criminal Justice, 910 F.Supp. 1208 (W.D.Tex. 1995) reversed 110 F.3d 299. Inmates successfully challenged several parole board procedures in this class action. On remand from the court of appeals the district court held that: (1) inmates' equal protection rights were violated by the Board of Pardons and Paroles consideration--without disclosure--of protest statements; (2) inmates' due process rights were violated by the Board's consideration of writ-writing activities; and (3) out-of-state inmates were not denied equal protection by the Board's practice of considering successful completion of furlough. On appeal the court reversed on issues (1) and (2), finding that these practices did not violate prisoners' equal protection rights. (Texas Board of Pardons and Paroles)

U.S. District Court
FAILURE TO
PROTECT

Jones v. Kelly, 918 F.Supp. 74 (W.D.N.Y. 1995). An inmate filed a civil rights suit against corrections officials alleging that they knowingly placed his life in danger by transferring him to a certain correctional facility. After his transfer the inmate's cell was set on fire and he was assaulted by other inmates. The district court granted summary judgment for the defendants, finding that they had taken appropriate measures at every reasonable opportunity to ensure the inmate's safety, although the risk of harm to the inmate was substantial and the officials had knowledge of the risk. (Attica Correctional Facility, New York)

U.S. District Court
DUE PROCESS
DUE OF FORCE

Maguire v. Coughlin, 901 F.Supp. 101 (N.D.N.Y. 1995). A former inmate sued corrections officials to recover for alleged verbal and physical abuse, inadequate cell conditions, and transfers. The district court granted summary judgment for the defendants, in part, and denied it in part. The court found that the alleged verbal and physical abuse was not cruel and unusual punishment since officers did not apply force maliciously and sadistically to cause harm and did not use more than de minimus force. The court held that the former inmate's transfers did not implicate a due process liberty interest; merely transferring the former inmate among and within four correctional facilities in a span of three weeks in order to carry out an escape investigation did not implicate due process. Because an inmate's Eighth Amendment right to adequate cell conditions was clearly established at the time of the alleged violations, the court held that the defendants were not entitled to qualified immunity. (Downstate Correctional Facility, New York)

U.S. Appeals Court
RETALIATION

Pratt v. Rowland, 65 F.3d 802 (9th Cir. 1995). A prisoner filed a § 1983 action against prison officials, alleging their transfer of him from one prison to another and his placement in a double cell was in retaliation for his exercise of his First Amendment rights. The district court granted a preliminary injunction against the inmate, which the appeals court reversed and remanded. The appeals court held that the prisoner failed to establish that the transfer was retaliatory and was not justified by neutral institutional objectives. The prisoner had given an interview to a television network and had been successful in previous lawsuits against prison officials; the interview occurred after the officials had met to transfer the prisoner, and there was no evidence that officials at the new prison who placed the inmate in a double cell were aware of the interview. (Mule Creek Prison, California)

U.S. Appeals Court
RETALIATION
LIBERTY INTEREST

Schroeder v. McDonald, 55 F.3d 454 (9th Cir. 1995). An inmate filed a pro se civil rights action alleging he was transferred in retaliation for filing a civil rights action against a prison guard. The district court granted the defendants' motion for summary judgment in part and the appeals court reversed in part and remanded. The appeals court found that the prison officials were entitled to qualified immunity and that state prison regulations generally requiring that an inmate be held in the least restrictive level of confinement did not give rise to any liberty interest protected by due process. The court noted that evidence showed that the inmate was disrupting internal discipline during his first 16 days after transfer to a minimum security facility and that he was creating an excessive burden on staff by constantly demanding access to the law library and continuously requesting legal materials. The inmate was transferred back to the medium security

facility from which he had come, and the court found that inmate had no constitutional right to remain in a facility which corresponded to the risk level at which he had been classified. (Hawai'i Department of Public Safety, Corrections Division)

U.S. District Court
RETALIATION

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. (Iowa State Penitentiary)

U.S. Appeals Court
DUE PROCESS
RETALIATION

Ward v. Dyke, 58 F.3d 271 (6th Cir. 1995). A inmate sued prison officials alleging violation of his rights as the result of a transfer from one prison to another because he exercised his right to seek redress of grievances. The district court denied summary judgment for the defendants on the grounds of qualified immunity. The appeals court reversed, finding that the officials could permissibly transfer an inmate from a level II institution to another in order to give prison staff a respite from the inmate's continuous barrage of grievances, even if the new facility was less desirable than the facility from which the inmate was transferred. The court noted that the inmate had no constitutional right not to be transferred when prison officials determine, in exercise of their discretion, that the prisoner was an adjustment problem. (Ionia Temporary Facility and Chippewa Temporary Facility, Michigan)

1996

U.S. District Court
RETALIATION

Alnutt v. Cleary, 913 F.Supp. 160 (W.D.N.Y. 1996). An inmate filed a civil rights action alleging his constitutional rights were violated by corrections officials while he was serving as an inmate representative on a grievance committee. The defendants moved to dismiss the case and the district court denied the motion in part, finding that summary judgment for the defendants was precluded on one claim. The inmate alleged that state corrections officials verbally harassed him, made direct threats, and prepared a false misbehavior report charging him with marijuana use following his election as a representative on an inmate grievance resolution committee. While the court ruled that these allegations did not give rise to a civil rights cause of action, the allegations suggested a correlation between adverse actions against the inmate and his activities as an inmate representative--precluding summary judgment on the inmate's retaliation claim. The court also found that the transfer of the inmate to another state correctional facility, without a hearing, violated a state regulation and did not meet the emergency exception to the hearing requirement. (Wende Correctional Facility, New York)

U.S. Appeals Court
FAILURE TO PROTECT
RETALIATION

Babcock v. White, 102 F.3d 267 (7th Cir. 1996). A prisoner brought a Bivens claim against prison officials alleging violation of his rights as the result of his retention in administrative segregation and delays in transferring him to another facility. The prisoner had requested a transfer to another prison because of gang members who had threatened to kill him. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded the case. The appeals court held that prison officials did not violate the prisoner's Eighth Amendment rights or due process rights by keeping him in the facility despite his fear of physical harm, because no harm was inflicted and there was no indication of malice on the part of the officials. The court noted that the prisoner had originally requested placement in administrative segregation and therefore could not claim that he was deprived of the opportunity to earn good time credits. But the appeals court found that the prisoner had stated a claim that the officials had acted in retaliation for the prisoner's right to petition for redress of grievances, precluding summary judgment. The court also held that the officials were not entitled to qualified immunity. In its decision, the appeals court stated "John Babcock is living proof of the dangers that prison

gangs pose to inmates, and of the logistical nightmare they create for prison administrators." Babcock had claimed that he was held in administrative segregation for ten months while the officials processed his request to be transferred to another prison. (United States Penitentiary, Terre Haute, Indiana)

U.S. Appeals Court
RETALIATION

Cochran v. Morris, 73 F.3d 1310 (4th Cir. 1996). A prisoner filed an in forma pauperis suit against prison officials and it was dismissed by the district court. The appeals court affirmed the lower court decision, finding that the district court did not abuse its discretion in finding that the claims were virtually identical to those in a previous unsuccessful complaint. The court held that the prisoner's allegation that prison officials transferred him in retaliation for filing lawsuits was not sufficiently linked to the specific transfer decision and was therefore not sufficient to state a cause of action. (Buckingham Correctional Center, Virginia)

U.S. District Court
STATE STATUTE
LAW LIBRARY

Counts v. Newhart, 951 F.Supp. 579 (E.D.Va. 1996). A state prison inmate brought a § 1983 action against a sheriff and corrections department official challenging conditions at a city jail and the department's failure to transfer the inmate to another facility. The district court held that the inmate had no right to transfer from a local jail to a state prison under either the due process clause or state statutes, and that failure to transfer the inmate did not constitute an equal protection violation. The court held that a state statute providing for the transfer of inmates from local jails to a state prison within 60 days of sentencing did not create an interest protected by due process, as the statute was merely a procedural device governing the location of the prisoner, and that retaining an inmate in a local jail beyond the 60-day period did not exceed the normal limits of custody. The court found that jail conditions did not constitute cruel and unusual punishment and that the provision of an allegedly inadequate law library did not violate the inmate's right of access to courts. (Chesapeake City Jail)

U.S. Appeals Court
RETALIATION

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. Appeals Court
FOREIGN COUNTRIES

Kass v. Reno, 83 F.3d 1186 (10th Cir. 1996). A prisoner who was transferred from Mexico to the United States under the terms of a prisoner exchange treaty filed a petition for habeas corpus relief challenging his Mexican conviction. The district court denied relief and the prisoner appealed. The appeals court affirmed the lower court decision. The court found that the requirement of the prisoner exchange treaty that the prisoner seeking the transfer must agree not to challenge the Mexican conviction in United States court was not unconstitutional because the prisoner relinquished no vested rights by consenting to the treaty terms; Americans incarcerated in Mexican prisons have no right to relief from United States courts and therefore they lose nothing by consenting to limit themselves solely to Mexican limits after they are transferred. The court also found that the prisoner forfeited potential early release under Mexican law when he agreed to transfer to the United States, and that Mexico had exclusive jurisdiction over the prisoner's claim that Mexican authorities miscalculated his work credits. (Federal Correctional Institution, La Tuna, Texas)

U.S. Appeals Court
PRETRIAL
DETAINEES

Laza v. Reish, 84 F.3d 578 (2nd Cir. 1996). A prisoner brought a § 1983 action against a warden alleging that he had been subjected to unlawful punishment as a pretrial detainee when he was transferred from state prison and held in a federal prison to await trial on federal charges. The district court dismissed the suit and the appeals court affirmed, ruling that since the prisoner had not completed his state sentence at the time he was held, he had not been a pretrial detainee with a due process right to freedom from punishment under Bell v. Wolfish. The prisoner assaulted a counselor who was attempting to conduct a routine search of his cell and was transferred two days later from a federal metropolitan correctional facility to a federal correctional institution where he was placed in administrative detention. (Metropolitan Correctional Center, Federal Bureau of Prisons, New York)

U.S. District Court
FOREIGN COUNTRIES

Marshall v. Reno, 915 F.Supp. 426 (D.D.C. 1996). A former federal prisoner who was a Canadian citizen sued federal officials alleging violation of his rights due to the officials' failure to transfer or deport him to his home country and denial of access to release programs which were available to United States citizens. The district court dismissed the case, finding that the prisoner did not have a protected liberty interest in obtaining

deportation or transfer, nor did he have a right to be incarcerated at a particular prison or under a certain security classification. Although there was a treaty between the United States and Canada that allowed the transfer of the prisoner, the court noted that this was a discretionary matter which afforded the prisoner no right to a transfer. The Federal Bureau of Prisons program statement that limited access of aliens to community confinement facilities and minimum security facilities did not, according to the court, violate the equal protection clause. (Federal Bureau of Prisons)

U.S. Appeals Court
DISCIPLINE

Moorman v. Thalacker, 83 F.3d 970 (8th Cir. 1996). A prisoner filed a § 1983 action against prison officials, alleging a due process violation arising from discipline imposed for violation of prison regulations. The district court denied the defendants' request for qualified immunity and ruled in favor of the prisoner. The defendants appealed. The appeals court reversed the lower court decision, ruling that the discretionary transfer of the prisoner to a medium security prison was not a disruption exceeding the ordinary incidents of prison life and therefore did not implicate a due process liberty interest. The court also ruled that the prison officials were entitled to qualified immunity. The officials had found that the prisoner violated prison regulations when he had a conversation with a fellow prisoner about obtaining a handgun immediately upon the prisoner's imminent release; the prisoner's discipline included the loss of sixteen days of good time. (Iowa State Men's Reformatory)

U.S. District Court
RETALIATION

Niece v. Fitzner, 922 F.Supp. 1208 (E.D.Mich. 1996). A prisoner and his deaf fiance brought a civil rights suit under the Americans with Disabilities Act (ADA), Rehabilitation Act, and state law, alleging discrimination and retaliation. The district court found that the prison's provision of telephone access to prisoners was a "service" within the meaning of ADA and that the prisoner's fiance stated a claim upon which relief could be granted. The court held that prison officials--in their individual capacities--were proper defendants to the ADA suit and that compensatory damages were available under ADA. The court found that the prisoner had standing to bring the suit alleging that he was discriminated against because of his known association with his deaf fiance and on the grounds that he was retaliated against when he was transferred from a minimum security facility to a maximum security facility after he complained about the lack of access to telephonic equipment allowing him to communicate with his fiance. The court also found the fiance stated a claim that prison officials discriminated against her by not allowing her to bring a plastic tumbler with handles on her visits to the prison, in retaliation for her complaint to the Department of Justice and her participation in the Department's investigation of violations of ADA in the prison. (Carson City Temporary Facility, Michigan)

U.S. Appeals Court
OTHER STATE
RETALIATION

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)

1997

U.S. District Court
FOREIGN COUNTRIES

Brancaccio v. Reno, 964 F.Supp. 1 (D.D.C. 1997). A Canadian serving a federal prison sentence sought injunctive relief under the Alien Tort Claims Act seeking transfer to Canada to serve the remainder of her sentence, pursuant to the Convention on the Transfer of Sentenced Persons. The district court held that the Convention had not been violated, and that a transfer under the Convention was an agency action for which the agency had discretion under the law, and is not reviewable under the Administrative Procedures Act. (Federal Correctional Institution, Raybrook, New York)

U.S. District Court
RETALIATION

Davis v. Kelly, 981 F.Supp. 178 (W.D.N.Y. 1997). An inmate brought a § 1983 action alleging he was transferred in retaliation for initiating a lawsuit against a prison official. The district court granted summary judgment in favor of the prison official, finding that the transfer was not retaliation for filing a lawsuit and that the official was entitled to qualified immunity. Corrections officials stated that the inmate was transferred because he had become too familiar with staff and procedures and the court agreed that the transfer would have occurred even if the inmate had not filed a lawsuit. (Attica Correctional Facility and Clinton Correctional Facility, New York)

U.S. District Court
PRETRIAL
DETAINEES

Dodson v. Reno, 958 F.Supp. 49 (D.Puerto Rico 1997). An inmate in a federal pretrial detention facility brought a *Bivens* action against facility officials challenging his proposed transfer to a segregated wing of a federal penitentiary which also housed members of a gang that posed a threat to his life. The district court granted summary judgment for the officials, finding that the proposed transfer did not violate the inmate's Eighth Amendment rights and that the inmate was not entitled to an injunction preventing prison officials from transferring him to any penitentiary in the United States. The court noted that the proposed facility offered an unusually high level of security for inmates whose lives were threatened by other inmates, making the transfer a reasonable

measure designed to ensure the inmate's safety. The court also held that denying the inmate physical access to a prison law library did not deny him his right of access to courts. (Metropolitan Detention Center, Puerto Rico)

U.S. District Court
FAILURE TO PROTECT

Fisher v. Goord, 981 F.Supp. 140 (W.D.N.Y. 1997). A female state prisoner filed a civil rights action against corrections officers and officials claiming she had been raped and sexually abused by officers. The prisoner moved for a preliminary injunction transferring her to another institution and the court denied the motion. The court held that it did not have the authority to transfer the state prisoner to a federal prison, and that prison officials had taken steps to protect the prisoner from attacks in the future. A newly enacted state law classified any sexual relations between a prison employee and an inmate as statutory rape, and the court suggested that this was likely to deter any further misconduct. The court held that the alleged consensual interactions between a correction officer and the prisoner, although inappropriate, were not cruel and unusual punishment under the Eighth Amendment, nor did the officer's alleged conduct in stroking the prisoner's hair while she was asleep and giving her an unsolicited kiss. The court also held that inmates do not have a First Amendment right to write love letters to corrections officers and that prison authorities have a significant and legitimate interest in prohibiting and punishing such conduct. (Albion Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS

Freitas v. Ault, 109 F.3d 1335 (8th Cir. 1997). An inmate filed a civil rights suit against a warden and prison employee alleging he was sexually harassed by the employee, and challenging his transfer to another facility. The district court entered judgment for the inmate on the due process claim associated with the transfer. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the transfer of the inmate, without a hearing, from a minimum security facility to a medium security facility did not violate the inmate's due process rights because it did not subject the inmate to conditions that were an atypical and significant hardship. The appeals court also held that the alleged sexual harassment did not rise to the level of an Eighth Amendment violation. The inmate had been assigned to a job as a painter under a female staff member and a romantic relationship developed between the two that lasted for several months. The two would meet in secluded areas of the facility where they would hug, kiss, and talk. At her request, the inmate would write her "hot sexy" letters several times each week, and she occasionally dressed in tight skirts and high heels for the inmate's benefit. The inmate informed the warden of the relationship after he became angry at the woman for having a male friend stay at her home over the weekend. In his letter to the warden, the inmate referred to the "relationship" between them, and stated that he had been "as much at fault" as her. The court found that the inmate's welcome and voluntary sexual interactions with the correctional employee, no matter how inappropriate, could not as a matter of law constitute "pain" to the inmate as required to show a violation of the Eighth Amendment. (North Central Correctional Facility, Iowa)

U.S. Appeals Court
RETALIATION

Hendricks v. Coughlin, 114 F.3d 390 (2nd Cir. 1997). An indigent inmate brought a federal civil rights action against corrections officers alleging that he was transferred in retaliation for legal actions. The inmate, a self-described jailhouse lawyer, had requested appointment of counsel. The district court denied the inmate's request for counsel and dismissed the action. The appeals court reversed the order denying counsel, vacated the judgment of dismissal and remanded the case. The appeals court found that the district court's automatic denial of the inmate's request for appointment of counsel, on the ground that the case had not survived a dispositive motion, was an abuse of discretion. The court noted that the complexity of legal issues was considerable, and that appointed counsel could possibly cure flaws in the inmate's complaint and shortfalls in evidentiary proof. Some officers had admitted involvement with at least one allegedly retaliatory transfer. (Southport Correctional Facility, New York)

U.S. Appeals Court
FOREIGN COUNTRIES

Kleeman v. United States Parole Com'n., 125 F.3d 725 (9th Cir. 1997). A defendant convicted of simple intentional homicide in Mexico sought to serve her sentence in the United States under the terms of a transfer treaty. Under the terms of the treaty the Parole Commission was charged with the task of translating the foreign sentence into terms appropriate to domestic penal enforcement. The United States Parole Commission set the defendant's sentence and the defendant petitioned for review. The appeals court held that the comparable United States offense was voluntary manslaughter. (United States Parole Commission)

U.S. District Court
FAILURE TO PROTECT

Luong v. Hatt, 979 F.Supp. 481 (N.D.Tex. 1997). A state prisoner who was being housed in a privately-operated prison facility brought a pro se action against prison officials seeking transfer to another facility and damages for their failure to protect him from assaults by other inmates. The district court dismissed the case, finding that the prisoner did not demonstrate violations of his rights sufficient to support an order from the court requiring his transfer to another institution. The court also held that the prisoner could not recover damages in the absence of any indication that suffered a "physical injury" within the meaning of the Prison Litigation Reform Act (PLRA). According to the court,

the cuts, scratches, bruises and similar injuries suffered by the prisoner lasted only two or three days and did not constitute the requisite level of physical injury. The court concluded that the appropriate de minimis standard is whether the injury is of a nature that would require a free-world person to visit an emergency room or to be attended by a doctor; injuries treatable at home with over-the-counter drugs, heating pads, rest and similar methods do not fall within the parameters of the PLRA requirements for a "physical injury." (Dickens County Correctional Center, Texas, operated by the Bobby Ross Group, Inc.)

U.S. Appeals Court
DEPORTATION

Thye v. U.S., 109 F.3d 127 (2nd Cir. 1997). A convicted alien moved for immediate deportation prior to the completion of his prison term. The district court denied the motion and the alien appealed. The appeals court affirmed, finding that the Bureau of Prisons had discretion to consider the inmate's alien status in setting his conditions of confinement. According to the court, federal statutes left the matter solely within the discretion of the Attorney General and the statutes did not allow a private right of action to compel the Attorney General to act. (Federal Bureau of Prisons)

U.S. District Court
OTHER STATE
CRUEL & UNUSUAL
PUNISHMENT

Tucker v. Angelone, 954 F.Supp. 134 (E.D.Va. 1997). A Virginia prisoner housed in Tennessee brought a § 1983 action alleging due process and equal protection violations, and that incarceration in Tennessee was cruel and unusual punishment. The district court dismissed the complaint, finding that the prisoner had no federal or state created liberty interest in parole or to a particular institutional classification. (Tennessee Department of Corrections, Virginia Department of Corrections)

1998

U.S. District Court
DUE PROCESS

Batts v. Richards, 4 F.Supp.2d 96 (D.Conn. 1998). An inmate brought a § 1983 action against correctional officials alleging that his placement in administrative segregation and transfer to a different facility violated his due process rights. The district court granted summary judgment for the officials, finding that no due process violation occurred. According to the court, the inmate received due process because he was given written notice of a classification hearing 48 hours in advance, was given the opportunity to call witnesses, was given a hearing before a hearing officer with a staff advocate acting on his behalf, and the hearing officer issued a written report. (Northern Correctional Institution, Somers, Connecticut)

U.S. District Court
RETALIATION

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
MEDICAL CARE

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
FAILURE TO PROTECT OTHER STATE

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 Department of Corrections)

U.S. District Court
MEDICAL CARE

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. Appeals Court
MEDICAL CARE

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
DUE PROCESS

Jackson v. New York Dept. of Correctional Services, 994 F.Supp. 219 (S.D.N.Y. 1998). A prison inmate who had been placed in keeplock for 13 days and then transferred to another prison brought a § 1983 action against prison officials. The district court granted summary judgment for the defendants, finding that the inmate's placement and transfer did not implicate any protected liberty interest. The court also held that the inmate could not recover for false imprisonment for his 13 days in keeplock, where he was placed there for legitimate purposes and the prison attempted to hold a hearing on the disciplinary charges but was unable to because the inmate was transferred. The inmate was placed in keeplock as the result of a misbehavior report, which the inmate had claimed was falsified. The inmate was transferred to avoid a conflict with another inmate who was transferred to the prison, with whom he had a previous altercation. The court found that the accidental placement of the second inmate, who was regarded by prison officials as an "enemy" of the plaintiff, in the same prison was not the result of deliberate indifference. The transfer of the plaintiff, instead of the second inmate, was supported by the fact that the second inmate had at least ten enemies throughout the prison system and it would have been more difficult to transfer him. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
FOREIGN COUNTRIES

James v. U.S. Parole Com'n, 159 F.3d 1200 (9th Cir. 1998). A prisoner who was convicted of a drug offense in a Mexican court, but was transferred to the United States under a prisoner exchange treaty appealed the decision of the United States Parole Commission which calculated his release date. The appeals court affirmed the Commission's calculation, finding that the prisoner was not entitled to a sentence reduction for acceptance of responsibility in view of the prisoner's "stonewalling" behavior, including affirmative denials of her guilt. The court also held that the Commission's alleged failure to follow its internal guidelines did not result in a denial of due process. The court noted that the guideline was not intended to have the force of law, but was instead used only as an interpretive, procedural rule to guide Commission practice. The guideline required the hearing examiner to warn the prisoner that if the prisoner continued to contest the conduct which was necessarily the basis of the foreign conviction, she would not qualify for the acceptance of responsibility adjustment. (United States Parole Commission)

U.S. District Court
FOREIGN COUNTRIES

Lambros v. Hawk, 993 F.Supp. 1372 (D.Kan. 1998). An inmate sought a declaratory judgment that his constitutional rights had been violated by the federal Bureau of Prisons (BOP). The district court granted summary judgment in favor of the BOP, finding that the inmate's Eighth Amendment rights were not violated by the conditions of his confinement in Brazil prior to his extradition. The court also held that the inmate's constitutional right of access to court did not entitle him to access to English translations of Brazilian law in order to research and challenge his arrest and extradition. The court found that evidence did not support the inmate's allegations

of torture and mistreatment while in Brazil. (U.S. Penitentiary, Leavenworth, Kansas)

U.S. District Court
RETALIATION

McCain v. Scott, 9 F.Supp.2d 1365 (N.D.Ga. 1998). A prisoner brought a pro se Bivens action against federal penitentiary officials in their individual capacities, for damages alleging that they retaliated against him for filing administrative complaints against prison staff. The prisoner alleged that officials retaliated against him by increasing his security-level classification and by transferring him to another facility to be murdered. The court found that the prisoner failed to show a causal relationship between the events, but gave the prisoner permission to amend his complaint. (U.S. Penitentiary, Atlanta, Georgia)

U.S. District Court
INTERSTATE COMPACT
HABEAS CORPUS

Smart v. Goord, 21 F.Supp.2d 309 (S.D.N.Y. 1998). A defendant who was convicted in New Hampshire for conspiring to murder her husband, and was then transferred to a New York State prison, filed a habeas corpus petition in New York. New York officials moved to dismiss the petition, or to transfer it to New Hampshire. The district court granted the motion to transfer, finding that New Hampshire was the petitioner's true custodian, and therefore a district court in New Hampshire would be able to assert personal jurisdiction over appropriate New Hampshire officials. (New York Department of Correctional Services, New Hampshire Department of Corrections)

U.S. Appeals Court
FOREIGN COUNTRIES

Verner v. U.S. Parole Com'n, 150 F.3d 1172 (10th Cir. 1998). A Canadian offender who was transferred to the United States pursuant to the Treaty Between the United States and Canada on the Execution of Penal Sentences appealed a decision of the United States Parole Commission sentencing him to life imprisonment with no opportunity for parole. The appeals court affirmed the Commission's sentence, finding that the translation of the Canadian sentence of parolable life imprisonment to nonparolable life did not violate the treaty nor the statute governing transfer of offenders serving a sentence of imprisonment. (U.S. Parole Commission)

1999

U.S. Appeals Court
OTHER STATE
CRUEL AND UNUSUAL PUNISHMENT

Froehlich v. State of Wis., Dept. of Corrections, 196 F.3d 800 (7th Cir. 1999). Minor children sued Wisconsin authorities alleging that the transfer of their incarcerated mother to an out-of-state prison violated their Eighth, Ninth, and Fourteenth Amendment rights. The district court dismissed the action and the appeals court affirmed. The appeals court held that the transfer did not violate the children's Eighth Amendment rights or their due process rights. The court noted that the children had no constitutional right to insist that their mother be imprisoned at a convenient location. (Wisconsin Department of Corrections)

U.S. District Court
EQUAL PROTECTION

James v. Reno, 39 F.Supp.2d 37 (D.D.C. 1999). A prisoner claimed violation of his constitutional rights when prison officials failed to transfer him to medium security. The district court dismissed the action, finding that the prisoner did not have a liberty interest in the procedures governing the scoring of his custody classification, or in his place of confinement. The court also held that the prisoner failed to establish that his security classification resulted in restrictions placed on him that imposed an atypical and significant hardship on him, in violation

U.S. District Court
PRIVATE FACILITY
OTHER STATE

Lambert v. Sullivan, 35 F.Supp.2d 1131 (E.D.Wis. 1999). A state prisoner filed for a writ of habeas corpus in an attempt to prevent his transfer to a privately-operated correctional facility in another state. The district court denied the petition, finding that the proposed transfer did not violate the prisoner's rights under state law nor did it violate the prisoner's due process rights. The court noted that as a general matter, a state prisoner has no federal constitutional right to serve his sentence in any particular place of confinement. The court also rejected the prisoner's assertion that his transfer would violate the Thirteenth Amendment's proscription against involuntary servitude because he would be required to work at the private facility. According to the court, it is well established that the forced labor of state convicts does not violate the Thirteenth Amendment, and the same rule of law applies regardless of whether the convict is incarcerated in a public or private facility. (Foxx Lake Correctional Institution, Wisconsin)

U.S. Appeals Court
PRIVATE FACILITY
OTHER STATE

Pischke v. Litscher, 178 F.3d 497 (7th Cir. 1999). Inmates of several Wisconsin state prisons sought habeas corpus relief to invalidate, under the Thirteen Amendment's ban on involuntary servitude, a state statute that authorizes prison authorities to enter into contracts with private prisons in other states for the confinement of Wisconsin prisoners. Federal district courts denied the inmates' petitions. The appeals court denied the applications for appealability, finding that § 1983, not habeas corpus, was the proper means to challenge the constitutionality of the statute, and that the claims were frivolous. According to the court, the Thirteenth Amendment ban on involuntary servitude has an express exception for persons imprisoned pursuant to conviction of a crime. (Wisconsin)

U.S. District Court
DUE PROCESS

Rienholtz v. Campbell, 64 F.Supp.2d 721 (W.D.Tenn. 1999). A prison inmate brought a pro se action under § 1983 alleging that termination from his prison law library position, his transfer to another facility, and his termination from a commissary clerical job, resulted in violation of his First Amendment and due process rights. The district court held that the handling of the inmate's prison grievances did not implicate his First Amendment right of access to courts. According to the court, right of access applies only to court actions, not prison grievances. The court also found that the

inmate's alleged lack of access to a prison law library because a computerized research system had not been installed did not violate the First Amendment. The court held that an inmate has no liberty interest protected by the due process clause in assignment to a particular job, to a particular prison, or in freedom from segregation. The court noted that although mandatory language in state prison regulations might have been violated, these procedural regulations did not implicate a protected liberty interest. (West Tennessee Prison Site I, Henning, Tennessee)

U.S. District Court
DUE PROCESS
HABEAS CORPUS

Rizvi v. Crabtree, 42 F.Supp.2d 1024 (D.Or. 1999). An inmate who had been placed in administrative segregation, transferred and barred from communicating with his son who was another inmate, for allegedly planning an escape, petitioned for habeas corpus relief. The district court granted the petition, finding that the inmate had been denied procedural due process. According to the court, the inmate should have been given advance written notice of alleged violations, a written statement of fact finders as to evidence relied on and reasons for disciplinary action, and the opportunity to call witnesses and present documentary evidence in his defense. The inmate and his son had been placed in administrative segregation along with three other men after an informant told prison staff that they were planning an escape. The group was then transferred to a local county jail where they remained in administrative segregation for two more months, and then were transferred to different federal institutions. (Federal Bureau of Prisons, FCI Safford, Arizona)

U.S. Appeals Court
RETALIATION
OTHER STATE

Rouse v. Benson, 193 F.3d 936 (8th Cir. 1999). A state prisoner brought a civil rights action against prison officials alleging that his transfer from one prison to another was in retaliation for his exercise exercise of his Native American religion and violated his equal protection rights. The district court entered summary judgment in favor of the officials and the prisoner appealed. The appeals court reversed and remanded, finding that fact issues as to whether the transfer was in retaliation for exercise of a First Amendment activity precluded summary judgment. The prisoner had been convicted and incarcerated in Iowa but was transferred at his request to a state prison in Minnesota where he hoped to have greater opportunities to practice his Native American religion, specifically the practices of Lakota. While incarcerated in Minnesota he complained about various religious restrictions and filed several grievances. He was returned to Iowa and alleged that his transfer was in retaliation for his grievances and his efforts to practice his religion. (Minnesota Correctional Facility, Stillwater)

U.S. District Court
LIBERTY INTEREST

Sinnett v. Simmons, 45 F.Supp.2d 1210 (D.Kan. 1999). An inmate brought a § 1983 action against various prison workers alleging interference with his freedom of religion, violations of due process and equal protection, and failure to provide adequate protection. The court found that the inmate had no liberty interest in a prison-to-prison transfer, absent a showing that a transfer resulted in a hardship that was "atypical" or "significant" when compared to ordinary prison life. Denial of smoking privileges, extended exercise time, library visits, and participation in certain programs had been necessary to contain disturbances throughout the correctional system and the restrictions were lifted within three weeks. The court held that prison staff did not violate the prisoner's Eighth Amendment rights to be protected from harm when they placed an inmate with a violent history in protective custody with him, even though he had been labeled a "snitch" for cooperating with prison officials. The court noted that the prison staff lacked knowledge that the violent inmate would harm the cooperating inmate. (Ellsworth Correctional Facility, Kansas)

U.S. Appeals Court
FOREIGN COUNTRIES

Wong v. Warden, FCI Raybrook, 171 F.3d 148 (2nd Cir. 1999). An inmate who was a Canadian citizen sought habeas corpus relief alleging that he was denied transfer to a Canadian prison, under the provisions of the Convention on the Transfer of Sentenced Persons, based on his race and national origin. The district court denied the petition and the appeals court affirmed. The appeals court held that the Department of Justice's decision to deny the inmate transfer to a Canadian prison was subject to judicial review, given the inmate's allegations of unconstitutional discrimination. (Fed. Corr. Inst., Raybrook, N.Y.)

2000

U.S. District Court
FOREIGN COUNTRIES

Coleman v. Reno, 91 F.Supp.2d 130 (D.D.C. 2000). A prisoner who was a dual citizen of the United States and Canada who was incarcerated in a Canadian prison filed a complaint seeking an order directing the United States Attorney General to accept custody of him to allow his return to the United States. The district court dismissed the case, finding that the treaty between the two countries pertaining to the execution of penal sentences did not provide a private right of action and that the decision to approve a transfer was committed to the discretion of the Attorney General and was not subject to review. (U.S. Department of Justice)

U.S. District Court
INTERSTATE
COMPACT
NOTIFICATION

Doe v. Ward, 124 F.Supp.2d 900 (W.D.Pa. 2000). A convicted sex offender filed a complaint seeking preliminary and permanent injunctive relief in connection with the application of the Pennsylvania Registration of Sex Offenders Act, to the extent that he had been subjected to community notification for an out-of-state conviction. The district court granted the offender's motion, finding that the offender did not waive the process according to in-state offenders prior to community notification when he applied to transfer to Pennsylvania under the terms of the Interstate Compact Concerning Parole. The court noted that once a sending state grants permission, the receiving state must assume supervision and treat the offender the same as in-state offenders. (Pennsylvania Board of Probation and Parole)

U.S. District Court
OTHER STATE
PRIVATE FACILITY

Evans v. Holm, 114 F.Supp.2d 706 (W.D.Tenn. 2000). A prisoner who had been transferred to a privately-operated out-of-state prison petitioned for habeas corpus relief. The district court denied the petition, finding that the transfer did not amount to a deprivation of liberty. The court noted that the prisoner did not reside in the other state because he had not chosen to live there and would be returned to the prosecuting state for release and any post-release supervision. The court found that a prisoner does not enjoy a federal constitutional right to be confined within a convicting state's borders, regardless of that state's statutes or prison regulations. (West Tennessee Detention Facility, operated by the Corrections Corporation of America)

U.S. Appeals Court
OUT OF STATE
PRIVATE FACILITY

Montez v. McKinna, 208 F.3d 862 (10th Cir. 2000). A prisoner brought a pro se petition for a writ of habeas corpus challenging his interstate transfers under state and federal law. The district court dismissed the claims and the appeals court dismissed the appeal. The appeals court held that federal law did not prohibit the inmate's transfer from one state to a private facility in another state. The inmate had been transferred from a Wyoming state-operated prison to a private Texas correctional facility and then to a private Colorado correctional facility. (Cowley County Correctional Facility, Colorado)

U.S. Appeals Court
PRIVATE FACILITY

Rael v. Williams, 223 F.3d 1153 (10th Cir. 2000). A state prisoner who was incarcerated in a privately-run prison facility under a contract between the state and a private corporation filed a habeas corpus petition. The district court dismissed the petition. The appeals court held that the fact that a state prisoner is transferred to, or must reside in, a privately operated facility, simply does not raise a federal constitutional claim. (Lea County Correctional Facility, New Mexico, operated by the Wackenhut Corporation)

2001

U.S. District Court
PRIVATE FACILITY
OTHER STATE

Berdine v. Sullivan, 161 F.Supp.2d 972 (E.D.Wis. 2001). A state prisoner brought a § 1983 action alleging that his transfer to an out-of-state correctional facility violated his due process rights and constituted cruel and unusual punishment in violation of the Eighth Amendment. The court held that the prisoner has no liberty interest in avoiding transfer to another prison, be it out-of-state, more restrictive, or owned and run by a private corporation. The court found that the attendant loss of visitation associated with his transfer to an out-of-state prison did not violate the Eighth Amendment because it did not totally deprive him of visitation privileges. (Whiteville Correctional Facility, Tennessee, and Oshkosh Correctional Facility, Wisconsin)

U.S. Appeals Court
RETALIATION

Farver v. Schwartz, 255 F.3d 473 (8th Cir. 2001). An inmate brought a § 1983 action against prison officials alleging that harassment from correctional officers prompted a urine test which resulted in his loss of good time credits, change of class, and relocation. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that the inmate stated a claim under § 1983 with respect to allegedly false disciplinary charges and allegedly retaliatory relocation. The inmate had been relocated 250 miles from his home after he questioned an officer's right to deny him legal assistance. The inmate had previously filed a grievance against another officer that allegedly resulted in false disciplinary charges. (Cummins Unit, Arkansas Department of Correction)

U.S. Appeals Court
DISCIPLINE
DUE PROCESS

Giano v. Selsky, 238 F.3d 223 (2nd Cir. 2001). A state prisoner brought an action alleging his placement in administrative segregation violated his due process rights. The district court granted summary judgment to the defendants and the prisoner appealed. The appeals court vacated the district court decision and remanded the case. The appeals court held that a 92 day continuation of the prisoner's confinement in administrative segregation at a prison to which the prisoner was transferred, which extended his 670 day period of segregation served at the sending prison, created a liberty interest under New York law, implicating due process concerns. The court held that the periods of segregation must be considered in the aggregate and that the segregation at the second facility was simply a continuation of his initial segregation. (Clinton Correctional Facility, N.Y.)

U.S. Appeals Court
RETALIATION

Smith v. Campbell, 250 F.3d 1032 (6th Cir. 2001). A prisoner brought a § 1983 action asserting a First Amendment retaliation claim against a prison counselor and another prison official. The district court dismissed portions of the case and granted summary judgment for the defendants on the remaining portions. The appeals court affirmed, finding that the prisoner's filing of grievances against prison officials on behalf of himself and others, in a manner that violated legitimate prison regulations and objectives in light of his aggressive attitudes and his attempts to intimidate staff members, was not a protected activity. The court also held that the prisoner failed to establish a causal connection between protected conduct and his transfer. (Northeast Corr'l Complex, Tenn.)

U.S. District Court
RETALIATION

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 Facility, Michigan)

U.S. District Court
OTHER STATE

Tart v. Young, 168 F.Supp.2d 590 (W.D.Va. 2001). An inmate brought § 1983 claims against a warden and commissioner of corrections alleging they violated his free exercise rights. The district

court granted summary judgment in favor of the defendants. The court held that a prison policy that prohibited inmates from "smudging" with herbs did not violate the First Amendment. The court noted that the prison policy required all religious groups to have more than one inmate from a housing unit. According to the court, the inmate's transfer from a Connecticut prison to a Virginia prison did not violate the inmate's rights under the Equal Protection Clause. (Wallens Ridge State Prison, Virginia)

2002

U.S. Appeals Court
INTERSTATE COMPACT

Ali v. District of Columbia, 278 F.3d 1 (D.C. Cir. 2002). A District of Columbia inmate who was transferred to a Virginia prison and then back again, sued state and District officials alleging various violations of his constitutional rights and the Religious Freedom Restoration Act (RFRA). The district court dismissed the action and the inmate appealed. The appeals court affirmed, finding that the inmate could not establish that D.C. prison officials were liable under § 1983 for alleged constitutional violations by Virginia prison officials. The Virginia officials required the inmate to register under this birth name rather than his religiously-inspired legal name. The court noted that the Interstate Corrections Compact provided that confinement in the receiving state would not deprive an inmate of any legal rights which he would have had if confined in the sending state, but did not waive the receiving state's sovereign immunity under the Eleventh Amendment. (District of Columbia Lorton Central Facility, and Sussex II, Virginia.)

U.S. District Court
OTHER STATE PRIVATE FACILITY

Doty v. Doyle, 182 F.Supp.2d 750 (E.D.Wis. 2002). A state prisoner petitioned for habeas relief after he was transferred to a private out-of-state prison, alleging that the state lost its authority once it shipped him beyond its boundaries. The district court denied the petition and the prisoner appealed. The district court held that the state no longer had the authority to divert a portion of the prisoner's income to release accounts while he was confined in a private out-of-state prison. But the court held that the state had the authority to continue administering the prisoner's trust account, under the terms that were in place when it was created, and therefore retained the authority to deny the prisoner's request for the return of all funds in the entire account. Officials had diverted over $500 of the prisoner's money to be held in his name for his use upon his possible future release. (Wisconsin Department of Corrections, and Whiteville Corr'l Facility, Tennessee)

U.S. District Court
LIBERTY INTEREST

Fermin-Rodriguez v. Westchester County Jail Med., 191 F.Supp.2d 358 (S.D.N.Y. 2002). An inmate brought a pro se § 1983 action against county jail and federal law enforcement officials. The district court dismissed the case, finding that the inmate had no liberty interest in being returned to a state prison from a county jail, and that the delay in returning the inmate to state detainee status was not a due process violation. The court noted that prison officials generally have discretion to transfer an inmate from one correctional facility to another. The inmate claimed that conditions in the state correctional facility were superior to those in a county jail. (Westchester Co. Jail, N.Y.)

U.S. District Court
MEDICAL CARE 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 diabetes condition, 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. Appeals Court
INTERSTATE COMPACT

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. District Court
OTHER STATE PRIVATE FACILITY

Koos v. Holm, 204 F.Supp.2d 1099 (W.D.Tenn. 2002). A state prisoner petitioned for a writ of habeas corpus, challenging his transfer to a private out-of-state prison. The district court denied relief, finding that the state did not violate the prisoner's due process rights nor waive jurisdiction over him by transferring him. (West Tennessee Detention Facility)

U.S. Appeals Court
PRIVATE FACILITY

Martinez v. Johnson, 33 Fed.Appx. 395 (10th Cir. 2002). A state prisoner brought a § 1983 action challenging his confinement in privately owned correctional facilities. The district court dismissed all claims and the appeals court affirmed. The appeals court held that the prisoner's claims that

officials in the privately owned prison violated state laws and contract requirements, did not violate any federal constitutional right so as to support a § 1983 claim. (New Mexico)

U.S. Appeals Court
TRANSPORTATION
RESTRAINTS

Thielman v. Leean, 282 F.3d 478 (7th Cir. 2002). An inmate housed in a medium-security treatment facility for sexually violent persons brought a § 1983 action seeking declaratory and injunctive relief, alleging that the facility's inmate transport policy violated his rights to procedural due process and equal protection under the Fourteenth Amendment. The district court dismissed the case and the inmate appealed. The appeals court affirmed, finding that the inmate had no state-created liberty interest in being free from restraint during transportation, even if the state's statutes gave the inmate a right to the least restrictive conditions of confinement during transport. According to the court, subjecting sexually violent persons to full restraints during transport to and from the medium-security facility, while not subjecting mental health or other patients to such full restraints, did not violate the inmate's equal protection rights. The inmate had a medical condition that required him to be transported from the facility for outside medical treatment an average of three times per month. The transport policy stated, in part, that "Inmates shall be placed in full and double-locked restraints, chain-belt type waist restraints with attached handcuffs, security Blackbox, and leg restraints." (Wisconsin Resource Center)

U.S. Appeals Court
RETALIATION

Toolasprashad v. Bureau of Prisons, 286 F.3d 576 (D.C. Cir. 2002). A prisoner who was allegedly transferred and reclassified as a "special offender" in retaliation for exercising his First Amendment rights, brought a pro se action for violation of the Privacy Act. The district court dismissed the case and the prisoner appealed. The appeals court reversed and remanded. The inmate alleged that he was transferred in retaliation for filing grievances. (Federal Correctional Institutions in Allenwood, Pennsylvania, and Marianna, Florida)

U.S. District Court
ACCESS TO
ATTORNEY
PRETRIAL DETAINEE

U.S. v. Johnson, 225 F.Supp.2d 982 (N.D.Iowa 2002). A pretrial detainee charged with murder while engaged in a conspiracy moved to be transferred to a different facility. The district court denied the motion, finding that denial of the transfer motion was not clearly erroneous, absent a showing that detention at the current facility had interfered with the detainee's right to counsel. The court noted that one of the detainee's attorneys had an office in the same city as the current detention facility. The court also found that transfer was not warranted absent a showing that conditions at the current facility amounted to unconstitutional "punishment." (Linn Co. Jail, Iowa)

U.S. District Court
RESTRAINTS

Williams-El v. McLemore, 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 positioned. The prisoner alleged that prison officials failed to provide him with large handcuffs, rather than standard handcuffs, for transportation. (Standish Maximum Security Facility, and Josephine McCallum Facility, Michigan)

2003

U.S. Appeals Court
RETALIATION

Bruce v. Ylst, 351 F.3d 1283 (9th Cir. 2003). A state prison inmate brought a § 1983 action against prison officials, alleging that they validated him as a prison gang affiliate in retaliation for his jail house lawyering activities and his filing of prison grievances. The district court granted 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 as to whether the officials abused the prison gang validation procedure as a cover or ruse to silence and punish the inmate, barred summary judgment on his First Amendment retaliation claim. (Salinas Valley State Prison, California)

U.S. District Court
DISCIPLINE

Childers v. Maloney, 247 F.Supp.2d 32 (D.Mass. 2003). A state prisoner sued prison officials alleging violation of his due process rights during a prison disciplinary hearing. The district court dismissed the action. The court held that the prisoner's liberty interests were not infringed upon by his loss of visitation for six weeks, placement in isolation, and transfer to another prison as discipline for violation of prison regulations. The court found that the prisoner did not have a liberty interest, under state law, in his position as "Minority Co-Camp Chairman." The court noted that the statute authorizing the corrections commissioner to establish work programs in prisons did not indicate any limitations on the commissioner's discretion to suspend or revoke the prisoner's position. (Old Colony Correctional Center, Massachusetts)

U.S. District Court
ACCESS TO COURT
OTHER STATE

Hannon v. Allen, 241 F.Supp.2d 71 (D.Mass. 2003). A Pennsylvania inmate who was transferred to a prison in Massachusetts brought a § 1983 action claiming denial of his right of access to Pennsylvania courts, seeking a preliminary injunction. The district court denied the inmate's request for an injunction, finding that the inmate failed to satisfy the requirement that he would be likely to succeed on the merits of the case. The court noted that the Massachusetts prison could elect to satisfy its access obligations to the inmate by arranging for his legal representation in

Pennsylvania. (Massachusetts Correctional Institution-Cedar Junction, and Pennsylvania Department of Corrections)

U.S. District Court
RETALIATION

Johnson v. Kingston, 292 F.Supp.2d 1146 (W.D.Wis. 2003). A prisoner brought a civil rights action against prison officials, alleging that they violated his First Amendment rights by retaliating against him for his involvement in other lawsuits against prison employees. The district court granted summary judgment in favor of the officials. The court held that although the prisoner stated a legally viable claim that was not moot, he failed to provide evidence that would support his allegation that the defendants knew about his prior lawsuit, even though the lawsuit was widely publicized in state newspapers. The court noted that the prisoner inferred that he had been transferred in retaliation. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
RETALIATION

Koger v. Snyder, 252 F.Supp.2d 723 (C.D.Ill. 2003). A state prisoner brought an action alleging violation of his rights in connection with the search and seizure of various documents in his cell, and his subsequent transfer to a different prison. According to the court, the prisoner did not have a constitutionally protected right to remain in a particular prison and his lateral transfer to another prison, based on a warden's legitimate penological reasons, did not violate the prisoner's rights. The warden transferred the prisoner to send a message to the prison population that violation of the excess property rules would not be tolerated. (Danville Corr'l Center, Illinois)

U.S. District Court
ACCESS TO COURT

Konigsberg v. Lefevre, 267 F.Supp.2d 255 (N.D.N.Y. 2003). A state inmate brought two civil rights actions against state correctional officials and employees, alleging denial of access to the courts, and conspiracy to violate his civil rights. The district court entered summary judgment in favor of the defendants. The court held that the inmate failed to establish that his access to courts rights were denied with his general claim that his legal materials were lost, copied, or purposely destroyed by prison officials during his transfer. The court noted that the inmate failed to identify particular documents, show how the allegedly missing documents related to his appeal or a resulting new trial, or assert facts showing that his pursuit of litigation was affected by his lack of access to any particular documents. (Clinton Corr'l Facility, Attica Corr'l Facility, New York)

U.S. Appeals Court
MENTAL
INSTITUTION

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. District Court
MEDICAL CARE

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)

2004

U.S. District Court
INTERSTATE
COMPACT
FAILURE TO PROTECT
NOTIFICATION

Ashford v. District of Columbia, 306 F.Supp.2d 8 (D.D.C. 2004). A prisoner brought a civil rights action against the District of Columbia and its employees, alleging they were liable to him for injuries resulting from an attack by other inmates. The district court held that the prisoner stated a sufficient causal connection between his injuries and the District's alleged policy or custom of transferring inmates without informing the receiving institutions about active separation orders. The court also found that the prisoner stated a claim under § 1983 against the District's Interstate Compacts administrator. The court noted that the prisoner told prison officials at the receiving facility about the separation orders, but that an official separation order would have received more consideration and attention. (Pleasant Valley State Prison, California)

U.S. Appeals Court
FAILURE TO PROTECT
TRANSPORTATION

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. Appeals Court
OTHER STATE
PRIVATE FACILITY

Overturf v. Massie, 385 F.3d 1276 (10th Cir. 2004). State prison inmates who had been transferred from Hawaii to a privately owned correctional facility in another state sought federal habeas relief, alleging they should have been transferred when the private facility was purchased by the state. The district court dismissed the action, finding that inmates have no protected liberty interest in the location of their confinement. The court also held that the transferor state did not lose jurisdiction over the inmates, and that the original transfer did not constitute "banishment" in violation of the Eighth Amendment. (Dominion Correction Services, Oklahoma)

2005

U.S. District Court
MEDICAL CARE

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. Appeals Court
RETALIATION

Rhodes v. Robinson, 408 F.3d 559 (9th Cir. 2005). A state prisoner brought a § 1983 action against prison officials, alleging that they retaliated against him for exercising his First Amendment rights to file prison grievances. The district court dismissed the action for failure to state a claim and the prisoner appealed. The appeals court reversed and remanded. The court held that the fact that the prisoner undertook exhaustive efforts to remedy a myriad of alleged violations of his First Amendment rights did not demonstrate that his rights were not violated at all. The court noted that adoption of such a theory would subject prisoners to a "Catch 22" by establishing a rule that, by virtue of an inmate having fulfilled the requirements necessary to pursue a cause of action in federal court, he would be precluded from prosecuting the very claim he was forced to exhaust. According to the court, the prisoner presented the "very archetype of a cognizable First Amendment retaliation claim" in alleging that prison officials: (1) arbitrarily confiscated, withheld and eventually destroyed his property, threatened to transfer him to another facility, and ultimately assaulted him; (2) because he; (3) exercised his First Amendment rights to file prison grievances and otherwise seek access to the legal process, and that; (4) beyond imposing those tangible harms, the officers' actions chilled the prisoner's First Amendment rights; and (5) were not undertaken in narrowly tailored furtherance of legitimate penological purposes. The court noted that the prisoner's conflict with the officers "has its genesis in the most unlikely of places: the servicing of his Canon typewriter." (California Corr'l Inst., Tehachapi, California)

U.S. District Court
MEDICAL 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
RETALIATION

Shaheed-Muhammad v. Dipaolo, 393 F.Supp.2d 80 (D.Mass. 2005). A prisoner brought a civil rights action against employees of a state corrections department alleging violation of his right to practice his Muslim religion. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that the defendant failed to establish that the prisoner's religious beliefs were not sincerely held, noting that although the prisoner had a long history of pro se litigation, he might have been both litigious and religiously observant. According to the court, the fact that the prisoner first sought a pork-free diet and four months later sought a vegetarian diet could have suggested an evolution of his beliefs, and not "backsliding" or nonobservance of religious tenets. The court found that the prisoner failed to establish that prison officials retaliated against him by transferring him from one facility to another after he attempted to exercise his First Amendment rights. According to the court, although there were inconsistencies in the officials' arguments, they presented evidence of two disciplinary infractions that preceded the transfer which conceivably could have provided a basis for the transfer, and there was an indication that the prisoner had "numerous enemies" at the first facility. (Massachusetts Correctional Institution, Cedar Junction)

U.S. Appeals Court
RETALIATION

Siggers-El v. Barlow, 412 F.3d 693 (6th Cir. 2005). A state prisoner brought an action against a prison block officer, alleging that the officer transferred him to another prison in retaliation for exercising his First Amendment rights when he complained to the officer's supervisors that the officer had failed to authorize disbursements of money from his prison account to pay his lawyer to review his appellate brief and file. The district court denied the officer's motion for summary judgment and the officer appealed. The appeals court affirmed. The court held that the prisoner engaged in protected conduct when he informed the officer's supervisor about the refusal to release funds, for the purposes of his First Amendment retaliation claim. The court found that the officer took an adverse action against the prisoner even though the officer's action simply made the prisoner eligible for a routine transfer, and the violation involved a clearly established right of which a reasonable officer would have been aware. (Michigan Department of Corrections)

U.S. Appeals Court
ACCESS TO COURT
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
COURT TRANSFER
RESTRAINTS
SEARCHES

Thiel v. Wisconsin, 399 F.Supp.2d 929 (W.D.Wisc. 2005). A detainee held under the Wisconsin Sexually Violent Persons Law (WSVPL) brought a § 1983 action alleging due process violations in connection with his commitment. The district court denied the detainee's motion to proceed in forma pauperis and dismissed the action. The court held that no due process liberty interests were implicated by the manner in which the detainee was treated, either in regard to his commitment, or in regard to trips outside the facility to a county jail for court proceedings. The court found that the maximum security classification imposed on the detainee was an ordinary incident of such confinement and did not pose atypical or significant hardships. The court found no violations with the manner in which the detainee was strip searched, dressed in prison clothes and placed in restraints before being transported to a county jail for court proceedings. (Sand Ridge Secure Treatment Center, Wisconsin)

U.S. District Court
DUE PROCESS

Torres Garcia v. Puerto Rico, 402 F.Supp.2d 373 (D.Puerto Rico 2005). A prisoner filed a civil rights suit claiming violations of his constitutional rights. The district court granted the defendants' motions to dismiss in part, and denied in part. The court held that the prisoner stated a due process claim against prison officials based on his transfer from a minimum security unit to a maximum security unit in violation of a prison rule that required a timely post-transfer hearing, but noted that the prisoner could only seek prospective injunctive relief. The court found that the prisoner's expectations of prison employment did not amount to a property or liberty interest entitled to due process protection, noting that earning wages while incarcerated was a privilege, not a right. The court held that the inmate failed to state an Eighth Amendment claim that prison officials failed to afford him adequate protection from an attack by other inmates, absent an allegation that he had sustained any injury at their hands. (Puerto Rico Department of Corrections, Bayamon Institutions Nos. 292 and 501)

U.S. Appeals Court
DUE PROCESS

Westefer v. Snyder, 422 F.3d 570 (7th Cir. 2005). State prisoners brought a § 1983 action challenging their transfers to a higher-security prison. The district court granted summary judgment for the defendants and the prisoners appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoners' suit challenging transfers to a high security prison was not subject to dismissal for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA), where the transfer review process was not available to prisoners in disciplinary segregation, and the prisoners' grievances were sufficient to alert the prison that the transfer decisions were being challenged. The court held that the alleged change in a prison policy that required transferring gang members to a high security facility did not constitute an ex post facto violation. The court ruled that the prisoners stated a claim for denial of due process, where the conditions at the high security prison were arguably different enough to give the prisoners a liberty interest in not being transferred there, and there was a dispute as to whether the state provided sufficient pre- and post-transfer opportunities for the prisoners to challenge the propriety of the transfers. The court held that the transfers did not violate the gang members' First Amendment associational rights, noting that prisoners had no right to associate with gangs. (Tamms Correctional Center, Illinois)

U.S. District Court
RESTRAINTS
TRANSPORTATION
CRUEL AND UNUSUAL PUNISHMENT
RETALIATION

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
DUE PROCESS

Austin v. *Wilkinson*, 502 F.Supp.2d 675 (N.D.Ohio 2006). A state inmate filed a § 1983 action alleging that the procedure for transferring him to a super maximum security prison violated due process. The inmate moved to compel the state to reduce his security placement level. The district court granted the motion. The court held that the process used by the state to increase the inmate's security placement level after he killed his cellmate violated due process, even though the prison's rules infraction board found insufficient evidence that the inmate acted solely in self-defense, where the prison's classification committee recommended that the inmate's security placement remain unchanged, the inmate was not given notice of the warden's decision to override the committee's recommendation or opportunity to argue his position and submit evidence, the inmate was not given a hearing on administrative appeal, the board's finding was subject to review by the committee, and the inmate was transferred to a super maximum security prison before the review process was complete. According to the court, due process required that the warden and the state's administrative appeals board provide adequate reasoned statements to justify their decisions to override the prison's classification committee's recommendation that the inmate's security placement remain unchanged after he killed his cellmate. The court held that the state prison system was required to provide an individualized review of the security risk presented by an inmate following his transfer to a super maximum security prison, and thus the state's use of a boilerplate checklist violated the inmate's due process rights, where the inmate received no meaningful review of his situation or of the events leading to his transfer. (Ohio State Penitentiary)

U.S. District Court
DUE PROCESS

Austin v. *Wilkinson*, 502 F.Supp.2d 660 (N.D.Ohio 2006). State inmates in a super maximum security prison facility brought a class action against corrections officials under § 1983 alleging that procedures for transferring them to, and retaining them at, the prison violated due process. The district court ruled that the procedures denied due process and ordered modifications. Prison officials appealed. The appeals court affirmed in part, reversed in part and remanded. Certiorari was granted. The United States Supreme Court affirmed in part, reversed in part and remanded. On remand, the inmates moved for an order extending the court's jurisdiction over due process issues for one year, and the officials' moved to terminate prospective relief. The district court granted the inmates' motion and denied the officials' motion. (Ohio State Penitentiary)

U.S. District Court
INTERSTATE COMPACT

Daniels v. Crosby, 444 F.Supp.2d 1220 (N.D.Fla. 2006). An inmate brought a § 1983 suit against corrections officials, alleging that they violated his due process rights by unconstitutionally depriving him of wages, occupational training, and other benefits. The district court granted summary judgment in favor of the defendants. The court held that the inmate had no liberty or property interest in wages for his work in prison, possession of particular items of personal property, or involvement in rehabilitative programs. The court noted that the Kentucky inmate, incarcerated in Florida for a Kentucky offense pursuant to an interstate corrections compact, had no liberty or property interest, and that while Kentucky officials may have owed a legal duty to the inmate to provide such benefits, Florida corrections officials did not. The inmate had argued that Kentucky pays prisoners for work they do in prison at the rate of $1 per day and that Florida owed him these back wages. He claimed entitlement to pay, to possess the same kind of

personal property (typewriter, television, stereo receiver, ice chest, hot pot, bed linen) he was allowed to possess in Kentucky, and to enroll in a vocational trade as he was allowed to do in Kentucky. (Florida Department of Corrections)

U.S. District Court
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. Appeals Court
INTERSTATE COMPACT

Garcia v. Lemaster, 439 F.3d 1215 (10th Cir. 2006). A New Mexico inmate housed in California pursuant to an Interstate Corrections Compact (ICC) filed a civil rights action against New Mexico defendants challenging his classification and denial of recreation in California. The district court granted the defendants' motion to dismiss for failure to state a claim and the inmate appealed. The court of appeals affirmed, finding that the inmate was required to bring his civil rights suit challenging the conditions of his confinement against his California custodians, and that the inmate did not have a state-created liberty interest in conditions of confinement in accord with New Mexico regulations when he was housed in another state. According to the court, an inmate incarcerated in another state pursuant to the ICC had no liberty interest entitling him to the application of the sending state's classification and recreation rules while confined in the receiving state. The court also found that the inmate had no statutory right under the ICC to be classified and afforded recreation pursuant to New Mexico regulations, noting that the ICC specifically provided that such inmates were entitled to treatment equal to that afforded similar inmates of the *receiving* state. (New Mexico State Penitentiary, New Mexico Dept. of Corrections)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST

Gilmore v. Goord, 415 F.Supp.2d 220 (W.D.N.Y. 2006). A prisoner brought a civil rights action against prison officials and employees, claiming that they violated his constitutional rights in connection with an administrative segregation hearing. The defendants moved for summary judgment and the district court granted the motion. The court held that the inmate's administrative segregation for nineteen days did not implicate a protected liberty interest, nor did his transfer from a medium-security facility to maximum-security facility. The court found that the prisoner had no protected liberty interest in parole, and no justifiable expectation that he would be incarcerated in any particular prison within a state, and therefore, transfers from one facility to another generally do not implicate any due process-protected liberty interest, even if the transfer involves a change in security classification as well. (Wyoming Corr'l Facil., N.Y.)

U.S. District Court
ACCESS TO COURT
RETALIATION

Mark v. Gustafson, 482 F.Supp.2d 1084 (W.D.Wis. 2006). A state prison inmate sued a prison and individuals, alleging that "magic seals" were removed from the interior of his prison cell in violation of his religious rights, and that officials conspired to transfer him to another facility. The district court entered judgment for the defendants. The court found that the absence of any evidence that officials made any kind of concerted effort to send the inmate to a state prison that lacked adequate legal research facilities precluded his claim that his transfer was the result of a conspiracy to deny his right to pursue legal remedies, rather than the stated purposes of sending him closer to home to ease his return to the outside world. (Oakhill Correctional Institution, Wisconsin)

U.S. Appeals Court
RETALIATION

Morris v. Powell, 449 F.3d 682 (5th Cir. 2006). An inmate brought a § 1983 action against prison officials, alleging that they retaliated against him for exercising his First Amendment right to

use the prison grievance system. Following denial of the defendants' first motion for summary judgment, the appeals court remanded for consideration of whether an inmate's retaliation claim must allege more than a ***de minimis*** adverse act. On remand, the district court granted the defendants' motion for summary judgment. The inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that: (1) when addressing an issue of apparent first impression for the court, prisoners bringing § 1983 retaliation claims against prison officials must allege more than an inconsequential or ***de minimis*** retaliatory act to establish a constitutional violation; (2) the officials' alleged actions in moving the inmate to a less desirable job within the prison did not rise to the level of an actionable retaliation; (3) the inmate's claim that he was transferred to an inferior and more dangerous prison satisfied the ***de minimis*** threshold; and (4) the defendants were entitled to qualified immunity on the inmate's job transfer claim. The court noted that although the inmate's official job classification was switched from the commissary to the kitchen for about six weeks, he was actually made to work in the kitchen for only a week at most, and he spent just one day in the "pot room," which was evidently an unpleasant work station, after which he was moved to the butcher shop, about which he raised no complaints. (Telford Unit, Texas Department of Criminal Justice)

U.S. District Court
PURPOSE
RETALIATION

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. District Court
OTHER STATE
RETALIATION

Price **v. *Wall,*** 464 F.Supp.2d 90 (D.R.I. 2006). A state prisoner brought a pro se civil rights action under § 1983 against various prison officials, alleging the officials retaliated against him in violation of his First Amendment rights. The district court granted summary judgment in favor of the defendants. The court held that: (1) the prisoner's transfer to an out-of-state correctional system was not adverse; (2) the prisoner's classification while confined in the out-of-state correctional facility to a restrictive or harsh classification was not adverse, for the purposes of his First Amendment retaliation claim; (3) the prisoner's transfer was not in retaliation for his legal activities; and (4) the officials were not liable for retaliation based on the prisoner's classification while confined in the out-of-state correctional facility. The court noted that the prisoner's classification was not significantly more severe than his classification while confined at the in-state correctional facility. (Rhode Island Department of Corrections)

U.S. Appeals Court
RETALIATION

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 found that the offender's transfer was not in retaliation for his alleged advocacy for another patient, so as to violate the offender's speech rights, where the sex offender program officials indicated that they transferred the offender to lessen his contact with the patient, whom the offender was suspected of exploiting, and where the offender failed to present any evidence that the transfer took place for any other reason. (Minnesota Sex Offender Program, Minnesota Department of Human Services)

U.S. District Court
RETALIATION

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. 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. (Michigan Department of Corrections)

U.S. District Court
LIBERTY INTEREST

Tanner* v. *Federal Bureau of Prisons, 433 F.Supp.2d 117 (D.D.C. 2006). An inmate brought an action against the federal Bureau of Prisons, alleging that his pending transfer to another facility would deprive him of participation in vocational training programs. The inmate moved for a preliminary injunction. The district court denied the motion. The court held that the inmate failed to demonstrate the likelihood of success on his due process claim, as required to obtain a preliminary injunction preventing his transfer, where removal from programs did not constitute an atypical or significant deprivation of the inmate's rights, nor did it affect the duration of his sentence, as may have impaired his protected liberty interests. But the court found that the inmate demonstrated that he would suffer an irreparable injury if injunctive relief were not granted, as required to obtain a preliminary injunction, because the transfer was certain to result in the loss of access to an aquaculture program in which he was employed, loss of pay grade and loss of eligibility for a cable technician program. (Federal Correctional Institution Fairton, New Jersey, United States Penitentiary Leavenworth, Kansas)

U.S. Appeals Court
OTHER STATE

U.S.* v. *Garcia, 470 F.3d 1001 (10th Cir. 2006). Following criminal convictions for drug conspiracy and related crimes, several defendants moved for transfer to a detention facility located closer to their families. The district court denied the motions and the defendants appealed. The appeals court affirmed, finding that a request for a change in place of confinement was required to be brought pursuant to ***Bivens***, since the request was a challenge to the conditions of confinement. (Moshannon Valley Correctional Center, Phillipsburg, Pennsylvania)

2007

U.S. District Court
MEDICAL CARE
LIBERTY INTEREST

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 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 held that the alleged refusal of officials of Department of Corrections (DOC) to transfer the detainee to a correctional treatment facility at which conditions were far less restrictive did not implicate a due process liberty interest. The court noted that an inmate has no due process liberty interest in a particular place of confinement or a particular level of security. (Central Detention Facility. D.C. and Correctional Treatment Facility operated by the Corrections Corporation of America)

U.S. District Court
LIBERTY INTEREST
MEDICAL CARE
DUE PROCESS

Farmer v. ***Kavanagh***, 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.

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"])

U.S. District Court
RETALIATION FOR
LEGAL ACTION

Kaufman v. ***Schneiter,*** 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. (Wisconsin Secure Program Facility)

U.S. District Court
LAW LIBRARY
MAIL
RETALIATION

Kaufman v. ***Schneiter***, 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.The court held that the warden was not involved in the inmate's transfer to a maximum security institution, precluding the warden's liability on the claim alleging that he transferred the inmate in retaliation for the inmate's filing of an earlier lawsuit against him. The court found that there was no evidence that any of the prison officials sued by the inmate were personally involved in denying delivery to the inmate of the letter underlying his free speech claim, and therefore the officials could not be held liable under § 1983. 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). The court held that the former state inmate did not show that while he was incarcerated at a maximum security facility, he ever chose to use out-of-cell time to visit the law library, as opposed to out-of-door exercise, and thus to show an injury-in-fact required for the former inmate to have standing to challenge the prison official's policy of requiring inmates to choose between out-of-cell exercise time and law library time under the Eighth Amendment. (Wisconsin Secure Program Facility)

U.S. District Court
TRANSPORTATION
CRUEL AND UNUSUAL PUNISHMENT

Malik v. ***District of Columbia***, 512 F.Supp.2d 28 (D.D.C. 2007). An inmate sued the District of Columbia, a correctional services company retained by the District, and a transportation company claiming violations of the Eighth Amendment during a 40-hour bus ride transferring the inmate between two facilities. The defendants moved for summary judgment. The court held that the inmate failed to exhaust his administrative remedies as to the claims against the District and the correctional services company. On appeal (574 F.3d 781), the appeals court held that the prisoner did not have administrative remedies for the inmate to exhaust. The court ruled that genuine issues of material fact existed as to whether he exhausted any administrative remedies available to him under the transportation company's informal grievance policy, precluding summary judgment. (District of Columbia, Corrections Corporation of America, TransCor, CCA's Northeast Ohio Correctional Center, Youngstown, Ohio, and CCA Central Arizona Detention Center)

U.S. District Court
RETALIATION

Montoya v. ***Board of County Com'rs***, 506 F.Supp.2d 434 (D.Colo. 2007). A jail inmate brought civil rights and civil rights conspiracy claims against sheriffs, a deputy sheriff, and officials of two counties alleging violation of his constitutional rights when he was tasered by a correctional officer and later transferred and placed in segregation in alleged retaliation for complaining to the press about the tasering incident. The defendants moved for summary judgment and the district court granted the motion. The court held that a civil rights claim was not stated against counties and sheriffs in their official capacities for the inmate's transfer and placement in segregated confinement in alleged retaliation for his complaints to press, given the inmate's complete failure to allege any specific facts suggesting that segregation was the result of a custom or policy, rather than being simply a single act of deprivation disconnected from any wider scheme. According to the court, the county sheriffs were entitled to qualified immunity on individual capacity claims involving conspiracy to transfer and place jail inmate in protective, segregated confinement in retaliation for the exercise of his First Amendment rights, absent any indication that the sheriffs, who never communicated with each other about the transfer, were personally involved in the decision, exercised discretionary control over the decision, or failed to supervise jail administrators who actually made the transfer. (Chaffee and Park Counties, Colorado)

U.S. District Court
MEDICAL CARE

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. (Delaware Corr'l Center)

2008

U.S. Appeals Court
FAILURE TO PROTECT
TRANSPORTATION

Brown v. Fortner, 518 F.3d 552 (8th Cir. 2008). A former inmate brought a § 1983 action against correction officers alleging deliberate indifference by failing to provide safe transportation. The district court denied the officers' claims of qualified immunity and denied their motions for summary judgment. The officers appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that evidence that a correction officer transporting inmates as part of a convoy refused to fasten the inmate's seatbelt knowing that he could not do so himself because of his shackles, and drove recklessly while ignoring requests to slow down, was sufficient for a reasonable jury to conclude that the officer manifested deliberate indifference for the inmate's safety in violation of the Eighth Amendment. The court found that another correction officer who was driving a vehicle as part of the convoy who drove too fast and followed the lead vehicle too closely did not act with deliberate indifference for the safety of the inmate passenger in the lead vehicle, even though the officer's driving proximately caused a multiple vehicle rear-end accident which resulted in the inmate's injuries, absent evidence that the officer was asked to slow down and refused, or that the officer knew that the inmate had been denied a seatbelt. (Missouri Department of Corrections)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE
TRANSPORTATION

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
MEDICAL CARE

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. (Roanoke City Jail, Virginia)

U.S. Appeals Court
INTERSTATE COMPACT
LAW LIBRARY
RETALIATION

Hannon v. ***Beard***, 524 F.3d 275 (1st Cir. 2008). A prisoner who was formerly incarcerated in Pennsylvania and transferred to Massachusetts brought an action against the Secretary of the Pennsylvania Department of Corrections, alleging that he was transferred out-of-state in retaliation for prior lawsuits. The previous lawsuits were against a Pennsylvania prison librarian, who allegedly denied his requests for legal materials, and against numerous Massachusetts prison officials. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded the case for further proceedings regarding the Secretary of the Department of Corrections. The court held that the conduct by the Secretary of the Pennsylvania Department of Corrections, in authorizing, directing, and arranging the Pennsylvania prisoner's transfer from a Pennsylvania prison to a Massachusetts prison, pursuant to an Interstate Corrections Compact, was sufficient to constitute the "transaction of business" in Massachusetts, as would support the exercise of personal jurisdiction by the district court. The court found that the prison librarian's conduct in responding to requests for legal materials by the prisoner incarcerated in Massachusetts was insufficient to constitute the "transaction of business" in Massachusetts, within the meaning of the Massachusetts long-arm statute. The court noted that the prisoner "…has been the quintessential 'jailhouse lawyer,' pursuing post-conviction relief and filing numerous grievances and lawsuits on behalf of himself and other prisoners challenging their conditions of confinement." The prisoner estimated that he had represented "thousands" of his fellow inmates in proceedings. He alleged that the Pennsylvania DOC grew tired of his lawsuits and agitation and, in order to prevent him from filing more lawsuits and in retaliation for the actions he had already taken, began a strategy of transferring him to out-of-state prisons. (Pennsylvania Department of Corrections, Massachusetts Department of Corrections)

U.S. District Court
MEDICAL CARE

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
INTERSTATE COMPACT
MEDICAL CARE
TRANSPORTATION

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 claimsagainst 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
DUE PROCESS
LAW LIBRARY
MENTAL HEALTH

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 Wisconsin Department of Corrections)

U.S. District Court
RETALIATION

Piggie v. ***Riggle***, 548 F.Supp.2d 652 (N.D.Ind. 2008). A prisoner brought a pro se action against a prison official, alleging that she transferred him to another facility because he filed grievances and lawsuits against prison staff. The district court denied summary judgment for the defendants. The court held that summary judgment was precluded by fact issues as to whether: the official was personally involved in the transfer; the asserted reasons for the transfer were pretextual; and the prisoner exhausted remedies under the Prison Litigation Reform Act (PLRA). (Miami Correctional Facility, Pendleton Correctional Facility, Indiana)

U.S. District Court
DUE PROCESS
EQUAL PROTECTION
TRANSFER

Pugh v. ***Goord***, 571 F.Supp.2d 477 (S.D.N.Y. 2008). State prisoners sued prison officials, alleging violations of their constitutional and statutory rights to free exercise of Shi'a Islam and to be free from the establishment of Sunni Islam. Following remand from the appeals court, the plaintiffs moved for summary judgment. The district court granted the motions in part and denied in part. The court held that one prisoner's claim for injunctive relief qualified for a "capable of repetition, yet evading review" exception, and therefore was not rendered moot by his transfer to another facility. The court noted that the corrections department had the ability to freely transfer the prisoner between facilities prior to the full litigation of his claims, and there was a reasonable expectation that the prisoner would be subject to the same action again, given that the department's policies were applicable to all of its prison facilities. (New York State Department of Correctional Services, Mid-Orange Correctional Facility and Fishkill Correctional Facility)

U.S. District Court
PURPOSE

Shilling v. ***Crawford***, 536 F.Supp.2d 1227 (D.Nev. 2008). A Washington prisoner who was being housed in Nevada brought an action against prison officials, claiming violation of his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the officials' motion for summary judgment. The court held that prison authorities imposed a substantial burden on the prisoner's religious beliefs when they conditioned the prisoner's receipt of a kosher meal on his relinquishment of the benefits of living in a lower-security facility. But the court held that even if the prisoner could bring an individual capacity claim against prison officials under RLUIPA, the officials would be entitled to qualified immunity since it would not have been clear to a reasonable official in April 2004 that offering the prisoner a transfer to a higher security prison to accommodate his religious diet would violate his rights under RLUIPA. (High Desert State Prison, Nevada, and Washington Department of Corrections)

U.S. District Court
CRUEL AND UNUSUAL PUNISHMENT
OTHER STATE

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. Appeals Court
FAILURE TO TRAIN

Whitt v. ***Stephens County***, 529 F.3d 278 (5th Cir. 2008). The father of a pretrial detainee who purportedly hanged himself while incarcerated at a county jail brought a § 1983 action against a county, the county sheriff, and unknown jail officials. The district court granted summary judgment in part in favor of jail officials and the sheriff in their individual capacities. The father appealed. The appeals court affirmed. The district court denied the father's motion for leave to amend the complaint to identify the unknown jail officials, and granted summary judgment in favor of the defendants on remaining claims. The father again appealed. The appeals court affirmed. The court held that the amended complaint to substitute named county jail officials for unknown jail officials did not relate back to the original complaint, for the purpose of avoiding a statute of limitations bar. The court found that the county sheriff was not liable under § 1983 for the death of the pretrial detainee, where the sheriff was not present at the jail until after the detainee was found dead, and there was no showing that the sheriff played any part in the detainee's death, or that the sheriff was deliberately indifferent in failing to attempt to resuscitate the detainee or obtain additional medical care for the detainee. The court held that the county was not liable under § 1983 for the detainee's purported suicide, where the county had adequate policies and procedures for detainees who posed an obvious risk of suicide, the detainee did not indicate that he was suicidal on an intake form or otherwise exhibit obvious suicidal tendencies, and the county was not deliberately indifferent in failing to train

or supervise county jail officials. The court noted that in the specific context of jail suicide prevention, municipalities must provide custodial officials with minimal training to detect the obvious medical needs of pretrial detainees with known, demonstrable, and serious medical disorders, but a failure to train custodial officials in screening procedures to detect latent suicidal tendencies does not rise to the level of a constitutional violation. The court found that in the absence of manifest signs of suicidal tendencies, a city may not be held liable for a pretrial detainee's jailhouse suicide in a § 1983 suit based on a failure to train. (Stephens County Jail, Texas)

2009

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
MENTAL INSTITUTION

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
DUE PROCESS
RETALIATION

Brown v. ***Corsini***, 657 F.Supp.2d 296 (D.Mass. 2009). Inmates brought a pro se § 1983 action against prison officials, alleging retaliatory transfer, deliberate indifference and due process violations. The district court granted the officials' motion for summary judgment. The court held that the inmates failed to demonstrate that they would not have been transferred to a new prison but for the prison officials' retaliatory motive, for filing grievances about being required to install security screens on other prisoners' windows. The court noted that the inmates had refused to perform work assignments in the prison's maintenance shop in violation of prison regulations. According to the court, prison officials were not deliberately indifferent to the inmates' safety in violation of the Eighth Amendment by refusing to reassign them to new jobs despite their fear of retribution by other prisoners. The prisoners had installed security screens on other prisoners' windows as part of their job duties. The court noted that there was no evidence that the inmates were subjected to ominous threats or violence by other prisoners. (Bay State Correctional Center, Massachusetts)

U.S. Appeals Court
DUE PROCESS

Hart v. ***Hodges***, 587 F.3d 1288 (11th Cir. 2009). A former federal prisoner brought an action against a state prosecutor, the general counsel of the Georgia Department of Corrections (DOC) and the warden of a Georgia prison, alleging violations of his constitutional rights by having him transferred from federal to state custody at the end of his federal sentence. The district court granted the defendants' motion for judgment on the pleadings on the ground they were entitled to absolute immunity. The plaintiff appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prosecutor was entitled to absolute immunity for his role in the plaintiff's transfer. But the court held that the general counsel of the Georgia Department of Corrections (DOC) and the warden of a Georgia prison were not entitled to absolute immunity from liability under § 1983 and state law for causing the issuance of a second state warrant against the prisoner prior to his release from federal prison, and issuing a notice of surrender to the prisoner and threatening further prosecution following his release. The court noted that the general counsel's role as legal advisor to the DOC and the warden's role as chief jailer of the prison where the prisoner was incarcerated were not roles intimately associated with the judicial phase of the criminal process. (Jackson State Prison, Georgia Department of Corrections)

U.S. District Court
CRUEL AND UNUSUAL PUNISHMENT
DISCIPLINE
DUE PROCESS
EQUAL PROTECTION
TRANSFER

Holland v. ***Taylor***, 604 F.Supp.2d 692 (D.Del. 2009). A state prisoner brought a pro se § 1983 action against a Department of Correction (DOC) and DOC officials, alleging violations of his constitutional rights to equal protection and due process, deliberate indifference, cruel and unusual punishment, and false imprisonment. The prisoner moved to appoint counsel, and the defendants brought a renewed motion for summary judgment. The district court granted the motion for summary judgment and denied the motion to appoint counsel. The court found that neither Delaware law nor Delaware Department of Correction regulations create a liberty interest, the denial of which would constitute a due process violation, in a prisoner's classification within an institution. The court found that the state prisoner had no constitutionally protected right to work release, and thus, neither the alleged failure of a multi-disciplinary team (MDT) member to inform the inmate of a disciplinary review meeting regarding his alleged work release program violation, nor the prisoner's transfer following completion of the sentence imposed in connection with the disciplinary meeting, to another facility to await return to the work-release facility, violated the prisoner's due process rights, absent any atypical or significant hardship by being housed at the other facility as compared to a work-release facility. (Delaware Correctional Center)

U.S. District Court
ACCESS TO COURT
DUE PROCESS
INTERSTATE COMPACT

Kim v. *Veglas*, 607 F.Supp.2d 286 (D.Mass. 2009). A prisoner, who was initially convicted and incarcerated in Maine, brought an action against various prison officials in Massachusetts and Maine alleging that his transfer to a Massachusetts corrections facility violated a variety of his constitutional and statutory rights. The district court dismissed the case in part. The court held that a Maine prison law librarian was subject to Massachusetts' long-arm statute, for the purposes of a claim of denial of access to the courts brought by the prisoner. The court noted that, in a letter to the prisoner in response to his request for legal materials, the librarian stated that he was the individual to contact for Maine legal materials, and that he required the prisoner to provide "exact citations" for requested legal materials. The prisoner contended that this requirement essentially prohibited him from acquiring Maine legal materials, and thus caused his constitutional injury. The court held that the prisoner's allegations were sufficient to satisfy the relatedness requirement for exercise of specific personal jurisdiction over the librarian, consistent with due process. According to the court, the librarian's alleged conduct was both the "but-for" and proximate cause of the prisoner's inability to access the courts, and the foreseeable result of the letter the librarian sent into Massachusetts was that it would prevent the prisoner from having meaningful access to legal materials. The court held that the exercise by the Massachusetts court of personal jurisdiction over the Maine prison law librarian would be reasonable, as required to comply with due process. The court found that Massachusetts had an interest in adjudicating the dispute because: (1) the Commonwealth would be less willing to accept inmates pursuant to the New England Interstate Corrections Compact if the prisoners it accepted must bring suit in Maine; (2) the prisoner had a great interest in accessing the federal courts in Massachusetts, given that he had adequate access to Massachusetts legal materials; (3) litigating in Massachusetts would promote judicial economy because the prisoner had already been appointed pro bono counsel and the case was pending in Massachusetts for several years; and (4) the suit would promote a substantive social policy of ensuring that interstate transfers of prisoners were not used as a means of cutting off inmates' ability to access the courts to seek redress for injuries suffered at the hands of donor states. (Maine State Prison, Massachusetts Correctional Institution-Cedar Junction)

U.S. District Court
FOREIGN COUNTRIES
NOTIFICATION

Kiyemba v. *Obama*, 561 F.3d 509 (D.C. Cir. 2009). Nine detainees at the United States naval base at Guantanamo Bay, Cuba, petitioned for a writ of habeas corpus. The detainees requested interim relief requiring the government to provide 30 days' notice to the court and counsel before transferring them from the naval base, asserting fears that they would be transferred to a country where they might be tortured or further detained. The district court entered requested orders and the government appealed. The appeals court vacated. The court held that the district court could exercise jurisdiction over claims related to the detainees' potential transfer. According to the court, a provision of the Military Commissions Act (MCA) eliminating jurisdiction over non-habeas actions against the United States or its agents relating to any aspect of a detainees' transfer did not apply to preclude jurisdiction over the detainees' claims for notice of transfer. But the court found that a writ of habeas corpus was not available to bar the detainee's transfer based upon the likelihood of a detainee being tortured in recipient country. The district court could not issue a writ of habeas corpus to bar the transfer of a detainee based upon the expectation that the recipient country would detain or prosecute the detainee. (United States Naval Base, Guantanamo Bay, Cuba)

U.S. District Court
SEARCHES

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 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 city's strip search policy at the time. (Washington Co. Jail, Oregon)

U.S. Appeals Court
EQUAL PROTECTION
FACILITY
STATE STATUTE

Roubideaux v. *North Dakota Dept. of Corrections and Rehabilitation*, 570 F.3d 966 (8th Cir. 2009). North Dakota prison inmates, representing a certified class of female inmates, brought a sex discrimination suit under § 1983 and Title IX, alleging that a state prison system provided them with unequal programs and facilities as compared to male inmates. The district court granted summary judgment in favor of the defendants and the inmates appealed. The appeals court affirmed. The court held that North Dakota's gender-explicit statutes, allowing the Department of Corrections and Rehabilitation to place female inmates in county jails and allowing the Department to place female inmates in "grade one correctional facilities" for more than one year, was substantially related to the important governmental objective of providing adequate segregated housing for female inmates, and thus the statutes were facially valid under heightened equal protection review. According to the court, even if the decision to house them at the women's center was based on economic concerns, where the female prison population as a whole was much smaller than the male population, sufficient space to house the female prisoners was becoming an issue as the entire prison population increased. Female inmates were in need of a separate facility to better meet their needs, and statutes expressly required the Department to contract with county facilities that had adequate space and the ability to provide appropriate level of services and programs for female inmates. The court held that the female inmates, by expressing an assertion before the district court that they were not challenging the programming decisions made by Department of Corrections and Rehabilitation upon transfer to county jails for housing, abandoned an "as-applied" challenge to the gender-explicit statutes facilitating such transfers. (Southwest Multi-County Correctional Center, North Dakota)

U.S. District Court
RETALIATION

Savage v. *Judge*, 644 F.Supp.2d 550 (E.D.Pa. 2009). Prison inmates brought a civil rights action against prison officials for allegedly violating their civil rights in connection with reassignment of the inmates to different cells and assaults allegedly committed upon them. Inmates not only asserted unlawful retaliation claims, but claimed that officials exercised excessive force in violation of their Eighth Amendment rights and unlawfully conspired to violate their rights. 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 prison officials, in separating the cellmates from each other and in transferring one to another facility, were retaliating against the cellmates for their pursuit of grievances, or were taking necessary action to prevent the cellmates from engaging in homosexual activity in a cell. The court also found a genuine issue of material fact as to how an inmate sustained an injury to his face while he was being transferred to another cell. (Graterford L-Unit- RHU, Pennsylvania Department of Corrections)

U.S. District Court
FOREIGN COUNTRIES

Simmons v. *Wolff*, 594 F.Supp.2d 6 (D.D.C. 2009). A prison inmate filed a pro se § 1983 action, alleging that the denial of his requests to serve his sentence in Canada constituted cruel and unusual punishment under the Eighth Amendment. The district court dismissed the complaint. The court held that it lacked jurisdiction to entertain claims against federal government officials, in their official capacities, where the government was sued for damages for constitutional torts. The court found that the prison inmate was not subjected to such "extreme deprivations" as to support a claim for cruel and unusual punishment, based on not being allowed to serve his sentence in Canada, which made it difficult for his family to visit him, and not being allowed, as a foreigner, to participate in certain rehabilitation programs. (Federal Bureau of Prisons)

U.S. District Court
DENIAL
RETALIATION

Skinner v. *Holman*, 672 F.Supp.2d 657 (D.Del. 2009). A prisoner brought a § 1983 action against prison employees, alleging he was retaliated against for having filed a prison grievance. The defendants moved to dismiss the claims as frivolous and the district court denied the motion. The court held that the inmate's allegations that he was denied transfer to a minimum security prison, was prevented from working, and was kept in disciplinary confinement for several months as a result of a grievance he had filed were sufficient to state a claim of retaliation for the exercise of his First Amendment rights by prison employees. (James T. Correctional Center, Delaware)

U.S. District Court
EQUAL PROTECTION
FACILITY
TRANSFER

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 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. (Calipatria State Prison, California)

U.S. District Court
FAILURE TO PROTECT
TRANSPORTATION

Wilbert v. *Quarterman*, 647 F.Supp.2d 760 (S.D.Tex. 2009). A state prisoner, proceeding pro se, brought a § 1983 action alleging that two correctional officers violated his Eighth Amendment right to be free from cruel and unusual punishment when they allowed him to be transported without seatbelts, resulting in injuries following the vehicle's sudden stop. The district court granted the defendants' motion to dismiss. Although the court held that the prisoner stated a claim of deliberate indifference in violation of the Eighth Amendment, the prisoner did not timely file a grievance and therefore the prisoner did not satisfy the exhaustion of the administrative remedies requirement of the Prison Litigation Reform Act. The prisoner alleged that he had requested a seatbelt and was denied, that he was not properly seated in the Texas Department of Criminal Justice (TDCJ) transport van, that the van was traveling at an unsafe speed, and that he was injured when the van suddenly stopped. (Texas Department of Criminal Justice, McConnell Unit)

2010

U.S. Appeals Court
LIBERTY INTEREST

Colvin v. *Caruso*, 605 F.3d 282 (6th Cir. 2010). A state prisoner brought pro se action against prison officials, asserting that the prison's 16–day denial of kosher meals, multiple mistakes in administering the kosher-meal program, and the lack of Jewish services and literature at the prison, violated his constitutional rights and the 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. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prisoner's pro se claims for injunctive and declaratory relief under RLUIPA, challenging a particular prison's kosher meal program and the alleged denial of Jewish services and literature at the prison, were rendered moot by the prisoner's transfer to another prison. The court noted that the claims were directed specifically at the particular prison's policies and procedures, not at the state prison system's programs as a whole. The court found that the prisoner's First Amendment right of freedom of religion was not violated by the prison's lack of Jewish services and literature, and thus, the prisoner could not prevail in his § 1983 First Amendment claim on that basis. The court noted that the prisoner was the only inmate requesting Jewish services and literature, that prison policies reasonably required a minimum number of inmates to request religious services before they would be held, and there was no showing that the prisoner was restricted from practicing Judaism privately or that the prison prevented him from requesting religious literature. The appeals court held that the prisoner's pro se claims for injunctive and declaratory relief under RLUIPA, challenging his removal from a kosher meal program and his failure to be reinstated into the kosher meal program, were not rendered moot by his transfer to another prison, noting that the prisoner's non-kosher status traveled with him to the transferee prison. The court held that the prisoner's amended claims against prison officials, challenging his removal from a kosher meal program and his failure to be reinstated into the kosher meal program following his transfer to a different prison, were not futile, for the purpose of the prisoner's motion to amend. The court noted that the prisoner consistently stated his religious preference as Jewish throughout his incarceration, and he submitted numerous grievances concerning

alleged violations of kosher practice by prison kitchen staff. (Michigan Department of Corrections, Alger Maximum Correctional Facility)

U.S. District Court
MEDICAL CARE
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
DUE PROCESS
LIBERTY INTEREST
OTHER STATE

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
MEDICAL CARE

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. District Court
EQUAL PROTECTION
RETALIATION
SEARCHES

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 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. 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 requite 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, Calif. Dept. of Corrections)

U.S. District Court
LIBERTY INTEREST

Silverstein v. *Federal Bureau Of Prisons*, 704 F.Supp.2d 1077 (D.Colo. 2010). A federal inmate brought a civil rights action against the Bureau of Prisons and correctional officers, challenging conditions of his confinement. The district court denied the defendants' motion to dismiss in part. The court held that the allegation that the inmate was indefinitely placed in solitary confinement, isolated from other inmates and correctional facility staff, and subjected to continuous lighting and camera surveillance, was sufficient to allege a liberty interest in conditions of his confinement. The court found that the allegation that the inmate was subjected to solitary confinement for more than two decades was sufficient to state claim under the Eighth Amendment against the

Bureau. But, according to the court, the inmate did not have a liberty interest in avoiding transfer to administrative segregation facility. (United States Penitentiary, Administrative Maximum facility, Florence, Colorado)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE

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. Appeals Court
FAILURE TO PROTECT
TRANSPORTATION

Whitson v. *Stone County Jail*, 602 F.3d 920 (8th Cir. 2010). A female prisoner initiated a pro se § 1983 suit, alleging that two officers failed to protect her from a sexual assault by a male prisoner, and that others failed to properly train and supervise the officers responsible for her safety. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by a fact issue as to whether the officers were deliberately indifferent to the safety of the female prisoner who was placed in the back of a dark van for transport with two male inmates and allegedly raped by one of them. (Stone County Jail, Missouri)

2011

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
RETAILATION

Aref v. *Holder*, 774 F.Supp.2d 147 (D.D.C. 2011). A group of prisoners who were, or who had been, incarcerated in communication management units (CMU) at federal correctional institutions (FCI) designed to monitor high-risk prisoners filed suit against the United States Attorney General, the federal Bureau of Prisons (BOP), and BOP officials, alleging that CMU incarceration violated the First, Fifth, and Eighth Amendments. Four additional prisoners moved to intervene and the defendants moved to dismiss. The district court denied the motion to intervene, and granted the motion to dismiss in part and denied in part. The court held that even though a federal prisoner who had been convicted of solicitation of bank robbery was no longer housed in the federal prison's communication management unit (CMU), he had standing under Article III to pursue constitutional claims against the Bureau of Prisons (BOP) for alleged violations since there was a realistic threat that he might be redesignated to a CMU. The court noted that the prisoner had originally been placed in CMU because of the nature of his underlying conviction and because of his alleged efforts to radicalize other inmates, and these reasons for placing him in CMU remained.

The court found that the restrictions a federal prison put on prisoners housed within a communication management unit (CMU), which included that all communications be conducted in English, that visits were monitored and subject to recording, that each prisoner received only eight visitation hours per month, and that

prisoners' telephone calls were limited and subjected to monitoring, did not violate the prisoners' alleged First Amendment right to family integrity, since the restrictions were rationally related to a legitimate penological interest. The court noted that prisoners assigned to the unit typically had offenses related to international or domestic terrorism or had misused approved communication methods while incarcerated. The court found that a federal prisoner stated a First Amendment retaliation claim against the Bureau of Prisons (BOP) by alleging: (1) that he was "an outspoken and litigious prisoner;" (2) that he had written books about improper prison conditions and filed grievances and complaints on his own behalf; (3) that his prison record contained "no serious disciplinary infractions" and "one minor communications-related infraction" from 1997; (4) that prison staff told him he would be "sent east" if he continued filing complaints; and (5) that he filed a complaint about that alleged threat and he was then transferred to a high-risk inmate monitoring communication management unit (CMU) at a federal correctional institution. (Communication Management Units at Federal Correctional Institutions in Terre Haute, Indiana and Marion, Illinois)

U.S. Appeals Court
OTHER STATE RETALIATION

Hannon v. *Beard*, 645 F.3d 45 (1st Cir. 2011). A state inmate filed a § 1983 action against the secretary of a state department of corrections, alleging that he was transferred to an out-of-state prison in retaliation for his advocacy on behalf of himself and other convicts. The district court entered summary judgment in the secretary's favor, and denied the inmate's motion for reconsideration. The inmate appealed. The appeals court affirmed. The court held that the decision by the secretary to transfer the inmate to an out-of-state maximum security prison was not in retaliation for the inmate's advocacy on behalf of himself and other convicts, and thus did not violate the inmate's First Amendment free speech rights, even though the inmate had not received any misconduct reports in the fourteen years before transfer, and posed no danger to staff or other prisoners. According to the court, the initial decision to transfer the inmate was made three years before the secretary assumed his current position, the inmate had accumulated a large number of legitimate separations while incarcerated in the state prison system, and the transfer did not violate any standard prison policies or procedures. (Pennsylvania Department of Corrections)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE
RESTRAINTS

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)

2012

U.S. Appeals Court
PURPOSE

Bader v. *Wrenn*, 675 F.3d 95 (1st Cir. 2012). A state prisoner filed an action against a Department of Corrections under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court denied the prisoner's motion for a preliminary injunction and the prisoner appealed. The appeals court affirmed, finding that RLUIPA did not constrain prison transfers based on disadvantages at the transferee prison that were not themselves of the government's creation. According to the court, transfer of the state prisoner for reasons that had not been based on the prisoner's religious practice did not violate RLUIPA although the transfer had the result of restricting his religious opportunities. (Northern Correctional Facility, New Hampshire)

U.S. Appeals Court
RESTRAINTS
TRANSPORTATION

Beaulieu v. *Ludeman*, 690 F.3d 1017 (8th Cir. 2012). Patients who were civilly committed to the Minnesota Sex Offender Program (MSOP) brought a § 1983 action against Minnesota Department of Human Services (DHS) officials and Minnesota Department of Corrections (DOC) officials, alleging that various MSOP policies and practices relating to the patients' conditions of confinement were unconstitutional. The district court granted summary judgment in favor of the defendants and the patients appealed. The appeals court affirmed. The appeals court held that: (1) the MSOP policy of performing unclothed body searches of patients was not unreasonable; (2) the policy of placing full restraints on patients during transport was not unreasonable; (3) officials were not liable for using excessive force in handcuffing patients; (4) the officials' seizure of televisions from the patients' rooms was not unreasonable; (5) the MSOP telephone-use policy did not violate the First Amendment; and (6) there was no evidence that officials were deliberately indifferent to the patients' health or safety. (Minnesota Sex Offender Program)

U.S. District Court
MEDICAL CARE
NOTIFICATION

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
FAILURE TO
PROTECT
MEDICAL CARE

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
FAILURE TO PROTECT
TRANSPORTATION

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 Cor'l. Complex in Terre Haute, Indiana)

U.S. Appeals Court
MEDICAL CARE
RETALIATION

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. 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
DISCIPLINE
DUE PROCESS
TRANSPORTATION

Jabbar v. *Fischer*, 683 F.3d 54 (2nd Cir. 2012). A state prison inmate brought an action against prison officials alleging that his constitutional rights under the Eighth and Fourteenth Amendments were violated when he was transported on a bus without a seatbelt and was injured when thrown from his seat. The defendants moved to dismiss for failure to state a claim. The district court granted the motion and the inmate appealed. The appeals court affirmed. The court held that the failure of prison officials to provide inmates in transport with seatbelts does not, without more, violate the Eighth Amendment's prohibition against cruel and unusual punishment or the Due Process Clause of the Fourteenth Amendment. The court noted that a bus seatbelt for a prison inmate in transport is not a life necessity, the deprivation of which constitutes cruel and unusual punishment under the Eighth Amendment. According to the court, a correctional facility's use of vehicles without seatbelts to transport prison inmates, when based on legitimate penological concerns rather than an intent to punish, is reasonable under the Eighth Amendment. (Woodbourne Correctional Facility, Ulster Correctional Facility, New York)

U.S. District Court
PRIVATE FACILITY
SEARCHES

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 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 Department of Corrections; Corrections Corporation of America; Crossroads Correctional Center)

U.S. Appeals Court
MENTAL HEALTH
DUE PROCESS
FACILITY

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 inadequate. (Illinois Youth Center, IYC Kewanee, Illinois)

U.S. Appeals Court
DUE PROCESS
FACILITY
LIBERTY INTEREST

Rezaq v. *Nalley*, 677 F.3d 1001 (10th Cir. 2012). Federal inmates, who were convicted of terrorism-related offenses, brought an action against the Federal Bureau of Prisons (BOP) and BOP officials, alleging that they had a liberty interest in avoiding transfer without due process to the Administrative Maximum Prison (ADX). The district court granted summary judgment in favor of the defendants. The inmates appealed. The appeals court held that the action was not moot, even though the inmates were currently housed in less-restrictive facilities when compared to ADX, where the inmates' transfers to less-restrictive facilities did not completely and irrevocably eradicate the effects of the alleged violation because the inmates were never returned to their pre-ADX placements, and some prospective relief remained available. The court found that the inmates did not have a liberty interest in avoiding conditions of confinement at Administrative Maximum Prison (ADX), and thus the inmates were not entitled to due process in the BOP's transfer determination. According to the court, the inmates' segregated confinement related to and furthered by the BOP's legitimate penological interests in prison safety and national security, conditions of confinement at ADX, although undeniably harsh, were not extreme, inmates' placements at ADX did not increase the duration of their confinement, and the inmates' placements at ADX were not indeterminate, as the inmates were given regular reevaluations of their placements in the form of twice-yearly program reviews. (Administrative Maximum Prison, Florence, Colorado)

U.S. Appeals Court
MENTAL INSTITUTION

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. Appeals Court
ACCESS TO COURT
RETALIATION

Surles v. *Andison*, 678 F.3d 452 (6th Cir. 2012). A state inmate filed a § 1983 action alleging that prison officials had confiscated his legal papers and computer disks on multiple occasions, damaged or destroyed legal and religious papers and property, taken actions to deprive him of access to courts, violated his First Amendment rights, retaliated against him by filing false misconduct charges and transferring him to other prisons, and

conspired against him to violate his rights. The district court entered summary judgment in the officials' favor, 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 state inmate exhausted his administrative remedies, and whether prison officials prevented the inmate from filing grievances and exhausting his administrative remedies. (Michigan Department of Corrections, Gus Harrison Correctional Facility)

U.S. Appeals Court
DUE PROCESS
NOTIFICATION

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. District Court
EQUAL PROTECTION
MEDICAL CARE
PRETRIAL DETAINEE
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)

2013

U.S. District Court
FAILURE TO PROTECT
RETALIATION
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
DENIAL

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
MEDICAL CARE
PRETRIAL DETAINEES

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 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
TRANSPORTATION
FAILURE TO PROTECT
MEDICAL CARE

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 Detention Center, Kankakee County, Illinois)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE
RESTRAINTS
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
DUE PROCESS
INTERSTATE COMPACT

Payne v. *Friel*, 919 F.Supp.2d 1185 (D.Utah 2013). A state inmate brought a § 1983 action against prison officials, certain members of the state board of pardons and paroles, and lawyers working under contract with the prison to provide limited legal services to inmates, alleging numerous constitutional violations. The district court dismissed the complaint, and inmate appealed. The appeals court affirmed in part, dismissed in part, and remanded. On remand, the district court granted the defendants' motion for summary judgment. The court held that the inmate's initial placement in administrative segregation did not violate his due process rights, where the inmate was promptly evaluated by proper officials and was assigned to ad-seg based on legitimate safety and security concerns, and given the reason for the inmate's return to the state-- termination of his interstate compact placement following his conviction for murdering another inmate while in ad-seg there-- there could be little doubt that officials were justified in initially placing the inmate in the most secure housing available pending future review. The court noted that the inmate promptly received a thorough evaluation under the prison's standard review procedures which included a reasoned examination of his assignment. The court found that the inmate was not entitled to a formal hearing regarding the implementation of an Executive Director Override (EDO) and that the former director's failure to personally review the EDO for an 18-month period did not violate due process. (Utah State Prison)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE
RETALIATION

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
FAILURE TO PROTECT
MEDICAL 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)

2014

U.S. District Court
TRANSPORTATION

Best v. *New York City Dept. of Correction*, 14 F.Supp.3d 341 (S.D.N.Y. 2014). A pretrial detainee filed a § 1983 action alleging that state prison officials denied him due process at an infraction hearing, improperly placed him in segregated housing, and failed to protect him while being transported to court. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the issues of whether the detainee's placement in segregated housing following the infraction hearing was administrative or punitive in nature, and whether he was provided the opportunity to call a witnesses at a hearing involved fact issues that could not be resolved on a motion to dismiss the detainee's claim that prison officials' denied him procedural due process at the hearing. According to the court, the officials' failure to provide the detainee with a seat belt while

he was being transported to court with his hands handcuffed behind his back did not demonstrate deliberate indifference to the detainee's safety. Plaintiff alleges that, some time after he was placed in segregated housing, "while being transported to court, handcuffs [were] placed behind [Plaintiff's] back and [he was] "placed in a cage with no seatbelt or a way to protect [himself] in case of a sudden stop or accident." and that, "while riding[, he sat] on a slippery seat that cause[d] [him] to continuously slide." According to the detainee, "On [his] way to court, the bus kept stopping short and [Plaintiff] continued to bump [his] head on the gate in front of [him]." The detainee complained to the driver and after he returned to the detention facility he was taken to the medical center where his injuries were assessed and an injury report was filed. The detainee claims that, as a result of the injuries that he sustained during this trip, his neck and shoulders were injured, and that "he now has to take medication for migraine headaches. (Metropolitan Detention Center, Brooklyn, N.Y.)

U.S. District Court
PRIVATE FACILITY

Dean v. *Corrections Corporation of America*, 108 F.Supp.3d 702 (D. Ariz. 2014). A state prisoner, who was an adherent of the Essene faith, brought a § 1983 action against a private prison management company, warden, and the State of Hawai'i Department of Public Safety, alleging that, following his assignment to a prison in Arizona, he was denied a raw-food, vegetarian diet that had been requested, consistent with his religious beliefs, in violation of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the defendants' motion for a change of venue to the District of Arizona. The defendants moved for summary judgment. The district court granted the motion, finding that: (1) material fact issues existed as to the sincerity of the prisoner's beliefs and whether those beliefs were substantially burdened; (2) the potential perception of preferential treatment was not a compelling interest to justify a burden on the prisoner's religious practice under RLUIPA; (3) an inconsistency with simplified food service and additional costs presented a compelling interest to justify the burden on the prisoner's religious practice under RLUIPA; (4) rejecting the prisoner's requested diet was the least restrictive means to further a compelling government interest; and (5) refusing the prisoner's requested diet did not violate his First Amendment rights. (Saguaro Correctional Center, operated by Corrections Corporation of America, Arizona)

U.S. District Court
TRANSPORTATION
FAILURE TO PROTECT

Fouch v. *District of Columbia*, 10 F.Supp.3d 45 (D.D.C. 2014). A detainee, who allegedly suffered severe injuries from collision between two police vehicles, one of which he was riding in, handcuffed behind the back and without a seat belt or harness, while being transported between police stations for processing of a misdemeanor threat charge, brought an action against the District of Columbia and the two officers who had been driving the vehicles. After the court dismissed claims against the officer who had been driving the other vehicle, the District and the remaining officer filed a motion for partial dismissal. The district court granted the motion for partial dismissal in part and denied in part without prejudice. The court held that the District of Columbia could not be held liable for damages under § 1983. (District of Columbia Metropolitan Police Department, Central Booking Division)

U.S. Appeals Court
HABEAS CORPUS
PURPOSE

Griffin v. *Gomez*, 741 F.3d 10 (9th Cir. 2014). A state inmate filed a petition for a writ of habeas corpus challenging his placement in a security housing unit (SHU). After the writ was issued, the district court ordered the state to release the inmate from segregated housing conditions, and the state appealed. The appeals court vacated, reversed, and remanded. The appeals court held that the district court abused its discretion by finding that the state had violated its order issuing a writ of habeas corpus requiring the state to release the inmate from the facility's security housing unit (SHU). According to the court, the state subsequently placed the inmate in the facility's administrative segregation unit (ASU) and then in another facility's SHU. The court noted that the inmate had been released into federal custody before the order was issued, his placement in ASU after he was released from federal custody pending evaluation of his gang status was standard procedure, and the inmate was validated as an active gang member and placed in other SHU. According to the court, the district court improperly impeded state prison management. (Pelican Bay State Prison, California)

U.S. District Court
MEDICAL CARE
TRANSPORTATION

Mori v. *Allegheny County*, 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)

U.S. District Court
MENTAL HEALTH

Thomas v. *Adams*, 55 F.Supp.3d 552 (D.N.J. 2014). Civilly-committed sexually violent predators (SVP) brought an action against corrections officials, and other defendants, challenging the adequacy of treatment after they were transferred to a new facility for SVPs. The defendants moved to dismiss. The district court granted the motions in part and denied in part. The inmate's claimed that he was diagnosed as a sexually violent predator (SVP) requiring treatment, and after he was transferred to a different facility his prescribed amount of therapy was reduced, and eventually denied without any mental health evaluation. The inmate alleged that the denials were based on his placement in a segregated housing unit (SHU). The court held that the inmate sufficiently

alleged a substantive due process challenge against high-ranking, supervising corrections officers involved in the decision to transfer SVPs to a new facility, despite the contention that the officials played no role in the inmate's day-to-day affairs. (N.J. Sexually Violent Predator Act, Special Treatment Unit at East Jersey State Prison)

U.S. District Court
MENTAL HEALTH

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 Department of Social and Health Services, Western State Hospital and Eastern State Hospital)

2015

U.S. Appeals Court
LIBERTY INTEREST

Chavarriaga 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 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. 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. District Court
PURPOSE
DUE PROCESS

Collazo-Perez v. *Puerto Rico*, 100 F.Supp.3d 88 (D.P.R. 2015). A Puerto Rico prisoner brought a pro se § 1983 action against the Commonwealth of Puerto Rico, the head of a prison's security, and others, alleging his prison transfer violated his civil rights. The prisoner sought $75,000 to compensate him for damages suffered. The defendants moved to dismiss and the district court granted the motion. The court held that the prisoner's allusions to negligence on the part of prison's head of security in immediately transferring the prisoner to another institution, after confidential information about which the prisoner was the author was disseminated to the penal population, were insufficient to state a due process claim that the security head and others endangered the prisoner. According to the court, the prison's head of security had sovereign immunity from the prisoner's § 1983 suit, where the head of security was at all times acting within the scope of his employment, and in his official capacity. (Bayamon Penal Complex, Puerto Rico)

U.S. Appeals Court
TRANSPORTATION
RESTRAINTS

King v. *McCarty*, 781 F.3d 889 (7th Cir. 2015). A state prisoner brought a § 1983 action against a county sheriff and two jail guards, alleging the jail's use of a transparent jumpsuit during his transfer to a state prison, which exposed the prisoner's genitals, violated the prisoner's rights under the Fourth and Eighth Amendments. The district court dismissed the prisoner's Eighth Amendment claim for failure to state a claim and granted the defendant's motion for summary judgment as to the Fourth Amendment claim. The prisoner appealed. The appeals court reversed and remanded. The court held that: (1) the prisoner was required to direct his grievance to the jail, not the state prison, in order to satisfy the Prison Litigation Reform Act's (PLRA) exhaustion requirement; (2) the jail's grievance procedure was not "available," within the meaning of PLRA; (3) allegations were sufficient to state a claim under the Eighth Amendment; and (4) the jail's requirement that the prisoner wear a transparent jumpsuit did not violate the Fourth Amendment. (Illinois Department of Corrections, Livingston County Jail)

U.S. Appeals Court
FACILITY
LIBERTY INTEREST

King v. *Zamiara*, 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)

U.S. District Court
EQUAL PROTECTION

Sassman v. *Brown*, 99 F.Supp.3d 1223 (E.D. Cal. 2015). 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), alleging that the exclusion of male prisoners from California's Alternative Custody Program (ACP), under which female prisoners were allowed to apply for release from prison to serve the last 24 months of their sentence in the community, violated the Equal Protection Clause. The male prisoner moved for summary judgment. The district court granted the motion. The court held that California's ACP violated the Equal Protection Clause of the Fourteenth Amendment, and the provision excluding male prisoners from applying to the ACP would be stricken to expand the ACP to male prisoners. (California Department of Corrections and Rehabilitation)

U.S. District Court
OTHER COUNTRIES

Sluss v. *United States Department of Justice*, 78 F.Supp.3d 61 (D.D.C. 2015). A federal prisoner sought to compel the Department of Justice (DOJ) to transfer him, pursuant to an international treaty, to his birthplace of Canada to carry out the remainder of his sentence. The DOJ moved to dismiss. The district court granted the motion. The court held that decisions regarding the international transfer of prisoners constituted an agency action, which was committed to agency discretion by law, and thus the decisions were not reviewable under the Administrative Procedure Act (APA). (Federal Correctional Center, Petersburg, Virginia)

U.S. Appeals Court
TRANSPORTATION

Turner v. *Mull*, 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. 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. 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)

U.S. Appeals Court
FAILURE TO PROTECT

U.S. v. *Mujahid*, 799 F.3d 1228 (9th Cir. 2015). A federal prisoner was convicted in the district court for aggravated sexual abuse and abusive sexual contact against other prisoners while in custody in a state prison, awaiting transfer to a federal prison. The prisoner appealed his conviction. The appeals court affirmed. The appeals court held that the question of whether or not a contract to house federal prisoners existed between the United States Marshals Service and the state department of corrections was a question of law that was within the district court's authority to decide. The appeals court found that a district court may determine as a matter of law whether the facility at which an alleged crime took place was the one in which the persons were held in custody by direction of, or pursuant to, a contract or agreement with the head of any federal department or agency. (Anchorage Correctional Complex, U.S. Marshals Service)

U.S. Appeals Court
MEDICAL CARE

White v. *Bukowski*, 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 Co. Jail, Illinois)

2016

U.S. Appeals Court
RETALIATION
MENTAL HEALTH

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)

SECTION 48: USE OF FORCE

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.

1945

U.S. Supreme Court
EXCESSIVE FORCE

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)

1971

U.S. District Court
CHEMICAL AGENTS

Landman v. Royster, 333 F.Supp. 621 (E.D. Vir. 1971). The district court held that tear gas should not be used to subdue a man who did not pose a serious threat to others. (State Prison, Virginia)

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)

1973

U.S. District Court
CHEMICAL AGENTS
FIRE HOSE

Collins v. Schoonfield, 363 F.Supp. 1152 (D. Md. 1973). Court held that the use of chemical mace and a fire hose on rioting inmates who were assaulting a guard is justified. (Baltimore City Jail, Maryland)

U.S. Appeals Court
BRUTALITY

Johnson v. Glick, 481 F.2d 1028 (2nd Cir. 1973), cert. denied, 414 U.S. 1033. While it is doubtful that the cruel and unusual punishment clause applies to pretrial detainees, they are protected by the due process clause against acts of brutality by correction officers. However, protection is less extensive than that provided by common law torts. (Manhattan House of Detention, New York)

1974

U.S. Supreme Court
USE OF FORCE

Scheur v. Rhodes, 416 U.S. 232 (1974). Personal representatives of the estates of students who were killed on the Kent State University, Ohio campus in 1970 brought damages action under 42 U.S.C. Section 1983 against the governor, adjutant general of

the Ohio National Guard, various guard officers and enlisted members, and the university president, claiming these officials, acting under color of state law caused the death to the students unnecessarily and illegally. This decision is important in a corrections law context due to the decision in Procunier v. Navarette, 434 U.S. 555 (1978). In that decision the Supreme Court ruled that the state officials and governor could rely only on the qualified immunity described in Scheur.

HELD: "[I]n varying scope, a qualified immunity is available to officers of the executive branch of government, the variation being dependent upon the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action on which liabilities are sought to be based. It is the existence of reasonable grounds for the belief formed at the time and in light of all the circumstances, applied with good faith belief, that affords a basis for qualified immunity of executive officers for acts performed in the course of official conduct." 416 U.S. at 247-248. (Kent State University, Ohio)

1975

U.S. District Court
RESTRAINTS

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. Restraints will be used only in a hospital setting or medical authorization, with strict recordkeeping. (D.C. Jail)

U.S. District Court
CHEMICAL AGENTS

Greear v. Loving, 391 F.Supp. 1269 (W.D. Vir. 1975). Held that the use of tear gas was a proper security measure, because it had taken five correctional officers to subdue the inmate. (Correctional Unit, Greenville, Virginia)

1976

U.S. Appeals Court
BRUTALITY

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)

1977

U.S. Appeals Court
CHEMICAL AGENTS

Arroyo v. Schaefer, 548 F.2d 47 (2nd Cir. 1977). To be unconstitutional, use of tear gas must be more than a common law tort. (Manhattan House of Detention)

1978

U.S. District Court
USE OF FORCE

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
RESTRAINTS

Owens-El v. Robinson, 442 F.Supp. 1368 (W.D. Penn. 1978). Use of restraints as a disciplinary measure violates the eighth amendment. (Allegheny County Jail, PA)

1979

U.S. Appeals Court
BRUTALITY

Collins v. Cundy, 603 F.2d 825 (10th Cir. 1979). Mere verbal abuse of a prisoner does not state a claim for relief under Section 1983, but an allegation that a jailer beat the plaintiff does state a claim. (Campbell County Jail, Wyoming)

U.S. Appeals Court
BRUTALITY

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. (Escambia County Jail, Alabama)

U.S. District Court
BRUTALITY

Lamb v. Hutto, 467 F.Supp. 562 (E.D. Vir. 1979). Mere threats do not state a claim on which relief can be granted, but a single act of a beating by several guards is offensive and does state a claim for violation of civil rights. (Mecklenburg Correctional Center, Virginia)

1980

U.S. District Court
EXCESSIVE FORCE

Griffin v. Smith, 493 F.Supp. 129 (W.D. N.Y. 1980). Allegations of the excessive and unnecessary use of force by guards on inmates in the Special Housing Unit state a claim upon which relief can be granted. (Attica Correctional Facility, New York)

U.S. District Court
CHEMICAL AGENTS

LeBlanc v. Foti, 487 F.Supp. 272 (E.D. La. 1980). Failure of the chief administrative officer to establish procedures for the use of mace and tear gas does not state a claim for violation of civil rights in favor of an inmate on which it was used. The use of these is in the sound discretion of the institutional administration, and their use to quell a disturbance is quite proper. (Orleans Parish Prison, Louisiana)

U.S. Appeals Court
EXCESSIVE FORCE

Martinez v. Rosado, 614 F.2d 829 (2nd Cir. 1980). When force is used not with respect to the duty to maintain order and enforce rules but with the intention of causing injury, the injured prisoner may maintain an action for violation of civil rights. (Ossining Correctional Facility, New York)

U.S. District Court
EXCESSIVE FORCE

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
EXCESSIVE FORCE

Ridley v. Leavitt, 631 F.2d 358 (4th Cir. 1980). The fact that the plaintiff inmate was found guilty of assaulting a guard does not preclude the maintenance of a civil rights actions for the use of excessive force by a guard. (Norfolk City Jail)

U.S. District Court
EXCESSIVE FORCE

Santiago v. Yarde, 487 F.Supp. 52 (S.D. N.Y. 1980). The allegation of the use of force to remove the plaintiff from the cell does not shock the conscience since the force used was apparently not excessive. Therefore, the use of force does not constitute a cruel and unusual punishment. (Bronx House of Detention, New York)

U.S. Appeals Court
USE OF FORCE

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)

1981

U.S. District Court
EXCESSIVE FORCE

Biancone v. Kramer, 513 F.Supp. 908 (E.D. Penn. 1981). The fact that the plaintiff may have been verbally abusive to the sheriff does not justify the use of excessive or unnecessary force. (Berks County, Pennsylvania)

U.S. District Court
EXCESSIVE FORCE

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
CHEMICAL AGENTS
EXCESSIVE FORCE

Lock v. Jenkins, 641 F.2d 488 (7th Cir. 1981). The test for determining the constitutionality of treatment of pretrial detainees alleged to deprive them of liberty without due process of law is whether those conditions amount to punishment of the detainee. It is appropriate to consider together all the conditions of confinement in order to determine whether they amount to punishment. The use of tear gas to retrieve a metal food tray from a pretrial detainee or to stop others from shouting and uttering threats was found constitutionally impermissible. (Indiana State Prison, Michigan City, Indiana)

U.S. District Court
EXCESSIVE FORCE

O'Connor v. Keller, 510 F.Supp. 1359 (D. Md. 1981). An inmate may not employ force against a guard unless he is responding to the guard's use of excessive force against him. Here the force used by the guard was reasonable under the circumstances. (Maryland Correctional Institution)

1982

U.S. Appeals Court
EXCESSIVE FORCE

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. District Court
CHEMICAL AGENTS
EXCESSIVE FORCE

Peterson v. Davis, 551 F.Supp. 137 (D. Md. 1982), aff'd, 729 F.2d 1453 (4th Cir. 1984). Use of tear gas is not excessive force. The United States District Court held that the use of tear gas to quell a disturbance in this instance did not give rise to a Section 1983 action, nor did the confining of inmates in an old recreation area following the use of tear gas. Also, the court ruled that even if the use of tear gas was found unconstitutional, the warden and officers would have been immune from liability. (Maryland House of Correction)

U.S. Appeals Court
CHEMICAL AGENTS

Smith v. Iron County, 692 F.2d 685 (10th Cir. 1982). Use of mace on pretrial detainee is found reasonable. The court found that the use of mace did not violate any constitutional rights in this case. The plaintiff, awaiting disposition on a burglary charge, was found on the floor under his bunk making banging noises. The jailer warned the inmate that he would use mace if he was not given the object making the noise. Because the jailer was the only person on duty in the facility in Cedar City, Utah, and because he had reason to believe that a heavy metal object (six pound drain cover) might have been used to harm anyone near the inmate, the use of mace was reasonable.

The court also noted that the jailer could not enter the cell without risking the escape of the plaintiff and his cell mate. (Iron County Jail, Utah)

1983

U.S. District Court
RESTRAINTS

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)

U.S. Appeals Court
EXCESSIVE FORCE

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)

U.S. District Court
USE OF FORCE

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. Appeals Court
EXCESSIVE FORCE

Putman v. Gerloff, 701 F.2d 63 (1983). Sheriff uses reasonable force to prevent escape. The Circuit Court of Appeals has decided that a sheriff and his deputy used no more force than was necessary to prevent the escape attempt of two pretrial detainees being held at the Gasconede County Jail in Hermann, Missouri.

The plaintiffs were awaiting trial on charges of armed robbery. They attempted to escape from the jail by using saw blades to cut through the bars on a door leading to the jail's main room. They succeeded in removing the bars and one crawled into the hallway. The second became stuck. The two were discovered at this time by the sheriff and his deputy.

The plaintiffs claimed that they were grabbed by the hair, thrown to the floor, kicked in the side, and beaten about the head numerous times with the butt of a shotgun, and that after their escape was discovered and they were recaptured, they were chained, back to back, and left in that position in a holding cell overnight.

The defendants described the events differently, with the sheriff admitting to having struck one of the plaintiffs on the head, because he could not determine if the plaintiff had a weapon. The deputy admitted that the plaintiffs were handcuffed together but only remained so for about thirty minutes. Several jail inmates verified the testimony of the sheriff and his deputy.

The plaintiffs appealed, alleging that they were entitled to a directed verdict at trial on the issue of liability. The court of appeals rejected this argument, finding that the jury could reasonably have concluded that the sheriff and his deputy had told the truth and had used force which was no more severe than was reasonably necessary under the circumstances. (Gasconede County Jail, Missouri)

U.S. District Court
CHEMICAL AGENTS
EXCESSIVE FORCE

Soto v. Cady, 566 F.Supp. 773 (E.D. Wisc. 1983). Use of mace is found improper. A district court in Wisconsin has found that the practices at a prison in Wisconsin are improper, and that the use of mace on inmates whose disobedient behavior was passive was in violation of the inmate's rights. Several inmates testified of routine use of mace in 130 incidents during a three year period. (Correctional Institution, Waupun, Wisconsin)

1984

U.S. District Court
EXCESSIVE FORCE

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)

U.S. District Court
FAILURE TO
DIRECT

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)

U.S. Appeals Court
EXCESSIVE FORCE

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. Appeals Court
BRUTALITY

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
EXCESSIVE FORCE

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
EXCESSIVE FORCE

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
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. Secondly, he was spreadeagled with almost no ability to move. The unpadded chains that were used caused nerve damage when he attempted movement in his agitated state. Because of no monitoring or supervision, he was denied use of a toilet for at least fourteen hours. 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
EXCESSIVE FORCE

Hazen v. Pasley, 768 F.2d 226 (8th Cir. 1985). Prisoners brought action against state officers and the county sheriff for wrongful taking of property and constitutionally impermissible conditions of confinement and sought damages for excessive use of force allegedly employed by one state officer at the time of the arrest. The United States District Court entered the final judgment in favor of the defendants, and the prisoners appealed. Each was awarded $100.00. (Phelps County Jail, Missouri)

U.S. District Court
BRUTALITY

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
BRUTALITY

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. District Court
EXCESSIVE FORCE

Peebles v. Frey, 617 F.Supp. 1072 (D.C.Mo. 1985). While guards were giving an orientation to new inmates, the plaintiff inmate shouted annoying language from his maximum security unit, disrupting the orientation procedure. Correctional officers attempted to quiet the inmate, who ultimately had to be moved to another cell. He grabbed one officer's shirt, causing scratch marks on the guard, at which time a fellow officer delivered a single blow with his fist smacking the inmate in the forehead. The inmate was handcuffed and placed in the cell. The court found the blow was not excessive force given the inmate's provocative behavior. (Missouri Correctional Center)

U.S. Appeals Court
EXCESSIVE FORCE

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. District Court
EXCESSIVE FORCE

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
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 plaintiff also alleged that during the nine-day period, he was not allowed to shower, have clean bedding, use the bathroom, have regular water access, send or receive mail, and that the restraints were applied carelessly. The court dismissed various claims and ordered others to proceed, primarily, concerning the shackling itself. (Menard Correctional Center, Illinois)

1986

U.S. District Court
EXCESSIVE FORCE

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. District Court

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
EXCESSIVE FORCE

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. District Court
BRUTALITY

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 nonoffending 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
THREATENING

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
EXCESSIVE FORCE

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 due process clause forbids punishment of pretrial juvenile detainees. The conditions of a pretrial juvenile detainee incarceration affect interests protected by the fourteenth amendment rather than the eighth amendment.

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.

In determining whether the injuries sustained by the juvenile from the conduct of the superintendent of the juvenile detention center violated the juvenile's liberty interests protected by the fourteenth amendment, the fact that the juvenile did not suffer broken bones and permanent disfigurement did not require dismissal of the juvenile's injuries as negligible.

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. Appeals Court
EXCESSIVE FORCE

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
EXCESSIVE FORCE

McCullough v. Cady, 640 F.Supp. 1012 (E.D. Mich. 1986). An inmate brought a civil rights action against a prison guard arising from an incident in which the guard shot the inmate. The prison guard and other defendants moved for judgment notwithstanding the verdict after the jury returned verdict for the inmate. The district court held that: (1) there was sufficient evidence for the jury to reasonably infer that the prison guard deliberately and wantonly inflicted pain upon the inmate in violation of the eighth amendment; (2) the prison guard did not enjoy qualified immunity from liability; and (3) the inmate was entitled to recover attorney's fees and costs.

An overwhelming weight of evidence was that the prison guard intentionally shot the inmate who did not pose a threat to the safety of anyone; therefore, the prison guard was not entitled to qualified immunity from liability in the inmate's civil rights action. (State Prison for Southern Michigan at Jackson, Michigan)

U.S. Appeals Court
BRUTALITY

McRorie v. Shimoda, 795 F.2d 780 (9th Cir. 1986). A prison inmate brought a civil rights action based on allegations that a prison guard attempted to plunge a riot stick into his anus during a strip search after a shakedown. The United States District Court dismissed the suit for failure to state a claim on which relief could be granted, and the inmate appealed. The court of appeals held that: (1) the inmate's allegations, if proved, stated an eighth amendment violation; (2) if true, the prison guard's alleged conduct amounted to deprivation of the inmate's liberty interest which rose to the level of a substantive due process violation; and (3) the availability of state court relief did not bar federal relief under Section 1983 for alleged prison guard brutality which constituted a deprivation of substantive due process. In determining whether a prison guard's conduct amounts to brutality and is therefore a liberty deprivation without due process, the court must look to such factors as a need for the application of force, the relationship between the need and amount of force that was used, the extent of the injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or applied maliciously and sadistically for the very purpose of causing harm. (Oahu Community Correctional Center, Hawaii)

U.S. Appeals Court
EXCESSIVE FORCE

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. District Court
FAILURE TO PROTECT

Musgrove v. Broglin, 651 F.Supp. 769 (N.D.Ind. 1986). A former prison inmate brought a civil rights action against prison officials. The district court held that: (1) the guard violated the inmate's eighth amendment rights when he injured him; (2) the prison superintendent acted with deliberate indifference in view of his knowledge of problems with the guard and failure to take proper action; and (3) the inmate was entitled to damages in the amount of $12,000. A guard violated the eighth amendment rights of a prisoner by causing physical injury to him when he discovered him lying on his bed following a population count. (Westville Correctional Center, Indiana)

State Court
BRUTALITY

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)

U.S. Appeals Court
RESTRAINTS

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 Bureau of Police Services, Detention Unit, Georgia)

U.S. Supreme Court
EXCESSIVE FORCE

Whitley v. Albers, 106 S.Ct (1986). Supreme Court rules that use of lethal force to quell a prison disturbance does not violate constitutional rights. During a disturbance at the Oregon State Penitentiary a correctional officer was taken hostage and placed in a cell on the upper tier of a two tier cellblock. Attempting to free the hostage, prison officials devised a plan which called for a manager to enter the cellblock unarmed, followed by officers armed with shotguns; the officers were instructed to fire a warning shot, and to shoot low at any inmate who attempted to climb the cellblock stairs. After firing a warning shot, an officer shot a prisoner in the knee when he started up the stairs. The prisoner filed suit against prison officials alleging violation of his eighth and fourteenth amendment rights.

The federal district court ruled for the defendants, finding their "use of deadly force was justified under the unique circumstances of this case." The U.S. Court of Appeals for the Ninth Circuit reversed the lower court decision. The U.S. Supreme Court reversed the appeals court decision, finding the use of force to be justified in this case.

The Court ruled that the infliction of pain in the course of a prison security measure is only an eighth amendment violation if it is "inflicted unnecessarily and wantonly." The Supreme Court found that the "deliberate indifference" standard for evaluating eighth amendment claims which was established in Estelle v. Gamble, 429 U.S. 427 (1976), is not sufficiently broad enough to be used to analyze deadly force claims associated with riot situations. Wantonness must consider if the force was applied as part of a good faith effort to maintain or restore discipline, or if it was applied maliciously or sadistically for the purpose of causing harm, as well as efforts made to temper the severity of the forceful response. (Oregon State Penitentiary)

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." (City of Atlanta Police, Georgia)

1987

U.S. District Court
EXCESSIVE FORCE

Bruscino v. Carlson, 654 F.Supp. 609 (S.D. Ill. 1987). Action was brought by federal inmates complaining of use of excessive force, performance of rectal searches, amount of time they had to spend in their cell, transfer procedures and various other conditions that had existed at prison since "lockdown" began. On objections to magistrate's report and recommendation, the district court held that: (1) restraining control unit inmates during legal visits did not violate their right of access to the courts; (2) rectal searches at the prison did not constitute unnecessary and wanton infliction of pain within the meaning of the eighth amendment; (3) restraining federal inmates to beds for prolonged periods without checking them every thirty minutes violated federal regulations but because incidents were isolated, there was no policy or practice of abuse and thus no constitutional violation requiring injunctive relief; (4) "out of cell time" granted federal prisoners for exercise and recreation did not violate the eighth amendment where the inmates in disciplinary segregation and protective custody were allowed five hours exercise per week outside their cells, and the prisoners in control unit were permitted seven hours exercise per week, and general population inmates received eleven hours of exercise per week; and (5) inmates had no right to a due process hearing before placement at and/or transfer to a maximum security federal prison. Although control unit inmates at the prison were given a hearing before placement in that unit, there were distinct differences between conditions of confinement for general population and control unit. (Marion Penitentiary, Illinois)

U.S. District Court
CHEMICAL AGENTS
DISTURBANCE

Blair-El v. Tinsman, 666 F.Supp. 1218 (S.D.Ill. 1987). Use of mace which was sprayed on an inmate was upheld by the court because it was used to restore prison security and that it did not constitute cruel and unusual punishment. After the chemical was sprayed, the inmate was offered medical treatment which he refused. (Menard Correctional Center, Illinois)

U.S. Appeals Court
EXCESSIVE FORCE

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
EXCESSIVE FORCE

Childs v. Pellegrin, 822 F.2d 1382 (6th Cir. 1987). A state prisoner brought suit alleging that his civil rights were violated when he was kept in administrative segregation, after he had been cleared of allegations which supported his initial placement in segregation. The district court dismissed the complaint, and the prisoner appealed. The appeals court held that the defendant was not deprived of a liberty interest when prison guards fired shotguns in his direction at four inmates who were seeking to pass through an opening in the fence that restrained a large group of rebellious prisoners. (Fort Pillow State Prison)

U.S. District Court
CHEMICAL AGENTS
EXCESSIVE FORCE

Collins v. Ward, 652 F. Supp. 500 (S.D.N.Y. 1987). Prison officers subdued a violent inmate who was armed with bottles and scissors with tear gas. Two inmates who were nearby filed a claim for using the tear gas without regard for their health and safety. The district court ruled that prison officials were reasonable in their use of tear gas because an effort had been made to open windows and ventilate the area where the chemical was to be thrown. The court found that using tear gas to regain control and free inmates was proper under emergency circumstances. According to the court, the fact that alternative methods, other than tear gas, were available to subdue riotous prisoners did not mean that use of tear gas constituted cruel and unusual punishment when prison officials otherwise acted in good faith and employed special precautions to minimize harmful effects of tear gas upon innocent bystanders. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
CHEMICAL AGENTS

Holloway v. Lockhart, 813 F.2d 874 (8th Cir. 1987). A federal appeals court disagreed with a lower court and ruled that an inmate could bring a federal suit for being forced to inhale tear gas sprayed by guards to subdue fellow inmates. The inmate claimed that he, along with about 20 other inmates, was injured while they were sleeping when guards sprayed a barrage of the chemical at disruptive inmates; this caused the fellow inmates to be forced to inhale the substance causing them to choke, pass out, suffer temporary blindness and breathing problems. (Maximum Security Unit, Tucker, Arkansas)

U.S. Appeals Court
EXCESSIVE FORCE

James v. Alfred, 832 F.2d 339 (5th Cir. 1987). A federal appeals court affirmed a lower court decision that dismissed an inmate's claim that guards physically assaulted him when he made a request. According to the court, the event was at most, "an isolated incident" and the inmate had not suffered a "serious, debilitating or permanent injury." The claim was dismissed because it did not demonstrate conduct which violated any constitutional right. The level of force that is permitted in the pursuit of prison security is governed by the standard announced in **Whitley v. Albers**, 475 U.S. 312 (1987), which inquires "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." Since there was no severe injury in this case, the court found that the claim was frivolous. (Texas State Prison)

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)

U.S. Appeals Court
EXCESSIVE FORCE

Pressly v. Gregory, 831 F.2d 514 (4th Cir. 1987). According to a federal court, a medical examination and a photograph taken of an inmate the day after an alleged assault were sufficient evidence to support the officers' version of the incident. The inmate plaintiff was being transferred from one prison to another when he resisted efforts to be handcuffed. He alleged that five officers fell on him "en masse" and beat him although he was offering only passive resistance. The court found that there was a need for the application of force since the inmate even admitted that it was applied against him only after he refused to cooperate and resisted efforts to be handcuffed. While the court noted that force justified at its inception may still cross the boundary of constitutionality if the level of coercion actually applied dramatically exceeds the amount needed to accomplish legitimate goals and causes unnecessary injury. It ruled that the force inflicted by the officers here was not of such an impermissible degree. While the inmate alleged his injuries caused pain for weeks following the incident, a medical examination and a photograph of appellate taken the next day revealed no indication of any physical injury. (Mecklenburg County Jail, Boydton, Virginia)

U.S. District Court
EXCESSIVE FORCE

Smith v. Gosh, 653 F.Supp. 846 (W.D.Wis. 1987). An arrestee brought a civil rights action against police officers. Although evidence did not support the arrestee's claim of excessive use of force by police officer, the officer was not entitled to award of attorney fees in civil rights action, as the fact that the arrestee was injured, possibly by a blow from police officer, was enough to allow him to bring suit and conduct discovery into officer's state of mind to determine existence of malice. The arrestee's belief that a police officer attempted to keep him in jail in order to hide his injuries from others was sufficient to permit him to bring claim for unreasonable detention against police officer, so that the officer was not entitled to award of attorney fees even though officer prevailed on the merits. (Marshfield Police Department)

U.S. Appeals Court
EXCESSIVE FORCE

Tyler v. White, 811 F.2d 1204 (8th Cir. 1987). According to a federal appeals court, the lower court properly admitted as evidence in a civil rights suit brought by inmates under sections 1981 and 1983 a photograph of a fatally stabbed prison guard to challenge inmates' claims that they were physically injured in violation of constitutional rights. The appellate court explained that the photograph depicted the seriousness of the disturbance prison officials were up against in a way in which testimony could not match. On appeal the inmates had also claimed that the magistrate erred in refusing to grant a mistrial when defense counsel told jurors that one inmate refused to undergo a lie detector test. A mistrial was unnecessary, said the court, because the magistrate properly instructed the jury to disregard the question. The magistrate may have erred in allowing defense counsel to argue to the jury that plaintiffs failure to call certain witnesses inferred that their testimony would have been damaging, but the error did not constitute grounds for reversal, because the verdict was supported by additional evidence. (Missouri Training Center for Men)

1988

U.S. District Court
EXCESSIVE FORCE

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.

According to the court, the fact that the inmate was confined to his cell pending a disciplinary hearing that did not transpire did not violate a liberty interest. The confinement was administrative, not disciplinary. (Sing Sing Correctional Facility, New York)

U.S. Appeals Court
RESTRAINTS

Bruscino v. Carlson, 854 F.2d 162 (7th Cir. 1988), cert. denied, 109 S.Ct. 3193. In a class action suit brought against the Marion Penitentiary in Illinois by inmates held in the Control Unit, the inmates claimed use of excessive force and other charges because they were subjected to rectal searches every time they left or re-entered the unit. The appeals court ruled that because inmates in the Control Unit require greater supervision than other prisoners, rectal searches can be legally performed on such inmates. Use of physical restraints during attorney visitation and limited out-of-cell time was also upheld by the federal district court. The court found that extraordinary security measures employed in a maximum security federal prison, such as limitation of time spent outside cells, denial of opportunities for socialization, handcuffing, shackling, spread-eagling and

rectal searches were reasonable measures in view of the history of violence at the prison and the incorrigible character of the inmates and thus it did not constitute cruel and unusual punishment. Further, the court found that the transfer of prisoners to a maximum security federal prison did not result in incremental deprivation so great as to constitute actionable deprivation of natural liberty and thus require a hearing. (The United States Penitentiary in Marion, Illinois)

U.S. Appeals Court
EXCESSIVE FORCE

Clark v. Evans, 840 F.2d 876 (11th Cir. 1988) A civil rights action was brought, based on the fatal shooting of a prisoner who was attempting to escape from the state prison, against the Commissioner of the State Department of Corrections, the prison warden, the guard who fatally shot the prisoner, and guards who were on yard or in building complex nearby when prisoner attempted to escape. The district court dismissed all claims against all defendants in their official capacities, granted summary judgment for the commissioner and guards located near the prisoner, but rejected qualified immunity defense asserted by the warden and guard who shot the prisoner in their individual capacities. The warden and the guard who shot the prisoner appealed, and the plaintiffs appealed the dismissal of the other defendants. The appeals court held that: (1) a reasonable officer could have believed that the guard's actions in shooting the prisoner were lawful, and accordingly, the guard was entitled to qualified immunity for use of deadly force; (2) the commissioner was not liable on theory he had instituted and perpetuated a policy that committal orders of state court judges would be ignored and that the prisoner's death occurred as a direct result of the prisoner not having been transferred to a mental hospital pursuant to involuntary commitment order, and (3) nearby guards were not liable on the theory that they were deliberately indifferent to a prisoner's safety or serious medical needs. The court noted that, in determining whether a state prison guard who fatally shot a prisoner who was attempting to escape was entitled to qualified immunity in a civil rights action based on the shooting, the proper inquiry was not whether escape could reasonably have been prevented in a less violent manner, but rather, whether a reasonable officer with information available to the guard who shot the prisoner could have believed that less violent means were not reasonably available (see Anderson v. Creighton, 107 S.Ct. 3034 (1987). The plaintiffs also argued that the use of deadly force in this instance was unlawful, since the law forbids the execution of insane persons. The court disagreed, noting that the inmate was not executed (killed as a punishment), but instead was shot in an effort to prevent escape. (Georgia State Prison)

U.S. District Court
EXCESSIVE FORCE

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. District Court
THREATENING

Parker v. Asher, 701 F.Supp. 192 (D. Nev. 1988). An inmate brought a civil rights action against a correctional officer. The inmate's allegations, that the correctional officer threatened to shoot him with a "taser gun" for no legitimate penological reason and in fact pointed the loaded gun at him, and that the inmate suffered great anguish and distress due to his fear that the officer would in fact subject him to immediate bodily harm, stated a cognizable claim for violation of the inmate's eighth amendment right to be free from cruel and unusual punishment. The court stated that prison guards cannot aim "taser guns" at inmates for the malicious purpose of inflicting gratuitous fear. (Nevada State Prison)

U.S. Appeals Court
EXCESSIVE FORCE
DISTURBANCE

Unwin v. Campbell, 863 F.2d 124 (1st Cir. 1988). A prison inmate sued state and local police officers seeking damages for injuries sustained during the quelling of a disturbance. Defendants moved for summary judgment on the grounds of qualified immunity. The U.S. District Court denied the motion as to certain defendants, and they appealed. The appeals court reversing in part and affirming in part, found that two of the defendants were entitled to qualified immunity, absent evidence that they had any contact with the defendant; but there were issues of fact, precluding summary judgment in favor of the remaining defendants, as to the magnitude of the disturbance in question.

Allegations of the complaint concerning the attempt to subdue a boisterous inmate did not support the inference of a prison disturbance of such magnitude that it indisputably posed significant risks to the safety of the inmates and prison staff, and thus to state an eighth amendment claim. An inmate not involved in the struggle, who was injured by police action, did not have to allege that the defendant policemen and state troopers acted maliciously and sadistically for the very purpose of causing harm. Allegations of the complaint to the effect that one or more of the state troopers or police officers seriously injured the prison inmate when they unjustifiably struck him several times while he was innocently standing in the dayroom observing an isolated struggle between two inmates, if true, would tend to show that the officers violated clearly established law and thus were not entitled to qualified immunity. When prison officials are responding to an outbreak of violence, they cannot be expected to measure nicely the precise amount of force necessary to restore order. Where the institutional security is not at stake, the officials' license to use force is more limited, and to establish an eighth amendment liability, an injured inmate need not prove malicious and sadistic intent, and liability will be imposed where the officials' actions involved wanton and unnecessary infliction of pain as determined by the need for the application of force, the relationship between the need and the amount of force used, and the extent of the injury inflicted. (Merrimack County House of Correction, Boscawen, New Hampshire)

U.S. Appeals Court
EXCESSIVE FORCE
CHEMICAL AGENTS

Williams v. Boles, 841 F.2d 181 (7th Cir. 1988). An inmate brought a Section 1983 action alleging that he was beaten without cause by a guard wielding a pipe and was sprayed with mace by other guards on another occasion, also without cause. The federal appeals court held that while "severe injury" may not have been an element of constitutional tort, judgment against inmate would not be disturbed, where the inmate himself proposed the instruction informing jury that "severe injury" was an essential element. The court noted that the standard set forth in **Whitley v. Albers**, 475 U.S. 312 (1986), for cases in which jailers shoot prisoner, must apply to beating prisoners as well. Because "trials are costly," litigants who "neglect to press legal developments on the trial courts are bound by the legal rules in which all parties acquiesced." (Stateville Prison, Illinois)

U.S. Appeals Court
EXCESSIVE FORCE

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)

1989

U.S. Appeals Court
DISTURBANCE
EXCESSIVE FORCE

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
FAILURE TO
PROTECT

Arnold v. Jones, 891 F.2d 1370 (8th Cir. 1989). An inmate sued prison officials to recover for damages suffered when he was beaten by another inmate. The court of appeals held that unarmed corrections officers had no constitutional duty to physically intervene in an assault by one inmate on another, when intervention may cause them serious injury or worsen the situation. The court also ruled that unarmed corrections officers were entitled to qualified immunity with respect to their failure to physically intervene to break up an assault with a pipe by one inmate on another where they did order the assaulting inmate to stop the assault. (Iowa State Penitentiary)

U.S. Appeals Court
BRUTALITY
FAILURE TO
PROTECT

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
FIRE HOSE
DISTURBANCE

Campbell v. Grammer, 889 F.2d 797 (8th Cir. 1989). Inmates brought an action against prison officials alleging that their constitutional and statutory rights were violated during a prison lockdown. The U.S. District Court entered a judgment in favor of the inmates and awarded attorneys' fees; the defendants appealed. The court of appeals found that the supervising lieutenant's failure to issue jumpsuits pursuant to his superiors' order after a shakedown did not rise to the level of cruel and unusual punishment. The lieutenant had been assigned to supervise the adjustment center for the first time on the day of the lockdown and thus, the failure to carry out his superiors' orders was due to misunderstanding, inexperience, oversight, inadvertence or recklessness. Courts should ordinarily accord actions of prison officials much deference; courts should be especially reluctant to interpose their hindsight when challenged conduct occurred during a prison disturbance. When faced with the necessity of using force to quell a disturbance, prison officials are compelled to balance competing concerns of insuring safety of inmates and staff and of using the least confining or least dangerous measure to control those who threaten the safety of others. Given the fact that such decisions are necessarily made in haste and under pressure, measures taken will not be held to be an eighth amendment violation if imposed in a good faith effort to maintain or restore discipline and not maliciously and sadistically for the very purpose of causing harm. The court found however, that the inmates had been intentionally, rather than accidentally, sprayed with the high-powered firehoses, which resulted in an eighth amendment violation. As a result, they upheld awards to the inmates of $750, $100 and $50. (Nebraska State Penitentiary)

U.S. Appeals Court
EXCESSIVE FORCE

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. Appeals Court
EXCESSIVE FORCE

Henry v. Perry, 866 F.2d 657 (3rd Cir. 1989). A prisoner brought a civil rights action against a prison guard arising out of the prison guard's use of deadly force in attempting to prevent the prisoner's escape. In his complaint, the plaintiff alleged that, while being returned to Pittsburgh from a track meet and upon arrival at Pittsburgh and believing the officers in charge of him including the defendant to be unarmed, he proceeded to effect an escape and that thereupon "Mr. Perry commenced to fire 5 or 6 shots at me without ordering me to stop or that he had a weapon and would shoot to kill." One of the shots wounded the plaintiff in the arm. He completed his escape but was subsequently recaptured. The U.S. District Court denied the prison guard's motion for summary judgment and the prison guard appealed. The court of appeals, reversing and remanding with directions, found that the prison guard was entitled to qualified immunity from liability. The appeals court stated that the use by prison guards of deadly force on an escapee may be cruel and unusual punishment within the meaning of the eighth amendment but where the escapee has committed crime involving the infliction of serious bodily harm, deadly force may be used as necessary to prevent an escape and if, where feasible, some warning has been given. Using deadly force appeared to be the "only means of preventing his escape and even that did not actually do so." Where an escapee has committed a crime involving the infliction of serious bodily harm, the court stated, citing **Tennessee v. Garner**, 471 U.S.1 (1985), such as the murder committed by the prisoner, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning if given. (State Correctional Institution, Pittsburgh, Pennsylvania)

U.S. Appeals Court
EXCESSIVE FORCE

Miller v. Leathers, 885 F.2d 151 (4th Cir. 1989). A prison inmate brought a civil rights action alleging the use of excessive force by a prison officer. The U.S. District Court entered a summary judgment against the inmate, and he appealed. The appeals court affirmed and found that the officer's striking the inmate three times with his baton did not violate the eighth amendment. A white inmate called a black correctional officer a "slush-headed nigger," threatened him with physical harm and sexually insulted his mother. In addition, the inmate also refused an order to proceed through a cellblock exit, and turned around to confront the officer. At this time, a brief scuffle occurred, during which the officer struck the inmate three times with his baton. The inmate then armed himself with a broomstick and charged the officer, but was subdued. He suffered a minor fracture on his right forearm, and filed a civil rights suit against the officer, alleging excessive use of force. Confrontations between correctional officers and inmates in the prison setting "are legion," the court stated. The test for use of excessive force against a convicted prisoner, as pointed out by the court, is based on the eight amendment's cruel and unusual punishment clause. Even if it may appear in retrospect that the degree of force used was unreasonable, this will not indicate cruel and unusual punishment unless the force was used merely to inflict "unnecessary and wanton pain." (Central Prison, Raleigh, North Carolina)

U.S. District Court
DEADLY FORCE
EXCESSIVE FORCE

Ryan Robles v. Otero de Ramos, 729 F.Supp. 920 (D.Puerto Rico 1989). An inmate's father brought a Section 1983 action against a prison guard, administrator, and supervisors to recover for the shooting death of an escaping inmate. The defendants moved for summary judgment. The district court granted the motion and found that using deadly force against a convicted, escaping inmate was not an unnecessary and wanton infliction of pain, did not violate the eighth amendment, and was within the guard's qualified immunity from Section 1983 liability. The guard tried to physically prevent the escape, and was prevented from doing so by the inmate's spear. He warned the inmate to desist, fired a warning shot, and fired the revolver after the inmate had jumped to the street outside the prison and started to run. The inmate's father failed to establish in the Section 1983 action that the training of guards and the use of firearms caused the death of the escaping inmate, that the policy on the use of deadly force deprived the inmate of constitutional rights, or that the administrator and supervisors were grossly negligent or deliberately indifferent. (Young Adults Institution, Miramar, Puerto Rico)

U.S. Appeals Court
EXCESSIVE FORCE

Pool v. Mo. Dept. of Corr. and Human Resources, 883 F.2d 640 (8th Cir. 1989). An inmate brought an action against the Department of Corrections and Human Resources, the Governor, and the state penitentiary superintendent to recover for injuries caused by an assault from another inmate. The U.S. District Court dismissed the complaint, and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court stated that intervening in an assault to save the life of another inmate did not preclude a constitutional claim for injuries suffered in that fight. (Missouri State Penitentiary)

U.S. District Court
EXCESSIVE FORCE

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)

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U.S. Appeals Court
EXCESSIVE FORCE
USE OF FORCE

Adams v. Hansen, 906 F.2d 192 (5th Cir. 1990). A new test for Eighth Amendment excessive force claims, adopted by the U.S. Court of Appeals for the Fifth Circuit, requires the showing of: 1) a significant injury; which 2) resulted directly and only from the use of force that was clearly excessive to the need, the excessiveness of which was; 3) objectively unreasonable; and 4) the action constituted an unnecessary and wanton infliction of pain. Applying this standard, the appeals court overturned a trial court's dismissal of a prisoner's complaint as frivolous. The allegation that a prison guard smashed a prisoner's fingers in a small opening on a cell door, requiring stitches in two fingers, stated a claim for use of excessive force. The inmate also claimed that the defendant guard, "in an act of gratuitous brutality," grabbed and twisted his right arm in an attempt to break it. The court found that these allegations stated the occurrence of a significant injury resulting from the defendant's use of excessive force that was objectively unreasonable and done for the sole purpose of inflicting unnecessary pain, and therefore the complaint should not have been dismissed. (Texas Department of Corrections)

U.S. Appeals Court
EXCESSIVE FORCE

Bennett v. Parker, 898 F.2d 1530 (11th Cir. 1990). A lawsuit was filed against the prison warden and prison staff officers by an inmate who claimed his constitutional rights were violated through excessive use of force and the failure to provide due process. The federal appeals court found that the amount of force used by officers was appropriate based on the prison's security interest in maintaining order and the minimal injuries sustained by the inmate. According to the court, the inmate's civil rights actions failed to support the reasonable inference of wantonness in infliction of pain required to establish a constitutional violation. There was undisputed evidence that the inmate created a disturbance, which necessitated the use of force, and although other inmates' affidavits attested to guards grabbing the inmate by the throat and pushing him against bars, there was no other evidence supporting the inmate's claim that an officer struck him with a night stick. The inmate's medical records contained no report of head injuries or treatment for pain following the incident. (Augusta Correctional and Medical Institution, Georgia)

U.S. District Court
EXCESSIVE FORCE

Bony v. Brandenburg, 735 F.Supp. 913 (S.D. Ind. 1990). A prisoner sued prison officials, alleging cruel and unusual punishment in connection with the use of force to remove him from his cell after he refused to obey an order to come forward to be handcuffed. Evidence established that the officials acted properly and pursuant to governing regulations and standards, and there was no evidence of unnecessary and wanton infliction of pain. As a result, the defendants were entitled to qualified immunity. (United States Penitentiary, Terre Haute, Indiana)

U.S. District Court
BRUTALITY
EXCESSIVE FORCE

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. Appeals Court
CHEMICAL AGENTS

Colon v. Schneider, 899 F.2d 660 (7th Cir. 1990). An inmate brought a Section 1983 action, alleging that a corrections official violated his rights under the due process clause of the fourteenth amendment when the official used chemical mace to compel him to submit to a strip search during the course of the inmate's transfer from one area of a correctional institution to another. The U.S. District Court issued an injunction prohibiting the official from using mace solely to compel strip searches incident to the transfer of inmates within the institution, and the official appealed. The inmate cross-appealed, arguing that he was entitled to one dollar in compensatory damages and that the district court erred in vacating the jury's award of punitive damages. The appeals court found that Wisconsin regulations governing the use of mace in prisons do not create a federally-protected liberty interest on behalf of inmates, and even if such regulations did create a liberty interest, the inmate failed to satisfy his burden that he was maced in the absence of constitutionally required procedural safeguards. The appeals court also found that, under the eleventh amendment, the district court lacked jurisdiction to adjudicate the claim which was nothing more than an allegation that the prison official violated state law, or to enjoin the official from engaging in the allegedly violative conduct. According to the court, in order for state regulations to create a constitutionally and protected liberty interest, the regulations must employ language of an unmistakably mandatory character, requiring that certain procedures "shall," "will," or "must" be employed, and that the challenged action will not occur absent specific substantive predicates. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
EXCESSIVE FORCE

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 use of excessive force during the arrest. The U.S. District Court entered summary judgment against the detainee, and he appealed. The court of appeals found that the police officers used objectively reasonable force when arresting the visibly intoxicated bar patron and complied with the Fourth Amendment. The patron actively resisted arrest by flailing arms, striking one officer in the face, and causing severe injury to the ligaments in the officer's thumb, and the officers never drew weapons and did not cause any noticeable injury to the patron. (Salem Police Station, Salem, Massachusetts)

U.S. Appeals Court
EXCESSIVE FORCE

Gilbert v. Collins, 905 F.2d 61 (5th Cir. 1990). A state prisoner sued a prison officer, claiming that he kicked the door to the food slot of his cell, cutting off the tip of his finger, which had to be attached by plastic surgery. The prisoner testified that the officer's action was intentional. At a hearing to determine whether to dismiss the suit as frivolous, a prison employee testified that a prison use-of-force report exonerated the officer. A magistrate relied on this testimony, as well as a medical report and internal affairs report stating that the officer's action in kicking the slot door was a reflex unintentional act, and dismissed the suit as frivolous, finding that the act was performed without malice. The appeals court reversed. It agreed that if there was no malice in the officer's action, it being unintentional, the prisoner could not prevail. But the court was troubled by the "factual underpinnings of the finding." The use of hearsay witnesses and "unauthenticated records" to counter the prisoner's testimony was improper, and the court ordered further proceedings in the matter. (Texas Department of Criminal Justice)

U.S. Appeals Court
EXCESSIVE FORCE

Huguet v. Barnett, 900 F.2d 838 (5th Cir. 1990). An inmate in a state correctional facility filed a civil rights lawsuit against two officers, alleging that they assaulted him during a routine cell search. The trial court dismissed the excessive force claim. The U.S. Court of Appeals for the Fifth Circuit, in upholding the dismissal, adopted a new standard for assessing Eighth Amendment excessive force claims. In order for a plaintiff to prevail on excessive force claims, the court held, he/she must prove: 1) a significant injury, which; 2) resulted directly and only from the use of force that was clearly excessive to the need, the excessiveness of which was; 3) objectively unreasonable, and; 4) the action constituted an unnecessary and wanton infliction of pain. The court must ask whether the force was "applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." If this last element is missing, there is no liability, the court stated, regardless of "how significant the injury, how far in excess of the need, and how unreasonable" the force used. In this case, the court found that the prisoner was "recalcitrant" during the cell search and that officers responded with force that was "in accord with the need." Additionally there was no evidence of the "wanton infliction of pain." The claim was therefore properly dismissed. (Texas Department of Corrections)

U.S. Appeals Court
EXCESSIVE FORCE
THREATENING
USE OF FORCE

Miller v. Leathers, 913 F.2d 1085 (4th Cir. 1990), cert. denied, 111 S.Ct. 1018. An inmate brought a Section 1983 action against a prison guard claiming use of excessive force in violation of the Eighth Amendment rights. The U.S. District Court granted the guard's motion for summary judgment, and the inmate appealed. The court of appeals affirmed. On rehearing, the court of appeals found that genuine issue of material fact existed, precluding summary judgment for the prison guard on the inmate's claim of use of excessive force, on whether the inmate provided the guard with anything more than verbal provocation before the official struck the inmate with a riot baton resulting in a fractured arm and swollen elbow; verbal provocation alone did not justify the response. The injuries could not be characterized as "de minimis." (North Carolina)

U.S. Appeals Court
EXCESSIVE FORCE

Oliver v. Collins, 914 F.2d 56 (5th Cir. 1990). An inmate who was allegedly beaten by prison guards brought a civil rights action against the guards and prison officials. The U.S. District Court dismissed the action, and the inmate appealed. The court of appeals found that the magistrate improperly applied a "severe injury" test, rather than "significant injury" test in recommending dismissal of the inmate's civil rights claim against the prison guards. In addition, it was found that the inmate did not have a constitutional right to have the guards criminally prosecuted, for purposes of his civil rights claim against the sheriff who refused to file charges. (Coffield Unit, Texas DOC)

U.S. District Court
EXCESSIVE FORCE

Ospina v. Department of Corrections, State of Del., 749 F.Supp. 572 (D. Del. 1990). An arrestee brought a civil rights action against the arresting officer. On the defendants' motion to dismiss, the district court found that the arresting officer accused of using excessive force was not entitled to qualified immunity from Section 1983 liability. The arrestee's right to freedom from excessive force in effecting an arrest was "clearly established" at the time of the challenged conduct, and a reasonable officer would not have believed that use of such force in face of no resistance was lawful. (Delaware Department of Corrections)

U.S. District Court
EXCESSIVE FORCE

Rubins v. Roetker, 737 F.Supp. 1140 (D. Colo. 1990). A state inmate filed a civil rights action alleging violations of his eighth amendment right to be free from cruel and unusual punishment. The district court dismissed the case, finding that the prison guards' use of force against the inmate, including the use of a stun gun, did not involve the unnecessary and wanton infliction of pain so as to constitute cruel and unusual punishment. The inmate had become very loud and aggressive and expressed the desire to get into a physical altercation in a violent setting, and the guards' use of force to subdue the inmate did not involve the unnecessary and wanton infliction of pain. The inmate, who had filed seven motions in conjunction with his civil rights action and 15 other cases of which 14 had been dismissed, was ordered to have future complaints or petition "screened" by the Department of Corrections legal access attorney before being permitted to file them as a sanction for his consistent and repeated abuse of the legal system. He was enjoined from raising the same or similar allegations in subsequent actions, and was restricted to filing one action per year unless he claimed he was about to be subjected to immediate physical harm. (Territorial Correctional Facility, Canon City, Colorado)

U.S. Appeals Court
EXCESSIVE FORCE

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
EXCESSIVE FORCE

Smith v. Holzapfel, 739 F.Supp. 1089 (E.D. Tex. 1990). Pretrial detainees brought a Section 1983 action alleging deliberate indifference and use of excessive force by the sheriff and deputies when quelling an escape attempt. Following a bungled, violent but brief attempted jailbreak, this action was brought under Title 42 U.S.C. Section 1983 against the Sheriff and three of his deputies, individually, and not in their official capacities. The court found that the force used in quelling the jailbreak by pretrial detainees was not excessive. The detainees had already rendered one jailor unconscious and when deterred in their attempt to escape, began hand-to-hand combat with officers. (Hardin County Jail, Texas)

U.S. Appeals Court
USE OF FORCE
RESTRAINTS

Stenzel v. Ellis, 916 F.2d 423 (8th Cir. 1990). An inmate who was forcibly removed to an isolation cell brought a Section 1983 action against the jailers. The U.S. District Court granted summary judgment for the defendants, and appeal was taken. The court of appeals found that the guards use of force to remove the inmate from a regular cell to an isolation cell was justified, and thus did not constitute an Eighth Amendment violation. The inmate had been asked three times to uncover his head while sleeping and had finally unequivocally refused, and his size, slippery skin as a result of lotion on his body, and "passive resistance" made him awkward to move. It was also found that the chaining of the inmate to his bunk in the isolation cell, after he refused to remove an obstruction from the observation camera, did not constitute cruel and unusual punishment, in violation of the Eighth Amendment; restraint was accomplished without the use of force, and was the only way to prevent the inmate from breaking a rule once he made it clear that he had no intention of obeying it. (Minnehaha County Jail, Sioux Falls, South Dakota)

U.S. Appeals Court
EXCESSIVE FORCE
RESTRAINTS

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. For a prisoner to prevail in an excessive force claim, four elements must be proven: significant injury, which resulted directly and only from the use of force that was clearly excessive in need, excessiveness of which was objectively unreasonable, and the action constituted unnecessary and wanton infliction of pain. The inmate's allegation that a state prison officer handcuffed him so tightly that his wrists were swollen and bleeding was insufficient to state an excessive force claim against the officer, absent allegations suggesting that the officer's conduct constituted unnecessary and wanton infliction of pain. The inmate's allegation that a state prison officer placed him in a "choke hold" and applied sufficient pressure to cause him to briefly lose consciousness was insufficient to state a claim against the officer for use of excessive force, absent an allegation that the inmate suffered serious or permanent injury stemming from his momentary blackout. (Texas Department of Corrections)

U.S. Appeals Court
EXCESSIVE FORCE
RESTRAINTS

White v. Roper, 901 F.2d 1501 (9th Cir. 1990). A pretrial detainee filed a civil rights action against a jail sergeant and deputies for deliberate indifference to his personal safety and excessive use of force. The U.S. District Court granted summary judgment for the defendants, and the detainee appealed. The appeals court, affirming in part, reversing in part, and remanding, found that genuine issues of material fact existed on the deliberate indifference claim, but the detainee who alleged he suffered a cut wrist and bruises when the officers attempted to subdue him when he resisted being put into another inmate's cell failed to make a showing sufficient to establish use of force against him was excessive or brutal. Genuine issues of material fact existed as to whether an officer was deliberately indifferent to a pretrial detainee's personal safety or intended to punish the pretrial detainee by ordering him in a cell of another detainee who had a history of violent behavior, in spite of the plaintiff inmate's protests and threats by other inmate. (San Francisco County Jail, California)

U.S. Appeals Court
EXCESSIVE FORCE

Williams v. Luna, 909 F.2d 121 (5th Cir. 1990). A state prisoner brought an in forma pauperis claim alleging the use of excessive force by prison guards. The U.S. District Court dismissed the suit as frivolous following a *Spears* hearing, and the prisoner appealed. The appeals court, affirming in part, vacating and remanding in part, found that the correctional director and prison warden were properly dismissed from the suit; the prisoner adequately alleged a claim for use of excessive force; and the district court made an improper credibility determination in resolving the issue at the *Spears* hearing. The state prisoner adequately alleged a claim for use of excessive force while he was allegedly obeying an order to move from the cell, notwithstanding prison medical records which indicated that he failed to complain about the alleged injuries at the prehearing physical shortly after the incident; nothing in the prisoner's testimony refuted his allegation that his medical complaints resulted from the guard's actions in stepping on his feet and knees, and prison records could not be used to counter his testimony at the *Spears* hearing stage of proceedings. (See: Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985). (Texas Department of Corrections, Ellis II Unit)

U.S. Appeals Court
EXCESSIVE FORCE

Wise v. Carlson, 902 F.2d 417 (5th Cir. 1990). A federal prisoner filed an action claiming that prison officials used excessive force. The U.S. District Court granted a motion to dismiss, and the prisoner appealed. The appeals court, affirming the decision, found that a prisoner who suffered only superficial injuries failed to state a constitutional claim of unlawful use of excessive force by prison guards. A prison doctor who examined the inmate the day after his scuffle with prison guards found "superficial injuries" such as bruises on his chest and forearm and a "hematoma on the right upper eyelid." (Texas Federal Prison)

U.S. District Court
DEADLY FORCE
EXCESSIVE FORCE

Wright v. Whiddon, 747 F.Supp. 694 (M.D. Ga. 1990) reversed 951 F.2d 297. A civil rights action was brought to recover damages for the wrongful death of and deprivation of the constitutional rights of a pretrial detainee, who was fatally shot while attempting to escape, against a city police officer, a city police chief, the city, and the county sheriff. On the defendants' motions for summary judgment, the district court found that the Fourth Amendment, rather than the Eighth Amendment, provided the standard for analyzing a claim that the pretrial detainee who was fatally shot while attempting to escape was subjected to unconstitutional use of excess force. The pretrial detainee had the status of a presumptively innocent individual, so was more akin to suspect than a convicted prisoner, and the Fourth Amendment's objective reasonableness standard accordingly applied. It was also found that genuine issue of material fact existed as to whether a reasonable police officer could believe the pretrial detainee who was attempting an escape posed a serious threat, thus rendering lawful the officer's action in fatally shooting the detainee, so as to preclude summary judgment on the issue of whether the officer was entitled to qualified immunity with respect to constitutional claims asserted under the civil rights statute Section 1983. The county sheriff who ordered the city police officer to shoot the pretrial detainee who was attempting the escape was not liable for violation of the fatally wounded detainee's constitutional rights, although it was argued that the sheriff intentionally authorized the commission of the unlawful act which resulted in the death and violation of constitutional rights. The sheriff did not have authority to command the police officer, and the police officer did not act pursuant to any command from the sheriff, but in reliance on his own training and city policy, in deciding to draw his gun and fire at the detainee. The appeals court reversed the lower court ruling, finding that the officer was entitled to qualified immunity. (Turner County, Georgia)

1991

U.S. Appeals Court
USE OF FORCE

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. Appeals Court
EXCESSIVE FORCE
USE OF FORCE

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 unreasonable use of force. 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 had not used excessive force. How much force an officer may reasonably exert in the course of an arrest depends on the severity of the crime at issue, whether the suspect presents an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade an arrest by flight. The officers who used force in an attempt to move the arrestee who was subsequently diagnosed as a quadriplegic due to a spinal injury were not liable. Even if the officers' conduct may have aggravated the arrestee's undiscovered spinal injury, the doctor had diagnosed the arrestee as merely intoxicated and the officers' attempts to arouse the arrestee from his apparent stupor were objectively reasonable. (Allen County, Indiana)

U.S. Appeals Court
EXCESSIVE FORCE
USE OF FORCE

Burgin v. Iowa Dept. of Corrections, 923 F.2d 637 (8th Cir. 1991). An inmate filed a Section 1983 action claiming that his right under the Eighth Amendment to be free from cruel and unusual punishment had been abridged by correctional officers as well as prison officials. The U.S. District Court awarded the inmate damages and attorney fees, and both parties appealed. The court of appeals affirmed the lower court decision which found that the inmate was entitled to damages for pain, suffering and humiliation, as a result of an incident in which corrections officers pinned him against a shower wall with a plexiglass riot shield following his refusal to give them his coat. The officers came at the inmate with such force that the handles of the riot shield broke. The inmate at no time acted in a hostile or threatening manner, he simply refused to give the officers his coat. The officers pinned the inmate against the wall and forced him to the floor, where they were able to remove his coat. The inmate suffered multiple abrasions and contusions, a swollen and bleeding nose and a "tender left clavicle." The trial court found that the two officers had used excessive force, and that the two supervisory officers also shared in liability for the injuries, one for ordering the two officers to proceed with the riot shield, and the other for failing to take any action to stop the attack. It awarded the inmate $1,250.00 for pain, suffering and humiliation, and $8,896.76 for attorney fees. (Iowa State Penitentiary)

U.S. District Court
PRETRIAL
DETAINEES
EXCESSIVE FORCE

Carman v. Burgess, 763 F.Supp. 419 (W.D. Mo. 1991). A prisoner brought a federal civil rights action against a city, police officers and others. The U.S. District Court found that the prisoner would be granted provisional leave to proceed in forma pauperis, conditioned on the payment of a partial filing fee of $20.36 in four monthly installments. It also found that the prisoner failed to adequately state a claim against the city for alleged civil rights violations by police officers; the city could not be held liable to the prisoner under a federal civil rights statute, where the prisoner merely alleged that the city was liable for actions of its police officers, and not for any policies executed or implemented by them. The prisoner's claims against police officers did not appear on their face to be totally frivolous or maliciously raised, and therefore the officers were directed to answer or otherwise respond to the prisoner's allegations; the prisoner alleged that the officers pulled him by the hair, struck him in the face and on the head several times with handcuffs, and threw the prisoner face down on the pavement. (Kansas City Honor Center, Kansas)

U.S. Appeals Court
EXCESSIVE FORCE
USE OF FORCE

Culver v. Town of Torrington, Wyo., 930 F.2d 1456 (10th Cir. 1991). An arrestee brought a Section 1983 action against the city and a police officer, alleging excessive force in connection with her arrest and detention. The U.S. District Court granted the city and policeman's motion to dismiss, and the arrestee appealed. The appeals court found that the officer had not exerted excessive force by pulling the arrestee's arms through the bars of the jail cell to immobilize her while a matron performed a pat down search. The search was not intended as excessive force to punish the appellant, but rather was intended to meet the legitimate governmental interest of ensuring that the appellant was not in possession of contraband or any means by which to hurt herself. The bruises found on the body of the arrestee were insufficient to preclude summary judgment against her. There was no evidence as to where or how the bruises occurred or more specifically, that the bruises were a result of the search of the appellant in the jail cell. Further, the evidence was insufficient to show that the force used was not reasonable under the circumstances. The court also found that the arrestee had not been denied an opportunity to conduct an adequate discovery; she had approximately four months after the city filed a motion for summary judgment to do so. (Goshen County Jail, Wyoming)

U.S. Appeals Court
EXCESSIVE FORCE

Davis v. Locke, 936 F.2d 1208 (11th Cir. 1991). A prison inmate brought a civil rights action against prison guards who dropped the inmate, head first, from the back of a pickup truck while the inmate's hands were shackled behind his back after he had been apprehended following an attempted escape. Following a jury trial, the U.S. District Court entered judgment in favor of the inmate on two of fifteen claims and awarded attorneys' fees to the inmate; the guards appealed. The court of appeals found that use of force by the guards in allowing the inmate to be dropped from the truck head first was excessive. Evidence showed that there was no continuing threat to the guards after the capture. (Hendry Correctional Institution, Florida)

U.S. Appeals Court
EXCESSIVE FORCE

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
EXCESSIVE FORCE
USE OF FORCE

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
EXCESSIVE FORCE
USE OF FORCE

Kinney v. Indiana Youth Center, 950 F.2d 462 (7th Cir. 1991). A prisoner brought a civil rights action against a correction officer who shot him while he was attempting to escape and against seven supervisory officials. The U.S. District Court entered summary judgment for the officer and prison officials, and the prisoner appealed. The court of appeals found that the prisoner was on notice that the correction officer would shoot him when he ventured to climb the outer prison fence to make his escape, and therefore the officer did not use excessive force. The correction officer acted in good faith in shooting the escaping prisoner, and therefore the officer did not use excessive force, where no

evidence indicated the officer acted deliberately with intent to inflict unnecessary pain on the prisoner. (Indiana Youth Center)

U.S. Appeals Court
EXCESSIVE FORCE
USE OF FORCE

Luciano v. Galindo, 944 F.2d 261 (5th Cir. 1991). An inmate brought a civil rights action against prison guards, alleging use of excessive force. The U.S. District Court dismissed the action and the inmate appealed. The court of appeals found that evidence that the inmate suffered extensive bruising and small lacerations after he was allegedly pushed down stairs by prison guards while handcuffed established the significant injury element of the inmate's Eighth Amendment excessive force claim. The court noted that "lasting harm" or "permanent injury causing disablement" need not be shown to constitute a "significant injury." In this case, the prisoner suffered widespread bruises, as well as lacerations and cuts "which left permanent, albeit small, scars." These injuries were enough to constitute "significant injury." (Coffield Unit, Texas Department of Criminal Justice Institutional Division)

U.S. District Court
BRUTALITY
EXCESSIVE FORCE

McNeal v. Owens, 769 F.Supp. 270 (W.D. Tenn. 1991), affirmed, 991 F.2d 795. A former jail inmate brought a civil rights action arising from an allegedly unprovoked beating. The U.S. District Court found that the jail inmate was entitled to recover $2,500 for the beating by jail officers in the immediate presence of the sheriff and other jail officials, who made no effort to stop the violence, where the inmate suffered minor trauma to his head, chest and right knee and was prescribed medicine and given an ice pack. (Shelby County Jail, Memphis Tennessee)

U.S. Appeals Court
BRUTALITY
EXCESSIVE FORCE

Miller v. Glanz, 948 F.2d 1562 (10th Cir. 1991). An inmate brought a Section 1983 action against a sheriff, deputy sheriffs, an investigator, nurses, and others to recover for alleged use of excessive force, deliberate indifference to medical needs, false imprisonment, malicious prosecution, cruel and unusual punishment, biased investigation, discriminatory acts to prolong incarceration, negligent failure to train and certify deputies, and intentional infliction of emotional distress. The U.S. District Court dismissed the claims, and the inmate appealed. The court of appeals found that the inmate's alleged resistance to a deputy sheriff's instructions to place his hands behind his back for handcuffing was an emergency, and, thus, the deputy's alleged actions of apprehending the inmate and moving him to a holding cell were subject to the wantonness standard and were not cruel and unusual punishment, where the deputy did not act maliciously and sadistically with the purpose of causing harm. However, deputy sheriffs' alleged acts of kicking, beating, jumping on, and choking the inmate almost to the point of death, were cruel and unusual punishment, even if the inmate posed a legitimate threat and the deputies were responding to an emergency, as the inmate claimed that he could barely breathe, suffered numerous bruises, and excreted blood, and allegations sufficiently stated that the deputies acted maliciously and sadistically with the purpose of causing harm. The alleged violation of the inmate's Eighth Amendment right to be free from use of excessive force would entitle the inmate to recover for emotional distress. The court also found that absolute immunity from Section 1983 liability based on testimony in a prior trial extended to the alleged conspiracy to present false testimony. (Tulsa City-County Jail, Oklahoma)

U.S. District Court
EXCESSIVE FORCE

Neal v. Miller, 778 F.Supp. 378 (W.D. Mich. 1991). A state prisoner filed an action against a corrections officer for common law battery under Michigan law and violations of his civil rights. The U.S. District Court found that the inmate was entitled to recover for damages for common law battery under Michigan tort law based on the actions of the correctional officer in intentionally striking the inmate in the groin area; the contact was without provocation, without the inmate's consent, and was not privileged. However, the action did not involve the "deliberate indifference" required to establish cruel and unusual punishment under the Eighth Amendment; the officer had no intent to inflict harm, and his conduct did not show wantonness. The inmate was entitled to a damages award of $500 for pain and suffering and other physical consequences and an exemplary damages award of $250. (Ionia Maximum Correctional Facility, Michigan)

U.S. District Court
USE OF FORCE

Sanders v. Heitzkey, 757 F.Supp. 981 (E.D. Wis. 1991). An inmate sued corrections officials for alleged violations of civil rights which occurred during a visual strip search of the inmate. The officers moved for summary judgment. The U.S. District Court found that the officers who did not participate in the strip search could not be personally liable for money damages for the alleged civil rights violations which occurred during the search. It also found the inmate's constitutional rights were not violated when he was required to submit to the visual strip search, pursuant to prison policy, when he was about to be confined in a segregation unit following a disciplinary hearing, or when the corrections officers used physical force to compel him to submit to the remainder of the strip search after he became abusive and disruptive. (Green Bay Correctional Institution, Wisconsin)

U.S. Appeals Court
RESTRAINTS

Stewart v. McManus, 924 F.2d 138 (8th Cir. 1991). A prisoner brought a Section 1983 action asserting claims based on his disciplinary treatment by Iowa correctional authorities after he had been transferred from Kansas. The U.S. District Court found no

Eighth Amendment violation occurred when the prisoner was placed in plastic hand cuffs following a cell house disturbance, particularly where the prisoner's alleged wrist injury was slight. The inmate was flex-cuffed in a good-faith effort to restore discipline after a prison riot and only after guards ran out of ordinary handcuffs. (Iowa State Penitentiary)

U.S. District Court
EXCESSIVE FORCE

Valdez v. Farmon, 766 F.Supp. 1529 (E.D. Cal. 1991). A prison inmate brought a civil rights action alleging that a prison official used unnecessary and wanton force in connection with an ordered strip search. On motions for, inter alia, summary judgment, the district court found that the inmate's allegations that prison officials used excessive force against her, allegedly using an electronic stun gun in connection with threatening the inmate to comply with a strip search, were properly analyzed under the Eighth Amendment, rather than the Fourth Amendment, as all of the allegations concerning compensable injury were directed at the means by which the search was undertaken, not the propriety of the search itself. Furthermore, the inmate's allegation that prison officials use of force against her would not be analyzed under the Fourteenth Amendment due process clause as unjustified deprivation of liberty, as such analysis would have been redundant where the case was analyzed under the Eighth Amendment. (Northern California Women's Facility, Stockton, California)

U.S. Appeals Court
RESTRAINTS

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 Corr. Fac., Alabama)

1992

U.S. District Court
EXCESSIVE FORCE

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
EXCESSIVE FORCE

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
EXCESSIVE FORCE
RESTRAINTS

Caldwell v. Moore, 968 F.2d 595 (6th Cir. 1992). A prison inmate who was subdued with a stun gun and straight jacket by police officers after refusing to obey jailers' orders brought a civil rights suit. The U.S. District Court granted summary judgment for the defendants and the inmate appealed. The appeals court, affirming the decision, found that the police officers' use of the stun gun and straight jacket did not violate the Eighth Amendment. Furthermore, the inmate, who was shot by police officers with the stun gun while the officers attempted to quell his protests in an isolation cell, did not subsequently suffer deliberate indifference to his medical needs at the hands of the jailers, inasmuch as the inmate's injuries were not serious enough to require immediate medical attention, and the inmate produced no evidence that the jailers acted with a

U.S. District Court
EXCESSIVE FORCE

Cummings v. Caspari, 797 F.Supp. 747 (E.D. Mo. 1992). An inmate brought an action against prison officials seeking damages and declaratory and injunctive relief, alleging that the officials denied him due process in certain disciplinary proceedings, subjected him to cruel and unusual punishment and refused him medical care. The officials moved for summary judgment. The use of force by officials did not subject the inmate to cruel and unusual punishment where the audio portion of a videotape contained no indication that officials beat the inmate or acted maliciously and sadistically. In addition, the episode lasted no longer than four minutes during which time the inmate voiced no grievances about the alleged beating. Handcuffs remained on the inmate solely because he refused to comply with instructions for removing them, and a medical examination just after the incident revealed that the inmate had only suffered a scratch from the use of force. (Missouri Eastern Correctional Center)

U.S. Appeals Court
EXCESSIVE FORCE

Flowers v. Phelps, 956 F.2d 488 (5th Cir. 1992). An inmate brought a Section 1983 action against correctional officers who allegedly beat him, claiming an Eighth Amendment violation. The U.S. District Court entered judgment for the inmate, and appeal was taken. The court of appeals affirmed the decision, as the finding that the correctional officers violated the inmate's Eighth Amendment rights was sufficiently supported by evidence that they attacked the inmate without provocation or rational justification and that, while they did not cause any objectively significant injury, their intention was to cause the inmate sufficient pain to dissuade him from filing requests for administrative relief against them in the future. It was also found that the Eleventh Amendment did not preclude the inmate's claim against the correctional officers as state law did not mandate indemnification of officers in cases of wrongful, intentional acts. (LA State Penitentiary)

U.S. Appeals Court
EXCESSIVE FORCE

Frohmader 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
USE OF FORCE

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
BRUTALITY
EXCESSIVE FORCE

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 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. (Gratherford State Prison, Eastern Pennsylvania)

U.S. Supreme Court
EXCESSIVE FORCE

Hudson v. McMillian, 112 S.Ct. 995 (1992). A prisoner brought a federal rights suit, alleging his Eighth Amendment rights were violated by a beating he received from state correctional officers. The U.S. District Court entered judgment in favor of the prisoner, and the correctional officers appealed. The court of appeals reversed, holding that the prisoner had no claim because his injuries were minor and required no medical attention. The prisoner petitioned for certiorari. The U.S. Supreme Court, reversing the court of appeals decision, found that the use of excessive physical force against a prisoner may constitute cruel and unusual punishment even though the prisoner does not suffer serious injury. Whenever prison officials stand accused of using excessive physical force in violation of the cruel and unusual punishment clause, the core of judicial inquiry is whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. (Angola State Penitentiary, Louisiana)

U.S. Appeals Court
EXCESSIVE FORCE
USE OF FORCE

Hudson v. McMillian, 962 F.2d 522 (5th Cir. 1992). A prisoner brought a Section 1983 action, alleging that his Eighth Amendment rights were violated by a beating he received from state corrections officers. The U.S. District Court entered judgment in favor of the prisoner, and the corrections officers appealed. The court of appeals reversed, finding that the prisoner had no claim because his injuries were minor. The prisoner petitioned for certiorari. The U.S. Supreme Court, 112 S.Ct. 995 (1992), reversed. On remand, the court of appeals, affirming the decision, found that the prisoner was entitled to damages under Section 1983 for injuries sustained when prison guards kicked and struck him during a transfer to an administrative lock-down unit, even though the injuries sustained by the prisoner were minor. An Eighth Amendment violation occurs when prison officials apply force maliciously and sadistically for the purpose of causing harm. (Angola Penitentiary, Louisiana)

U.S. District Court
EXCESSIVE FORCE
FAILURE TO PROTECT
BRUTALITY

Jones v. Huff, 789 F.Supp. 526 (N.D.N.Y. 1992). An inmate brought a suit seeking damages for excessive use of force by corrections officers. The district court found that one corrections officer's punch to the inmate, administered in an effort to restore discipline in face of the inmate's deliberate disobedience in ignoring a repeated order to stop walking and in subsequently striking another officer, did not violate the inmate's Eighth Amendment rights. Similarly, an officer's headlock on the inmate as he escorted him to a holding room did not violate the Eighth Amendment, as the inmate continued to struggle as the officer attempted to gain control. However, an officer who did not intercede to stop the unnecessary beating of the inmate by other officers was liable to that inmate for that failure, as kicks and punches were not administered in a good faith effort to restore discipline, and could not have possibly been thought necessary, since the inmate was already pinned face down by two officers. In addition, the inmate's Eighth Amendment rights were violated by another officer when the officer participated in ripping the inmate's clothes off him because the inmate would not come or was too slow to strip. Such force was not necessary, given the number of officers present in the holding room and the fact that by that point the inmate was subdued. The inmate's award of punitive damages of $2,000 was appropriate and would be apportioned equally among two correction officers based on the fact that one officer, through his failure to intercede, and another officer, through striking the inmate, equally contributed to the inmate's injuries. (Mt. McGregor Correctional Facility, New York)

U.S. Appeals Court
EXCESSIVE FORCE

Martin v. Harrison County Jail, 975 F.2d 192 (5th Cir. 1992). A pro se prisoner brought a civil rights action against a county jail based on conditions of confinement and an assault by a prison guard; the jail moved for summary judgment. The U.S. District Court granted the motion, and the prisoner appealed. The appeals court, affirming the decision, found that the guard's assault on the prisoner who was cutting his wrist in a suicide attempt did not involve unconstitutionally excessive force. According to the court, the prisoner did not allege how many times he was struck, whether the blows were significant, or how many people hit him. As the guards were obligated to prevent the prisoner from committing suicide, some force was called for. (Harrison County Jail, Mississippi)

U.S. Appeals Court
EXCESSIVE FORCE

Rainey v. Conerly, 973 F.2d 321 (4th Cir. 1992). A detainee brought a Section 1983 action against a prison guard alleging use of excessive force. The United States District Court entered judgment on jury verdict for the prison guard, and the detainee appealed. The appeals court, reversing and remanding, found that there were triable issues of fact as to whether the prison guard was entitled to qualified immunity. It was a reversible error for the trial court to refuse to question members of the jury panel regarding whether they would tend to credit the testimony of the law enforcement officer over that of the detainee in connection with the detainee's action. (Cumberland County Jail, Fayetteville, North Carolina)

U.S. District Court
EXCESSIVE FORCE

Winder v. Leak, 790 F.Supp. 1403 (N.D. Ill. 1992). An inmate filed a civil rights action against prison officials. The district court granted the motion for summary judgment in part and denied it in part. The court found that material issues of fact existed precluding summary judgment as to whether a correctional officer acted maliciously in pushing the inmate who was allegedly walking with the aid of a leg brace, after the inmate allegedly disobeyed a direct order to move from an unauthorized area. The inmate's claim alleged more than a de minimis use of physical force for Eighth Amendment purposes, and thus could form the basis of a civil rights claim. (Residential Treatment Unit, Cook County Department of Corrections, Illinois)

1993

U.S. District Court
EXCESSIVE FORCE
THREATENING

Collins v. Bopson, 816 F.Supp. 335 (E.D. Pa. 1993). An inmate brought an action against corrections officers, alleging excessive force in violation of Section 1983 and an unspecified state law. On the defendants' motion for summary judgment, the district court found that even if a corrections officer did use force against the inmate, medical evidence suggested that such force was de minimis for Eighth Amendment purposes or was applied to maintain or restore discipline. Records showed that all of the inmate's injuries found after his admission to a restricted housing unit (RHU), where an officer allegedly beat him, had previously existed after officers subdued him in an incident arising from his fight with another inmate. In addition, the doctor examining the inmate on the day after his admission to RHU noted that he had no problems. Evidence did not establish a causative link between a corrections officer's words on the cell block, allegedly falsely accusing the inmate of trying to hit and kick the officer, and the subsequent alleged beating of the inmate in the RHU by the officer's superior, precluding imposition of Section 1983 liability on the officer in connection with the beating. The officer was not in the RHU area when the alleged beating occurred, nor was there evidence that he ordered anyone to beat the inmate or that the superior beat the inmate in response to the inmate's actions against the officer. Furthermore, a corrections officer's alleged action of holding a baton to discourage the inmate from defending himself against the alleged beating or to discourage the inmate from assaulting the correctional officers did not produce a Section 1983 liability. Mere threatening gestures of a custodial officer do not amount to constitutional violations. (Pennsylvania State Correctional Institution, Frackville, Pennsylvania)

U.S. District Court
DISTURBANCE
CHEMICAL AGENTS

Collins v.Kahelski, 828 F. Supp. 614 (E.D. Wis. 1993). An inmate brought an action against state corrections officials, alleging he was denied his rights under the Eighth Amendment as a result of actions taken during a prison disturbance. On cross motions for summary judgment, the district court found that the inmate failed to create a genuine issue of material fact regarding the mental state of the corrections officials. The officials declined to allow him to exit the prison's recreations area that was the site of the prison disturbance, and failed to protect the inmate from violence at the hands of other prisoners. However, the disputed factual matters were not material to the mental state issue and, in any event, were not genuine considering the inmate's earlier statement confirming the corrections officials' version of events. The use of tear gas to quell the disturbance was clearly reasonable and did not involve malicious and sadistic actions amounting to cruel and unusual punishment. There was apparent danger posed by the disturbance, and there was no indication that the amount of tear gas used was excessive or that the sole purpose of using the tear gas was to punish or inflict emotional distress. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
EXCESSIVE FORCE

Cooper v. Ellsworth Correctional Work Facility, 817 F.Supp. 84 (D.Kan. 1993), affirmed, 2 F.3d 1160. An inmate brought a Section 1983 action alleging that the use of excessive force was cruel and unusual punishment in violation of the Eighth Amendment and that his transfer was retaliatory. The district court found that correctional officers' use of force on the inmate was not excessive. Refusal to allow the inmate to attend a doctor's appointment and correctional officers' use of force to escort the inmate to the guard captain's office did not violate the Eighth Amendment's prohibition against cruel and unusual punishment. The inmate was not allowed to attend the doctor's appointment because he refused to put his pants on. Use of force occurred only after the inmate attempted to use his cane on one correctional officer and several officers came to his assistance to escort the inmate to the captain's office. Furthermore, the inmate did not

allege that he sustained any injuries in the altercation. The court also found that the decision to transfer the inmate because of the episode in which several correctional officers were required to restore order clearly advanced legitimate correctional concerns and was not in retaliation for the inmate's conduct. (Ellsworth Correctional Facility, Kansas)

U.S. District Court
EXCESSIVE FORCE

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 Corr. Center)

U.S. District Court
EXCESSIVE FORCE

Davis v. Sancegraw, 850 F.Supp. 809 (E.D.Mo. 1993). An inmate brought a Section 1983 action against prison officials. The district court found that evidence showed that the inmate's refusal to submit to the use of hand restraints when requested was the cause of the use of a "movement team," and thus, there was no showing that a prison official somehow improperly initiated the movement exercise. (Potosi Correctional Center, Mineral Point, Missouri)

U.S. Appeals Court
EXCESSIVE FORCE
STUN GUN

Hickey v. Reeder, 12 F.3d 754 (8th Cir. 1993). An inmate brought a civil rights action against jail officials who shot him with a stun gun when he refused to clean his cell. The U.S. District Court entered judgment for the jail officials, and the inmate appealed. The court of appeals, reversing and remanding, found that the use of a stun gun to enforce an order to sweep violated the inmate's constitutional right to be free from cruel and unusual punishment. (Pulaski County Jail, Little Rock, Arkansas)

U.S. Appeals Court
EXCESSIVE FORCE

Hill v. Shelander, 992 F.2d 714 (7th Cir. 1993). An inmate brought a suit against a prison sergeant who allegedly beat him. The U.S. District Court denied the prison sergeant's motion for summary judgment on grounds of qualified immunity, and the sergeant appealed. The court of appeals found that a fact question as to whether the prison sergeant acted in good faith to restore order in the cell block or acted maliciously in allegedly beating the prisoner for refusing to exit his cell precluded summary judgment. The prison sergeant was not entitled to qualified immunity from the claim that he pulled the inmate from his cell by the shoulder and hair, slammed the inmate's head against the bars of an adjacent cell and struck him twice in the face and kneed him in the groin. A reasonable prison sergeant should have known that such conduct violated the Eighth mendment. (Tazewell County Jail, Illinois)

U.S. Appeals Court
EXCESSIVE FORCE

Jackson v. Culbertson, 984 F.2d 699 (5th Cir. 1993). A jail detainee brought a Section 1983 action against the government, claiming that he had been subjected to excessive force. The U.S. District Court dismissed the action and the detainee appealed. The appeals court affirmed the decision finding that the detainee's claim that a jail guard had used excessive force by spraying him with a fire extinguisher while putting out a fire the detainee started, was frivolous, as the detainee had sustained no injury. (Jefferson County Jail, Texas)

U.S. Appeals Court
EXCESSIVE FORCE
STUN GUN

Jasper v. Thalacker, 999 F.2d 353 (8th Cir. 1993). An inmate sued prison officials under Section 1983 alleging that the officials' use of a stun gun to subdue the inmate violated the Eighth Amendment. The U.S. District Court granted judgment for the prison officials, and the inmate appealed. The appeals court, affirming the decision, found that the use of the stun gun to subdue the inmate who appeared to be threatening a guard did not violate the Eighth Amendment absent any showing that the stun gun was used sadistically or maliciously. (Iowa)

U.S. District Court
RESTRAINTS

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
EXCESSIVE FORCE

Moore v. Holbrook, 2 F.3d 697 (6th Cir. 1993). A prisoner brought a Section 1983 action against prison guards for an alleged assault. The United States District Court dismissed the action, and appeal was taken. The appeals court, reversing and remanding, found that there were genuine issues of material fact, precluding summary judgment for the prison officials. The prisoner claimed he was assaulted by officials during a prison disturbance and there were doubts as to whether the disturbance was in progress at the time of the assault. If the assault occurred during the disturbance, the guards were permitted to use greater force than normally necessary to control the prisoner. (So. Ohio Corr. Facility)

U.S. District Court
EXCESSIVE FORCE

Nicholson v. Kent County Sheriff's Dept., 839 F.Supp. 508 (W.D. Mich. 1993). An arrestee who was mentally disturbed and was causing damage to a hospital brought a civil rights action against officers who physically subdued him. The officers moved for summary judgment. The district court found that the plaintiff failed to state an excessive force claim under the civil rights statute against the police officers who subdued him. The officers were called to the hospital by the hospital's own frightened staff to prevent the arrestee from doing further damage and to restore order. The arrestee threatened the officers with physical harm and actually injured them. In addition, the arrestee was a physically strong man and suffered from a bipolar chemical imbalance which caused him to become grossly agitated. The arrestee struck the officers before they struck him and it took eight officers to subdue the arrestee. (Kent County Sheriff's Department, Michigan)

U.S. Appeals Court
EXCESSIVE FORCE

Norman v. Taylor, 9 F.3d 1078 (4th Cir. 1993). An inmate sued a deputy alleging excessive force in violation of the Eighth Amendment. The U.S. District Court granted summary judgment for the deputy finding that the inmate did not adequately refute the deputy's statement that the inmate was causing a disturbance so that force was necessary, and that the amount of force was not excessive. The inmate appealed. The appeals court, reversing and remanding, found that a genuine issue of material fact as to whether the inmate was causing a disturbance justifying the use of force precluded summary judgment in favor of the deputy. According to the court, the actions of the deputy in swinging keys at the inmate's face to stop him from smoking could clearly support a finding that he acted maliciously and sadistically to cause harm and satisfied the subjective component of an Eighth Amendment excessive force claim. Furthermore, the harm alleged by the inmate which included initial and lingering pain to his hand, physical injury sustained including swelling and decreased mobility of his hand, and psychological injury caused from threats by the deputy, were beyond the de minimis level. (Norfolk County Jail, Virginia)

U.S. District Court
EXCESSIVE FORCE

Richardson v. Van Dusen, 833 F.Supp. 146 (N.D.N.Y. 1993). An inmate brought a Section 1983 action alleging use of excessive force in violation of the Eighth Amendment. The district court found that it was well within reason for corrections officers, faced with the threat of extended violence by the inmate, to aggressively attempt to subdue the inmate and, thus, their conduct did not constitute cruel and unusual punishment. (Coxsackie Correctional Facility, New York)

U.S. District Court
EXCESSIVE FORCE

Risdal v. Martin, 810 F.Supp. 1049 (S.D. Iowa 1993). An inmate brought a Section 1983 action against correctional officers, alleging that excessive physical force was used when he was forced to take a shower. The district court found that the inmate failed to establish he was subjected to unnecessary and wanton infliction of pain in violation of the Eighth Amendment, in view of the testimony presented and the total lack of evidence corroborating the inmate's claim that he was physically assaulted by a corrections officer at the shower cell. Furthermore, the alleged taunting and jostling of the inmate by corrections officers who were returning the inmate to his cell did not amount to conduct so egregious as to cause a violation of the Eighth Amendment; even as alleged by the inmate, the officers' use of force was minimal, caused no physical injury, and was not the type to be physically injurious or painful. (Iowa State Penitentiary, Fort Madison, Iowa)

U.S. District Court
RESTRAINTS

Shanton v. Detrick, 826 F. Supp. 979 (N.D. W. Va. 1993) affirmed 17 F.3d 1434. An inmate sued corrections officers and prison medical staff under Section 1983 alleging excessive force and inadequate medical attention. On the defendants' motion for summary judgment, the district court found that the use of force, consisting of placing the inmate on the floor and cuffing his hands behind his back to prevent him from fleeing to another section of the prison facility, was reasonable and necessary. The officers had found the inmate, in the dayroom shouting, swinging his arms and running around and when the door opened, the inmate attempted to push past the guard and flee. (Regional Jail, Martinsburg, WV)

U.S. Appeals Court
DISTURBANCE
EXCESSIVE FORCE

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
BRUTALITY

Vineyard v. County of Murray, Ga., 990 F.2d 1207 (11th Cir. 1993), cert. denied, 114 S.Ct. 636. An arrestee brought a Section 1983 action against deputies and a sheriff, alleging that the defendants violated the arrestee's constitutional rights by beating him. The U.S. District Court entered judgment on a jury verdict for the arrestee, and the defendants appealed. The court of appeals found that the evidence supported a finding that the county's deliberate indifference to the rights of arrestees to be free from use of excessive force by the county's deputies was a moving force of the violation of the arrestee's constitutional rights resulting from the beating by deputies. An expert witness testified that, assuming the arrestee's version of the beating was true, the beating would not have occurred if county policies were such that officers knew they must report any confrontations, that others would call the sheriff's department to report complaints to the department, and that the department would investigate complaints. (Murray County Sheriff's Department)

1994

U.S. District Court
EXCESSIVE FORCE

Boyd v. Selmer, 842 F.Supp. 52 (N.D.N.Y. 1994). An inmate brought a Section 1983 action against correctional officers for the excessive force allegedly applied by officers in forcing the inmate to remove his hands from an open feed-up flap in his cell. The district court found that the force applied by the officers in compelling the inmate to remove his hands, which consisted of striking the inmate three to four times with their batons, was not excessive and did not support the civil rights claim, particularly where the nurse who examined the inmate did not notice any bruises or abrasions. The accidental injury that the inmate sustained when a correctional officer closed the feed-up flap before the inmate had removed his hands would not support an excessive force claim. The correctional officers' altercation with the prison inmate arose in connection with their discharge of their official duties, and would not support an assault and battery claim against the officers in their personal capacity. (Coxsackie Correctional Facility, New York)

U.S. Appeals Court
DEADLY FORCE

Brothers v. Klevenhagen, 28 F.3d 452 (5th Cir. 1994). Family members of a pretrial detainee who was killed while attempting to escape from custody during transport from one holding cell to another, brought an action in state court against the county and its sheriff alleging excessive force and violation of Section 1983. The defendants removed the action to federal court and the parties cross-moved for summary judgment. The U.S. District Court granted summary judgment for the defendants and the plaintiffs appealed. The appeals court, affirming the decision, found that the due process clause, rather than the Fourth Amendment, provided the constitutional standard for determining whether deputies used excessive force in their treatment of the detainee. The deputies' shooting and killing of the unarmed pretrial detainee who was escaping did not violate due process. The sheriff's department policy allowed deadly force only when immediately necessary to prevent escape and was designed in a good faith effort to maintain or restore discipline and not maliciously and sadistically for the purpose of causing harm. The deputies fired at the detainee only as a last resort to prevent an escape, and the detainee would have escaped if the deputies had not fired upon him. (Harris County Jail, Texas)

U.S. District Court
EXCESSIVE FORCE

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 kneeing 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 kneeing 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. Appeals Court
RESTRAINTS

Davidson v. Flynn, 32 F.3d 27 (2nd Cir. 1994). An inmate brought an action against corrections officials to recover for an injury caused by handcuffs. 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 although the inmate was an escape risk and some restraint was necessary beyond that normally used, the inmate stated a claim for cruel and unusual punishment by alleging that the handcuffs were placed too tightly, leading to serious and permanent physical injury, and that excessive force was applied wantonly and maliciously in retaliation for being litigious. (Specialized Housing Unit, Elmira, New York)

U.S. District Court
EXCESSIVE FORCE

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. Appeals Court
EXCESSIVE FORCE

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. Appeals Court
EXCESSIVE FORCE

Howard v. Barnett, 21 F.3d 868 (8th Cir. 1994). A prisoner sued a prison official alleging use of excessive force. The U.S. District Court entered judgment on a jury verdict for the prisoner and the official appealed. The appeals court, reversing and remanding, found that a violation of the Eighth Amendment required a finding that force was applied "maliciously and sadistically for the very purpose of causing harm." Force that was excessive within the meaning of the Eighth Amendment would be compensable if it caused the prisoner actual injury, even if the injury was not of great significance. (Missouri)

U.S. District Court
EXCESSIVE FORCE
USE OF FORCE

Huffman v. Fiola, 850 F.Supp. 833 (N.D. Cal. 1994). A prisoner filed a federal civil rights complaint against prison officials and police officers and sought to proceed in forma pauperis. The district court found that the prisoner stated a cognizable claim against a prison official and police officers for use of excessive force. One officer allegedly "hog-tied" the prisoner, another allegedly bashed the prisoner's head against a wall, and a third stomped on the prisoner's bare feet. (Pacific Grove Police Department and Monterey County Sheriff's Department, California)

U.S. Appeals Court
EXCESSIVE FORCE
RESTRAINTS

Lunsford v. Bennett, 17 F.3d 1574 (7th Cir. 1994). Prisoners brought a civil rights action against prison and county officials alleging violations of the Eighth and Fourteenth Amendments. The U.S. District Court entered summary judgment for the officials, and the prisoners appealed. The appeals court, affirming the decision, found that shackling the prisoners to their cells so that trustees could mop up water in the cell block which prisoners had flooded did not constitute an Eighth Amendment violation. Pouring a bucket of water over the head of an inmate who was shackled to his cell during the cleanup of the cell block did not rise to a level of Eighth Amendment violation. Institutional security was threatened, prisoners and guards were talking "trash" to one another, some prisoners were splashing guards with water, and prison officials were obliged to restore order and control. Although pouring a bucket of water over the head of a prisoner who was already standing ankle deep in water might be seen as unnecessary in retrospect, it was a minor use of force that did not offend the conscience. (Elkhart County Security Center, Indiana)

U.S. Appeals Court
EXCESSIVE FORCE

McLaurin v. Prater, 30 F.3d 982 (8th Cir. 1994). An inmate filed a Section 1983 action against a security officer concerning an alleged beating. The U.S. District Court entered judgment in favor of the inmate and the officer appealed. The appeals court found that

the inmate's Eighth Amendment rights were violated by the security officer's striking of the inmate with the sole purpose to hurt the inmate rather than out of a good faith effort to restore or maintain discipline or order. The degree of force employed exceeded the amount of force justified under the circumstances; the officer was not acting to protect himself or others or to serve any legitimate penological interest. (Tucker Maximum Security Unit, Arkansas)

U.S. District Court
EXCESSIVE FORCE

Miller v. Fairman, 872 F.Supp. 498 (N.D. Ill. 1994). A pretrial detainee brought a civil rights action against jail administrators and jail guards alleging that conditions of his confinement violated his due process rights. The district court found that the pretrial detainee's allegations that he was severely beaten by one jail guard while another guard watched were sufficient to state a civil rights claim against guards in their individual capacities based on a violation of his due process right against being subjected to excessive force amounting to punishment. (Cook County Jail, Illinois)

U.S. District Court
EXCESSIVE FORCE
USE OF FORCE

Newsome v. Webster, 843 F.Supp. 1460 (S.D. Ga. 1994). Jail detainees brought a Section 1983 action against various officers, alleging excessive use of force. Motions were made to dismiss and for summary judgment. The district court found that the jail detainees failed to establish the liability of the sheriff, either individually or officially. The detainees did not allege that the sheriff had personally participated in any force inflicted upon them, and their conclusory statements as to the inadequacy of training and policies towards the use of force did not show that force was excessive. The detainees had not stated a cause of action for excessive force against personnel who had arrested them or personnel responsible for their jail confinement. (Richmond County Jail, Georgia)

U.S. District Court
EXCESSIVE FORCE
FAILURE TO PROTECT

Shearin v. Correction Officer Pennington, 867 F.Supp. 1250 (E.D.Va. 1994). A state inmate brought a Section 1983 action against a corrections officer and other corrections employees, alleging that the officer committed assault and battery against the inmate and that the employees failed to protect the inmate, thereby subjecting the inmate to cruel and unusual punishment in violation of the Eighth Amendment. Both parties moved for summary judgment. The district court found that the inmate was not subjected to cruel and unusual punishment under the Eighth Amendment by the actions of the corrections officer in thrusting a metal window rod through the bars of the inmate's cell and charging at the inmate, after the inmate threw dissolved human waste onto the officer from his cell. The inmate was not subjected to the use of excessive force when the officer verbally provoked the inmate; the inmate was subjected to no further physical contact. There was no evidence that the inmate was physically harmed, and the officer acted to defend himself, rather than with a culpable state of mind. In addition, the inmate was not subjected to cruel and unusual punishment under the Eighth Amendment by the actions of a higher-ranking officer after the incident. The officer visited the inmate a few minutes after the incident and immediately presented the inmate to a physician for treatment. The officer protected the inmate from further harm, and moved to discipline the lower-ranking officer. (Powhatan Correctional Facility, Virginia)

U.S. District Court
EXCESSIVE FORCE

Smith v. Delamaid, 842 F.Supp. 453 (D.Kan. 1994). An arrestee sued police officers and a city under Section 1983. On the defendants' motions for summary judgment, the U.S. District Court found that genuine issues of material fact existed as to whether the amount of force used by the arresting officers was reasonable under the circumstances, and as to whether the arrestee suffered significant injury, precluding summary judgment against the arrestee. The arrestee alleged that the officers used force against him while he was restrained by handcuffs and shackles despite his lack of resistance, and there was medical evidence to support a finding that the arrestee was beaten up. (Wichita Police Department, Kansas)

U.S. Appeals Court
EXCESSIVE FORCE

White v. Holmes, 21 F.3d 277 (8th Cir. 1994). An inmate brought an action against a prison librarian and supervisor to recover for injuries caused by an altercation with the librarian. The U.S. District Court denied a summary judgment motion by the librarian and supervisor, and they appealed. The court of appeals, reversing and remanding, found that the prison librarian's supervisor was not deliberately indifferent toward and did not tacitly approve the librarian's act of striking the inmate, and, thus, the supervisor was not liable to the inmate. (Missouri State Penitentiary)

U.S. Appeals Court
BRUTALITY
EXCESSIVE FORCE

Wilkens v. Moore, 40 F.3d 954 (8th Cir. 1994). Prison guards appealed the denial by the U.S. District Court of the guards' motion for summary judgment in a civil rights action brought by a prisoner against them. The appeals court, affirming the decision, found that the jury could draw reliable inferences as to whether the prison guards' use of force on the prisoner could have been thought to be necessary, or instead exceeded the amount of force that was justified under the circumstances. The prison guards were not entitled to a defense of qualified immunity on a deprivation of clothing claim. The prison guards placed the inmate naked in a strip cell for 22 hours, where the guards allegedly verbally and physically abused the inmate continuously. The district court determined that the inmate's assault claim against the guards was a fact issue for trial, and the prison guards did not appeal this determination. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
RESTRAINTS

Williams v. Vidor, 17 F.3d 857 (6th Cir. 1994). An inmate brought a civil rights action against a prison officer and deputy warden alleging that he was subject to cruel and unusual punishment and denied his right to equal protection when he was shackled to his bed

for 73 hours. The U.S. District Court granted summary judgment for the officer and deputy warden, and the inmate appealed. The appeals court, affirming in part, reversing in part and remanding, found that the officer who carried out the order to place the inmate in shackles had qualified immunity. He did not make the decision to place the inmate in restraints nor to keep them on for any particular period of time, and he did carry out his duty to check on the inmate periodically. However, genuine issues of material fact existed as to whether the deputy warden was responsible for maintaining the inmate in shackles for 73 hours, precluding summary judgment. (Ionia Maximum Correctional Facility, Michigan)

U.S. Appeals Court
EXCESSIVE FORCE

Wilson v. Groaning, 25 F.3d 581 (7th Cir. 1994). An inmate filed a civil rights action claiming that correctional officers used excessive force in returning him to his cell. The U.S. District Court entered judgment on a jury verdict for the officers and the inmate appealed. The appeals court, affirming the decision, found that evidence that the inmate spat on an officer immediately before the officer allegedly punched the inmate was relevant and admissible to support the officer's claim that he felt threatened at the time he allegedly used excessive force. The district court did not abuse its discretion in admitting evidence of three of the inmate's six prior convictions to impeach his testimony. The potential for prejudice resulting from irrelevant and inflammatory evidence that the inmate sprayed another correctional officer with urine and fecal matter after excessive force was used to return the inmate to his cell did not warrant a mistrial in the inmate's civil rights action. The district court gave timely and effective curative instructions and evidence supported the jury's verdict against the inmate. (Shawnee Correctional Center, Vienna, Illinois)

1995

U.S. District Court
EXCESSIVE FORCE

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. 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. 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. (California Department of Corrections)

U.S. District Court
EXCESSIVE FORCE

Fickes v. Jefferson County, 900 F.Supp. 84 (E.D.Tex. 1995). A pretrial detainee brought a § 1983 action against a county, sheriff, and corrections officials. The district court granted summary judgment for the defendants in part and denied it in part. The court found that a corrections officer was at most negligent in leaving mops and brooms in a cell; the detainee alleged that other inmates beat him with the mops and brooms. The court noted that bringing an end to the flood that had disrupted several cells was a legitimate government purpose that justified bringing the mops, brooms and squeegees into the cell. The court held that genuine issues of fact remained as to whether an officer knew of the ongoing attack when he made his rounds and chose to do nothing or whether the altercation erupted after the officer made his rounds, precluding summary judgment. The court held that genuine fact issues remained as to whether officers used excessive force when removing the detainee to another cell by continuing to exert force directly on the detainee's neck by means of a headlock after the detainee announced he had injured his neck, precluding summary judgment. (Jefferson Co. Jail, Texas)

U.S. District Court
EXCESSIVE FORCE
BRUTALITY

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. (Pelican Bay State Prison, California)

U.S. District Court
EXCESSIVE FORCE

Maguire v. Coughlin, 901 F.Supp. 101 (N.D.N.Y. 1995). A former inmate sued corrections officials to recover for alleged verbal and physical abuse, inadequate cell conditions, and transfers. The district court granted summary judgment for the defendants, in part, and denied it in part. The court found that the alleged verbal and physical abuse was not cruel and unusual punishment since officers did not apply force maliciously and sadistically to cause harm and did not use more than de minimus force. (Downstate Correctional Facility, New York)

U.S. District Court
EXCESSIVE FORCE

Martin v. Shoults, 888 F.Supp. 1086 (D.Kan. 1995). An inmate filed a civil rights suit against prison officials alleging Eighth Amendment violations in connection with injuries he received. The district court dismissed the case, finding that a correctional officer acted reasonably when he inadvertantly struck the inmate in the back with a gym door when he was entering to break up a fight in which the inmate was involved. There was no evidence that the officer intentionally struck the inmate. (El Dorado Correctional Facility, Kansas)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

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
CHEMICAL AGENTS

McLaurin v. Morton, 48 F.3d 944 (6th Cir. 1995). An inmate brought an action alleging a violation of due process and cruel and unusual punishment in connection with the use of mace by a correctional officer. The U.S. District Court denied the correctional officer's motion for summary judgment based on qualified immunity and the officer appealed. The appeals court found that the prison's policy directive on the use of chemical agents and physical restraints against prisoners created no due process liberty interest for the inmate. Although the directive contained some mandatory language, taken as a whole, it left considerable official discretion and did not establish mandatory, inflexible procedures which must be followed before chemical agents are used. (Jackson State Prison, Michigan)

U.S. District Court
EXCESSIVE FORCE

Nowosad v. English, 903 F.Supp. 377 (E.D.N.Y. 1995). A plaintiff brought a § 1983 action against county officials and individuals involved with his arrest and prosecution. The district court found that the plaintiff stated an excessive force claim, where he alleged that during the course of his arrest he was pushed, his arm was painfully and roughly twisted, and he suffered such difficulties as a disabling knee injury, arm, shoulder, back and leg injuries causing pain. The court found that a strip search did not violate the Fourth Amendment, where the fact that the plaintiff was charged with menacing with a weapon provided an element of reasonable suspicion that another weapon was concealed. (Suffolk County Police Department, New York)

U.S. District Court
EXCESSIVE FORCE

Pyka v. Village of Orland Park, 906 F.Supp. 1196 (N.D.Ill. 1995). The estate of an arrestee who committed suicide while in detention brought a civil rights action against a village and police officers. An eighteen-year-old youth in police custody committed suicide by hanging himself from the bars of his cell with his t-shirt. The court found that the defendants were entitled to qualified immunity on claims against them in their official capacity, but the officer who put the arrestee in a chokehold was not entitled to immunity on the claim of excessive force, nor was immunity available for an officer who failed to intervene in the first officer's takedown of the arrestee. The court also found that the officers were not entitled to immunity on the claim that they struck the arrestee in violation of his right to be free from pretrial detention that constituted punishment; a videotape showed no sign of aggression or violence by the arrestee before the officer grabbed him and placed him in a chokehold. (Overland Park Police Department, Illinois)

U.S. District Court
EXCESSIVE FORCE

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
EXCESSIVE FORCE

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 use of a "pain compliance hold" on the inmate, without actual application of force, was justified to maintain order in the institution and to maintain the safety of prison personnel and inmates during a

strip search, after the inmate refused a direct order to return to his cell from the shower area. The use of force did not constitute an infliction of cruel and unusual punishment. (Iowa State Penitentiary)

U.S. District Court
EXCESSIVE FORCE

Sweatt v. Bailey, 876 F.Supp. 1571 (M.D. Ala. 1995). An arrestee sued an officer for civil rights violations in connection with a beating he received from the officer while in detention. The district court found that a limited exception to the general rule of qualified immunity was justified for the officer who lost his temper and summarily beat the arrestee who was talking on the phone at the time of the attack. The police chief was entitled to qualified immunity on a claim of failure to supervise the arresting officer who beat the arrestee where there was only a bare assertion by an expert witness that the chief took inappropriate action with regard to supervision. The district court found that the arrestee's statement, within the officer's hearing, that the officer is an "ass" should not provoke a violent reaction from the officer and does not fall within the "fighting words" doctrine. (Andalusia Police Station, Alabama)

1996

U.S. District Court
EXCESSIVE FORCE

Cockrell-El v. District of Columbia, 937 F.Supp. 18 (D.D.C. 1996). An inmate brought an action against corrections officials alleging violation of his constitutional rights in connection with an alleged assault by a guard when the inmate was returning from a religious service, and from a disciplinary proceeding arising from the assault. The district court held that the inmate's right of free exercise of religion pursuant to the Religious Freedom Restoration Act was not violated because the inmate was neither prevented from attending a service nor pressured to commit any act forbidden by his religion. The court found that the inmate failed to establish a denial of due process violation during a disciplinary proceeding because the inmate did not have a protected liberty interest in remaining free from administrative segregation, and was informed of the charges against him and notified of his hearings. The court found that a prison guard did not violate the inmate's Eighth Amendment rights because the guard had asserted that his blow to the inmate's face was necessary for both self-protection and to maintain internal safety in a cell block. The court found the inmate's contention that his hands were in handcuffs to be incredible given the guard's injuries--a cut lower lip and injuries to his wrist and arm. (Maximum Security Facility, District of Columbia)

U.S. District Court
EXCESSIVE FORCE

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. When jail officials attempted to transfer the inmate to a single cell for his own protection the inmate became recalcitrant and belligerent; the court found that jail officials did not use excessive force when transferring him to the single cell. (St. Joseph County Jail, Indiana)

U.S. District Court
EXCESSIVE FORCE

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
RESTRAINTS

Fitts v. Witkowski, 920 F.Supp. 679 (D.S.C. 1996). An inmate sued corrections officials alleging violation of his Eighth Amendment rights by the use of four-point restraints. The district court held that a previous consent decree established a liberty interest in freedom from the use of four-point restraints except under procedures established by the decree and that there was an issue of fact as to whether the defendants complied with the decree. The court noted that this case did not involve a disturbance that threatened prison security so as to make pre-deprivation protections impossible. The court found that prison officials were entitled to qualified immunity for due process and Eighth Amendment claims because the existence of the decree did not clearly establish that the inmate had a liberty interest against the use of four-point restraints. (Perry Correctional Institution, South Carolina)

U.S. Appeals Court
EXCESSIVE FORCE

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. District Court
EXCESSIVE FORCE

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
BRUTALITY

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
EXCESSIVE FORCE

Mitchell v. Maynard, 80 F.3d 1433 (10th Cir. 1996). A prisoner brought a § 1983 action against prison officials, claiming violation of his rights under the Fifth, Sixth, Eighth and Fourteenth Amendments. The district court granted judgment for the defendants as a matter of law and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded the case for further proceedings. The appeals court ruled that the prisoner failed to state a cause of action that the guards' beating of him violated his rights because he failed to name the guards responsible in the complaint and he did not allege any personal involvement of the warden and director of corrections. According to the prisoner, he tripped and fell to the ground where he was beaten by several guards with night sticks while they shouted racial epithets at him. The prisoner was naked and shackled at the wrists, ankle and belly at the time the attack occurred and there was no indication he had acted inappropriately or posed any disciplinary problem at the time of the beating. (Mack Alford Correctional Center, Oklahoma)

U.S. District Court
CHEMICAL AGENTS
EXCESSIVE FORCE

Norris v. Detrick, 918 F.Supp. 977 (N.D.W.Va. 1996). A federal prisoner brought a § 1983 action seeking damages based on a state prison official's alleged use of excessive force when he sprayed the prisoner with chemical gas while the prisoner was incarcerated in a state prison. The district court found that administering two doses of CN gas was not excessive force or cruel and unusual punishment; the first use of CN gas was made when the prisoner--who possessed martial arts skills--refused to return to his cell after he was given numerous opportunities to comply with orders. The second use of CN gas was administered only after the prisoner charged officers. The court noted that whether or not the use of gas is unconstitutional depends on the totality of circumstances including provocation, amount of gas used, and the purposes for which the gas was used. (Eastern Regional Jail, West Virginia)

U.S. Appeals Court
CHEMICAL AGENTS
DISTURBANCE
EXCESSIVE FORCE
RESTRAINTS

Williams v. Benjamin, 77 F.3d 756 (4th Cir, 1996). An inmate filed a civil rights action claiming that correctional officers violated his constitutional rights when they sprayed him with mace, confined him for eight hours in four-point restraints on a bare metal bed frame, refused to allow him to wash off the mace, and denied medical care and the use of a toilet. The district court granted summary judgment to the prison officials and the appeals court affirmed in part and reversed and remanded in part. The appeals court found that the correctional officers' decision to use some force to quell a disturbance was justifiable after inmates threw water at an officer and refused to obey a command to desist. The court ruled that the initial application of mace was not cruel and unusual punishment, but that summary judgment was precluded for the claims that the use of restraints and related actions violated the Eighth Amendment. The court noted that four-point restraints can be used on a limited basis, as a last resort, without violating the Eighth Amendment when other forms of prison discipline have failed, and that the initial application of four-point restraints was justified. But the officers offered no evidence to dispute the inmate's affidavit that his long confinement without being able to wash off the mace caused "immense" pain and that the inmate pleaded with them for water to wash off the mace. According to the court, after the immediacy of the disturbance was at an end the unnecessary infliction of continued pain through a prolonged period of time would support the inference that the officers were acting to punish, rather than to quell a disturbance. (Lieber Correctional Institution, South Carolina)

U.S. Appeals Court
EXCESSIVE FORCE

Wilson v. Williams, 83 F.3d 807 (7th Cir. 1996). A pretrial detainee brought a civil rights action against a correctional officer for use of allegedly excessive force. The district court granted summary judgment for the officer and an appeals court reversed the decision. On remand, the district court entered judgment on a jury verdict in favor of the officer and the detainee appealed. The appeals court reversed the district court decision. The appeals court found that a jury could properly consider objective factors in determining intent, particularly where the court listed a variety of factors that could be used to infer an intent to punish. The detainee alleged that the correctional officer attacked him without provocation, continued to beat him while he was restrained by other correctional officers, and attacked him again when he was restrained in a different area of the jail. The appeals court ruled that the jury instruction constituted an error. The jury was instructed to determine, through objective means, whether the prohibited punitive intent was present, but was then told even if this was found, a reasonable good faith punitive intent would excuse it. (Cook County Jail, Illinois)

1997

U.S. Supreme Court
EXCESSIVE FORCE

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. Appeals Court
EXCESSIVE FORCE

Boddie v. Schnieder, 105 F.3d 857 (2nd Cir. 1997). An inmate brought a pro se § 1983 action against prison officials alleging sexual harassment, use of excessive force, false misbehavior reports, and conspiracy. The district court dismissed the action and the inmate appealed. The appeals court affirmed, finding that although a prisoner's allegations of sexual abuse by a corrections officer may state an Eighth Amendment claim, the sexual abuse the inmate claimed to have experienced was not serious enough to be cruel and unusual. The court noted that the isolated episodes of harassment and touching alleged by the inmate were despicable and, if true, might be the basis for a state tort action. The inmate had alleged that there were a small number of incidents in which he was verbally harassed, touched, and pressed against without his consent. The court also found that the inmate's allegations of excessive force, false misbehavior reports, conspiracy and retaliation were unsupported, speculative, and conclusory. (Green Haven Correctional Facility, New York)

U.S. District Court
RESTRAINTS

Casaburro v. Giuliani, 986 F.Supp. 176 (S.D.N.Y. 1997). A pretrial detainee alleged that he was subjected to cruel and unusual punishment because he was handcuffed in a holding cell for over 7 hours. The district court found that the detainee stated a § 1983 claim against officers, the police department and the city. According to the detainee, he was placed in a holding cage "that had no seats, no water, poor ventilation." He had notified officers that he was under a chiropractor's care for back problems but was allegedly tightly handcuffed behind his back anyway. After he complained he was re-handcuffed to a hook approximately 12 inches off of the floor. After complaining about this he was allegedly cuffed to the front of the cell in a standing position. The district court found that the detainee stated a § 1983 claim against officers, the police department and the city. (City of New York)

U.S. District Court
STUN GUN
RESTRAINTS
EXCESSIVE FORCE

Collins v. Scott, 961 F.Supp. 1009 (E.D.Tex. 1997). A male Muslim inmate sued prison officials alleging violation of the Religious Freedom Restoration Act (RFRA) and § 1983 arising from a strip search by a female officer. The district court dismissed the case, finding that ordering the inmate to submit to a strip search did not substantially burden his religious rights and was the least restrictive means of furthering a compelling government interest in maintaining security. The court found that prison officials did not use excessive force in conducting the strip search and that they were entitled to qualified immunity. The officials had shocked the inmate with an electronic capture shield and placed him in restraints when he refused to submit to a search. The court noted that the inmate was willing to be strip searched by a males in all cases, and by females in emergency or extraordinary circumstances, despite the teaching of the inmate's religion that he should not be naked in the presence of males or females. Prison officials usually accommodated the inmate's request to be strip searched by male staff. (Coffield Unit, Texas Department of Criminal Justice)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

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
EXCESSIVE FORCE
CELL EXTRACTION

Dennis v. Thurman, 959 F.Supp. 1253 (C.D.Cal. 1997). An inmate proceeding pro se and in forma pauperis brought an action against 36 prison officials alleging constitutional violations because he was deprived of water for 36 hours. He also challenged the force used to extract him from his cell and alleged inadequate and untimely medical care for injuries he sustained during the cell extraction. The district court held that prison officials did not use excessive force in removing the inmate from his cell. The officials had used a block gun, which shot rubber blocks at a high velocity. The court found that no official acted maliciously or sadistically for the purpose of causing the inmate pain, and the cell extraction was necessary to allow a search which was conducted in response to a plan to kill a correctional officer. The court found that even if the inmate was without water for 36 hours during a search of his cell block, there was no Eighth Amendment violation. In the past, the inmate had used water to flood the cell block, creating a dangerous condition for both prison officials and other inmates. (California State Prison--Los Angeles County)

U.S. Appeals Court
EXCESSIVE FORCE
BRUTALITY
FAILURE TO PROTECT
CELL EXTRACTION

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. District Court
EXCESSIVE FORCE

Lopez v. Reynolds, 998 F.Supp. 252 (W.D.N.Y. 1997). A prisoner claimed the use of allegedly excessive force in a civil rights action. The district court found that the force used against the prisoner did not amount to cruel and unusual punishment. The court noted that the prisoner's conduct, including his refusal to attend his disciplinary hearing, his refusal to allow guards to remove his leg restraints, and spitting in one guard's face, demonstrated a reasonably perceived threat to the maintenance of prison discipline. Therefore the use of some force to remove the prisoner's leg irons and place him in his cell was not found to be usubjectively excessive. (Southport Correctional Facility, New York)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

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
RESTRAINTS
CHEMICAL AGENTS

Price v. Dixon, 961 F. Supp. 894 (E.D.N.C. 1997). An inmate sued prison officials alleging violation of his Eighth and Fourteenth Amendment rights when he was placed in four-point restraints for 28 hours. The court granted summary judgment in favor of the defendants, finding that they did not violate any clearly established rights of the inmate and were entitled to qualified immunity. The court upheld the limited use of mace to subdue the inmate who was disruptive and who was throwing urine on prison officers. The inmate had incurred more than 100 rule violations since he was admitted to the facility, and on one occasion the inmate even broke through steel handcuffs that were applied to restrain him. The

court held that denying the inmate the opportunity to wash after being sprayed with mace did not violate any clearly establish right of the inmate. The inmate was afforded bathroom breaks and was not totally without access to any source of water. He was checked every 15 minutes and was released for regular meal times. The inmate was also evaluated by medical personnel. (Central Prison, Raleigh, North Carolina)

U.S. Appeals Court
THREATENING
EXCESSIVE FORCE

Riley v. Dorton, 115 F.3d 1159 (4th Cir. 1997). A pretrial detainee brought a § 1983 action against a police officer, alleging the use of excessive force during an interrogation after his arrest. The district court granted summary judgment for the officer and the detainee appealed. The appeals court affirmed, finding that the Fourth Amendment did not extend protection from excessive force to pretrial detainees, and that the alleged use of force did not violate the Eighth Amendment. According to the court, the Fourth Amendment applies to the initial decision to detain the accused, not to conditions of confinement after that decision has been made. The court also held that the officer's alleged use of force did not violate due process where any injury suffered by the detainee was de minimis. The court found that the detainee's encounter with police officers did not amount to "interrogation" within the meaning of the Fifth Amendment because officers did not directly question the detainee and their other conduct (exchanging insults with the detainee and requesting that the detainee sign a waiver form for genetic testing) was not reasonably likely to elicit an incriminating response. The detainee alleged that the officer used handcuffs, inserted the tip of a pen into the detainee's nose, threatened the detainee and slapped the detainee across the face. (Henrico County Public Safety Building, Virginia)

U.S. District Court
EXCESSIVE FORCE

Santiago v. Semenza, 965 F.Supp. 468 (S.D.N.Y. 1997). A pretrial detainee brought an action claiming excessive force against a United States marshal who struggled with the detainee during a commotion in a holding cell area. The district court granted summary judgment for the marshal, finding that the marshal was not liable for the alleged use of excessive force and had qualified immunity. The court found that the marshal's actions were necessary to secure the detainee, safeguard other marshals, and restore security to the holding cell area. According to the court, there was no indication that the marshal's actions, which may have been the cause of the detainee's bruise or scratch, were disproportionate to the situation. (Holding Cell Area, United States Courthouse, Southern District of New York)

U.S. Appeals Court
EXCESSIVE FORCE

Siglar v. Hightower, 112 F.3d 191 (5th Cir. 1997). An inmate brought an in forma pauperis complaint under § 1983 alleging excessive use of force by prison officers. The district court dismissed the complaint as frivolous and the appeals court affirmed. The appeals court held that under the provisions of the Prison Litigation Reform Act (PLRA), which requires a prisoner to make a showing of physical injury before bringing any federal civil action, the injury must be more than de minimis but need not be significant. The court found that the inmate's sore, bruised ear, which lasted for three days, was de minimis and thus he did not raise a valid Eighth Amendment claim for excessive force. (Texas)

U.S. Appeals Court
OFFICER ON
PRISONER ASSAULT
BRUTALITY

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. District Court
EXCESSIVE FORCE

Watson v. McGinnis, 964 F.Supp. 127 (S.D.N.Y. 1997). An inmate whose throat was slashed by another inmate brought a § 1983 action against corrections employees and officials. The district court held that the inmate's allegation that a guard intentionally called him a snitch in order to cause him harm by other inmates stated an Eighth Amendment claim. (Downstate Correctional Facility, New York)

U.S. District Court
EXCESSIVE

Wilson v. Shannon, 982 F.Supp. 337 (E.D.Pa. 1997). An inmate brought a § 1983 action against prison officials alleging violation of his rights in connection with strip searches and denial of exercise. The district court granted summary judgment for the officials, finding that denial of exercise for only eight days in response to disciplinary problems created by the inmate did not indicate deliberate indifference in violation of the Eighth Amendment. The court also held that alleged repeated strip searches of the inmate, both at the library and as the result of a security check of his cell, did not violate the Fourth Amendment because the inmate failed to show that the searches were conducted in an unreasonable manner, even if they were unnecessary. (SCI Frackville, Pennsylvania)

U.S. District Court
EXCESSIVE FORCE

Adewale v. Whalen, 21 F.Supp.2d 1006 (D.Minn. 1998). An arrestee sued a police officer and the city that employed him under federal civil rights laws and state tort claims. The district court found that the officer was entitled to qualified immunity from liability for his decision to jail the arrestee, but found that genuine issues of material fact precluded summary judgment on the grounds of official immunity on allegations of assault, battery and false imprisonment. The court held that the officer's decision to detain the arrestee for a misdemeanor did not violate her federal rights and was objectively reasonable, given the arrestee's admission that she had been drinking and intended to drive. The court held that the arrestee failed to show that the city improperly trained its officers to arrest noncooperative persons for obstruction of legal process, based only on the decision of a deputy director of police that it was proper to arrest someone for refusing to open a security door for the police. The arrestee suffered a broken arm which she alleged was the result of excessive force used by the officer during a pat-down search. (City of Richfield Police Department, Minnesota)

U.S. District Court
EXCESSIVE FORCE

Aziz Zarif Shabazz v. Pico, 994 F.Supp. 460 (S.D.N.Y. 1998). A prison inmate brought a § 1983 action against prison officials and employees alleging violation of his constitutional rights. The district court granted summary judgment for the defendants. The court held that the inmate failed to allege facts sufficient to support a conspiracy claim or that officials had acted in retaliation for the inmate's exercise of protected rights. The court concluded that kicking of the inmate inside his ankles and feet while performing a pat frisk, while not to be condoned, was a de minimis use of force and did not violate the Eighth Amendment. The court noted that at one time the inmate admitted that he had sustained no physical injuries. The court held that the pat frisk and strip frisk searches performed on the inmate were permissible and did not violate the provisions of a consent decree. The court found that performing a strip frisk on the prison inmate prior to his transfer to another facility did not violate his right of free exercise of religion, notwithstanding the inmate's religious objections to the requirement that he remove his clothing. According to the court, alleged verbal taunts, no matter how inappropriate, unprofessional or reprehensible they might seem, did not support a claim of cruel and unusual punishment absent any injury. Any psychological or emotional scars to the inmate were found to be de minimis and did not support a claim of cruel and unusual punishment. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
EXCESSIVE FORCE
CHEMICAL AGENTS
DISTURBANCE

Baldwin v. Stalder, 137 F.3d 836 (5th Cir. 1998). An inmate brought a § 1983 action claiming that prison officials used excessive force during two incidents on two successive days. The district court found that a prison official had used excessive force in one incident, but the appeals court reversed, finding that the official's action in using pepper mace to quell a disturbance on a bus did not amount to the use of excessive force. The appeals court noted that the incident on the bus was a potentially dangerous situation because inmates on the bus had been involved in a prior prison-yard incident and an ensuing work stoppage, and were being transferred to a more secure facility as the result of their involvement. The official did not allow the inmates to leave the bus to wash off the mace because he was concerned about possible escape attempts in an unfenced area. (Washington Correctional Institute, Louisiana)

U.S. District Court
EXCESSIVE FORCE

Benglen v. Zavaras, 7 F.Supp.2d 1171 (D.Colo. 1998). A prisoner brought a § 1983 action against Colorado corrections officials and employees for alleged attacks on him by a guard and other prisoners following his transfer from Colorado to a Texas prison. The district court dismissed the case, finding that the prisoner failed to state claims against the Colorado corrections director, absent allegations that the director participated in the attack by the guard or that he ever had contact with the guard. The prisoner complained that he was attacked by a law enforcement official of the Texas county in which he was housed, alleging that the officer struck him with a rifle butt to the groin. The prisoner also alleged that several days later he was "brutally attacked without provocation and beaten" by three inmates in an attack that was observed by other law enforcement officers who did nothing to render aid. The prisoner underwent emergency surgery and sustained 70% loss of vision in one eye. (Bowie County Correctional Facility, Texas)

U.S. District Court
EXCESSIVE FORCE

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. The court held that the corrections officer was entitled to qualified immunity, where he helped the police officer restrain the arrestee by holding the arrestee's legs and carrying the arrestee to a

padded cell. The corrections officer said that he entered the booking room and found the arrestee kicking away at the police officer who was the only officer in the room, and the corrections officer denied that he saw the police officer mistreating the arrestee until he subsequently viewed the video tape of the booking. (Mansfield Police Department and City Jail, Ohio)

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
EXCESSIVE FORCE

Farabee v. Rider, 995 F.Supp. 1398 (M.D.Fla. 1998). An arrestee sued a county sheriff and deputies alleging negligence and malicious prosecution. The district court found that the sheriff owed a duty to protect the arrestee from the risk of use of excessive force created by his alleged failure to train and supervise deputies. The court held that the sheriff was not entitled to qualified immunity. The arrestee was pushed to the ground and handcuffed while a deputy put his knee in her back. She was transported to the county jail where she was incarcerated for at least 12 hours and she was suffering from back and arm injuries inflicted by the deputy while confined. (Glades County Jail, Florida)

U.S. Appeals Court
DEADLY FORCE

Gravely v. Madden, 142 F.3d 345 (6th Cir. 1998). The administrator of an inmate's estate brought a civil rights action against a corrections officer, alleging violation of the inmate's rights when he was fatally shot by the officer following the inmate's escape. The district court denied the officer's motion for summary judgment but the appeals court vacated and remanded. The appeals court held that the officer was acting within the scope of his discretionary authority and his use of deadly force was objectively reasonable, entitling the officer to qualified immunity. The court noted that even if the officer's use of deadly force violated a state regulation permitting the use of such force only when an officer reasonably believes that such force is the least force necessary to apprehend an escapee, the regulation did not create a substantive right that gave rise to a cause of action, but instead provided a guideline for corrections officers. The inmate had escaped from a minimum security farm detail. When the officer and others raided the residence of a friend of the inmate, the officer was stationed on the rear landing of the building. When the inmate came through the back door he was ordered by the officer to freeze and give himself up. He leaped off the landing and ran past the officer, who again told him to stop. The officer then fired a single shot which struck the inmate in the back, fatally injuring him. A butcher knife was found partially hidden beneath the inmate's leg. (Pickaway Correctional Institute, Ohio)

U.S. District Court
EXCESSIVE FORCE

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 found that the inmate's unsupported allegations regarding deprivation of communication, clean bedding, clean clothing and hot food during her period of respiratory isolation were not objectively sufficiently serious to support a claim of cruel and unusual punishment. 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. District Court
EXCESSIVE FORCE

Holland v. Morgan, 6 F.Supp.2d 827 (E.D.Wis. 1998). An inmate who alleged that prison officials used excessive force against him was granted permission to proceed in forma pauperis. The district court found that the inmate stated an excessive force claim by alleging that an official, without provocation, smashed his face against a metal door and applied leg and wrist restraints that were tight and painful. The inmate alleged he was taken to his cell, was blindfolded, and suffered a painful chokehold on the official's orders. (Racine Correctional Institution, Wisconsin)

U.S. District Court
EXCESSIVE FORCE
CHEMICAL AGENT

Jackson v. DeTella, 998 F.Supp. 901 (N.D. Ill. 1998). An inmate filed a pro se § 1983 action against prison officials in their individual and official capacities claiming he was subjected to excessive physical force and that he was subjected to cruel and unusual punishment because of certain conditions of his confinement. The district court held that officials who sprayed the inmate with a chemical agent and beat him were not entitled to qualified immunity. The court found that an eight-day deprivation of personal hygiene items and bedding was not cruel and unusual punishment, where there was no evidence that the deprivation resulted in harm to the inmate. (Stateville Correctional Center, Illinois)

U.S. District Court
EXCESSIVE FORCE

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 inconnection 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 had failed to comply with pat-frisk procedures and was increasingly loud and boisterous and he was ordered to be quiet by a corrections officer. The court noted that the inmate had other means of expressing his dissatisfaction, such as the grievance procedure. The court found that the alleged conduct of a corrections officer in pushing his genital area against the inmate during the pat-frisk search, and wedging the inmate's pants into his buttocks, was a de minimus activity that did not implicate the Eighth Amendment. The court also found that the alleged conduct of a corrections officer in pushing the inmate back into his cell after the search did not involve the use of excessive force in violation of the Eighth Amendment. 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. District Court
EXCESSIVE FORCE

Kapfhammer v. Boyd, 5 F.Supp.2d 689 (E.D.Wis. 1998). A state prisoner sued a correctional officer alleging the use of excessive force in violation of the Eighth Amendment and § 1983. The district court denied summary judgment for the officer, finding that disputed questions of material fact as to the amount and type of force used by the officer to remove the prisoner from his bunk, and whether the prisoner was injured in the course of an actual search, precluded summary judgment. The court also found that there was a disputed issue of material fact regarding the officer's intent at the time he used force. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
EXCESSIVE FORCE
STUN GUN
BRUTALITY
DOGS

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 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
EXCESSIVE FORCE

Mahotep v. DeLuca, 3 F.Supp.2d 385 (W.D.N.Y 1998). A prison inmate sued prison officials under § 1983. The district court held that the inmate presented fact issues with regard to allegations of physical assault by officers. The inmate claimed that as a result of an assault by officers he suffered a ruptured testicle, groin damage, severe pain, a pinched nerve in his ankle, and had a severe asthmatic attack that necessitated a long hospital stay. The court found that allegations of retaliation for legal action presented fact issues, where the inmate's conduct in filing previous grievances against the same officers was clearly protected by the First Amendment, and the alleged assault occurred approximately one week after the inmate filed the grievances. (Attica Correctional Facility, New York)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

Malik v. Mack, 15 F.Supp.2d 1047 (D.Kan. 1998). A prisoner challenged his isolation from other inmates during his evaluation for placement in the general population. The district court granted summary judgment for the defendants, finding that the isolation was not an unreasonable incursion upon his First Amendment rights. The prisoner was isolated during evaluation based on information received prior to his arrival at the facility. The court also found that the routine placement of restraints incident to a cell move, during which the prisoner allegedly sustained a wrist injury and a cut lip, did not constitute excessive force in violation of the Eighth Amendment. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
EXCESSIVE FORCE

McClanahan v. City of Moberly, 35 F.Supp.2d 744 (E.D.Mo. 1998). A pretrial detainee alleged that she was the victim of excessive force used in connection withher transfer from a police department to a county jail. The district court granted summary judgment for the defendants, finding that the detainee's allegations of being slapped three times, without any evidence of any resulting injury, was at most a de minimis injury that did not implicate the Due Process Clause of the Fourteenth Amendment. (Moberly Police Department and Shelby County, Missouri)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS
RESTRAINING CHAIR

Moore v. Hosier, 43 F.Supp.2d 978 (N.D.Ind. 1998). A former pretrial detainee sued a county sheriff's department and individual law enforcement officers alleging civil rights violations arising out of his treatment while he was being held in county confinement. The district court held that the restraint of the detainee by officers for the purposes of decontaminating him after a pepper spray cannister malfunctioned did not amount to assault and battery under state law. The detainee alleged that officers strapped him to a chair with his arms tied behind his back and beat him about his face and body, and placed his face and mouth in front of a shower. The court held that even if these allegations were true, they did not amount to an invasion of privacy under Indiana law. The court denied summary judgment for officers who did not participate in the beating of the detainee but witnessed it and had the opportunity to stop it. The court held that the sheriff's department did not negligently train its employees in the use of force, where the department had developed and maintained detailed procedures for training incoming officers in handling inmates, and the department policy specifically stated that officers were expected to use force only in a lawful and justifiable manner. The detainee admitted that he was intoxicated when officers arrived at the scene and that he fled on foot when they arrived. The detainee was involved with altercations with officers at a detention center, and was strapped into a restraining chair and was sprayed with pepper spray. (Allen County Confinement Center, Indiana)

U.S. Appeals Court
EXCESSIVE FORCE

Moore v. Novak, 146 F.3d 531 (8th Cir. 1998). An arrestee brought a civil rights action against correctional officers under § 1983, alleging the use of excessive force and violations of equal protection and due process. The district court entered judgment for the officers and the appeals court affirmed. The appeals court held that the finding that excessive force was not used was not clearly erroneous, even if the fact that a videotape of the incident was missing raised the inference that the videotape would have supported the arrestee's version of the incident. The court noted that a supervisor's testimony sufficiently rebutted this inference. The arrestee was intoxicated, agitated, and refused to comply with commands, kicked the arresting officer, continued to struggle and attempt to get away, and posed an immediate threat to his own safety and to the safety of the officers. (Lancaster County Jail, Nebraska)

U.S. Appeals Court
EXCESSIVE FORCE

Parkus v. Delo, 135 F.3d 1232 (8th Cir. 1998). An inmate sued corrections officers alleging his rights were violated when he was subdued following his attack on a prison psychologist. The district court entered judgment in favor of the officers and the appeals court affirmed. The appeals court held that the district court did not abuse its discretion when it defined "sadistically" in its instruction as "extreme or excessive cruelty or delighting in cruelty." The court noted that the inmate vigorously opposed the officers' efforts to subdue him after he attacked, choked, sexually assaulted and injured a female prison psychologist. The court also found that although an officer was dismissed for using force against the inmate, this action against the officer did not unambiguously decide the issue of whether the officer used excessive force in the context of an Eighth Amendment claim. (Missouri)

U.S. District Court
EXCESSIVE FORCE

Rodriguez v. McGinnis, 1 F.Supp.2d 244 (S.D.N.Y. 1998). An inmate brought a § 1983 action against corrections officials alleging violation of his due process rights by the imposition of a 17-day keeplock confinement sanction upon him. The court found that 17-day placement in keeplock was not atypical nor a significant hardship, and that officials were entitled to qualified immunity on the due process claim. The inmate also alleged that an officer violated his Eighth Amendment rights by stepping on his back and kicking him in his lower back numerous times without provocation while he was handcuffed. The district court held that the inmate stated an Eighth Amendment claim with regard to the excessive force allegations. (Downstate Correctional Facility, New York)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

Spicer v. Collins, 9 F.Supp.2d 673 (E.D.Tex. 1998). A state prisoner brought a § 1983 action against prison officials and staff. The district court dismissed the case. The court held that the inmate failed to state a claim based on prison officials' alleged verbal threats, harassment and insults. The court found that the alleged threats were of such a magnitude that they constituted a substantial risk of harm to the inmate. The court found that the inmate failed to state a claim for failure to take action to protect him after he reported that correctional officers had made verbal threats to him. The court concluded that the prisoner failed to suffer "some injury" as required for a § 1983 claim, when he claimed that he suffered only pain in his neck, arms and hands as the result of being handcuffed, and claimed no physical injury as the result of being grabbed by the arm, absent evidence that the force used by officers was repugnant to the conscience of mankind. (Stiles Unit, Texas Department of Criminal Justice-Institutional Division)

U.S. Appeals Court
EXCESSIVE FORCE
DISTURBANCE

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)

1999

U.S. District Court
EXCESSIVE FORCE

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
EXCESSIVE FORCE

Banks v. Person, 49 F.Supp.2d 119 (E.D.N.Y. 1999). A parolee who was detained for questioning by police brought a § 1983 action against parole officers alleging excessive use of force. The district court granted summary judgment for the defendants finding that the Eleventh Amendment barred a suit against the state division of parole, that parole officers who took no part in a scuffle could not be held liable, and that the force used by parole officers to restrain the parolee was objectively reasonable. According to the court, the parole officers' use of force to restrain the parolee who was acting in a dangerous and violent manner was reasonable, noting that the scuffle only lasted for a few minutes and resulted in no injury to the parolee. (New York State Division of Parole)

U.S. Appeals Court
RESTRAINTS
EXCESSIVE FORCE

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
RESTRAINTS

Drummer v. Luttrell, 75 F.Supp.2d 796 (W.D.Tenn. 1999). An inmate brought a § 1983 action against corrections officials alleging that a disciplinary action violated her due process and Eighth Amendment rights. The district court held that strip-searching and handcuffing the inmate during a unit search did not constitute a due process violation because the action did not impose an atypical and significant hardship on her. The inmate had been strip-searched during a shakedown of her dormitory. After squatting and coughing twice the inmate refused a direct order to do so again and was disciplined. She then left a shower area dressed in nothing but her panties and two male officers were called for assistance. (Shelby County Correctional Center, Tennessee)

U.S. Appeals Court
EXCESSIVE FORCE
RESTRAINTS
RESTRAINING CHAIR

Grayson v. Peed, 195 F.3d 692 (4th Cir. 1999). The administrator for the estate of a deceased detainee sued officers and county officials under § 1983 asserting constitutional violations, negligence, gross negligence, negligent training and negligent supervision. The district court granted summary judgement for the defendants on all § 1983 claims and declined to assume supplemental jurisdiction over state law claims. The appeals court affirmed. The detainee had been arrested and transported to the county detention center and the following day was declared brain dead. During his booking the detainee was acting irrationally, his speech was slurred, and he kept repeating in an intoxicated manner "I can't believe this is all over a traffic ticket." He was then taken to a cell and strip searched, but at the conclusion of the search attempted to crawl out of the cell and a struggle ensued. Officers used pepper spray to subdue him. Early the next morning the detainee began acting belligerent again. He resisted being moved to another cell and a five-man cell

extraction team pinned him face down. During the struggle he was sprayed with pepper spray and he was punched several times. Once restrained, he was carried face down to another cell and was placed in four-point restraints. A few minutes later he appeared to be unconscious and was checked by medics and was found to be "okay." Another officer then noticed that the detainee was not breathing, CPR was initiated and he was taken to a local hospital where he was found to be brain dead. The appeals court held that officers at the county detention center were not deliberately indifferent to the medical needs of the deceased detainee, either when the detainee was booked or during his custody. A trained medic was on hand in the booking area and discerned no sign of a medical problem. According to the court, the failure to clean pepper spray off of the detainee in a timely manner was, in the first instance, due to the detainee's violent response to the officer's offer to wash the spray off, and in the second instance was due to the need to rush the detainee to a hospital for emergency care. The appeals court held that the officers did not use excessive force against the detainee, but rather that they applied the force necessary in a good faith effort to restore discipline. The court also found that there were no actionable deficiencies in the sheriff's policies, customs or training. According to the court, "...the appellant's own expert penologist conceded that [sheriff] Peed's policies met the standards of both the Virginia Board of Corrections and the American Correctional Association." The court also concluded, "...claims that [sheriff] Peed provided inadequate training for his employees must also fail. As of the time of this incident, the ADC had been accredited for more than ten years by both the American Correctional Association and the National Commission on Correctional Health Care, two organizations whose training requirements often surpass minimal constitutional standards." (Fairfax County Adult Detention Center, Virginia)

U.S. District Court
EXCESSIVE FORCE

Hardy v. Town of Hayneville, 50 F.Supp.2d 1176 (M.D.Ala. 1999). An arrestee brought a § 1983 suit against an arresting officer, chief of police, mayor and town, alleging false imprisonment and use of excessive force. The court found that the arrestee's allegations that the police officer arrested him and detained him in a county jail without informing him of the nature and cause of the accusations against him were sufficient to state a Sixth Amendment claim. The court also found that allegations that the police chief and town failed to provide police officers with adequate training on the lawful use of force, and that the unlawful use of force would be condoned by their superiors, were sufficient to state a Fourth Amendment claim. The arrestee had been preaching the gospel and greeting people as they came into a store, with the permission of the owner. A police officer instructed the arrestee to leave the store and then allegedly followed the arrestee to the back of the store when he attempted to protest to the owner. The officer allegedly assaulted the arrestee and battered him about the head and back, threw him to the ground and struck his wrists repeatedly with unopened handcuffs. (Town of Hayneville, Alabama)

U.S. District Court
PEPPER SPRAY
CHEMICAL AGENT
EXCESSIVE FORCE

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
RESTRAINTS

Hartsfield v. Vidor, 199 F.3d 305 (6th Cir. 1999). A state prison inmate brought a § 1983 action alleging that he was unconstitutionally restrained. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part and remanded, finding that the officials' alleged act of keeping the inmate in hard restraints for two eight-hour periods after he damaged his cell did not amount to cruel and unusual punishment. The inmate alleged that during his periods in the restraints he was denied food, access to fresh water and the use of a toilet. The inmate had been placed in top-of-bed restraints for a total of eighteen hours. (Ionia Corrections Facility, Michigan)

U.S. Appeals Court
EXCESSIVE FORCE

Lambert v. City of Dumas, 187 F.3d 931 (8th Cir. 1999). The family of a detainee who died in his jail cell brought a § 1983 action against a city and police officers, asserting claims for unlawful arrest, excessive force and wrongful death. The district court denied the defendants' motion for summary judgment and the appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment was precluded by factual issues regarding the amount and degree of force used during the detainee's arrest, but that the officers were not liable for wrongful death, absent any evidence that the officers were subjectively aware of any risk that the detainee would inflict harm on himself. The detainee did not threaten to commit suicide during his incarceration or otherwise indicate that he might do so, he was never classified as a suicide risk, and the officers were not shown to have knowledge of a prior incident when the detainee swallowed a metal crack pipe. The court noted that a showing that a jailer was negligent in failing to recognize a prisoner's suicidal tendencies is insufficient to satisfy the § 1983 deliberate indifference standard. (Dumas Police Department, Arkansas)

U.S. District Court
EXCESSIVE FORCE

Peters v. City of Biloxi, Mississippi, 57 F.Supp.2d 366 (S.D.Miss. 1999). An arrestee brought a § 1983 claim challenging the use of force during his arrest. The district court found that the arresting officer's conduct in handcuffing, shackling and verbally harassing the arrestee was objectively reasonable and was not clearly excessive. The court noted that there was no evidence that the officer hit or otherwise physically injured the arrestee. (City of Biloxi, MS)

U.S. Appeals Court
EXCESSIVE FORCE

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
BRUTALITY

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. Appeals Court
EXCESSIVE FORCE

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)

2000

U.S. Appeals Court
RESTRAINING CHAIRS

Fuentes v. Wagner, 206 F.3d 335 (3rd Cir. 2000). An inmate who had been detained in a county prison while awaiting sentencing sued corrections officers and prison officials under § 1983 for the alleged use of excessive force. A district court jury returned a verdict in favor of the defendants and the inmate appealed. The appeals court affirmed, finding that whether the inmate was placed in a restraint chair to stop his disruptive behavior and maintain prison order or for purposes of punishment was a jury question and that placement of the inmate in a restraint chair for eight hours did not violate substantive due process under the Eighth Amendment. The court noted that the inmate was not kept in the chair any longer than was authorized, his physical condition was checked every fifteen minutes and he was released every two hours for ten minutes to allow stretching, exercise, and use of the toilet. He was examined by a nurse at the end of the eight-hour period. According to the court, an inmate awaiting sentencing had the same status under the Constitution as a pretrial detainee and the Due Process Clause protected him from the use of excessive force amounting to punishment. (Berks County Prison, Pennsylvania)

U.S. District Court
DEADLY FORCE
EXCESSIVE FORCE

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
EXCESSIVE FORCE

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
EXCESSIVE FORCE

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. The court also found that a prison guard who had a realistic opportunity to step forward and prevent a fellow guard from violating a prisoner's rights through the excessive use of force, but fails to do so, can be held liable for an Eighth Amendment violation. (Maximum Control Complex, Westville, Indiana)

U.S. Appeals Court
PEPPER SPRAY

Jones v. Shields, 207 F.3d 491 (8th Cir. 2000). An inmate brought a pro se § 1983 action against a corrections officer alleging that the officer inflicted cruel and unusual punishment by unjustly spraying him with a pepper-based chemical spray. The district court denied judgment for the officer and the appeals court reversed and remanded. The appeals court held that the officer's actions did not violate the Eighth Amendment because the spray resulted in only a de minimis injury and there was no showing that the officer's use of the spray was malicious or sadistic. The court noted that the inmate's own testimony revealed that the effects of the spray had cleared within 45 minutes, that we was twice taken to the infirmary and treated with water during that period, and that a medical examination the following day revealed no lingering effects. (Cummins Unit, Arkansas Department of Corrections)

U.S. District Court
EXCESSIVE FORCE

Santiago v. C.O. Campisi Shield #4592., 91 F.Supp.2d 665 (S.D.N.Y. 2000). A pretrial detainee brought a § 1983 action against a city corrections department alleging that an officer assaulted him in his cell. The district court granted summary judgment for the defendants, finding that a corrections officer's alleged open-handed slap of the detainee after an altercation was de minimis where the detainee suffered no physical injury. The court found that the slap was not sufficiently repugnant to the conscience of mankind to constitute a due process violation. (Bronx County Courthouse, New York)

U.S. District Court
STUN GUN
EXCESSIVE FORCE

Velasco v. Head, 166 F.Supp.2d 1100 (W.D.Va. 2000). A state prisoner sued correctional officers alleging he was subjected to the malicious use of force during an intake procedure, seeking monetary damages for his alleged personal injuries. The district court denied summary judgment in favor of the officers, finding that material fact issues regarding whether the prisoner's shackles were stepped on by correctional officers, and at what point a stun gun was used, precluded summary judgment. The court found that if the allegations regarding the use of a stun gun were proven true, the prisoner would not be required to prove that he suffered a permanent injury to prove that he was subjected to the malicious use of force. (Wallens Ridge State Prison, Virginia)

U.S. Appeals Court
EXCESSIVE FORCE
PEPPER SPRAY

Wagner v. Bay City, Tex., 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)

U.S. District Court
EXCESSIVE FORCE

Warren v. Westchester County Jail, 106 F.Supp.2d 559 (S.D.N.Y. 2000). An inmate brought a § 1983 action against a county jail, administrators and officers, alleging Eighth Amendment violations. The district granted summary judgment for the defendants, holding that a jail officer who fought with the inmate had not employed excessive force when he grabbed the inmate in a bear hug in a good faith effort to restore order, even though the inmate claimed that the officer took advantage of the situation to administer additional blows. The court also held that verbal abuse, which the inmate had alleged he was subjected to, did not rise to the level of a constitutional violation that was actionable under § 1983. (Westchester County Jail, New York)

U.S. Appeals Court
RESTRAINTS

Williams v. Department of Corrections, 208 F.3d 681 (8th Cir. 2000). An inmate brought a civil rights action against the Iowa Department of Corrections and other defendants alleging that they had retaliated against him for participating in a hearing by placing leg irons on him too tightly. The district court dismissed the action and the inmate appealed. The appeals court held that the inmate stated a retaliation claim against two correctional officers alleging that they placed leg shackles too tightly on the inmate and refused to loosen or remove the shackles after he complained. The inmate suffered intense pain, swelling and bruises. (Anamosa State Penitentiary, Iowa)

2001

U.S. District Court
EXCESSIVE FORCE

Craw v. Gray, 159 F.Supp.2d 679 (N.D.Ohio 2001). An arrestee sued law enforcement officers under § 1983 asserting claims for use of excessive force. The district court granted partial summary judgment in favor of the officers, finding that the allegations did not support a claim for inadequate training of an officer and that past "use of force" incident reports did not support the claim for inadequate supervision of the officer. According to the court, the assertion that a particular officer may be unsatisfactorily trained does not alone "suffice to fasten § 1983 liability" on a municipality for failure to train. The court noted that none of the reports showed that the deputy acted improperly. The officer had brought the arrestee to a county jail and during the booking process an altercation between the arrestee and the officer resulted in a right hip fracture and dislocation for the arrestee. (Mercer County Jail, Ohio)

U.S. District Court
EXCESSIVE FORCE

Davis v. Hill, 173 F.Supp.2d 1136 (D.Kan. 2001). An arrestee brought a § 1983 action against a county, sheriff, and employees alleging that he was the victim of excessive force while detained. The defendants moved for summary judgment and the district court granted the motion in part, and denied it in part. The court held that fact issues as to whether sheriff's deputies beat the arrestee senseless in his cell precluded summary judgment on the detainee's Fourth Amendment excessive force claim. The court also found that the arrestee could maintain a suit against deputies who were near the cell at the time, despite his inability to identify the two who allegedly administered the beating. The arrestee was allegedly handcuffed in his cell during a staff shift change. The arrestee was yelling and kicking his cell door and alleged that an officer entered the cell and hit him behind his ear, knocking him into the steel bed and against a steel wall, and then ground his thumb behind the arrestee's ear. According to the arrestee, another officer entered and the two "proceeded attacking and torturing me on every joint in my body..." (Sedgwick Co. Adult Det. Facility, Kansas)

U.S. Appeals Court
EXCESSIVE FORCE
PEPPER SPRAY

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. District Court
BRUTALITY

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. 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. District Court
EXCESSIVE FORCE

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. Appeals Court
EXCESSIVE FORCE
PEPPER SPRAY

Foulk 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
EXCESSIVE FORCE

Gailor v. Armstrong, 187 F.Supp.2d 729 (W.D.Ky. 2001). The estate of a deceased pretrial detainee brought a § 1983 action against a county and correctional officers for the beating death of the detainee by officers. The district granted summary judgment in favor of the county, finding that there was insufficient evidence to hold the county liable, but denied summary judgment for the officers. The court held that fact issues remained as to whether the officers' use of force was excessive. The court ruled that the officers and their supervisor were not entitled to qualified immunity. The court held that the county was not liable under § 1983 because evidence that the officers failed to follow the county's use of force policy, officials allegedly falsified reports, and evidence that some officers received only limited use of force training, did not demonstrate custom or usage necessary to support a § 1983 claim. The court denied summary judgment for a supervisor who allegedly failed to intervene when she saw excessive force being used against the detainee. (Jefferson County Department of Corrections, Kentucky)

U.S. Appeals Court
STUN BELTS
RESTRAINTS

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. Appeals Court
EXCESSIVE FORCE
FAILURE TO DIRECT

Jeffers v. Gomez, 240 F.3d 845 (9th Cir. 2001). An inmate who was shot by a correctional officer during a prison disturbance brought a civil rights action to recover for alleged violations of his constitutional rights. The district court denied summary judgment on qualified immunity grounds for the defendants. The appeals court reversed and remanded, finding that officers were qualifiedly immune from liability to the inmate. The court noted that the shot that one of the officers fired was aimed at an inmate who was attacking the plaintiff with a knife but accidentally hit the plaintiff in the neck. (California State Prison at Sacramento)

U.S. Appeals Court
EXCESSIVE FORCE

Jeffers v. Gomez, 267 F.3d 895 (9th Cir. 2001). An inmate brought a § 1983 action against prison officials after being shot during a prison riot The district court denied the officials' motion for summary judgment on qualified immunity grounds and they appealed. The appeals court reversed and remanded, finding that the officials were qualifiedly immune from civil rights liability and were not deliberately indifferent. The court noted that prison officials had investigated rumors of impending inmate violence before the riot and there was no evidence that they should have done anything differently once the threat materialized. According to the court, a prison warden complied with a statewide housing practice and he had no affirmative duty to change the policy. The inmate had been shot in the neck during the disturbance. (California State Prison, Sacramento)

U.S. District Court
DEADLY FORCE
EXCESSIVE FORCE

Jordan v. Cobb County, Georgia, 227 F.Supp.2d 1322 (N.D.Ga. 2001). A pretrial detainee brought a § 1983 action against a jail officer and a county, alleging excessive force, wrongful seizure, and assault and battery. The district court held that the officer was not entitled to qualified immunity and that a fact issue as to whether the officer violated the detainee's substantive due process rights, precluded summary judgment. The court found that the county could not be held liable for the officer's alleged conduct. The detainee had been arrested for suspicion of driving under the influence of alcohol and was detained in a holding cell at a police precinct. While in the holding cell, the detainee allegedly resisted being handcuffed by the officer. After a struggle or altercation, the detainee was shot twice in the abdomen by the officer. There were no witnesses to the shooting. The court noted that "virtually all of the facts and circumstances surrounding the altercation and shooting are in dispute." (Cobb County Police Department, Precinct One, Georgia)

U.S. Appeals Court
RESTRAINTS

Kostrzewa v. City of Troy, 247 F.3d 633 (6th Cir. 2001). An arrestee sued a city and police officers asserting claims for use of excessive force. The district court dismissed the case but the appeals court reversed and remanded. The appeals court held that the allegations supported a claim for use of excessive force and that the officers were not entitled to qualified immunity. The appeals court found that the city's handcuff policy, that required all detainees to wear handcuffs, supported a § 1983 claim of the arrestee who allegedly suffered pain and injury from being restrained with handcuffs that were too small for his wrists, despite being arrested for a non-violent misdemeanant offense.

U.S. District Court
RESTRAINTS

Laws v. Cleaver, 140 F.Supp.2d 145 (D.Conn. 2001). A state prison inmate brought a § 1983 action alleging cruel and unusual punishment in connection with restraints applied following an altercation. The district court found for the defendants, holding that the inmate's four-hour immobilization in "four-point" restraints did not by itself constitute an atypical and significant hardship, where there was no evidence regarding the frequency of such restraints at the prison, how tightly the restraints were fastened, and the effect on the inmate. (McDougall Corr'l Institution, Conn.)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

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 Co. Adult Detention Facility, Kansas)

U.S. District Court
EXCESSIVE FORCE

Morris v. Crawford County, Ark., 173 F.Supp.2d 870 (W.D.Ark. 2001). A detainee in a county jail brought a § 1983 action and state law battery claims against the county, sheriff and deputies. The defendants moved for summary judgment and the district court granted the motion in part and denied it in part. The court held that genuine issues of material fact existed as to the type of force used by a deputy against the detainee, and whether the detainee sustained injuries, precluding summary judgment. The court also found that the deputy was not entitled to qualified immunity for his alleged use of force on the detainee, who was allegedly not resisting. There was evidence that the deputy used a "knee drop" on the detainee, thereby severing his intestine. (Crawford County Detention Center, Arkansas)

U.S. District Court
EXCESSIVE FORCE

Piedra v. True, 169 F.Supp.2d 1239 (D.Kan. 2001). A federal prisoner brought an action alleging that assaults by prison officers violated his constitutional rights. The district court granted summary judgment in favor of the officers, finding that they were entitled to qualified immunity for beating the prisoner while he was handcuffed. According to the court, it was not clearly established at the time that guards could not use force on a combative prisoner who was handcuffed. The court noted that medical records did not support the prisoner's claim that he was repeatedly beaten. According to the court, the prisoner swung a telephone, kicked, spat and verbally assaulted the officers. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
EXCESSIVE FORCE

Pittman v. Kurtz, 165 F.Supp.2d 1243 (D.Kan. 2001). An inmate brought an action against jail officials and a county jail alleging that he was physically assaulted by staff while he was incarcerated at the jail, in violation of his Eighth Amendment rights to be free from cruel and unusual punishment. The district court granted summary judgment in favor of the defendants, finding that the force applied by jail officials to restrain the inmate did not violate his rights. The inmate had refused to go to his cell after multiple orders to do so, and struck at one official with a

pencil, hitting him in the neck and shoulder area between six and ten times. The altercation lasted only a few seconds and the inmate's injuries were minor. (Sedgwick County Jail, Kansas)

U.S. Appeals Court
EXCESSIVE FORCE

Thornton v. Phillips County, Arkansas, 240 F.3d 728 (8th Cir. 2001). A jail inmate brought a § 1983 suit against a county, police officers and paramedics based on his treatment after he was injured in a fall that was allegedly caused by a jail jumpsuit that was too long. The district court dismissed the action, and the appeals court affirmed the district court finding that the allegations, including assertions that paramedics tried to put him on a stretcher while his foot was caught between stairs, alleged no more than mere negligence. (Phillips County Jail, Arkansas)

U.S. District Court
EXCESSIVE FORCE
BRUTALITY

Watford v. Bruce, 126 F.Supp.2d 425 (E.D.Va. 2001). The district court held that a pretrial detainee stated a claim for cruel and unusual punishment under § 1983 against a deputy sheriff who allegedly assaulted him with such force that he sustained bruising, scarring and swelling, despite the claim that the injuries were de minimis. (Virginia Beach Correctional Center, Virginia)

U.S. Appeals Court
PEPPER SPRAY
EXCESSIVE FORCE

Young v. City of Mount Ranier, 238 F.3d 567 (4th Cir. 2001). The parents of a boy who died in custody brought state law negligence and wrongful death claims, and constitutional claims under § 1983, arising from the death of their son. Following removal from state court, the federal district court dismissed the complaint and the parents appealed. The appeals court affirmed in part and dismissed in part. The appeals court held that the conduct of officers who took the boy into custody for emergency psychiatric evaluation fell within the "middle range of culpability," between gross negligence and intentional misconduct, noting that the boy was owed the same duties owed to a more typical pretrial detainee. The appeals court held that the conduct of the officers fell short of deliberate indifference, as needed to establish § 1983 liability. The boy had resisted when officers tried to take him into custody. The officers used pepper spray to subdue him and then handcuffed him and placed him face down in the back seat of their police car. He was transported to a local hospital where he was found to have no pulse and where efforts to resuscitate him failed. An autopsy revealed that he had PCP in his system. His parents alleged that he died from "positional asphyxiation." (Mount Ranier Police Dept., Maryland)

2002

U.S. District Court
EXCESSIVE FORCE

Bafford v. Nelson, 241 F.Supp.2d 1192 (D.Kan. 2002). A state inmate filed a § 1983 action alleging that a correctional official used excessive force against him. The district court held that the official did not use excessive force in restraining the inmate, but held that fact issues remained as to whether the official punched the inmate in the head after he had been successfully restrained. The court held that the official was not entitled to qualified immunity. (El Dorado Correctional Facility, Kansas)

U.S. District Court
EXCESSIVE FORCE

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. 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. (Montgomery County Detention Facility, Alabama)

U.S. Appeals Court
PEPPER SPRAY
EXCESSIVE FORCE
DISTURBANCE

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, California)

U.S. Appeals Court
EXCESSIVE FORCE
CHEMICAL AGENT

Combs v. Wilkinson, 315 F.3d 548 (6th Cir. 2002). Death row inmates sued several state corrections supervisors and officers under § 1983, alleging that they used excessive force in quelling a disturbance in violation of the Eighth Amendment. The district court granted the defendants' motions for summary judgment and dismissal, and the inmates appealed. The appeals court affirmed in part, and reversed and remanded in part. The appeals court held that an individual officer's use of mace was not malicious or sadistic. The court found that summary judgment was precluded by fact questions as to whether the commander of a special response team adequately briefed the team members, and failed to control the use of chemical agents in the extraction of

inmates. The court held that the commander was not liable under § 1983 for failing to admonish team members when he overheard them discussing particular inmates that they wanted to "beat," absent any showing that the commander encouraged or directly participated in the use of excessive force. The court found that the inmates were not entitled to an injunction requiring corrections officers to wear name tags or other identification and to videotape cell extractions, even though their failure to do so was a violation of state corrections policies and regulations. (Mansfield Corr'l Institution, Ohio)

U.S. Appeals Court
STUN GUNS
RESTRAINTS

Dye v. Lomen, 40 Fed.Appx. 993 (7th Cir. 2002). A state prisoner brought § 1983 claims against correctional employees, alleging they used excessive force against him during two entries into his cell, that they refused to provide him with toilet paper for several days, and that they strip-searched him in front of a female employee. The district court granted summary judgment in favor of the correctional employees and the appeals court affirmed. The appeals court held that correctional officials did not use excessive force when they physically and mechanically restrained the prisoner and used a stun gun against him during two cell entries. The appeals court found that the failure to provide the prisoner with toilet paper for several days did not violate the prisoner's rights, absent proof that the officials deprived him of toilet paper to unnecessarily and wantonly inflict pain upon the prisoner. The appeals court held that strip-searching the male prisoner in front of female employees did not constitute cruel and unusual punishment. (Kettle Moraine Correctional Institution, Wisconsin)

U.S. District Court
EXCESSIVE FORCE

Gallardo v.Dicarlo, 203 F.Supp.2d 1160 (C.D.Cal. 2002). A state prisoner brought a § 1983 action against a prison warden. The district court found that the prisoner stated an Eighth Amendment excessive force claim against the warden and that the warden was not entitled to qualified immunity. The prisoner alleged that the warden encouraged the use of excessive force, and that he sustained physical injuries from officers' use of force on him that required a 31-day hospitalization and resulted in permanent physical injuries. (Calif. State Prison, Chino)

U.S. District Court
EXCESSIVE FORCE

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. Appeals Court
RESTRAINT BOARD

Hill v. McKinley, 311 F.3d 899 (8th Cir. 2002). A prisoner brought § 1983 action alleging jail officers and a sheriff violated her Fourth Amendment right to privacy, and her privacy rights under state law. The prisoner had been marched down a hallway naked, escorted by staff members of the opposite sex, and was then strapped face down to a restrainer board in a spread-eagle position. The district court denied the defendants' request for judgment as a matter of law, refused to reduce damages, and granted attorney fees to the prisoner. The appeals court affirmed in part, reversed in part, and remanded with directions. The appeals court held that the use of male officers in an otherwise justified transfer of an unruly and naked female prisoner did not violate the Fourth Amendment. The court held that the prisoner's Fourth Amendment rights were violated when she was allowed to remain completely exposed to male officers on a restrainer board for a substantial period of time after the threat to security and safety had passed. But the court found that the officers were entitled to qualified immunity because their actions did not violate clearly established law, noting that prisoners were entitled to very narrow zones of privacy. The court found that evidence supported the verdict for the prisoner on her state law privacy claim and the $2,500 compensatory damage award for invasion of privacy. (Story County Jail, Iowa)

U.S. Supreme Court
RESTRAINTS

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 anofficer 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
EXCESSIVE FORCE

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. Appeals Court
PEPPER SPRAY

Lawrence v. Bowersox, 297 F.3d 727 (8th Cir. 2002). Prisoners brought an action against prison officers alleging violation of their Eighth Amendment rights. The district court granted judgment in favor of the prisoners and the appeals court affirmed in part and remanded in part. The appeals court held that evidence was sufficient for a reasonable jury to conclude that the inmates were incarcerated under conditions that posed an objectively substantial risk of harm, and that an unnecessary pepper spray shower violated the inmates' Eighth Amendment rights because a supervisor orchestrated it even though the inmates were confined and had not disobeyed orders. The appeals court found that it was not an abuse of discretion for the district court to require prison officials to pay discovery sanctions where the inmates were "given the runaround" and were forced to take depositions and file motions that would have been unnecessary if the officials had complied with the district court's discovery order. The district court jury awarded $10,003 against an officer and the district court awarded discovery sanctions in the amount of $8,712. (Potosi Corr'l Ctr., Missouri)

U.S. District Court
EXCESSIVE FORCE

Lynn v. O'Leary, 264 F.Supp.2d 306 (D.Md. 2003). An arrestee sued state prison officials, alleging that he was subjected to an unlawful arrest, excessive force, and an illegal cavity search. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that officials were not entitled to governmental official immunity, under state law, in light of allegations that the officials acted with malice or were grossly negligent when they allegedly searched the arrestee's cavities while he was attempting to visit his son, after the officials informed the arrestee that a drug dog had falsely alerted on him. The arrestee had arrived at a state prison with his wife, intending to visit his son who was an inmate. While he was waiting to be admitted to the visiting area, a search dog was brought into the area and canvassed the room on a long leash. The dog gave a positive alert for drugs and the arrestee was subjected to a pat down search and his visitor locker was searched. No drugs were found on his person or in his locker and he was told that the dog had made a false alert. But he was not allowed to visit, and waited in lobby while his wife visited their son. After the visit prison officials ordered the arrestee into a side room where his wife heard him scream in pain. He informed the officials that he suffered from a medical condition. He was informed that he was under arrest and that he would be subjected to a strip and body cavity search, and the arrestee demanded that a warrant be produced. His clothes were forcibly removed and no contraband was found. $2,000 was taken from his wallet and divided among the prison officials. His person was then searched, including a body cavity examination. While he was dressing after the search one officer jerked up the arrestee's left leg, causing him to fall off a chair and hit his head against a wall, and he was knocked unconscious. He was taken to a hospital where he was found to be suffering from a contusion to his brain, and injury to his back, shoulder and arm. He was permanently banned from visiting his son. (Maryland House of Corrections Annex, Jessup, Maryland)

U.S. District Court
EXCESSIVE FORCE

Pizzuto v. County of Nassau, 240 F.Supp.2d 203 (E.D.N.Y. 2002). The family of a county corrections facility inmate who had been beaten to death by corrections officers, brought a civil action against the county and officials. The district court held that the inmate's mother and father lacked a substantive due process right to companionship of their 38-year-old son. The court noted that the son lived away from home for six years and started a family of his own, prior to returning to occupy a ground floor apartment in his parent's house three months before his death. The court found that the family stated a claim for intentional infliction of emotional distress under state law. The inmate had been sentenced to ninety days in jail on a misdemeanor charge of driving under the influence of methadone. Upon admission to the county correctional facility, the inmate was assigned to a single cell in the facility's observation tier, based on his status as an inmate receiving methadone treatment. The next morning the inmate complained that he needed his treatment and after a heated exchange with an officer, all inmates on the tier were ordered to their cells. All cell doors were locked, except the inmate's. Moments later, at the direction of a supervisor, three corrections officers went into the inmate's cell with the intention of using force to control his behavior. While one officer stood outside, two officers donned surgical gloves and beat the inmate for several minutes, punching and kicking him about the face, torso and legs. An extensive cover-up followed. Two days later the inmate collapsed in his cell. He was taken to a hospital where he died from his injuries several days later. (Nassau County Correctional Center, New York)

U.S. District Court
STUN GUN
EXCESSIVE FORCE

Shelton v. Angelone, 183 F.Supp.2d 830 (W.D.Va. 2002). A state prisoner brought a § 1983 alleging violation of his 8th and 14th Amendment rights. The district court denied summary judgment, in part, for the defendants. The court held that fact issues about the use of a stun gun to subdue the

prisoner precluded summary judgment. The court also found that correctional officers who allegedly used the stun gun were not entitled to qualified immunity. (Red Onion State Prison, Virginia)

U.S. District Court
EXCESSIVE FORCE

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. Appeals Court
EXCESSIVE FORCE

Skrtich v. Thornton, 280 F.3d 1295 (11th Cir. 2002). A prison inmate brought a § 1983 action against corrections officers alleging Eighth Amendment violations resulting from an alleged excessive use of force against him. The district court denied the defendants' motions for summary judgment and dismissal and the officers appealed. The appeals court affirmed, finding that the defense of qualified immunity was not available to the officers. According to the court, the inmate's allegations that the officers used excessive force when they went to his cell to extract him when he refused to voluntarily leave to permit a search to be conducted, were sufficient to state a § 1983 claim for violation of his Eighth Amendment rights. The officers used an electronic shield to shock and incapacitate the inmate, and allegedly punched, kicked and beat him to the extent that he had to be airlifted to a hospital for treatment. The court noted that the inmate acknowledged that some degree of force was warranted in light of his history of disciplinary problems and his refusal to cooperate with the search. (Florida State Prison)

U.S. Appeals Court
DISTURBANCE
EXCESSIVE FORCE

Torres-Viera v. Laboy-Alvarado, 311 F.3d 105 (1st Cir. 2002). A prisoner who was injured by a tear gas canister fired by a prison officials during a disturbance, brought a § 1983 action alleging violation of his Eighth Amendment rights. The district court dismissed the action and the prisoner appealed. The appeals court affirmed, finding that the force was applied in a good faith effort to restore order, and was not malicious or sadistic. (Bayamon Correctional Institution, Puerto Rico)

U.S. Appeals Court
PEPPER SPRAY
EXCESSIVE FORCE

Treats v. Morgan, 308 F.3d 868 (8th Cir. 2002). A state prisoner sued corrections officials under § 1983 alleging his Eighth Amendment rights were violated when he was sprayed with pepper spray and thrown to the floor. The district court denied the defendants' motion for summary judgment and the appeals court affirmed. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether it was reasonable for the officer to use of pepper spray and force against the prisoner who failed to obey commands, but who had not jeopardized any person's safety or threatened prison security. The prisoner alleged that he was sprayed in the face without any warning by an officer, and then thrown to the floor and handcuffed by a lieutenant. (North Center Unit, Arkansas Department of Correction)

U.S. District Court
RESTRAINTS

Turner v. Kight, 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 court held that the detainee's allegation that she was brutally handcuffed did not present a constitutional violation, particularly in the absence of any explanation of how the handcuffing led to any injury. (Montgomery Co. Detention Center, Maryland)

U.S. Appeals Court
EXCESSIVE FORCE

U.S. v. Daniels, 281 F.3d 168 (5th Cir. 2002). Three corrections officers were convicted for civil rights violations arising from an incident in which two of the officers beat a prisoner and the third officer was found to have "witnessed the attack and willfully permitted and made no attempt to stop it." The officers appealed and the appeals court affirmed the convictions. (Louisiana State Prison)

U.S. District Court
STUN BELT

U.S. v. Durham, 219 F.Supp.2d 1234 (N.D.Fla. 2002). A defendant moved to prohibit the use of a restraining device known as a "stun belt" during his trial. The district court denied the motion and the defendant was convicted. The defendant successfully appealed his conviction. The defendant again moved to prohibit the use of the stun belt and the district court denied the motion, finding its use was warranted. The court noted that the defendant had repeatedly attempted to escape from custody and that less restrictive measures would not have been sufficient. According to the court, the stun belt did not pose any health risk to the defendant and the chance of accidental discharge was 0.01746%. The court found no evidence that the device caused self-urination or self-defecation. According to the court, the stun belt was not visible to the jury and did not impair the defendant's ability to meaningfully participate in his trial. The court described the defendant's level of risk as follows: "It is beyond doubt that Durham possesses a rare combination of skill, ingenuity, cunning and fearlessness. These characteristics, in conjunction with the challenge he appears to relish in attempting to escape, makes this defendant one of the most dangerous and one of the highest escape risks of any defendant to come before this Court" (U.S. District Court, Northern District, Florida)

U.S. Appeals Court
STUN BELT

U.S. v. Durham, 287 F.3d 1297 (11th Cir. 2002). A defendant challenged the use of an electric "stun belt" on him during his trial; his motion was denied by the district court. The defendant was subsequently convicted and appealed. The appeals court vacated and remanded, finding that the district court had abused its discretion by failing to make findings sufficient to justify the use of the stun belt during the trial. According to the court, physical restraints upon a criminal defendant at trial should be used as rarely as possible because their use tends to erode the presumption of innocence that is an integral part of a fair trial. The court held that use of the belt may have had an adverse impact on the defendant's ability to follow the proceedings and to take an active interest in the presentation of his case. The appeals court held that the novelty of the technology employed in the stun belt will likely cause the need for factual findings about the operation of the device, addressing issues such as the criteria for triggering the belt and potential for accidental discharge, to assess the need for its use as compared to less restrictive methods of restraint. The appeals court noted that the district court did not, on the record, consider any less restrictive alternatives to prevent escape and to ensure courtroom safety. The defendant had attempted to escape from a jail and had managed to slip out of a set of leg irons using a key he had concealed on his person. The defendant's attorney argued that the defendant would be "more concerned about receiving such a jolt than he is about thinking about the testimony and giving me aid and assistance in the defense of this case." The court suggested that a stun belt poses "a far more substantial risk of interfering with a defendant's Sixth amendment right to confer with counsel than do leg shackles. The fear of receiving a painful and humiliating shock for any gesture that could be perceived as threatening likely chills a defendant's inclination to make any movements during the trial-- including those movements necessary for effective communication with counsel." The appeals court also found that "stun belts have the potential to be highly detrimental to the dignified administration of criminal justice... If activated, the device poses a serious threat to the dignity and decorum of the courtroom." (U.S. District Court for the Northern District of Florida)

U.S. Appeals Court
RESTRAINTS

Williams v. City of Las Vegas, 34 Fed.Appx. 297 (9th Cir. 2002). An arrestee brought a suit against a city and correctional officer alleging the use of excessive force. The district court granted summary judgment to the defendants and the appeals court affirmed. The appeals court held that the officer's use of force and restraints when the arrestee refused to cooperate during the booking process was not excessive under either the Eighth Amendment standard for prisoners, nor the Fourteenth Amendment standard for pretrial detainees. The court noted that all of the officer's conduct associated with this claim had been videotaped from three different positions by surveillance cameras. According to the court, the use of waist and leg restraints on the inmate in his jail cell did not violate the Eighth Amendment, where the inmate had refused to stand still during a frisk search and displayed erratic and seemingly uncooperative behavior. (Las Vegas Dept. of Detention, Nevada)

2003

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

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
EXCESSIVE FORCE

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. District Court
EXCESSIVE FORCE

Eberle v. City of Newton, 289 F.Supp.2d 1269 (D.Kan. 2003). An arrestee brought a § 1983 action against a city and city officials and staff, alleging that she was subjected to excessive force while in police custody. The district court granted summary judgment in favor of the defendants, in spite of finding violations, because the arrestee had signed a waiver of all civil rights claims. The court found that an officer's use of violence against the arrestee during questioning at a police station violated the arrestee's clearly established right to be free from excessive force, and that the officer

was not entitled to qualified immunity. The arrestee had attempted to leave an interrogation room and the officer grabbed her by the arm, throwing her in the direction of a chair and causing her to fall, and then the officer kicked the arrestee even though she posed no threat to him. (City of Newton Police Department, Kansas)

U.S. District Court
EXCESSIVE FORCE

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. Appeals Court
EXCESSIVE FORCE
PEPPER SPRAY

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 court 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 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
EXCESSIVE FORCE

Marquez v. Gutierrez, 322 F.3d 689 (9th Cir. 2003). A state prison inmate brought a § 1983 action alleging that an officer's act of shooting him during an assault on another inmate constituted use of excessive force in violation of the Eighth Amendment. The district court denied summary judgment for the officer and the officer appealed. The appeals court reversed, finding that the corrections officer was entitled to qualified immunity. The court found that a reasonable officer could have believed that shooting one inmate in the leg to stop an assault that could have seriously injured or killed another inmate was a good faith effort to restore order, and was therefore lawful. (California State Prison- Sacramento)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

Mladek v. Day, 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. (Walton County, Georgia)

U.S. District Court
RESTRAINT BOARD

Myers v. Milbert, 281 F.Supp.2d 859 (N.D.W.Va. 2003). A state prisoner brought a pro se action against corrections officers, alleging that they violated his rights by inappropriately restraining him for 20 hours on a stretcher, and feeding him a "nutra-loaf" diet for three days. The district court granted summary judgment in favor of the officers, finding that the prisoner did not suffer from a serious medical condition as a result of being restrained, and that the disciplinary nutra-loaf diet did not violate the prisoner's Eighth Amendment rights. The court noted that the inmate had assaulted a corrections officer and kicked a door. After being placed on the restraint stretcher, called a "stokes basket," the inmate's handcuffs were loosened and he was given numerous bathroom breaks, medications, and food and liquids. (Northern Reg'l Jail and Corr'l Facil., W.V.)

U.S. District Court
EXCESSIVE FORCE

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
EXCESSIVE FORCE

Pizzuto v. County of Nassau, 240 F.Supp.2d 203 (E.D.N.Y. 2002). The family of a county corrections facility inmate who had been beaten to death by corrections officers, brought a civil action against the county and officials. The district court held that the inmate's mother and father lacked a substantive due process right to companionship of their 38-year-old son. The inmate had been sentenced to ninety days in jail on a misdemeanor charge of driving under the influence of

methadone. Upon admission to the county correctional facility, the inmate was assigned to a single cell in the facility's observation tier, based on his status as an inmate receiving methadone treatment. The next morning the inmate complained that he needed his treatment and after a heated exchange with an officer, all inmates on the tier were ordered to their cells. All cell doors were locked, except the inmate's. Moments later, at the direction of a supervisor, three corrections officers went into the inmate's cell with the intention of using force to control his behavior. While one officer stood outside, two officers donned surgical gloves and beat the inmate for several minutes, punching and kicking him about the face, torso and legs. An extensive cover-up followed. Two days later the inmate collapsed in his cell. He was taken to a hospital where he died from his injuries several days later. (Nassau County Correctional Center, New York)

U.S. Appeals Court
EXCESSIVE FORCE

Walters v. County of Charleston, 63 Fed.Appx. 116 (4th Cir. 2003) [unpublished]. The personal representative of a detainee who died in custody brought a § 1983 action, alleging that the detainee's death was the result of officers' use of excessive force. The district court entered summary judgment in favor of the defendants and the plaintiff appealed. The appeals court affirmed, finding that the officers' use of force in restraining the detainee was not excessive, even though the detainee died as the result of a compression injury to his neck sustained while officers attempted to subdue him. The court noted that the detainee was an exceptionally large man who became violent while in his cell and after he was let out of his cell, and that there was no evidence that the officers intentionally choked the detainee. The detainee had been housed in a temporary detention facility pursuant to a civil contempt order of a family court, for refusing to pay back child support. (Charleston County Detention Center, South Carolina)

2004

U.S. Appeals Court
EXCESSIVE FORCE

Fillmore v. Page, 358 F.3d 496 (7th Cir. 2004). A state prisoner at a maximum security prison brought a § 1983 action alleging that he was subjected to excessive force during, and after, his transfer to the prison's segregation unit. The district court granted summary judgment, judgment as a matter of law, and judgment upon a jury verdict in favor of the defendants. The prisoner appealed. The appeals court affirmed in part, reversed and remanded in part. The court held that the district court was required to make findings of fact about which, if any, of the named officers pressed the prisoner's face up against cell bars, whether the prisoner was really beaten upon his arrival at the cell, and if the beating occurred, which of the named officers was involved or present. (Menard Correctional Center, Illinois)

U.S. Appeals Court
RESTRAINING CHAIR
EXCESSIVE FORCE

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. District Court
MEDICAL CARE
RESTRAINTS

Munera v. Metro West Detention Center, 351 F.Supp.2d 1353 (S.D.Fla. 2004). A former pretrial detainee brought a § 1983 action against a county correctional officer who escorted him on a visit to an optometrist, alleging that the officer used excessive force, threatened him, and deprived him of access to medical care. The district court entered summary judgment in favor of the defendant. The court held that the alleged profanity and ethnic slurs that the officer directed at the detainee did not rise to the level of a constitutional violation. The court found that the officer's decision to remove the detainee from an eye clinic because of security concerns did not deprive the detainee of needed medical care and did not amount to deliberate indifference to a serious medical need in violation of the Due Process Clause. According to the court, the force applied by the officer was the minimum necessary under the circumstances, where the force included wrist cuffs secured to a waist chain with the detainee seated in a wheelchair. The court noted that the officer checked that the cuffs were properly applied when the detainee complained of discomfort, and told the detainee not to struggle. The officer used additional force and restraints to keep the detainee seated in the wheelchair, when the detainee was repeatedly moving between the wheelchair and another seat in the waiting room. (Ward D, Jackson Memorial Hospital, Miami-Dade County, Florida)

U.S. District Court
EXCESSIVE FORCE

Thomas v. Ferguson, 361 F.Supp.2d 435 (D.N.J. 2004). A state prison inmate sued prison officials, alleging that officers inflicted cruel and unusual punishment on him in violation of the Eighth Amendment during an altercation. The district court held that the degree of force applied and the seriousness of the injuries were insufficient to support an Eighth Amendment claim. The extent of the officers' contact consisted of three punches and two shoves, and the inmate's injuries consisted of a broken facial pimple, swollen areas on the cheekbone, and a small laceration on the bridge of his nose. (Special Treatment Unit, Kearny, New Jersey)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

Watson v. Riggle, 315 F.Supp,2d 963 (N.D.Ind. 2004). A state prison inmate brought a pro se § 1983 Eighth Amendment action against corrections officers, alleging use of excessive force in connection with the removal of handcuffs. The district court granted summary judgment in favor of the

officers, finding that the officers who restrained the inmate's wrists in order to remove the handcuffs following the inmate's refusal to allow the removal, used reasonable force, given the inmate's argumentative nature and minimal injuries. The court noted that the inmate's argumentative nature could have led to a greater disturbance, and that a medical examination found only a cut on one hand and swelling in the wrist, with the full range of motion, and no further treatment was required. (Miami Correctional Facility, Indiana)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

Webster v. City of New York, 333 F.Supp.2d 184 (S.D.N.Y. 2004). Arrestees brought an action against a city, police commissioner and police officers alleging unreasonable use of force and punishment without due process. The district court granted summary judgment in favor of the defendants, in part. The court held that the use of handcuffs on the pretrial detainees, and subjecting them to abusive language, did not rise to the level of a due process violation. (City of New York Police Department)

U.S. District Court
RESTRAINTS

Ziemba 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. Appeals Court
RESTRAINING CHAIR

Agster v. Maricopa County, 406 F.3d 1091 (9th Cir. 2005). The parents and the representative of the estate of an inmate who died in jail brought an action against the county in state court. The case was removed to federal court, where the county was ordered to produce a mortality review report that was conducted by a private health provider. The county appealed the district court decision. The appeals court upheld the district court order. The appeals court held that no protected privilege of peer review protected the mortality review. The inmate had been arrested and taken to a county jail where he was placed in a restraint chair. His respiration decreased and he developed an irregular heartbeat. Attempts were made to resuscitate him and he was transported to a hospital where he was placed on life support. He was pronounced dead three days later. (Maricopa County Sheriff's Office, Arizona)

U.S. District Court
RESTRAINING CHAIR

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 found genuine issues of material fact as to whether corrections officers used excessive force against a jail inmate by placing her in a restraint chair after she allegedly threw urine and feces from her cell. The court found that the alleged act of serving food to a jail inmate on a napkin or paper towel on one occasion did not amount to a constitutional deprivation. (Orange County Correctional Facility and County Commissioner of Mental Health, New York)

U.S. District Court
RESTRAINING CHAIR

Beltran v. O'Mara, 405 F.Supp.2d 140 (D.N.H. 2005). A pretrial detainee brought a § 1983 action against correctional officers, alleging civil rights violations. The court granted summary judgment in favor of the officers in part, and denied in part. The court held that the failure to exhaust some claims did not mandate dismissal of the entire complaint. The court found that fact issues precluded summary judgment regarding whether officers used excessive force in repeatedly placing the detainee in a restraint chair. The court held that the purported withholding of toilet paper from the detainee did not deny him a minimal measure of necessities required for civilized living, as required to establish a Fourteenth Amendment violation. The only evidence that supported the allegation consisted of a complaint that the detainee was regularly made to wait over one hour for toilet paper, and there was no evidence regarding the frequency of such events. (Hillsborough County Department of Corrections, New Hampshire)

U.S. District Court
RESTRAINING CHAIR
STUN GUN

Birdine v. Gray, 375 F.Supp.2d 874 (D.Neb. 2005). A pretrial detainee brought a § 1983 action against jail employees claiming violation of his right to be free of punishment and his right to privacy. The district court dismissed the complaint. The court found no violation when the inmate was placed in a restraint chair because he was confined as a last resort when all other restraint options proved ineffective. According to the court, the detainee was monitored, the chair was not used to punish, and the detainee was offered the opportunity to be released in return for acting appropriately. The court found no due process violation when a stun gun was applied to the detainee two times, after he engaged in violent actions as jail officers attempt to settle him into a cell to which he was being transferred. The court found that the detainee's conduct was an

immediate threat to institutional safety, security and efficiency. (Lancaster County Jail, Nebraska)

U.S. Appeals Court
EXCESSIVE FORCE

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
EXCESSIVE FORCE

Calhoun v. Thomas, 360 F.Supp.2d 1264 (M.D.Ala. 2005). A detainee brought a § 1983 action against a sheriff and deputy sheriff in their individual capacities, raising excessive force, deliberate indifference and conditions of confinement claims. The defendants moved for summary judgment, which the district court granted in part and denied in part. The court found a potential violation in the alleged conduct of officers during his interrogation. The officers allegedly choked and beat the detainee, who was restrained and posed no threat to anyone's safety, punched him in his gunshot wound, and slammed him into a door several times telling him they wanted to make him suffer as the victim in a robbery and shooting had suffered. The court held that the officers were not entitled to qualified immunity on the excessive force claim. (Pike County Jail, Alabama)

U.S. District Court
EXCESSIVE FORCE

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
EXCESSIVE FORCE

Davis ex rel. Davis v. Borough of Norristown, 400 F.Supp.2d 790 (E.D.Pa. 2005). A parent and minor child brought a § 1983 action against a borough and police officers, alleging constitutional violations in connection with the child's arrest and detention after the child dropped bottles of beer that he was holding and fled. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that fact issues existed as to whether the borough had a policy or custom of detaining juveniles for underage drinking. The court also found fact issues as to whether officers' conduct was reckless or callous with respect to the force used in the arrest. The child alleged that he was tackled into cement steps, punched in the face, kicked in the face and that his arm was pulled so hard that it broke his shoulder. According to the court, the plaintiffs failed to establish that the borough had a custom or policy of inadequately training its officers in the use of force. (Borough of Norristown, Pennsylvania)

U.S. Appeals Court
EXCESSIVE FORCE
BRUTALITY

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. Appeals Court
EXCESSIVE FORCE

Harper v. Albert, 400 F.3d 1052 (7th Cir. 2005). State prisoners brought a § 1983 action against prison guards alleging excessive force in violation of the Eighth Amendment. Following a jury trial the district court granted judgment as a matter of law for some of the guards, and the jury subsequently found in favor of the remaining guards. The prisoners appealed. The appeals court affirmed. The court held that the guards were not jointly and severally liable for their failure to intervene in other guards' alleged use of excessive force during a cell transfer and transport procedure. The court noted that the prisoners failed to establish that each and every guard touched them, much less that any of them used excessive force. The incident happened after a prison cellhouse erupted into violence, with inmates throwing cans, burning rags, light bulbs, bodily fluids and other liquids at the officers. The outburst was apparently in retaliation for a "strip out" or complete search of a cell on the block, and continued to grow more serious during the day. (Menard Correctional Facility, Illinois)

U.S. District Court
EXCESSIVE FORCE

Jeanty v. County of Orange, 379 F.Supp.2d 533 (S.D.N.Y. 2005). A county jail inmate whose arm was broken in an altercation with corrections officers sued the officers and the county, alleging excessive use of force. 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 by fact issues as to whether excessive force was applied when the officers allegedly beat the prisoner in his cell to the point of breaking his arm, and wantonly ignored his cries of pain and pleas that they desist. The court also found that summary judgment was precluded by issues of fact as to whether the officers were entitled to qualified immunity. According to the court, the conviction of the inmate for assaulting an officer, arising out of the same incident, did not preclude the inmate's claim. The court held that the Eighth Amendment, not the Fourteenth Amendment, applied to this action because the inmate had been convicted of arson and was awaiting sentencing. (Orange County Jail, New York)

U.S. District Court
EXCESSIVE FORCE
RESTRAINING CHAIR

Johnson v. Wright, 423 F.Supp.2d 1242 (M.D.Ala. 2005). An arrestee sued an arresting officer, a volunteer riding with the officer, and county jail officers, claiming violation of his Fourth Amendment protections against false arrest and excessive force. The officer, volunteer and jail officers moved for summary judgment. The district court held that the jail officers were not entitled to qualified immunity due to material issues of fact, as to whether the jail officers beat the arrestee without provocation while he was in his cell. According to the arrestee, officers dragged him out of his cell and put him in some type of harness chair, and he was in handcuffs during the entire time he was being beaten at the jail and he was still in handcuffs when he was strapped into the harness chair. The arrestee alleged that officers continued to beat him after he was strapped into the harness chair. (Chilton County Jail, Alabama)

U.S. District Court
EXCESSIVE FORCE

Lopez v. Smiley, 375 F.Supp.2d 19 (D.Conn. 2005). A state inmate filed a § 1983 action alleging that one corrections officer assaulted him and that other officers failed to intervene. The district court denied the inmate's motion to modify his amended complaint, in part, and the inmate moved for reconsideration. The district court granted the motion. The court held that fact issues remained as to whether officials suppressed the inmate's grievance, and whether an officer had legal justification to hit the inmate. The court noted that deliberate obstruction of access to a prison grievance system, if proven, can be grounds to bar the enforcement of the exhaustion requirements of the Prison Litigation Reform Act (PLRA). (Northern Correctional Institution, Connecticut)

U.S. District Court
EXCESSIVE FORCE
STUN GUN

Manier v. Cook, 394 F.Supp.2d 1282 (E.D.Wash. 2005). A county jail inmate brought a § 1983 action against jail officers, alleging cruel and unusual punishment based on the use of excessive force. The district court entered summary judgment in favor of the defendants. The court held that the use of force was within the scope of the jail's policy for maintaining and restoring order. According to the court, the inmate had refused to return to his cell as ordered and he had verbally abused jail officers. An officer fired two Taser gun shots rather than one continuous trigger shot, and the officer decided not to fire a third short. The court noted that the inmate suffered only a minor injury and that he had a history of self harm. (Spokane County Jail, Washington)

U.S. District Court
EXCESSIVE FORCE

Niemyjski v. City of Albuquerque, 379 F.Supp.2d 1221 (D.N.M. 2005). An arrestee brought a state court action against a city, alleging that police officers committed a civil rights violation in connection with his arrest and detention. The action was removed to federal court, where the district court granted summary judgment for the city and remanded state law claims. The court held that the arrestee failed to show that a municipal custom or policy contributed to the alleged violations. The court noted that the city's policy manual stated that staff were required to received training in the legitimate use of force and restraints, and that no correctional officer was permitted to work with inmates until and unless such training was successfully completed. The arrestee had been placed in a holding cell. When he was denied the opportunity to make a telephone call he protested by refusing to have his photograph taken. Because of his resistance, jail officers used force to position him to take his photograph. The arrestee and the officers later traded racial insults. He was taken up stairs rather than an elevator, and he fell down and alleged that officers

punched and kicked him resulting in an injury to his ribs. He was released less than 24 hours after his arrest on a warrant. (Bernalillo County Detention Center, New Mexico)

U.S. Appeals Court
EXCESSIVE FORCE
PEPPER SPRAY

Norton v. The City of Marietta, OK, 432 F.3d 1145 (10th Cir. 2005). A former jail inmate brought a § 1983 action against city and county officials and employees, alleging that he was subjected to excessive force while confined in the county jail. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that summary judgment was precluded by material issues of fact as to whether the sheriff and police officers' use of pepper spray on the inmate was subjectively harmful enough to violate the inmate's Eighth Amendment rights. The court noted that several factors must be considered, including how long the inmate was sprayed, whether he was adequately irrigated afterward, and whether the pepper spray was used in a good faith effort to restore discipline or was used maliciously and sadistically for the purpose of causing harm. (Love County Jail, Oklahoma)

U.S. District Court
EXCESSIVE FORCE
FAILURE TO PROTECT

Orwat v. Maloney, 360 F.Supp.2d 146 (D.Mass. 2005). An inmate brought a § 1983 action against correctional officers and officials and a state corrections department, alleging violations of the First, Eighth and Fourteenth Amendments and various state laws. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that an officer was not liable for violating the Eighth Amendment by failing to intervene to protect an inmate from an attack by another officer, where the officer had no reasonable opportunity to prevent the other officer's initial blow to the inmate, and thereafter attempted to intervene. The court found that summary judgment was precluded by genuine issues of material fact as to whether a correctional officer struck the inmate, not to restore or maintain discipline, but maliciously and sadistically to cause harm to him, and whether the officer used more force than was necessary. The officer had hit the inmate in the face and broken his jaw. (MCI-Cedar Junction, Massachusetts)

U.S. Appeals Court
EXCESSIVE FORCE
CHEMICAL AGENTS

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
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
CELL EXTRACTION

Skinner v. Cunningham, 430 F.3d 483 (1st Cir. 2005). A prisoner brought a civil rights action against prison authorities alleging due process violations from his segregation following his killing of another inmate, and Eighth Amendment violations arising from his forced extraction from his cell. The district court entered summary judgment in favor of the authorities on two claims, and judgment on a jury verdict in favor of the authorities on the remaining claim. The prisoner appealed. The appeals court affirmed. The court found no Eighth Amendment violation arising from the force used to extract the prisoner from his cell. The prisoner's face was gouged during a struggle that was caused by his resistance to the cell extractions, and the incidents were video taped. Officers were shown on the video tape offering repeated precautions to protect the prisoner's head from injury as he was being dragged from the cell while resisting. (New Hampshire State Prison)

U.S. District Court
EXCESSIVE FORCE

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 even if a police officer grabbed the detainee and threw him to the floor, his actions did not amount to the use of excessive force in violation of due process, absent evidence that the officer's actions caused the detainee's lost tooth and broken hand. 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 on the evening he made the written request for treatment. (Crow Wing County Jail, Minnesota)

U.S. Appeals Court
BRUTALITY
EXCESSIVE FORCE
FAILURE TO PROTECT

U.S. v. Serrata, 425 F.3d 886 (10th Cir. 2005). Former correctional officers who were convicted in federal court of offenses related to an assault on an inmate and subsequent obstruction of justice appealed their convictions. The appeals court affirmed in part, vacated in part, and remanded. The court held that evidence was sufficient to support the conviction of one officer for failing to intervene to prevent an assault. Four eyewitnesses testified that the officer stood within arm's reach and watched another officer attack an inmate who was lying defenseless on the floor with his hands cuffed behind his back. The inmate was examined by a physician who observed that he was groggy, had abrasions on his head, neck, back, ear and eye, and had a black boot scuff mark on the right side of his head. The inmate lost consciousness and was taken to a hospital, but he suffered no permanent physical injuries or impairments as a result of the attack. The court held that the boots worn by an officer when he kicked or stomped on an inmate's head constituted dangerous weapons. The appeals court found that the district court abused its discretion in granting a downward departure under sentencing guidelines based on extraordinary family circumstances, employment records and community service. One officer was sentenced to 51 months, another to 24 months, and a third to 78 months imprisonment. (Lea County Correctional Facility, New Mexico)

U.S. Appeals Court
BRUTALITY
EXCESSIVE FORCE

Watts v. McKinney, 394 F.3d 710 (9th Cir. 2005). A state inmate filed a civil rights action alleging that a prison guard violated his Eighth Amendment rights. The district court denied summary judgment for the guard and he appealed. The appeals court affirmed, finding that the guard was not entitled to qualified immunity from liability. The court held that a reasonable prison guard would have reasonably believed that kicking a helpless prisoner's genitals was cruel and unusual conduct. The court noted that "to suppose that any reasonable person, let alone a trained prison officer, would not know that kicking a helpless prisoner's genitals was cruel and unusual punishment is beyond belief. The Supreme Court did not need to create of a catalogue of all acts by which cruel and sadistic purpose to harm another would be manifest; but if it had, such act would be near the top of the list. The case must go to trial." (Pelican Bay State Prison, California)

U.S. District Court
EXCESSIVE FORCE

Willis v. Youngblood, 384 F.Supp.2d 883 (D.Md. 2005). An inmate sued correctional officers under § 1983 alleging excessive force in violation of the Eighth Amendment. Following a jury trial and the entry of a verdict against two officers, the officers renewed their motion for judgment as a matter of law. The district court granted the motion, finding that evidence that the inmate suffered more than a de minimis injury was insufficient to submit to the jury. According to the court, there was no evidence at trial indicating any physical injury resulting from the officers' alleged actions of shoving the inmate against a wall and throwing him in a chair. The court noted that not every push or shove, "even if it may later seem unnecessary in the peace of a judge's chambers," violates a prisoner's Eighth Amendment right to be free of excessive force. (Western Correctional Institution, Maryland)

U.S. Appeals Court
EXCESSIVE FORCE
RESTRAINTS

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
RESTRAINTS

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
EXCESSIVE FORCE

Avratin v. Bermudez, 420 F.Supp.2d 1121 (S.D.Cal. 2006). A prisoner who was involved in a fight with another inmate brought a civil rights action against a corrections officer, alleging that the officer used excessive force in attempting to stop the fight. The officer moved for summary judgment and the district court granted the motion. The court held that the officer's alleged conduct of firing a wooden projectile from a launcher directly at an unarmed prisoner involved in a fight with another inmate, causing a severe injury to the inmate's leg, violated the prisoner's Eighth Amendment right to be free from cruel and unusual punishment. The court noted that no correctional officers, prison personnel or other inmates were at immediate risk during the fight and the officer failed to use any lesser degree of force before firing his launcher. However, the court found that the officer was entitled to qualified immunity for his alleged conduct because it would not be clear to a reasonable officer that the alleged conduct was unlawful, as a reasonable officer could conclude that the fight posed a risk of serious bodily injury, the officer aimed at the prisoner's leg, virtually eliminating the risk that the prisoner would suffer a life-threatening injury, the fight occurred in a heightened security setting with many other inmates present in the yard, and the prisoner and other inmate refused orders to desist. (Centinela State Prison, Calif.)

U.S. District Court
EXCESSIVE FORCE

Buchanan v. Maine, 417 F.Supp.2d 24 (D.Me. 2006). The personal representative of a mentally ill suspect who had been fatally shot by a deputy sheriff brought an action against a state, county, and various officials and officers, alleging civil rights violations. The county and officers moved for summary judgment, which the district court granted. The court held that the deputy sheriffs' warrantless entry of a mentally ill suspect's home was reasonable under the Fourth Amendment, pursuant to the emergency doctrine. According to the court, the deputies had reasonable belief that the suspect posed an immediate threat to his own safety, and developing circumstances at the scene, the late time of day, winter conditions, and the remote location of the suspect's residence made it more reasonable for deputies to enter the home immediately instead of obtaining a warrant. The court found that the personal representative failed to establish that a reasonable officer would have understood his conduct in entering the suspect's home without a warrant contravened clearly established law, and thus the deputies were entitled to qualified immunity as to the Fourth Amendment claim. The court concluded that the deputies would have had reasonable grounds to believe that the protective custody criteria under state law were met. According to the court, a deputy sheriff's shooting of a mentally ill suspect after he had stabbed another deputy did not constitute excessive force, and thus was reasonable under the Fourth Amendment. The other deputy was attacked after attempting to take the suspect into protective custody, and the deputy who shot the suspect had reasonable belief that the other deputy was threatened with death or serious physical injury. The court held that the personal representative failed to demonstrate that the county had a custom or policy relating to mentally ill persons that resulted in deprivation of Fourth Amendment rights, as required to establish the county's municipal liability under § 1983. According to the court, there was no evidence that the county's alleged failure to train officers constituted a well-settled and widespread custom or practice, and that there was no need for increased training in proper methods for making warrantless arrests or for engaging mentally ill and potentially combative persons when the deputy was hired. (Lincoln County, Maine)

U.S. Appeals Court
RESTRAINTS
EXCESSIVE FORCE

Calvi v. Knox County, 470 F.3d 422 (1st Cir. 2006). A female arrestee brought a § 1983 action against a city, city officers, a county, and county officers alleging excessive force. The district court granted summary judgment in favor of the defendants and the plaintiff appealed. The appeals court affirmed. The court held that an officer who handcuffed the arrestee in the customary manner by cuffing her hands behind her back did not use excessive force, even if the officer knew

that the arrestee had a hand deformity. The court noted that the officer's decision to not deviate from the standard practice of placing handcuffs behind the back was a judgment call. The arrestee had told the officer to be gentle because she was frail and had recently undergone elbow surgery. The officer double-locked the handcuffs behind her back so that they would not tighten. He then marched her outside, deposited her in his cruiser, and belted her in for transport to the jail. Upon arriving at the lockup, the arrestee was transferred to the custody of a jail officer, who unlocked the handcuffs, patted her down, and placed her in a holding cell. After other required aspects of the booking process had been completed, another jail officer fingerprinted the arrestee, who claimed that the officer who fingerprinted her repeatedly pushed her fingers down hard, in spite of being told that she had a hand deformity. She also claimed that the fingerprinting caused injuries to her wrist and her surgically repaired middle finger. (Knox County Jail, Maine)

U.S. District Court
CELL EXTRACTION
PEPPER SPRAY

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 County Sheriff's Department, Township of Paulsboro, New Jersey)

U.S. District Court
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 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
RESTRAINTS

Hanks v. Prachar, 457 F.3d 774 (8th Cir. 2006). A former county jail detainee brought a § 1983 action against county jail officials, alleging violation of his due process rights in connection with the use of restraints and confinement, requesting damages and injunctive relief. The district court granted summary judgment in favor of the officials and the former detainee appealed. The appeals court affirmed the grant of summary judgment on the claims for injunctive relief, reversed the grant of summary judgment on the claims for damages, and remanded for further proceedings. The court held that the detainee's claim for injunctive relief was rendered moot by detainee's release from jail. The court found that summary judgment was precluded by genuine issues of material fact as to whether the detainee was restrained in shackles and chains or confined in a padded unit for the purpose punishment, or for valid reasons related to legitimate goals. The detainee alleged he was placed in four-point restraints, chained to a wall in a "rubber room," forced to shower in waist chains and shackles, and denied hearings before being punished. The detainee was 17 years old when he was admitted to the jail. (St. Louis County Jail, Minnesota)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

Jenkins v. Wilson, 432 F.Supp.2d 808 (W.D.Wis. 2006). A pretrial detainee brought a civil rights claim alleging that jail officers used excessive force. The district court held that a genuine issue of fact, as to whether deputies were justified in hitting the pretrial detainee about the head in attempting to handcuff him and transport him to segregation, precluded summary judgment. (Dane County Jail, Wisconsin)

U.S. Appeals Court
CELL EXTRACTION
EXCESSIVE FORCE
PEPPER SPRAY

Johnson v. Blaukat, 453 F.3d 1108 (8th Cir. 2006). A female inmate brought claims against correctional officers, supervisors, and a county alleging that her constitutional rights were violated by the alleged use of excessive force. The district court entered summary judgment on the claims and the inmate appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that: (1) genuine issues of fact precluded summary judgment on the claim that officers used excessive force in violation of the Cruel and Unusual Punishment Clause; (2) the supervisor's actions in allegedly using a racial epithet against another inmate and in allegedly removing feminine hygiene products from the cell was not cruel and unusual punishment; and (3) the purported violation of county policies that were not alleged to be unconstitutional provided no basis for civil rights liability for the county. According to the court, genuine issues of material fact as to whether correctional officers used excessive force in tackling and using pepper spray on the inmate when they entered her cell to subdue a cellmate precluded summary judgment on the Eighth Amendment claim; questions included whether their acts were defensive in nature or motivated by frustration or anger, whether the force applied was necessary to maintain order and was commensurate with the situation, whether the inmate failed to comply with the officers' orders and was actively resisting them, whether a verbal warning was issued before the application of pepper spray, and whether the inmate suffered actual injuries. The court found that the correctional officers' alleged violation of county policies regarding the use of force and the use of pepper spray could not give rise to civil rights liability on the part of the county, absent any allegation the policies themselves were unconstitutional. The inmate had testified that her head was slammed down on the floor, her hair was pulled, and that an officer sprayed mace on her face and eyes. She claimed that she sustained injuries from the incident, including bruising and lacerations on her arms, a broken thumb, and two black eyes. The inmate admitted that after the incident an officer gave her a cold towel and she was taken to the shower. (Jasper County Detention Center)

U.S. Appeals Court
EXCESSIVE FORCE

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. (Jefferson City Correctional Center, Missouri)

U.S. District Court
EXCESSIVE FORCE

Moore v. Morales, 445 F.Supp.2d 1000 (N.D.Ill. 2006). The administrator of the estate of a detainee who died in police custody brought a § 1983 action against arresting officers, and other officers and employees of a police department who had processed the detainee at a police station, alleging that the defendants either had used excessive force on the detainee, ultimately leading to his death, or had been deliberately indifferent to his medical needs. The defendants moved for summary judgment and the district court granted the motion in part and denied in part. The court held that the summary judgment was precluded by fact issues as to the degree of force used on the detainee, and whether some police officers failed to stop the infliction of injuries on the detainee by fellow officers. The court found that the police had not shown deliberate indifference to the condition of the detainee and that there was no cover-up of the use of excessive force. (Chicago Police Department, 12th District Police Station, Illinois)

U.S. District Court
BRUTALITY
DOGS
USE OF FORCE

Rasul v. Rumsfeld, 414 F.Supp.2d 26 (D.D.C. 2006). Former detainees at a military facility in Guantanamo Bay, Cuba, sued the Secretary of Defense and commanding officers, alleging they were tortured. The defendants moved to dismiss and the district court granted the motion in part, and deferred in part. The court held that military personnel supervising the interrogation of detainees at the facility had qualified immunity from a claim that they promoted or condoned torture in violation of Fifth and Eighth Amendment rights of detainees, because the question as to whether the detainees had rights under the constitution had not been resolved by high courts and therefore personnel could not have known that their conduct was wrongful. The court noted that District of Columbia law applied to the question of whether military personnel at Guantanamo Bay, Cuba, were acting within the scope of their employment when they allegedly tortured detainees. The prisoners alleged various forms of torture, including hooding, forced nakedness, housing in cages, deprivation of food, forced body cavity searches, subjection to extremes of heat and cold, harassment in the practice of their religion, forced shaving of religious beards, placing the Koran in the toilet, placement in stress positions, beatings with rifle butts, and the use of unmuzzled dogs for intimidation. The court found "most disturbing" their claim that executives of the United States government were directly responsible for the "depraved conduct the plaintiffs suffered over the course of their detention." (U.S. Naval Station, Guantanamo Bay, Cuba)

U.S. Appeals Court
EXCESSIVE FORCE

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
CHEMICAL AGENTS
EXCESSIVE FORCE

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. Appeals Court
RESTRAINTS

Tibbs v. City of Chicago, 469 F.3d 661 (7th Cir. 2006). An arrestee brought § 1983 action against an arresting officer and city, alleging Fourth Amendment violations. The district court granted summary judgment in favor of the defendants, and the arrestee appealed. The appeals court affirmed. The court held that a police officer acted reasonably, and thus, did not violate the arrestee's Fourth Amendment right against unreasonable seizure, when he made an arrest on an outstanding traffic warrant. The court held that the police officer did not use an unreasonable amount of force, in violation of the Fourth Amendment, by putting tight handcuffs on the arrestee and leaving them on for approximately 30 minutes until the arrestee was taken to a lockup at a police station. The arrestee complained only once to the officer that the handcuffs were too tight, he offered the officer no indication of the degree of pain caused by the handcuffs, he suffered minimal, if any, injury, other than redness on his wrists for less than two days, and he sought no medical care for any wrist injury. The arrestee was held in custody for two days. About twenty to twenty-five minutes after arriving at the station, the arrestee was taken to a lockup where his handcuffs were removed. (City of Chicago, Illinois)

U.S. Appeals Court
EXCESSIVE FORCE
PEPPER SPRAY

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. Appeals Court
EXCESSIVE FORCE
CELL EXTRACTION

Valdes v. Crosby, 450 F.3d 1231 (11th Cir. 2006). The estate of a death-row inmate who died in prison after an alleged beating by prison guards brought § 1983 and state law actions against prison officials and prison nurses, alleging Eighth and Fourteenth Amendment violations. The inmate's estate alleged that several guards beat the inmate during a cell extraction, and that the inmate did not resist or act aggressively and no weapons were visible in his cell. The inmate was on death row for having killed a guard at another facility during an escape attempt. Evidence

indicated that the inmate's death was not due to injuries sustained repeatedly throwing himself off the bunk onto the concrete floor, as the officers reported, but was due to a massive physical beating that occurred within five to ten minutes of his death. The district court granted the defendants' motions for summary judgment in part and denied in part. A former warden appealed. The appeals court affirmed. The court held that the plaintiff sufficiently stated a claim that prison guards beat the inmate and that the plaintiff created triable issues as to: (1) whether the prison had a history of widespread abuse of the inmates; (2) whether the warden established customs and policies that resulted in deliberate indifference to constitutional violations; and (3) whether the warden failed to take reasonable measures to correct the alleged deprivations. The court noted that, at the time of the inmate's death, it was clearly established that a warden could face liability under § 1983 when, faced with a history of widespread abuse, he failed to take reasonable steps or he adopted policies or customs that resulted in deliberate indifference. Evidence showed that the prison had a notorious reputation for inmate abuse, the warden's predecessor warned him about abusive guards, yet the warden promoted one such guard and had him work on the wing where inmates with the most serious disciplinary problems were housed. Evidence also showed that the warden discontinued the practice of videotaping guards extracting prisoners from cells, and that the warden did not read the inmates' abuse of force complaints, but gave them to his secretary to handle. The court found that the warden was on notice of the need to correct or to stop the abuse by the officers. (Florida State Prison)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

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. District Court
STUN BELT

Adams v. Bradshaw, 484 F.Supp.2d 753 (N.D.Ohio 2007). After his convictions for aggravated murder and other offenses were affirmed, an offender sought a writ of habeas corpus. The district court held that, even if a due process violation occurred, the improper use of a stun belt placed on the defendant his during trial was a harmless error because the evidence of guilt was overwhelming. The court noted that due process prohibits the use of shackles on a defendant during a criminal trial, unless there exists an essential state interest, such as the interest in courtroom security. (Trumbell County, Ohio)

U.S. District Court
EXCESSIVE FORCE

Allaway v. McGinnis, 473 F.Supp.2d 378 (W.D.N.Y. 2007). A state inmate brought a pro se § 1983 action against employees of the New York Department of Correctional Services (DOCS) alleging inadequate medical care and use of excessive force. The employees moved for summary judgment. The district court granted the motion. The court held that the inmate's refusal to come out of his exercise pen necessitated the use of some force, the force was used only when the inmate ignored repeated pleas to come out, and when the door was opened he not only resisted the officers but charged toward them, and the four punches delivered by an officer did not rise to level of unnecessary and wanton infliction of pain. (Southport Correctional Facility, New York)

U.S. District Court
EXCESSIVE FORCE

Allen v. City of New York, 480 F.Supp.2d 689 (S.D.N.Y. 2007). A prison inmate sued a city and corrections officers, claiming violation of the Eighth Amendment, false arrest, and malicious prosecution arising from a beating administered by the officers while being escorted to his cell. The district court granted summary judgment for the defendants in part, and denied in part. The court held that summary judgment was precluded by fact issues regarding whether officers accompanying inmate could and should have intervened to keep one officer from banging the inmate's head against a wall, whether the officer who allegedly banged the inmate's head against a wall used excessive force, whether an officer who filed a criminal assault complaint against the inmate committed malicious prosecution, and whether that officer was entitled to qualified immunity. (Rikers Island, New York City Department of Corrections)

U.S. District Court
EXCESSIVE FORCE

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. (Knox County Jail, Maine)

U.S. Appeals Court
EXCESSIVE FORCE

Cockrell v. *Sparks*, 510 F.3d 1307 (11th Cir. 2007). An inmate who was injured when he was shoved by a deputy while incarcerated in a county jail, brought a § 1983 action against a sheriff and deputy, alleging that the use of excessive force violated his civil rights. The district court granted summary judgment to the defendants and the inmate appealed. The appeals court affirmed. The court held that a deputy's open-handed push of the inmate, who was drunk and creating a disturbance, in an effort to quiet him so that the deputy could relocate a different prisoner who had attempted suicide, was not so egregious that it shocked the conscience, even though it resulted in the inmate falling, breaking his hip and wrist, and lacerating his ear. (Polk County Jail, Georgia)

U.S. District Court
EXCESSIVE FORCE

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 district held that summary judgment was precluded by genuine issues of material fact as to whether the prisoner lunged toward a corrections officer, whether the amount of force used by officers was reasonably related to the need, and whether corrections officers' use of force against prisoner was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the purpose of causing harm. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether a sergeant failed to protect the prisoner when the prisoner was allegedly attacked by other corrections officers. (Sussex Correctional Institute, Delaware)

U.S. District Court
PEPPER SPRAY

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' 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. (Lauderdale Detention Center, Alabama)

U.S. District Court
EXCESSIVE FORCE
PEPPER SPRAY

Giles v. *Kearney*, 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 the physical force used by the corrections officer after the inmate struck the officer following the officer's use of pepper spray was not excessive considering the evolving series of events. The officer sat on top of the inmate's back, trying to control the inmate as well as the unfolding situation, and the court concluded that the force he used was not maliciously or sadistically applied to cause pain. The court 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 Institution, Delaware)

U.S. Appeals Court
RESTRAINTS

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
EXCESSIVE FORCE

Long v. Morris, 485 F.Supp.2d 1247 (D.Kan. 2007). An inmate brought a pro se suit against a sheriff's deputy, alleging that by using excessive force the deputy violated his rights under the Eighth Amendment to be free from cruel and unusual punishment. The district court held that the deputy was not entitled to qualified immunity. The court held that the law was clearly established that the alleged actions of the deputy violated the inmate's rights under the Eighth

Amendment, such that the deputy was not entitled to qualified immunity on the inmate's excessive force claim. According to the court, the record supported an inference that while the inmate was shackled at the wrists, waist and ankles, the deputy took him to the ground, hit his head on the floor hard enough to require stitches, and displaced his collar bone. (Johnson County Adult Detention Center, Kansas)

U.S. Appeals Court
EXCESSIVE FORCE

Marvin v. *City of Taylor*, 509 F.3d 234 (6th Cir. 2007). An arrestee brought an action against police officers under § 1983 and state law alleging excessive force. The district court denied the defendants' motion for summary judgment and they appealed. The appeals court reversed. The court held that even if an officer pushed the arrestee, who was drunk, to the ground as he exited the police vehicle upon arrival at the police station, the officer did not use excessive force. The court noted that the arrestee was on the ground outside of the vehicle for less than fifteen seconds, and as soon as the arrestee ended up on the ground the officer closed the vehicle's door, joined another officer in helping arrestee to his feet, and walked the arrestee inside to the booking room. The court found that the officers did not use excessive force in the booking room when they moved the arrestee's arms behind him and over his head for less than twenty seconds after the arrestee refused to keep his hands on a bench and struck out at an officer with closed-fist swing. According to the court, the officers did not use excessive force outside of the cell in which they attempted to place the arrestee when they restrained the arrestee on the floor for approximately thirty seconds after the arrestee fell. (City of Taylor Police Department, Michigan)

U.S. District Court
STUN GUN

Montoya v. *Board of County Com'rs*, 506 F.Supp.2d 434 (D.Colo. 2007). A jail inmate brought civil rights and civil rights conspiracy claims against sheriffs, a deputy sheriff, and officials of two counties alleging violation of his constitutional rights when he was tasered by a correctional officer and later transferred and placed in segregation in alleged retaliation for complaining to the press about the tasering incident. The defendants moved for summary judgment and the district court granted the motion. The court held that a civil rights claim was not stated against counties and sheriffs in their official capacities for the inmate's transfer and placement in segregated confinement in alleged retaliation for his complaints to press, given the inmate's complete failure to allege any specific facts suggesting that segregation was the result of a custom or policy, rather than being simply a single act of deprivation disconnected from any wider scheme. According to the court, the county sheriffs were entitled to qualified immunity on individual capacity claims involving conspiracy to transfer and place jail inmate in protective, segregated confinement in retaliation for the exercise of his First Amendment rights, absent any indication that the sheriffs, who never communicated with each other about the transfer, were personally involved in the decision, exercised discretionary control over the decision, or failed to supervise jail administrators who actually made the transfer. (Chaffee and Park Counties, Colorado)

U.S. Appeals Court
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. District Court
EXCESSIVE FORCE

Stewart v. *Beaufort County*, 481 F.Supp.2d 483 (D.S.C. 2007). A pretrial detainee brought an action in state court against a county, county sheriff's department, and deputy, alleging claims for assault and battery against the deputy, gross negligence against the sheriff's department, and, pursuant to § 1983, violation of his constitutional rights. Following removal to federal court, the defendants moved for summary judgment. The district court denied the motion. The court held that a genuine issue of material fact existed as to whether the deputy's use of force in transporting the pretrial detainee to a detention center was excessive, precluding summary judgment for deputy on the basis of qualified immunity. The court noted that, at the time of the alleged violation, a pretrial detainee's right to be free from excessive force was clearly established. (Beaufort County Detention Center, South Carolina)

U.S. Appeals Court
EXCESSIVE FORCE

U.S. v. *Miller*, 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 Det. Facility, Arkansas)

U.S. District Court
EXCESSIVE FORCE

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 district court held that, with respect to three body cavity search incidents, the prisoner would be permitted proceed with his Eighth Amendment excessive force claims against each correctional officer who he alleged was either directly involved in the use of force or was present and either encouraged or failed to stop it. The prisoner alleged that there was no need for force in connection with the first search, that his constitutional rights were violated in connection with the second search when several officers, who lacked legitimate security reasons

for conducting a manual body cavity search, made contact with his genitals while conducting a strip search as a means of obtaining sexual gratification or humiliating him, and other officers who were present failed to intervene, and that, with respect to the third search, an officer used a taser against the prisoner when he posed no threat. (Wisconsin)

2008

U.S. District Court
EXCESSIVE FORCE

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
DEADLY FORCE
EXCESSIVE FORCE

Alvarado v. *Battaglia*, 539 F.Supp.2d 1022 (N.D.Ill. 2008). A state prisoner brought a § 1983 action against a warden and corrections officers arising from an alleged incident in which an officer discharged a firearm in the direction of the prisoner and other inmates from a guard tower that overlooked the inmates' recreation yard. The district court held that the prisoner stated an excessive force claim against the officer who allegedly discharged the firearm but failed to state a claim against the warden. According to the court, the prisoner's allegations that the corrections officer discharged a firearm in the direction of the prisoner and other inmates in response to the inmates' banter were sufficient to state an excessive force claim, so as to overcome the officer's qualified immunity defense. The court found that the prisoner's allegations that prison officials knew that the corrections officer who allegedly discharged the firearm was mentally unstable, yet allowed her to continue working, were insufficient to establish that the warden acted with deliberate indifference, as required for the warden to be held liable under § 1983 for the officer's actions. (Stateville Correctional Center, Illinois)

U.S. District Court
EXCESSIVE FORCE

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. District Court
RESTRAINING CHAIR
RESTRAINTS

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 detainee's attorneys' argument that the detainee was "hogtied" by the defendant corrections officers did not constitute misconduct warranting a new trial, where testimony indicated that the detainee's feet were shackled together and his hands were shackled together behind his back, but that his feet were not shackled to his hands. (Sacramento County, California)

U.S. District Court
CELL EXTRACTION
EXCESSIVE FORCE

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)

U.S. Appeals Court
EXCESSIVE FORCE
PEPPER SPRAY

Danley v. *Allen*, 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 held that the use of pepper spray to subdue the unruly detainee who had twice ignored a jailer's instructions for him to return to his cell did not itself represent the application of excessive force in violation of the detainee's Fourteenth Amendment rights. But 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 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
RESTRAINTS

Davis v. *Peters*, 566 F.Supp.2d 790 (N.D.Ill. 2008). A detainee who was civilly committed pursuant to the Sexually Violent Persons Commitment Act sued the current and former facility directors of the Illinois Department of Human Services' (DHS) Treatment and Detention Facility (TDF), where the detainee was housed, as well as two former DHS Secretaries, and the current DHS Secretary. The detainee claimed that the conditions of his confinement violated his constitutional rights to equal protection and substantive due process. After a bench trial, the district court held that: (1) the practice of searching the detainee prior to his visits with guests and attorneys violated his substantive due process rights; (2) the practice of using a "black-box" restraint system on all of the detainee's trips to and from court over a 15-month period violated his substantive due process rights; (3) requiring the detainee to sleep in a room illuminated by a night light did not violate the detainee's substantive due process rights; (4) a former director was not protected by qualified immunity from liability for the constitutional violations; and (5) the detainee would be awarded compensatory damages in the amount of $30 for each hour he wore the black box in violation of his rights. The court found that a 21-day lockdown following an attempt at organized resistance by a large number of detainees at the facility, shortly after the breakout of several incidents of violence, was not outside the bounds of professional judgment for the purposes of a substantive due process claim asserted by the detainee. (Treatment and Detention Facility, Illinois)

U.S. District Court
EXCESSIVE FORCE

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 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
EXCESSIVE FORCE
PEPPER SPRAY

Fields v. *Roswarski*, 572 F.Supp.2d 1015 (N.D.Ind. 2008). A state inmate brought a § 1983 action against city police officers, alleging they used excessive force when arresting him, and against custody officers at a county jail, alleging they used excessive force by unnecessarily spraying the inmate with pepper spray for an unreasonable period of time. The district court granted summary judgment for the defendants, finding that the inmate failed to exhaust his administrative remedies. According to the court, the inmate failed to comply with the requirement, under the Prison Litigation Reform Act (PLRA), of exhausting his administrative remedies before bringing a § 1983 action, because after denial of his belated grievance, he failed to appeal from the denial of the grievance, and the jail's grievance policy would have allowed such an appeal. (Tippecanoe County Jail, Indiana)

U.S. Appeals Court
EXCESSIVE FORCE
RESTRAINTS

Grinter v. *Knight*, 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)

U.S. District Court
CELL EXTRACTION
EXCESSIVE FORCE
PEPPER SPRAY

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 officer did not use excessive force in requiring the prisoner to lift his genitals during an unclothed body search, even though the prisoner had pepper spray on his hands. The court held that officers did not use excessive force in violation of the Eighth Amendment when they allegedly attempted to trip the prisoner, pushed him into the frame of a holding cell door, and twisted and pulled his wrists as they put him in leg restraints in order to move the prisoner from the cell to an outside area where he could be decontaminated from the officer's use of pepper-spray. The court noted that the prisoner's medical evaluations, prior to and after the incident indicated that the prisoner did not sustain any injuries, such as cuts, abrasions, swelling or bruises. 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. District Court
EXCESSIVE FORCE

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. Appeals Court
CELL EXTRACTION
EXCESSIVE FORCE
PEPPER SPRAY

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 found there was no question that some dispersal of pepper spray was warranted in carrying out the extraction. But the officer's final burst of pepper spray was deployed after the inmate had laid down on the floor, and the officer and members of the extraction team never changed the inmate's clothing or removed the spit mask covering his nose and mouth and never secured medical treatment for the inmate. Although the inmate proffered his hands through the door pursuant to the officer's order, albeit in front of rather than behind him, the officer deployed several additional bursts of pepper spray even after the inmate attempted to comply with the order, and the inmate never reacted violently. 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
EXCESSIVE FORCE

Jean-Laurent v. *Wilkinson*, 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 Department of Correction)

U.S. District Court
CELL EXTRACTION
USE OF FORCE

Johnston v. *Maha*, 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. According to the court, evidence was insufficient to show that the inmate was injured, or that whatever force was used by correctional officers, who removed the inmate from his cell during his transfer to segregation, was more than necessary, as would have supported the inmate's § 1983 claim for alleged violation of his rights under the Eighth Amendment. The court held that evidence was insufficient to show that medical staff at the county jail acted with deliberate indifferent 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)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

Jones v. *Taylor*, 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 attened 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)

U.S. District Court
DISTURBANCE
EXCESSIVE FORCE

Kounelis v. *Sherrer*, 529 F.Supp.2d 503 (D.N.J. 2008). A prisoner brought a § 1983 action alleging that various prison officers violated his Fourth, Fifth, Eighth, and Fourteenth Amendment rights. The court held that the prison defendants were under a duty to preserve the digital video recording of an altercation between the prisoner and prison staff, where the surveillance footage was relevant, not only to the prisoner's § 1983 action against the prison, but also to the prisoner's pending disciplinary proceeding. The court noted that the defendants were aware that a disciplinary hearing was imminent following the disputed altercation, that the prisoner had made repeated requests for the production of the evidence, and that the defendants should have been able to foresee the harm or prejudice that would have been caused by the non-preservation of the evidence. The court found that spoliation of evidence sanctions were warranted against the prison officials for their alleged failure to preserve the digital video recording. The court found that a genuine issue of material fact existed as to whether prison officials' use of force against the prisoner during an altercation was in good faith and in order to maintain discipline, precluding summary judgment in favor of the officials on the issue of whether the use of force exerted by the officials upon prisoner during the altercation violated the Eighth Amendment. (Northern State Prison, New Jersey)

U.S. Appeals Court
EXCESSIVE FORCE

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
EXCESSIVE FORCE

McCall v. *Crosthwait*, 590 F.Supp.2d 1337 (M.D.Ala. 2008). An arrestee brought a § 1983 action against a police officer and others, alleging that an officer used excessive force against him when he was in a municipal jail, in violation of the Fourth Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the police officer's use of force against the arrestee and the injuries sustained by the arrestee, allegedly arising out of the officer pushing the arrestee in the jail with such force that he fell into a steel door and plexiglass window, was de minimis under the Fourth Amendment. According to the court, even if the officer pushed the arrestee into a jail house door unprovoked, a hospital found no injuries after the jail incident aside from a minor contusion to the arrestee's right elbow and shoulder. (Montgomery Municipal Jail, Alabama)

U.S. Appeals Court
EXCESSIVE FORCE

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
CELL EXTRACTION
EXCESSIVE FORCE

Muhammad v. *McCarrell*, 536 F.3d 934 (8th Cir. 2008). An inmate filed a § 1983 suit against a state prison and officers, asserting claims for battery and an Eighth Amendment violation for officers' allegedly using excessive force in extracting the inmate from his cell, resulting in a powder-round wound to his leg that required surgery. After a jury trial, the district court entered judgment in favor of the defendants. The inmate appealed. The appeals court affirmed. The court held that the jury's credibility determinations about the officers' motives were not reviewable. (Varner Supermax Unit, Arkansas Department of Corrections)

U.S. Appeals Court
EXCESSIVE FORCE
STUN GUN

Orem v. Rephann, 523 F.3d 442 (4th Cir. 2008). An arrestee brought a § 1983 action against a sheriff's deputy, alleging use of excessive force during transport to jail. The district court denied the deputy's motion for summary judgment on qualified immunity grounds. The appeals court affirmed. The court held that the deputy's repeated use of a taser on the unruly arrestee qualified as wanton and sadistic and was not objectively reasonable, precluding qualified immunity. The court noted that the excessive force claim asserted by the arrestee, who had not been formally charged but was being transported to a jail at the time of the events giving rise to the claim, was analyzed under the Fourteenth Amendment's Due Process Clause, not under the Fourth Amendment. According to the court, the deputy first tased the arrestee after she forcefully stated "fuck you" to the deputy, the deputy did not follow the sheriff's department's taser policy requiring initial use of open-hand measures, the arrestee likely was not endangering herself as the deputy had claimed, since she was handcuffed and in a hobbling device while locked in the back-seat cage of the squad car, and the deputy used the taser under the arrestee's breast and on her inner thigh. (Eastern Regional Jail, West Virginia)

U.S. District Court
EXCESSIVE FORCE
STUN GUN

Parker v. *Bladen County*, 583 F.Supp.2d 736 (E.D.N.C. 2008). The administratrix of a detainee's estate brought a § 1983 action in state court against county defendants, alleging that they used excessive force when they used tasers on her. The defendants removed the action to federal court. The county and sheriff's department moved to dismiss. The district court granted the motion. According to the court, under North Carolina law, the sheriff, not the county encompassing his jurisdiction, has final policymaking authority over hiring, supervising, and discharging personnel in the sheriff's office. The court found that the sheriff's deputies' alleged use of excessive force in attempting to control the detainee by use of tasers, and the sheriff's department's alleged failure to train and supervise its employees as to the use of tasers, could not be attributed to the county, so as to subject it to § 1983 liability for the detainee's death. The court held that the county sheriff's department lacked the legal capacity, under North Carolina law, to be sued under § 1983 liability for the detainee's death. (Bladen County Sheriff's Department, North Carolina)

U.S. Appeals Court
EXCESSIVE FORCE

Pavey v. *Conley*, 528 F.3d 494 (7th Cir. 2008). A prisoner filed a § 1983 suit for damages, governed by the Prison Litigation Reform Act, claiming officers broke his arm when using excessive force to remove him from his cell. The court denied the officers' motion to reconsider a grant of the prisoner's jury demand on factual issues related to an affirmative defense. The officers filed an interlocutory appeal. The appeals court reversed and remanded. The court held that the prisoner was not entitled by the Seventh Amendment to a jury trial, rather than a bench trial, on factual issues relating to his affirmative defense of failure to exhaust administrative remedies. The prisoner alleged that he could not prepare a grievance as he was left-handed and his left arm was broken, and that he was transferred to another prison before prison officials conducted a promised investigation, which would form the basis of his grievance. (Indiana)

U.S. District Court
EXCESSIVE FORCE

Powers-Bunce v. *District of Columbia*, 576 F.Supp.2d 67 (D.D.C. 2008). The mother of a detainee who committed suicide while in police custody brought a suit in the District of Columbia Superior Court against police officers, alleging violations of the Fifth, Eighth, and Fourteenth Amendments. The case was removed to federal court and the district court granted the officers' motion to dismiss in part and denied in part. The district court granted summary judgment for the officers. An autopsy identified contusions that were consistent with being struck repeatedly with a night stick or similar weapon. The detainee sustained injuries on his buttocks, back of legs, abdomen, back, shins, and fingers. But the court noted that there was no evidence indicating whether the injuries were inflicted before the detainee's arrest or linking the injuries to the arresting officer. The district court concluded that there was an absence of a factual dispute concerning the Fourth Amendment excessive force claim, and therefore summary judgment was granted to the officers. (District of Columbia)

U.S. Appeals Court
EXCESSIVE FORCE

Richman v. *Sheahan*, 512 F.3d 876 (7th Cir. 2008). The administrator of the estate of contemnor filed a § 1983 suit individually and in her official capacity against deputy sheriffs in their individual capacities for violating the Fourth and Eighth Amendments. The administrator alleged that the deputies used excessive force, leading to her son's death, while restrainig him for resisting arrest in a state courtroom after a judge held him in contempt. The district court granted in part, and denied in part, the deputies' motion for summary judgment on the ground of official immunity and the deputies appealed. The appeals court affirmed in part and reversed in part. The court held that summary judgment was precluded by fact issues as to whether the deputy sheriffs applied excessive force with the intent to punish the contemnor, not merely with the intent to arrest. The court found that the deputies were protected by official immunity for seizing the mother. According to the court, the deputy sheriffs did not subject the mother to excessive force by seizing her in the courtroom. Other deputies restrained her son for resisting arrest allegedly sat on his back. The court noted that the deputies moved the mother by wheelchair to another courtroom in a modest use of force. The court found that the use of force was well suited to the situation in which it was essential to remove her after she had tried to force her way back to the courtroom, as her screaming would have likely distracted the deputies or incited the son to further struggles. The court noted that she did not suffer the slightest injury from the short trip in the wheelchair. (Cook County, Illinois)

U.S. Appeals Court
EXCESSIVE FORCE

Simpson v. *Thomas*, 528 F.3d 685 (9th Cir. 2008). A state inmate brought a § 1983 action against a corrections officer, alleging use of excessive force after the inmate failed to comply with the officer's orders. A jury trial resulted in a verdict in the officer's favor, and the district court denied the inmate's motion for a new trial. The inmate appealed. The appeals court reversed and remanded. The court held that the inmate was not precluded from testifying that the officer started the physical altercation by punching him, and that his subsequent actions were done in self-defense, even if such testimony was contrary to the result of a prison disciplinary proceeding in which the inmate was found guilty of battery on the officer and assessed 150 days of behavioral credit forfeiture. (California Medical Facility, Vacaville)

U.S. District Court
EXCESSIVE FORCE

Stanley v. *Muzio*, 578 F.Supp.2d 443 (D.Conn. 2008). An arrestee brought a § 1983 action against two state judicial marshals, the Connecticut State Police and individual troopers and officers of the Connecticut State Police, alleging false imprisonment and use of excessive force. Following dismissal of claims against the State Police, troopers and officers, the marshals moved to dismiss. The district court granted the motion in part and denied in part. The court noted that the arrestee's claim for false imprisonment under Connecticut law, alleging that two state judicial marshals kicked him in the head and back after he was forcibly restrained, were sufficient to allege reckless, wanton, or malicious conduct that was outside the scope of the defendants' employment as state judicial marshals. The court found that the arrestee's allegation that two state judicial marshals told him that he had to remain in the courtroom for five minutes following a hearing on a restraining order obtained by his wife and forcibly stopped him when he tried to leave after three minutes stated a § 1983 claim for false imprisonment. (Connecticut State Judicial Marshals, Connecticut State Police)

U.S. District Court
EXCESSIVE FORCE
PEPPER SPRAY

Thomas v. *Northern*, 574 F.Supp.2d 1029 (E.D.Mo. 2008). A state inmate filed a § 1983 action against correctional officers alleging that they violated his constitutional rights. The district court granted summary judgment for the officers and denied in part. The court held that summary judgment was precluded by fact issues as to whether the correctional officers had an objective need to use pepper spray after the inmate placed his arm in his food port, whether the amount of spray used was reasonable, and whether the officers properly attempted to temper the severity of their use of force. (Southeast Correctional Center, Missouri)

U.S. District Court
EXCESSIVE FORCE

U.S. v. *Gould*, 563 F.Supp.2d 1224 (D.N.M. 2008). A correctional officer was charged with violating the civil rights of an inmate in a beating incident. Following a jury trial, the officer was convicted of various counts, including deprivation of rights under the color of law and obstructing justice by writing false reports. The officer moved for a new trial on those counts, alleging that the government had violated its obligations by not disclosing the inmate's psychiatric evaluations. The court denied the motion, finding that the evaluations were not favorable to the defendant and the evaluations were not material to the outcome of the trial. (Dona Ana County Detention Center, New Mexico)

U.S. Appeals Court
EXCESSIVE FORCE
RESTRAINTS

Vondrak v. *City of Las Cruces*, 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)

U.S. Appeals Court
EXCESSIVE FORCE
PEPPER SPRAY

Walker v. *Bowersox*, 526 F.3d 1186 (8th Cir. 2008). A state prisoner brought a pro se § 1983 action against correctional officers. The district court granted summary judgment in favor of the officers and the prisoner appealed. The appeals court reversed in part and remanded. The appeals court held that summary judgment was precluded by fact issues as to whether corrections officers used reasonable force when they restrained the prisoner on a bench for 24 hours after he refused to accept a specific cell mate, and whether another corrections officer used reasonable force when he used pepper spray after the prisoner admittedly ignored the officer's repeated orders to hand over his food tray. (South Central Correctional Center, Missouri)

U.S. Appeals Court
EXCESSIVE FORCE
RESTRAINTS

Walker v. *Sheahan*, 526 F.3d 973 (7th Cir. 2008). A pretrial detainee brought a § 1983 action against county correctional officers, a county sheriff, and a county, alleging that the officers used excessive force against him, deprived him of access to medical care, and retaliated against him. The district court granted summary judgment in favor of the defendants. The detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the sheriff's office was not liable under § 1983 because the detainee failed to demonstrate that the sheriff's office had a pattern of widespread use of excessive force, inadequate investigation and training regarding use of force, or a code of silence. The court noted that although 783 complaints of excessive force were made against the

sheriff's office over a five-year period, none resulted in an indictment, the the training the officers received imposed limitations on the amount of force they could use, and that officers werediscipline for the use of excessive force. The court held that summary judgment for the officers was precluded by a genuine issue of material fact as to whether the injuries sustained by the detainee were consistent with his account of the restraint incident involving county corrections officers. (Cook County Jail, Illinois)

2009

U.S. District Court
RESTRAINING CHAIR

Al-Adahi v. *Obama*, 596 F.Supp.2d 111 (D.D.C. 2009). Aliens who were alleged enemy combatants engaging in voluntary hunger strikes while detained at the U.S. Naval Base at Guantanamo Bay, Cuba, moved to enjoin measures taken as part of a forced-feeding program. The district court denied the motion. The court found that the detainees failed to show a likelihood that they would suffer irreparable harm in the absence of an order enjoining the government from using a restraint-chair in order to facilitate force-feeding them. The court noted that pursuant to the Military Commissions Act of 2006 (MCA), the district court lacked jurisdiction to consider the complaints of detained alleged enemy combatants. According to the court, the government officials who imposed various restraints on the detained alleged enemy combatants, including the use of a restraint chair, in order to facilitate force-feeding them in response to their hunger strikes, were not thereby deliberately indifferent to their Eighth Amendment rights. The court found that evidence that the detained alleged enemy combatants had assaulted medical staff and guards during attempts to force-feed them after the detainees engaged in hunger strikes, demonstrated that the government might suffer a substantial injury if the detainees' request for a preliminary injunction against the use of a restraint-chair to facilitate such feedings were granted. (U.S. Naval Base at Guantanamo Bay, Cuba)

U.S. Appeals Court
EXCESSIVE FORCE

Askew 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
RESTRAINTS

Bowers v. *Pollard*, 602 F.Supp.2d 977 (E.D.Wis. 2009). An inmate brought a § 1983 action against correctional facility officials, challenging the conditions of his confinement. The court held that the correctional facility's enforcement of a behavior action plan that regularly denied the inmate a sleeping mattress, occasionally required him to wear only a segregation smock or paper gown, and subjected him to frequent restraint did not deny the inmate the minimal civilized measure of life's necessities and was targeted at his misconduct, and thus the plan did not violate the inmate's Eighth Amendment rights. The court noted that the inmate's cell was heated to 73 degrees, he was generally provided some form of dress, he was granted access to hygiene items, and he was only denied a mattress and other possessions after he used them to perpetrate self-abusive behavior, covered his cell with excrement and blood, and injured facility staff.

The court held that the state Department of Corrections' regulations governing procedures for placing an inmate on observational status to ensure his safety and the safety of others, and the procedures for utilizing restraints for inmate safety were sufficient to protect the inmate's liberty interest in avoiding an erroneous determination that his behavior required such measures. The procedures governing observational status required the inmate to be orally informed of the reasons for placement on the status and prohibited placement for more than 15 days without an evidentiary hearing. The procedures governing restraints prohibited restraining an inmate for more than a 12-hour period. (Green Bay Correctional Institution, Wisconsin)

U.S. District Court
EXCESSIVE FORCE

Browne v. *San Francisco Sheriff's Dept.*, 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)

U.S. District Court
CELL EXTRACTION
EXCESSIVE FORCE
PEPPER SPRAY
STUN GUN

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. The court held that the detainee sufficiently pleaded that the city had a policy of using stun guns in such situations, as required to state a § 1983 Fourth Amendment excessive force claim against the city. The detainee alleged that nine months prior to his assault, a separate incident occurred that was similar. (City of Willows Police Department, California)

U.S. District Court
DEADLY FORCE
EXCESSIVE FORCE

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)

U.S. District Court
EXCESSIVE FORCE

Cusamano v. *Sobek*, 604 F.Supp.2d 416 (N.D.N.Y. 2009). A former state prisoner brought a pro se action against department of corrections employees, alleging violation of his First, Eighth and Fourteenth Amendment rights as well as the New York Constitution. 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 regarding whether a corrections officer was present during, and participated in, the alleged assault of the prisoner. The court noted that an officer's failure to intervene during another officer's use of excessive force can itself constitute excessive force. The court also held that summary judgment was precluded by a genuine issue of material fact regarding whether excessive force was used against the prisoner. The court found that there was no meeting of the minds between corrections officers to inflict an unconstitutional injury on the prisoner, as required for the prisoner's conspiracy claim against the officers. According to the court, there was no evidence of an agreement to inflict an injury on the prisoner, or of an overt act done in furtherance of that goal. The court found that there was no evidence that a misbehavior report that a corrections officer filed against the prisoner was a false report intended to cover up the use of excessive force, as required for the prisoner's false misbehavior report claim against the officer. The court also found no causal connection between the state prisoner's grievance and the issuance of the misbehavior report, as required for the state prisoner's retaliation claim against a corrections officer. The court found that the actions of the corrections officers toward the prisoner, including the utterance of profanities and the deprivation of amenities, did not cause the prisoner physical injury or psychological injury that was more than de minimis, as required for the prisoner's harassment claim against the corrections officers under the Eighth Amendment. (Gouverneur Corr. Facility, Clinton Corr. Facility, New York)

U.S. Appeals Court
DISTURBANCE
EXCESSIVE FORCE

Fennell v. *Gilstrap*, 559 F.3d 1212 (11th Cir. 2009). A pretrial detainee brought a Fourteenth Amendment excessive force claim against a sheriff's deputy under § 1983. The district court entered summary judgment for the deputy and the detainee appealed. The appeals court affirmed. The court held that once the district court decided that the detainee had shown excessive force, it could not then find that the deputy was qualifiedly immune because his use of excessive force was not in violation of clearly established law. But the court found that the deputy's kick to the detainee's face, which resulted in fractures, did not constitute excessive force. The court noted that the deputy saw the detainee struggling with six other officers who were unable to restrain him, the detainee had not yet been secured when the deputy kicked him, the deputy intended to kick the detainee in the arm rather than the face, the detainee had grabbed the arm of another officer, and the officers made an immediate offer of medical care. (Georgia)

U.S. Appeals Court
EXCESSIVE FORCE
PEPPER SPRAY

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
EXCESSIVE FORCE
FAILURE TO PROTECT

Gregg v. *Ohio Dept. of Youth Services*, 661 F.Supp.2d 842 (S.D.Ohio 2009). The resident of a juvenile correctional facility brought a § 1983 action against facility officials, seeking damages for injuries he allegedly received at the hands of corrections officers. The court held that summary judgment was precluded by a fact question as to whether correctional officers used excessive force in subduing the resident when he stepped out of the line to receive his medication. The court also found a fact question as to whether correctional officers who observed the alleged beating of the resident by other officers violated the resident's constitutional rights by failing to intervene in the beating. (Ohio River Valley Juvenile Correctional Facility, Ohio)

U.S. District Court
CHEMICAL AGENTS
EXCESSIVE FORCE

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
EXCESSIVE FORCE

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 necklace 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
CHEMICAL AGENTS
EXCESSIVE FORCE

Harris v. *Curtin*, 656 F.Supp.2d 732 (W.D.Mich. 2009). A state prisoner brought a § 1983 action alleging that a warden, nurse, and corrections officer violated his Eighth Amendment rights when he was sprayed with a chemical agent. The district court granted summary judgment to the defendants and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. On remand, 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 corrections officer used excessive force without regard to the health risks posed to the prisoner, who had asthma and a history of a brain aneurysm. The officer sprayed a chemical agent into the prisoner's cell while attempting to place the prisoner in restraints for having broken his cell window. The court held that the prison nurse's authorization of the use of the chemical agent to restrain the prisoner did not constitute malicious or sadistic behavior prohibited by the Eighth Amendment; even thought the prisoner, who had asthma and a history of brain aneurysm, was classified in prison medical records as a high risk for unwanted side effects from chemical agents. According to the court, such a classification did not preclude the use of chemical agents on him. (Michigan Department of Corrections)

U.S. Appeals Court
BRUTALITY
EXCESSIVE FORCE

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 kneeing 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
CELL EXTRACTION
EXCESSIVE FORCE
STINGER GRENADE

Jackson v. *Gerl*, 622 F.Supp.2d 738 (W.D.Wis. 2009). A prisoner brought a § 1983 action against a warden and other prison officials, alleging that the use of a stinger grenade to extract him from his cell constituted excessive force in violation of the Eighth Amendment, and that an abusive strip search following the deployment of the grenade also violated the Eighth Amendment. The defendants moved for summary judgment and the district court granted the motion in part and denied in part. The court held that a prison lieutenant's extraction of the prisoner from inside his cell by means of a stinger grenade, which when detonated created a bright flash of light, emitted a loud blast accompanied by smoke, and fired rubber balls, was not "de minimis," as would bar a claim for excessive force under the Eighth Amendment. The court found that summary judgment was precluded by genuine issues of material fact as to whether the extraction of the prisoner from his cell by means of a stinger grenade was malicious and sadistic, or whether the use was in a good-faith effort to maintain or restore discipline. The court held that the prison security director's authorization of the prisoner's extraction by means of a stinger grenade was not malicious and sadistic, as required to establish excessive force under the Eighth Amendment. According to the court, the director was aware that the prisoner was refusing to cooperate, the prisoner had invited officials to "suit up" to "come in and play," and had covered his window and had put water on the floor. The director knew that tasers and incapacitating agents could not be used against the prisoner, and relied on the lieutenant's statements that she had been trained and was certified in the use of the grenade, having never used one himself.

The court held that members of the prison's emergency response unit did not act with deliberate or reckless disregard of the prisoner's rights against excessive force under the Eighth Amendment when they failed to speak out against higher ranking officers from extracting prisoner from cell by means of a stinger grenade.

According to the court, the prison's training captain and the commander of the emergency response unit did not provide inadequate training on the use of a stinger grenade, with a deliberate or reckless disregard to the prisoners' Eighth Amendment rights against excessive force, as required to subject the captain to § 1983 liability, even though the captain advised trainees that stinger grenades could be used in a cell and did not tell them of the danger of using the grenade in the presence of water. The captain lacked knowledge that using the grenade in a cell or in the presence of water would likely be an excessive use of force even where immediate weapons would otherwise be justified.

The court found that the officials' alleged failure to give the prisoner an opportunity to strip down on his own so that officials could perform a visual inspection of his person rather than be subject to a manual strip search was for a legitimate penological purpose, and thus did not violate the Eighth Amendment as a wanton infliction of psychological pain. The officials decided to manually strip search the prisoner after he had resisted following orders along every step of the way. The court noted that the performance of the strip search in front of a cell, rather than inside a cell, was not done to demean and humiliate the plaintiff, where the cell was not in an area widely visible to prisoners, but rather was at the end of a hall with no cell across from it. (Wisconsin Secure Program Facility)

U.S. Appeals Court
EXCESSIVE FORCE

Krout v. *Goemmer*, 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 summary judgment was precluded by a genuine issue of material fact as to whether fellow police officers used excessive force in making a traffic stop and arrest. According to the court, it was clearly established at the time of the arrest that a police officer had a duty to intervene to prevent the excessive use of force by other officers. (Pope County Detention Center, Russellville Police Department, Arkansas)

U.S. Appeals Court
RESTRAINTS

Lewis v. *City of West Palm Beach, Fla.*, 561 F.3d 1288 (11th Cir. 2009). The survivor of a detainee who had died in police custody brought a § 1983 action against a city and against individual officers, alleging use of excessive force. The district court granted summary judgment for the defendants and the survivor appealed. The appeals court affirmed. The court held that the detainee's right not to be restrained via “hobbling” and being “hogtied” was not clearly established. The detainee became unconscious and died during detention. According to the court, the officers' conduct was not so egregious as to be plainly unlawful to any reasonable officer, given the detainee's agitated state when first detained and given his continued uncooperative and agitated state, presenting a safety risk to himself and others, during restraint. After handcuffing the detainee did not prevent his continued violent behavior, the officers attached an ankle restraint to the handcuffs with a hobble cord (also known as “TARP,” the total appendage restraint position). The hobble was tightened so that Lewis's hands and feet were close together behind his back in a “hogtied” position. The court held that the city was not potentially liable for failure to train officers in the use of restraints, where the need for training in the application of “hobble” restraints did not rise to the level of obviousness that would render the city potentially liable under § 1983 for deliberate indifference based on the failure to administer such training. The court noted that hobble restraints did not have the same potential flagrant risk of constitutional violations as the use of deadly firearms. (West Palm Beach Police Department, Florida)

U.S. Appeals Court
EXCESSIVE FORCE
STUN GUN

Lewis v. *Downey*, 581 F.3d 467 (7th Cir. 2009). A federal prisoner in custody at a county jail filed a pro se § 1983 action, alleging jail guards' conduct in shooting him with a taser gun amounted to cruel and unusual punishment in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that a jail guard who stood by while another guard shot a taser gun at the inmate in response to a superior officer's order, after the inmate refused an order to get out of bed, could not be liable in the inmate's § 1983 excessive force claim, where the bystander guard had no realistic opportunity to stop the other guard from discharging the taser gun. The court found that the jail guard's use of a taser gun against the prisoner after the prisoner refused an order to get out of bed amounted to more than a de minimis application of force, as required to prove the prisoner's pro se § 1983 excessive force claim. The court noted that it was undisputed that the taser sent an electric shock through the prisoner's body strong enough to cause him to fall from his bed and render him helpless while the guards secured him and removed him from his cell. The court found that summary judgment was precluded by genuine issues of material fact as to whether the guard acted in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. The court held that the guard was not entitled to qualified immunity from liability for his use of a taser gun against the prisoner, where, at the time of the conduct, the prisoner was allegedly prone on his bed, weakened, and docile. According to the court, the guard allegedly used the taser without warning the prisoner first, and the prisoner allegedly did not have enough time to respond to the guard's order to get out of bed, so that no reasonable guard would think he was justified in using the taser gun under the circumstances as alleged. (Jerome Combs Detention Center, Kankakee County, Illinois)

U.S. Appeals Court
STUN GUN

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
EXCESSIVE FORCE

Moore v. *Thomas*, 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. (Pelican Bay State Prison, California Medical Facility)

U.S. Appeals Court
RESTRAINTS

Nelson v. *Correctional Medical Services*, 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)

U.S. District Court
RESTRAINTS

Padilla v. *Yoo*, 633 F.Supp.2d 1005 (N.D.Cal.2009). *reversed* 678 F3d 748. 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. 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). *On appeal*, 678 F3d 748, the appeals court reversed the district court decision, finding that the official was entitled to qualified immunity because there had not been a violation of well established law. (Military Brig, South Carolina)

U.S. District Court
EXCESSIVE FORCE

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
EXCESSIVE FORCE

Petrolino v. *County of Spokane*, 678 F.Supp.2d 1082 (E.D.Wash. 2009). A detainee, a German citizen, brought an action against a county, county sheriff, and numerous defendants, seeking damages under § 1983 and state law for force used during his arrest and detention. 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 corrections officers' knee strikes against the pretrial detainee were administered in response to a threat, due to the detainee's alleged refusal to surrender a pen that he possessed, and thus whether the strikes were reasonable uses of force. (Spokane County Jail, Washington)

U.S. Appeals Court
EXCESSIVE FORCE

Smith v. *Ozmint*, 578 F.3d 246 (4th Cir. 2009). A South Carolina prisoner brought an action alleging that a prison grooming policy violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). The South Carolina Department of Corrections moved for summary judgment and the district court granted the motion. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prison's policy requiring maximum security inmates to wear closely cropped hair, and which allowed for implementation of that policy through physical force, imposed a substantial burden on the inmate's religious practice within the meaning of the Religious Land Use and Institutionalized Persons Act (RLUIPA), where the policy compelled an inmate to modify his behavior in violation of his genuinely held religious beliefs. According to the court, an affidavit offered by the Department of Corrections in support of summary judgment did not demonstrate that the prison policy of forcibly shaving the heads of maximum security unit prisoners who wore long hair as a matter of religious belief furthered a compelling governmental interest in space utilization, hygiene, or security by the least restrictive means under RLUIPA. The court noted that the affidavit dealt solely with the grooming policy applied to special management unit prisoners, and the Department failed to explain how the rationale offered for not accommodating special management unit prisoners applied to maximum security unit prisoners. (South Carolina Department of Corrections, Maximum Security Unit at Kirkland Correctional Institution)

U.S. Appeals Court
STUN GUN

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
EXCESSIVE FORCE

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
EXCESSIVE FORCE

Teas v. *Ferguson*, 608 F.Supp.2d 1070 (W.D.Ark. 2009). A former inmate brought a pro se civil rights action pursuant to § 1983 against detention center staff alleging that while he was an inmate of the detention center, his constitutional rights against excessive force and retaliation were violated. The district court denied the defendant's motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to whether excessive force was used against the prisoner, while still a pretrial detainee. (Benton Co. Det. Center, Ark.)

U.S. Appeals Court
RESTRAINING
CHAIR

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 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)

U.S. Appeals Court
EXCESSIVE FORCE

Wasserman v. *Rodacker*, 557 F.3d 635 (D.C. Cir. 2009). An arrestee brought an action against the government and a police officer, alleging tort and constitutional claims based on his arrest for violating a leash law and assaulting a police officer. The government substituted itself as a defendant and moved to dismiss. The district court dismissed the tort claims and granted summary judgment on the constitutional claims. The arrestee appealed. The appeals court affirmed. The court held that the government properly substituted itself as a party defendant and that the force used in the arrest was reasonable. The court found that the arrestee's detention was not unreasonable, in violation of Fourth Amendment, despite having been premised on an assault charge that was later dropped by the government, where the length of detention was less than 48 hours, and the arrestee failed to allege that the delay of a probable cause hearing was a result of ill will or some other malicious purpose. (District of Columbia, Metropolitan Police Department Central Cell Block)

U.S. Appeals Court
EXCESSIVE FORCE

Wright v. *Goord*, 554 F.3d 255 (2nd Cir. 2009). A prisoner brought two § 1983 actions against prison officers, alleging excessive force and retaliation in violation of the First and Eighth Amendments. The district court summarily dismissed both actions. The prisoner appealed. The appeals court affirmed. The court held that the prisoner did not sufficiently

allege excessive force by the prison officers in violation of the Eighth Amendment where the prisoner failed to concretely allege a physical assault by an officer. According to the court, the assault alleged in his complaint involved the prisoner's cellmate, and the prisoner proffered no evidence to support the suggestion that the officers returned a cane to a cellmate after learning that the cellmate had allegedly hit the prisoner with a cane. The court found that a prison officer's action in grabbing the prisoner did not constitute "excessive force" in violation of the Eighth Amendment. The court noted that apart from several minutes where the prisoner alleged he experienced a shortness of breath, the inmate did not allege any physical injuries resulting from the encounter. (Coxsackie Correctional Facility, New York)

U.S. District Court
CELL EXTRACTION
CHEMICAL AGENTS
EXCESSIVE FORCE
FAILURE TO PROTECT
RESTRAINING CHAIR
RESTRAINTS
STUN GUN

Zimmerman v. *Schaeffer*, 654 F.Supp.2d 226 (M.D.Pa. 2009). Current and former inmates at a county jail brought a § 1983 action against the county, corrections officers, and prison officials, alleging that they were abused by officials during their incarceration 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 summary judgment was precluded by genuine issues of material fact as to: (1) whether corrections officers and prison officials knew or should have known that an officer would apply excessive force to the inmate by shocking him when he was restrained and whether they could have prevented the officer's excessive use of force; (2) whether the inmates exhausted administrative remedies by filing grievances regarding use of a restraint chair, lack of mattresses, inability to shower, cell conditions, and issues with mail; (3) whether the use of mechanical restraints against the inmates constituted wanton infliction of pain in violation of the Eighth Amendment; (4) whether an inmate complied with officials when extracted from a cell, rendering the use of oleoresin capsicum spray excessive and unjustified; (5) whether cell conditions posed a substantial risk of harm to inmates and whether corrections officers and prison officials were deliberately indifferent to that risk; and (6) whether the warden of the county jail was aware of and condoned the use of excessive force against inmates at jail. (Mifflin County Correctional Facility, Lewistown, Pennsylvania)

2010

U.S. Appeals Court
EXCESSIVE FORCE

Aldini v. *Johnson*, 609 F.3d 858 (6th Cir. 2010). A detainee brought a § 1983 excessive force case against four corrections officers, arising out of a beating which occurred while the detainee was being held in a booking room pending completion of the booking process, but after he had been surrendered to jailers by his arresting officer. The district court granted summary judgment to two of the officers based on qualified immunity. The detainee, and the officers whose motions for summary judgment were denied, appealed. The appeals court affirmed in part, and vacated and remanded in part. The court held that the district court's error, in not applying the Fourth Amendment reasonableness test to the officer whose actions the court found violated the higher Fourteenth Amendment due process "shocks-the-conscience" standard, was harmless. (Montgomery County Jail, Ohio)

U.S. District Court
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. District Court
EXCESSIVE FORCE

Brooks v. *Austin*, 720 F.Supp.2d 715 (E.D.Pa. 2010). A state pretrial detainee brought a § 1983 action against correction officers, alleging violations of the Eighth and Fourteenth Amendments. The officers filed a motion to dismiss. The district court granted the motion in part and denied in part. The court held that the pretrial detainee's allegations that a correctional officer slammed him into a wall, that another officer was "on his neck" while he was handcuffed, and that these actions resulted in injuries to his knee and shoulder were sufficient to state a § 1983 claim for excessive force in violation of the Fourteenth Amendment. (Chester County Prison, Pennsylvania)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS
CHEMICAL AGENTS
STUN GUN
RESTRAINING CHAIR

Caldwell v. *Luzerne County Corrections Facility Management Employees*, 732 F.Supp.2d 458 (M.D.Pa. 2010). A county prison inmate brought civil rights claims against prison officials. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate stated claims of excessive force against prison officials with respect to various incidents in which he was allegedly tased, causing him to hit his forehead on a cell wall, forced to remain on a hard mattress at an uncomfortable angle, causing severe neck pain, strip searched, placed in 5-point restraints, causing swollen and bleeding wrists, pulled forcefully while handcuffed, causing his hands to swell and bleed, punched and slapped in the back while handcuffed, maced, and slammed onto the floor, kicked and punched. The court held that the inmate's allegations that in four incidents occurring over a span of four months he was placed on a mattress at an awkward angle for over 12 hours and subjected to severe pain, not permitted to use the bathroom, eat, drink, or shower while placed in 5-point restraints for many hours, and was refused a blanket while restrained in a cell with broken windows and an air vent blowing directly on him, were sufficient to state a conditions of confinement claim under the Eighth Amendment. The court held that the inmate's allegations that he was subjected by prison officials to excessive force and unconstitutional conditions of confinement, and that the officials' conduct reflected retaliation for his filing of lawsuits against them, stated a claim for retaliation under § 1983. (Luzerne County Corrections Facility, Pennsylvania)

U.S. District Court
EXCESSIVE FORCE

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
BRUTALITY
EXCESSIVE FORCE
THREATENING

Cummings v. *Harrison*, 695 F.Supp.2d 1263 (N.D.Fla. 2010). A Black Muslim state prisoner brought a civil rights action against a prison warden and correctional officers, alleging, among other things, that the defendants used excessive force against him in violation of the Eighth Amendment and retaliated against him, in violation of First Amendment, for submitting grievances. 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 correctional officers' repeated verbal threats, including death threats, combined with physical assaults, against the Black Muslim prisoner caused the prisoner extreme psychological harm, and as to whether the officers maliciously and sadistically used force against the prisoner because he was black or because he practiced the Muslim faith. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether the prison warden had the ability to remove the Black Muslim prisoner from the supervision of the correctional officer who was allegedly verbally and physically abusing him, but refused to do so, and denied the prisoner's request for protective custody. (Taylor Correctional Institution, Florida)

U.S. District Court
CELL EXTRACTION
EXCESSIVE FORCE
PEPPER SPRAY

Enriquez v. *Kearney*, 694 F.Supp.2d 1282 (S.D.Fla. 2010). A civil detainee brought a pro se civil rights action against correctional facility officers and physicians, asserting claims for excessive force. The officers and physicians moved for summary judgment. The district court granted the motion. The court held that officers did not use excessive force against the civil detainee in violation of his due process rights by spraying him with pepper spray, handcuffing him, and escorting him from a detention unit in restraints, where the detainee did not sustain any serious injury, and the decision to use pepper spray was only made after officers attempted for more than one hour to verbally convince the detainee to cooperate and leave the unit where his interaction with officers was causing a disturbance. The court noted that there was no indication that the force was imposed as punishment rather than in a good faith effort to further the need to maintain order and security on a unit where numerous sexually violent predators (SVPs) were held. (Florida Civil Commitment Center, Arcadia, Florida)

U.S. Appeals Court
EXCESSIVE FORCE

Fletcher v. *Menard Correctional Center*, 623 F.3d 1171 (7th Cir. 2010). A state prisoner subject to the Prison Litigation Reform Act's (PLRA) three strikes provision brought a civil rights action against a prison, warden, and various prison employees, alleging the defendants violated his federal constitutional rights by using excessive force to restrain him and by recklessly disregarding his need for medical attention. The district court dismissed the complaint for failure to pre-pay the filing fee, and a motions panel authorized the prisoner's appeal. The appeals court affirmed. The court held that that while the prisoner's allegation of excessive force satisfied the three strikes provision's imminent danger requirement, the prisoner failed to exhaust administrative remedies under the PLRA. The court noted that the prisoner had an administrative remedy under an Illinois regulation providing an emergency grievance procedure for state prisoners claiming to be in urgent need of medical attention. (Menard Correctional Center, Illinois)

U.S. Appeals Court
STUN GUN
EXCESSIVE FORCE

Forrest v. *Prine*, 620 F.3d 739 (7th Cir. 2010). A pretrial detainee brought a § 1983 action against a police officer alleging the officer used excessive force against him when he used a stun gun in a holding cell. The district court entered summary judgment for the officer. The detainee appealed. The appeals court affirmed. The court held that the officer did not violate the pretrial detainee's right to be free of illegal search and seizure when he used a stun gun on the detainee while attempting to conduct a strip search in a holding cell following the detainee's arrest. The court held that the officer's decision to use the stun gun on the detainee did not violate the detainee's due process guarantees, where the officer was aware that the detainee had attacked another officer earlier in the night, and the detainee appeared to be intoxicated. The court noted that the detainee was a relatively large man confined in an enclosed space of relatively small area, and he was facing the officer, pacing in the cell, clenching his fists, and yelling obscenities in response to orders to comply with the strip search policy. (Rock Island County Jail, Illinois)

U.S. Appeals Court
EXCESSIVE FORCE

Griffin v. *Hardrick*, 604 F.3d 949 (6th Cir. 2010).A pretrial detainee brought an action against a county jail officer, alleging use of excessive force under § 1983 and state-law battery. The district court granted summary judgment in favor of the officer. The detainee appealed. The appeals court affirmed. The court held that a videotape of the incident between the detainee and a county jail officer was properly considered by the district court, in determining the officer's motion for summary judgment, where the detainee's version of events was blatantly contradicted by the videotape. The court found that the county jail officer's use of a leg-sweep maneuver to bring the pretrial detainee to the floor, which resulted in the detainee's leg being fractured, did not constitute wanton infliction of pain, and thus, the detainee could not prevail in her § 1983 Fourteenth Amendment excessive force claim against the officer. The court noted that it was undisputed that the detainee was acting in a manner, that she attempted to jerk away from the officer, and struggled with the officer when he attempted to lead her away. It was undisputed that the leg-sweep maneuver was in compliance with the jail's policies on the use of force. The leg fracture resulted from the accident of another officer collapsing on the detainee as they both fell to floor. (Davidson County Criminal Justice Center, Tennessee)

U.S. District Court
EXCESSIVE FORCE

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. (Fed. Corr'l Facility in Fort Dix, New Jersey)

U.S. Appeals Court
CELL EXTRACTION
EXCESSIVE FORCE
PEPPER SPRAY

Harvey v. *Jordan*, 605 F.3d 681 (9th Cir. 2010). An inmate brought a suit alleging that prison officials' use of pepper spray to extract him from his cell during a building-wide search of all prisoners' cells constituted excessive force and that his right to due process was denied in connection with a disciplinary charge stemming from his refusal to comply with the search. The district court granted the defendants' motion to dismiss for failure to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA). The inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the inmate exhausted administrative process, as required by PLRA, for the claim that he was denied due process in connection with a disciplinary charge when prison officials purported to grant relief that resolved his grievance to his satisfaction, a hearing and access to a videotape. The court noted that the inmate was not required to appeal that decision. (Salinas Valley State Prison, California)

U.S. District Court
BRUTALITY
EXCESSIVE FORCE
FAILURE TO PROTECT

Johnson v. *Deloach*, 692 F.Supp.2d 1316 (M.D.Ala. 2010). A state prisoner brought a § 1983 action against prison supervisory officials and correctional officers, challenging the constitutionality of actions taken against him during his incarceration. The prisoner alleged that an officer, without justification, repeatedly slapped him about his face and head causing the back of his head to strike the wall, and the prisoner "became dazed and disoriented...." The officer allegedly stopped slapping the prisoner and then grabbed the prisoner around his throat and began choking him while shoving his back and head against the wall. The officer then allegedly stopped choking the prisoner, lifted the prisoner off the floor and slammed him to the floor causing his back, head and left leg to hit a pole protruding from the wall. According to the prisoner, two other officers watched these actions and failed to intervene. The district court granted summary judgment for the defendants in part and denied in part. The court held that state prison officials were absolutely immune from the prisoner's § 1983 claims brought against them in their official capacities, since Alabama had not waived its Eleventh Amendment immunity, and Congress had not abrogated Alabama's immunity. The court held that summary judgment was precluded by genuine issues of material fact regarding the need for the use of force against the state prisoner by a correctional officer and the amount of force used by the officer, as to whether the officer acted "maliciously and sadistically" to cause harm, and as to whether two other officers witnessed the use of excessive force and failed to intervene. The court noted that a correctional officer who is present at a scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held personally liable under § 1983 for his nonfeasance.(Draper Correctional Facility, Alabama)

U.S. District Court
STUN GUN

Johnson v. *Roberts*, 721 F.Supp.2d 1017 (D.Kan. 2010). A former county jail inmate brought an action against a deputy, sheriff, and county board of commissioners, alleging use of excessive force when the deputy used a stun gun on the inmate. The district court granted summary judgment in favor of the defendants. The court held that the use of a stun gun to subdue the county jail inmate was reasonable and did not violate the inmate's Eighth Amendment rights. The court noted that the inmate had placed a towel in front of a security camera in violation of a jail rule, and when deputies responded to the inmate's cell to confiscate the towel and the inmate's property box, the inmate refused to hand over the box and either dropped or threw the box to the floor and refused an order to pick it up, placing the deputy in the position of bending down to retrieve the box from directly in front of the noncompliant inmate. The court found that the use of a stun gun was not a clearly established violation of the Eighth Amendment at the time of the incident and thus the deputy, sheriff, and county board of commissioners were entitled to qualified immunity. The court noted that the deputy used the stun gun to ensure the inmate's compliance with orders and not to punish the inmate. (Miami County Jail, Kansas)

U.S. Appeals Court
EXCESSIVE FORCE

Johnston v. *Maha*, 606 F.3d 39 (2nd Cir. 2010). An inmate brought a § 1983 action against employees of a county jail, alleging violations of his constitutional rights and of the Americans with Disabilities Act (ADA) in connection with detention and medical care while in jail. The district court granted the defendants summary judgment. The inmate petitioned for the appointment of counsel in his appeal. The appeals court granted the petition. The court held that the appointment of counsel was appropriate in connection with the inmate's appeal from dismissal of his claim that his placement in solitary confinement, and subsequent excessive force he suffered, violated his constitutional rights, since there was likely merit in the inmate's claims. The court found that it appeared from the inmate's complaint that he might have been a pretrial detainee at the time he was placed in solitary confinement, and thus the claim that the inmate was subjected to excessive force as a detainee would arise under the Fifth, not the Eighth Amendment, because as a detainee he could not be punished at all. The court noted that there was no evidence that the inmate violated any rule or was provided with a pre-deprivation hearing. According to the court, the legal issues were fairly complex, especially with respect to whether the inmate's pretrial detention was substantial enough to give rise to a constitutional violation of a procedural due process right. (Genesee County Jail, New York).

U.S. District Court
CELL EXTRACTION
EXCESSIVE FORCE

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 an ADC employee's use of force against the inmate was justified by the inmate's disruptive behavior during the search of her cell and thus did not give rise to the ADC employee's liability on an excessive force claim. The inmate alleged that the ADC employee grabbed her by the arm, dragged her from her cell, and threw her into the shower. The court note that there was no medical evidence that the ADC employee's use of handcuffs caused any permanent injury to the inmate as required to support a claim that the employee used excessive force against the inmate. 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. District Court
EXCESSIVE FORCE
RESTRAINTS

Lewis v. *Mollette*, 752 F.Supp.2d 233 (N.D.N.Y. 2010). A former juvenile inmate at the Office of Child and Family Services (OCFS) brought a § 1983 action against OCFS employees, alleging use of excessive force and failure to intervene. 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: (1) the events leading up to the use of a physical restraint technique (PRT) on the juvenile inmate by OCFS employees; (2) the need for a second employee to assist the first employee with the PRT; and (3) the cause of the arm fracture the inmate sustained during the incident. (Highland Office of Child and Family Services, New York)

U.S. District Court
EXCESSIVE FORCE

Molina v. *New York*, 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. Resid. Center, New York)

U.S. Appeals Court
EXCESSIVE FORCE
STUN GUN

Porro v. *Barnes*, 624 F.3d 1322 (10th Cir. 2010). An immigration detainee brought a § 1983 excessive force claim against a jail employee, sheriff, and the sheriff's successor, related to an incident in which a stun gun was used on the detainee. The district court granted the sheriff's motion for summary judgment and the successor's motion for summary judgment. The detainee appealed. The appeals court affirmed. The court held that the sheriff who was not present during the incident in which a stun gun was used on the detainee while he was restrained was not liable under § 1983, where the sheriff did not employ any force on the detainee, was not present when the force was applied, and did not give any advance approval to the use of the stun gun on the detainee. The court found that the county jail's policy of training jailers to use stun guns only if and when an inmate should become violent, combative, and pose a direct threat to the security of staff did not exhibit deliberate indifference to the immigration detainee's due process rights against the use of excessive force, as required for § 1983 liability. (Jefferson County Jail, Oklahoma)

U.S. Appeals Court
EXCESSIVE FORCE
CHEMICAL AGENTS
PEPPER SPRAY

Santiago v. *Walls*, 599 F.3d 749 (7th Cir. 2010). A state prisoner brought a § 1983 action against certain officers and employees of the Illinois Department of Corrections (IDOC), alleging that they violated his constitutional rights by failing to protect him from other inmates, failing to provide him with medical care, and retaliating against him for speaking out against the IDOC. Following a jury trial, the district court entered judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed in part, reversed and remanded in part. The court held that the prisoner failed to state a claim against two correctional officers for failure to protect him from attack by an inmate. The court also found no claim was stated by the prisoner's allegations that one prison official sprayed him with pepper spray and that, while escorting him to the infirmary, another official “brutally yank[ed] and rip[ped]” backwards on his handcuffs. But the court held that a claim was stated against the prison warden for failure to protect him from an assault by his cellmate. The prisoner alleged that the warden knew or should have known that his cellmate had a history of assaulting his cellmates and that the warden disregarded this risk. Four days prior to his assault, the plaintiff had filed an emergency grievance with the warden, requesting that his cellmate be placed on his enemy list and that a “cell change be conducted to prevent a physical confrontation.” According to the appeals court, the district court abused its discretion in denying the pro se state prisoner's request for counsel under the federal in forma pauperis statute during the discovery phase of his § 1983 action. The appeals court found that the district court failed to consider the relatively difficult allegations the prisoner had to prove, the difficulty posed by the prisoner's confinement in another facility during trial preparation, the prisoner's inability to identify parties and witnesses, and a decidedly uncooperative prison administration who had the assurances of the magistrate judge that it would not have to worry about a lawyer being around during the discovery period. The appeals court ruled that the prisoner was prejudiced by district court's denial of his request for counsel, requiring reversal. (Menard Correctional Center, Illinois)

U.S. District Court
EXCESSIVE FORCE

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. (N.Y. State Department of Correctional Services, Eastern New York Correctional Facility)

U.S. Appeals Court
CHEMICAL AGENTS
EXCESSIVE 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
EXCESSIVE FORCE

Vanderburg v. *Harrison County, Miss. ex rel. Bd. of Supervisors*, 716 F.Supp.2d 482 (S.D.Miss. 2010). A pretrial detainee brought an action against a county, officials and officers, alleging civil rights violations under § 1983 and related statutes. A correctional officer moved for summary judgment and for dismissal. 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 whether the correctional officer acted with malice in allegedly injuring the pretrial detainee and whether the force used by the correctional officer was objectively reasonable. (Harrison County Adult Detention Center, Mississippi)

2011

U.S. Appeals Court
EXCESSIVE FORCE

Alspaugh 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 Maximum Security Correctional Facility, Michigan)

U.S. District Court
EXCESSIVE FORCE
STUN GUN

Bailey v. *Hughes*, 815 F.Supp.2d 1246 (M.D.Ala. 2011). A state prisoner brought an action against a county sheriff's department, a sheriff, corrections officers, and others, alleging unconstitutional deprivations of his rights while in custody in a county jail. The defendants moved to dismiss and for an award of attorney fees. The district court granted the motions. The district court held that: (1) neither the Fourteenth Amendment nor the Fourth Amendment's excessive force prohibition applied to the sentenced offender; (2) the sheriff and supervisory officials were entitled to qualified immunity; (3) allegations did not state an Eighth Amendment claim based on jail overcrowding; (4) the officers' alleged conduct in tasering the prisoner did not violate the Eighth Amendment; (5) allegations did not state a § 1983 claim for an unconstitutional strip search; (6) placement of the prisoner alone in closet-sized cell for eight hours after the alleged incident did not amount to unconstitutional confinement; and (7) the officers' alleged conduct in searching the prisoner's cell did not amount to retaliation for prisoner's prior lawsuit. The court noted that the prisoner admitted that he repeatedly refused the officers' verbal commands and fled his cell, he was repeatedly warned that he would be shocked if he did not comply with the officers' commands, and he was shocked by a taser only once before he fled his cell and then two to three times after he did so. (Houston County Jail, Alabama)

U.S. District Court
EXCESSIVE FORCE

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. District Court
EXCESSIVE FORCE

Bridgewater v. *Taylor*, 832 F.Supp.2d 337 (S.D.N.Y. 2011). A New York state prisoner brought a § 1983 action against prison officials and correctional officers, alleging excessive force, failure to protect, and failure to supervise and properly train in violation of the Eighth Amendment. After the prisoner's motion for summary judgment against an officer was preliminarily denied, the prisoner moved for reconsideration and the former prison superintendent and another officer moved to dismiss. The district court denied the motion for reconsideration and granted the motion to dismiss. The court held that the prisoner did not properly serve the complaint on the officer or superintendent and that the prisoner failed to state a failure to protect claim against the officer. The court held that summary judgment was precluded by genuine issues of material fact as to whether the correctional officer acted with malice or wantonness toward the prisoner necessary to constitute an Eighth Amendment violation, or whether he was applying force in a good–faith effort to maintain discipline. The court also found that summary judgment was precluded by genuine issues of material fact as to whether the correctional officer's use of physical force against the prisoner was more than de minimus. (Sing Sing Correctional Facility New York)

U.S. Appeals Court
EXCESSIVE FORCE

Hicks v. *Norwood*, 640 F.3d 839 (8th Cir. 2011). An arrestee brought a § 1983 action against a detention center captain alleging use of excessive force, and against a lieutenant and sergeant for failing to prevent the use of excessive force. The district court dismissed the action and the arrestee appealed. The appeals court affirmed. The court held that the detention center captain's decision to use force, and the amount of force used in subduing the arrestee during the booking process were objectively reasonable under the circumstances, and he thus did not violate the arrestee's Fourth Amendment rights. The court noted that the arrestee refused to comply with directions, loudly abused correctional officers, and aggressively leapt toward the captain. (Ouachita County Jail, Arkansas)

U.S. Appeals Court
EXCESSIVE FORCE

Hunter v. *County of Sacramento*, 652 F.3d 1225 (9th Cir. 2011). Former jail inmates brought a § 1983 action against a county, alleging that they were subjected to excessive force while in custody at the county jail. After a jury verdict in favor of the county, the district court denied the inmates' motion for a new trial and the inmates appealed. The appeals court reversed and remanded, ordering a new trial due to the district court's refusal to submit the inmates' proposed instructions to the jury. The court noted that the inmates' proposed instructions explicitly stating that the county's use of an unconstitutional practice or custom could be proven through evidence that incidents of excessive force were not investigated and their perpetrators were not disciplined. (Sacramento County Main Jail, California)

U.S. District Court
EXCESSIVE FORCE

Jordan v. *Fischer*, 773 F.Supp.2d 255 (N.D.N.Y. 2011). A state inmate brought a pro se § 1983 action alleging that corrections officials violated his Eighth Amendment rights through the use of excessive force, failure to intervene, and deliberate indifference to his medical needs. The parties cross-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 as to whether the inmate was subjected to excessive force by correction officers, given the existence of some medical evidence supporting the inmate's claims of an assault, as well as another inmate's statement that he saw the plaintiff inmate being pulled out of line, which was inconsistent with the correction officer's statements. The court found that the alleged "sexual slurs" made to the inmate by a prison nurse did not rise to the level of an Eighth Amendment violation even if the inmate felt insulted or harassed, where the inmate alleged that the nurse, while inspecting the inmate's injuries, asked him how much the inmate could bench press and told him he had nice muscles. (Great Meadow Correctional Facility, New York)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

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
EXCESSIVE FORCE

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. (Robert N. Davoren Center, Rikers Island, New York City)

U.S. District Court
EXCESSIVE FORCE
CHEMICAL AGENT

Thorpe v. *Little*, 804 F.Supp.2d 174 (D.Del. 2011.) A pretrial detainee, proceeding in forma pauperis, brought a § 1983 action against a prison, prison officials, and prison medical personnel, alleging violations of the Americans with Disabilities Act (ADA), Civil Rights Act, Civil Rights of Institutionalized Persons Act (CRIPA), and supplemental state law claims. The detainee moved to show cause and for transfer to a different institution. The district court denied the motions and dismissed the claims in part. The court held that the prison did not violate the pretrial detainee's First Amendment right of access to courts by only allowing the detainee to receive legal services from the prison law library through written requests, where the detainee was provided access to courts if he merely submitted a written request, and the detainee was represented by a public defender. The court held that the detainee's complaint, alleging that a corrections officer sprayed him in the face with pepper spray when he did not comply with the officer's order, stated a claim for excessive force, as would violate the Fourteenth Amendment Due Process Clause. The detainee was maced when he would not allow correctional officers to leave his food tray on the cell window flap. The macing caused vision loss and facial irritation. Following the incident, the detainee was taken to isolation where he remained for the next fifteen days. He received a disciplinary write-up for this incident and was found guilty. (James T. Vaughn Correctional Center, Smyrna, Delaware)

2012

U.S. Appeals Court
EXCESSIVE FORCE

Beaulieu v. *Ludeman*, 690 F.3d 1017 (8th Cir. 2012). Patients who were civilly committed to the Minnesota Sex Offender Program (MSOP) brought a § 1983 action against Minnesota Department of Human Services (DHS) officials and Minnesota Department of Corrections (DOC) officials, alleging that various MSOP policies and practices relating to the patients' conditions of confinement were unconstitutional. The district court granted summary judgment in favor of the defendants and the patients appealed. The appeals court affirmed. The appeals court held that: (1) the MSOP policy of performing unclothed body searches of patients was not unreasonable; (2) the policy of placing full restraints on patients during transport was not unreasonable; (3) officials were not liable for using excessive force in handcuffing patients; (4) the officials' seizure of televisions from the patients' rooms was not unreasonable; (5) the MSOP telephone-use policy did not violate the First Amendment; and (6) there was no evidence that officials were deliberately indifferent to the patients' health or safety. (Minnesota Sex Offender Program)

U.S. Appeals Court
EXCESSIVE FORCE

Bernini v. *City of St. Paul*, 665 F.3d 997 (8th Cir. 2012). Thirty-two arrestees filed a § 1983 action against a city and police officers in their individual capacities for allegedly violating the First and Fourth Amendments by detentions and arrests, on the first day of the Republican National Convention. The charges were ultimately dismissed. The district court granted the city and the officers summary judgment and the arrestees appealed. The appeals court affirmed. The court held that police officers' brief detention of seven members of a group at a park during the Republican National Convention comported with Fourth Amendment reasonableness requirements for investigative detention, since the group members were detained only while the officers sought to determine which members were involved in a prior confrontation with officers at an intersection.

The court found that the officers had arguable probable cause for the mass arrest of 160 people in the park, based on an objectively reasonable mistaken belief that all 160 people were part of a unit of 100 protestors that officers had probable cause to believe had committed third-degree riot and unlawful assembly in violation of Minnesota law. According to the court, the officers' deployment of non-lethal munitions, as authorized by the lead sergeant

commanding mobile field force operations during the confrontation with a crowd at the Republican National Convention, was not excessive force, under the Fourth Amendment, since officers reasonably believed that the noncompliant crowd intended to penetrate a police line blocking access to the downtown. (City of St. Paul, Minnesota)

U.S. District Court
EXCESSIVE FORCE
PEPPER SPRAY

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. Appeals Court
DEADLY FORCE

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
RESTRAINTS

Gruenberg v. *Gempeler*, 697 F.3d 573 (7th Cir. 2012). A state prisoner, proceeding pro se, filed a § 1983 action against various prison officials, guards, and medical staff, alleging violations of the Eighth Amendment. The district court granted summary judgment for the defendants. The prisoner appealed. The appeals court affirmed. The appeals court held that: (1) the prisoner did not have a clearly established right to not be continually restrained without clothing or cover in a cell for five days following his ingestion of a handcuff key, the master key for belt restraints, and the key used for opening cell doors, where restraint had been imposed to keep the prisoner from re-ingesting those keys; (2) the continuous restraint of the prisoner without clothing or cover in a cell for five days did not violate his Fourteenth Amendment due process rights; (3) the prisoner's Fourth Amendment and Fourteenth Amendment substantive due process claims were barred; and (4) the district court did not abuse its discretion by ruling that the prisoner was competent to advance his case and was not entitled to appointed counsel. (Waupun Correction Institution, Wisconsin)

U.S. District Court
EXCESSIVE FORCE

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
BRUTALITY
EXCESSIVE FORCE

Morrison v. *Hartman*, 898 F.Supp.2d 577 (W.D.N.Y. 2012). A state prisoner brought a § 1983 action against several state corrections officers, alleging use of excessive force and sexual and verbal abuse in violation of his Eighth Amendment rights. 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, and to what extent, the corrections officers' alleged beating of the prisoner caused injuries or exacerbated pre–existing injuries, and whether the officers acted in a good–faith effort to maintain or restore discipline, or rather with malicious

and sadistic intent to cause harm. The court found that the prisoner's allegations that a corrections officer pinched his left nipple and forced him to touch his own buttocks and then his mouth were not severe enough to be considered objectively and sufficiently serious to support the prisoner's § 1983 claim of sexual abuse in violation of his Eighth Amendment rights. According to the court, the prisoner's allegations of verbal abuse by a corrections officer during an incident in which officers allegedly beat the prisoner did not state an independent § 1983 claim for violation of his Eighth Amendment rights, but those allegations were potentially admissible in support of the prisoner's excessive force claim against the officer in relation to the beating. (Attica Correctional Facility, New York)

U.S. Appeals Court
CELL EXTRACTION
PEPPER SPRAY
RESTRAINING CHAIR

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 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 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. District Court
EXCESSIVE FORCE
RESTRAINING CHAIR

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. 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. (Houston County Detention Center, Georgia)

U.S. District Court
EXCESSIVE FORCE
FAILURE TO PROTECT

Taylor v. *Hale*, 909 F.Supp.2d 1320 (N.D.Ala. 2012). A pretrial detainee brought § 1983 and Bivens actions against county deputy sheriffs and deputy United States marshals alleging they used excessive force against him. The defendants moved for summary judgment. The district court granted the motion and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether county deputy sheriffs used more force than was necessary to subdue the detainee and place him in a holding cell. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether one county deputy sheriff, and a United States Marshal, failed to protect the detainee from an alleged use of excessive force by two other deputy sheriffs. According to the court, a deputy sheriff's and a United States Marshal's alleged conduct of failing to intervene when she witnessed two other deputy sheriffs use excessive force against the detainee violated the clearly established duty of officers to protect inmates in their care from assault by fellow officers, and thus, they were not entitled to qualified immunity on the detainee's § 1983 claim against her, alleging deliberate indifference to a substantial danger to the

detainee in violation of his Fourteenth Amendment rights. During the booking process, a deputy allegedly forced the detainee to the floor on his stomach with a "combination of repetitious blows to the temple, jaw, neck, and ribs" and he was then handcuffed dragged to the holding cell where the beating continued. (Jefferson County Jail, Birmingham, Alabama)

2013

U.S. Appeals Court
RESTRAINING CHAIR
EXCESSIVE FORCE

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. Appeals Court
EXCESSIVE FORCE
FAILURE TO PROTECT

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
EXCESSIVE FORCE
PEPPER SPRAY

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
BRUTALITY
EXCESSIVE FORCE
PEPPER SPRAY

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 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
EXCESSIVE FORCE

Clay v. *Woodbury County, Iowa*, 982 F.Supp.2d 904 (N.D.Iowa 2013). A female arrestee brought a § 1983 action against a city, an arresting officer, county, county sheriff, and jail officers, alleging, among other things, that jail officers "strip searched" her without reasonable suspicion and in unconstitutional manner, and did so in retaliation for her vociferous complaints about her detention and the search of her purse and cell phone. The defendants moved for summary judgment, and the arrestee moved to exclude expert testimony. The district court held that the expert's reference to an incorrect standard for the excessive force claim did not warrant excluding his opinions in their entirety, although portions of the expert's report were inadmissible.

The court found that the incident in which male and female county jail officers forcibly removed the female arrestee's under-wire bra and changed her into jail attire was not a "strip search" within the meaning of the Iowa law which defined a "strip search" as "having a person remove or arrange some or all of the person's clothing so as to permit an inspection of the genitalia, buttocks, female breasts or undergarments of that person or a physical probe by any body cavity," where there was no indication that the officers inspected the arrestee's private parts or physically probed any of her body cavities. The court also found that the arrestee whose clothing was forcibly removed in the presence of male and female county jail officers in a holding cell after the arrestee refused to answer questions during the booking process and to remove her clothing herself, was not subjected to a "strip search" requiring reasonable suspicion under the Fourth Amendment. According to the court, the officers did not violate the arrestee's privacy rights under the Fourth Amendment where the officers' reason for removing the arrestee's bra-- institutional safety-- was substantially justified, and the scope of the intrusion was relatively small. The court also found that the officers were entitled to qualified immunity from the female arrestee's § 1983 unlawful search claim, where the officers neither knew, nor reasonably should have known, that their actions would violate the arrestee's privacy rights. The court held that summary judgment was precluded by genuine issues of material fact as to whether the amount of force used by female county jail officers during the booking process to forcibly remove the female arrestee's under-wire bra and change her into jail attire after the arrestee refused to answer questions, became disruptive, and refused to remove her clothing herself, was reasonable. The officers allegedly threw the arrestee onto the cell bunk, causing her to bang her head against the bunk or cell wall. The court found that male county jail officers did not use excessive force, within the meaning of the Fourth Amendment, in restraining the female arrestee in a holding cell after the female officers had allegedly thrown the arrestee onto a cell bunk, causing her to bang her head against bunk or cell wall, in an effort to forcibly remove the arrestee's clothing and to change her into jail attire. (Woodbury County Jail, Iowa)

U.S. District Court
EXCESSIVE FORCE

Davis v. *Pickell*, 939 F.Supp.2d 771 (E.D.Mich. 2013). A pretrial detainee brought a § 1983 action against a sheriff, undersheriff, and deputies, alleging various claims, including excessive force. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The detainee had been booked into a holding cell at the jail and then he was removed from the multi-prisoner cell and taken to a single-inmate "safety cell." He alleges that during the transfer, deputy sheriffs subjected him to excessive force in the course of removing his jacket and shoes. The district court found that "[T]he videotape provides substance to those allegations." The court held that summary judgment was precluded by genuine issues of material fact as to whether the deputies' use of force against the detainee shocked the conscience, whether the deputies maliciously used force, and whether the use of force on the detainee was outrageous conduct. (Genesee County Jail, Michigan)

U.S. District Court
DISTURBANCE
DOGS
EXCESSIVE FORCE
PRETRIAL
DETAINEE

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. Appeals Court
EXCESSIVE FORCE
PEPPER SPRAY

Furnace v. *Sullivan*, 705 F.3d 1021 (9th Cir. 2013). A state prison inmate brought a § 1983 action against correctional officers, alleging they used excessive force in violation of the Eighth Amendment by spraying him with an excessive quantity of pepper spray, and that they violated his rights to equal protection under the Fourteenth Amendment rights when they denied him a vegetarian breakfast as required by his religion. The officers moved for summary judgment. The district court granted the motions, and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether the inmate posed a threat to correctional officers, and as to whether the officers' discharge of pepper spray on the inmate was required to gain his compliance. The court found that correctional officers who refused to provide the inmate with a vegetarian meal required by his religion did not treat the inmate any differently than others who were similarly situated, and thus the officers did not violate the inmate's Fourteenth Amendment right to equal protection. The court noted that although other prisoners were provided with vegetarian meals for religious reasons, they were not similarly situated to the inmate because the officers did not know the inmate had also been approved for a vegetarian meal. (Salinas Valley State Prison, California)

U.S. District Court
EXCESSIVE FORCE

Gwathney v. *Warren*, 930 F.Supp.2d 1313 (M.D.Ala. 2013). An inmate filed a *Bivens* suit against a prison officer and others for use of excessive force during a pat-down search, alleging violation of the Eighth Amendment prohibition against cruel and unusual punishment, and other claims. All claims except the excessive use of force claim were dismissed. The officer filed a renewed motion to dismiss on the grounds of qualified immunity, or in the alternative for summary judgment. The district court granted summary judgment in favor of the officer. The court held that evidence did not create a fact issue as to whether the prison official maliciously or sadistically inflicted pain on the inmate while conducting a pat-down search, as required for the inmate to survive summary judgment on the defense of qualified immunity. According to the court, when the officer entered the inmate's cubicle, he observed the inmate rise from his bunk, turn, and place his hand down front of his pants, which typically signaled that an inmate was trying to conceal an object. The inmate was facing away from the officer when the officer began the pat-down and thus, the inmate could not observe any expression or movement suggesting that the officer had any malicious motive in touching the inmate's shoulders. Even after the inmate fell to his knees from post-surgery shoulder pain, the officer's statement "[o]h, you still can't raise your arm" did not indicate malice for the sole purpose of inflicting pain, but rather supported an inference that the officer still did not believe the inmate's assertion about shoulder surgery and that he could not raise his arm. (Federal Prison Camp, Montgomery, Alabama)

U.S. District Court
MEDICAL CARE
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
EXCESSIVE 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. Appeals Court
EXCESSIVE FORCE

Navejar v. *Iyiola*, 718 F.3d 692 (7th Cir. 2013). A prisoner brought a § 1983 action against prison guards claiming that the guards used excessive force to subdue him after he punched a prison guard. The district court granted summary judgment for the guards. The prisoner appealed. The appeals court reversed and remanded. The appeals court held that the trial court abused its discretion in denying the prisoner's request for the appointment of counsel under the federal in forma pauperis statute in the prisoner's § 1983 action, where the court focused on the prisoner's competency to try his case instead of whether the prisoner appeared competent to litigate his own claims. The appeals court found that the trial court failed to address the prisoner's personal abilities and allegations that he had limited education, mental illness, language difficulties, and lacked access to other resources, and the court applied the appellate review standard of whether the recruitment of counsel would affect the outcome of the case. (Stateville Correctional Center, Illinois)

U.S. District Court
BRUTALITY
FAILURE TO
PROTECT
THREATENING

Randle v. *Alexander*, 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. According to the court, the alleged forced fight between the inmate and a fellow inmate, orchestrated, condoned, and covered up by correctional officers was an objectively serious violation of the inmate's Eighth Amendment right to reasonably safe conditions of confinement, and the intent evinced by such activity was, at the very least, one of indifference to inmate safety, supporting the inmate's § 1983 Eighth Amendment conditions of confinement claim against the officers.

The court held that the African-American state inmate's allegations in his complaint that a correctional officer arranged inmates in his company so that white inmates were close to officers' posts, whereas black inmates were placed further away, that white inmates were given superior jobs, that the officer's efforts in forcing a fight between the inmate and a fellow inmate were done purposefully for his amusement because both inmates were black, and that the officer's treatment of the inmate and other black inmates was motivated by his intent to discriminate on the basis of race and malicious intent to injure inmates, stated a § 1983 equal protection claim against the officer. The court ruled that the correctional officers were not entitled to qualified immunity from the inmate's § 1983 Eighth and Fourteenth Amendment claims because inmates had a clearly established right to remain incarcerated in reasonably safe conditions, and it was objectively unreasonable to threaten inmates until they agreed to fight each other in front of prison officials.

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)

U.S. District Court
EXCESSIVE FORCE
CHEMICAL AGENTS

Reid v. *Cumberland County*, 34 F.Supp.3d 396 (D.N.J. 2013). An inmate filed a § 1983 action against a county, its department of corrections, warden, and correctional officers alleging that officers used excessive force against him. The inmate moved to compel discovery. The district court granted the motion. The court held that: (1) information regarding past instances of excessive force by correctional officers was relevant to the inmate's supervisory liability claims; (2) officers' personnel files and internal affairs files were relevant; (3) officers' personnel files and internal affairs files were not protected by the official information privilege; (4) officers' personnel files and internal affairs files were not protected by the deliberative process privilege; (5) internal affairs files concerning the incident in question were subject to discovery; (6) the county failed to adequately demonstrate that the inmate's request for prior instances of excessive force and accompanying documentation was sufficiently burdensome to preclude discovery; and (7) complaints about officers' excessive force, statistics of excessive force, the county's use of force reports, and related internal affairs files were not protected by the official information privilege or the deliberative process privilege. The inmate alleged that officers entered his cell and, without legal justification, willfully, maliciously, and intentionally punched and kicked him until he was curled up on the ground, and that mace was sprayed in his face. The inmate claimed that one officer "not only approved of the beating but also took the affirmative step of opening the cell door…" so two other officers could attack him. The inmate asserted that, as a result of the beating, he was treated for injuries that included broken ribs, a fracture of his left orbital bone, and loss of sensation and nerve damage in his lips and cheek area. (Cumberland County Department of Corrections, New Jersey)

U.S. District Court
EXCESSIVE FORCE
FAILURE TO PROTECT

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. 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
EXCESSIVE FORCE
THREATENING

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
EXCESSIVE FORCE

Stone v. *Caswell*, 963 F.Supp.2d 32 (D.Mass. 2013). A state prisoner brought a § 1983 action against a correctional officer, a sergeant, a captain, and the Massachusetts Department of Correction (DOC) officials, alleging that the defendants violated his state and federal civil rights while he was in their custody. The officials moved to dismiss. The district court granted the motion in part and denied the motion in part. The court held that the prisoner stated a claim against DOC officials, a sergeant, and a captain for supervisor liability under § 1983. According to the court, even though they did not participate in the underlying constitutional violation—a correctional officer's alleged use of excessive force against the prisoner-- the prisoner alleged that they caused his constitutional rights to be violated by inadequately training and supervising the correctional officer. The prisoner was being held in a cell at a local court when a DOC transportation officer asked about a pair of sneakers located in the prisoner's cell. The prisoner responded that the sneakers did not belong to him. The officer then entered the prisoner's cell, pointed his finger in prisoner's face, grabbed him, forced him into a sitting position and, later, forced him to the ground of the lock-up corridor. (Massachusetts Department of Correction)

U.S. Appeals Court
BRUTALITY
EXCESSIVE FORCE

U.S. v. *McQueen*, 727 F.3d 1144 (11th Cir. 2013). After a state prison sergeant was convicted of conspiring to deprive several inmates of their right to be free from cruel and unusual punishment, and for obstruction of justice, and a state prison corrections officer was convicted of obstruction of justice, the district court denied the sergeant's motion for a new trial, and denied the corrections officer's motion for judgment of acquittal or in the alternative, for a new trial, and they appealed. The court affirmed in part, vacated in part, and remanded. The court held that evidence was sufficient to establish an illegal agreement among the sergeant and others to violate the civil rights of numerous inmates, and that any error by the government in improperly bolstering the credibility of a witness did not warrant reversal. The court held that the prison officers' sentences were substantively unreasonable because the district court varied downward from the bottom of the Sentencing Guideline range by more than 90%. The court noted that the sergeant had brutalized more than five young prisoners and then lied about it, and the corrections officer intentionally sought to conceal those serious crimes. Evidence showed that a law enforcement officer, in the sergeant's presence, beat one inmate around the hands with a broomstick when the inmate refused to offer the name of another prisoner who had engaged in a fight, and despite the sergeant's obligation to intervene the sergeant did nothing. The evidence also revealed that the sergeant, in the presence of other officers, assaulted another inmate who had been involved in a prison fight, beating him with a broken broomstick and throwing him to the ground, when the prisoner refused to disclose the name of the inmate with whom he had been fighting. (South Florida Reception Center)

U.S. District Court
EXCESSIVE FORCE
FAILURE TO PROTECT
RESTRAINTS

Valade v. *City of New York*, 949 F.Supp.2d 519 (S.D.N.Y. 2013). Arrestees brought § 1983 and state law actions against police officers and a city. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment on the Fourth Amendment excessive force claim was precluded by genuine issues of material fact as to whether a police officer used excessive force against the arrestee by handcuffing her too tightly and shoving her into a police car. The court also found a genuine issue of material fact as to whether the arrestee was sexually assaulted while she was in police custody following her arrest. (New York City Police Department, Central Booking)

U.S. Appeals Court
EXCESSIVE FORCE

Verser v. *Barfield*, 741 F.3d 734 (7th Cir. 2013). An inmate brought a pro se § 1983 action against prison security officers who allegedly held him down and punched him in the stomach during a cell change, alleging that the officers violated his Eighth Amendment right to be free from excessive use of force. Following a jury trial in the district court, a verdict was returned in favor of the officers. The inmate appealed denial of his motion for a new trial. The appeals court reversed and remanded. The appeals court held that the total exclusion of the inmate from the courtroom at the time the verdict was read prevented the inmate from exercising his right to poll the jury. According to the court, the error arising from the district court's total exclusion of the inmate from the courtroom was not harmless, and thus a new trial was warranted. The court noted that a jury poll definitely or even likely would have revealed that the verdict in favor of the officers was not unanimous. (Western Illinois Correctional Center)

U.S. Appeals Court
EXCESSIVE FORCE

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)

2014

U.S. Appeals Court
PEPPER SPRAY

Burns v. *Eaton*, 752 F.3d 1136 (8th Cir. 2014). A state prisoner brought a § 1983 action against two prison officers, claiming his Eighth Amendment rights were violated when the first officer pepper-sprayed him, and the second officer turned off the water and prevented him from rinsing off the pepper-spray. The district court granted summary judgment in favor of the prison officers. The prisoner appealed. The appeals court affirmed. The court held that one prison officer did not act maliciously in an effort to cause harm, so as to support the prisoner's Eighth Amendment excessive

force claim under § 1983, when the officer deployed pepper spray after the prisoner refused orders to leave a locked shower cell. The court noted that the prison officer warned the prisoner that he would be pepper-sprayed if he did not comply with the officer's order, the prisoner then threw an object or spit at the officer three times, and, after each aggressive act of defiance, the officer deployed a small amount of pepper spray. (Maximum Security Unit, Arkansas Department of Corrections)

U.S. District Court
PEPPER SPRAY
EXCESSIVE FORCE

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. (California Department of Corrections and Rehabilitation)

U.S. District Court
EXCESSIVE FORCE
RETALIATION

Coley v. *Harris*, 30 F.Supp.3d 428 (D.Md. 2014). An inmate brought a pro se action under § 1983 against correctional facility officers in their individual capacities for common law battery and violations of his Fourth and Eighth Amendment rights after he was allegedly beaten following a disagreement with one of the officers. The officers moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a strip search of the inmate was reasonable or motivated by punitive intent. (Eastern Correctional Institution, Maryland)

U.S. Appeals Court
EXCESSIVE FORCE
RESTRAINTS

Cordell v. *McKinney*, 759 F.3d 573 (6th Cir. 2014). A jail inmate brought a § 1983 excessive force claim against a jail's deputy sheriff, alleging that while the inmate was awaiting transfer to a state prison following his conviction for involuntary manslaughter, the deputy sheriff slammed the inmate, who was handcuffed and restrained, headfirst into a concrete wall. The district court granted summary judgment and qualified immunity to the deputy sheriff. The inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by fact issues as to the subjective and objective components of the excessive force claim, and that the deputy sheriff's alleged conduct violated clearly established law. (Greene County Jail, Ohio)

U.S. District Court
EXCESSIVE FORCE

Crayton v. *Graffeo*, 10 F.Supp.3d 888 (N.D. Ill. 2014). A pretrial detainee in a county department of corrections jail brought an action against three correctional officers, alleging that they beat him in two separate incidents, and asserting an excessive-force claim under § 1983. The officers filed a motion for summary judgment. The district court granted the motion in part and denied in part. The court held that the detainee failed to exhaust his administrative remedies before filing his § 1983 action, where the detainee neither appealed the notice that his grievance was being forwarded to the jail's Office of Professional Review (OPR), nor did he await the results of OPR's investigation. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
EXCESSIVE FORCE
STINGER GRENADE

Edwards v. *Byrd*, 750 F.3d 728 (8th Cir. 2014). Pretrial detainees in a county jail brought a § 1983 action against the county, county sheriff, and jail guards, alleging use of excessive force, failure to protect, and other constitutional violations. The district court denied, in part, the sheriff's and guards' motion for summary judgment based on qualified immunity. The sheriff and a guard appealed. The appeals court affirmed in part and reversed in part. The court found that the guards were not entitled to qualified immunity for their alleged conduct in employing a flash-bang grenade in pretrial detainees' cell, kicking the detainees, and shooting them with bean-bag guns. According to the court, immediately before the guards entered the cell, the detainees were allegedly submissive, lying face-down, which the guards could allegedly see through the cell door, and the detainees allegedly did not resist or otherwise act aggressively, and, at the time of the incident, it was clearly established that such conduct would violate due process. The court held that the sheriff could not be liable where it was undisputed that the sheriff was not present during the alleged incident. (Falkner County Detention Center, Arkansas)

U.S. Appeals Court
EXCESSIVE FORCE
STUN GUN

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 Detention Center, Denver, Colorado)

U.S. District Court
EXCESSIVE FORCE

Hill v. *Hoisington*, 28 F.Supp.3d 725 (E.D.Mich. 2014). A detainee filed an action alleging that a deputy sheriff used excessive force and committed battery against him while he was in custody, after he was acquitted of criminal charges against him. After a jury verdict in the detainee's favor, the detainee moved for entry of judgment on the jury verdict, for costs, and for judgment as matter of law. The district court denied the motion as moot, where the award of

exemplary damages was justifiable and the detention of the detainee after he was acquitted was unlawful, where the jury found that the deputy's conduct was malicious, or so willful and wanton as to demonstrate reckless disregard of the detainee's rights. The court noted that the proper post-acquittal procedure requires immediate release of a detainee following acquittal, allowing for any possible out-processing to occur without continued or required detention. (Oakland County Jail, Michigan)

U.S. District Court
EXCESSIVE FORCE

Holton v. *Conrad*, 24 F.Supp.3d 624(E.D.Ky. 2014). An arrestee brought a § 1983 action against a constable, a county jail, and a county jailer, asserting claims arising out of his arrest and treatment at the jail. The jail and jailer moved for judgment on the pleadings on the arrestee's state law claim. The district court denied the motion. According to the court, the arrestee's claim requesting records under Kentucky law did not form part of same case or controversy as his federal claim in § 1983, where the arrestee's federal claim was based on the constable's actions in allegedly beating him at time of arrest and at the county jail. (Estill County Detention Center, Kentucky)

U.S. District Court
EXCESSIVE FORCE
PEPPER SPRAY

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
EXCESSIVE FORCE

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. District Court
EXCESSIVE FORCE
STUN GUN

Johnson v. *Milliner*, 65 F.Supp.3d 1295 (S.D.Ala. 2014). A county jail detainee brought an action against a jail officer alleging use of excessive force and state law claims for assault and battery. The officer 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 force applied against the detainee by the jail officer, which involved the use of a stun gun, was applied in a good faith effort to preserve discipline and security or was applied maliciously and sadistically to cause harm. (Mobile Metro Jail, Alabama)

U.S. Appeals Court
EXCESSIVE FORCE
CELL EXTRACTION
FAILURE TO
PROTECT

Kitchen v. *Dallas County, Tex.*, 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)

U.S. Appeals Court
EXCESSIVE FORCE
STUN GUN

Maus v. *Baker*, 747 F.3d 926 (7th Cir. 2014). A pretrial detainee filed a § 1983 action against personnel at a county jail, alleging that they had used excessive force against him. The detainee alleged that the defendants used excessive force in response to him covering the lens of the video camera in his jail cell. In the first incident, the detained alleged that his arms were twisted, he was pinned against the wall, and he was choked. In the second incident, the detainee alleged that a taser was used to gain his compliance in transferring him to a separate cell. Following a jury trial, the district court entered judgment for the defendants and denied the detainee's motions for new trial. The detainee appealed. The appeals court reversed and remanded, finding that the court's errors in failing to conceal the detainee's shackles from jury, and in requiring the detainee to wear prison clothing while the defendants were allowed to wear uniforms were not harmless. According to the court there was no indication that concealment of the restraints would have been infeasible, and visible shackling of the detainee had a prejudicial effect on the jury. The court noted that there would have been no reason for the jury to know that the plaintiff was a prisoner, and being told that the plaintiff was a prisoner and the defendants were guards made a different impression than seeing the plaintiff in a prison uniform and the defendants in guard uniforms. (Langlade County Jail, Wisconsin)

U.S. District Court
EXCESSIVE FORCE

Pettit v. *Smith*, 45 F.Supp.3d 1099 (D.Ariz. 2014). A state prisoner filed a motion for spoliation sanctions against the Arizona Department of Corrections, relating to the loss or destruction of a video recording of a use of force incident, the personnel report for the incident, investigative reports and attachments, and a post-incident photograph of the prisoner's hand. The prisoner asserted an excessive claim arising from an incident when the prisoner was escorted from a shower to a prison cell. The district court granted the motion in part and denied in part. The court held that the department had a common-law duty to preserve evidence and reasonably should have anticipated the prisoner's lawsuit. The court found that appropriate spoliation sanctions included an "adverse-inference" instruction. (Arizona State Prison Complex—Eyman, Arizona Department of Corrections)

U.S. District Court
EXCESSIVE FORCE

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. (Anna M. Kross Center, Rikers Island, New York City Department of Correction)

U.S. Appeals Court
CHEMICAL AGENTS

Roberson v. *Torres*, 770 F.3d 398 (6th Cir. 2014). A state prisoner brought an action against a state corrections officer, alleging that the officer sprayed him with a chemical agent while he was sleeping, in violation of the Eighth Amendment. The district court denied the officer's motion for summary judgment on the basis of qualified immunity. The officer appealed. The appeals court affirmed. The court held that the corrections officer was not entitled to qualified immunity for his alleged conduct in spraying a sleeping state prisoner with a chemical agent, without prior warning, when the prisoner was covered from head to toe by his blanket. According to the court, the officer's alleged conduct was unreasonable under the alleged circumstances, and the law was clearly established that the use of a chemical agent in an initial attempt to wake a sleeping prisoner, when an officer had no reason to believe that a prisoner was awake and disobeying orders, violated the Eighth Amendment. (Michigan Department of Corrections)

U.S. District Court
EXCESSIVE FORCE

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 County, California)

U.S. District Court
EXCESSIVE FORCE
STUN GUN
CELL EXTRACTION

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
EXCESSIVE FORCE

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
EXCESSIVE FORCE
FAILURE TO DIRECT

Shepherd v. *Powers*, 55 F.Supp.3d 508 (S.D.N.Y. 2014). An inmate at a county jail brought a § 1983 action against a first correction officer, a second correction officer, and a county, asserting excessive force in violation of the Eighth Amendment, malicious prosecution, and denying or interfering with the inmate's religious rights. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by a genuine dispute of material fact as to whether the force a correction officer at the county jail used in grabbing and squeezing the inmate's testicles was applied maliciously or sadistically to cause harm, in violation of the Eighth Amendment. The court also found fact issues as to whether the correction officer's conduct, including throwing the inmate to the floor, was objectively malicious and sadistic. According to the court, fact issues existed as to whether the county had a custom and practice of using excessive force or failed to adequately train or supervise correction officers in the use of force, precluding summary judgment on the inmate's § 1983 claim against the county. (Westchester County Jail, New York)

U.S. Appeals Court
EXCESSIVE FORCE
STUN GUN

Shreve v. *Franklin County, Ohio*, 743 F.3d 126 (6th Cir. 2014). A detainee brought an action against a county, its sheriff, and sheriff's deputies, alleging that the deputies used excessive force against him when they subdued him with a stun gun while he was in custody. The district court granted the defendants' motion for summary judgment. The detainee appealed. The appeals court affirmed. The appeals court held that the sheriff's deputies did not act with deliberate indifference towards the detainee's federally protected rights when they subdued the detainee with a stun gun while he was in custody, and therefore the deputies did not use excessive force against the detainee under the Fourteenth Amendment. According to the court: (1) the deputies tried to handcuff the detainee several times before using the stun gun, showing that they sought to minimize the stun gun's use; (2) the deputies also warned the detainee that the stun gun would hurt and that he did not want to have the gun used on him, which showed that they were trying to avoid unnecessary harm; and (3) the deputies faced an ongoing danger with the detainee thrashing about on the cell floor with a loose handcuff, as the deputies had been trained never to lose control of an inmate with a loose handcuff because it could be used as a weapon. The court held that the incident, in which the detainee lunged towards a sheriff's deputy with his hands raised after a hospital examination, was a rapidly evolving, fluid, and dangerous predicament which precluded the luxury of a calm and reflective pre-response deliberation, and therefore the detainee was required to show that the deputy's actions involved force employed maliciously and sadistically for the very purpose of causing harm, rather than in a good faith effort to maintain or restore discipline, in order to establish the use of excessive force under the Fourteenth Amendment. The court noted that the detainee lunged toward the deputy after asking the deputy "Do you want a piece of me?" and the deputy explained that he had "no way of retreating" because of the cramped quarters and the detainee's position over him while standing on the hospital bed. (Franklin Co. Corr. Center II, Ohio)

U.S. District Court
EXCESSIVE FORCE

Sloane v. *Borawski*, 64 F.Supp.3d 473 (W.D.N.Y. 2014). A state inmate brought a § 1983 action alleging that correction officers used excessive force against him, denied him due process in connection with a disciplinary hearing, and denied him adequate medical treatment after the alleged excessive use of force incident. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) exclusion of proposed witnesses at a prison disciplinary hearing did not violate the inmate's procedural due process rights where the testimony of three witnesses, who were prison employees, would have been irrelevant to the issues presented in the hearing, and another potential witness, a fellow inmate, refused to testify on the grounds that he did not know anything; (2) the hearing officer was not so partial as to violate the inmate's procedural due process rights; (3) the inmate failed to establish that retaliation was the motivating factor behind filing of an allegedly false misbehavior report; (4)

summary judgment was precluded by a fact issue on the Eighth Amendment excessive force claim as to whether correction officers' use of force against the inmate was unrelated to any effort to maintain order or discipline; but, (5) the inmate's injuries, including a two-and-a-half-inch laceration to the top of his head, a laceration to his left eyebrow, and a chin abrasion, did not rise to the level of a serious medical condition warranting Eighth Amendment protection. (Attica Correctional Facility, New York)

U.S. Appeals Court
STUN GUN
EXCESSIVE FORCE

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. District Court
EXCESSIVE FORCE
RESTRAINTS

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 court held that it was objectively reasonable for the prisoner, to conclude that no administrative mechanism existed through which to obtain remedies for the alleged attack, and thus the prisoner was not required under the Prison Litigation Reform Act (PLRA) to exhaust administrative remedies before bringing his claim. The court noted that the jail's grievance policy stated that "allegation of assault…by either staff or inmates" was non-grievable, the policy stated that an inmate complaint "is grievable unless it constitutes assault, harassment or criminal misconduct," the prisoner alleged that officials committed criminal misconduct in acting with deliberate indifference toward him, and although the prisoner did not complain of the assault by officials, the prisoner would not have been required to name a defendant in filing a grievance. According to the court, even if city jail officials would have accepted the prisoner's failure-to-protect grievance, the prisoner's mistake in failing to exhaust administrative procedures was subjectively reasonable. 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. District Court
EXCESSIVE FORCE

Turner v. *Rataczak*, 28 F.Supp.3d 818 (W.D.Wis. 2014). An inmate at a correctional facility brought a pro se action under § 1983 against a corrections officer alleging excessive force in violation of the Eighth Amendment's prohibition of cruel and unusual punishment, for injuries sustained when the officer allegedly assaulted the inmate without provocation. The corrections officer moved for summary judgment. The district court denied the motion, finding a fact issue existed as to whether the corrections officer maliciously and sadistically "decentralized" the inmate and punched him in the face in order to cause him harm, rather than to restore discipline. (Wisconsin Department of Corrections, Columbia Correctional Institution)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS
RESTRAINING CHAIR

Williams v. *Champagne*, 13 F.Supp.3d 624 (E.D.La. 2014). A former inmate who was a practicing Rastafarian brought an action against a sheriff and prison officials under § 1983, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and state law arising out of a grooming policy which he contended substantially burdened his Rastafarian religious practices, and an alleged incident of excessive force. 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: (1) issues of fact as to whether the grooming policy prohibiting dreadlocks and requiring men's hair to be no more than two inches long was the least restrictive means of serving compelling government interests on the RLUIPA claim; (2) issues of fact as to the incident in which the inmate had complied with orders to leave his cell, whether there was any basis for prison officers to use any force at all to maintain discipline after the prisoner had complied with orders to leave his cell, let alone with force sufficient to rip a dreadlock from his scalp; (3) issues of fact as to whether it was objectively unreasonable for prison officers to pull on the chain connecting the prisoner's handcuffs while he was fully restrained in the "suicide chair," and for one officer to strike the prisoner forcefully in the head after the prisoner spit on him, and, (4) issues of fact on the inmate's assault and battery claims.

The court found that prison officers did not violate the prisoner's Eighth Amendment right to be free of cruel and unusual punishment in the form of excessive force when, in the course of a struggle in a hallway as they were bringing the prisoner to the "suicide chair" cell, his head hit a wall, and the officers picked him up and carried him, since video of the incident unambiguously showed the prisoner resisting multiple officers as he was escorted down the hallway. (Nelson Coleman Correctional Center, Louisiana)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

Barnes v. *County of Monroe*, 85 F.Supp.3d 696 (W.D.N.Y. 2015). A state inmate brought a § 1983 action against a county, county officials, and correctional officers, alleging that the officers used excessive force against him and that he was subjected to unconstitutional conditions of confinement during his pretrial detention. The defendants moved for judgment on the pleadings. The district court granted the motion in part and denied in part. The court held that the former pretrial detainee's allegation that a county correctional officer used excessive force when he responded to a fight between the detainee and fellow inmates, and jumped on the detainee's back, striking him in face and knocking out a tooth, and that the officer was not merely using force to maintain or restore discipline but that the entire incident was "premeditated," stated a § 1983 excessive force claim against officer under the Due Process Clause. According to the court, the former detainee's allegations that county correctional officers used excessive force when they pushed him face-first into a glass window, pushed him to the floor, kicked, stomped on and punched him, and used handcuffs to inflict pain, that as a result of the altercation, the inmate urinated and defecated on himself and experienced dizziness and a concussion, and that the force used on him was in response to his reaching for legal papers and attempting to steady himself, stated a § 1983 excessive force claim against the officers under the Due Process Clause.

The court found that the former detainee's allegations that a county correctional officer who responded to a fight between the detainee and other inmates "collaborated" with fellow officers to delay an emergency call, allowing the detainee to be attacked by inmates, stated a conspiracy claim in violation of his constitutional rights under § 1983.

The court held that the former detainee's allegations that, before being placed in a special housing unit (SHU), he was subjected to a strip search by a county correctional officer, that during the course of the strip search the detainee felt that he was degraded and humiliated, and he subsequently filed grievance against the officer, that later the same day the officer approached the detainee's cell and made sexual comments and gestures, and that other officers filed a false misbehavior report against him in retaliation for the detainee's grievance, stated a § 1983 First Amendment retaliation claim against the officers. The court found that the former detainee's allegations that, after he was released from a special housing unit (SHU), county correctional officers placed him in a poorly ventilated cell where he was exposed to human excrement and bodily fluids over the course of multiple days, and that he was subjected to extreme conditions in the SHU by way of 24-hour lighting by the officers, stated a § 1983 conditions-of-confinement claim against the officers under the Due Process Clause. (Upstate Correctional Facility and Monroe County Jail, New York)

U.S. District Court
EXCESSIVE FORCE

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. (Washington Co. Det. Center, Md.)

U.S. Appeals Court
SEARCH

Chavarriaga 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 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. The court held that 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. (Garrett House Residential Community Release Facility, Edna Mahan Correctional Facility, New Jersey)

U.S. Appeals Court
EXCESSIVE FORCE
RESTRAINTS

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 the that 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
RESTRAINTS

Davis v. *Wessel*, 792 F.3d 793 (7th Cir. 2015). A civil detainee brought a pro se action under § 1983 against security guards employed at civil detention facility for sexually violent persons, operated by the Illinois Department of Human Services. The detainee alleged violation of his rights under the Due Process Clause of the Fourteenth Amendment. The district court entered judgment on a jury verdict in favor of the detainee and the security guards appealed. The appeals court vacated and remanded. The court held that the issue of whether security guards employed at the civil detention facility refused to remove the detainee's handcuffs with the intent of humiliating him, by preventing him from using the restroom and forcing him to urinate on himself, was for a jury to decide. The court found that the security guards were not entitled to qualified immunity from the claim by the detainee under § 1983 alleging excessive use of restraints in violation of the Due Process Clause after the guards refused to remove the detainee's handcuffs because it was clearly established at the time the detainee requested to use the restroom, which had no windows, that keeping the handcuffs on was not rationally related to a legitimate non-punitive purpose absent an indication that the detainee was a security risk. (Illinois Department of Human Services, Rushville Treatment and Detention Facility)

U.S. Appeals Court
EXCESSIVE FORCE

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)

U.S. District Court
EXCESSIVE FORCE

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 County Correctional Facility and Vineland Police Department, New Jersey)

U.S. District Court
PEPPER SPRAY

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. The court found that the use of pepper spray against the juvenile detainees at the county jail did not violate the Eighth Amendment, where pepper spray was effective for quickly stopping a fight without inflicting injury, nearly every use of pepper spray at that jail was to stop a fight, and there was no evidence that the pepper spray had lasting, negative effect. (Polk County Central County Jail, Florida, and Corizon Health, Inc.)

U.S. Supreme Court
USE OF FORCE

Kingsley v. *Hendrickson*, 135 S.Ct. 2466 (2015). A pretrial detainee brought a § 1983 action against county jail officers, alleging, among other things, that they used excessive force against him in violation of his Fourteenth Amendment rights. The district court entered an order denying the officers' motion for summary judgment on the detainee's excessive force claim, and subsequently entered judgment on a jury verdict in the officers' favor. The detainee appealed. The appeals court affirmed. The U.S. Supreme Court vacated and remanded, finding that the detainee was required to show only that the force used was objectively unreasonable, and that jury instructions improperly added a subjective standard for determining excessiveness. (Monroe County Jail, Wisconsin)

U.S. Appeals Court
STUN GUN
EXCESSIVE FORCE

Kingsley v. *Hendrickson*, 801 F.3d 828 (7th Cir. 2015). A pretrial detainee brought a § 1983 action against county jail officers, alleging that they used excessive force against him in violation of his Fourteenth Amendment rights. The district court entered an order denying the officers' motion for summary judgment on the detainee's excessive force claim, and subsequently entered judgment on a jury verdict in the officers' favor. The detainee appealed. The appeals court affirmed. The U.S. Supreme Court vacated and remanded. On remand, the appeals court reversed and remanded for a new trial. The appeals court held that the district court's error of instructing the jury that the detainee was required to establish the subjective intent of the officers was not a harmless error, and thus a new trial was warranted, since jurors might have decided that, although the officers had acted in an objectively unreasonable manner, they did not have the subjective intent required by the erroneous instruction. According to the court, a reasonable officer would have been on notice that the detainee was not resisting officers in a manner that justified slamming his head into a wall and using a stun gun while he was manacled, and thus the alleged use of a stun gun on the non-resisting detainee, lying prone and handcuffed behind his back, violated the detainee's clearly established right to be free from excessive force in violation of his Fourteenth Amendment rights. (Monroe County Jail, Wisconsin)

U.S. District Court
EXCESSIVE FORCE
PEPPER SPRAY

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. But the court held that the officer's use of pepper spray on the inmate was not excessive so as to violate the Eighth Amendment, where officer responded to a fight between the inmate and his cellmate, the officer ordered the inmate to release the cellmate from his grip, after the inmate refused, the officer sprayed the inmate and the cellmate in the head with pepper spray, he subsequently sprayed the inmate in the upper torso after the inmate and the cellmate disobeyed repeated orders to stop fighting, the use of pepper spray ceased immediately after the fighting ceased, and the inmate was immediately removed from the cell and was provided a change of clothes and a shower to mitigate the effect of the chemical agents. (North Branch Corr. Inst., Maryland)

U.S. Appeals Court
EXCESSIVE FORCE

McBride v. *Lopez*, 791 F.3d 1115 (9th Cir. 2015). After a prison's appeals coordinator dismissed a prisoner's administrative grievance as untimely, the prisoner brought an action against prison guards under § 1983 claiming violation of the Eighth Amendment by use of excessive force against him, under the provisions of the Prison Litigation Reform Act ("PLRA"). The district court granted the guards' motion to dismiss and the prisoner appealed. The appeals court affirmed. The appeals court noted that a two-part test for determining whether a threat to a prisoner rendered the prison grievance system unavailable had been developed by the 11th Circuit, requiring the prisoner to provide a basis for the court to find that he actually believed prison officials would retaliate against him if he filed a grievance, and if he makes such a showing, he must then demonstrate that his belief was objectively reasonable. The court found that the prisoner subjectively believed that the guards' statements were a threat, where the prisoner had recently been beaten by the guards that made the statement, and the prisoner could have believed the guards bore him considerable hostility and therefore the statement could have been interpreted as threatening. But the court found that the statement could not have reasonably been objectively viewed as a threat of retaliation if the prisoner filed a grievance against the guards, where there was no allegation or evidence that the guards believed the prisoner was contemplating filing a grievance, and the prisoner had not asked for the materials necessary to file a grievance or had given any indication he intended to file a grievance. (Pleasant Valley State Prison, California)

U.S. Appeals Court
EXCESSIVE FORCE

McBride v. *Lopez*, 807 F.3d 982 (9th Cir. 2015). After a prison's appeals coordinator dismissed a prisoner's administrative grievance as untimely, the prisoner brought an action against prison guards under § 1983 claiming violation of the Eighth Amendment by use of excessive force against him. The district court granted the guards' motion to dismiss. The prisoner appealed. The appeals court affirmed. The court held that: (1) the threat of retaliation for reporting an incident can render the prison grievance process effectively unavailable and thereby excuse a prisoner's failure to exhaust administrative remedies before filing a court action; (2) the prisoner subjectively perceived prison guards' statement to be a threat not to use the prison grievance system; and (3) prison guards' statement could not have reasonable been objectively viewed as a threat of retaliation if the prisoner filed a grievance against the guards. The guards had stated that he was "lucky," in that the injuries he sustained during an altercation between the prisoner and guards "could have been much worse" than they were, to be a threat not to use the prison grievance system. The court

noted that the prisoner had recently been beaten by the guards that made the statement, and the prisoner could have believed the guards bore him considerable hostility and therefore the statement could have been interpreted as threatening. (Pleasant Valley State Prison, California)

U.S. District Court
EXCESSIVE FORCE

Nagy v. *Corrections Corporation of America*, 79 F.Supp.3d 114 (D.D.C. 2015). A female detainee brought an action in the District of Columbia Superior Court against the operator of a correctional facility, alleging negligence, negligent supervision, negligent infliction of emotional distress, and intentional infliction of emotional distress. The operator moved the action to federal court and moved for summary judgment. The district court denied the motion, finding that summary judgment was precluded by genuine issues of material fact as to: (1) whether the operator caused the detainee's injuries stemming from a second alleged assault by failing to follow up on the first alleged assault by guards at the correctional facility; (2) whether the detainee was injured by outrageous behavior of the guards; (3) whether the guards negligently handled the detainee, and (4) whether this negligence physically injured the detainee. The detainee alleged that she was abused almost immediately upon arrival at the facility, when two correctional officers grabbed her by the arms, took her to a locked cell, and threw her against the commode. She alleged that she landed sideways on her back, and that the officers kicked her on her right side, broke her ribs, and bruised her body. She reported the incident to corrections officials. Six days later, she was once again allegedly assaulted "by staff and officers." She showed her injuries to a doctor who observed bruises on her buttocks and hips "of varying stages, none that appeared newer than 2–3 days old with some yellowing and fading." (Corr. Treatment Facility, Corr. Corp. of America, District of Columbia)

U.S. District Court
EXCESSIVE FORCE

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
EXCESSIVE FORCE

Perry v. *Dickhaut*, 125 F.Supp.3d 285 (D. Mass. 2015). A state prisoner brought a § 1983 action against prison officials and a prison nurse, asserting Eighth Amendment claims for excessive force in attempting to double-bunk the prisoner. The district court granted the motions in part and denied in part. The court held that prison officials did not act with deliberate indifference to the risk of serious harm from prisoner violence, as would violate the Eighth Amendment, by repeatedly double-bunking the prisoner in a cell with another prisoner. According to the court, there was no evidence that the officials knew or should have known that the prisoner and his cellmates were enemies, and making an exception to the double-bunk system for one inmate simply because he was purposefully disruptive would pose substantial risks for the overall management of prison. (Souza-Baranowski Correctional Center, Massachusetts)

U.S. Appeals Court
EXCESSIVE FORCE

Peters v. *Risdal*, 786 F.3d 1095 (8th Cir. 2015). A pretrial detainee filed a § 1983 action against a county, county sheriff, and jail officers alleging that she was subjected to an unreasonable search, that her right to freedom of speech was violated, and that the officers used excessive force. The district court granted the defendants' motion for summary judgment on the unreasonable search claim, and after a jury verdict, in the officers' favor on the remaining claims, and denied the detainee's motion for a new trial. The detainee appealed. The appeals court affirmed, finding that the officers did not violate the detainee's Fourth Amendment rights when they forcibly removed her clothing in a holding cell. According to the court, it was objectively reasonable for county jail officers to believe that the pretrial detainee presented a risk of harm to herself if she was permitted to retain strings on her clothing, and thus the officers did not violate her Fourth Amendment rights when they forcibly removed her clothing in a holding cell. The court noted that the detainee refused to respond to medical screening questions, refused to comply with a female officer's instruction to change into an orange jumpsuit while male officers were outside the holding cell, and acted aggressively toward the male officers when they entered. The officers restrained the detainee face down on her stomach and covered her with a paper suit while the female officer removed her clothing. (Woodbury County Jail, Iowa)

U.S. District Court
EXCESSIVE FORCE
STUN GUN

Senalan v. *Curran*, 78 F.Supp.3d 905 (N.D. Ill. 2015). A pretrial detainee brought a § 1983 action against corrections officers at a county jail, the sheriff, and the sheriff's office, alleging unlawful detention and excessive force, as well as conspiracy. 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 allegations were sufficient to plead excessive force and were sufficient to state a conspiracy claim. The court found that the detainee's allegations that he was pushed, pepper sprayed, stunned, beaten, and subdued in his cell by correctional officers, that he was naked and prone on the floor of a booking cell when four officers jumped on him and violently restrained him, and that he was not threatening or resisting, were sufficient to plead excessive force, as required for the detainee's § 1983 claim against the officers. According to the court, the detainee's allegations that correctional officers used excessive force against him, and that the officers communicated with each other prior to engaging in their use of force, were sufficient to state a § 1983 claim against the officers for conspiracy to deprive him of his constitutional rights. (Lake County Jail, Illinois)

U.S. District Court
SEARCH

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 also found fact issues as to whether the county sheriff's deputies' manner of conducting a visual body cavity search of the female pretrial detainee on three occasions exhibited exaggerated and excessive force, and was vindictive or harassing, precluding summary judgment on the detainee's § 1983 Fourth Amendment unlawful search claim against the deputies. (Century Regional Detention Facility, Los Angeles County, California)

U.S. District Court
EXCESSIVE FORCE
RESTRAINTS

Shuford v. *Conway*, 86 F.Supp.3d 1344 (N.D.Ga. 2015). Pretrial detainees brought a § 1983 action against a sheriff and other county jail officials and employees, alleging excessive force in violation of the Fourteenth Amendment. The defendants moved for summary judgment. The district court granted the motion, finding that the jail employees did not apply force maliciously and sadistically against any detainee. According to the court, in shooting the pretrial detainee with a non-lethal chemical agent projectile, taking him to the floor, and placing him in restraint chair, the employees did not apply force maliciously and sadistically. The court noted that the detainee had hit a wall and metal partition, creating a risk of self-harm, the restraints reduced or eliminated the detainee's ability to inflict harm against himself, and the detainee did not suffer serious or permanent injuries. (Gwinnett County Jail, Georgia)

U.S. District Court
EXCESSIVE FORCE
CHEMICAL AGENTS
CELL EXTRACTION
BRUTALITY

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
EXCESSIVE FORCE

Taylor v. *United States*, 103 F.Supp.3d 87 (D.D.C. 2015). A detainee brought an action under the Federal Tort Claims Act (FTCA), alleging she suffered intentional infliction of emotional distress, assault, and battery while in the custody of the United States Marshals Service. After a bench trial, the district court held that evidence did not support the detainee's intentional infliction of emotional distress claim, and that the officer's use of force against the detainee was protected by law enforcement privilege. The detainee alleged that a detention enforcement officer's use of a leg sweep on her, which caused her to fall and sustain facial injuries, caused intentional infliction of emotional distress. According to the court, the officer's conduct was not extreme and outrageous since the leg sweep maneuver is a standard non-lethal technique that was appropriate in the situation, and the detainee provided no documentation relating to any psychiatric evaluation or counseling for the alleged emotional distress. The court found that the officer's use of the leg sweep maneuver was privileged, and thus could not support her claim of battery against the officer, where the detainee could have posed a legitimate threat to the officer, and the officer responded to the detainee's refusal to obey commands by using a standard non-lethal technique. (D.C. Superior Court Holding Cell, District of Columbia)

U.S. Appeals Court
EXCESSIVE FORCE
RESTRAINTS

Thomas v. *Reese*, 787 F.3d 845 (7th Cir. 2015). A state inmate filed a § 1983 action alleging that county correctional officers unlawfully used excessive force in the course of handcuffing him after he disobeyed an order. The district court entered summary judgment in the officers' favor and inmate the appealed. The appeals court reversed and remanded, finding that the inmate was not barred by the Prison Litigation Reform Act (PLRA) from bringing the action. The court noted that the inmate did not have an available administrative remedy, where the inmate did not have access to an inmate handbook that set forth the proper grievance procedure, the officer informed the inmate that he could not file a grievance, the handbook only permitted inmates to dispute alleged violations, and the inmate was not contesting his discipline, but rather was challenging the officers' conduct that occurred after his offenses. (Dane County Jail, Wisc.)

U.S. Appeals Court
EXCESSIVE FORCE

Tidwell v. *Hicks*, 791 F.3d 704 (7th Cir. 2015). A state inmate brought a § 1983 action against prison officers, alleging they violated his Eighth Amendment rights when they failed to protect him from an attack by a fellow inmate and then subjected him to excessive force by restraining him during the attack. The district court granted judgment as a matter of law for two of the officers and, following a jury verdict, entered judgment in the third officer's favor. The inmate appealed. The appeals court affirmed, finding that the inmate failed to show that the officers knew that the inmate was at risk of serious harm. . (Pinckneyville Correctional Center, Illinois)

U.S. Appeals Court
EXCESSIVE FORCE
CELL EXTRACTION

Ussery v. *Mansfield*, 786 F.3d 332 (4th Cir. 2015). A state inmate brought a § 1983 action against correctional officers, alleging excessive force in forcibly extracting him from his cell. The inmate alleged that members of the cell extraction team beat him repeatedly in the head and face with batons, punches, and kicks, and that a sergeant "kicked and stomped" on him. The district court denied the officers' motion for summary judgment based on qualified immunity and the officers appealed. The appeals court affirmed, finding that summary judgment was precluded by a genuine issue of material fact existed as to whether the state inmate suffered more than a de minimis injury. (Bertie Correctional Institution, North Carolina)

U.S. District Court
RESTRAINTS

Vincent v. *Sitnewski*, 117 F.Supp.3d 329 (S.D.N.Y. 2015). A New York inmate brought a § 1983 action against prison officers, alleging claims for First Amendment retaliation and failure to protect under the Eighth Amendment. The officers 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 sexual groping by a prison officer would have deterred a person of "ordinary firmness" from exercising his constitutional rights, and as to

whether the officer who allegedly groped the inmate was motivated by retaliatory purpose. The court found that the inmate's allegations that prison officers handcuffed him to a bedpost for 18 hours, purportedly as payback for filing grievances, even if improbable, were neither fanciful, fantastic, nor delusional, precluding summary judgment on the ground of factual frivolousness on the inmate's § 1983 claim for First Amendment retaliation arising from such conduct. The court noted that the inmate did not contradict himself and his allegations were quite serious, as they showed officers using their power to threaten and dehumanize an inmate they were supposed to protect. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
EXCESSIVE FORCE

Whatley v. *Warden, Ware State Prison*, 802 F.3d 1205 (11th Cir. 2015). A state prisoner brought a § 1983 action, alleging that he had been beaten by prison staff and denied medical care after the beating. The district court dismissed the action based on failure to exhaust administrative remedies. The prisoner appealed. The appeals court reversed. The court held that the district court failed to accept as true the prisoner's view of the facts regarding exhaustion of administrative remedies and failed to make specific findings to resolve disputed issue of fact regarding the exhaustion of administrative remedies. (Telfair State Prison, Ware State Prison, Georgia Diagnostic and Classification Prison)

U.S. District Court
EXCESSIVE FORCE
CELL EXTRACTION

Wilson v. *Hauck*, 141 F.Supp.3d 226 (W.D.N.Y. 2015). A former inmate brought a § 1983 action against corrections officers alleging they violated his rights by use of excessive force and/or by failing to protect him from that excessive force. The inmate moved for sanctions for alleged spoliation of evidence. The district court granted the motion. The court held that: (1) officers at one point possessed and had the ability to preserve original photographs of the inmate's injuries and the original videotape of his cell extraction; (2) officers were at least negligent with respect to the destruction or loss of both the original photographs and the videotape; and (3) differences between the originals and the copies were sufficient to permit a reasonable trier of fact to conclude that the originals would support inmate's claims. (Attica Correctional Facility, New York)

SECTION 49: VISITING

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. Appeals Court
SPOUSE

Walker v. Pate, 356 F.2d 502 (7th Cir. 1966), cert. denied, 384 U.S. 966 (1965). Visits may be denied to a wife with a criminal record. (Statesville State Penitentiary, Illinois)

1971

U.S. District Court
FAMILY

Rowland v. Wolff, 336 F.Supp. 257 (D. Neb. 1971). Visits can be required to be limited to immediate family. (Nebraska Penal and Correctional Complex)

1972

U.S. District Court
ATTORNEY

Collins v. Schoonfield, 344 F.Supp. 257 (D. Md. 1972). "Lack of facilitation on an unreasonable basis" of attorney visits rises to a level of constitutional denial. Non-suicidal inmates and inmates not presenting an immediate threat to life, safety, or property may not be denied attorney visits as a means of discipline. (Baltimore City Jail, Maryland)

U.S. District Court
ATTORNEY

Elie v. Henderson, 340 F.Supp. 958 (E.D. La. 1972). Banning of lawyers who seem intent on "instigating trouble" is approved. Attorneys do not have a right to visit inmates who have not sought their advice. (Louisiana State Penitentiary)

U.S. Appeals Court
RACIAL DISCRIMINATION

Henry v. Van Cleve, 469 F.2d 687 (5th Cir. 1972). Visits cannot be denied on racial grounds. (State Prison, Alabama)

1973

U.S. Appeals Court
SEARCHES

Daugherty v. Harris, 476 F.2d 292 (10th Cir. 1973), cert. denied, 414 U.S. 872. Strip searches of prisoners before or after visits are allowed. (Leavenworth Federal Penitentiary, Kansas)

U.S. Appeals Court
FAMILY
CONTACT VISITS

Fallis v. United States, 476 F.2d 619 (5th Cir. 1973). Security and visiting rules are sufficient grounds for refusing to allow Mormon "Family Home Evening" contact visits. (Atlanta Federal Penitentiary, Georgia)

U.S. Appeals Court
RACIAL DISCRIMINATION

Thomas v. Brierley, 481 F.2d 660 (3rd Cir. 1973). Visits cannot be denied on racial grounds. (State Prison, Pennsylvania)

1974

U.S. District Court
ATTORNEYS
FAMILY

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. Interference with communication between an inmate and his or her spouse may be unconstitutional as an infringement of rights of family relationships and privacy attached to activities relating to the family. (Mecklenburg County Jail, North Carolina)

U.S. Supreme Court
MEDIA

Pell v. Procunier, 417 U.S. 817 (1974). Pell, a journalist, together with two other journalists and four California State Prison inmates, sought injunctive and declaratory relief in a 42 U.S.C. Section 1983 action challenging a California Department of Corrections rule promulgated by Procunier, Director of the Department. The rule provided that press and other media interviews with specific individual inmates would not be permitted. The U.S. District Court for the Southern Division of California granted the requested relief, holding that the rule unconstitutionally infringed their first and fourteenth amendment freedoms. The court dismissed the journalists' claims on the ground that other sources of information were available to them. The prison officials and journalists appealed directly to the U.S. Supreme Court.

HELD: "[S]ince [the rule prohibiting media interviews with specific individual inmates] does not deny the press access to sources of information available to members of the general public, we hold that it does not abridge the protection that the first and fourteenth amendments guarantee." 417 U.S. at 835.

REASONING: a. "[L]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system [Cite omitted]." 417 U.S. at 822.

b. "[A] prison inmate retains those first amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrective system. Thus, challenges to prison restrictions that are asserted to inhibit first amendment interests must be analyzed in terms of the legitimate policies and goals of the corrections system, to whose custody and care the prisoner has been committed in accordance with due process of law." 417 U.S. at 822.

c. "It is in light of these legitimate penal objectives [deterrence, rehabilitation, and security] that a court must assess challenges to prison regulations based on asserted constitutional rights of prisoners." 417 U.S. at 823.

d. "When the question involves the entry of people into the prisons for face-to-face communication with inmates, it is obvious that institutional considerations such as security and related administrative problems, as well as the accepted and legitimate policy objectives of the corrections system itself, require that some limitation be placed on such visitations." 417 U.S. at 826.

e. "In the judgment of the state corrections officials, this visitation policy will permit inmates to have personal contact with those persons who will aid in their rehabilitation, while keeping visitations at a manageable level that will not compromise institutional security. Such considerations are peculiarly within the province and professional expertise of corrections officials and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment." 417 U.S. at 827.

f. "[W]hen the issue involves a regulation limiting one of several means of communication by an inmate, the institutional objectives furthered by that regulation, and the measure of judicial deference owed to corrections officials in their attempt to serve those interests are relevant in judging the validity of the regulation." 417 U.S. at 827.

g. "[N]ewsmen have no constitutional right of access to prisons or their inmates beyond that afforded the general public." 417 U.S. at 834.

h. "The right to speak and publish does not carry with it the unrestrained right to gather information." 417 U.S. at 834 at 9, Citing Zemel v. Rusk, 381 U.S. AT 16-17.

NOTE: Important to the Court's holding that the rule did not violate the inmates' rights was its finding that adequate alternatives (mail and visitation) existed to provide inmates with access to the outside world. (Department of Corrections, California)

U.S. Appeals Court
ATTORNEY
SCHEDULING

Souza v. Travisono, 498 F.2d 1120 (1st Cir. 1974). The right of an inmate to see his attorney or his attorney's agent is subject to a reasonable spectrum of prison controls that can range from the primary need of maintaining security and discipline to the maintenance of such housekeeping rules as lunch schedules (banning of visits during meals is upheld). A prisoner has a right to consult with his attorney's agent. The right to select a paralegal assistant to meet and confer with the inmate rests with the attorney. (Adult Correctional Institution, Rhode Island)

1975

U.S. District Court
FORMER PRISONERS

Farmer v. Loving, 392 F.Supp. 27 (W.D. Vir. 1975). A rule prohibiting visiting with former inmates is upheld. (Correctional Unit, Virginia)

U.S. District Court
ATTORNEY

Giampetruzzi v. Malcolm, 406 F.Supp. 836 (S.D. N.Y. 1975). Inmates in administrative segregation are entitled to confer with their attorneys in such numbers as may be shown necessary to assure their right to prepare their defenses of charges for which they are detained. (New York City House of Detention for Men)

U.S. Appeals Court
FAMILY
CONTACT VISITS

Oxendine v. Williams, 509 F.2d 1405 (4th Cir. 1975). Inmates have no constitutional right to physical contact with their family. (Caswell County Unit, North Carolina Department of Corrections)

U.S. Appeals Court
CONTACT VISITS
SEGREGATION

Rhem v. Malcolm, 527 F.2d 1041 (2nd Cir. 1975), affirming 396 F.Supp. 1195 (S.D. N.Y. 1975). Limitation of right to contact visits must be justified by a system of classification which excludes only those inmates requiring maximum security. No detainee in a segregation unit can be denied a visit solely on the grounds of his presence there. (Manhattan House of Detention, New York)

1976

U.S. District Court
PRETRIAL
DETAINEES

Wolfish v. Levi, 406 F.Supp. 1243 (S.D. N.Y. 1976). Restrictions on visitation of pretrial inmates must be justified by compelling necessity. Prison officials have the ultimate burden of proof on this issue. Due process requires that the least restraint necessary to assure institutional security and administrative manageability be employed. (Metropolitan Correctional Facility, New York)

1977

U.S. District Court
CONTACT VISITS
FEMALE PRISONERS

Forts v. Malcolm, 426 F.Supp. 464 (S.D. N.Y. 1977). Summary judgment is granted requiring that every visit be a contact visit except where a security risk is revealed through an established classification system. Women inmates are permitted to wear pants and have contact visits. (New York City Correctional Institute for Women)

U.S. District Court
RULES
TIME LIMITS
FREQUENCY

Johnson v. O'Brien, 445 F.Supp. 122 (E.D. Mo. 1977). Court orders revision of visiting rules to extend time limits and increase frequency of visits. (St. Louis County Jail, Missouri)

U.S. District Court
PRETRIAL
DETAINEES

Vest v. Lubbock County, 444 F.Supp. 824 (N.D. Tex. 1977). Pretrial detainees are ordered to be permitted daily visits, others at least twice a week. (Lubbock County Jail, Texas)

1978

U.S. District Court
FREQUENCY
CHILDREN
CONTACT VISITS

O'Bryan v. Saginaw, 446 F.Supp. 436 (E.D. Mich. 1978). Expanded visitation schedule is to include at least two visits per week; including children, limited contact visitation is ordered. (Saginaw County Jail, Michigan)

U.S. District Court
FREQUENCY

Owens-El v. Robinson, 442 F.Supp. 984 (W.D. Penn. 1978). Three visits per inmate per week is found acceptable. Telephone system is ordered. (Allegheny County Jail, Pittsburgh, Pennsylvania)

1979

U.S. Supreme Court
CONTACT VISITS

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 confided 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)

State Appeals Court
CONTACT VISITS

Cooper v. Morin, 424 N.Y.2d 168 (1979), cert. denied, 100 S.Ct 2965 (1979). The New York State Court of Appeals has ruled that state due process laws do allow for contact visitation rights for pretrial detainees when the government's only argument against such visitation centers on additional administrative costs. The court ruled that, although federal constitutional requirements would not dictate such a finding in light of the Bell v. Wolfish decision, state due process requirements called for an opposite finding. The court examined carefully the rationale that was the basis for the Supreme Court decision in the Bell case and made it clear that, at least in part, they felt the Supreme Court had erred:

> While we are in agreement with the Supreme Court's holding in Bell v. Wolfish that due process forbids the punishment of pretrial detainees because punishment can only be imposed after conviction, we cannot agree that the validity of the regimen imposed upon such persons during detention turns no more than whether a regulation has a legitimate purpose other than punishment and is not excessive in relation to that purpose. So one-sided a concept of due process we regard as unacceptable. In our view what is required is a balancing of the harm to the individual resulting from the condition imposed against the benefit sought by the government through its enforcement.

In a dissenting opinion, two judges took the position that to find that state due process requirements were different from federal requirements was impossible, since the wording in the respective clauses is identical. Therefore, they claimed, the Bell case and its holding must dictate the state court's decision. (Monroe County Jail, New York)

1980

U.S. Appeals Court
ATTORNEY

Ferranti v. Moran, 618 F.2d 888 (1st Cir. 1980). Denial of transfer, harassment for seeking legal redress, allegations of tampering with the inmate's legal mail, and allegations of a refusal to permit the inmate to bring his legal papers to conferences with his attorney state claim for interference with the right of access to the court. (Rhode Island Adult Correctional Institution)

U.S. District Court
SEGREGATION

Griffin v. Smith, 493 F.Supp. 129 (W.D. N.Y. 1980). An allegation that inmates in the Special Housing Unit are limited to one visit with a counselor per week fails to state a claim upon which relief can be granted. Allegations regarding the lack of access to the regular visiting room and to the visiting room vending machines for visitors to inmates in the Special Housing Unit fail to state a claim upon which relief can be granted. (Attica Correctional Facility, New York)

U.S. Appeals Court
CONTACT VISITS

Jordan v. Wolke, 615 F.2d 749 (7th Cir. 1980). Contact visitation is not constitutionally required in a jail. (Milwaukee County Jail, Wisconsin)

U.S. District Court
SCHEDULE
CHILDREN

Nicholson v. Choctaw Co., Ala., 498 F.Supp. 295 (S.D. Ala. 1980). Visitation is to be provided on terms convenient to the potential visitors, not merely when most convenient to the institutional staff. Visitation is to include at least two hours on Saturday or Sunday and should emphasize evenings, weekends and holidays. Children are to be permitted to visit their parents. (Choctaw County Jail, Alabama)

1981

U.S. District Court
CONTACT VISITS

Frazier v. Ward, 528 F.Supp. 80 (N.D. N.Y. 1981). The Supreme Court's decision in Bell v. Wolfish does not stand for the proposition that strip searches are per se constitutional, but rather, that body cavity searches are not per se unreasonable under the fourth amendment. Prison officials in New York were not entitled to relief from judgment which prohibited them from conducting visual body cavity searches upon inmates returning after contact visits. (Clinton Correctional Facility, New York)

U.S. District Court
ATTORNEY

Howard v. Cronk, 526 F.Supp. 1227 (S.D. N.Y. 1981). The prisoner's constitutional right to visit with his legal counsel was not violated by the prison policy of not allowing prisoners to bring books into a legal visit. That rule was reasonable in light of the security problem posed by books as a vehicle for smuggling contraband into the prison, and it could not be said that the policy unjustifiably obstructed the prisoner's access to his attorney. (Green Haven Correctional Facility, New York)

U.S. District Court
VISITOR SEARCHES

Wool v. Hogan, 505 F.Supp. 928 (D. Vt. 1981). The United States District Court for Vermont dismissed Kirk Wool's 42 U.S.C. Section 1983 suit against the correctional facility. Wool had alleged that prison officials had interfered with his right to marriage and family relationships by requiring his visitors to submit to strip searches. The case arose after Wool began receiving weekly contact visits from his girlfriend and their infant daughter. Three months after these visits began, prison officials began requiring the girlfriend and the infant to submit to strip searches prior to contact visits with Wool. On a visit a few months later, the woman refused to be strip searched, and the two were denied visitation privileges. Wool's relationship with the two eventually deteriorated, and he subsequently filed suit claiming that the strip search policy had discouraged their visits. He also alleged that the officials' denial of his earlier request to marry had violated his fundamental rights under the fourteenth amendment.

In reviewing Wool's complaints, the district court noted that prison administrators are accorded wide ranging authority in the execution of policies that are needed to preserve internal order, discipline and security. The court then held that penal officials have an interest in restricting the flow of contraband into an institution, and that strip searching visitors suspected of carrying such contraband was not an exaggerated response. The court reasoned that the maintenance of a family relationship requires communication, compassion, and constancy, and the strip search policy did not hinder such goals. The court also rejected Wool's claim that the strip searches "chilled" his first amendment right of association. The court stated that while it is clear that free members of society have the right of physical association, such a right is significantly curtailed by a criminal conviction. The court then found that prison security justified any "chilling" effect on Wool's first amendment rights. In dealing with Wool's request to marry, the court determined that the fundamental nature of the right to marry arises from an individual's interest in being free from governmental interference in making important personal decisions. The court noted, however, that states have traditionally had a significant interest in the marriage relationship. In this regard the court ruled that Vermont prison officials had a specific interest in Wool's rehabilitation and concluded that the officials acted reasonably in denying his marriage request in light of those interests. (St. Albans Correctional Facility, Vermont)

1982

U.S. District Court
CONTACT VISITS

Boudin v. Thomas, 543 F.Supp. 686 (S.D. N.Y. 1982). Administrative detention is terminated and contact visits are restored by Court. A pretrial detainee sought a writ of habeas corpus challenging her confinement in administrative segregation. The United States District Court held that administrative detention was to be immediately suspended and contact visits between the petitioner and approved visitors were to be initiated, where the detainee had not committed any act or engaged in any conduct threatening herself, staff or institutional security and was not shown to be an escape risk. The defendants presented only vague assertions in attempts to demonstrate the risks posed by contact visits with her infant son. (Metropolitan Correctional Center, New York)

State Appeals Court
FAMILY

Hickson v. Coughlin, 454 N.Y.S.2d 368 (App. Div. 1982). Cousins may attend special family events when nephews, nieces and common-law wives are allowed. The Supreme Court of Dutchess County, New York, ruled that the commissioner of the Department of Correctional Services and the superintendent of Downstate Correctional Facility could

not deny cousins of inmates from attending special family event programs, where others, such as common-law wives, and nieces and nephews were allowed visitation rights. The defendant officials argued that depriving cousins of visitation privileges is within the authority of the commissioner, that his directive had the force of law and that there was no constitutional deprivation or statutory violation. The court found the exclusion of cousins while allowing visitation rights to common-law wives, and nephews and nieces to be inconsistent and directed the commissioner to revise the directive to include cousins. (Downstate Correctional Facility, New York)

U.S. Appeals Court
VISITOR SEARCHES

Hunter v. Auger, 672 F.2d 668 (1982). The Constitution mandates that a reasonable suspicion standard govern strip searches of visitors to penal institutions. That standard is flexible enough to afford the measure of fourth amendment protection without imposing an insuperable barrier to the exercise of all search and seizure powers. To justify the strip search for a particular visitor under the reasonable suspicion standard, prison officials must point to specific objective facts and rational inferences that they are entitled to draw from those facts in light of their experience. (Men's Penitentiary, Fort Madison, Iowa)

1983

State Appeals Court
VISITOR SEARCHES

Comm. v. Lapia, 457 A.2d 877 (Penn. App. 1983). Anonymous tip does not provide "reasonable suspicion" for strip search of visitor. The Superior Court of Pennsylvania determined that a strip search of a visitor was improper since it was conducted based only on an anonymous tip.

U.S. District Court
VOLUNTEERS

Hardaway v. Kerr, 573 F.Supp. 419 (W.D. Wisc. 1983). Denial of visits with prison volunteers is improper. The suit was brought after officials refused to allow a volunteer in a Bible study program to visit one of the inmates with whom she became friends. A facility policy preventing all prison volunteers from visiting inmates was found to be without justification by a federal district court in Wisconsin. The court ruled that the regulation was an "exaggerated response" to any legitimate need to maintain the effectiveness of the volunteer program. Officials tried to justify the rule on the basis that a professional distance needed to be created between the inmates and the prison workers to avoid overly friendly relationships which would undermine the volunteer program. They claimed that a volunteer was more effective in rehabilitating a prisoner if he or she did not become personally involved with that prisoner. (Federal Correctional Institution, Oxford, Wisconsin)

U.S. District Court
DENIAL OF VISITS

Keenum v. Amboyer, 558 F.Supp. 1321 (E.D. Mich. 1983). Short-term denial of visiting does not violate inmate rights. A federal district court has determined that an inmate at the Macomb County Jail suffered no violation of constitutional rights when authorities prevented a certain individual from visiting him for three weeks. The restriction was imposed after officials received a telephone call warning that the individual was going to assist the inmate in an escape attempt. The court noted that in the three week period the inmate received other visitors, and he was able to communicate with the restricted individual through correspondence. (Macomb County Jail, Michigan)

State Appeals Court
SPOUSE
TERMINATION OF
VISITS

Neal v. Camper, 647 S.W.2d 923 (Mo. App. 1983). A hearing is necessary before spouse visiting rights are terminated. After visits with his wife were restricted, an inmate filed a petition for injunctive relief asking that the restriction be removed. The circuit court dismissed the petition, and the inmate appealed. The appellate court reversed and ordered the petition to proceed. The inmate alleged that the superintendent had imposed a severe sanction against the plaintiff without affording any procedural due process of law in that no hearing was held, he was not given a right to call witnesses, he was prevented from confronting the accusers, and he did not receive a written violation. Prison officials had written the wife informing her that her visitation privileges were suspended due to an investigation involving the smuggling of drugs into the institution. (Missouri State Penitentiary)

State Supreme Court
ATTORNEY SEARCH

Rhode Island Defense Attorneys' Association v. Dodd, 463 A.2d 1370 (Sup. Ct. R.I. 1983). Rhode Island Supreme Court rules that attorney searches and refusal to allow briefcases in cell area are valid. In a case filed by the Rhode Island Defense Attorneys' Association, the court found that existing procedures did not violate any constitutional rights. Attorneys are required to pass through a metal detector. If the device is activated, they are asked to remove metal items and to pass through again. A pat-down search is used only as a last resort.

Briefcases are inspected only for the purpose of discovering weapons or other lethal objects. Finally, the facility refuses to allow briefcases in the cell area, but permits attorneys to take files and papers into the cell block.

The court supported these practices, stating that "It is our opinion that these procedures, in light of the potential dangers confronting the state, are reasonable." (Rhode Island Department of Corrections)

U.S. Appeals Court
CONTACT VISITS
PRETRIAL DETAINEES

Rutherford v. Pitchess, 710 F.2d 572 (9th Cir. 1983), rev'd, 104 S.Ct. 3227 (1984). Pretrial detainees class action suit brings changes. A class action suit was filed against the Los Angeles County central jail by pretrial detainees. The Federal District Court ordered twelve changes after a trial; three of the changes were appealed by county officials.

The Ninth Circuit Court of Appeals decided that: low risk detainees were to be allowed one contact visit per week; detainees would be allowed to be present during searches of their cells; and the replacement of transparent windows by concrete enclosures was justified. Subsequently the United States Supreme Court reversed on the first two issues. (Los Angeles County Central Jail)

1984

U.S. Supreme Court
CONTACT VISITS
PRETRIAL DETAINEES

Block v. Rutherford, 104 S.Ct. 3227 (1984). U.S. Supreme Court reverses lower court rulings. Pretrial detainees in Los Angeles Central Jail will not have contact visits and will not be allowed to be present when cells are searched.

Pretrial detainees at the Los Angeles County Central Jail brought a class action in federal district court in 1975 against the county sheriff and other officials, challenging the jail's policy of denying pretrial detainees contact visits with their spouses, relatives, children and friends, and the jail's practice of conducting random, irregular "shakedown" searches of cells while the detainees were away at meals, recreation, or other activities. The district court concluded that the danger of permitting lower security risk inmates to have contact visits was not great enough to warrant deprivation of such contact and, with regard to cell searches, that allowing inmates to watch from a distance while their cells are searched would allay inmate concerns that their personal property would be unnecessarily confiscated or destroyed.

In a six to three decision, the Supreme Court relied upon its previous ruling in Bell v. Wolfish, 441 U.S. 520, to uphold practices at the Los Angeles County Central Jail. Writing for the majority, Chief Justice Burger stated that " ...The principles articulated in Wolfish govern resolution of this case....We affirm that, 'proper deference to the informed discretion of prison authorities demands that they, and not the courts, make the difficult judgments which reconcile conflicting claims affecting the security of the institution, the welfare of the prison staff, and the property rights of the detainees.' 441 U.S. at 557. Accordingly, the judgment of the Court of Appeals is reversed."

Contact Visits. The Supreme Court based its decision on a narrow question: is the prohibition of contact visits reasonably related to legitimate governmental objectives? Finding, as in Wolfish, that there is no basis to conclude that pretrial detainees pose any less security risk than convicted inmates, the court noted that detainees may in fact present a greater risk to jail security. The district court had ordered: "Commencing not more than ninety days following the date of this order, the defendants will make available a contact visit once each week to each pretrial detainee that has been held in the jail for one month or more, and concerning whom there is no indication of drug or escape propensities; provided, however, that no more than fifteen hundred such visits need be allowed in any one week. App. to Pet. for Cert. 38.

The majority of the court held that the burden of identifying candidates for contact visits is made even more difficult by the brevity of detention. The majority criticized the district court for not ending its inquiry after the County had established reasons for denying them; the "balancing" that the district court attempted in its decision, "resulted in an impermissible substitution of its view on the proper administration of Central Jail for that of the experienced administrators of the facility," according to the majority opinion. The opinion concluded, on this issue, by stating: "In rejecting the district court's order, we do not in any sense denigrate the importance of visits from family or friends to the detainee. Nor do we intend to suggest that contact visits might not be a factor contributing to the ultimate reintegration of the detainee into society. We hold only that the Constitution does not require that detainees be allowed contact visits when responsible, experienced administrators have determined, in their sound discretion, that such visits will jeopardize the security of the facility."

In a separate concurring opinion, Justice Blackmun challenged the reasoning of the majority, stating that when a detainee attempts to demonstrate the punitive intent of a policy he is necessarily calling into question the good faith of the prison administrators: "Under those circumstances, it seems to me to be somewhat perverse to insist that a court assessing the rationality of a particular administrative practice must accord prison administrators 'wide-ranging deference in the adoption and execution of policies and practices' ...such a requirement boils down to a command that when a court is confronted with a charge of administrative bad faith, it must evaluate the charge by assuming administrative good faith." (Los Angeles County Central Jail)

1985

U.S. Appeals Court
SEARCH

Blackburn v. Snow, 771 F.2d 556 (1985). A woman was awarded $177,040 for violations of fourth amendment rights when repeatedly subjected to strip searches when visiting her brother. The sheriff imposed a rule requiring all visitors to submit to body cavity strip-searches, without any suspicion of carrying contraband or anything else.

Merely because they were visiting, they were strip searched. The court ruled that the sheriff was not immune from damages, and that the county was liable for the policy as well. The plaintiff's returning to the prison for visits on future occasions where she was again strip searched did not imply consent to waive her constitutional rights, added the court. (Plymounth County Jail, Massachusetts)

1986

State Appeals Court
AIDS
FAMILY

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
CHILDREN
DENIAL OF VISITS

Ford v. Beister, 657 F.Supp. 607 (M.D. Pa. 1986). A prison ban on "child" visitations with inmates housed in maximum security at the state correctional facility is legal and does not violate constitutional rights according to a federal district court. Prison officials contented, and the court agreed, that it is dangerous for young people (under 18 years of age) to travel into the Restricted Housing Unit located in the center of the facility. The court stated: "...the ban in this case is reasonable and the plaintiffs have not in any way dispelled the concerns and justifications for electing to limit visits to those 18 years of age or older. Consequently, assuming arguendo, that a constitutional right is implicated, nothing in the record indicates other reasonable methods of permitting child visitation to those in restricted housing without compromising the internal security of the prison." (State Correctional Institution, Dallas, Pennsylvania)

U.S. District Court
VISITING

Jackson v. Gardner, 639 F.Supp. 1005 (E.D.Tenn. 1986). Inmates of a county jail brought a Section 1983 action challenging the constitutionality of conditions of confinement. After resolution of some of the conditions complained of, and stipulation as to others, the district court found that prison conditions under which an average inmate was confined twenty-four hours a day in a physically dilapidated, insect infected, dimly lit, poorly ventilated area averaging under twenty square feet per inmate, without any available recreation or diversion other than some reading or letter writing, sharing a shower which might not have hot water with twelve to fourteen others, sharing a sink and toilet with three or four others, and possibly sleeping on an unsanitary floor, or within inches of a toilet, in clothing which may not have been recently washed, constituted cruel and unusual punishment. In order for the county jail to provide constitutionally acceptable confinement, population at the main jail facility had to be reduced, regular out-of-cell recreation had to be provided, visitation increased, and fire escape plans had to be communicated to inmates and prominently displayed in corridors at all times. (Sullivan County Jail, Tennessee)

U.S. District Court
DENIAL OF VISITS

Morgan v. District of Columbia, 647 F.Supp. 694 (D.D.C. 1986). Whether a prisoner was denied due process when his punishment was increased by the loss of visitation privileges involved disputed questions of fact, precluding summary judgment in the prisoner's Section 1983 suit. The prisoner had a liberty interest in visitation. If the prisoner's adjustment segregation did not coincide with the rescission of visitation privileges, or the visitation privileges were not imposed by the Adjustment Board, he would be entitled to some due process before his visitation privileges could be suspended. (Maximum Security Facility at Lorton, Virginia)

U.S. Appeals Court
DENIAL OF VISITS

Toussaint v. McCarthy, 801 F.2d 1080 (9th Cir. 1986), cert. denied, 481 U.S. 1069. Inmates and prison officials appealed an order of the district court, 597 F.Supp. 1388, which granted permanent injunctive relief with respect to placement of prisoners in administrative segregation. The court of appeals held that: (1) state regulations gave prisoners liberty interest; (2) due process required only that prison officials hold an informal nonadversary hearing within reasonable time after a prisoner is placed in segregation and inform him of charges against him and give him an opportunity to present his views; (3) it was error for special master or court to substitute their views for those of the administrator in determining when a prisoner should be released; (4) review of segregation should be conducted more frequently than annually; (5) decision

to place a prisoner in segregated confinement must be supported by some evidence; and (6) denial of contact visits and work programs did not violate the eighth amendment. (San Quentin, Folsom, Deuel Vocational Institute at Tracy, and the Correctional Training Facility at Soledad in California)

1987

State Supreme Court
SPOUSE
DENIAL OF VISITS

In Matter of Miner v. N.Y. State Dept. of Correctional Services, 524 N.Y.S.2d 390 (N.Y. 1987), cert. denied, 109 S.Ct. 364, reh'g. denied, 109 S.Ct. 825. A state supreme court denied an inmate the right to participate in a "family reunion program" allowing periods of contact visitation with spouses because he was married while incarcerated for a life sentence. The court held that the out-of-state proxy marriage of the inmate would not be recognized. The court restated the principle that a marriage entered into by an incarcerated life-sentence inmate is void from inception because of the legislative declaration of "civil death" of the inmate. (New York State Dept. of Corr. Services)

U.S. Appeals Court
ATTORNEY
SCHEDULING

Sturm v. Clark, 835 F.2d 1009 (3rd Cir. 1987). An attorney who was the sole subject of restrictive directives at federal correctional institution commenced action for damages and injunction for deprivation for her constitutional rights. The federal appeals court held that: (1) due process was not violated by directives, absent showing of more than damage to reputation and financial harm resulting therefrom; (2) the attorney stated First Amendment claim based on restriction precluding her from speaking to visitors at prison and to those inmates for whom she did not have visitation permit; and (3) the attorney also stated equal protection claim based on visiting hours directives. According to the court, the attorney's due process rights were not violated by directives at federal correctional institution which restricted her visits to designated times and upon 24 hours notice as a result of her "disruptive and unprofessional behavior" and which allegedly resulted in prison inmates' unwillingness to retain her as counsel. (Allenwood Federal Prison Camp)

U.S. District Court
DENIAL OF VISITS

U.S. ex rel. Adams v. O'Leary, 659 F.Supp. 736 (N.D. Ill. 1987). Illinois law gave a prisoner a liberty interest in receiving visitors, which could give rise to a claim for deprivation of due process. Allegations that a prisoner was told that a visit would be permitted, but that the visit was subsequently denied for no apparent reason, state such a claim. (Stateville Correctional Center, Illinois)

1988

U.S. District Court
DENIAL OF VISITS

Beasley v. Wharton, 682 F.Supp. 1234 (M.D.Ga. 1988). A district court ruled that a prison regulation restricting visiting privileges to a prisoner's family or prior acquaintances was reasonable. After becoming acquainted with a woman through correspondence, an inmate serving time for child molestation, decided he wanted to marry his "pen pal." He listed her as his fiancee on his visitor's list and she requested a visit. Prison regulations limit visitation to inmates' family members and prior acquaintances and, therefore, his "pen pal" was denied a visit. The purpose of the regulation was to be sure that visitors have "legitimate personal reasons for coming to the prison, as opposed to satisfying mere curiosity interests." The court found that the regulation was reasonable, particularly since other means of communication, such as mail and the telephone, were still available. (Middle Georgia Correctional Institution, Men's Unit, Hardwick, Georgia)

U.S. Appeals Court
ATTORNEY
SEARCHES
SEGREGATION

Bruscino v. Carlson, 854 F.2d 162 (7th Cir. 1988), cert. denied, 109 S.Ct. 3193. In a class action suit brought against the Marion Penitentiary in Illinois by inmates held in the Control Unit, the inmates claimed use of excessive force and other charges because they were subjected to rectal searches every time they left or re-entered the unit. The appeals court ruled that because inmates in the Control Unit require greater supervision than other prisoners, rectal searches can be legally performed on such inmates. Use of physical restraints during attorney visitation and limited out-of-cell time was also upheld by the federal district court. The court found that extraordinary security measures employed in a maximum security federal prison, such as limitation of time spent outside cells, denial of opportunities for socialization, handcuffing, shackling, spread-eagling and rectal searches were reasonable measures in view of the history of violence at the prison and the incorrigible character of the inmates and thus it did not constitute cruel and unusual punishment. Further, the court found that the transfer of prisoners to a maximum security federal prison did not result in incremental deprivation so great as to constitute actionable deprivation of natural liberty and thus require a hearing. (The United States Penitentiary in Marion, Illinois)

U.S. District Court
DENIAL OF VISITS

Card v. Dugger, 709 F.Supp. 1098 (M.D. Fla. 1988). An inmate, under the sentence of death, brought a civil rights action against prison officials, alleging he was denied daily access to a priest while he was on "death watch." On the defendants' motion for summary judgment, the district court found that the limits placed on the inmate's access to a priest did not violate his right to free exercise of religion, and the state

prison policy that allowed prison-employed chaplains to have contact visits with "death watch" inmates on a regular basis, while prohibiting a nonemployee Catholic priest from having contact visits with death watch inmates, did not deprive the Roman Catholic inmate who was on death watch of equal protection of the laws, although all prison chaplains were Protestants. The prison allowed outside religious leaders to visit inmates on a regular basis. All inmates had equal access to outside religious representatives, and all inmates had an equal access to the institutional chaplains. The State Department of Corrections did not violate the establishment clause of the first amendment when it hired only Protestant ministers as chaplains in a state prison system, where the Department secured Catholic priest volunteers to attend to the needs of Cathqlic inmates. The court noted that inmates under the sentence of death have "little reason" to fear ordinary disciplinary action because of their situation. They are therefore "desperate and unpredictable persons" and the prison has a legitimate reason to separate them physically from outside social visitors, including visiting priests. (Florida State Prison)

U.S. Appeals Court
DENIAL OF VISITS

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
SPOUSE
CONJUGAL

Davis v. Carlson, 837 F.2d 1318 (5th Cir. 1988). A prisoner and his wife filed a pro se complaint seeking declaratory judgment regarding the manner in which the prison was administered. The federal district court dismissed the case; the prisoner and his wife appealed. The appeals court held that: (1) the prisoner's complaint was properly dismissed for failure to exhaust administrative remedies; (2) the Bureau of Prisons had no duty to transfer the prisoner to a prison near the wife's residence; (3) the wife had no right to conjugal visits; and (4) the prisoner's incarceration did not violate the wife's rights against cruel and unusual punishment. (U.S. Bureau of Prisons)

U.S. District Court
RULES
CONTACT VISITS

Shaddy v. Gunter, 690 F.Supp. 860 (D. Neb. 1988). A federal district court ruled that a Nebraska prison regulation that prohibits most forms of physical contact during visitation periods is not unconstitutionally vague. The regulation permitted "an embrace and a kiss at the beginning and end of a visit," but forbid kissing, caressing and fondling" at all other times. After being found to have violated the rule by squeezing his wife's buttocks, an inmate sued saying the regulation was too vague. The court agreed that the regulation could have been written better, but ruled that it was not void for vagueness. The court found that the rule in context with other prison regulations provided sufficient guidance to put the inmate on notice that physical contact in a manner more intimate than hand holding during visitation is prohibited under the rule. (Nebraska State Penitentiary)

1989

U.S. District Court
CHILDREN

Berrios-Berrios v. Thornburg, 716 F.Supp. 987 (E.D. Ky. 1989). A lawsuit was filed by a female inmate to challenge the refusal of prison officials to permit her to breast-feed her child. She moved for a preliminary injunction allowing her to breast-feed her child during normal visitation hours, to store breast milk in a refrigerator, and to compel the defendants to make arrangements for the delivery of the breast milk to the child's caretaker. The court found that the need for immediate resolution of the inmate's request to be allowed to breast-feed her child during normal visitation hours and to store the breast milk negated requirements to exhaust administrative remedies, and that the inmate was entitled to a preliminary injunction allowing her to breast-feed her child during regular visitation periods. A substantial threat existed that the absence of an injunction would irreparably injure the inmate's ability to breast-feed her child and the inmate and her child would unnecessarily be deprived of the beneficial effects of breast-feeding; the defendants failed to allege any harm. However, the court ruled that the inmate's interest in breast-feeding her child with milk stored in a refrigerator was outweighed by the government's compelling interest arising out of the need for security checks, the desire to avoid negligence claims, and the cost and burden of providing the refrigerators and a system for the storage and delivery of the milk to caretakers. (Federal Correctional Institution, Lexington, Kentucky)

U.S. District Court
CONTACT VISITS
PRETRIAL DETAINEES

Charron v. Medium Sec. Inst., 730 F.Supp. 987 (E.D. Mo. 1989). A former pretrial detainee brought a civil rights action against the city and staff members of a city workhouse, alleging various constitutional violations which occurred in connection with his refusal to work in the kitchen of the workhouse, and the medical treatment that was afforded him for a workhouse injury. The U.S. District Court found that as a pretrial detainee, the plaintiff has no claim under the eighth amendment for cruel and unusual punishment, arising from his being placed in segregation for refusing to work in the workhouse kitchen, however the placement in segregation did amount to punishment in violation of his due process rights. It was also stated that nothing in the Constitution requires that pretrial detainees be allowed contact visits when prison administrators had determined that such visits will jeopardize the security of the facility.

The court also found that the members of the workhouse staff were not entitled to qualified immunity from the civil rights claim; the law clearly established that the unnecessary imposition of security confinement on a pretrial detainee violated the detainee's rights to due process. (Medium Security Institution, Missouri)

U.S. District Court
DENIAL OF VISITS
RULES
SEGREGATION

Crozier v. Shillinger, 710 F.Supp. 760 (D. Wyo. 1989). Protective custody inmates brought an action to challenge the suspension of certain opportunities and benefits that were afforded to the general prison population. The defendants moved for a summary judgment. The district court found that giving certain benefits and opportunities to the general prison population without giving those opportunities and benefits to protective custody inmates was not cruel and unusual punishment. According to the court, a prisoner has no absolute constitutional right to visitation. Cancelling some visits for protective custody inmates due to conflicting visits to prisoners in the general population was constitutional. Giving the protective custody inmates fewer benefits and opportunities than the general prison population was not cruel and unusual punishment and did not violate the fourteenth amendment. The suspension of certain benefits and opportunities represented accommodation with institutional interest in providing adequate protection to protective custody inmates. (Wyoming State Penitentiary)

U.S. District Court
RULES
SPOUSE
TERMINATION OF VISITS

Czajka v. Moore, 708 F.Supp. 253 (E.D.Mo. 1989). A prisoner and his wife brought an action alleging that certain disciplinary measures were taken by prison officials without affording due process of law. The plaintiff sought a preliminary injunction. Following the denial of an injunction and reversal of that denial on appeal, the district court found that the prisoner and his wife were entitled to a preliminary injunction requiring prison officials to remove a stop order from the wife's visiting and releasing the inmate from the special adjustment unit. Actions were taken as a result of determination of misconduct involving sexual activity of the inmate and his wife in the prison's main visiting room, where the adjustment board which found the inmate guilty of a conduct violation included the prison official who had reported the alleged conduct violation. (Missouri Eastern Correctional Center)

U.S. District Court
CONJUGAL
FAMILY

Isaraphanich v. Coughlin, 716 F.Supp. 119 (S.D.N.Y. 1989). An alien inmate who was denied participation in a family reunion program and temporary release program brought a civil rights action alleging, inter alia, a violation of an equal protection clause. On the corrections officials' motion for summary judgment, the district court found that denying inmate's participation in programs on the basis of an outstanding INS detainer was rationally related to a legitimate penological interest of preventing participating inmates from escaping upon release. The family reunion program involves inmates visiting with their family members in a mobile home for 48 hours. The location of this home, near the "edge of a field" is less secure than other parts of the facility and, because of this, prison officials have an increased interest in insuring that individuals who participate in the program do not "have a special incentive to escape," such as facing possible deportation. (Fishkill Correctional Facility, New York)

U.S. Supreme Court
DENIAL OF VISITS
TERMINATION OF VISITS

Kentucky Dept. of Corrections v. Thompson, 109 S.Ct. 1904 (1989). Kentucky inmates brought a suit alleging that the suspension of visitation privileges without a hearing in two instances violated due process. Following the district court's issuance of a consent decree settling a class action brought by Kentucky penal inmates under 42 U.S.C.A. Section 1983, the Commonwealth promulgated "Corrections Policies and Procedures," which, inter alia, contain a nonexhaustive list of prison visitors who "may be excluded," including those who "would constitute a clear and probable danger to the institution's security or interfere with [its] orderly operation." The Kentucky State Reformatory at LaGrange subsequently issued its own "Procedures Memorandum," which, in addition to including language virtually identical to that of the state regulations, sets forth procedures under which a visitor "may" be refused admittance and have his or her visitation privileges suspended by Reformatory officials. After the Reformatory refused to admit several visitors and

denied them a hearing, the representatives of an inmate class filed a motion with the district court, claiming, among other things, that the suspensions violated the due process clause of the fourteenth amendment. The court agreed and directed that minimal due process procedures be developed. The court of appeals affirmed and remanded, concluding, inter alia, that the language of the relevant prison policies created a liberty interest protected by the due process clause.

Held: The Kentucky regulations do not give state inmates a liberty interest in receiving visitors that is entitled to the protections of the due process clause. Pp. 1908-1911.

(a) In order to create a protected liberty interest in the prison context, state regulations must use "explicitly mandatory language," in connection with the establishment of "specific substantive predicates" to limit official discretion, and thereby require that a particular outcome be reached upon a finding that the relevant criteria have been met.

(b) Although the regulations at issue do provide certain "substantive predicates" to guide prison decisionmakers in determining whether to allow visitation, the regulations lack the requisite relevant mandatory language, since visitors "may," but need not, be excluded whether they fall within or without one of the listed categories of excludable visitors. Thus, the regulations are not worded in such a way that an inmate could reasonably form an objective expectation that a visit would necessarily be allowed absent the occurrence of one of the listed conditions or reasonably expect to enforce the regulations against the prison officials should that visit not be allowed. (State Penitentiary, Eddyville, Kentucky)

U.S. Appeals Court
TERMINATION OF VISITS
DENIAL OF VISITS
RULES

Mayo v. Lane, 867 F.2d 374 (7th Cir. 1989). The plaintiff appealed from the dismissal of her suit challenging an order by an official of the Illinois prison system that bars her from visiting any Illinois state prison. She alleged that the order deprived her of liberty and property without due process of law and sought damages and an injunction. She was visiting her grandnephew, who was serving time for armed robbery, when she was seen talking with another inmate after which she entered the women's bathroom without signing in at the visitors' desk first, as required. A search of the bathroom immediately afterwards produced a large quantity of marijuana, concluding that the visitor placed it there. A letter written by the warden to her recited these facts and informed her that "in light of the above, you are permanently restricted from visiting this facility and every other Adult Institution in the State of Illinois." Her grandnephew was paroled shortly thereafter and she then filed this lawsuit. It was noted by the court that a person's "natural liberty" is not infringed by being forbidden to enter a prison. The plaintiff argued that her natural liberty includes a right of association with members of her family, and that this right includes the right to visit them in prison. But the court noted that the complaint did not allege that she has been prevented from visiting her grandnephew or any other relative imprisoned by the State of Illinois. There was no suggestion that she wanted to visit her grandnephew after the date of her visit and before his release on parole or that any of her other relatives are in prison or about to be put there. In the absence of any injury, the plaintiff lacked standing to bring the suit on the mere basis that she felt offense at the order barring her from prison visits. (Illinois State Adult Institutions)

U.S. District Court
RULES
TERMINATION OF VISITS
VISITOR SEARCHES

Qasim v. Scully, 708 F.Supp. 90 (S.D.N.Y. 1989). A prison visitor who was arrested after a partially smoked marijuana cigarette was discovered in her bag during a routine, pre-admittance search of her belongings by correctional officers brought a suit alleging a violation of her constitutional rights. The defendants moved for summary judgment. The district court found that the arrest did not violate the visitor's constitutional rights in absence of any evidence that officers planted marijuana or acted from improper motive. The prison officials had a right to revoke the visitor's contact visiting privileges after the incident. She was given a copy of the report of the officer in charge at the time of the arrest, which was the basis of the suspension decision, which satisfied procedural requirements of state law; and the officers were entitled to an award of attorneys fees. (Green Haven Correctional Facility, New York)

U.S. District Court
DENIAL OF VISITS
FAMILY IDENTIFICATION

Ross v. Owens, 720 F.Supp. 490 (E.D. Pa. 1989). An inmate sought an injunction and monetary relief against prison officials who refused to allow his 16-year-old son to visit him. The district court dismissed the claim and the inmate moved for reconsideration. The district court denied the motion and found that under Pennsylvania regulations, it was proper for the prison to refuse the inmate's son admittance. The son, who was accompanied by an adult family member, was denied permission for a visit because he did not have any form of identification. The son had been on the list of approved visitors for eight years and had visited numerous times before. The court found that under the current state statutes, the prison had acted correctly in denying the visit based on the absence of showing identification. The lawsuit, which was based on this past refusal, was

dismissed as frivolous. However, the court did state that the prison could not refuse to allow visitation based on the failure to provide a form by the son's legal guardian granting approval, and would allow the inmate to file a new complaint if the prison denied visitation on this basis. (Pennsylvania)

U.S. Appeals Court
DENIAL OF VISITS
FAMILY

Taylor v. Armontrout, 894 F.2d 961 (8th Cir. 1989). An inmate brought a civil rights action alleging that he was denied visitation with his son. The U.S. District Court dismissed the complaint as frivolous, and the inmate appealed. The appeals court, reversing and remanding with directions, found that a Missouri Department of Corrections Rule which provided that those persons whose names appear on the inmate's visiting list "shall" be allowed to visit, created a liberty interest protected by the fourteenth amendment, and thus the prisoner could bring a civil rights action after he was denied visitation with his son, who was on an approved visiting list. On July 7, 1986, Taylor's son rode his motorcycle from Florida to visit his father. When he arrived at the visiting room of the prison during regular visiting hours, he requested a visit presenting himself as an approved visitor, in a neat and respectful manner with appropriate picture identification. Prison officials denied him permission to visit Taylor. After being denied permission to visit, Taylor's son went to the local Salvation Army for assistance. The Salvation Army advised Taylor's son to request an interview with the warden concerning the denial of visitation. He made such a request, but the request was refused. Two days later, he again sought the assistance of the Salvation Army. A Salvation Army representative was permitted to visit with Taylor and advised him that his son had attempted to visit him. Taylor than contacted his case worker notifying him of the prison's refusal of the visit. Taylor also wrote the warden notifying him of the refusal as well. Soon thereafter, Taylor's son was granted permission to visit Taylor. Unfortunately, by this time Taylor's son was hospitalized as a result of injuries he received in a motorcycle accident. (Missouri DOC)

U.S. Supreme Court
FREQUENCY
RULES
SCHEDULING

Thompson v. Com. of Ky., Dept. of Corrections, 109 S.Ct. 1904 (1989). Prisoners in the Kentucky prison system filed a suit alleging that they had a due process liberty interest in visitation privileges. The federal appeals court stated that a procedures memorandum adopted to govern visitation created a due process liberty interest because the policy specified that each inmate is allowed three separate visits a week, and it also limited the discretion of authorities to deny visitation to certain circumstances. Since it was not clear from the record what set of regulations governed other parts of the Kentucky prison system, the court ordered further proceedings to determine the precise regulations applicable, the limits of prison discretion and "the particular procedural process due the plaintiffs when visitation is denied." However, the Supreme Court disagreed, reversing the lower court decision, holding that the Kentucky regulations do not give state inmates a liberty interest in receiving visitors that is entitled to the protections of the Due Process Clause. (Kentucky State Reformatory and Kentucky State Penitentiary)

1990

U.S. Appeals Court
ATTORNEY
CONTACT VISITS

Ching v. Lewis, 895 F.2d 608 (9th Cir. 1990). A state prisoner brought a suit against several prison officials claiming violations of his eighth and fourteenth amendment rights. The U.S. District Court entered a summary judgment in the defendant officials' favor, and the prisoner appealed. The appeals court, reversing and remanding the lower court's decision, found that the prisoner's right of access to the courts included contact visitation with his counsel, and the apparently arbitrary policy of denying the prisoner contact visits with his attorney prohibited effective attorney-client communication and unnecessarily abridged the prisoner's right to meaningful access to courts. (State Prison, Florence, Arizona)

U.S. District Court
DENIAL OF VISITS
RULES

Doe v. Sparks, 733 F.Supp. 227 (W.D. Pa. 1990). A female inmate of a county prison brought an action challenging the prohibition on visitation by boyfriends or girlfriends of homosexual inmates. The U.S. District Court found that the rule bore a rational relation to valid goals but its effectiveness was so undercut by other factors as to render it constitutionally infirm. According to the court, if Pennsylvania law holds that it is beyond the power of the Pennsylvania legislature to prohibit adult private consensual homosexual conduct, the federal equal protection clause requires at least a showing of a rational relationship to a permissible end for any governmental policy which requires the disparate treatment for persons who are not seeking to engage in legally permissible sexual conduct but merely to acknowledge the existence of a homosexual affectional or romantic relationship. The prohibition of even consensual homosexual activity is a practical necessity of the prison administration, whether for health or discipline reasons. Concerns for abuse of inmates who are identified as homosexuals and for the protection of discipline and health were valid concerns of prison officials, and the prison policy against visits by the boyfriends or girlfriends of homosexual inmates bore a rational relation to preventing those ills, but the effectiveness of that policy to deal with those ills was so undercut by other factors as to render it constitutionally infirm. (Blair County Prison, Pennsylvania)

U.S. Appeals Court
RULES

Grass v. Sargent, 903 F.2d 1206 (8th Cir. 1990). An inmate brought a civil rights action asserting a violation of his constitutional rights by the Arkansas Department of Correction's policy prohibiting smoking in the prison visitation area during visiting hours. The U.S. District Court dismissed the complaint, and the inmate appealed. The court of appeals, affirming the lower court decision, found that the policy prohibiting smoking in the prison visitation area during visiting hours did not violate the inmate's constitutional rights. While a state regulation instructed prison officials to establish a smoking policy, the court found that it did not contain "particularized substantive criteria to guide the officials or mandatory language requiring them to act in a certain way," and therefore did not create a liberty interest. The policy also did not violate the eighth amendment, since it did not deprive inmates of a "minimal civilized measure of life's necessities." The complaint was "nothing more than a claim of infringement of a legal interest that does not exist." (Cummins Unit, Arkansas Department of Correction)

U.S. District Court
VISITOR SEARCHES

Smith v. Maloney, 735 F.Supp. 39 (D.Mass. 1990). A visitor to an inmate at a state correctional institution brought a civil rights suit alleging that searches of her violated federal constitutional rights and Massachusetts law. The court ruled that a state regulation and prison visitor's liberty interests were violated by searching the visitor without her signature in a logbook consenting to the search. The state regulation provides that unless there is probable cause to search, a visitor to be searched more intrusively than a thorough pat down should be told that he may leave the institution rather than submit to a search, and that if the visitor agrees to the search, he shall record such consent by signing the logbook. (MCI- Cedar Junction, Massachusetts)

1991

U.S. District Court
ATTORNEY

Casey v. Lewis, 773 F.Supp. 1365 (D. Ariz. 1991), reversed, 4 F.3d 1516. A class action suit was brought by prisoners challenging certain prison policies. The district court found that a blanket prohibition of attorney contact visits in certain prison units was invalid because the defendants provided no proof of the regulation's purpose or how it furthers a legitimate penological objective. The appeals court reversed the decision, upholding the prison policy. (Arizona Department of Corrections)

U.S. District Court
CONJUGAL

Cromwell v. Coughlin, 773 F.Supp. 606 (S.D.N.Y. 1991). An inmate challenged prison regulations denying him conjugal visits. On officials' motion for summary judgment, the district court found that New York prison regulations governing visitation did not create a protected liberty interest in conjugal visits at all state prisons. The court found the need for further proceedings to determine whether the state's interest in effective prison administration "justified curtailment of what would otherwise be a constitutionally protected right," and refused to grant summary judgment on the inmate's claim that his inability to participate in a conjugal visit program constituted a violation of his fundamental right to marital privacy. (Ossining Correctional Facility, New York)

U.S. Appeals Court
VISITOR SEARCHES

Long v. Norris, 929 F.2d 1111 (6th Cir. 1991), cert. denied, 112 S.Ct. 187. Inmates and former inmates brought a Section 1983 action against prison officials, challenging a policy which authorized strip and body cavity searches of visitors, regardless of probable cause. The U.S. District Court denied the officials' motion for summary judgment based on qualified immunity, and appeal was taken. The court of appeals found that state prison regulations granting inmates visitation rights, which could not be removed without good cause, gave rise to a clearly established due process right which was violated by prison officials' policy of subjecting prison visitors to strip and body cavity searches regardless of probable cause. According to the court, caselaw "clearly established the contours of the prison visitor's right to be free from a visual body cavity search in the absence of reasonable suspicion that he or she is carrying contraband." (Morgan County Regional Correctional Facility, Tennessee)

U.S. Appeals Court
VISITOR SEARCHES

Marriott By and Through Marriott v. Smith, 931 F.2d 517 (8th Cir. 1991). A plaintiff brought suit under Section 1983 against a sheriff, county jailers, and the county and its commissioners, alleging that her Fourth Amendment rights were violated when she was searched at the jail after she visited an inmate. The court of appeals found that the prison visitor exception to the Fourth Amendment search warrant requirement did not apply to the search of a visitor who had already finished a visit to the jail and was no longer in a position to smuggle contraband into jail, and the defendants were not entitled to qualified immunity, since nothing in prior cases suggested that a jail visitor's Fourth Amendment right not to be searched without a warrant could be abridged after visit and after danger of smuggling had passed. (Morgan County Jail, Missouri)

U.S. Appeals Court
LIBERTY INTEREST
SCHEDULING

Patchette v. Nix, 952 F.2d 158 (8th Cir. 1991). Prisoners brought an action contending that they had liberty interest in existing visitation regulations and that changing those regulations violated their constitutional rights. The U.S. District Court found that the change in visitation regulations violated due process but that there was no Eighth Amendment violation, and appeal was taken. The court of appeals found that the

prisoners had a liberty interest in weekend visitation which could not be abridged without affording due process. (Iowa State Penitentiary Farm I)

U.S. District Court
DENIAL OF VISITS
LIBERTY INTEREST

Van Poyck v. Dugger, 779 F.Supp. 571 (M.D. Fla. 1991). An inmate brought a Section 1983 action against state prison officials based on their denial of visitation privileges to his fiancee, and the officers moved to dismiss. The district court found that even though an inmate had no absolute right to visitation under the First Amendment, Florida law created a liberty interest in the inmate's right to visitation by setting forth both specified substantive predicates and relevant mandatory language concerning denial of visitation. The employees of the Florida Department of Corrections were not entitled to qualified immunity from liability in the inmate's Section 1983 action as the unlawfulness of denying the inmate visitation privileges without legitimate penological objectives was clearly established at the time of the actions challenged. In addition, genuine issue of material fact existed as to whether the state prison official's decision to deny the inmate's fiancee visitor status was rationally related to legitimate security interest or was in retaliation for the inmate's offense of felony-murder of a correctional officer and in retaliation for his actions as an inmate legal aide, precluding summary judgment. (Florida State Prison)

1992

U.S. District Court
CONJUGAL

Anderson v. Vasquez, 827 F.Supp. 617 (N.D. Cal. 1992) modified 28 F.3d 104. Death row inmates filed a Section 1983 action alleging that the denial of conjugal visits and of the opportunity to preserve sperm for artificial insemination violated the Eighth Amendment. The district court found that the denial of conjugal visits for the death row inmates did not violate their equal protection rights. Although inmates sentenced for life imprisonment were allowed conjugal visits, there was no showing that the death row inmates were similarly situated. In addition, no constitutional right to have inmates' sperm preserved for artificial insemination exists. Although an inmate has a constitutionally protected right to marry, many aspects of marriage, including artificial insemination as a method of begetting a child, are superseded by the fact of confinement. Spouses and other women partners willing to procreate with death row inmates, and potential grandparents of such possible issue, had no standing to assert a claim that denial to inmates of conjugal visits and artificial insemination inflicted cruel and unusual punishment on them in violation of the Eighth Amendment, even though they had not been convicted of a crime. The Eighth Amendment prohibition does not read so far as to require the state to ensure against hardship caused to third persons as a result of incarceration of one convicted of crime. (San Quentin State Prison, California)

U.S. District Court
ATTORNEY
FREQUENCY
SCHEDULING

Benson v. County of Orange, 788 F.Supp. 1123 (C.D. Cal. 1992). Inmates in a county jail sought a temporary restraining order and preliminary injunction to prevent an announced reduction of visiting times to two days a week. The district court found that the reduction did not violate the constitution because the county had shown that the visitation schedule change was made after careful study of visiting practices, capacity, and available supervisory personnel. According to the court, jail officials had made a considered choice regarding scheduling, in the face of under-use of some visiting times, budget limits, and security requirements for assigning personnel elsewhere. (Orange County Jail, California)

U.S. Appeals Court
VISITOR SEARCHES

Boren v. Deland, 958 F.2d 987 (10th Cir. 1992). The wife of an inmate sued state prison officials under Section 1983 after officials strip-searched her prior to a visit with her husband to determine whether she was wearing inappropriate clothing in violation of the visiting room policy. The district court found that the search was based upon reasonable suspicion and that the wife had consented, and the wife appealed. The court of appeals, affirming the decision, found that the wife had a legitimate expectation of privacy when she entered prison to visit her husband, and the search was supported by reasonable individualized suspicion and did not violate the Fourth Amendment. On several occasions, prison visitors complained that the wife wore white denim jeans with a hole in the crotch and that she and her husband engaged in inappropriate sexual conduct during visiting hours. One of the officers involved in ordering the search had also previously observed the wife wearing the offending clothing. The wearing of such clothing during a visit violated Utah State Prison regulations, and the search was supported by reasonable individualized suspicion as a result of numerous people observing the violation. (Utah State Prison)

U.S. District Court
FAMILY
DENIAL OF VISITS

Gavin v. McGinnis, 788 F.Supp. 1012 (N.D. Ill. 1992). A pro se inmate sued prison officials alleging that they improperly denied his visitation rights with his family. The defendants moved to dismiss. The district court denied the motion, finding that the inmate's allegations that prison officials refused to admit his family to the prison for visitation purposes and revoked their visitation privileges for a six-month period, thus preventing him from receiving visitors, sufficiently stated a claim under Section 1983 for violation of civil rights. However, the court expressly declined to decide whether a prisoner had a statutorily-created protectible liberty interest in visitation. (Stateville Correctional Center, Joliet, Illinois)

U.S. Appeals Court
DENIAL OF VISITS

Mendoza v. Blodgett, 960 F.2d 1425 (9th Cir. 1992). A prisoner brought a Section 1983 action against administrators and correctional officers at a prison to recover for violation of procedural due process in connection with suspension of visitation privileges. The U.S. District Court entered summary judgment for the defendants, and the prisoner appealed. The court of appeals found that Washington's prison visitation regulations created a due process liberty interest, and, thus, the visiting rights could be suspended under an enumerated list of circumstances only after finding of guilt pursuant to a regular disciplinary hearing. In addition, written notice had to be given to the inmate and visitor, and regulations did not state that administrative staff "reserves the right" to allow or disallow visits. However, the prisoner's procedural due process rights in visitation were not violated by a 90-day suspension and informal infraction hearing, even though the infraction was subsequently dismissed. The dismissal of the charge against the prisoner for attempting to smuggle drugs into the prison did not entitle him to reinstatement of visitation rights under Washington law, as the suspension was continued on the basis of the wife's attempts to smuggle contráband to the prisoner on prior occasions and the finding of a balloon with a white slimy substance and the tip bitten off in a restroom after the prisoner's child used it. (State Penitentiary, Walla Walla, Washington)

U.S. District Court
SPOUSE
TERMINATION OF VISITS

Smith v. Matthews, 793 F.Supp. 998 (D.Kan. 1992). A prison inmate and his wife and daughter brought a *Bivens* action against a warden of a prison seeking declaratory judgment, injunctive relief, and damages for alleged constitutional violations. Upon the defendants' motion to dismiss, or in the alternative, for summary judgment, the district court found that the warden did not act arbitrarily and capriciously in permanently restricting the wife's visitation. The wife refused to complete the first search by prison officials and the fact that she later consented to a second or further search, and the fact that no contraband was found, did not negate the potential consequences of her first refusal. In addition, reliable and confidential information of a drug smuggling scheme that included an inmate and his wife provided probable cause to issue a warrant for a body search of the inmate's wife during her attempt to visit the inmate. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
CONTACT VISITS
SEARCHES

Zunker v. Bertrand, 798 F.Supp. 1365 (E.D. Wis. 1992). An inmate brought a Section 1983 action against a prison warden alleging that a policy regarding pre- and post-visitation visual body cavity searches violated the inmate's Fourth and Fourteenth Amendment rights. The district court found that visual body cavity searches conducted after contact visits in prisons as a means of preventing inmates' possession of weapons and contraband, even absent probable cause, were reasonable. In addition, the language of the prison regulation under which a strip search "may only" be conducted in a clean and private place did not establish the prisoner's liberty interest in having visual body cavity searches conducted in complete privacy which could form the basis of a Section 1983 claim for violation of the Fourteenth Amendment. Even if the searches violated provisions of prison regulations, as they were not conducted in a private place, the violation would not give rise to a constitutionally protected liberty interest. (Green Bay Correctional Institution, Wisconsin)

1993

U.S. Appeals Court
CONTACT VISITS
RULES

ACLU of Maryland v. Wicomico County, MD., 999 F.2d 780 (4th Cir. 1993). A paralegal brought a Section 1983 action against a county prison after the prison refused to allow the paralegal to continue to have contact visits with inmates. The U.S. District Court denied the prison's summary judgment motion, and the prison appealed. The appeals court found that the paralegal failed to show an adverse impact from the visitation restriction, and thus failed to state a retaliation claim under Section 1983. The paralegal was free to visit with inmates in noncontact meeting rooms which were all that the prison provided to any nonprofessional visitor. In addition, the paralegal failed to establish a due process claim based on the prison's former acquiescence to such visits. Such acquiescence was at most an informal arrangement that did not implicate the due process clause, and no evidence existed of a legal guarantee that such visits would continue. The court also found that the paralegal failed to establish an equal protection claim. The warden's withdrawal of the special accommodation he had made for the paralegal affected her alone and merely returned her to the status occupied by other prospective paralegal visitors. (Wicomico County Detention Center, Maryland)

U.S. District Court
ATTORNEY
CONTACT VISITS

Mann v. Reynolds, 828 F.Supp. 894 (W.D. Okl. 1993) reversed 46 F.3d 1055. Death-row inmates brought a class action against state-related defendants to change a policy of restricting full contact visits with attorneys. The district court found that the limited-contact visits with attorneys presently accorded to death row inmates, with modification, met the requirement of the Sixth and Fourteenth Amendments. Inmates are to be allowed a full view through a clear partition that will not restrict vocal communication. The access by inmates to telephones used for confidential attorney calls which were equipped with a cord long enough to enable the inmate to take the receiver to the back of the cell

met the Sixth and Fourteenth Amendment requirements. The appeals court reversed the lower court decision, finding no Sixth Amendment violation. (Oklahoma State Penitentiary, McAlester, Oklahoma)

U.S. District Court
TERMINATION OF VISITS

Percy v. Jabe, 823 F.Supp. 445 (E.D. Mich. 1993). An inmate and his visitor brought a civil rights action against prison officials who placed the visitor on a permanent visitor restriction list when the inmate was found guilty of possessing crack cocaine after a visit. The district court found that the prison officials did not violate the inmate's right to due process in adjudicating his substance abuse charge in a prison misconduct proceeding without bringing criminal charges. The fact that officials chose not to invoke criminal sanctions against the inmate or visitor involved in the incident had no significance regarding the accuracy of the determination that the inmate abused crack cocaine after a visit. In addition, placing the visitor on a restricted list did not violate the inmate's or the visitor's constitutional rights. The restriction was not an irrational or exaggerated response by officials, and even if the inmate had a protected liberty interest in visitation, it would be subject to reasonable restrictions. (Michigan)

U.S. District Court
VISITOR SEARCHES

U.S. v. Spriggs, 827 F.Supp. 372 (E.D. Va. 1993) affirmed 30 F.3d 132. A defendant charged with narcotics distribution while visiting a prison moved Zto suppress drugs seized during a strip search. The district court denied the motion, finding that the visitor to the prison was warned that all visitors will be searched and consented to the search. He could not withdraw his consent after the search had commenced, and thus, the drugs recovered during the search could be suppressed. The warrantless strip search of the prison visitor was found reasonable. After consenting to a pat down of his upper body and thorough inspection of his mouth, the visitor balked at a pat down of his groin area. The visitor attempted to withdraw his consent, and asserted a suspect religious objection to the search. (Occoquan Facility, Lorton Reformatory, Lorton, Virginia)

1994

U.S. District Court
CONTACT VISITS
DENIAL OF VISITS

Ayers v. Rone, 852 F.Supp. 18 (E.D.Mo. 1994). A prisoner who was being held at a county jail brought an action against prison officials alleging that they violated his constitutional due process and equal protection rights by refusing to provide him with contact visits with his wife and not providing him with satisfactory reasons for such refusal. The district court found that the denial of contact visits between the prisoner and his wife, who was also incarcerated at the jail, was rationally related to valid penological concerns. The prisoner, who was charged with homicide, was not similarly situated to other prisoners who received contact visits, because he was a high risk and posed a serious threat to the security of the jail and to the safety of jail employees and other prisoners. (New Madrid County Jail, Missouri)

U.S. Appeals Court
ATTORNEY
CONTACT VISITS

Barnett v. Centoni, 31 F.3d 813 (9th Cir. 1994). A death row inmate filed a Section 1983 action against prison officials. The U.S. District Court granted summary judgment on the prisoner's claim that he was denied access to courts and dismissed the inmate's claim that he was denied contact visitation privileges. The inmate appealed. The appeals court found that the Constitution guarantees a prisoner's meaningful access to courts, including contact visitation with counsel. This right may be limited if prison officials can show that such limitations are reasonably related to legitimate penological interests; however, prison officials failed to make such a showing. It was noted by the court that other than with attorneys, prisoners have no right to contact visitation privileges. (San Quentin State Prison)

U.S. Appeals Court
CHILDREN
EQUAL PROTECTION
FAMILY

Bills v. Dahm, 32 F.3d 333 (8th Cir. 1994). An inmate brought a Section 1983 action against officials of a correctional facility, alleging violations of his right to equal protection because he was denied overnight visitation with his infant son while some female inmates of a correctional facility for women were permitted such visits. The U.S. District Court denied the defendants' motion for summary judgment and they appealed. The court of appeals, reversing and remanding, found that prison officials were entitled to qualified immunity. A reasonable official could have believed that the inmate was not similarly situated to inmates at the women's facility and could find denial of such visitation privileges to the inmate to be rationally related to a legitimate penological objective. (Lincoln Correctional Center, Nebraska)

U.S. Appeals Court
SPOUSES
TERMINATION OF VISITS

Caraballo-Sandoval v. Honsted, 35 F.3d 521 (11th Cir. 1994). A prisoner and his wife brought a civil rights action against prison officials who terminated the wife's visitation privileges. The U.S. District Court dismissed the action and the inmate appealed. The appeals court found that the decision to terminate the visitation privileges was within the prison officials' discretionary authority and that the prison officials had a legitimate penological objective for denying the privileges. The wife was a former prison employee and the officials were concerned that the wife posed a threat to security because of her knowledge of security procedures. (Federal Correctional Institution, Marianna, Florida)

U.S. Appeals Court
SPOUSES
VISITOR SEARCHES

Daugherty v. Campbell, 33 F.3d 554 (6th Cir. 1994). A prison visitor brought a civil rights action against a warden in connection with the warden's authorization of a strip search of the visitor. The U.S. District Court entered judgment for the warden and the visitor appealed. The appeals court, reversing and remanding, found that, as a matter of law, where no independent objective information existed, uncorroborated information upon which the warden relied was insufficient to warrant the strip search, notwithstanding the warden's contention that since some information regarding the visitor's alleged smuggling of drugs into prison came from a reliable officer, they required no corroboration. The officer had simply relayed an anonymous tip to the warden, and letters received by the warden personally were either anonymous or had a fictitious name and provided no reliability. The court found that a generalized suspicion of smuggling activity does not justify a strip search of a visitor. Reasonable suspicion requires individualized suspicion, specifically directed toward a person targeted for a strip search, and exists only if information contained in an anonymous tip is linked to other objective facts known by correctional authorities. (Turney Center, Tennessee)

U.S. District Court
DENIAL OF VISITS
FAMILY
LIBERTY INTEREST

Gavin v. McGinnis, 866 F.Supp. 1107 (N.D. Ill. 1994). A former state prisoner sued an assistant prison warden in a Section 1983 action, alleging he was deprived of civil rights when he was denied visitation with his sister. The district court denied the assistant warden's motion to dismiss. On its own reconsideration, the same court found that the prisoner had a liberty interest in visitation arising from an Illinois statute requiring correctional facilities to permit committed persons to receive visitors. However, the prisoner failed to state a cause of action under Section 1983 against the assistant warden, since the prisoner failed to sufficiently connect the alleged denial of visitation to the assistant warden. The assistant warden was protected by qualified immunity from the suit as the existence of the statutorily created liberty interest in visitation in Illinois was not established at the time of the alleged denial. (Stateville Correctional Center, Joliet, Illinois)

U.S. Appeals Court
CONJUGAL
DENIAL OF VISITS

Hernandez v. Coughlin, 18 F.3d 133 (2nd Cir. 1994) U.S. cert. denied 115 S.Ct. 117. An inmate brought an action against state corrections officials alleging that denial of conjugal visitation rights violated his due process rights. The U.S. District Court dismissed, and the inmate appealed. The appeals court, affirming the decision, found that the inmate did not have a constitutionally protected interest in conjugal visitation. Relevant regulations contained no specific set of criteria that when met would make participation in the program mandatory, or that would significantly limit prison officials' discretion in deciding the best candidates for program participation. Rather, the regulations provided corrections officials with discretionary authority to determine whether a particular visitor should be permitted to enter a correctional facility, whether a particular correctional facility should include a program, and whether a particular inmate should be given the privilege to participate. (Fishkill Correctional Facility, New York)

U.S. District Court
ATTORNEY
CONTACT VISITS

Mitchell v. Dixon, 862 F.Supp. 95 (E.D.N.C. 1994). An inmate brought a civil rights action against prison officials alleging sexual harassment. On the inmate's motion to compel the officials to allow the inmate's counsel to have contact visits with the inmate, the district court found that the inmate was not entitled to contact visits with attorneys. The state had legitimate interests in prohibiting contact visits, including preventing escapes and smuggling of contraband. Permitting contact visits would result in high costs in terms of personnel, facility, and procedures that would be required. The current noncontact visitation sufficiently accommodated the inmate's right to confer with counsel. (Central Prison, North Carolina)

U.S. District Court
CHILDREN
RULES

Navin v. Iowa Dept. of Corrections, 843 F.Supp. 500 (N.D. Iowa 1994). Action was brought against a sheriff and jail administrator for alleged violation of an inmate's constitutional rights by restricting visitation by the inmate's minor daughter. On the defendants' motion for summary judgment, the district court found that the inmate did not have standing to assert denial of his daughter's constitutional right of visitation. The correctional center's requirement that minors be accompanied by an appropriate adult was reasonably related to legitimate penological interests even if it impinged upon the inmate's First, Eighth and Fourteenth Amendment rights. The defendants were entitled to qualified immunity where a reasonable official would not have known that the alleged actions violated constitutional rights. (Linn County Correctional Center, Iowa)

U.S. District Court
CHILDREN

Smith v. McDonald, 869 F.Supp. 918 (D.Kan. 1994). A county detention center inmate brought a civil rights action. The district court found that the detention center did not violate the civil rights of the prisoner by denying him visitation rights with his six-year-old son during a seven-month period of incarceration. The center was revising its policy during the period of the prisoner's incarceration and informally allowed him visitation for the last two months, even though a liberalized policy had not been formally adopted. (Wyandotte County Detention Center, Kansas)

U.S. Appeals Court
VISITOR
SEARCHES

Spear v. Sowders, 33 F.3d 576 (6th Cir. 1994). A prison visitor sued prison officials under Section 1983 alleging that a strip search and search of her car when she visited an inmate violated the Fourth Amendment. The U.S. District Court granted summary judgment to prison officials on the basis of qualified immunity and the prison visitor appealed. The appeals court, reversing and remanding, found that law was clearly established at the time of the search that prison officials needed reasonable suspicion to search prison visitors. The prison officials did not have reasonable suspicion to search the prison visitor based upon a confidential informant's tip that the inmate was receiving drugs "every time an unrelated female visited." Therefore, the officials did not have qualified immunity in the action. Furthermore, the prison officials' search of the visitor's car violated the Fourth Amendment, and the prison officials were not immune. (Northpoint Training Center, Kentucky)

U.S. District Court
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. (Maximum Control Complex, Indiana Department of Corrections, Westville, Indiana)

U.S. District Court
VISITOR SEARCHES

Varrone v. Bilotti, 867 F.Supp. 1145 (E.D.N.Y. 1994). The son of a prison inmate brought a Section 1983 action against a prison official after he was required to submit to a strip search before he was allowed to visit his father. The district court found that the son had a diminished expectation of privacy as a prison visitor. However, the son did not waive his Fourth Amendment rights by signing a consent form or because of a posted sign warning that a search may be required. The court found that the search was not warranted by a confidential informant's tip and a generalized suspicion of drug smuggling. Material issues of fact precluding summary judgment existed as to whether the search of the son was reasonable. The prison official was not entitled to summary judgment on the grounds of qualified immunity. Although the official did not participate in making the decision to subject the prison inmate's son to a strip search, the official actually performed the search in question. (Arthur Kill Correctional Facility, New York)

U.S. District Court
FAMILY
FREQUENCY
PRETRIAL
DETAINEES

Young v. Larkin, 871 F.Supp. 772 (M.D. Pa. 1994), affirmed, 47 F.3d 1163. A pretrial detainee filed a civil rights action against prison officials complaining about treatment during pretrial detention. On the defendants motion for summary judgment the district court found that the prisoner, who was confined in a restrictive housing unit, was not denied constitutional rights by the fact that he was allowed fewer visits with family than other prisoners in the general population and that he had to visit family with handcuffs on, unlike prisoners in the general prison population. The restrictions were justified by valid security concerns. (State Correctional Institution, Dallas, Pennsylvania)

1995

U.S. District Court
PRETRIAL DETAINEES
IDENTIFICATION
TIME LIMITS
SCHEDULING

Flournoy v. Fairman, 897 F.Supp. 350 (N.D.Ill. 1995). A pretrial detainee brought § 1983 actions against a director of a county department of corrections and a social worker at a county jail. The district court held that denial of visitation when the visiting room was overcrowded, when visitors refused to produce identification, when visitors did not know on which tier the detainee was housed, or when insufficient time remained during visiting hours, did not violate the detainee's right to due process. The court found that such policies and practices were perfectly sensible and were reasonably related to the need to maintain internal security at the jail. The court also noted that an Illinois statute governing visitation at state correctional facilities did not apply to county jails and therefore did not give rise to any protected liberty interest. (Cook County Jail, Illinois)

U.S. Appeals Court
ATTORNEY

Ingram v. Ault, 50 F.3d 898 (11th Cir. 1995). A death row inmate brought a civil rights action alleging that denial of face-to-face contact with his lawyer during the hours preceding his execution violated the Sixth Amendment. The U.S. District Court denied the inmate's motion for a temporary restraining order and the inmate appealed. The appeals court, affirming the decision, found that granting the death row inmate telephone access to his lawyer during the hours immediately preceding his scheduled execution satisfied the inmate's rights under the Sixth Amendment. (Georgia Diagnostic & Classification Center, Jackson, Georgia)

U.S. District Court
CHILDREN
RULES
SPOUSE

Hallal v. Hopkins, 947 F.Supp. 978 (S.D.Miss. 1995). Inmates who were husband and wife brought a pro se action against the administrator and deputy matron of a county detention center. The district court held that the wife had no First Amendment claim regarding deprivation of her property when she initially entered the facility and that confiscation of her property did not violate her right to privacy under the Fourth Amendment. The court found that partitioning the visitation area, permitting visitation only for periods of 20 minutes, and refusing to permit the husband and wife to visit one another were policies that were within the sound discretion of the detention center officials. However, the court found that an evidentiary hearing was warranted to determine the factual basis for an absolute ban on visitation by children under 12 years of age, and whether the ban was an exaggerated and

overly broad response to security concerns under the circumstances. The court held that denying the wife legal assistance from her husband did not violate her constitutional rights. (Madison County Detention Center, Wisconsin)

U.S. Appeals Court
ATTORNEY
CONTACT VISITS

Mann v. Reynolds, 46 F.3d 1055 (10th Cir. 1995). A class action was brought on behalf of death row and high-maximum security inmates, challenging a prison policy prohibiting barrier-free or contact visits between inmates and legal counsel. The U.S. District Court determined that the policy violated the inmates' constitutional rights but that alterations of that policy unilaterally adopted by the prison during the course of the litigation were in compliance with constitutional requirements, and the inmates appealed. The appeals court found that the prison policy prohibiting contact visitation between death row inmates and their attorneys violated the Sixth Amendment. The prison permitted inmates personal contact with virtually all those with whom they interacted. This included contact with other inmates and law clerks who are also inmates in the law library, contact during religious services and at the barber shop staffed by inmates, contact with medical, psychological, and other prison staff as well as visiting chaplains, contact with the public during tours of the facility, and contact with civilian female librarians and visiting law enforcement personnel. There was no explanation why lawyers were singled out for the restrictive contact. (Oklahoma State Penitentiary)

U.S. District Court
CONTACT VISITS
DENIAL OF VISITS

McDiffett v. Stotts, 902 F.Supp. 1419 (D.Kan. 1995). A prison inmate filed a § 1983 action against prison authorities and the district court granted summary judgment for the defendants. The court found that prison authorities could constitutionally suspend contact visits with family and friends for 90 days. The court noted that contact visitation may be limited or even prohibited by prison authorities without violating inmates' rights to freedom of association under the First Amendment. (El Dorado Correctional Facility, Kansas)

U.S. District Court
SEGREGATION
FREQUENCY

Robinson v. Il. State Corr. Ctr. (Stateville), 890 F.Supp. 715 (N.D.Ill. 1995). A prison inmate housed in a segregation unit sued prison officials alleging violation of his civil rights in connection with his conditions of confinement. The district court dismissed several elements of his suit, but found that his complaint that inadequate heating and cooling posed a risk to his health was actionable under § 1983. The inmate claimed that the reduction of visitation time imposed when he was placed in segregation violated his rights but the court disagreed, holding that he was not denied the right to see particular visitors nor did restrictions placed on visitation time prevent him from receiving any visitors at all. The court found that neither prison regulations nor state statutes established a protected right to commissary privileges, holding that restrictions placed on the types of commissary items that could be purchased by inmates in segregation did not violate any constitutional rights. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
DENIAL OF VISITS
SEARCHES
TERMINATION

Rodriguez v. Phillips, 66 F.3d 470 (2nd Cir. 1995). A former inmate and his mother filed a § 1983 action against prison officials. The district court denied summary judgment for the defendants and they appealed. The appeals court reversed and remanded in part, and dismissed in part. The appeals court found that prison officials' belief that the inmate's three-day administrative confinement, without the opportunity to be heard, was reasonable. The court noted that the officials perceived a threat to security and safety following a report that the inmate's mother had passed contraband into the prison, and that they needed time to search the public spaces of the cell block and interview an informer. The court held that a substantive due process right to be free from excessive force from a state act in a nonseizure, nonprisoner context was not clearly established at the time that a prison officer used excessive force on the inmate's mother. Just before a visit to her son, the mother had apparently leaned against or touched the fence surrounding the prison, pausing before she continued to the visitors reception area. An officer radioed a report to officers inside the facility that he had seen the mother pass a small brown package through the fence to an unidentified inmate. Inside the prison the mother was questioned by officers about the incident and she was told she would not be allowed to visit her son that day. While she was waiting at the bus stop corrections officers seized her and brought her back for further questioning, police were contacted and she was arrested. Unable to make bail she was held overnight and she was released without explanation the next day. Two weeks later she arrived to visit her son and she was not allowed to, although her visiting rights had not been formally suspended. She alleged that an officer screamed at her, put both hands on her shoulders and propelled her toward the building entrance and threw her against the front door. (Mid-Orange Correctional Facility, New York)

U.S. Appeals Court
VISITOR
SEARCHES

Romo v. Champion, 46 F.3d 1013 (10th Cir. 1995). Visitors to a prison brought a Section 1983 action alleging a violation of their constitutional rights by law enforcement officials in connection with stopping their vehicle at a roadblock, a canine sniff of their vehicle and their bodies, and a strip search of one of the visitors. The U.S. District Court granted summary judgment against the visitors and they appealed. The appeals court, affirming the decision, found that the initial stop of the vehicle as it was attempting to enter the prison, in order to facilitate a drug-sensing dog's sweep of the car and its occupants, did not violate the Fourth Amendment. Public interest in keeping drugs out of prisons and maintaining prison security was substantial, the roadblock was reasonably tailored to achieve those objectives, and interference with the occupants' individual liberty was not significant. After the drug-sniffing dog alerted officers to one of the visitors, prison officials possessed at least reasonable suspicion

that the visitor was concealing narcotics and ordering her to submit to a strip search before entering the prison was constitutional. (Dick Conner Correctional Center, Hominy, Oklahoma)

U.S. District Court
DENIAL OF VISITS

Sorenson v. Murphy, 874 F.Supp. 461 (D. Mass. 1995). An inmate sued a superintendent and a deputy superintendent of a correctional facility alleging violations of his due process and equal protection rights. On the defendants' motion to dismiss or for summary judgment, the district court found that the inmate's loss of visiting privileges for 12 days, after a disciplinary report was issued based upon a positive drug test result but prior to a hearing before a disciplinary officer and a determination of guilt, did not rise to a level of federal due process proportions, although it was in violation of rules promulgated by the Department of Corrections. (Old Colony Correctional Center, Massachusetts)

U.S. Appeals Court
SEARCHES

Spear v. Sowders, 71 F.3d 626 (6th Cir. 1995). A prison visitor sued prison officials under § 1983 alleging that a strip search and a search of her car when she visited an inmate violated the Fourth Amendment. The district court granted summary judgment for the officials on the basis of qualified immunity. The appeals court affirmed in part, reversed in part and remanded the case. The court found that information supplied by a confidential informant that an inmate "was receiving drugs every time a young unrelated female visitor visited" gave prison guards reasonable suspicion and justified a body cavity search of the visitor. The court noted that if prison officials had detained the visitor without probable cause and told her she would not be permitted to depart without submitting to a search, those circumstances would have violated her right to be free from being detained absent probable cause. Prison visitors can be subjected to some searches, such as a pat-down or metal detector sweep, merely as a condition of visitation absent any suspicion, and visitors seeking entry to a controlled environment acknowledge a lesser expectation of privacy. Prison officials may not search a visitor who objects without giving the visitor a chance to abort the visit and depart. A visitor does not consent to an invasive search simply by appearing at the prison for a visit even if he or she may consent to less invasive searches merely by entering the facility. However, the court found that fact questions existed about the exact scope of the search of the visitor's car or whether a sign was posted and visible notifying the visitor that her car would be searched, making summary judgment inappropriate with regard to that search. (Northpoint Training Center, Kentucky)

1996

U.S. District Court
FAMILY
AIDS
ADA-Americans with Disabilities Act

Bullock v. Gomez, 929 F.Supp. 1299 (C.D.Cal. 1996). An HIV-positive inmate and his wife sued correctional officials alleging that refusal to allow overnight visits violated the Americans with Disabilities Act (ADA). The district court denied the defendants' motion for summary judgment, finding that the ADA and the Rehabilitation Act applied to state correctional facilities and that fact questions about the reasonableness of the refusal precluded summary judgment. The court found that a person infected with the human immunodeficiency virus (HIV) is an "individual with a disability" within the meaning of the Rehabilitation Act. (California Men's Colony)

U.S. District Court
SEARCHES

Fernandez v. Rapone, 926 F.Supp. 255 (D.Mass. 1996). Inmates brought a civil rights action against prison officials alleging violation of their rights when they were subjected to strip searches following contact visits. The district court held that subjecting the inmates to searches in the presence of other prisoners in order to prevent the introduction of contraband was not unreasonable in violation of the Fourth Amendment nor did the searches violate substantive due process. The court noted that the searches were performed by male correctional officers out of view of visitors and other staff, and that the searches were reasonable in light of inmates' diminished expectation of privacy while confined. The court also found that alleged occasional degrading remarks made by prison officers during the searches did not violate substantive due process. (North Central Correctional Institution, Massachusetts)

U.S. District Court
DENIAL OF VISITS
CONJUGAL VISIT

Henry v. Coughlin, 940 F.Supp. 639 (S.D.N.Y. 1996). An inmate brought a civil rights action alleging violation of his First and Fourteenth Amendment rights as the result of denial of his request for additional visiting privileges. The district court dismissed the case, finding that a prison regulation which bars inmates from having additional visits on the same day that their participation in a family reunion program ended did not restrict the inmate's freedom of association in violation of the First Amendment. The court also found that the denial did not violate any constitutionally protected liberty interest or the Eighth Amendment. The court accepted prison officials' explanation for denying the request, relating to overcrowding in the visiting room during the weekend. The court noted that the inmate had already been allowed greater visitation and communication privileges than an average inmate because he was allowed a prolonged visit with his wife in the privacy of a modular home. (Sing Sing Correctional Facility, New York)

U.S. Appeals Court
SEGREGATION
CONTACT VISIT
ATTORNEY

Keenan v. Hall, 83 F.3d 1083 (9th Cir. 1996). An inmate brought a § 1983 action against prison officials and employees. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed in part and reversed in part, finding that summary judgment was precluded for several allegations. The inmate's rights were not violated by prison officials who denied the inmate visits from persons other than his immediate family because there is no constitutional right to access to a particular visitor. Prisoners have a First Amendment right to telephone access, subject to reasonable security limitations, but the inmate failed to specify whether the alleged denial of his telephone access

was total, partial or occassional and he did not allege that he was denied access for an emergency call or to call his lawyer. (Oregon State Prison)

U.S. District Court
ATTORNEY
ATTORNEY SCHEDULING

Moore v. Lehman, 940 F.Supp. 704 (M.D.Pa. 1996). An inmate challenged the constitutionality of an attorney visitation policy, alleging violation of inmates' right of access to courts. The The district court found that neither the attorney visitation policy nor its application by prison officials violated inmates' constitutional rights. The policy required the name of an inmate's attorney to be placed on a visitation list prior to the attorney's visit in order for the attorney to be allowed to visit or meet with an inmate. The inmate alleged that the transition from hard paper to the prison's computer system, which entailed time to enter the paper list into the system, caused unconstitutional delays. The court found that the inmate was not "injured" by delays caused by the policy, and that the prison had a legitimate governmental interest in preventing escapes and violation of prison policies, which justified the policy. (State Correctional Institute at Muncy, Pennsylvania)

U.S. District Court
MEDIA
DENIAL OF VISITS

Sidebottom v. Schiriro, 927 F.Supp. 1221 (E.D.Mo. 1996). Prison inmates and reporters who wanted to take video cameras into correctional institutions to interview them sought a preliminary injunction requiring a lifting of a stay placed on interviews by prison officials. The district court found that the news media did not have a constitutional right of access to prison, over and above that of the general public, to interview inmates and make sound and video recordings of interviews for publication through television broadcasts. The court also found that the refusal of prison officials to admit the mother of an executed inmate as a reporter did not violate her First Amendment or equal protection rights, noting that her presence in the prison could trigger problems. The court held that it was not a violation of due process to impose a stay on news media video interviews with prison inmates without notice to inmates or an opportunity for comment, as appearance on television while incarcerated is not expected. (Jefferson City Correctional Center, Missouri)

U.S. Appeals Court
SEARCHES

Wood v. Clemons, 89 F.3d 922 (1st Cir. 1996). Prison visitors sued prison officials alleging that strip searches violated their Fourth Amendment rights. The district court entered summary judgment for the defendants on the basis of qualified immunity. The appeals court affirmed, finding that the superintendent acted reasonably, in light of information before him, that the visitors would be bringing drugs to the inmate, entitling him to qualified immunity. The court found that reasonable suspicion is the proper standard by which to gauge the constitutionality of prison-visitor strip searches. The court noted that reasonable suspicion is something stronger than a mere "hunch' but something weaker than probable cause and that reasonable suspicion can arise from something that is less reliable than that required to show probable cause. In this case, the superintendent had grown to trust an officer to provide him with reliable information and the superintendent also found a police detective, on whose report the officer's report was based, to be a reliable and trustworthy source of information. The superintendent had approved a strip search of a female inmate's teenaged children based on a tip which he erroneously believed to have been confirmed by two unconnected confidential informants. (Maine Correctional Center)

1997

U.S. Appeals Court
CONTACT VISITS

Bazzetta v. McGinnis, 124 F.3d 774 (6th Cir. 1997). Prisoners brought a class action civil rights suit challenging prison regulations that limited contact visits for certain classes of prisoners. The district court denied the prisoners' motion for preliminary injunctive relief and the prisoners appealed. The appeals court affirmed, finding that the regulations were reasonably related to legitimate penological interests and did not violate the Eighth Amendment. The corrections department grades its prisoners on the basis of their dangerous propensities, from grade I (lowest risk) to grade VI (highest risk). Regulations prohibit contact visits for grades V and VI, with rare exceptions. The regulations included restrictions on contact visits by children, members of the general public and former prisoners. (Michigan Department of Corrections)

U.S. Appeals Court
FAMILY

Johnson v. Baker, 108 F.3d 10 (2nd Cir. 1997). A state prison inmate brought a § 1983 action against prison officials challenging a prison policy that required the inmate to admit to sex offenses of which he had been convicted as a prerequisite to participation in the prison's sex offender program. Admission to the sex offender program was itself required for admission to a program that permits inmates to spend extended periods of time with their spouses and family. The district court dismissed the case and the inmate appealed. The appeals court affirmed, holding that the policy in question did not violate the inmate's right to equal protection or his right against self-incrimination. The court found that the prison officials did not violate the prisoner's Fifth Amendment right against self-incrimination, as long as the adverse consequence was imposed for failure to answer a relevant inquiry and not for refusal to give up a constitutional right; however, the state may not seek a court order compelling answers to its questions about an alleged offense, require a waiver of immunity, or insist that answers be used in a criminal proceeding. The court noted that the inmate's unwillingness to admit to criminal sexual activity rendered him unlikely to benefit from the rehabilitative process. (Auburn Correctional Facility, New York)

U.S. District Court
VISITOR SEARCHES

Laughter v. Kay, 986 F.Supp. 1362 (D.Utah 1997). A pregnant prison visitor brought a § 1983 action against officers after she was subjected by the officers to manual body cavity searches along with her three-year-old son. The district court granted summary judgment in favor of the plaintiff, finding that a manual body cavity search of a prison visitor must be justified by probable cause and the officers lacked probable cause. The court held that the prison-visitor exception to the prohibition against warrantless searches did not apply because the officers had no intention of allowing the visitor into the prison to visit, that no exigent circumstances existed, and that the visitor's consent to the searches did not validate them. The court denied qualified immunity to the officers. The court found that probable cause was not established by an affidavit relating information about one prisoner's alleged drug activities and the affiant's belief that the visitor would pass drugs to another prisoner, where the affidavit failed to connect the visitor or the prisoner she was visiting to the prisoner who had allegedly engaged in drug activity. The court also found that probable cause was not established by an uncorroborated note from a confidential prisoner-informant referring to a "thing" to be taken to the visitor's address, monitored telephone conversations in which prisoners made oblique references to the visitor, the discovery of syringes in the vehicle the visitor drove to the prison several days before the search, or an uncorroborated tip from one prison officer's mother. (Central Utah Correctional Facility)

U.S. District Court
CHILDREN

N.E.W. v. Kennard, 952 F.Supp. 714 (D.Utah 1997). Pretrial detainees and their children brought a § 1983 action challenging a county jail policy restricting visitation by persons younger than eight years of age, alleging violation of due process and equal protection. The district court held that the restrictions did not violate due process or equal protection. (Salt Lake County Metro Jail, Utah)

U.S. Appeals Court
ATTORNEY
SPOUSE

O'Dell v. Netherland, 112 F.3d 773 (4th Cir. 1997). A death row inmate sued a prison warden in his official capacity alleging that his right of access to courts was violated because he was denied contact visits with a paralegal, who was also his wife. The district court ordered the Commonwealth of Virginia to allow the inmate to have contact visits with the paralegal, and the Commonwealth appealed. The appeals court reversed, finding that the inmate had failed to show that his right of access to courts was burdened by the denial of contact visits. The court held that the Commonwealth's interest in the security of its prisons outweighed the inmate's Sixth Amendment interest in contact visits with a paralegal. (Mecklenburg Correctional Center, Virginia)

U.S. District Court
CONJUGAL VISIT

Torricellas v. Poole, 954 F.Supp. 1405 (C.D.Cal. 1997). An inmate brought a § 1983 action against prison officials and a fellow prisoner alleging violation of her constitutional rights when a Christmas party was held in a prison visiting room when she was present. The inmate complained about the propriety of the party and was subsequently charged with a disciplinary violation. The district court held that the Christmas party did not violate the inmate's First Amendment rights. The court also found that the inmate lacked a protected liberty interest in her cancelled conjugal visit. (Calif. Institution for Women, Frontera, Cal.)

U.S. Appeals Court
VISITOR SEARCH

Varrone v. Bilotti, 123 F.3d 75 (2nd Cir. 1997). The son of a prison inmate brought a § 1983 action against prison officials arising from the requirement that the son submit to a strip search before he was allowed to visit his father. Summary judgment was denied to all parties and they appealed. The appeals court reversed and remanded, finding that officials and their subordinates were entitled to qualified immunity. The court noted that the reasonable suspicion standard for the strip search of a visitor was clearly established at the time of the challenged search, and that the search was authorized based on reasonable suspicion. A corrections official had been provided with information by a narcotics bureau chief and other information which established reasonable suspicion to support the search, even if the corrections official did not personally investigate the reliability of the informant who provided the information to the bureau chief. (Arthur Kill Correctional Facility, New York)

1998

U.S. Appeals Court
ATTORNEY
RULES

Abu-Jamal v. Price, 154 F.3d 128 (3rd Cir. 1998). A state inmate brought a § 1983 action challenging a prison rule that prohibited inmates from carrying on a business or profession. The inmate moved for a preliminary injunction which the district court granted in part. The appeals court affirmed in part and reversed in part, remanding with instructions. The appeals court found that the district court's injunction against enforcement of visitation rules was not warranted on the grounds that they were imposed in retaliation for the inmate's writings, and that the corrections department did not violate the inmate's access to the courts by imposing stricter visitation rules. The court found that the department had a valid, content-neutral reason for applying stricter visitation rules to the inmate's visitors, given evidence that the inmate's legal visitation privileges were being abused so that he could receive more than the permitted number of social visits. The department required verification that legal visitors were credentialed or employed by the inmate's attorney. (State Correctional Institution at Greene, Pennsylvania)

U.S. District Court
DENIAL OF VISITS
FAMILY

Africa v. Vaughan, 998 F.Supp. 552 (E.D.Pa. 1998). A prison inmate who was denied visitation with a woman who, along with the inmate, was a member of an activist group, and who the inmate claimed was his wife, brought a § 1983 action. The district court granted summary judgment for the defendants, finding that the inmate failed to show that he and the woman were married for the purposes of Pennsylvania law; therefore, the denial of visitation did not violate equal protection. The court found that no statutory marriage existed, where the inmate had not obtained a marriage license, and there was no evidence that they had entered into an agreement sufficient to create a common law marriage. (S.C.I. Graterford, Pennsylvania)

U.S. District Court
DENIAL OF VISITS

Austin v. Hopper, 15 F.Supp.2d 1210 (M.D.Ala. 1998). Inmates in a state prison system brought a class action suit under § 1983, challenging several of the system's policies and practices. The district court held that an agreement settling the inmates' chain gang claim was not subject to the limitations on prospective relief imposed by the Prison Litigation Reform Act (PLRA) and the settlement was approved. The court found that an automatic 90-day denial of visitation for inmates assigned to a shock incarceration program did not violate their First Amendment right to visitation. The inmates in the program were recidivists and parole violators. According to the court, the denial of visitation promoted the legitimate penological objectives of deterrence and rehabilitation in a common-sense way, and the inmates had mail and telephone calls as an alternative means of communication. (Alabama Department of Corrections)

U.S. District Court
SPOUSE
DENIAL OF VISITS

Blair v. Loomis, 1 F.Supp.2d 769 (N.D.Ohio 1998). An inmate and his wife, a former correctional officer, sued prison officials challenging their denial of visitation. The district court denied the plaintiffs' motion for a temporary restraining order and temporary injunction. The court held that regulations governing visitation in Ohio prisons did not create a protectable liberty interest in a right to visitation. The court found that the public interest in a safe and orderly prison system outweighed the interest of the prisoner and his wife in maintaining their family relationship and the prisoner's interest in building a relationship that would help him to lead a law-abiding life upon his release. The court found that it was reasonable for Ohio law to consider present or former correctional officers to be security risks, and to exclude them from visitation for that reason, based upon their training in security procedures and their knowledge of facility operations. The prisoner and his wife were married while the prisoner was incarcerated, and the wife admitted to falsifying information on her visitor application to conceal the fact that she had been a corrections officer. (Grafton Correctional Institution, Ohio)

U.S. District Court
FAMILY
CONJUGAL VISITS

Daniel v. Rolfs, 29 F.Supp.2d 1184 (E.D.Wash. 1998). An inmate brought a § 1983 suit against prison officials alleging that denial of his participation in an Extended Family Visitation (EFV) program with his wife violated equal protection. The district court held that prison regulations that restricted EFVs to inmates who were married prior to incarceration did not violate equal protection, but that the inmate was eligible for grandfathering into the EFV since he had submitted his application in anticipation of marriage. (Airway Heights Corrections Center, Washington)

1999

U.S. District Court
ATTORNEY SEARCH
VISITOR SEARCHES
TERMINATION OF VISITS

Chimurenga v. City of New York, 45 F.Supp.2d 337 (S.D.N.Y. 1999). A visitor to a juvenile detention facility filed at § 1983 and state law action against a city and corrections officials for false arrest, negligence and violation of her equal protection and due process rights following her arrest for allegedly attempting to smuggle contraband. The court granted summary judgment to the defendants in part and denied in part. The court held that the equal protection rights of the visitor were not violated and that an attorney did not have a liberty interest in access to a pass that would allow her to visit detainees in a juvenile detention facility, where there was no law or regulation that limited the discretion of the state corrections department to grant or deny a pass. But the court found that summary judgment was precluded by fact questions regarding whether correction officers planted a razor blade in a box brought by the visitor. (Adolescent Reception and Detention Center, Rikers Island, New York)

U.S. District Court
FAMILY

Cooper v. Garcia, 55 F.Supp.2d 1090 (S.D.Cal. 1999). An inmate brought a § 1983 action against prison officials following the denial of family visitation privileges. The district court dismissed the action, finding that the inmate did not have a liberty interest in a state family visitation program, and the classification of the inmate as a "sex offender" did not violate his right to procedural due process. According to the court, state regulations stated that family visitation was a privilege, not a right. The court noted that the classification of the inmate as a "sex offender" without an individualized assessment of security risks did not violate the inmate's due process rights, even though the inmate was not convicted of a sex offense and the inmate was denied family visitation as a result of the classification, because the classification did not result in any mandatory, coercive treatment. (Centinela State Prison, California)

U.S. Appeals Court
FAMILY
DENIAL OF VISITS

Berry v. Brady, 192 F.3d 504 (5th Cir. 1999). An inmate brought a § 1983 action against a correctional officer alleging violation of his Eighth and Fourteenth Amendment rights. The district court dismissed the claims as frivolous and the appeals court affirmed. The appeals court held that the denial of eight meals over a seven month period did not violate his constitutional rights where he did not claim that he lost weight or suffered other adverse physical effects or was denied a nutritionally and calorically adequate diet, nor that his health was put at risk. The appeals court also held that prohibiting the inmate from visiting with his mother on one occasion did not amount to cruel and unusual punishment. (Stile Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
PRIVACY

U.S. v. Peoples, 71 F.Supp.2d 967 (W.D.Mo. 1999). A defendant who was charged with killing a witness to prevent testimony moved to suppress recordings of telephone conversations and in-person meetings that he had with a prisoner. The district court denied the motion, finding that the recordings did not violate the Fourth Amendment rights of the defendant. According to the court, a visitor of a prisoner did not have a reasonable expectation of privacy in conversations with the prisoner, or in telephone calls involving the prisoner. The recordings were made as part of a general recording program undertaken to maintain prison safety by reducing the flow of contraband into the prison. (Corrections Corporation of America facility, Leavenworth, Kansas)

2000

U.S. Appeals Court
VISITOR SEARCHES

Burgess v. Lowery, 201 F.3d 942 (7th Cir. 2000). Visitors who had been strip searched sued state prison officials under § 1983 seeking damages and injunctive relief. The district court denied the defendants' motion to dismiss and the appeals court affirmed. The appeals court held that the visitors' right not to be strip searched in the absence of reasonable suspicion that he or she was carrying contraband was clearly established. State prison regulations authorize strip searches of visitors only if the visitor consents *and* if there is reasonable suspicion that the visitor is carrying contraband. The visitors were the father and wife of inmates on death row and the court found that the state regulations applied indifferently to the visitors of death row inmates and to visitors of other inmates. (Illinois Department of Corrections)

U.S. District Court
CONJUGAL VISIT

Gerber v. Hickman, 103 F.Supp.2d 1214 (E.D.Cal. 2000). A state prisoner serving 100 years to life brought a § 1983 action against a warden, alleging violation of his constitutional right to procreate by refusing to allow him to artificially inseminate his wife. The district court dismissed the case. The court held that the prisoner did not have a right to procreate through artificial insemination while incarcerated, nor to have conjugal visits. The court found that male inmates were not similarly situated to female inmates with respect to the decision to terminate a pregnancy and therefore the warden's refusal to allow male inmates to engage in artificial insemination while not requiring female inmates to terminate their pregnancies did not violate equal protection. (Mule Creek State Prison, California)

2001

U.S. Appeals Court
ATTORNEY

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 which 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 court found that detainees were experiencing unjustified delays during attorney visitation. The district court required procedures to be established to ensure that attorney visits commenced within a specified time period following arrival at the jail, and the city was instructed to ensure the availability of an adequate number of visiting rooms that provide the requisite degree of privacy. (New York City Department of Correction)

U.S. District Court
FAMILY

Berdine v. Sullivan, 161 F.Supp.2d 972 (E.D.Wis. 2001). A state prisoner brought a § 1983 action alleging that his transfer to an out-of-state correctional facility violated his due process rights and constituted cruel and unusual punishment in violation of the Eighth Amendment. The court held that the prisoner has no liberty interest in avoiding transfer to another prison, be it out-of-state, more restrictive, or owned and run by a private corporation. The court found that the attendant loss of visitation associated with his transfer to an out-of-state prison did not violate the Eighth Amendment because it did not totally deprive him of visitation privileges. (Whiteville Correctional Facility, Tennessee, and Oshkosh Correctional Facility, Wisconsin)

U.S. District Court
RULES

Glaspy 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)

2002

U.S. Appeals Court
FORMER EMPLOYEES

Dewitt v. Wall, 41 Fed.Appx. 481 (1st Cir. 2002). A state prisoner brought a § 1983 action against prison officials, challenging a prison policy that prohibits former correctional employees from visiting prisoners. The district court granted summary judgment to the defendants and the appeals court affirmed. The appeals court held that the policy was rationally connected to legitimate concerns about prison security. (Adult Correctional Institution, Rhode Island)

U.S. Appeals Court
SCHEDULING
SPECIAL VISITS

Franklin v. Fox, 312 F.3d 423 (9th Cir. 2002). A detainee whose first-degree murder conviction was vacated on federal habeas corpus review brought claims under § 1983 and state law. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed. The court held that the jail officials who arranged for a special visit from the detainee's daughter, during which she attempted to persuade him to plead guilty of murder, was shielded by qualified immunity from Sixth Amendment liability. (San Mateo County Jail, California)

U.S. Appeals Court
CONJUGAL VISIT

Gerber v. Hickman, 291 F.3d 617 (9th Cir. 2002). A state prisoner brought a § 1983 action and state law claims against a warden, alleging violation of his constitutional right to procreate by the warden's refusal to allow the prisoner to artificially inseminate his wife. The district court dismissed the case; the appeals court reversed, vacated and remanded. On rehearing en banc, the appeals court affirmed the district court decision, finding that while the basic right to marry survives imprisonment, most of the attributes of marriage, including cohabitation, physical intimacy, sexual intercourse, and bearing and raising children, do not. The court noted that prisoners have no due process or Eighth Amendment right to contact visits or conjugal visits. The court found that a prisoner's right to marry while in prison does not include a right to consummate the marriage or to enjoy the "other tangible aspects of marital intimacy." According to the court, the prisoner's equal protection right to be free of forced surgical sterilization did not give the prisoner the right to exercise his ability to procreate while in prison. The court also found that the prisoner's equal protection rights were not violated because some prisoners were allowed to have conjugal visits, because these prisoners would eventually be released into the community, while the plaintiff would never be eligible for release. (Mule Creek State Prison, California)

U.S. District Court
FAMILY

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. Appeals Court
SEARCHES

Jordan Ex Rel. Johnson v. Taylor, 310 F.3d 1068 (8th Cir. 2002). An action was brought on behalf of an eight-year-old prison visitor who was subjected to a partial strip search without reasonable suspicion. The district court granted summary judgment for the defendant, a correctional officer, and the appeals court affirmed. The appeals court held that the encounter did not constitute a partial strip "search" for which reasonable suspicion was required, where the visitor and the grandmother who had brought the girl were told that they could leave at any time. The eight-year-old girl triggered the metal detector that was used to screen potential prison visitors. All concerned agreed that the metal detector was probably triggered by the buttons on the girl's overalls. The girl removed her overalls in a bathroom while a female officer watched, which the court found to be consensual. (Pine Bluff Unit, Arkansas Department of Corrections)

U.S. District Court
ATTORNEY

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)

U.S. Appeals Court
DENIAL OF VISITS
LIBERTY INTEREST

Ware v. Morrison, 276 F.3d 385 (8th Cir. 2002). An inmate brought a *Bivens* action against corrections officials alleging due process violations in connection with denial of visitation privileges. The district court denied the officials' motion for summary judgment and granted a partial temporary injunction. The appeals court reversed and remanded, and vacated the injunction. The appeals court held that the disciplinary loss of visitation privileges between the inmate and his wife, without a hearing, was within the ordinary incidents of confinement and did not violate the inmate's due process rights. (Federal Prison Camp, Fort Nellis, Arkansas)

U.S. Appeals Court
RULES
CONTACT VISITS

Whitmire v. Arizona, 298 F.3d 1134 (9th Cir. 2002). The homosexual partner of a state prisoner brought an action against a state corrections department, alleging that the department's regulation prohibiting same-sex kissing and hugging among non-family members during prison visits violated the equal protection clause. The district court dismissed the action, but the appeals court reversed and remanded. The appeals court held that dismissal on the pleadings was not warranted absent corroborating evidence of a rational connection between the regulation and an asserted correctional safety interest. The appeals court held that the partner had standing to challenge the regulation. The court found no common-sense connection between the regulation and the asserted safety interest for prisoners who were open about their homosexuality. (Arizona Dept. of Corrections)

2003

U.S. District Court
ATTORNEY
SEGREGATION

Boyd v. Anderson, 265 F.Supp.2d 952 (N.D.Ind. 2003). Prisoners filed a complaint in state court, alleging that state corrections officials had violated their federally-protected rights while they were confined in a state prison. The case was removed to federal court, where some of the claims were dismissed. The court held that prisoners have the right to meet with their attorney, but they do not have a right to meet as a group with an attorney. According to the court, prison officials have the authority to impose reasonable regulations and conditions regarding attorney visits, as long as they do not interfere with an inmate's communication with his attorney. (Indiana State Prison)

U.S. District Court
SEARCHES

Lynn v. O'Leary, 264 F.Supp.2d 306 (D.Md. 2003). An arrestee sued state prison officials, alleging that he was subjected to an unlawful arrest, excessive force, and an illegal cavity search. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that officials were not entitled to governmental official immunity, under state law, in light of allegations that the officials acted with malice or were grossly negligent when they allegedly searched the arrestee's cavities while he was attempting to visit his son, after the officials informed the arrestee that a drug dog had falsely alerted on him. The arrestee had arrived at a state prison with his wife, intending to visit his son who was an inmate. While he was waiting to be admitted to the visiting area, a search dog was brought into the area and canvassed the room on a long leash. The dog gave a positive alert for drugs and the arrestee was subjected to a pat down search and his visitor locker was searched. No drugs were found on his person or in his locker and he was told that the dog had made a false alert. But he was not allowed to visit, and waited in lobby while his wife visited their son. After the visit prison officials ordered the arrestee into a side room where his wife heard him scream in pain. He informed the officials that he suffered from a medical condition. He was informed that he was under arrest and that he would be subjected to a strip and body cavity search, and the arrestee demanded that a warrant be produced. His clothes were forcibly removed and no contraband was found. $2,000 was taken from his wallet and divided among the prison officials. His person was then searched, including a body cavity examination. While he was dressing after the search one officer jerked up the arrestee's left leg, causing him to fall off a chair and hit his head against a wall, and he was knocked unconscious. He was taken to a hospital where he was found to be suffering from a contusion to his brain, and injury to his back, shoulder and arm. He was permanently banned from visiting his son. (Maryland House of Corrections Annex, Jessup, Maryland)

U.S. District Court
CONTACT VISITS

McKenzie v. O'Gara, 289 F.Supp.2d 389 (S.D.N.Y. 2003). A prisoner brought a pro se action against prison officials under § 1983. The district court denied judgment on the pleadings for the defendants. The court held that it could not consider any subsequent misconduct by the prisoner, when addressing the prisoner's claim that officials refused to restore his contact visits after his successful grievance. The prisoner also alleged that he was placed in restraints during contact visits. (Rikers Island, New York City Department of Correction)

U.S. Appeals Court
CONTACT VISITS
SEGREGATION

Phillips v. Norris, 320 F.3d 844 (8th Cir. 2003). A state prison inmate brought a § 1983 action against corrections officials, alleging violations of his rights based on his disciplinary confinement on the charge of carrying contraband. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that denial of contact visitation, exercise privileges, and religious services for 37 days during segregation, did not

amount to an atypical and significant hardship. The court noted that the inmate was allowed to have non-contact visitation, and that he was free to exercise his religion within his cell. The inmate had been caught carrying tobacco, rolling papers and lighters. (East Arkansas Regional Unit, Arkansas Department of Correction)

U.S. Appeals Court
SEARCHES

Wood v. Hancock County Sheriff's Dept., 354 F.3d 57 (1st Cir. 2003). A jail inmate sought damages under § 1983, alleging he was unconstitutionally strip searched on three separate occasions by correctional officers. The district court entered judgment in favor of the defendants and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded for a partial new trial. The appeals court held that a jury instruction that incorrectly defined a strip search, improperly limited the jury's deliberations on the nature of the searches of the misdemeanor detainee. The court found the district court's use of the term "deliberate," when describing a strip search, unduly directed the jurors to the officers' subjective intent, and that other elements of the definition (scrutiny of the mouth and armpits) were not prerequisites for finding that a strip search took place. The court noted that an individual detained on a misdemeanor charge may only be strip searched as part of the booking process if officers have reasonable suspicion that he is either armed or carrying contraband. According to the court, a blanket policy of strip-searching inmates after contact visits is constitutional, except in atypical circumstances. (Hancock County Jail, Maine)

2004

U.S. Appeals Court
PRIVACY

Maydak v. U.S., 363 F.3d 512 (D.C.Cir. 2004). Inmates brought an action against the federal Bureau of Prisons (BOP) alleging that the BOP violated the Privacy Act and the statute that established Inmate Trust Funds by maintaining secret file photographs of inmates and their visitors. The district court entered judgment in favor of the BOP and the inmates appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the BOP's maintenance of copies of the photos was permitted by the Privacy Act, but only to the extent that it was pertinent to an authorized law enforcement activity. The photos were taken as part of an "Inmate Photography Program" that offered inmates and their visitors the opportunity to purchase photos taken of them during visits. Inmates paid $1 for each photo, which was deposited in the Inmate Trust Fund, which consists of money spent by inmates at prison commissaries and other Trust Fund programs. The Fund paid for cameras, film, processing and administrative costs associated with the program. The BOP had been obtaining a second set of prints of the photos and secretly keeping them for examination and future reference. The inmates discovered the practice when they obtained documents from a photo developer that indicated that duplicate prints were made, but only one print was given to the inmates. The court held that a genuine issue of material act, precluding summary judgment, existed as to whether the duplicate photographs were a "system of records" within the meaning of the Privacy Act. The court held that the BOP's use of monies from the Inmate Trust Fund to obtain a second set of prints violated the statute that created the fund, even though in some instances there was no extra charge for the second set of prints. The court noted that when an agency compiles information about individuals for investigative purposes, Privacy Act concerns "are at their zenith," and if there is evidence of even a few retrievals of information keyed to personal identifiers, it may be a violation of the Privacy Act. (Federal Bureau of Prisons)

U.S. District Court
CHILDREN
CONTACT VISITS

Odenwalt v. Gillis, 327 F.Supp.2d 502 (M.D.Pa. 2004). A convicted sex offender filed a federal civil rights action alleging that state correctional officials had violated his constitutional rights by denying him contact visits with his minor children. The district court dismissed the action, finding that the offender's Eighth or Fourteenth Amendment rights were not violated. The court held that the no-contact regulation was supported by legitimate penological interests, and non-contact visits were offered as an alternative. According to the court, accommodating the request would have impaired prison officials' ability to protect children on the premises, and there was no ready alternative that did not impose significant costs on the prison. (State Correctional Institution, Camp Hill, Pennsylvania)

U.S. Appeals Court
DENIAL
CHILDREN

Wirsching v. Colorado, 360 F.3d 1191 (10th Cir. 2004). A convicted sex offender who refused to comply with the requirements of a treatment program filed a § 1983 claim. The district court granted summary judgment against the offender and he appealed. The appeals court affirmed in part and dismissed in part. The appeals court held that prison officials did not violate the offender's rights of familial association and his due process rights by refusing to allow visits between his child and himself due to his refusal to comply with the requirements of the treatment program. The court found that the offender's Eighth Amendment rights were not violated by a requirement that he participate in a treatment program that required him to admit that he had committed a sex offense, or forego visitation privileges with his child and the opportunity to earn good time credits at the higher rate available to other prisoners. The department of corrections had a policy that inmates who refuse to participate in labor, educational or work programs, or who refuse to undergo recommended treatment programs, are placed on a Restricted Privileges Status. Because of his placement in Restricted Privileges Status, the offender: (1) could not have a television or radio in his cell; (2) could not use tobacco; (3) had no canteen privileges; (4) had certain personal property removed from his cell; (5) could not engage in recreation with other prisoners; and (6) was required to wear orange pants. (Colorado Department of Corrections)

U.S. District Court
SEGREGATION

Wrinkles **v. *Davis***, 311 F.Supp.2d 735 (N.D.Ind. 2004). Death row inmates at a state prison brought a § 1983 action in state court, alleging that a 79-day lockdown of the death row area violated their constitutional rights. The lockdown had been implemented after a death row inmate was killed during recreation, apparently by other death row inmates. The court held that ceasing, for security reasons, allowing religious volunteers into the death row unit for group religious services and for spiritual discussions during the lockdown did not violate the inmates' First Amendment right to practice their religion. The court also found no violation for the alleged denial of inmates' access to telephones for 55 days, to hygiene services for 65 days, to hot meals for 30 days, and to exercise equipment. According to the court, suspending all personal visits to death row inmates for the first 54 days of the lockdown did not violate the inmates' First Amendment rights, where visitation privileges were a matter subject to the discretion of prison officials. (Indiana State Prison)

2005

U.S. Appeals Court
RESTRICTIONS

Bazzetta **v. *McGinnis,*** 423 F.3d 557 (6th Cir. 2005). A class of state prisoners challenged restrictions on visitation. The district court entered judgment for the plaintiffs and the appeals court affirmed. The U.S. Supreme Court reversed and remanded. On remand, the district court declined to dissolve its injunctive order of compliance and the state corrections department appealed. The appeals court reversed and remanded, finding that the department regulation that restricted visitation did not, on its face, violate procedural due process. The court noted that prisoners do not have a protected liberty interest in visitation. The regulation indefinitely precluded visitation from persons other than attorneys or clergy for prisoner with two or more substance abuse violations. The appeals court opened its decision by stating "This case marks another chapter in a ten-year controversy between incarcerated felons, their visitors, and the Michigan Department of Corrections." (Michigan Department of Corrections)

U.S. District Court
SEARCHES

DeToledo **v. *County of Suffolk***, 379 F.Supp.2d 138 (D.Mass. 2005). A jail visitor who was arrested and briefly detained on an arrest warrant that was intended for another person, and a visitor who was arrested and strip searched on a warrant for her arrest that had been recalled, brought an action against correctional officers, a jail supervisor and the county. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court held that the supervisor's negligent conduct in mistakenly ordering the arrest of the wrong person did not rise to the level of a due process violation that would support a claim under § 1983, where the supervisor made a reasonable assumption as to the warrant target's location in the visiting area and immediately rescinded the arrest when he was alerted to his mistake by another officer. The court found that a fact issue precluded summary judgment in favor of the supervisor for arresting the second visitor, noting that the supervisor had in his hands documents which, if read, would have revealed that the arrest warrant had been recalled. The court granted summary judgment to low-ranking correctional officers who conducted a strip search on the second visitor under then-existing policies that called for strip searches of prisoners. According to the court, reasonable officers in their positions would not have known that their actions would violate the Fourth Amendment. (South Bay House of Corrections, Suffolk County, Massachusetts)

U.S. Appeals Court
VISITING
SEARCHES

Neumeyer **v. *Beard***, 421 F.3d 210 (3rd Cir. 2005). Prison visitors filed a § 1983 action seeking a declaration that the prison's practice of subjecting visitors' vehicles to random searches violated their constitutional rights. The district court entered summary judgment in favor of the defendants and the visitors appealed. The appeals court affirmed, holding that the prison's practice of engaging in suspicionless searches of prison visitors' vehicles was valid under the special needs doctrine. According to the court, the relatively minor inconvenience of the searches, balanced against the prison officials' special need to maintain the security and safety of the prison, rose beyond their general need to enforce the law. The court noted that some inmates have outside work details and may have access to the vehicles. The prison had posted large signs at all entranceways to the prison and immediately in front of the visitors' parking lot that stated "…all persons, vehicles and personal property entering or brought on these grounds are subject to search…" Visitors are asked to sign a Consent to Search Vehicle form before a search is conducted and if they refuse they are denied entry into the prison and are asked to leave the premises. (State Correctional Institution at Huntingdon, Pennsylvania)

2006

U.S. District Court
PRIVACY
ATTORNEY
VIDEO

Lonegan **v. *Hasty***, 436 F.Supp.2d 419 (E.D.N.Y. 2006). Defense attorneys brought a ***Bivens*** action against officials of a federal Bureau of Prisons (BOP) facility, claiming that the statutory and constitutional rights of themselves and their inmate clients were violated through the practice of videotaping meetings. The district court denied the defendants' motion to dismiss in part, and granted it in part. The court held that: (1) the statute of limitations had not run on the claim that the Wiretap Act was violated; (2) a claim was stated that conversations were actually recorded, as required under the Wiretap Act; (3) a claim was stated that the interception was intentional; (4) a claim was stated that "oral communications" were made with the expectation that they not be recorded; (5) there was no qualified immunity from the Wiretap Act claims; (6) a claim was stated under the Fourth Amendment; (7) there was no qualified immunity from the Fourth Amendment claim; (8) a claim of personal involvement by a warden was stated; and (9) the availability of Fourth Amendment relief precluded a claim under Fifth Amendment. The plaintiffs, attorneys employed by the Legal Aid Society of New York, claimed that, by secretly recording their conversations with certain detainees at the federal Bureau of Prisons' Metropolitan Detention Center ("MDC"), located in Brooklyn, New York, the defendants violated Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (the "Wiretap Act" or "Title III"), and the Fourth and Fifth Amendments of the U.S. Constitution. BOP personnel told the attorneys that video cameras were not on during their meeting with their clients, but a subsequent BOP investigation concluded that visual and sound recordings existed for many of the attorney/client meetings. (Metropolitan Detention Center, Federal Bureau of Prisons, New York)

U.S. District Court
PRETRIAL DETAINEES
RESTRICTIONS

Murray **v. *Edwards County Sheriff's Dept.***, 453 F.Supp.2d 1280 (D.Kan. 2006). A former pretrial detainee at a county jail brought a § 1983 action against a county sheriff's department, sheriff, undersheriff, and county attorney, alleging various constitutional violations. The district court granted summary judgment in favor of the defendants. According to the court, the county jail's policy prohibiting friends from visiting the pretrial detainee did not violate due process, where the detainee had free access to visits by family clergy and counsel to the extent that they wished to visit him, the detainee had the free use of a telephone in his cell to speak with his friends, and the detainee sent and received over 200 letters while at jail. (Edwards County Jail, Kansas)

U.S. District Court
SEARCHES

Zboralski **v. *Monahan***, 446 F.Supp.2d 879 (N.D.Ill. 2006). A visitor to a state treatment and detention facility brought a § 1983 action against facility officers, alleging that she was illegally searched prior to visits. The visitor moved to proceed in forma pauperis, and the district court granted the motion. The court held that the visitor stated Fourth Amendment claims based on unreasonable patdowns and "Rapiscan" scans, an invasion of privacy claim, and an assault and battery claim. The visitor alleged that she was illegally searched prior to visits, claiming invasion of privacy under Illinois law based on intrusion upon seclusion, alleging that her virtual naked image was captured through the Rapiscan machine, kept, and viewed hours later by officers. The court noted that the visitor was neither a patient nor under any criminal investigation. The visitor also alleged that an officer caused her to reasonably believe that she would place her fingers in the visitor's vaginal area, and physically touched her in such a manner at least four times. (Illinois Department of Human Services Treatment and Detention Facility, Joliet, Illinois)

2007

U.S. District Court
CONJUGAL VISIT

Gordon **v. *Woodbourne Correctional Facility***, 481 F.Supp.2d 263 (S.D.N.Y. 2007). An inmate and his wife brought a § 1983 action against a correctional facility, facility superintendent, and supervisor of the facility's conjugal visit program, alleging due process and equal protection violations. The superintendent and supervisor moved for summary judgment and the district court granted the motion. The court held that the plaintiffs did not have a due process liberty interest in participation in the conjugal visit program, nor did they have a fundamental right to participate in the conjugal visit program, for equal protection purposes. The court held that the officials' requirement that the inmate and his wife show, through proper documentation, the validity of their marriage as a prerequisite to participation in the facility's conjugal visit program, rationally furthered a legitimate government interest, and thus, the officials were not liable to inmate and his wife under § 1983. (Woodbourne Correctional Facility, New York)

2008

U.S. District Court
RESTRICTIONS
VISITOR SEARCHES

Adeyola v. ***Gibon***, 537 F.Supp.2d 479 (W.D.N.Y. 2008). An inmate brought a pro se action against a sheriff and correctional facility officials, alleging that they violated his constitutional rights by refusing to allow females to visit him unless they removed their head scarves for a search or presented proof that they were practicing Muslims. The district court granted summary judgment in favor of the sheriff and officials. The court held that the inmate failed to allege any injury in fact and thus lacked standing. The court held that the allegations, even if proven, did not violate any First Amendment right of the inmate to have visitors, in that it was reasonable for officials to require visitors to remove scarves to determine that they were not attempting to bring in contraband, and he was not denied visitors, given that visitors were simply required to agree to certain conditions before being allowed to see an inmate. (Erie County Holding Center, New York State Department of Correctional Services)

U.S. District Court
DENIAL OF VISITS
VISITOR SEARCHES

Carter v. ***Federal Bureau of Prisons***, 579 F.Supp.2d 798 (W.D.Tex. 2008). A prison visitor filed an action against the federal Bureau of Prisons (BOP) and the United States Department of Justice under the Federal Tort Claims Act (FTCA) claiming wrongful denial of inmate visitation. The district court dismissed the case for lack of subject matter jurisdiction. The court held that the United States had to be named as a defendant in an action under the Federal Tort Claims Act (FTCA) and that the plaintiff visitor had to provide grounds for relief under Texas law in order to recover. The plaintiff had traveled from Illinois to the Greater El Paso area "for the purpose of visiting her husband," who at the time was a prisoner at the BOP's Federal Satellite Low La Tuna facility. She alleged that upon arriving at La Tuna, a BOP agent selected her for contraband testing pursuant to a mandate from the Director and testing was accomplished using a device called the Ion Spectrometer. The test was positive and the plaintiff was denied visitation with her husband. (Low La Tuna Facility, Federal Bureau of Prisons, Texas)

U.S. District Court
SEARCHES

Davis v. ***Peters***, 566 F.Supp.2d 790 (N.D.Ill. 2008). A detainee who was civilly committed pursuant to the Sexually Violent Persons Commitment Act sued the current and former facility directors of the Illinois Department of Human Services' (DHS) Treatment and Detention Facility (TDF), where the detainee was housed, as well as two former DHS Secretaries, and the current DHS Secretary. The detainee claimed that the conditions of his confinement violated his constitutional rights to equal protection and substantive due process. After a bench trial, the district court held that the practice of searching the detainee prior to his visits with guests and attorneys violated his substantive due process rights. The court noted that strip searches of a detainee prior to his court appearances and upon his return to the institution did not violate substantive due process, where detainees were far more likely to engage in successful escapes if they could carry concealed items during their travel to court, and searches upon their return were closely connected with the goal of keeping contraband out of the facility. The court held that the practice of conducting strip searches of the detainee prior to his visits with guests and attorneys was not within the bounds of professional judgment, and thus, violated the detainee's substantive due process rights, where the only motivation for such searches appeared to be a concern that a detainee would bring a weapon into the meeting, and most weapons should have been detectable through a pat-down search. (Treatment and Detention Facility, Illinois)

U.S. District Court
LIBERTY INTEREST
TERMINATION OF VISITS

King v. *Caruso*, 542 F.Supp.2d 703 (E.D. Mich. 2008). The wife of a state prison inmate brought suit against prison officials alleging violation of her First Amendment rights, her Equal Protection rights, and her Fourteenth Amendment due process rights when her visitation rights were withdrawn for attempting to smuggle a cell phone into an institution. The district court granted summary judgment for the defendants. The court held that termination of the spouse's visitation rights did not violate her First Amendment right to freedom of association nor did it infringe upon any liberty interest for purposes of procedural or substantive due process. The court noted that a hearing on the cutoff of visitor's rights could be conducted by a division of the Department of Corrections and that hearing procedures did not deny the spouse procedural due process with respect to any liberty interest she might possess. The court found that the termination was reasonably related to penological interests and did not violate equal protection. (Chippewa Correctional Facility, Michigan)

2009

U.S. District Court
ATTORNEY
DENIAL OF VISITS
RESTRICTIONS

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 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 Dist. of Columbia Jail)

U.S. District Court
VISITOR SEARCHES

Federal CURE v. *Lappin*, 602 F.Supp.2d 197 (D.D.C. 2009). A nonprofit organization that advocated for the federal inmate population and their families and provided information to the public about the Federal Bureau of Prisons (BOP) challenged the BOP's denial of a fee waiver for information requested under the Freedom of Information Act (FOIA), regarding the ion spectrometer method of scanning prison visitors. The district court granted summary judgment in favor of the organization. The court held that the requested information was likely to contribute to increased public understanding of government activities, would reach a reasonably broad group of interested persons, and would contribute significantly to public understanding of government activities. The court noted that the organization would analyze and synthesize technical information to relay to prisoners and their families via a website, online newsletter, and Internet chat room that would disseminate information to a sufficiently broad audience. According to the court, the requested information was not yet in the public domain, so that any dissemination by the organization would enhance public understanding of the technology in centralized and easily accessible forums. (Federal Bureau of Prisons, Washington, D.C.)

U.S. District Court
CONJUGAL VISIT

Hill v. *Washington State Dept. of Corrections*, 628 F.Supp.2d 1250 (W.D.Wash. 2009). An inmate and his wife brought a § 1983 action against a state department of corrections and various prison officials, alleging a prison regulation regarding extended family visits (EFV) violated their equal protection rights. The district court dismissed the action as moot. On subsequent determination, the district court held that: (1) the inmate did not have a constitutionally protected right to conjugal visits with his wife; (2) the inmate and his wife were not absolutely entitled to equal treatment under EFV policy; (3) EFV regulations were rationally related to a legitimate penological interest; (4) prison officials were entitled to summary judgment; and (5) prison officials had Eleventh Amendment immunity from the § 1983 action. The court noted that denial of prison access to a particular visitor is well within the terms of confinement ordinarily contemplated by a prison sentence, and access to a particular visitor is not independently protected by the Due Process Clause. The challenged EFV policy only allowed those spouses who were legally married to inmates prior to incarceration to participate in extended family visitation. (Washington State Department of Corrections)

U.S. District Court
DENIAL OF VISITS

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. The court held that the prisoner stated a free exercise of religion claim under the First Amendment by alleging that detention center personnel prevented him from practicing the central tenet of his faith of regularly reading his Bible for 19 days while he was in protective custody. 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
RULES

Mosher v. *Nelson*, 589 F.3d 488 (1st Cir. 2009). The administrator of the estate of a pretrial detainee who was killed at a state mental health hospital by another patient brought an action against the superintendent of the hospital, the commissioner of the state department of corrections (DOC), and other state officials, alleging civil rights violations and state-law claims. The district court granted summary judgment in favor of the defendants. The administrator appealed. The appeals court affirmed. The court held that the superintendent of the state mental health hospital and the commissioner of the state department of corrections were entitled to qualified immunity from § 1983 liability on the deliberate indifference claim. According to the court, although the patient was able to strangle the detainee while the detainee was visiting the patient in his room, the hospital had a long-standing policy that allowed patients to visit in

each others' rooms during the short period during the end of the morning patient count and lunch. The court noted that there was no history of violence or individualized threats made by any patient, and reasonable officials could have believed that allowing the visiting policy to continue and maintaining the current staffing levels at the hospital would not cause a substantial risk of harm. (Bridgewater State Hospital, Massachusetts)

U.S. Appeals Court
RESTRICTIONS

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
FAMILY

Shariff v. *Coombe*, 655 F.Supp.2d 274 (S.D.N.Y. 2009). Disabled prisoners who depended on wheelchairs for mobility filed an action against a state and its employees asserting claims pursuant to Title II of the Americans with Disabilities Act (ADA), Title V of Rehabilitation Act, New York State Correction Law, and First, Eighth, and Fourteenth Amendments. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the existence of potholes and broken concrete in state prison yards did not constitute a violation of the Eighth Amendment's prohibition on cruel and unusual punishment as to disabled prisoners who depended on wheelchairs for mobility, even if those prisoners had fallen and suffered injuries as a result. According to the court, the inaccessibility of telephones throughout a state prison, inaccessibility of a family reunion site, inaccessibility of a law library, and malfunctioning of a school elevator, that did not cause any physical harm or pain to disabled prisoners who depended on wheelchairs for mobility, were not the kind of deprivations that denied a basic human need, and thus did not constitute a violation of the Eighth Amendment's prohibition on cruel and unusual punishment. (New York State Department of Correctional Services, Green Haven Correctional Facility)

U.S. District Court
RULES

Sparks v. *Seltzer*, 607 F.Supp.2d 437 (E.D.N.Y. 2009). A psychiatric patient, on behalf of himself and all others similarly situated, brought a § 1983 action against a director and a treatment team leader at a psychiatric center in a New York state psychiatric hospital. The patient was housed in an inpatient, long-term locked ward which normally houses a mixture of voluntary patients, patients who have been involuntarily committed under the civil law, and patients committed as a result of a verdict of not guilty by reason of mental disease or defect or a finding of incompetence to stand trial. The patient alleged violations of his First Amendment rights and his "zone of privacy" concerning a supervised visitation policy. The district court granted summary judgment for the defendants. The court held that the psychiatric patients' speech during supervised visits at a state psychiatric hospital was not wholly unprotected by the First Amendment, although the speech was casual and among family members or friends. According to the court, the reluctance of psychiatric patients in the state psychiatric hospital to discuss various matters within the earshot of a supervising guard during supervised visitation did not give rise to a cognizable injury to their free speech rights. The court noted that no patient had lost privileges, had the term of involuntary hospitalization extended, or had otherwise been punished or threatened with being punished for anything he or a visitor had said in a supervised visit. Patients were not required to speak loudly enough to be heard, guards did not generally report the contents of conversations to hospital authorities, and no sound recordings of the visits were made. The court held that the state psychiatric hospital's supervised visitation policy imposed upon patients did not invade their "zone of privacy" in violation of the Fourth Amendment, since patients had no reasonable expectation of privacy in a hospital visiting room which could be entered by anyone during a visit and which was used by more than one patient at a time for visits. The court found that the supervised visitation policy did not, on its face or applied to patients, infringe upon their privacy rights under the Fourteenth Amendment. (Creedmoor Psychiatric Center, New York)

2010

U.S. Appeals Court
CHILDREN
DENIAL OF VISITS
RESTRICTIONS

Dunn v. *Castro*, 621 F.3d 1196 (9th 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 denied the officials' motion to dismiss. The officials appealed. The appeals court reversed and remanded. The court held that the right of the prisoner to receive visits from his children was not clearly established and the officials were entitled to qualified immunity. The court noted that the restriction was temporary and the prisoner had violated prison rules by participating in a sexually-oriented telephone call involving a minor. (Corcoran State Prison, California)

U.S. District Court
ADA-Americans with Disabilities Act
CONTACT VISITS
RESTRICTIONS

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.

According to the court, the hearing impaired prison visitor was substantially limited in his ability to communicate with others, and therefore, was disabled for the purposes of his action alleging the prison failed to accommodate his disability in violation of the Rehabilitation Act. The court noted that it was difficult for the visitor to hear when a speaker was not in close proximity to him or when background noise was present, he could not use telephones without amplification devices, and he could not use the telephones in prison visitation rooms.

The court held that the Texas Department of Criminal Justice (TDCJ) failed to provide accommodations to the

visitor that would allow the visitor to participate in the visitation program, even though TDCJ allowed the visitor to use the end booth furthest away from the noise of other visitors and made pen and paper available. The court noted that the end booth was not always available, the visitor was still unable to hear while in the end booth, and passing notes was qualitatively different from in-person visitation. The court held that the prison visitor's request for contact visits with the inmate was not a reasonable accommodation for his disability, for the purposes of his Rehabilitation Act failure to accommodate claim, where the inmate was in prison for violently assaulting the visitor, and contact visits required additional staffing and security. According to the court, the provision of a telephone amplification device to the visitor would have been a reasonable accommodation for his disability, where the devices were readily available for approximately $15 to $100. The court also found that allowing the visitor to use an attorney client booth during visitation would have been a reasonable accommodation for his disability, where use of the booth would not fundamentally alter the visitation program, and the booth could be searched before and after visits for contraband.

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
CONTACT VISITS
SEARCHES

Mashburn v. *Yamhill County*, 698 F.Supp.2d 1233 (D.Or. 2010). A class action was brought on behalf of juvenile detainees against a county and officials, challenging strip-search procedures at a juvenile detention facility. The parties cross-moved for summary judgment. The court held that the scope of an admission strip-search policy applied to juvenile detainees was excessive in relation to the government's legitimate interests, in contravention of the Fourth Amendment. According to the court, notwithstanding the county's general obligation to care for and protect juveniles, the searches were highly intrusive, the county made no effort to mitigate the scope and intensity of the searches, and less intrusive alternatives existed. The court found that county officials failed to establish a reasonable relationship between their legitimate interests and post-contact visit strip-searches performed on juvenile detainees, as required under the Fourth Amendment. The court noted that the searches occurred irrespective of whether there was an individualized suspicion that a juvenile had acquired contraband, and most contact visits occurred between juveniles and counsel or therapists. (Yamhill County Juvenile Detention Center, Oregon)

U.S. District Court
DENIAL OF VISITS
RACIAL
DISCRIMINATION

Shuler v. *District of Columbia*, 744 F.Supp.2d 320 (D.D.C. 2010). An inmate's wife, who was an African-American attorney, brought a § 1983 action against the District of Columbia and a jail captain, alleging an equal protection violation due to the captain's alleged refusal to allow her to visit the inmate. The defendants moved for summary judgment and the district court granted the motion. The court held that there was no evidence that the captain terminated the wife's visits with the inmate based on a discriminatory purpose or intent, or that the District had a custom or policy of treating women or African-Americans differently than others. (District of Columbia Jail)

2011

U.S. District Court
LIBERTY INTEREST
RESTRICTIONS

Aref v. *Holder*, 774 F.Supp.2d 147 (D.D.C. 2011). A group of prisoners who were, or who had been, incarcerated in communication management units (CMU) at federal correctional institutions (FCI) designed to monitor high-risk prisoners filed suit against the United States Attorney General, the federal Bureau of Prisons (BOP), and BOP officials, alleging that CMU incarceration violated the First, Fifth, and Eighth Amendments. Four additional prisoners moved to intervene and the defendants moved to dismiss. The district court denied the motion to intervene, and granted the motion to dismiss in part and denied in part. The court held that even though a federal prisoner who had been convicted of solicitation of bank robbery was no longer housed in the federal prison's communication management unit (CMU), he had standing under Article III to pursue constitutional claims against the Bureau of Prisons (BOP) for alleged violations since there was a realistic threat that he might be redesignated to a CMU. The court noted that the prisoner had originally been placed in CMU because of the nature of his underlying conviction and because of his alleged efforts to radicalize other inmates, and these reasons for placing him in CMU remained.

The court found that the restrictions a federal prison put on prisoners housed within a communication management unit (CMU), which included that all communications be conducted in English, that visits were monitored and subject to recording, that each prisoner received only eight visitation hours per month, and that prisoners' telephone calls were limited and subjected to monitoring, did not violate the prisoners' alleged First Amendment right to family integrity, since the restrictions were rationally related to a legitimate penological interest. The court noted that prisoners assigned to the unit typically had offenses related to international or domestic terrorism or had misused approved communication methods while incarcerated.

The court found that prisoners confined to a communication management unit (CMU), stated a procedural due process claim against the Bureau of Prisons (BOP) by alleging that the requirements imposed on CMU prisoners were significantly different than those imposed on prisoners in the general population, and that there was a significant risk that procedures used by the BOP to review whether prisoners should initially be placed within CMU or should continue to be incarcerated there had resulted in erroneous deprivation of their liberty interests. The court noted that CMU prisoners were allowed only eight hours of non-contact visitation per month and two 15 minute telephone calls per week, while the general population at a prison was not subjected to a cap on visitation and had 300 minutes of telephone time per month. The court also noted that the administrative review of CMU status, conducted by officials in Washington, D.C., rather than at a unit itself, was allegedly so vague and generic as to render it illusory. The court found that a federal prisoner stated a First Amendment retaliation claim against the Bureau of Prisons (BOP) by alleging: (1) that he was “an outspoken and litigious prisoner;” (2) that he had written books about improper prison conditions and filed grievances and complaints on his own behalf; (3) that his prison record contained “no serious disciplinary infractions” and “one minor communications-related infraction” from 1997; (4) that prison staff told him he would be “sent east” if he continued filing complaints; and (5) that he filed a complaint about that alleged threat

and he was then transferred to a high-risk inmate monitoring communication management unit (CMU) at a federal correctional institution. (Communication Management Units at Federal Correctional Institutions in Terre Haute, Indiana and Marion, Illinois)

U.S. District Court
MEDIA
PRIVACY
VISITING

Battle v. *A & E Television Networks, LLC*, 837 F.Supp.2d 767 (M.D.Tenn. 2011). A wife who had unwittingly been filmed by a television crew at a maximum security prison while visiting her husband who was an inmate there filed suit against a television producer and a television network alleging defamation/false light and intentional infliction of emotional distress (IIED) when the program was aired on the national television network. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that, under Tennessee law, the television program which aired on a national network depicting the wife visiting her inmate husband in a maximum security prison, and which contained a voice-over explaining how drugs and contraband were passed to prisoners from outsiders, was capable of a defamatory meaning, and thus the wife stated a claim for defamation/false light against the television producer and the network. According to the court, the stream of audio and visual components interacting with each other suggested that the wife was a drug smuggler, and even though the program indicated that a search of the wife revealed no drugs, the overall impression was that the wife just happened not to get caught on that particular day. But the court found that the actions of television producer and network were not so outrageous as to be beyond all bounds of decency or utterly intolerable in a civilized community, as required to support claim for intentional infliction of emotional distress, since the program could also be understood to suggest that the plaintiff had not brought drugs into the facility. The program, "The Squad: Prison Police," was aired by A & E Television Networks, LLC. (Riverbend Maximum Security Institution, Nashville, Tennessee)

U.S. Appeals Court
DENIAL OF VISITS

McCollum v. *California Dept. of Corrections and Rehabilitation*, 647 F.3d 870 (9th Cir. 2011). Inmates and a volunteer prison chaplain brought an action against the California Department of Corrections and Rehabilitation (CDCR) and others, challenging CDCR's paid chaplaincy program, and alleging retaliation for bringing such a suit. The defendants moved to dismiss and for summary judgment. The district court granted the motion to dismiss the inmates' claims in part, dismissed the chaplain's Establishment Clause claim for lack of standing, and granted summary judgment on the chaplain's remaining claims. The plaintiffs appealed. The appeals court affirmed. The appeals court held that the inmates' grievances failed to alert CDCR that inmates sought redress for wrongs allegedly perpetuated by CDCR's chaplaincy-hiring program, as required to exhaust under the Prison Litigation Reform Act (PLRA). According to the court, while the inmates' grievances gave notice that the inmates alleged the prison policies failed to provide for certain general Wiccan religious needs and free exercise, they did not provide notice that the source of the perceived problem was the absence of a paid Wiccan chaplaincy. But the court found that an inmate's grievance alleging he requested that the prison's administration contact and allow visitation by clergy of his own Wiccan faith, which was denied because his chaplain was not a regular paid chaplain, was sufficient to put CDCR on notice that the paid-chaplaincy hiring policy was the root cause of the inmate's complaint and thus preserved his ability to challenge that policy under PLRA. According to the court, there was no direct evidence of a retaliatory motive by the prison employee who restricted the Wiccan prison chaplain's access to a prison, as required to support the chaplain's First Amendment retaliation claim. The court noted that the incident resulting in restricted access occurred nearly three years after the chaplain filed a lawsuit against CDCR, and an employee's knowledge of the suit, alone, was insufficient to raise a genuine issue of material fact as to a retaliatory motive. (California Department of Corrections and Rehabilitation)

U.S. District Court
DENIAL OF VISITS
RESTRICTIONS
SCHEDULING

Roseboro v. *Gillespie*, 791 F.Supp.2d 353 (S.D.N.Y. 2011.) A federal prisoner brought a pro se Bivens action against two prison correction officers and a prison counselor, alleging violations of his due process rights, cruel and unusual punishment, and retaliation for filing prison grievances. The defendants moved for summary judgment. The district court granted the motion. The court held that the prisoner could not prove that a prison counselor failed to process his visitor requests and filed a false incident report against him in retaliation for filing a grievance against a corrections officer, as required to establish a retaliation claim under the First Amendment, even if the alleged retaliation occurred close in time to the filing of the grievance. The court noted that the prisoner presented no evidence that the counselor's conduct was motivated by in an intent to retaliate, that she even knew about the grievance, or that the one month time for processing a visitor request was unusually long, and at least one visitor request was denied for the non-retaliatory reason that the visitor had a criminal record. (Metropolitan Correctional Center, New York City)

2012

U.S. Appeals Court
CONJUGAL VISITS
RULES

Pouncil v. *Tilton*, 704 F.3d 568 (9th Cir. 2012). A state prisoner brought a § 1983 action alleging that denials by prison officials of his request for a conjugal visit with his wife violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment by interfering with his practice of a tenet of his Islamic faith requiring him to marry, consummate his marriage, and father children. The district court denied a prison official's motion to dismiss the prisoner's claims as untimely, and the official appealed. The appeals court affirmed. The court held that notwithstanding a prior denial pursuant to the same regulation, denial of the prisoner's second request for a conjugal visit was a separate, discrete act, triggering running of the statute of limitations on the prisoner's Section 1983 claim against prison officials for violation of his First Amendment and RLUIPA rights. (Mule Creek State Prison, California)

U.S. District Court
DENIAL OF VISITS
FAMILY

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)

2013

U.S. Appeals Court
CONTACT VISITS

Chappell v. *Mandeville*, 706 F.3d 1052 (9th Cir. 2013). A state prison inmate brought a § 1983 action against prison officials, alleging violations of the Eighth and Fourteenth Amendments. The defendants moved for summary judgment on the ground of qualified immunity and the district court granted summary judgment as to some, but not all, of the claims. The defendants appealed. The appeals court reversed. The appeals court held that: (1) it was not clearly established that subjecting the prison inmate to a contraband watch violated the Eighth Amendment prohibition against cruel and unusual punishment, and thus prison officials were entitled to qualified immunity on the Eighth Amendment claim; (2) the contraband watch was not such an extreme change in conditions of confinement as to trigger due-process protection; and (3) it was not clearly established whether a state-created liberty interest existed with regard to the contraband watch, and thus officials were entitled to qualified immunity on the claim that the inmate's right to due process was violated because he was not provided with an opportunity to be heard by the official who ordered contraband watch. The inmate's fiancée had visited him, and when she entered the prison she was wearing a ponytail hairpiece. The next day the hairpiece was discovered in a trash can near the visiting room. Prison officials then searched the entire visiting area and found spandex undergarments in the women's bathroom. Both the hairpiece and the undergarments tested positive for cocaine residue. Prison staff conducted a search of the inmate's cell, during which they notified him that they believed that someone had introduced drugs through a hairpiece. The officials discovered three unlabelled bottles of what appeared to be eye drops in the inmate's cell. The liquid in the bottles tested positive for methamphetamine. The inmate was then placed on a contraband watch. The contraband watch conditions included 24-hour lighting, mattress deprivation, taping the inmate into two pairs of underwear and jumpsuits, placing him in a hot cell with no ventilation, chaining him to an iron bed, shackling him at the ankles and waist, and forcing him to eat "like a dog." (California State Prison, Sacramento)

U.S. District Court
FAMILY
FORMER EMPLOYEES
FORMER PRISONERS
SPOUSES

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)

U.S. District Court
CONTACT VISITS
PRIVACY RESTRICTIONS
SEARCHES
SEGREGATION
VIDEO

Royer v. *Federal Bureau of Prisons*, 933 F.Supp.2d 170 (D.D.C. 2013). A federal prisoner brought an action against Bureau of Prisoners (BOP), alleging classification as a "terrorist inmate" resulted in violations of the Privacy Act and the First and Fifth Amendments. The BOP moved for summary judgment and to dismiss. The district court granted the motion in part and denied in part. The court held that BOP rules prohibiting contact visits and limiting noncontact visits and telephone time for federal inmates labeled as "terrorist inmates", more than other inmates, had a rational connection to a legitimate government interest, for the purpose of the inmate's action alleging the rules violated his First Amendment rights of speech and association. According to the court, the prison had an interest in monitoring the inmate's communications and the prison isolated inmates who could pose a threat to others or to the orderly operation of the institution. The court noted that the rules did not preclude the inmate from using alternative means to communicate with his family, where the inmate could send letters, the telephone was available to him, and he could send messages through others allowed to visit. The court found that the inmate's assertions that the prison already had multiple cameras and hypersensitive microphones, and that officers strip searched inmates before and after contact visits, did not establish ready alternatives to a prohibition on contact visits for the inmate and limits on phone

usage and noncontact visits due to being labeled as a "terrorist inmate." The court noted that increasing the number of inmates subject to strip searches increased the cost of visitation, and microphones and cameras did not obviate all security concerns that arose from contact visits, such as covert notes or hand signals. The court held that the inmate's allegations that he was segregated from the prison's general population for over six years, that he was subject to restrictions on recreational, religious, and educational opportunities available to other inmates, that contact with his family was limited to one 15 minute phone call per week during business hours when his children were in school, and that he was limited to two 2-hour noncontact visits per month, were sufficient to plead harsh and atypical conditions, as required for his Fifth Amendment procedural due process claim. (Special Housing Units at FCI Allenwood and USP Lewisburg, CMU at FCI Terre Haute, SHU at FCI Greenville, Supermax facility at Florence, Colorado, and CMU at USP Marion)

U.S. Appeals Court
DENIAL OF VISITS
LIBERTY INTEREST

Williams v. *Ozmint*, 716 F.3d 801 (4th Cir. 2013). An inmate, proceeding pro se, brought a § 1983 action in state court against a warden, alleging that suspension of his visitation privileges for two years violated the First, Fifth, Eight, and Fourteenth Amendments. Following removal to federal court, the district court granted the warden's motion for summary judgment. The inmate appealed. The appeals court affirmed in part and dismissed in part. The appeals court held that: (1) the inmate did not have clearly established right to visitation; (2) the inmate's claim for injunctive relief was rendered moot when the inmate received restoration of his visitation privileges; (3) there was no evidence that the inmate would be deprived of his visitation privileges in the absence of any culpable conduct on his part; and (4) the inmate's request for "any other relief that seems just and proper" was insufficient to state a claim for declaratory relief. (Evans Correctional Institution, South Carolina)

2014

U.S. District Court
SEARCHES
VISITOR SEARCHES

Hernandez v. *Montanez*, 36 F.Supp.3d 202 (D.Mass. 2014). A prison visitor brought a civil rights action against corrections officers, alleging that a strip-search violated § 1983, the Massachusetts Civil Rights Act (MCRA), and the Massachusetts Privacy Act (MPA). The corrections officers moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the officers did not have reasonable suspicion to strip-search the female prison visitor based on an anonymous tip by an inmate on the prison hotline that another inmate would be receiving drugs from an unidentified visitor. The court noted that the officers had no knowledge of the source of the single anonymous tip or how the source had received his information, and there was no evidence that the anonymous tipster or hotline had provided reliable information in the past. The court found that an objectively reasonable prison official would not have believed that he had reasonable suspicion to strip-search the visitor, and thus the prison official and the corrections officers were not entitled to qualified immunity from visitor's Fourth Amendment claim arising from the strip-search. The court noted that the officers knew that the inmate had enemies in the prison and that inmates often used the hotline to harass other prisoners, and there was no evidence that the visitor was involved in drug activity. (Souza–Baranowski Correctional Center, Massachusetts)

2015

U.S. Appeals Court
SEARCHES

Crawford v. *Cuomo*, 796 F.3d 252 (2nd Cir. 2015). A current state prisoner and a former state prisoner brought an action against a corrections officer, the officer's supervisor, and state officials, alleging that the corrections officer sexually abused them in violation of their Eighth Amendment protection against cruel and unusual punishment, and seeking damages and injunctive relief. The district court dismissed the action for failure to state a claim. The current and former prisoners appealed. The appeals court reversed and remanded. The court held that one prisoner's allegation that the corrections officer, in frisking the prisoner during the prisoner's visit with his wife, fondled and squeezed the prisoner's penis in order to make sure that prisoner did not have an erection, stated a claim for sexual abuse in violation of his Eighth Amendment protection against cruel and unusual punishment. The court found that a prisoner's allegation that the corrections officer, in searching the prisoner after the prisoner left a mess hall, squeezed and fondled the prisoner's penis and roamed his hands down the prisoner's thigh, while making demeaning comments such as "[t]hat doesn't feel like a penis to me" and "I'll run my hands up the crack of your ass if I want to," stated a claim for sexual abuse in violation of the Eighth Amendment protection against cruel and unusual punishment. (Eastern Correctional Facility, New York)

U.S. Appeals Court
FAMILY
DENIAL OF VISITS

Jackson v. *Humphrey*, 776 F.3d 1232 (11th Cir. 2015). A wife brought an action under § 1983 against corrections officials, claiming that revocation of her visitation privileges with her incarcerated husband who was on a hunger strike violated the First Amendment. The district court granted summary judgment, based on qualified immunity, in favor of the officials, for their decision to terminate the wife's visitation privileges during the time of hunger strike. The court denied summary judgment to the officials for the period following the end of the hunger strike, ruling that the question of whether the officials continued to enjoy qualified immunity after the hunger strike ended was one for a jury. The officials appealed. The appeals court reversed and remanded, finding that the officials were entitled to qualified immunity. According to the court, the officials' decision had been motivated by lawful considerations even though it had consequences in the future, where the husband had a considerable amount of influence over other prisoners and considered himself, and was viewed by others, to be the leader of the hunger strike. The court noted that evidence suggested that the wife had urged her husband to prolong that strike after the strike had ended, and the officials were legitimately concerned that the strike might spread, about the disruption caused by the strike, and about the security and safety of staff and inmates. (Georgia Department of Corrections, Georgia Diagnostic and Classification Prison Special Management Unit)

U.S. District Court
VISITOR SEARCH

Knight v. *Washington State Department of Corrections*, 147 F.Supp.3d 1165 (W.D. Wash. 2015). A prison visitor who suffered from a seizure disorder, and was subjected to a strip search and pat-down searches, brought an action against the state Department of Corrections (DOC) and DOC officials, alleging that the searches violated the Americans with Disabilities Act (ADA). The defendants moved for summary judgment. The district court granted the mo-

tion, finding that: (1)the strip search and pat-down searches did not violate ADA; (2) guards did not act with deliberate indifference in conducting a strip search; (3) the prison was not a place of public accommodation, under the Washington Law Against Discrimination, as to visitors participating in an extended family visitation program; (4) the guards' conduct was not sufficiently extreme to support an outrage claim; and (5) the guards' conduct did not support a claim for negligent infliction of emotional distress. According to the court, there was no showing that the guards proceeded in conscious disregard of a high probability of emotional distress when ordering the strip search, as the visitor suggested the strip search as an alternative to a pat search and the guards followed this suggestion, and all visitors were subjected to pat-down searches, which were justified on safety grounds. (Monroe Corr. Complex, Washington)

U.S. Appeals Court
SEGREGATION

Prieto v. *Clarke*, 780 F.3d 245 (4th Cir. 2015). A state prisoner convicted of capital murder and sentenced to death brought a pro se § 1983 action, alleging that his confinement on death row, pursuant to a state policy which required him to be in a single cell with minimal visitation and recreation opportunities, violated his procedural due process and Eighth Amendment rights. The district court dismissed the Eighth Amendment claim, and subsequently granted summary judgment in favor of the prisoner on the due process claim. Prison officials appealed. The appeals court reversed, finding that the prisoner had no due process liberty interest in avoiding confinement on death row. (Sussex I State Prison, Virginia)

U.S. Appeals Court
DENIAL OF VISITS
FORMER EMPLOYEE

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
SEGREGATION

U.S. v. *Mohamed*, 103 F.Supp.3d 281 (E.D.N.Y. 2015). A defendant who was indicted for murder of an internationally protected person and attempted murder of an internationally protected person, filed a motion to vacate or modify special administrative measures governing conditions of his pretrial detention. The district court denied the motion, finding that the measures were rationally connected to the legitimate government objective of preventing the detainee from coordinating violent attacks. The detainee had been placed in a special housing unit and limitations on communications between him and people inside or outside the prison were limited. The court noted that the detainee had admitted allegiance to terrorist organizations, had previously broken out of prison two times, one escape was allegedly coordinated between the defendant and a terrorist organization, and three prison guards had been killed during one escape. (Metropolitan Correctional Center, Manhattan, New York)

U.S. District Court
DENIAL OF VISITS
RESTRICTIONS

United States v. *Rivera*, 83 F.Supp.3d 1130 (D.Colo. 2015). A federal prisoner moved for an order directing the Bureau of Prisons (BOP) to allow him to have a face-to-face meeting with another inmate, his co-defendant in a federal prosecution. The district court denied the motion. The court held that the prisoner's Fifth Amendment right to a fair trial and his Sixth Amendment right to present witnesses in his own defense were trial rights that did not entitle him to such a "tête-à-tête" witness interview. The court found that the opportunity afforded by the BOP for defense counsel to interview the co-defendant was sufficient, even in the absence of a face-to-face meeting between the defendant and the co-defendant, to satisfy the defendant's constitutional rights. The court noted that the decision by the BOP to keep the inmates separate was supported by a legitimate penological interest in the security of the facility and the safety of its staff and inmates. (Administrative Maximum Facility Florence, Colorado)

SECTION 50: WORK- PRISONER

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.

1964

U.S. District Court
UNSENTENCED PRISONERS
INVOLUNTARY SERVITUDE

Tyler v. Harris, 226 F.Supp. 852 (W.D. Mo. 1964). Unconvicted persons can be kept with convicted persons in federal medical centers, but they may not be subjected to involuntary servitude. (Medical Center For Federal Prisoners, Springfield, Missouri)

1970

U.S. District Court
FORCED LABOR
COMPENSATION

Holt v. Sarver, 309 F.Supp. 362 (E.D. Ark. 1970). State prisoners challenged conditions and practices in the state prison system. The district court held that conditions and practices in the Arkansas penitentiary system, including a trusty system whereby trusties ran the prison, open barracks system, conditions in isolation cells, and absence of a meaningful rehabilitation program, were such that confinement of persons in the system amounted to cruel and unusual punishment prohibited by eighth and fourteenth amendments.

Forced uncompensated labor of state convicts did not violate thirteenth amendment. The Arkansas system of working convicts was not "slavery" in the constitutional sense of term. (Arkansas Prison System)

1972

U.S. District Court
WORK ASSIGNMENT

Hamilton v. Landrieu, 351 F.Supp. 549 (E.D. La. 1972). Assignment of inmates to jobs where they have access to other inmates' records or information shall be discontinued. Practices whereby inmates are assigned to sensitive tasks which may compromise security shall be discontinued. (Orleans Parish Prison, Louisiana)

1974

U.S. District Court
UNSENTENCED PRISONERS
FORCED LABOR

Main Road v. Atych, 385 F.Supp. 105 (E.D. Penn. 1974). Unsentenced prisoners cannot be required to perform uncompensated labor. (Philadelphia Prison System, Pennsylvania)

1976

U.S. District Court
PRETRIAL DETAINEES

Barnes v. Government of the Virgin Islands, 415 F.Supp. 1218 (D. V.I. 1976). Detainees are not required to work except to keep cell areas clean. (Golden Grove Adult Correctional Facility, Virgin Islands)

1977

U.S. District Court
WORK RELEASE

Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. Work release, vocational training release, and educational release programs may be established for the new facility. Rehabilitation programs, counseling, work release, and vocational programs are not constitutionally required. (Platte County Jail, Missouri)

U.S. District Court
RIGHT TO WORK
IDLENESS

Laaman v. Helgemoe, 437 F.Supp. 269 (D. N.H. 1977). Although New Hampshire prisoners' statutory right to work does not extend to a right to a meaningful job, it does provide prisoners with the right to avoid stultifying idleness. (New Hampshire State Prison)

1978

U.S. Appeals Court
WORK ASSIGNMENT

Altizer v. Paderick, 569 F.2d 812 (4th Cir. 1978), cert. denied, 435 U.S. 1009 (1977). Inmates have no due process right to any particular job in an institution. No procedural due process is needed to transfer inmate from one job to another. (Virginia State Prison)

U.S. Appeals Court
PRETRIAL DETAINEES

Bijeol v. Nelson, 579 F.2d 423 (7th Cir. 1978). Pretrial detainees may be required to perform general housekeeping tasks. (Metro Corr. Center, Chicago)

1979

U.S. District Court
SEGREGATION
IDLE PAY

Wojtczak v. Cuyler, 480 F.Supp. 1288 (E.D. Penn. 1979). Where the inmate is placed in segregation as protective custody, security considerations prevent his attendance at the law library. If he is able to work, he should receive pay for work or idle pay when no work is available. (State Correctional Institution, Graterford, Pennsylvania)

1981

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)

1984

U.S. District Court
WORK ASSIGNMENT

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)

1985

State Appeals Court
ASSIGNMENT

Longval v. Commissioner of Correction, 484 N.E.2d 112 (App.Ct. Mass. 1985). Certain inmates with long prison terms which they alleged exceeded their respective life expectancies brought a suit challenging the validity of a statute pursuant to which they were denied access to the whole of their funds. The Superior Court denied relief, and the prisoners appealed. The appeals court held that a "life term" within meaning of a statute establishing a system for compensating inmates who performed good and satisfactory work in certain work programs was limited to those prisoners who were sentenced to life imprisonment and did not apply to inmates whose aggregate sentences exceeded their statistical life expectancies. (M.C.I., Cedar Junction, Massachusetts)

U.S. Appeals Court
WORK ASSIGNMENT

Smith v. Rowe, 761 F.2d 360 (1985). In a civil rights action brought by a former prison inmate, defendants appealed from judgment of the United States District Court. The court of appeals held that: (1) the district court did not abuse its discretion in excluding documents not listed in pretrial submission; (2) the plaintiff's failure to take other job assignments, which resulted in her continued detention and punitive segregation, did not under the circumstances amount to failure to mitigate damages as matter of law; (3) the award of compensatory damages in the amount of $80,770 was not "monstrously excessive" or shocking and did not require a new trial or remittitur; and (4) plaintiff established a prima facie case against director of the Illinois Department of Corrections. (Dwight Correctional Center, Illinois)

U.S. Appeals Court
ASSIGNMENT

Toombs v. Hicks, 773 F.2d 995 (1985). The Eighth Circuit Court of Appeals remanded a case ruling that an inmate stated a claim for cruel and unusual punishment in being assigned a work duty beyond his physical capacity. After his medical reevaluation, he claimed he remained on squad assignment for a two-handed hoe, despite that he was classified as fit for only one-armed duty. The court said that while the inmate may ultimately prove no viable claim, he was to be given the chance to develop his case. (Arkansas Department of Correction)

U.S. District Court
DEDUCTIONS FROM PAY

Turner v. Nevada Bd. of State Prison Com'rs., 624 F.Supp. 318 (D.Nev. 1985). Nevada inmates no longer have a property right in their work wages in respect to deductions for payment to a victim's family and payment for room and board. A statute was amended to allow deductions for room and board as of 1985. Prior to 1985 the statute read as follows:

> 1. The director shall:
> a. To the greatest extent possible, establish facilities which approximate the normal conditions of training and employment in the community.
> b. To the extent practicable, require each offender, except those whose behavior is found by the director to preclude participation, to spend forty hours each week in vocational training or employment, unless excused for a medical reason.
> c. Use the earnings from services and manufacturing conducted by the institutions and the money paid by private employers who employ the offenders or lease space or facilities within the institutions to offset the costs of operating the prison system and to provide wages for the offenders being trained or employed. The director may first deduct from the wages of any offender such amounts as the director deems reasonable to meet any existing obligation of the offender for the support of his family or restitution to any victim of his crime.

The amended version was to permit maintenance deductions. It reads:

> The director may deduct from the wages earned by an offender from any source during his incarceration:
> 1. An amount determined by the director, with approval of the board, to offset the cost of maintaining the offender in the institution, as reflected in the budget of the department; and
> 2. Such amounts as the director considers reasonable to meet any existing obligation of the offender for the support of his family or restitution to any victim of his crime.

However, prior to the amended version, the court determined, inmates did have a property interest in wages not being deducted for room and board. Therefore, the court refused to dismiss claims brought by those inmates that prison officials violated their rights to due process.

Lastly, the court found no violations in equal protection in deducting wages for room and board only from inmates who earn a gross income of $75.00 or more a month. (Nevada Board of State Prison Commissioners)

1986

U.S. Appeals Court
TRANSFER

Adams v. James, 784 F.2d 1077 (11th Cir. 1986). Prison inmates brought an action challenging their transfers from jobs as law clerks. The United States District Court denied relief, and the inmates appealed. The court of appeals held that: (1) inmates did not have a property interest in continuing as law clerks; (2) inmates could not assert whatever interest other inmates had in being assisted by them rather than by someone else; (3) benefits which are not classified as entitlements may not be terminated for impermissible reasons; and (4) first amendment rights are identified by balancing the right asserted against the need of the prison for discipline. Several legal principles regarding prisoner writ-writing are well established. A prisoner has a right to be his own jail house lawyer. **Sigafus v. Brown**, 416 F.2d 105 (7th Cir. 1969). Likewise, a prisoner has the right to assistance from other inmates. **Johnson v. Avery**, 393 U.S. 483. (Polk Correctional Institute, Florida)

U.S. Appeals Court
REMOVAL FROM JOB

Dupont v. Saunders, 800 F.2d 8 (1st Cir. 1986). Inmates filed suit alleging that they were wrongfully removed from their law library positions. The United States District Court denied the inmates' motion for a preliminary injunction. The inmates appealed. The court of appeals held that: (1) the inmates failed to establish irreparable harm, even though the challenged disciplinary actions deprived them of the opportunity to earn good-time credits, where they could seek a retroactive award of those credits if it was determined that they were wrongfully discharged, and where other clerks were available to serve as "writ writers" for other inmates; (2) the inmates had no vested property or liberty rights to either obtain or maintain their positions; and (3) the district court's findings that the inmates were terminated for cause and in accordance with prison regulations were not clearly erroneous, even though the inmates claimed that they were removed from their positions in retaliation for filing complaints. (MCI-Cedar Junction, Massachusetts)

U.S. District Court
PAYMENT

Holton v. Fields, 638 F.Supp. 1319 (S.D. W.Va. 1986). The breach of a promise allegedly made to an inmate by a jail administrator was not actionable under 42 U.S.C.A. Section 1983. The administrator allegedly promised the inmate he would be granted day-for-day good time credit for all of the time he spent as a member of the jail paint crew. Nonpayment of wages or a disallowance of promised good time at best amounts only to an allegation of breach of contract, in the absence of a public policy requiring payment of wages or allowance of good time for work performed while in jail. Neither West Virginia law nor federal law required payment or good time credit under the circumstances. (Cabell County Jail, West Virginia)

U.S. Appeals Court
DEDUCTION FROM WAGES

Hrbek v. Farrier, 787 F.2d 414 (8th Cir. 1986). A state prisoner brought a suit under Section 1983 following the deduction of court costs from wages he earned while in prison. The United States District Court dismissed, and the prisoner appealed. The court of appeals held that: (1) the prisoner had no constitutionally protected interest in the wages, and thus the prison officials' conduct in deducting the court costs was not actionable under Section 1983, and (2) Iowa statute allowing the deductions did not violate the equal protection clause on the basis that prisoners were being treated differently than nonprisoners, as the classes were not similarly situated and there was a rational basis for the classification. (State Penitentiary, Iowa)

U.S. District Court
IDLENESS

Morales Feliciano v. Romero Bercelo, 672 F.Supp. 591 (D. P.R. 1986). According to a federal court, prison overcrowding, inmate idleness, and the threat of violence among inmates, combined with the continuous frustrations of reasonable expectation produced by administrative incompetence, resulted in an ascertainable psychological deterioration in the Puerto Rican prison population. The psychological deterioration inflicted on inmates in the prison system was an unnecessary and wanton infliction of pain in violation of prisoners' Eighth Amendment protections against cruel and unusual punishment. Insofar as the Puerto Rican prison administration was under a statutory duty to provide rehabilitative programs through which inmates could earn time credits towards early release, unavailability of any form of useful work, study or even recreation, where none of the physical conditions of confinement met constitutional standards, combined with continuous frustrations of reasonable expectations produced by administrative incompetence, inflicted serious psychological harm on inmates, which was independently cognizable under the Eighth Amendment. When inmates' opportunities to study or work within prison were taken away by irregularities in the classification system or the prison administration's inability to provide a safe environment, inmates were deprived of liberty interest implicating a statutorily created expectation that imprisonment could be shortened by work and study. Inmates of Puerto Rican jails were denied due process as a result of inefficient, inexperienced, and often incompetent social-penal counseling system, which had a severe negative impact on inmates' opportunities to establish eligibility for parole and to actually be heard in a timely manner by a parole board. Commingling of pretrial detainees with convicted prisoners, in conjunction with finding that conditions which prevailed in all institutions at which pretrial detainees were housed violated the Eighth Amendment rights of convicted inmates, was a sufficient basis for holding that pretrial detainees were being punished prior to conviction and that, therefore, they were deprived of liberty without due process of law. (Commonwealth of Puerto Rico)

U.S. District Court
WORK RELEASE
EQUAL PROTECTION

Olynick v. Taylor County, 643 F.Supp. 1100 (W.D. Wis. 1986). A former prisoner in a county jail brought a civil rights action, claiming that she was a victim of sexual discrimination and was denied due process when she was not allowed to exercise work release privileges during her jail sentence. On cross motions for summary judgment, the district court held that: (1) the plaintiff was denied liberty without due process when she was denied the right to exercise work release privileges because of her transfer to another county jail; (2) the plaintiff's inability to exercise work release privilege outside of county to whose jail she was transferred did not constitute false imprisonment under Wisconsin law; and (3) the sheriff was entitled to qualified immunity because the prisoner's constitutional right to exercise work release privileges was not clearly established. Changes in condition of confinement, even those with a substantial impact, are not alone enough to invoke due process protections as long as the conditions or degree of confinement to which the prisoner is subjected is within the sentence imposed upon him. (Taylor County Jail, Wisconsin)

U.S. District Court
DEDUCTIONS FROM WAGES

Sahagian v. Dickey, 646 F.Supp. 1502 (W.D. Wis. 1986). A prisoner, seeking to challenge a state prison practice of diverting fifteen percent of money sent to a prisoner into a release account to which to prisoner would not have access until he was released from prison, petitioned for leave to proceed without prepayment of fees and costs or security therefor. The district court held that: (1) the practice did not deprive the prisoner of substantive due process; (2) no additional procedures were required in instituting practice to ensure the prisoner procedural due process; and (3) the practice did not violate an equal protection clause by reason of exception for work release wages. Petition denied.

A memorandum explained how funds were to be diverted. It stated:

> fifteen percent of all general inmate receipts including wages, hobby sales and gifts will be diverted to a segregated release account. The only exceptions are: a) work/study release money, b) refunds from outside purchases, c) savings account interest, d) money received from other institutions for inmates transferring in.

The Court ruled the practice did not deprive the inmate of constitutional rights. (Columbia Correctional Institution at Portage, Wisconsin)

U.S. Appeals Court
IDLENESS

Toussaint v. McCarthy, 801 F.2d 1080 (9th Cir. 1986), cert. denied, 107 S.Ct. 2462, and 481 U.S. 1069. Inmates and prison officials appealed an order of the district court, 597 F.Supp. 1388, which granted permanent injunctive relief with respect to placement of prisoners in administrative segregation. The Court of Appeals held that: (1) state regulations gave prisoners liberty interest; (2) due process required only that prison officials hold an informal non-adversary hearing within reasonable time after a prisoner is placed in segregation and inform him of charges against him and give him an opportunity to present his views; (3) it was error for special master or court to substitute their views for those of the administrator in determining when a prisoner should be released; (4) review of segregation should be conducted more frequently than annually; (5) decision to place a prisoner in segregated confinement must be supported by some evidence; and (6) denial of contact visits and work programs did not violate the eighth amendment. (San Quentin, Folsom, Deuel Vocational Institute at Tracy, and the Correctional Training Facility at Soledad in California)

1987

State Appeals Court
INJURY

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. Appeals Court
SEGREGATION
COMPENSATION

Brooks v. Andolina, 826 F.2d 1266 (3rd Cir. 1987). A federal appeals court ruled that (1) it is unlawful to place an inmate in segregation simply because he wrote a letter complaining of a female employee's search of a visitor, (2) prison officials' refusal to permit an inmate to call any witnesses at a disciplinary proceeding violated the inmate's procedural due process rights, and (3) the inmate was not entitled to lost wages. The inmate, who was sentenced in a disciplinary proceeding to 30 days punitive segregation in violation of his First and Fourteenth Amendment rights, was not entitled to damages for lost wages in his Section 1983 action against prison officials. Even though the inmate testified that he lost wages as a result of the unwarranted transfer to punitive segregation, the inmate failed to offer any evidence as to what those wages were. (State Correctional Institute at Pittsburgh, Pennsylvania)

U.S. District Court
SEGREGATION

Cooper v. Sumner, 672 F.Supp. 1361 (D.Nev. 1987). A Nevada prisoner who was incarcerated in Arizona pursuant to a western interstate corrections compact brought a 42 U.S.C.A. Section 1983 action contesting that placement and also other aspects of his confinement. After reviewing the magistrate's report, the district court held that: (1) the prisoner had no protectable liberty interest in earning work time credit and a Section 1983 claim based on his placement in a segregation unit and resultant deprivation of an opportunity to work was frivolous; (2) the prisoner's claim that lack of access to the Nevada statutes and case law prevented him from seeking postconviction relief, states a viable Section 1983 claim based on lack of access to the courts; and (3) the prisoner would be permitted time to file amended complaint with regard to the challenge to his initial transfer and other claims. (Arizona State Prison)

State Appeals Court
INJURY

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
WORK ASSIGNMENT

Flittie v. Solem, 827 F.2d 276 (8th Cir. 1987). An inmate at the South Dakota State Penitentiary was dismissed from his position as a law clerk after receiving a disciplinary report. He was therefore allowed to use the law library only after other prisoners who were not regular users were finished with their legal work. According to the appeals court, this prison rule was not unfair or illegal. The restriction amounted to an allocation system to prevent domination of the law library by regular users. Since the plaintiff was still using the law library on an average of three times a week, and had filed six lawsuits since the restriction was imposed, the court noted that he had obviously not been prejudiced by it. A claim for a Section 1983 relief was not supported by the inmate's allegations that prison officials dismissed him from the position as an inmate law clerk in retaliation for his legal activities. (South Dakota State Penitentiary)

U.S. Appeals Court
DISCRIMINATION
WORK ASSIGNMENT

Foster v. Wyrick, 823 F.2d 218 (8th Cir. 1987). A black inmate who alleged that he and other black inmates were denied more desirable and better-paid jobs at the prison because of their race was prevented from undertaking to prove his intentional discrimination claim. The district court construed the statute of limitations to bar any circumstantial evidence of racial discrimination occurring prior to the limitations period. The prisoner's access to information concerning clerk positions was also strictly limited by the district court. (Missouri State Penitentiary)

U.S. District Court
WORK STOPPAGE

Gabel v. Estelle, 677 F.Supp. 514 (S.D. Tex. 1987). Inmates suffered no denial of their constitutional rights when, as indicated in their civil rights lawsuit, they were furnished peanut butter sandwiches as the sole nourishment during a lockdown. Prison officials responded to a non-violent work strike of over 150 inmates by locking all striking inmates in their cells without notice or hearing. The court found that the lock-down was imposed upon all striking inmates without partiality and was the kind of action prison officials were entitled to take in response to a confrontation with an inmate. In addition, the court also found no constitutional violation on the mere basis of the inmates' "distaste" for peanut butter. It added that "the strike itself may have been the cause of the limited fare." (Wynne Unit, Texas Department of Corrections)

U.S. Appeals Court
WORK ASSIGNMENT

Gill v. Mooney, 824 F.2d 192 (2nd Cir. 1987). According to a federal court of appeals, changes in an inmate's work assignments which were not requested by the inmate or authorized by the prisoner's program committee did not violate the right to due process. Under New York law, there was no right to a particular job assignment. By not clearly alleging that the job transfer was made in retaliation for the exercise of constitutional rights, the prisoner could not state a claim. (Great Meadow Correctional Facility, New York)

U.S. Appeals Court
WORK ASSIGNMENT

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. 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)

U.S. Appeals Court
WORK RELEASE

Mahfouz v. Lockhart, 826 F.2d 791 (8th Cir. 1987). An Arkansas Department of Corrections regulation which prohibits any person convicted of a sex crime from participating in work/study release programs for inmates housed outside corrections facilities was upheld by a federal appeals court because it relates to a legitimate governmental purpose--preventing sex crimes. The plaintiff, an inmate serving a sentence for conviction of three counts of sexual abuse involving minors, filed suit alleging his constitutional rights were violated due to the denial of the opportunity to participate in these programs. The appeals court held that state could distinguish sex offenders from other inmates and properly exclude them from work release programs and that Arkansas statutes and regulations did not establish a protectable interest in participating in work release programs. (Arkansas Department of Corrections)

State Supreme Court
COMPENSATION

Meis v. Grammer, 411 N.W.2d 355 (Neb. 1987). A state supreme court upheld the denial of the prisoner's request to send money to a non-family member, noting that prison officials were justifiably concerned that the payment might be for an illegal debt incurred while the creditor was a fellow inmate. The prisoner had challenged prison regulations regarding the disbursement of prison funds when his request to hold a portion of his wages in a trust fund to be used to pay a debt to a friend was denied. At the time of his request, the prisoner had $135 in his fund of which $72 were wages earned while at

the prison. Prison regulations limited the use of funds earned at the prison, specifying that they could be used for the support of family members and for commissary purchases, and that funds could also be set aside to be provided to the inmate upon release. (Nebraska Department of Correctional Services)

U.S. Appeals Court
WORK CONDITIONS

Ort v. White, 813 F.2d 318 (11th Cir. 1987). A prison officer's denial of water to an inmate was not cruel and unusual punishment where the inmate refused to carry a water keg to the farm work site. The farm squad remained away from the prison for the entire day under supervision of a single officer. The officer's actions were necessary coercive measures undertaken to obtain compliance with a reasonable prison rule that inmates perform their assigned farm squad duties. The officer denied the inmate water only when he refused to carry the keg or refused to work. The officer's actions were necessary to prevent a possible disturbance by other inmates on the farm squad, and the inmate was allowed to drink water when he performed work required of all inmates on his farm squad. Although the officer did not follow usual procedures for filing a disciplinary report and conducting a disciplinary hearing before taking action, because the officer was alone in the field supervising an inmate work squad when he was confronted with spontaneous disruption by one of the inmates in his group, the work squad was to be away from the prison for the entire day, and the officer had to take action to maintain discipline and control until the squad returned to the prison, his actions did not violate inmates' due process rights. (Stanton Correctional Facility)

State Appeals Court
INJURY
WORK CONDITIONS

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. District Court
COMPENSATION

Salahuddin v. Coughlin, 674 F.Supp. 1048 (S.D.N.Y. 1987). Prison regulations specified that inmates transferred involuntarily (such as for purposes of distribution of population) would retain the same wage grade they had achieved. The regulations did not provide this guarantee to those transferred upon their own request. An inmate who participated in a job training program sued prison officials, alleging he was entitled to maintain his wage grade following a voluntary transfer. Prior to his transfer he had progressed from a compensation level of Wage Grade I ($.90 per day) to Wage Grade 4.2 ($2.19 per day). He requested a transfer to another prison in order to be closer to his family. The transfer was approved, but the inmate found that he was paid $1.30 a day in the lower wage grade when he was placed in at the new institution. The court found that the inmate had no legitimate claim of entitlement of retaining the same wage grade from one facility to the next and therefore had no due process right to either notice or hearing before his wage grade was reduced following transfer. (Green Haven Corr Fac., New York)

1988

U.S. Appeals Court
DISCRIMINATION
EQUAL OPPORTUNITY
EEOC

Baker v. McNeil Island Corrections Center, 859 F.2d 124 (9th Cir. 1988). A pro se inmate brought a suit against a prison alleging he was denied employment at the prison library due to his race. The U.S. District Court dismissed the inmate's petition. On appeal, the court of appeals, reversing and remanding, found that the district court's action was dismissal, not grant of summary judgment, and the pro se inmate sufficiently state a claim under Title VII. Reversing the trial court's dismissal of the inmate's lawsuit, the court noted that work assignments such as the library aide position in a prison, are in the nature of rehabilitation and employment training, rather than in the nature of commercial employment. But the applicable provision of the law, by its own terms, applies to apprenticeships and "other training or retraining, including on-the-job training programs". Further, the court noted that the EEOC published a Notice of Policy Statement that Title VII applies to prisoners eligible for work release on May 30, 1986. According to this statement, once a prison recommends a prisoner for work release, the prisoner is seeking an employment opportunity with an employer and the jail becomes a third party with the ability to control or interfere with the inmate's employment opportunities and its activities are thus covered by Title VII. Further, the court has also held that Title VII applies in such a situation. Mitchell v. Frank R. Howard Memorial Hosp., 853 F.2d 762, 767 (9th Cir. 1988). While the library aide position is not work release, the court noted, "it is not beyond doubt that a claim could not be proved under Title VII. We simply do not know enough about that position." The trial court had denied the appointment of counsel because it thought the inmate's claim meritless. On remand, the appeals court stated that the trial court must consider whether counsel should be appointed in light of its decision. (McNeil Island Corrections Center, Washington)

U.S. District Court
DISCRIMINATION

Brown v. Sumner, 701 F.Supp. 762 (D. Nev. 1988). An inmate who was denied hobby craft privileges to practice as a television and radio repairman brought a civil rights complaint against prison officials. The defendant sought summary judgment. The district court found that substantial issues of material fact existed as to whether the inmate was denied privileges on the basis of race, precluding summary judgment and denying the motion. The Constitution prohibits prison supervisors from using race as a factor in determining which prisoners can participate in which programs. While a prison inmate does not have an eighth amendment right to participate in a work program, he does have an eighth amendment right to be considered for those programs that do exist without regard to his race, color, or national origin. Where a state has established a particular program, all prisoners have fourteenth amendment equal protection rights regarding administration of that program. (Northern Nevada Correctional Center)

U.S. Appeals Court
WORK ASSIGNMENT
DISCRIMINATION

Davis v. Carlson, 837 F.2d 1318 (5th Cir. 1988). A prisoner and his wife filed a pro se complaint seeking declaratory judgment regarding the manner in which the prison was administered. The federal district court dismissed the case. The prisoner and his wife appealed. The appeals court held that the prisoner's complaint was properly dismissed for failure to exhaust administrative remedies. The court further found that a prisoner's wife could not bring a declaratory judgment action alleging that the prisoner might send her money derived from an income-producing job assigned him, if he had one, and that he would have an income-producing job if jobs were not assigned on a racially discriminatory basis. The wife's claim was derivative of the prisoner's claim, and the prisoner's claim was precluded by failure to exhaust administrative remedies. (U.S. Bureau of Prisons)

U.S. District Court
INJURY
COMPENSATION

Flowers v. Fauver, 683 F.Supp. 981 (D.N.J. 1988). By alleging that he was wrongfully deprived of wages after an employment related accident forced him to go on medical lay-in status, an inmate stated a viable claim for relief. The administrative plan manual and inmate handbook gave prison officials no discretion to deny benefits to qualified prisoners who have received verified work-related injuries. These inmates must be accorded compensatory wages or work credits. An inmate's right to compensatory wages for a work-related injury is not decreased due to the fact that the inmate had no right to a prison job. (Trenton State Prison, New Jersey)

U.S. Appeals Court
WORK RELEASE

Francis v. Fox, 838 F.2d 1147 (11th Cir. 1988). An inmate in the Alabama penal system did not have a protected liberty interest in participating in the work release program. Although the inmate contended that the state had created such an interest by statute, the Alabama statute was framed in discretionary terms and merely authorized work-release. Eligibility for participation in the work-release program was merely outlined by the regulations promulgated under the statute. (Alabama Department of Corrections)

U.S Appeals Court
DISCRIMINATION
WORK RELEASE

Fuller v. Lane, 686 F.Supp. 686 (C.D.Ill. 1988). A civil rights lawsuit was filed by two former inmates against various employees of the Illinois Department of Corrections alleging that their constitutional rights had been violated because they had been denied placement in a work release program. The two plaintiffs had been serving sentences for deviate sexual assault and aggravated criminal sexual abuse. They complained that all convicted sex offenders were denied placement in prison work release programs by the defendants. According to a federal district court, systematically excluding prisoners convicted of sex crimes from participating in work release programs is permissible. There is no constitutional right to work in prison. Further, state law does not grant eligible inmates an automatic right to work release. The Illinois statute authorizes prison officials to use their judgement in selecting inmates for the program and to take into account whether the participation of a particular inmate would cause "undue risk to the public." The court noted that there is no constitutional right to enter a discretionary work release program and summary judgment was issued for the defendants. Even if it were true that sex offenders were systematically excluded, the court concluded, there was no violation of equal protection, even if they were found to be a suspect class. The court also held that, even if they were found to be a suspect class, "prison officials' understandable reluctance to allow those inmates free movement in the community without supervision passes strict judicial scrutiny." (Illinois DOC)

U.S. District Court
WORK ASSIGNMENT
RIGHT TO WORK

Jackson v. O'Leary, 689 F.Supp. 846 (N.D. Ill. 1988). A federal district court ruled that a prison inmate has no constitutional right to prison employment. Further, in order to demonstrate a violation of his constitutional rights because he was reassigned to a less desirable job, the inmate must invoke state law or regulations that created a protected liberty or property interest in a particular prison job. Also, there would only be an equal protection violation if prison officials made the decision in a manner that involved intentional or purposeful discrimination. There was no violation of the Eighth Amendment's protection against cruel and unusual punishment when the plaintiff was reassigned from an administrative job paying $45 per month to a manual labor job paying $15 per month. The fact that the prisoner had a preference for clerical rather than

manual labor did not support a claim of "cruel and unusual punishment." Prison officials had not, in this instance, knowingly compelled the prisoner to do work that caused him undue pain or endangered the prisoner's life or health, or exceeded his physical capacity. (Stateville Correctional Center)

State Supreme Court
WORK ASSIGNMENT

Lee v. Coughlin, 530 N.Y.S.2d 884 (A.D. 3 Dept. 1988). A prisoner brought an Article 78 proceeding seeking a review of a determination of the Commissioner of Correctional Services finding the prisoner guilty of violating certain prison disciplinary rules. The State Supreme Court dismissed the petition, and appeal was taken. The supreme court affirmed the judgment and found that the prisoner did not have a liberty interest in obtaining a job closely suited to his perceived abilities, nor did he have a protected right to meet with a counselor prior to such assignment, and the prisoner's refusal to consent to employment, as well as to take a literacy test, constituted a disobedience of direct orders warranting discipline. The prisoner, who was transferred from another facility, was informed that he would be assigned to work in the mess hall. The prisoner refused, arguing that since he had completed college and had worked in a prison academic program for ten years, he should be offered a job commensurate with his abilities. He was found guilty of misbehavior for refusing to report for a mandatory literacy test, refusal to report to the mess hall and other infractions. He sought court review of his penalties of confinement to cell for 50 days and loss of commissary, packages and phone call privileges. (Mt. McGregor Correctional Facility, Saratoga County, New York)

U.S. Appeals Court
WORK ASSIGNMENT

Moody v. Baker, 857 F.2d 256 (5th Cir. 1988). A state prisoner filed his 24th civil rights suit, alleging that he was ordered to work despite his classification as disabled, and that the order represented retaliation for his past complaints. The U.S. District Court found the complaint frivolous, admonished the prisoner, and assessed court costs of $225, and the prisoner appealed. The appeals court, affirming the decision, found that the more than 20 prior frivolous civil rights complaints the state prisoner had filed undermined his credibility and occasioned close scrutiny of his pleadings, although when read in a vacuum, the prisoner's pro se complaint stated a claim cognizable under the civil rights statute. The state prisoner's conclusory allegation, that the job he was given represented retaliation for his prior complaints, was a frivolous basis for a civil rights action, standing alone, without an allegation of factual basis, and the $225 court costs was properly imposed on the prisoner, although the imposition of sanctions without prior warning is generally to be avoided. (Texas State Prison)

U.S. Appeals Court
INVOLUNTARY SERVITUDE

Plaisance v. Phelps, 845 F.2d 107 (5th Cir. 1988). An inmate filed a federal civil rights lawsuit alleging that the requirement that he perform assigned work violated the thirteenth amendment's prohibition of "involuntary servitude." An earlier case by the Fifth Circuit Court of Appeals, **Wendt v. Lynaugh**, 841 F.2d 619 (5th Cir. 1988), had noted that the prohibition of involuntary servitude does not apply to its use as "punishment for crime" of which the inmate has been convicted. The court also ruled that the pending appeal of the inmate's conviction did not compel the court to assume that his conviction was "other than duly obtained," and it was not unconstitutional to require him to continue to work until his appealed was decided. (Louisiana Department of Public Safety and Corrections)

U.S. District Court
REMOVAL FROM JOB
DEDUCTIONS FROM PAY

Prows v. U.S. Dept. of Justice, 704 F.Supp. 272 (D.D.C. 1988). A federal prisoner was fired from his job with federal prison industries for failing to comply with the Bureau of Prisons' inmate financial responsibility program. Under the program, the Bureau reviewed an inmate's financial obligations and established a plan for payment of "legitimate financial obligations," such as court-ordered payments or debts owed the federal government. On March 27, 1987, the Bureau issued a "Program Statement" which required that inmates at certain pay levels would be expected to allot not less than 50% of their monthly pay to the payment of "legitimate financial obligations." The inmate refused to comply, continuing to send voluntary support payments instead to his indigent family, an obligation he argued was "legitimate." The Bureau, recognizing as "legitimate" only the payment of his court-imposed criminal fine, fired him from his prison job for noncompliance, and the inmate filed a lawsuit. The court found that the inmate was entitled to restoration of his work assignment and pay level and back pay from the date of his termination. While the Bureau of Prisons had authority to create the Financial Responsibility Program, the 50% requirement was issued without required prior notice and rule-making procedures. The absence of these procedures rendered the requirement null and void, the court concluded. (La Tuna Federal Correctional Institution, Anthony, New Mexico)

State Appeals Court
INJURY

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 Corr. Institution, Florida)

U.S. Appeals Court
COMPENSATION
INVOLUNTARY SERVITUDE

Wendt v. Lynaugh, 841 F.2d 619 (5th Cir. 1988). According to a federal appeals court, requiring prisoners to work without pay is not "involuntary servitude." An inmate sued Texas prison officials, complaining that he was forced to work without pay while in prison; the prisoner alleged a violation of the thirteenth amendment. The appeals court found that the fact that some states pay prisoners for work--and that Texas sometimes does so--did not make it involuntary servitude to force a prisoner as punishment for crime to work without pay. The court noted that the thirteenth amendment in fact prohibits slavery and involuntary servitude, "except as a punishment for crime," so an inmate convicted of crime is exempted from the application of the thirteenth amendment. The court also rejected claims that such compelled labor was cruel and unusual punishment or that it was a denial of equal protection to only pay certain prisoners in the absence of some "specific kind of outlawed discrimination." According to the court, prisoners' pay is by "grace of the state." (Texas Department of Corrections)

U.S. District Court
COMPENSATION
FAIR LABOR STANDARDS ACT

Young v. Cutter Biological, 694 F.Supp. 651 (D.Ariz. 1988). State inmates brought an action against state defendants and the owner of a plasma treatment center located in a state prison to recover minimum wages allegedly due for labor performed for the plasma center pursuant to a contract between the center and the state Department of Corrections. The inmates sought summary judgment against the plasma center, and the state defendants and the plasma center filed a cross claim for summary judgment. The district court found that inmates could not recover minimum wages from the plasma center or state defendants under the Fair Labor Standards Act. The inmates did not state a cause of action against the plasma center for minimum wages under the Arizona statutory scheme which placed an obligation to pay inmates with the Department of Corrections. The eleventh amendment deprived the federal court of subject-matter jurisdiction to entertain the plaintiff's state law claim for minimum wages against the state, its agencies or its officials. The Section 1983 claim against the plasma center for deprivation of an alleged statutory right to minimum wages without due process could not be maintained and the eleventh amendment barred a Section 1983 cause of action against state defendants based on alleged deprivation of minimum wages under the Arizona statutory scheme in all respects except for prospective-injunctive or declaratory relief. The "economic reality" of the relationship between the inmates and the owner of the plasma center located in the state prison was not one of employer-employee within the meaning of the Fair Labor Standards Act, so as to entitle the inmates to payment of minimum wage from the center, notwithstanding the fact that the plasma center took the responsibility for day-to-day supervision of the inmate workers. The power to hire and fire the inmates, as well as the responsibility for determining their rate and method of pay, was vested solely with the state Department of Corrections pursuant to its contract with the center. The center kept no employment records for the inmate workers. The responsibility to compensate the prisoners was placed by statutory law on the director of the Department of Corrections and the center had no obligation under its contract with the prison to pay inmates directly. Thus, any rights the inmates may have had to minimum wage under the state statutory scheme existed only against the director. (State Prison, Florence, Arizona)

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U.S. Appeals Court
DISCRIMINATION

Canterino v. Wilson, 869 F.2d 948 (6th Cir. 1989). An action was filed challenging the denial of equal protection rights and the conditions of confinement in an institution for women. The U.S. District Court enjoined the enforcement of a statute which lists six categories of inmate in all Kentucky prisons who are ineligible for work release programs and the defendants appealed. The court of appeals found that the prisoners did not have a protected liberty interest in a particular classification, or in the study and/or work programs. The prisoners failed to prove that the denial of study and work release to members of their class was gender-based discrimination on its face; both men and women were included in the class of people who could be denied study and work release. Female prisoners failed to establish proof necessary to shift the burden of proof to prison and prison officials to show a legitimate justification for supposed discrimination; the court could not discern whether female prisoners were claiming that more women were unfairly classified and therefore unfairly denied these opportunities, or whether more women in the institution had committed serious crimes than men who were confined to similar institutions. (Kentucky Correctional Institute for Women)

U.S. District Court
PRETRIAL
DETAINEES

Charron v. Medium Sec. Inst., 730 F.Supp. 987 (E.D. Mo. 1989). A former pretrial detainee brought a civil rights action against the city and staff members of a city workhouse, alleging various constitutional violations which occurred in connection with his refusal to work in the kitchen of the workhouse, and the medical treatment that was afforded him for a workhouse injury. The U.S. District Court found that as a pretrial detainee, the plaintiff has no claim under the eighth amendment for cruel and unusual punishment, arising from his being placed in segregation for refusing to work in the workhouse kitchen, however the placement in segregation did amount to punishment in violation of his due process rights. According to the court, pretrial detainees do not stand on the same footing as convicted inmates. If pretrial detainees are subjected to restrictions and privations other than those inherent in their confinement itself or which are justified by compelling necessities of jail administration, their rights are violated under the due process and equal protection clauses of the fourteenth amendment. Placing the detainee in segregation was not reasonably related to a legitimate goal or purpose inasmuch as he did not pose a threat to security. The court found that he was entitled to nominal damages, since he suffered no actual harm as a result of his segregation for six days; thus, the plaintiff was awarded the sum of $600 in damages for the six days in punitive segregation at $100 per day. (Medium Security Institution, Missouri)

U.S. Appeals Court
WORK RELEASE

Coakley v. Murphy, 884 F.2d 1218 (9th Cir. 1989). When a state prison inmate was approved for work release, he was transported to a center where work release inmates live. He informed a counselor, upon his arrival, that he would not sign a copy of the work release agreement, which stipulated the conditions under which the inmates participated in the program. He was warned that if he failed to sign the agreement, he would be sent back to the penitentiary. He persisted in refusing to sign, stating that the agreement was illegal, that he was "civilly dead" as a prisoner under state law, and that he was therefore precluded from entering into contracts. He also said that if he signed, the agreement would be void because it was signed under duress. As a result of this persistent refusal, the inmate was returned to the penitentiary. He brought a Section 1983 action to challenge the denial of a hearing upon the transfer from the work release program to the penitentiary. The U.S. District Court dismissed the action, and the inmate appealed. The appeals court affirmed the lower court decision, ruling that the case was analogous to transfer from one institution to another within a state prison system; Idaho law placed no restrictions on transfers from work release centers, and there was no constitutional right to rehabilitation. The court of appeals found that the inmate had no due process liberty or property interest limiting the transfer from a work release program to the penitentiary upon the inmate's failure to sign a work release agreement and that the requirement that the inmate sign a work release agreement was rationally related to the legitimate interest in insuring that the inmate understand the obligations and therefore equal protections were not violated. (Idaho State Penitentiary, Boise)

U.S. Appeals Court
WORK RELEASE

Cornelius v. Town of Highland Lake, Ala., 880 F.2d 348 (11th Cir. 1989), cert. denied, 110 S.Ct. 1784. In March 1984, the Mayor of the Town of Highland Lake requested that the Alabama Department of Corrections provide the city with inmate labor for general maintenance, clearing and public works purposes. Beginning in May 1984, the St. Clair Correctional Facility provided the inmates for this community work program. According to the record, many community residents in Highland Lake opposed the use of inmate labor within the town and repeatedly voiced their concern to the town's officials. One method of opposition was the circulation of a petition in the community calling for the end to the unsupervised use of inmate labor.

A town clerk who was abducted from the town hall and terrorized by prison inmates assigned to the community work squad program brought a civil rights action against the town and its officials, as well as the prison and its officials. The U.S. District Court granted a summary judgment for the defendants. On appeal, the court of appeals reversed and remanded the case finding that genuine issues of material fact, as to whether a special relationship existed between the town clerk and the defendants and whether the defendants were aware that the clerk faced a special danger from the work squad inmates, precluded a summary judgment. (St. Clair Correctional Facility, Odenville, Alabama)

U.S. Appeals Court
WORK ASSIGNMENT
WORK CONDITIONS

Franklin v. Lockhart, 890 F.2d 96 (8th Cir. 1989). A prison inmate brought a civil rights complaint for prison authorities' alleged violation of free exercise and eighth amendment rights. The U.S. District Court entered an order dismissing the complaint, and the inmate appealed. The appeals court, affirming in part, reversing in part, and remanding, found that the allegations in the inmate's complaint that work which he had to preform while assigned to the prison hoe squad taxed him beyond his physical capacity, were sufficient to state an eighth amendment claim. The allegations in the complaint, that the work involved the handling of manure and dead animals contrary to the inmate's Muslim faith, were also sufficient to state a free exercise claim. (Arkansas State Prison)

U.S. Appeals Court
WORK ASSIGNMENT
WORK CONDITIONS
TRANSFER
REMOVAL FROM JOB

Jackson v. Cain, 864 F.2d 1235 (5th Cir. 1989). A prisoner brought a civil rights suit against various prison officials and employees. The U.S. District Court entered a summary judgment for the defendants, and the prison appealed. The appeals court found that the district court did not err in entering a summary judgment in favor of the defendants on issues of handcuffing, mail tampering and medical treatment. Some evidence raised material issues of fact, precluding a summary judgment on a cruel and unusual punishment claim, retaliation claim, failure to follow punishment limitations claim, and procedural due process claims. The prisoner's claim that he was "handcuffed, shackled and binded with a steel chain belt" and escorted from a work assignment at the Louisiana State Capitol by eight officers, inflicting "wanton pain" upon him did not rise to the level of cruel and unusual punishment. The prisoner never alleged that great pain was caused deliberately by the officers or that the particular kind of handcuff was not customarily used on prisoners working outside the prison. There was nothing to show that the prisoner was deliberately treated maliciously or differently from other trustees who might be transported from a work assignment due to unsatisfactory behavior. A prisoner has no protected liberty or property interest per se in avoiding the transfer from a desirable to an onerous job in the prison system, but once the state creates such a liberty or property interest, due process protections attach to the decision to revoke that interest. Evidence in the prisoner's civil right suit raised a genuine issue of material fact regarding the motives behind the decision of the prison authorities to transfer the prisoner from a desirable work assignment to an alleged "punishment crew," precluding a summary judgment against the prisoner on his claim that the move was in retaliation for his use of prison grievance procedures. The prisoner, who alleged that he was forced to work in the summer heat shoveling unshucked corn without a mask in spite of heavy corn dust did not establish that the working conditions, in and of themselves, violated the eighth amendment, in absence of showing that the practice differed from that of the surrounding agricultural community or violated a clearly established law. (Dixon Correctional Institute, Louisiana)

U.S. Appeals Court
DEDUCTIONS FROM PAY
RIGHT TO WORK

James v. Quinlan, 866 F.2d 627 (3rd Cir. 1989), cert. denied, 110 S.Ct. 197. Inmates brought an action challenging the constitutionality of Federal Bureau of Prisons' inmate financial responsibility program. The U.S. District Court upheld the program, and the inmates appealed. The appeals court found that even if federal inmates had either a liberty or property interest in prison industries job assignments, that right was not violated by the inmate financial responsibility program. Incarceration without being assigned a job was within the sentence imposed upon inmates. Accordingly, the inmates had no liberty interest in their federal prison industries job assignments arising from the due process clause itself. Traditionally, inmates have had no entitlement to a specific job or even to any job. Even if inmates had a constitutional right in federal prison industries job assignments, the right would not be violated by the Federal Bureau of Prisons' inmate financial responsibility program which required the inmates to either sign authorization giving prison officials authority to take 50% of their income for application toward their financial obligations or lose their desirable prison industry job assignments. (United States Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
WORK CONDITIONS
INJURY

Jones v. Morris, 769 F.Supp. 274 (N.D. Ill. 1989). An inmate filed a civil rights action against prison officials alleging cruel and unusual punishment because he was required to work on unsafe scaffolding which resulted in injury to him. The U.S. District Court found that prison officials who themselves regularly used the very scaffolding which the prisoner claimed was unsafe could not be found to have required use of unsafe scaffolding as cruel and unusual punishment, as they were sharing any risks involved. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
RIGHT TO WORK
EQUAL PROTECTION

Kalka v. Vasquez, 867 F.2d 546 (9th Cir. 1989). A prisoner filed a habeas corpus petition, contending that he was entitled to work time credit on a one for-one day basis, rather then a one-for-two day basis, from the time he was available to work until the time he was given work. The U.S. District Court denied the petition, and the prisoner appealed. The appeals court found that the refusal to award the credits on a one-for-one day basis did not violate the prisoner's equal protection rights. Section 2933(b) states that "[w]orktime credit is a privilege, not a right. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932." Except for prisoners ineligible pursuant to Section 2932, "every prisoner shall have a reasonable opportunity to participate in a full-time credit qualifying assignment in a manner consistent with institutional security and available resources." Cal.Penal Code Section 1933(b) (West 1982 & Supp.1989). Section 2933(a) provides that prisoners who were willing to participate but were not assigned work will receive no less credit than is provided under Section 2931: one day for every two served. (California Department of Corrections)

U.S. Appeals Court
REMOVAL FROM JOB
WORK ASSIGNMENT

Newsom v. Norris, 888 F.2d 371 (6th Cir. 1989). Inmate advisors filed a suit and sought a preliminary injunction to direct their reappointment as advisors to assist fellow inmates in disciplinary proceedings. The U.S. District Court granted a preliminary injunction, and prison officials appealed. The court of appeals, affirming in part and vacating in part, found that the inmate advisors did not have a due process liberty interest in continuing to serve in their positions. The inmate advisors established a likelihood that they would succeed on the merits of their claim that the warden failed to reappoint them in retaliation for their exercise of first amendment rights. The action was not appropriate for certification as a class action. (Tennessee State Penitentiary)

U.S. District Court
PRISON INDUSTRIES
WORK ASSIGNMENT
WORK CONDITIONS

Solomon v. Dixon, 724 F.Supp. 1193 (E.D.N.C. 1989). An inmate brought a suit against the prison officials under Section 1983 or the officials' alleged violation of eighth amendment rights, conspiracy to endanger the inmate's life, and verbal harassment. The inmate alleged that his exposure to a fumigant chemical and the lack of adequate ventilation caused him to experience breathing difficulties, which were exacerbated by prior lung damage from a stab wound. He also alleged that he experienced skin rashes and pain in his left foot, which he had previously injured in a chain saw accident. The prison officials moved to dismiss, or alternatively, for summary judgment. The district court found that the eighth amendment claims arising out of the inmate's assignment to the prison industrial facility, where the inmate was allegedly exposed to a fumigant chemical, were barred by the preclusive effect of finding of the state commissioner, in a prior tort claims action brought by the inmate, that the job assignment was within the inmate's capacity and was not harmful to his health, and slander or defamation does not constitute a basis upon which relief may be granted under Section 1983. (Central Prison, North Carolina)

State Appeals Court
COMPENSATION
INJURY

State, Dept. of Justice, Inmate Injury Fund v. Spear, 767 P.2d 928 (Or.App. 1989). The Workers' Compensation Board affirmed a referee's order that injury to an inmate was compensable and that attorney's fees, for services before the Board, were to be paid from the inmate injury fund. The State Department of Justice, the administrator of the fund, sought review. The appeals court, affirming the decision, found that the injury sustained by the inmate in a fight with another inmate, while both were waiting for transportation back to the prison following work, was compensable. The court also found that the attorney's fees were payable from the fund. The inmate had completed his day's work at a farm annex and was awaiting transportation back to the prison. While waiting, another prisoner who was also awaiting transportation, assaulted him. The court stated that the injuries the inmate sustained during the fight were compensable. Because the inmate was obligated to work at the farm annex, his transportation to and from work was also necessary, as was his waiting for it. Therefore, the court found that his employment "proximately caused" his injury. (Oregon State Penitentiary, Farm Annex).

1990

U.S. District Court
REMOVAL FROM JOB

Baptist v. O'Leary, 742 F.Supp. 975 (N.D. Ill. 1990). A prisoner sued prison officials under Section 1983 in connection with his job reassignment, along with other prisoners who worked with him in the prison's administrative building, following the theft of an engraver owned by the Department of Corrections. The defendants moved for summary judgment. The U.S. District Court found that the prisoner would be entitled in due process terms to a hearing if he were reassigned for punitive reasons, and that the prison officials were entitled to qualified immunity because they demonstrated that their actions could have been objectively justified on security grounds by reasonable prison officials, and no clearly established law at the time that the defendants acted taught that such set of security-oriented transfers would be "disciplinary" within the meaning of an Illinois statute relating to disciplinary actions against prison inmates. (Stateville Corr. Center, Illinois)

U.S. District Court
EQUAL PROTECTION
RIGHT TO WORK
WORK ASSIGNMENT

Farmer v. Moritsugu, 742 F.Supp. 525 (W.D. Wis. 1990). A prisoner who had tested positive for HIV brought an action alleging violation of his equal protection rights by prison officials' decision to prevent him from working in food services. The district court found that the decision to prevent the prisoner from working in food service after he tested positive for HIV was rationally related to legitimate security and order in the penal institution so the prisoner's equal protection rights were not violated. (Federal Correctional Institution, Oxford, Wisconsin)

U.S. Appeals Court
WORK ASSIGNMENT
WORK CONDITIONS

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. Appeals Court
DEDUCTIONS
FROM PAY

Johnpoll v. Thornburgh, 898 F.2d 849 (2nd Cir. 1990). An inmate petitioned for a show cause order seeking declaratory and preliminary injunctive relief, including a stay of collection procedures under the Inmate Responsibility Program. The U.S. District Court denied the inmate's petition, and the inmate appealed. The appeals court affirmed the decision and found that the inmate was required to exhaust administrative remedies with the Bureau of Prisons before he could bring a federal action challenging the collection procedures under the Inmate Responsibility Program. The Bureau of Prisons did not exceed its statutory authority nor depart from its own regulations by administering the Inmate Responsibility Program to collect court ordered civil fines and judgments. The Inmate Responsibility Program regulations allowing prison officials to require that all inmates with debts participate, were not punitive and did not violate due process. (New York Bureau of Prisons)

U.S. Appeals Court
WORK ASSIGNMENT
WORK CONDITIONS

Madewell v. Roberts, 909 F.2d 1203 (8th Cir. 1990). A civil rights action was brought by inmates in a state correctional facility for damages and declaratory injunctive relief based on the prison officials' alleged violation of due process and equal protection rights, retaliatory actions, and violation of the right to be free from cruel and unusual punishment. The U.S. District Court granted the defendants' motions for a summary judgment, and the prisoners appealed. The appeals court, affirming in part and remanding in part, found that the material question of fact, as to whether the prison officials violated the arthritic inmate's eighth amendment rights by requiring him to sit without a coat on the cold concrete floor for four or more hours in an unheated workplace, precluded an entry of a summary judgment on the prisoner's "cruel and unusual punishment" claim, but the inmate did not have a protected "liberty interest" in being classified for a particular job, notwithstanding that the job classification affected the ability to earn good time credits. (Maximum Security Unit, Arkansas Department of Corrections)

U.S. Appeals Court
REFUSAL TO
WORK
WORK ASSIGNMENT

Mikeska v. Collins, 900 F.2d 833 (5th Cir. 1990). Inmates brought a civil rights action against Texas prison officials, challenging their administrative punishment for refusing to work. The U.S. District Court dismissed the complaint as frivolous, and the inmates appealed. The appeals court affirmed the decision and found that the prison's classification plan satisfied due process. Equal protection did not require that inmates in administrative segregation be accorded the same privileges as prisoners in the general population. Placing an inmate in administrative segregation for refusing to work did not violate the eighth amendment, despite an inmate's claim that his stomach ulcer precluded him from working; the prison officials did not knowingly assign the inmate to a work detail which they knew would aggravate his ailment, and the inmate received adequate medical attention for his stomach problem. Prison officials have a discretion to determine whether and when to provide prisoners with privileges which amount to more than reasonably adequate food, clothing, shelter, sanitation, medical care, and personal safety. This discretion is not absolute and is subject to a constitutional requirement that significant and purposeful differences in treatment must have some rational basis and may not be wholly arbitrary and capricious. (Texas Department of Criminal Justice Institutional Division)

U.S. District Court
WORK ASSIGNMENT
INJURY

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

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. Appeals Court
PAYMENT
INVOLUNTARY
SERVITUDE

Murray v. Mississippi Dept. of Corrections, 911 F.2d 1167 (5th Cir. 1990), cert. denied, 111 S.Ct. 760. A Mississippi inmate filed a federal lawsuit claiming that forcing him to work on private property without pay violated his constitutional rights against involuntary servitude under the Thirteenth Amendment to the Constitution. A federal appeals court rejected this argument, noting that the Thirteenth Amendment specifically allows involuntary servitude as punishment after conviction of a crime. Compensating prisoners for their work is not a constitutional requirement, but rather "is by the grace of the state." The court declined to create a private property exception to this principle. The prisoner pointed to state law, which contained a provision which appears to prohibit working inmates on private property. The court said that, while it is possible that the inmate might have a state-law cause of action for declaratory, injunctive or monetary relief based on his claim, there was nothing to show that a violation of this state law "rises to constitutional proportions." (Mississippi State Penitentiary)

U.S. District Court
INJURY
WORK CONDITIONS

Warren v. State of Mo., 754 F.Supp. 150 (W.D. Mo. 1990), affirmed, 995 F.2d 130. An inmate brought an action against prison officials for violation of the Eighth Amendment. On the officials' motions to dismiss, the U.S. District Court found that the allegation that the prisoner was required to work with a table saw that was known to be dangerous was sufficient to state a cause of action for violation of the prisoner's Eighth Amendment rights. The prison officials were not entitled to qualified immunity from liability to the inmate who claimed he was injured by the table saw which officials knew posed a serious risk of injury. The officials should have known that the alleged conduct violated a clearly established prohibition against reckless indifference to the prisoner's safety. The court also found that the prisoner, who was alleging a valid Eighth Amendment claim, could not also bring a separate, independent claim under Section 1983 for the same behavior based on substantive due process. (Missouri State Penitentiary)

U.S. Appeals Court
COMPENSATION
FAIR LABOR
STANDARDS ACT
PAYMENT

Watson v. Graves, 909 F.2d 1549 (5th Cir. 1990). Two Louisiana ex-prisoners filed a civil rights and Fair Labor Standards Act lawsuit against the warden of the jail they had been incarcerated at, the sheriff, and the sheriff's daughter and son-in-law. The last two defendants were the operators of an unincorporated construction company that relied exclusively on inmate labor from a work release program operated by the sheriff and administered by the warden at the jail. The plaintiffs were paid a flat $20 per day for their work, regardless of how many hours they worked, including in excess of twelve hour days. They argued that they were subjected to involuntary servitude in violation of the Thirteenth Amendment to the U.S. Constitution, and additionally that they had been deprived of the wages legally due them, including overtime. A federal appeals court, while noting that the plaintiffs did not lose the protection of the Thirteenth Amendment, as they were not sentenced to hard labor, found that these prisoners had not been subjected to involuntary servitude, as they were not compelled to agree to work. Evidence showed that they both requested work outside the jail and worked whenever possible. "The choice of whether to work outside of the jail for twenty dollars a day or remain inside the jail and earn nothing may have indeed been 'painful' and quite possibly illegal under state law," the court stated, but it did not amount to forcing them to work against their will. However, the court found by applying an "economic reality" test, that the plaintiffs had been employees of the sheriff's daughter and son-in-law for purposes of the Fair Labor Standards Act, and therefore entitled to payment of the minimum wage and overtime, as well as other legal mandated benefits. These private parties had the power to hire and fire, since they could request particular inmates, the inmates utilized were supervised and controlled only by the employer and no law enforcement officers made patrols or spot checks of the work sites. Although the court ordered the private employers to pay back wages to be determined by the trial court, it also found that any Fair Labor Standards Act claim against the sheriff or warden had been abandoned by the failure to supply facts sufficient to establish an employer-employee relationship with those defendants. (Livingston Parish Jail, Louisiana)

U.S. Appeals Court
SAFETY
WORK CONDITIONS

Bibbs v. Armontrout, 943 F.2d 26 (8th Cir. 1991), cert. denied, 112 S.Ct. 1212. An inmate appealed from an order of the U.S. District Court which dismissed a claim of cruel and unusual punishment. The inmate had lost portions of two fingers when they became entangled in the gears of the "inker" in the license plate manufacturing facility at the prison. The appeals court found that the negligence in ignoring conditions of machines in the license plate plant and removal of guards covering gears of a machine did not amount to cruel and unusual punishment. No evidence showed that prison officials knew that guards were not covering the gears of the inker or that they willfully overlooked the condition of the equipment. (Missouri State Penitentiary)

U.S. District Court
RIGHT TO WORK
WORK ASSIGNMENT

Casey v. Lewis, 773 F.Supp. 1365 (D. Ariz. 1991), reversed, 4 F.3d 1516. A class action suit was brought by prisoners challenging certain prison policies. The district court found that a policy prohibiting assignment of prisoners to food services who test HIV positive violated the Rehabilitation Act. The court found that, although a significant risk of transmission of the AIDS virus could justify exclusion of the infected person from a job for which he or she is otherwise qualified, based on reasonable medical judgments, there is no significant risk of transmitting the HIV disease except through: (1) intimate sexual contact with an infected person; (2) invasive exposure to contaminated blood or certain other bodily fluids; or (3) perinatal exposure. HIV-positive prisoners are "handicapped" within the meaning of Section 504 of the Rehabilitation Act. As such, officials must make an individual determination that each HIV-positive prisoner presents a significant risk of transmitting the virus if he or she worked in food services. The appeals court vacated the lower court decision, finding that the plaintiffs lacked standing. (Arizona Department of Corrections)

U.S. District Court
WORK CONDITIONS

Choate v. Lockhart, 779 F.Supp. 987 (E.D. Ark. 1991), reversed, 7 F.3d 1370. An inmate who fell from a roof while performing work brought an action against prison officials. The district court found that prison officials were deliberately indifferent to the inmate's safety when he was directed to perform work on a 45-degree angle plywood roof, without toe boards or scaffoldings installed, when the inmate, among other things, possessed a recognizable infirm right leg. The appeals court reversed the lower court finding and dismissed the case. (Arkansas Department of Corrections)

U.S. Appeals Court
RIGHT TO WORK

Codd v. Brown, 949 F.2d 879 (6th Cir. 1991). An inmate brought a Section 1983 action alleging that state prison officials had violated his due process rights by removing him from a prison work release program. The U.S. District Court granted the prison officials' motion for summary judgment, and the inmate appealed. The court of appeals found that since the inmate had no established protected liberty interest in his continued participation in the program, he failed to state a cause of action upon which relief could be granted under Section 1983; a prisoner serving a life sentence had no inherent due process clause interest in employment outside a correctional institution. (Michigan Department of Corrections)

U.S. District Court
ASSIGNMENT
EQUAL PROTECTION
RIGHT TO WORK
REMOVAL FROM JOB

Kelley v. Vaughn, 760 F.Supp. 161 (W.D. Mo. 1991). A homosexual inmate brought action against a correctional center's food service manager to challenge removal from his job as a bakery worker. The U.S. District Court found that the inmate has no right to be assigned to a particular job. The expectation of keeping a particular job in prison is not a property or liberty interest entitled to due process protection. Because the plaintiff has no protected interest in his job in the prison bakery, denial of that job does not constitute a violation of due process. However, regardless of any liberty or property interest in his position as a bakery worker, if the plaintiff were to be removed from the position because of his race, or prisoner animosity based on race, a constitutional violation would be patent. Whether claims of discrimination because of homosexual orientation will support a valid equal protection claim is a subject of some debate. The inmate was granted permission to proceed in forma pauperis. (Tipton Treatment Center, Tipton, Missouri)

U.S. Appeals Court
ASSIGNMENT
DISCRIMINATION

La Bounty v. Adler, 933 F.2d 121 (2nd Cir. 1991). A black inmate allegedly required to complete training before he could become eligible for a maintenance electrician program brought a pro se action alleging Eighth Amendment and equal protection violations. The U.S. District Court dismissed, and the inmate appealed. The court of appeals found that the inmate who alleged that similarly situated white inmates, unlike the plaintiff inmate, were given work assignments without having to complete a training program and that no blacks had been assigned as institution electricians for ten years, stated an actionable equal protection claim in connection with the alleged racially discriminatory treatment of his request for work assignment as an electrician, but the alleged exclusion of the inmate from the prison's maintenance electrician program did not constitute "punishment" for Eighth Amendment purposes. (Green Haven Correctional Facility, New York)

U.S. District Court
DEDUCTION FROM WAGES

Muhammad v. Moore, 760 F.Supp. 869 (D. Kan. 1991). An inmate brought a pro se civil rights complaint asserting his entitlement to back pay. The U.S. District Court found that the inmate's refusal to participate in an inmate financial responsibility program warranted a reduction of prison earnings to maintenance pay of $5 per month, and the fact that the prisoner's family was forced to provide him with funds for personal use did not identify an arguable deprivation of constitutional dimension and thus did not entitle the prisoner to relief. (U.S. Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
WORK ASSIGNMENT

Wallace v. Robinson, 940 F.2d 243 (7th Cir. 1991), cert. denied, 112 S.Ct. 1563. A prisoner brought a civil rights action against prison officials challenging a change in his job assignment. The U.S. District Court granted the officials' motions for summary judgment, and the prisoner appealed. The court of appeals found that a rule giving prison officials discretion to act for any reason, but placing restraints on their options if their motive was disciplinary, created neither a liberty nor a property interest. An Illinois prison regulation which allowed the transfer of a prisoner's work assignment for any reason except punishment had put restrictions on only one ground of action, and the remaining field of discretion was so large that no prisoner had a legitimate claim of entitlement to a particular job placement. (Stateville Prison, Illinois)

U.S. Appeals Court
WORK ASSIGNMENT
DISCRIMINATION

Williams v. Meese, 926 F.2d 994 (10th Cir. 1991). A prison inmate sued prison officials alleging discrimination and retaliation in connection with prison job assignments. The action was dismissed for failure to state a claim by the U.S. District Court, and the inmate appealed. The court of appeals found that the inmate was not an "employee" of the Federal Bureau of Prisons in connection with job assignments, and thus could not pursue a claim for discrimination in connection therewith under either Title VII, the Age Discrimination in Employment Act, the Equal Pay Act, or the Rehabilitation Act. However, the inmate did state a *Bivens* claim for deprivation of right to equal protection under the Fifth Amendment in claiming discrimination on the basis of age, race or handicap in denying him prison job assignments for which he was qualified. In addition, he stated a claim by the allegation that he was retaliated against in job assignments for exercising his First Amendment rights. (Federal Penitentiary, Leavenworth, Kansas)

1992

U.S. District Court
ASSIGNMENT
TRANSFER
RIGHT TO WORK

Adams v. James, 797 F.Supp. 940 (M.D. Fla. 1992). A civil rights action was brought alleging that the transfer in job and institutional assignments of inmate law clerks unconstitutionally infringed on their right to file law suits and help other inmates. On motion of the defendants for summary judgment, the district court found that the inmate law clerks did not have unique personal rights to hold particular jobs as law clerks or to be assigned to a particular institution on the grounds that they were moving for social change in that institution by filing suits against officers of the institution concerning conditions of confinement. No such personal right protected by the First Amendment existed on the grounds that the law clerks were more visible than other inmates in instituting legal action against the correctional institution. In addition, the inmates failed to establish their claims of retaliatory transfer. The prison officials' action of reassigning the inmate law clerks, based on suspicions that the clerks were charging for their services, was reasonable. In addition, it was rationally and validly connected to the government's interest in protecting inmates from exploitation by one another. (Polk Correctional Institution, Florida).

U.S. District Court
REMOVAL FROM JOB
TRANSFER
WORK RELEASE

Beasley v. Duncil, 792 F.Supp. 485 (S.D. W.Va. 1992), affirmed, 9 F.3d 1107. Inmates sued alleging that their removal from a community-based work release program without an administrative hearing violated their due process rights. The district court found that West Virginia law afforded no liberty right to work release and, thus, inmates were not denied due process when they were administratively transferred from a work release center to a more restrictive correctional environment without an administrative hearing. (West Virginia)

U.S. Appeals Court
WORK CONDITIONS

Burton v. Armontrout, 975 F.2d 543 (8th Cir. 1992), cert. denied, 113 S.Ct. 2960. Inmates brought an action against correctional officers to recover for cruel and unusual punishment for failing to warn inmates that hospital sewage was contaminated with the AIDS (Acquired Immune Deficiency Syndrome) virus and other infectious diseases. The U.S. District Court directed a verdict in favor of some officers, entered judgment on a jury verdict in favor of the remaining officers, and granted an injunction. Appeals were taken, and the appeals court found that the injunction requiring the county correctional center to provide adequate protective clothing and warnings to inmates of potential danger of working in contaminated waste was permissible despite a general verdict in favor of correctional officers on constitutional claims. The court found that evidence showed that despite the passage of three years and a greater awareness of dangers of AIDS, prison

officials failed to provide adequate protective clothing. The court also found that the county inmates who were involved in the cleanup of the sewage were not subjected to "cruel and unusual punishment" when correctional officers failed to warn that sewage could be contaminated with the AIDS virus and other infectious diseases. (Jefferson County Correctional Center, Missouri)

U.S. Appeals Court
EQUAL PROTECTION
WORK RELEASE

DeTomaso v. McGinnis, 970 F.2d 211 (7th Cir. 1992). An inmate brought a federal civil rights action following denial of his application for work release. The U.S. District Court dismissed the suit and the inmate appealed. The appeals court, affirming the lower court decision, found that Illinois regulations setting out eligibility requirements for an inmate to be entitled to work release do not create a liberty or property interest in work release for an inmate who meets the requirements because prison officials have discretion to choose among the eligible inmates. Furthermore, even if Illinois officials acted arbitrarily in allowing felons with records worse than this inmate's to enjoy work release, the regulations did not violate the inmate's equal protection rights as the inmate had no liberty or property interest in work release. The inmate did not contend that race or religion played a part in the decision to deny him work release, and Illinois had a rational explanation for caution in awarding work release status, in that slots were few and potential risks were high. (Illinois Department of Corrections)

U.S. Appeals Court
SAFETY
WORK CONDITIONS

Elliott v. Byers, 975 F.2d 1375 (8th Cir. 1992). Maximum security prisoners, forced to work on a hoe squad in shoulder to shoulder "tightened down" formation, brought a suit against several prison officials alleging violation of their Eighth Amendment right to be free from cruel and unusual punishment because they faced the risk of attack from other prisoners while working in such situations. The U.S. District Court entered judgment upon a jury verdict against the prisoners, and they appealed. The appeals court, affirming the decision, found that under the Eighth Amendment cruel and unusual punishment analysis, in order to show reckless disregard of prison officials, the inmates must show that they face a pervasive risk of harm or that the prison officials had reacted unreasonably to any alleged risk. The inmates ordinarily may not show pervasive risk of harm from single or isolated incidents, but it may be shown by frequent assaults that place a prisoner or group of prisoners in reasonable fear for their safety. (Arkansas)

U.S. Appeals Court
ASSIGNMENT
REFUSAL TO WORK

Franklin v. Banks, 979 F.2d 1330 (8th Cir. 1992). An inmate brought a civil rights action for prison authorities' alleged violation of free exercise and Eighth Amendment rights. The U.S. District Court entered an order dismissing the complaint, and the inmate appealed. The appeals court, affirmed in part, reversed in part and remanded. On appeal following remand, the court of appeals, affirming the decision, found that prison authorities had not "knowingly" required him to do work beyond his physical capabilities. The inmate had never complained about his inability to do work, requested assignment to a less strenuous work detail, or raised a defense of inability in the 165 disciplinary proceedings brought against him for refusing to work. (Arkansas)

U.S. Appeals Court
DISCRIMINATION
EQUAL PROTECTION

Hansard v. Barrett, 980 F.2d 1059 (6th Cir. 1992). Homosexual inmates at a county jail brought a class action suit against jail officials, alleging they were discriminated against in their opportunity to earn reduction in sentences for work done in jail. The U.S. District Court entered summary judgment in favor of the officials and the inmates appealed. The court of appeals, affirming the decision, found that the administrative rule guaranteeing the inmates in administrative segregation the same rights and privileges as those in the general population did not create a protected liberty interest in favor of the inmates to discretionary sentence reduction based on work performed while incarcerated. State law made sentencing credits discretionary, and did not give any prisoner, whether in the general population or administrative segregation, an absolute right to earn a recommendation for reduction of a sentence because of his or her work in jail. Furthermore, evidence was insufficient to establish that homosexual inmates at the county jail, who were placed in administrative segregation, were denied an equal opportunity to discretionary reductions in sentences available to inmates who performed work during their terms, in violation of equal protection. The jail regulations concerning eligibility for the program did not discriminate against homosexual inmates, and the testimony of two homosexual inmates who were denied jobs at the jail did not establish the existence of a discriminatory policy. (Franklin County Jail, Columbus, Ohio)

U.S. District Court
RIGHT TO WORK

Huddleston v. Shirley, 787 F.Supp. 109 (N.D. Miss. 1992). A jail inmate brought a Section 1983 action against the county and sheriff, in his official capacity, alleging that the sheriff disregarded a provision of a state court order directing that the inmate be released during the day to go to work. The inmate moved for summary judgment. The district court found that the sheriff's actions violated the inmate's substantive due process rights; although the sheriff believed the order invalid, he never sought a definitive ruling on its validity through any formal means. As a result, the county and the sheriff were found liable. (Lee County Jail, Mississippi)

U.S. Appeals Court
PRETRIAL
DETAINEES
REFUSAL TO WORK

Martinez v. Turner, 977 F.2d 421 (8th Cir. 1992), cert. denied, 113 S.Ct. 1658. A pretrial detainee appealed from an order of the U.S. District Court that dismissed his pro se complaint as frivolous. The appeals court found that the pretrial detainee's claim that he was denied due process when placed in administrative segregation for refusing to work was not indisputably meritless, and should not have been dismissed as frivolous. The court noted that it could not, based on the record before it, determine what, if any, work was being asked of the detainee. Requiring a pretrial detainee to work or be placed in administrative segregation is punishment; however, requiring a pretrial detainee to perform general housekeeping chores is not. The dismissal of this claim was reversed and remanded. (United States Medical Center for Federal Prisoners, Missouri)

U.S. District Court
ASSIGNMENT
REFUSAL TO WORK

Mayberry v. Spicer, 808 F.Supp. 563 (E.D. Mich. 1992). A state prisoner filed a pro se civil rights complaint against correctional employees, alleging that they violated his due process rights when they conspired to file false charges against him. The district court found that the correctional employees were entitled to qualified immunity in the suit prompted by the filing of misconduct charges against the inmate after he refused to report to work at the prison laundry, a job he had quit a short time earlier. The employees had been instructed to hire the plaintiff before they could take another prisoner from the pool and could not be expected to realize that the issuance of a work detail would result in a substantive due process violation. Furthermore, the inmate was not deprived of his substantive due process rights when correctional employees wrote a misconduct ticket after he refused to work at the assigned job. Refusal to work was a violation of prison rules and the issuance of a ticket neither shocked the conscience nor constituted an egregious abuse of authority. (State Prison of Southern Michigan)

U.S. District Court
ASSIGNMENT
WORK CONDITIONS

Pendergrass v. Hannigan, 788 F.Supp. 488 (D. Kan. 1992). A prisoner filed a civil rights complaint alleging that he was subjected to cruel and unusual punishment when he was forced to work outside during dangerously cold conditions, and that if he had complained of the work conditions he would have been transferred without due process to a less desirable correctional facility. The warden filed a motion for summary judgment. The U.S. District Court found that the prisoner's allegation was not, standing alone, enough to state a claim for cruel and unusual punishment; the prisoner did not dispute information provided in an investigatory report that appropriate clothing was issued and available to prisoners during winter work. The prisoner's claim that he would have been summarily transferred without due process guarantees if he had complained about the weather conditions was speculative and was not properly before the court. (Hutchinson Correctional Facility, Hutchinson, Kansas)

1993

U.S. Appeals Court
FORCED LABOR
REFUSAL TO WORK

Chauvin v. Erickson, 998 F.2d 617 (8th Cir. 1993). An inmate who was convicted before Minnesota's enactment of a new requirement that prisoners perform work assignments, when available, to earn good-time credit, brought a civil rights action against prison officials. The U.S. District Court granted summary judgment to the defendants, and the inmate appealed. The appeals court, affirming the decision, found that Minnesota's new requirement did not violate the ex post facto clause as applied to the prisoner. The statutory work requirement did not change conditions for earning good-time credit, since, before the enactment of the work requirement, prison regulations imposed a disciplinary infraction for refusing a direct order to work. A prisoner who incurred a disciplinary infraction for refusing to work could not earn good-time credit for that day. (Minnesota)

U.S. Appeals Court
ASSIGNMENT
INJURY

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. District Court
DUE PROCESS
LIBERTY INTEREST
REMOVAL FROM JOB

Collins v. Palczewski, 841 F.Supp. 333 (D.Nev. 1993). An inmate brought a pro se action against prison officials for terminating and failing to reinstate his prison employment, alleging due process and equal protection violations. On a motion to dismiss, the district court found that the inmate did not have a protected liberty or property interest in prison employment. (Ely State Prison, Nevada)

U.S. Appeals Court
FAIR LABOR
STANDARDS ACT

Franks v. Oklahoma State Industries, 7 F.3d 971 (10th Cir. 1993). Inmates sought declaratory and injunctive relief, back wages and damages claiming that they were employees entitled to overtime under the Fair Labor Standards Act (FLSA). The U.S. District Court dismissed the complaint and the inmates appealed. The appeals court, affirming the decision, found that the FLSA's definition of "employee" was not intended to apply to work performed in prison by a prison inmate. (Oklahoma Department of Corrections, State Industries)

U.S. District Court
ASSIGNMENT
REMOVAL FROM JOB

Gladson v. Henman, 814 F.Supp. 46 (D.Kan. 1993). An inmate at a federal prison filed a Bivens action to challenge the termination of his job assignment in Federal Prison Industries. Prison officials moved for summary judgment. The district court granted the motion, finding that evidence showed that the termination of the inmate's job assignment had been a result of discretion in administering the program, not because of any discrimination or additional disciplinary sanction resulting from a charge of the inmate being drunk. Therefore, no due process violation occurred. The termination of the assignment was based on the recommendation that the inmate be reassigned to another job, based on unsatisfactory work performance and violation of work rules, independent of discipline imposed for job-related misconduct. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
FAIR LABOR
STANDARDS ACT
PAYMENT

Hale v. State of Ariz., 993 F.2d 1387 (9th Cir. 1993), cert. denied, 114 S.Ct. 386. Inmates who worked for state prison industries programs brought suits seeking to be paid federal minimum wage. The U.S. District Court granted summary judgment for the defendants in one case and dismissed all claims except a Section 1983 claim for injunctive relief in the other case, and appeals were taken and consolidated. The court of appeals affirmed in part, reversed in part and remanded. On rehearing en banc, the appeals court found that inmates working in prison programs structured pursuant to Arizona law requiring prisoners to work at hard labor were not "employees" of the prison entitled to minimum wage under the Fair Labor Standards Act (FLSA). Furthermore, the prison's authorization of an "inmate-operated business enterprise" which made belt buckles did not constitute a contract with a private person, firm, corporation or association, subject to minimum wage requirement under Arizona law. (Arizona Correctional Facilities)

U.S. Appeals Court
DUE PROCESS
WORK RELEASE

Jackson v. Lockhart, 7 F.3d 1391 (8th Cir. 1993). An inmate brought a Section 1983 action against the Director of the Department of Corrections for failing to grant a *Morrissey*-type hearing before revoking her work release status. The U.S. District Court denied the Director's motion for summary judgment, and the Director appealed. The appeals court found that the constitutional right of the inmate to due process protections of a *Morrissey*-type hearing due to parolees, rather than to protections due in prison disciplinary hearings, was not clearly established at the time the inmate's work release status was revoked. As a result, the Director was entitled to qualified immunity for his failure to provide such a hearing. Although there were similarities between parolees and work release participants, the department exercised significant control over work release inmates, and relevant statutes referred to work release participants as "inmates." (Arkansas Department of Correction)

U.S. District Court
FAIR LABOR
STANDARDS ACT
PAYMENT

McMaster v. State of Minn., 819 F.Supp. 1429 (D.Minn. 1993). Prison inmates filed suit against state and prison officials, challenging failure to pay minimum and prevailing wages for inmates working in prison industries. On defense motions for dismissal and partial summary judgment, the district court found that the inmates were not "employees" governed by minimum wage provisions of the Fair Labor Standards Act (FLSA). (Minnesota Correctional Facilities)

U.S. Appeals Court
WORK RELEASE

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. Appeals Court
INJURY
SAFETY
WORK CONDITIONS

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 even if the application of the deliberate indifference standard to prison working conditions was clearly established at the time of the inmate's injury, prison officials were entitled to qualified immunity in the inmate's Section 1983 action as the inmate did not establish that they were deliberately indifferent to the issue of work place safety. Reports of twenty-nine injuries submitted by the officials revealed a variety of accidents and reflected efforts by officials to find out whether saws were in proper working condition when those accidents occurred. The inmate submitted only an unattested list of twenty-one prior injuries described in a legal memorandum as injuries resulting from similar accidents, and, even if officials had knowledge of allegedly similar injuries, that knowledge did not show deliberate indifference, but rather, potential negligence. (Missouri State Penitentiary, Jefferson City, Missouri)

1994

U.S. District Court
INJURY
WORK CONDITIONS

Arnold v. South Carolina Dept. of Corrections, 843 F.Supp. 110 (D.S.C. 1994). A state prison inmate who was injured while using faulty kitchen equipment brought a Section 1983 claim against prison officials based on Eighth Amendment violations. Upon the prison officials' motion for summary judgment, the district court found that the inmate failed to establish that the officials violated the Eighth Amendment's prohibition against cruel and unusual punishment. The inmate offered no evidence that the officials acted with a requisite culpable state of mind in failing to repair the equipment. Also, the deprivation of rights was not sufficiently serious to satisfy the objective component of violation. The proper remedy for the inmate was to file for workers compensation benefits. The court found that even if the inmate had established that prison officials violated the Eighth Amendment's prohibition against cruel and unusual punishment by failing to repair the faulty steam pot, prison officials were entitled to qualified immunity from the suit because it had not been clearly established that the right to properly functioning prison equipment was of constitutional magnitude. (McCormick Correctional Institution, South Carolina)

U.S. Appeals Court
ASSIGNMENT
FORCED LABOR

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 prison officials did not violate the inmate's Eighth and Thirteenth Amendment rights when they required him to work one extra eight-hour shift as a clerk. (California)

U.S. Appeals Court
REFUSAL TO WORK

Cokeley v. Endell, 27 F.3d 331 (8th Cir. 1994). A prisoner filed a pro se Section 1983 complaint alleging violation of his constitutional rights by Arkansas correction officials. The U.S. District Court dismissed the complaint as frivolous and the prisoner appealed. The court of appeals, reversing and remanding, found that the prisoner's action should not have been dismissed as frivolous. The prisoner, who had been granted a writ of habeas corpus, raised a claim with arguable legal basis that the due process clause that protected a pretrial detainee who refused to work also protected him. (Arkansas Department of Correction)

U.S. District Court
REMOVAL FROM JOB

Hadley v. Peters, 841 F.Supp. 850 (C.D.Ill. 1994). A state prisoner brought a pro se civil rights action against correctional officials. On motion to dismiss, construed as a motion for summary judgment, the district court found that the inmate had no protected interest in his prison job assignment, nor was he entitled to procedural due process in conjunction with his termination. (Graham Correctional Center, Illinois)

U.S. District Court
DISCRIMINATION
EQUAL PROTECTION

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 failure to hire the inmate did not violate equal protection, despite the inmate's allegations that failure to hire was due to the inmate's alleged disabilities. The inmate provided no facts to show that the defendants acted with discriminatory intent, and the defendants' hiring decisions were rationally related to UCI's legitimate goal of hiring the most qualified applicants. (Utah State Prison)

U.S. District Court
ASSIGNMENT
DISCRIMINATION

Hill v. Davidson, 844 F.Supp. 237 (E.D. Pa. 1994). The district court found that an indigent inmate, who claimed that he was denied employment in the prison because of his race, presented a claim of arguable merit. However, the inmate did not show sufficient "special circumstances" to warrant appointment of counsel. (Pennsylvania)

U.S. Appeals Court
EQUAL PROTECTION
PAYMENT

Jeldness v. Pearce, 30 F.3d 1220 (9th Cir. 1994). Women prisoners incarcerated in a state prison brought a class action alleging that the Oregon Department of Corrections discriminated against women inmates in providing educational and vocational opportunities, in violation of Title IX of the Education Amendment of 1972, regulations promulgated thereunder, and the equal protection clause of the Fourteenth Amendment. The U.S. District Court ruled against the inmates and they appealed. The appeals court found that Title IX and its regulations applied to prison educational programs and that Title IX required equality of treatment, rather than parity. The court ruled that penological necessity was not a defense in the Title IX case, but was only a factor in how Title IX was applied in prison. The court also found that the practice of awarding merit pay to men, but not to women, participating in the same vocational training course in the same location amounted to disparate treatment violating Title IX and its regulations. (Oregon Women's Correctional Center)

U.S. District Court
INJURY

Lee v. Sikes, 870 F.Supp. 1096 (S.D.Ga. 1994). A prison inmate who was attacked by a boar hog while working at assigned duties in the prison's hog farm operation brought a civil rights suit against the warden and the supervisor of the operation. The district court found that the prison inmate failed to show "deliberate indifference" by the supervisor of the hog operation or prison warden, and thus failed to establish an Eighth Amendment violation. The inmate relied almost entirely on a list of safety rules and the supervisor's ignorance of the rules, but there was no evidence indicating deliberate indifference to the rules. In addition, the inmate was protected by the Eighth Amendment, which provides explicit protection to prisoners against cruel and unusual punishment, and could not bring a separate, independent claim for the same behavior by prison officials based on substantive due process. (Rogers Correctional Institution, Georgia)

U.S. Appeals Court
COMPENSATION
FAIR LABOR
STANDARDS ACT

McMaster v. State of Minn., 30 F.3d 976 (8th Cir. 1994). A prison inmate sued state and prison officials challenging the failure to pay minimum and prevailing wages for inmates working in prison industries. The U.S. District Court granted the defendants' motions for dismissal and summary judgment and the inmate appealed. The appeals court, affirming the decision, found that the prison inmates who are required to work as part of their sentences and perform labor within the correctional facility as part of a state-run prison industries program, are not "employees" of the state or prison within the meaning of the FLSA minimum wage provisions. In addition, the Ashurst-Sumners Act which prevents shipment of prisoner-made goods in interstate commerce, did not provide a private cause of action to the inmates. (Oak Park Heights Correctional Facility, Shakopee Correctional Facility, Stillwater Correctional Facility, Faribault Correctional Facility, Lino Lakes Correctional Facility, St. Cloud Correctional Facility, Minnesota)

U.S. District Court
WORK RELEASE

Merit v. Lynn, 848 F.Supp. 1266 (W.D. La. 1994). An inmate sued for alleged violation of his due process rights in connection with denial of the inmate's request for parole work release. Following remand, the district court found that a Louisiana statute governing parole work release did not create any constitutionally protectible expectancy of release. (Louisiana Parole Board)

U.S. Appeals Court
FAIR LABOR
STANDARDS ACT

Morgan v. MacDonald, 41 F.3d 1291 (9th Cir. 1994). A Nevada inmate who worked at a prison education center as a computer trouble-shooter brought an action under the Fair Labor Standards Act (FLSA). The U.S. District Court dismissed the action and the inmate appealed. The appeals court, affirming the decision, found that the economic reality of the inmate's work at the prison was that his labor belonged to the institution, and therefore the inmate was not an employee under FLSA. (Ely State Prison, Nevada)

U.S. Appeals Court
INJURY
WORK ASSIGNMENT

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. District Court
DISCRIMINATION
REMOVAL FROM
JOB

Rhodes v. Knight, 861 F.Supp. 980 (D.Kan. 1994), affirmed, 45 F.3d 440. A prison inmate brought an action alleging his constitutional rights were violated by reassignment from work in a prison food service unit. The court ruled that even if it was found that the prison inmate was removed from the assignment in the food service unit for the purpose of

achieving a racial balance, no constitutionally protected interest was implicated. The goal of achieving a racial balance in prison employment and housing units may be accomplished by deliberate transfers by prison officials. (Kansas Department of Corrections)

U.S. Appeals Court
COMPENSATION
DUE PROCESS

Robinson v. Cavanaugh, 20 F.3d 892 (8th Cir. 1994). An inmate brought an action for damages against prison officials for violating his due process rights by reducing his prison wages. The U.S. District Court dismissed and the inmate appealed. The appeals court, affirming the decision, found that a new prison wage scale that resulted in a reduction of the inmate's wages did not deprive him of a protected property interest without due process. There was no constitutional right to prison wages, and there was no Missouri statute shown that would grant the inmate a property interest to the previous higher wage scale. (Missouri)

U.S. Appeals Court
GOOD TIME

Waletzki v. Keohane, 13 F.3d 1079 (7th Cir. 1994). A federal prisoner petitioned for habeas corpus relief to challenge the denial of good-time credits for work performance. The U.S. District Court denied relief, and the prisoner appealed. The court of appeals, affirming the decision, found that the arbitrary denial of good-time credits, resulting in the arbitrary lengthening of imprisonment, cannot be considered harmless or merely a technical violation and is within the habeas corpus jurisdiction of the district court. However, the federal court has no law to apply and is not equipped to evaluate a prisoner's work performance and his claim of arbitrary denial of good-time credits for work while identically situated prisoners received the credits. (Indiana Federal Prison)

U.S. District Court
WORK
ASSIGNMENT

Walker v. City of Elba, Ala., 874 F.Supp. 361 (M.D. Ala. 1994). A black work release inmate who worked for a city water and electric board brought an action against the city under Title VII and against the board under Title VII and Section 1981 and for Alabama's tort of outrage. The city and board moved for summary judgment. The district court found that since the city did not construct the black work release inmate's schedule, did not set his hours, and did not endorse his paychecks, the city was not the inmate's employer and Title VII was not applicable to the city. The board for which the inmate worked was the inmate's employer for purposes of Title VII and material issues of fact as to whether the inmate was a temporary employee precluded summary judgment for the board on the inmate's Title VII claim. (Alabama Department of Corrections)

U.S. Appeals Court
WORK RELEASE

Welch v. Thompson, 20 F.3d 636 (5th Cir. 1994). A former prisoner of the Louisiana Department of Public Safety and Corrections brought an action against several department officials alleging denial of due process and equal protection when he was excluded from the prison's work release program during the final six months of his term. The district court dismissed the suit. The appeals court, affirming the decision, found that a Louisiana statute establishing the prison work release program does not contain mandatory language that a prisoner shall be eligible and approved for work release if certain criteria are met, and accordingly does not create a liberty interest. (Louisiana State Penitentiary)

U.S. District Court
DISCRIMINATION
REMOVAL FROM
JOB

Wilson v. Schomig, 863 F.Supp. 789 (N.D. Ill. 1994). A prisoner brought a civil rights action against prison officials based on alleged racial discrimination. The district court found that the inmate's claim that a prison officer indicated his desire to remove blacks from cell house jobs and then terminated the inmate's job, while possibly stating a claim with regard to the officer, would not support a claim against any other prison officials under Section 1983 absent any showing that other officials were personally involved in or aware of the officer's racial discrimination. (Stateville Correctional Center, Joilet, Illinois)

U.S. District Court
COMPENSATION
EQUAL PROTECTION
DISCRIMINATION

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 lack of equivalent opportunity for male and female prisoners in the area of work details violated Title IX. Work details for women were sterotypically below scale and were not nearly equivalent to the work details at the men's facilities which helped men establish marketable trades. (District of Columbia Correctional System- the Lorton Minimum Security Annex, the Correctional Treatment Facility, the Central Detention Facility)

1995

U.S. Appeals Court
INJURY
WORK CONDITIONS

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. District Court
COMPENSATION

Bounds v. O'Dell, 873 F.Supp. 221 (E.D.Mo. 1995). An inmate brought an action alleging that prison officials had violated his due process rights in connection with denial of wage increases. On various motions, the district court found that the Department of Correction regulation on inmate wages did not establish that the inmate had a property interest in any wage increase, thus precluding relief on his due process claim that he was improperly denied

salary increases prior to satisfying an educational requirement. The regulation suggested that wages were a matter of discretion to be determined by the heads of each prison according to available funds, performance of inmates, and value of their work to the institution. (Potosi Correctional Center, Missouri)

U.S. District Court
RIGHT TO WORK

Campbell-El v. District of Columbia, 881 F.Supp. 42 (D.D.C. 1995). A prisoner brought a civil rights action against prison officials, alleging violation of his Eighth Amendment rights. The district court found that the prisoner's allegation that he was not allowed to engage in work was insufficient to state a claim for cruel and unusual punishment in violation of the Eighth Amendment, absent a showing of the extent and severity of the alleged deprivation. (Maximum Security Facility at Lorton, District of Columbia)

U.S. Appeals Court
ASSIGNMENT
COMPENSATION
EQUAL PROTECTION
INJURY

Chacon v. U.S., 48 F.3d 508 (Fed. Cir. 1995). A relative of an inmate who was killed while helping to fight a fire as part of a prisoner fire-fighting detail sought benefits under the Public Safety Officers' Benefits Act. The Court of Federal Claims granted the government's motion for summary judgment and the relative appealed. The appeals court, affirming the decision, found that the fact that the inmate received a full and unconditional posthumous pardon was not relevant to determining whether he was a public safety officer within the meaning of the Act. Even if the inmate's work detail was a legally organized volunteer fire department under Arizona law, the inmate could not be deemed a "member" of it because he was not a "volunteer" and thus, he was not a public safety officer for the purposes of the Act. The relative failed to demonstrate that the Bureau of Justice Assistance's (BJA) regulatory interpretation of what it meant to "serve in an official capacity" for purposes of the Act was not reasonable or that this interpretation had been misapplied. (Arizona State Prison, Perryville, Arizona)

U.S. District Court
REMOVAL FROM JOB
WORK RELEASE

Dominique v. Weld, 880 F.Supp. 928 (D.Mass. 1995). A state inmate brought an action against prison officials alleging that his removal from a work release program deprived him of due process in violation of Section 1983 and the Massachusetts Civil Rights Act (MCRA). The district court found that the inmate did not have a constitutionally protected liberty interest in remaining in the program. The program granted the inmate some freedom, but not the broad freedoms granted to a parolee, and the program was similar to halfway house programs in which prisoners did not have constitutionally derived liberty interests. The revision of the work release program regulations, which rendered the inmate ineligible for the program, did not constitute ex post facto punishment. The revision was motivated by safety concerns, not a desire to impose further punishment on inmates, and participation in the program was a privilege which the state was entitled to revoke if it found such a measure necessary to ensure community safety. (MCI-Lancaster, Massachusetts)

U.S. District Court
ASSIGNMENT
DISCRIMINATION
FORCED LABOR

Fuller v. Rich, 925 F.Supp. 459 (N.D.Tex. 1995). An inmate brought a suit against employees of the Bureau of Prisons alleging violation of his Eighth Amendment rights. The district court granted the defendants' motion to dismiss, finding no constitutional violation. The court held that the inmate's job reassignment from food preparation to a dishroom was rationally related to the legitimate penological purpose of protecting the inmate from possible harm at the hands of other inmates, where other inmates made derogatory comments to prison officials regarding the inmate's homosexuality and there were rumors the inmate was infected with the HIV virus. The court noted that compelling prison inmates to fulfill work requirements does not violate an inmate's constitutional rights. (Federal Correctional Institution, Seagoville, Texas)

U.S. District Court
FAIR LABOR STANDARDS ACT
PAYMENT

George v. SC Data Center, Inc., 884 F.Supp. 329 (W.D. Wis. 1995). A state inmate brought an action against a private entity, which contracted for data entry services at the correctional facility and for which the inmate worked, and against the correctional facility claiming that he was an employee under the Fair Labor Standards Act (FLSA) entitled to minimum wage. The defendants moved for summary judgment. The district court found that the state inmate who was working for a private entity was not that entity's "employee" under the FLSA and, accordingly, was not entitled to minimum wages where the inmate was not hired or terminated by the entity nor was his pay, working conditions or work schedule determined by the entity, and the entity kept no records of the inmate's individual work or performance. In addition, the state inmate was not an "employee" of the prison officials or the Wisconsin Bureau of Corrections under the FLSA where remuneration for his labor was set and paid by his custodian. (Racine Correctional Institution, Sturtevant, Wisconsin)

U.S. District Court
REMOVAL FROM JOB

Hodges v. Jones, 873 F.Supp. 737 (N.D.N.Y. 1995). An inmate who was employed in a law library as a library assistant brought a Section 1983 action alleging that prison officials violated his constitutional rights by placing him in a special housing unit and confiscating legal documents. On the parties' cross-motions for summary judgment and certain defendants' motions, the district court found that the termination of the prisoner's position as a law clerk in the prison law library and confiscation of his documents did not deprive fellow inmates of assistance or access to courts, where other assistance was available. (Washington Correctional Facility, New York)

U.S. District Court
PRISON INDUSTRIES

Karacsonyi v. Radloff, 885 F.Supp. 368 (N.D.N.Y. 1995). A federal inmate sued a prison official alleging violation of his constitutional rights by the official's decision to penalize him for not participating in the Inmate Financial Responsibility Program (IFRP). The district court

granted summary judgment for the official on issues relating to the IFRP decision, but found that the inmate's placement in a four-person cell which measured approximately 115 square feet (roughly 29 square feet of living space per man) may have amounted to cruel and unusual punishment depending upon the duration of this living situation and whether it lead to deprivations of essential needs, such as sanitation. The inmate had refused to sign a required form which the court held constituted refusal to participate in the IFRP. The court found that the inmate was correctly categorized as refusing to participate in the program where his restitution was due and payable during his incarceration. As a penalty for refusing to participate, the inmate was placed in the lowest housing status (a four-man cell), was denied the opportunity to work in Federal Prison Industries, and was denied the opportunity for a furlough. The court noted that prison officials have broad discretion in denying federal inmates the opportunity to participate in Federal Prison Industries. (Ray Brook Federal Correctional Institution, New York)

U.S. District Court
CONTACT VISITS
DENIAL OF VISITS

McDiffett v. Stotts, 902 F.Supp. 1419 (D.Kan. 1995). A prison inmate filed a § 1983 action against prison authorities and the district court granted summary judgment for the defendants. The court found that prison authorities could constitutionally suspend contact visits with family and friends for 90 days. The court noted that contact visitation may be limited or even prohibited by prison authorities without violating inmates' rights to freedom of association under the First Amendment. (El Dorado Correctional Facility, Kansas)

U.S. Appeals Court
SUSPENSION

Miller v. Benson, 51 F.3d 166 (8th Cir. 1995). An inmate brought a Section 1983 civil rights action alleging constitutional violations resulting from his temporary suspension from his prison job. The U.S. District Court dismissed the action and the inmate appealed. The court of appeals, affirming the decision, found that the inmate's one-day suspension from his prison job did not violate his constitutional rights. The suspension was work-related and did not constitute punishment, and the inmate did not lose any accrued good time or accrued wages and was not placed in more restrictive conditions of confinement. (Minnesota Correctional Facility)

U.S. District Court
FAIR LABOR
STANDARDS ACT

Nicastro v. Clinton, 882 F.Supp. 1128 (D.D.C. 1995). Federal prison inmates sued the President of the United States and a variety of government officials alleging violations of the Fair Labor Standards Act (FLSA). On the defendants' motion to dismiss, the district court found that federal prison inmates were not "employees" covered by the FLSA, as the labor they performed was not voluntary. The court ruled that a federal prisoner seeking to state a claim under the FLSA must at a minimum allege that his or her work was performed without legal compulsion and that his or her compensation was set and paid by a source other than the Bureau of Prisons. (United States Penitentiary, White Deer, Pennsylvania)

U.S. District Court
DISCRIMINATION
EQUAL PROTECTION

Quinn v. Cunningham, 879 F.Supp. 25 (E.D. Pa. 1995). An inmate brought an action against prison officials in charge of a prison shoe plant, alleging that prison officials denied him a position in the plant based on his race and that prison officials denied the inmate certain privileges after he filed a grievance. The prison officials moved for summary judgment. The district court found that the inmate's constitutional right to due process was not violated when he was denied a position in the prison shoe plant, even if the inmate was denied a position based on his race, where the inmate did not have liberty or property interest in any prison work assignment. However, material issues of fact precluded summary judgment for prison officials in the inmate's action which alleged an equal protection violation. Although the inmate had no right to any particular prison job, prison officials could not discriminate against him on the basis of his race in work assignments. Material issues of fact as to whether prison officials abandoned the practice of giving prisoners extra paid hours for doing extra work across the board, or whether they singled out the inmate in retaliation for filing a grievance, precluded summary judgment for the prison officials. The prison officials in charge of the prison shoe plant were not entitled to qualified immunity. Reasonable officials in the prison officials' position could not have believed that discriminating on the basis of race in prison work assignments and retaliating against inmates for filing grievances were lawful actions in light of clearly established law and information that they possessed at the time. (State Correctional Institution, Graterford, Pennsylvania)

U.S. Appeals Court
DENIAL OF VISITS
SEARCHES
TERMINATION

Rodriguez v. Phillips, 66 F.3d 470 (2nd Cir. 1995). A former inmate and his mother filed a § 1983 action against prison officials. The district court denied summary judgment for the defendants and they appealed. The appeals court reversed and remanded in part, and dismissed in part. The appeals court found that prison officials' belief that the inmate's three-day administrative confinement, without the opportunity to be heard, was reasonable. The court noted that the officials perceived a threat to security and safety following a report that the inmate's mother had passed contraband into the prison, and that they needed time to search the public spaces of the cell block and interview an informer. The court held that a substantive due process right to be free from excessive force from a state act in a nonseizure, nonprisoner context was not clearly established at the time that a prison officer used excessive force on the inmate's mother. Just before a visit to her son, the mother had apparently leaned against or touched the fence surrounding the prison, pausing before she continued to the visitors reception area. An officer radioed a report to officers inside the facility that he had seen the mother pass a small brown package through the fence to an unidentified inmate. Inside the prison the mother was questioned by officers about the incident and she was told she

would not be allowed to visit her son that day. While she was waiting at the bus stop corrections officers seized her and brought her back for further questioning, police were contacted and she was arrested. Unable to make bail she was held overnight and she was released without explanation the next day. Two weeks later she arrived to visit her son and she was not allowed to, although her visiting rights had not been formally suspended. She alleged that an officer screamed at her, put both hands on her shoulders and propelled her toward the building entrance and threw her against the front door. (Mid-Orange Correctional Facility, New York)

U.S. District Court
PAYMENT

Winnie v. Clarke, 893 F.Supp. 875 (D.Neb. 1995). A prisoner sued corrections officials alleging violation of his due process rights in connection with his placement in disciplinary segregation. The district court granted summary judgment for the defendants, finding that the inmate did not have a legitimate expectation to be paid for what he would have done had he not been placed in disciplinary segregation. (Nebraska State Penitentiary)

1996

U.S. Appeals Court
PAYMENT

Allen v. Cuomo, 100 F.3d 253 (2nd Cir. 1996). Inmates brought a § 1983 action against state officials challenging the constitutionality of a regulation pertaining to disciplinary surcharges and a pay lag for inmate wages. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the imposition of a mandatory $5 disciplinary surcharge on inmates convicted of certain prison infractions did not violate their due process right to an impartial adjudicator. The inmates asserted that the surcharge gives prison disciplinary hearing officers an incentive to impose the surcharge frequently, but the court disagreed, noting that monies collected were credited to the state general fund and not to the corrections agency. The appeals court found that the fact that the surcharge did not contain a hardship waiver for indigent inmates, while other surcharges on unincarcerated persons contained such waivers, did not violate equal protection. The appeals court found that the deterrence of inmate misbehavior and the raising of revenue were legitimate penological interests, supporting the surcharge. The appeals court held that withholding a portion of inmates' wages until their release did not violate the due process clause, takings clause, or contracts clause. The policy calls for 20 percent of an inmate's wages over a 15-week period to be withheld until their release, and the court noted that while state corrections laws created an entitlement of inmates to payment for their labor, it did not create an entitlement to access their wages prior to release. The court also noted that forms signed by inmates consenting to their work assignment contained no details about how or when payments would be made. (Green Haven Correctional Facility, New York)

U.S. District Court
SAFETY
SUPERVISION

Baker v. Lehman, 932 F.Supp. 666 (E.D.Pa. 1996). A prisoner sued prison officials alleging they were deliberately indifferent to his Eighth Amendment right to personal safety by failing to protect him from an attack by another inmate. The district court granted summary judgment for the officials, finding that the prisoner did not show that the officials knew of any facts from which an inference of substantial risk of serious harm might be drawn. The court found that given the previous absence of violence in the prison clothing shop, the prisoner did not show that security measures in the clothing shop posed a substantial risk of harm. The prisoner alleged that lack of screening of prisoner-workers on the basis of prior crimes, the provision of only one guard for 150 inmates, and the availability of scissors created a substantial risk of serious harm in the shop. (State Correctional Institution at Graterford, Pennsylvania).

U.S. District Court
PRISON INDUSTRIES
INJURY

Barber v. Grow, 929 F.Supp. 820 (E.D.Pa. 1996). A prison inmate filed a § 1983 action against a prison guard, alleging that he was injured when the guard pulled a chair from under him. The district court found that the inmate failed to state an Eighth Amendment claim and failed to state a claim under the Federal Tort Claims Act (FTCA). The court found that the Federal Prison Industries Act generally provides the exclusive remedy for injuries sustained by working prisoners, but it does not apply to injuries sustained as the result of intentional conduct. The court found that the guard's alleged conduct in pulling a chair out from under the inmate was not "wanton" and thus did not violate the Eighth Amendment; the inmate did not allege that this happened more than once, and alleged that his injury consisted only of some cuts and bruises to his arm and knee. (Federal Correctional Facility, Pennsylvania)

U.S. Appeals Court
PAYMENT
INVOLUNTARY
SERVITUDE
PRETRIAL DETAINEES

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
IDLENESS

Douglas v. DeBruyn, 936 F.Supp. 572 (S.D.Ind. 1996). An inmate who was assigned to the "idle unit" of a prison filed an in forma pauperis complaint alleging violation of § 1983. The district court found the complaint to be frivolous within the meaning of the in forma pauperis statute. The court held that the absence of a job, and the absence of vocational, educational and rehabilitation programs does not violate due process. The court noted that while such programs and activities might be useful and productive as a matter of correctional policy, the absence of them does not create any atypical and significant hardships on an inmate in relation to the ordinary incidents of prison life. According to the court, to sustain a viable Eighth Amendment violation the inmate would have to allege that conditions in the idle unit constituted an excessive risk to his health or safety. The court also noted that inmates have no constitutional right to recreation and that only the objective harm that can result from significant deprivation of movement implicates the Eighth Amendment. (Correctional Industrial Complex, Indiana)

U.S. Appeals Court
SEGREGATION
RIGHT TO WORK

Frazier v. Coughlin, 81 F.3d 313 (2nd Cir. 1996). An inmate sued state corrections officials and employees claiming he was deprived of procedural due process when he was confined in a special housing unit (SHU) and then in a close supervision unit (CSU) for eleven months. The district court dismissed the suit and the inmate appealed. The appeals court affirmed the lower court decision, ruling that the district court made the required findings of fact. The appeals court found that conditions of confinement in the SHU, in which the inmate was housed pending a disciplinary proceeding, were not dramatically different from the basic conditions which could be expected as the result of his indeterminant sentence. The court also found that the inmate had no liberty interest to remain free from confinement in the CSU and that the inmate's prison record did not include erroneous information. The court noted that the only substantive differences between confinement in CSU and the general prison population were that CSU prisoners were ineligible for certain prison jobs and that additional correctional officers may be assigned to CSU. (Eastern New York Correctional Facility)

U.S. District Court
PRISON INDUSTRIES
TRANSFER

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. The court found prison officials in contempt of orders requiring vocational programs at women's prisons, to the extent that they denied court-ordered programming to some female inmates based upon their custody level. The officials were also found in contempt for not providing a work pass program at camp facilities and not providing inmates at camp facilities the opportunity to transfer to facilities which provided vocational, apprenticeship and prison industry programming. The court also found that some eligible inmates were denied an opportunity to participate in court-ordered programming by being transferred directly to camp facilities. The court found prison officials in contempt of orders regarding apprenticeship programs because electrician maintenance, landscape gardener, and building maintenance apprenticeships were never filled before the contempt motion was filed and the subsequently-established positions provided inadequate training and instruction and the officials did not actively recruit apprentices. The prison officials had argued that the electrical maintenance and other apprenticeship programs were not appropriate to the prison setting; the court responded by noting that the prison officials themselves had selected the apprenticeships to be offered and never sought to modify the court order. (Michigan Department of Corrections)

U.S. Appeals Court
WORK STOPPAGE

Graham v. Henderson, 89 F.3d 75 (2nd Cir. 1996). An inmate filed a pro se action claiming racial discrimination and alleging that prison officials unconstitutionally retaliated against him for protesting the proposed loss of showers in a prison workshop. The district court granted summary judgment for the defendants and the appeals court vacated in part and affirmed in

part. The appeals court held that fact issues precluded summary judgment for the officials. The officials claimed that the inmate was circulating a petition urging a work slowdown in violation of prison rules, but the inmate and other prisoners claimed he was merely collecting names of prisoners as part of a grievance process and that there was no work to be done on the day the inmate was accused of organizing a slowdown. (Auburn Correctional Facility, New York)

U.S. Appeals Court
IDLE PAY

Myers v. Hundley, 101 F.3d 542 (8th Cir. 1996). Inmates in administrative segregation brought a § 1983 action claiming violation of their constitutional rights as the result of a prison practice regarding idle-pay allowances for personal necessities and postage. The district court granted summary judgment for the prison officials and the inmates appealed. The appeals court affirmed in part, reversed in part, and remanded in part. The court found that material factual issues were raised, precluding summary judgement, by the inmate who specifically asserted that the insufficient amounts left over after purchasing hygiene supplies forced him to miss court deadlines and dismiss cases. The inmate had also listed specific prices of hygiene supplies on which he had to spend his idle pay. Inmates in administrative segregation receive $7.70 per month in idle pay, from which they must buy necessary hygiene supplies (such as soap and toothpaste), non-prescription medications, and stamps and supplies for legal mail. The inmates claimed that the amount is not enough and that they are therefore forced to choose between being clean and pursuing legal claims. (Iowa State Penitentiary)

U.S. Appeals Court
RIGHT TO WORK

Penrod v. Zavaras, 94 F.3d 1399 (10th Cir. 1996). An inmate brought a § 1983 suit against prison officials alleging several violations. The district court granted summary judgment for the officials and the appeals court affirmed in part and reversed in part. The appeals court held that restrictions placed on the inmate's law library access as the result of his status as an "unassigned" prisoner (one who does not have a job or program assignment), did not violate his right of access to courts. The appeals court held that placement of the inmate in an administrative segregation unit for prisoners who did not have jobs or participate in programs did not violate due process, as the conditions of segregation did not impose an atypical and significant hardship on the inmate. The appeals court held that prison regulations entitling the prisoner to work did not create a constitutional liberty interest because denial of employment opportunities to an inmate does not impose an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. (Limon Correctional Facility, Colorado)

U.S. District Court
ADA-Americans with Disabilities Act
ASSIGNMENT
EQUAL PROTECTION

Pierce v. King, 918 F.Supp. 932 (E.D.N.C. 1996). A state inmate filed a § 1983 suit against prison officials alleging violation of his constitutional rights and his rights under the Americans with Disabilities Act (ADA). The district court found that the ADA did not create a cause of action for an inmate who is displeased with his prison work assignment and that the prison did not violate the equal protection clause by allegedly refusing to make accommodations that would allow the disabled inmate to participate in work assignments that would allow him to earn good time credits. The court held that the effects of prison labor on interstate commerce were not sufficiently substantial to warrant applying labor laws such as ADA to state prisons, and that the requisite employment and public access relationships did not exist between prisoners and prisons to entitle the prisoner to benefits rooted in the Fourteenth Amendment. The court noted that it was rational for the state to base work assignment decisions on a prisoner's ability, or lack thereof, to perform particular tasks. (Tillery Correctional Center, North Carolina)

U.S. District Court
ASSIGNMENT
EQUAL PROTECTION

Tooley v. Boyd, 936 F.Supp. 685 (E.D.Mo. 1996). An inmate sued jail officials under § 1983 alleging equal protection violations. The district court granted summary judgment in favor of the officials, finding that the inmate suffered no equal protection violations based on his assignment to segregation following a race riot, where the inmate failed to demonstrate that he was treated dissimilarly from other similarly situated inmates. The court noted that jail officials had a rational basis for the differences in the treatment of involved parties. The court also found that the inmate suffered no equal protection violation based on denial of a kitchen work assignment. The court noted that the inmate was denied the assignment initially because the maximum number of inmates with high bonds or murder charges were already assigned to the kitchen, and when an opening occurred the inmate was given it. (St. Louis Municipal Jail, Missouri)

U.S. Appeals Court
ADA-Americans with Disabilities Act

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
RIGHT TO WORK
WORK RELEASE
REMOVAL FROM JOB

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 prisones did not have a constitutional right to prison work assignments. The court held that the prisoners did not have 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
INJURY
SAFETY

Bagola v. Kindt, 131 F.3d 632 (7th Cir. 1997). A federal inmate whose arm was severed by a textile machine while he was working in a prison industry program brought a Bivens action against prison officials. The district court entered summary judgment for the prison officials and the appeals court affirmed. The appeals court held that the inmate could bring a Bivens claim separate from any claim under workers' compensation but that the officials' failure to protect the inmate did not rise to the level of deliberate indifference. According to the court, it is not the injury itself that gives rise to a Bivens claim for violating the Eighth Amendment, but rather the court must scrutinize whether prison officials acted, or failed to act, with a sufficiently culpable state of mind to determine if the injury was the result of punishment or a tragic accident. The court found that the officials' conduct did not rise to a level of deliberate indifference where evidence indicated that the officials believed that safety violations were abated, did not receive any additional safety citations until after the accident, and continued to attempt to abate any risks associated with the inherently dangerous industrial setting. The officials had required the inmate to attend frequent safety meetings and to sign a job safety analysis. The inmate was working as a "card fixer" in the prison factory's Card and Spin Department, which produced wool blankets. (Federal Prison Industries, U.S. Penitentiary in Terre Haute, Indiana)

U.S. District Court
PAYMENT
COMPENSATION

Del Raine v. Bureau of Prisons, 989 F.Supp. 1373 (D.Kan. 1997). A federal inmate brought a pro se suit against the Federal Bureau of Prisons claiming his due process rights were violated because he was deprived of longevity pay by Federal Prison Industries (FPI). The district court held that the inmate did not have any constitutionally-protected property interest in longevity pay. The inmate was employed in the FPI print factory at a penitentiary. For a five month period the FPI superintendent for industries withheld all benefits from the inmate, including longevity pay, because of unsatisfactory work performance. (U.S. Penitentiary, Leavenworth, Kansas)

U.S. District Court
WORK CONDITIONS

Doyle v. Coombe, 976 F.Supp. 183 (W.D.N.Y. 1997). An inmate filed a civil rights action alleging that prison officials violated his Eighth Amendment right to be free from cruel and unusual punishment by exposing him to dangerous levels of asbestos. The district court granted summary judgment in favor of the prison officials, finding that they were entitled to qualified immunity because the inmate's exposure to asbestos predated the controlling law that found exposure to asbestos could support an Eighth Amendment claim. The inmate alleged that he was forced to work in areas where asbestos abatement projects were in progress; he claimed he was ordered to enter into areas in which signs were visibly posted warning that asbestos and asbestos-containing materials were present and that exposure without protective gear was dangerous. (Elmira Correctional Facility, New York)

U.S. District Court
SEGREGATION

Gholson v. Murry, 953 F.Supp. 709 (E.D.Va. 1997). Inmates brought a § 1983 action against prison officials alleging violation of their constitutional rights. The district court granted summary judgment for the officials. The court found that denial of work opportunities and certain educational programs for inmates in segregated housing did violate the due process clause or the Eighth Amendment. The court also found that denial of transfers to other facilities so that inmates could practice their religious diet did not violate the First Amendment, the Religious Freedom Restoration Act (RFRA), the equal protection clause or the Eighth Amendment where the inmates failed to present evidence that they had not received a proper religious diet at the facility at which they were incarcerated. The court held that allegedly small recreation facilities provided to segregated inmates did not violate the Eighth Amendment or the equal protection clause; individual exercise areas measuring approximately 8 feet by 20 feet were provided, and the inmates were permitted at least six hours of outside recreation per week. The court held that officials did not violate the Eighth Amendment with respect to lead in the prison water system because the officials reviewed the situation and informed staff and inmates of the steps they needed to take to safeguard themselves from exposure. (Mecklenburg Correctional Center, Virginia)

U.S. District Court
ASSIGNMENT
MEDICAL RESTRICTIONS
INJURY

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
INJURY
MEDICAL
RESTRICTIONS

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
SEGREGATION

Neal v. District of Columbia, 131 F.3d 172 (D.C.Cir. 1997). An inmate brought a § 1983 action against corrections officials alleging violation of his due process liberty interests. The inmate claimed he was kept involuntarily in "voluntary" protective custody for six months. The district court dismissed the case and the appeals court affirmed, finding that the inmate's placement did not constitute an "atypical and significant hardship." The appeals court held that the officials did not violate the inmate's due process liberty interest even though his placement deprived him of approximately half of his out-of-cell time, eliminated his access to employment, and restricted his access to prison facilities. The inmate had initially asked to be placed in voluntary protective custody so he could "become acquainted with the conditions and routine" of the facility, after he was transferred back to the facility. (District of Columbia Lorton Complex, Virginia)

U.S. District Court
ADA-Americans with Disabilities Act
DISCRIMINATION

Raines v. State of Fla., 983 F.Supp. 1362 (N.D.Fla. 1997). Inmates brought an action under the Americans with Disabilities Act (ADA) alleging they were denied the maximum amount of incentive gain time because they were disabled. A state regulation deprives handicapped or disabled prisoners of job assignments, educational assignments, or other opportunities to earn the maximum amount of incentive gain time. The district court held that the regulation was not cruel and unusual punishment under the Eighth Amendment because it was adopted to serve as an incentive to prisoners not to feign illness and to work, if possible, not to punish prisoners because of a real disability or illness. But the court held that the regulation excluded persons with disabilities from enjoying the full opportunity to participate in the gain time "program" in violation of ADA. The court ruled that ADA applied to state prisons, and that the regulation created lesser opportunities for disabled prisoners, making only one of four statutory activities available to them. (Florida Department of Corrections)

U.S. District Court
REFUSAL TO WORK
RELIGION

Rowold v. McBride, 973 F.Supp. 829 (N.D.Ind. 1997). A prisoner petitioned for habeas corpus relief from his conviction in a prison disciplinary proceeding. The prisoner alleged that he was ordered to perform extra work duty on his religious day of rest. The district court held that the record supported the guilty finding under the "some evidence" standard. The court found that the prison's interest in assigning extra work duty to the inmate was legitimate and that prison officials did not have to implement other alternatives to prove that the regulation was the least restrictive means available. According to the court, it was neither arbitrary nor irrational to require inmates to perform additional work duty in response to various violations they have committed while incarcerated. (Plainfield Correctional Facility, Indiana Youth Center)

U.S. Appeals Court
PRETRIAL DETAINEES
FLSA-Fair Labor Standards Act
INVOLUNTARY SERVITUDE

Villarreal v. Woodham, 113 F.3d 202 (11th Cir. 1997). A pretrial detainee who was allegedly required by correction officials to perform translation services for other inmates, medical personnel, and court personnel, filed suit in federal court. The detainee alleged violation of the Fair Labor Standards Act (FLSA) and violation of his civil rights because he was not paid for his services. The district court dismissed the claim and the detainee appealed. The appeals court affirmed, finding that the detainee was not an "employee" within the meaning of FLSA and that the detainee's forced performance of translation services was not cruel and unusual punishment. The court held that the four-factor standard for determining whether labor falls

within the Fair Labor Standards Act does not apply in the prison context, but that a broader approach is applied to inmate labor, focusing on the economic situation as a whole. The court noted that although there was no question that the sheriff's intent in requesting that the detainee perform translation services was punitive in nature, the cerebral task of language translation posed no risk to the detainee's safety or welfare, and presumably the performance of the services served to occupy the detainee's time, keep him out of trouble, and allow him interaction with others. (Gadsden County Correctional Facility, Florida)

1998

U.S. District Court
DISCRIMINATION
REMOVAL FROM JOB

Anthony v. Burkhart, 28 F.Supp.2d 1239 (M.D.Fla. 1998). An inmate brought a § 1983 action against employees of a private, nonprofit corporation which operated correctional work programs for the Florida Department of Corrections (DOC), claiming he was denied an office position in a program and was terminated based on his race for utilizing the program's grievance procedure. The district court granted summary judgment for the employees, finding they were entitled to qualified immunity from liability. The court noted that the employees had no control over which inmates were assigned by the DOC to the factory, and that the inmate did not allege facts that contradicted the DOC's claim that he was terminated for unauthorized use of a copier. (PRIDE of Florida's furniture factory at Avon Park Correctional Institution, Florida)

U.S. District Court
FORCED LABOR
CHAIN GANG
SAFETY
WORK CONDITIONS

Austin v. Hopper, 15 F.Supp.2d 1210 (M.D.Ala. 1998). Inmates in a state prison system brought a class action suit under § 1983, challenging several of the system's policies and practices. The district court held that an agreement settling the inmates' chain gang claim was not subject to the limitations on prospective relief imposed by the Prison Litigation Reform Act (PLRA) and the settlement was approved. The agreement called for a complete and permanent cessation of the practice of chaining prisoners together. Inmates on chain gangs had been shackled by leg irons in groups of five, separated by eight feet of chain between them, were required to wear white uniforms with "Chain Gang" printed in black, and were taken to public highways or work sites where they performed manual labor in ten-hour shifts. The court found that an automatic 90-day denial of visitation for inmates assigned to a shock incarceration program did not violate their First Amendment right to visitation. The inmates in the program were recidivists and parole violators. According to the court, the denial of visitation promoted the legitimate penological objectives of deterrence and rehabilitation in a common-sense way, and the inmates had mail and telephone calls as an alternative means of communication. The court held that the practice of disciplining inmates who refused to work or who were disruptive by chaining them to a "hitching post" was cruel and unusual punishment. The inmates experienced actual, significant pain while shackled to the post and were denied access to basic human needs such as shelter, water, and toilet facilities. The court declined to approve a proposed toilet facilities settlement in response to the inmates' claims that inmates on work squads were not provided with adequate toilet facilities. (Alabama Department of Corrections)

U.S. District Court
RIGHT TO WORK
WORK RELEASE

Carter v. McCaleb, 29 F.Supp.2d 423 (W.D.Mich. 1998). A former inmate brought a § 1983 action against corrections officials and a county. The district court held that the inmate, who received a sentence that authorized him to participate in work release, did not have a liberty interest to participate in the work release program that would implicate procedural or substantive due process when the county failed to process him for work release. Although the sentencing judge indicated that he wanted the inmate to "work or seek work" the judge also cautioned the inmate "that you may be on work release, that's simply an okay that you may be put on that status. It's a sheriff's work release program. It belongs to the sheriff, not the court system. I have nothing to do with it." (Calhoun County, Mich.)

U.S. District Court
TRANSFER

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. Appeals Court
WORK RELEASE PAYMENTS

Christiansen v. Clarke, 147 F.3d 655 (8th Cir. 1998). A former inmate of a community corrections center brought a suit alleging that a prison had deprived him of his property without due process of law, after the prison withdrew $2,790 from his inmate account to cover the costs for room and board during his participation in a work-release program. The district court dismissed the case and the appeals court affirmed. The appeals court held that the inmate lacked a constitutionally protected property right to the full amount of his salary from the work-release program because he did not have a constitutionally- protected right to work release. According to the court, a Nebraska statute that authorized the director of correctional services to collect from work-release inmates "such costs incident to the person's confinement" as the director deemed "appropriate and reasonable" provided the statutory authority for the prison's withdrawal of money from the prisoner's inmate account. (Community Corrections Center, Lincoln, Nebraska)

U.S. District Court
MEDICAL RESTRICTIONS

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
MEDICAL RESTRICT. INJURY

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. District Court
WORK CONDITIONS INJURY

Johnson v. DuBois, 20 F.Supp.2d 138 (D.Mass. 1998). An inmate brought a pro se action to recover for exposure to asbestos. The district court ruled that while the inmate could recover for exposure to asbestos without actually suffering from asbestosis, cancer, or other physical injuries, the inmate failed to establish that he was exposed to asbestos. The inmate alleged, based on news articles, that almost all buildings erected before 1970 used asbestos as fireproofing material, which the court found to be insufficient evidence. The inmate contended that we was exposed to asbestos while working on several corrections department inmate work crews during his incarceration, and that he was not provided with protective clothing or devices. (M.C.I. Shirley, Massachusetts)

U.S. District Court
EQUAL PROTECTION REMOVAL FROM JOB

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
DEDUCTIONS FROM WAGES

Montano-Figueroa v. Crabtree, 162 F.3d 548 (9th Cir. 1998). A federal prisoner petitioned for a writ of habeas corpus alleging that the Inmate Financial Responsibility Program (IFRP) impermissibly intruded upon the sentencing court's responsibility to determine the amount and timing of fine payments. The district court denied the petition and the appeals court affirmed. The appeals court held that the IFRP, which allowed a prison to withhold a prisoner's wages for payment of a court-ordered fine,

was not an improper intrusion upon a court's statutory sentencing authority, and that the IFRP was neither a usurpation of a sentencing court's Article III powers nor a violation of the separation of powers doctrine. (Federal Correctional Institute-Sheridan, Oregon)

U.S. District Court
WORK RELEASE
DUE PROCESS
REMOVAL FROM JOB

Roucchio v. Coughlin, 29 F.Supp.2d 72 (E.D.N.Y. 1998). A former inmate brought a § 1983 suit to recover damages from several state officials, alleging he was deprived of his right to procedural due process through the State's revocation of his right to participate in a temporary work release program (TWRP) without giving him an opportunity to be heard until approximately six months later. The district court granted summary judgment in favor of the defendants, finding that the inmate failed to show actual, compensable injuries from the acts of the temporary release committee. The court also found that the defendants were entitled to qualified immunity because the issue of whether the inmate's liberty interest in remaining in the program was sufficient to give rise to a pre-removal hearing was unclear. The former inmate had sought $600,000 in compensatory damages and $500,000 in punitive damages from each of the six defendants. (Queensboro Correctional Facility, New York)

U.S. Appeals Court
ASSIGMENT
MEDICAL RESTRICTIONS

Sanchez v. Taggart, 144 F.3d 1154 (8th Cir. 1998). An inmate brought a § 1983 action against corrections officials alleging that a corrections officer had compelled him to perform labor beyond his physical capacity, thereby endangering his health. The district court granted summary judgment for the officials but the appeals court reversed in part and affirmed in part. The appeals court held that summary judgment was precluded by issues of fact as to whether the officer endangered the inmate's health after he had been told by the inmate that he had a medical condition that restricted his ability to work. The inmate was assigned, along with others, to emergency sandbagging in response to road flooding. The inmates had not been screened because of the expediency of the situation. The inmate was called to report for sandbagging duty and he responded that he was on "no duty status" and that housing unit documents prohibited him from participating in hard labor. An officer, without checking the records, told the inmate that "I'm giving you a direct order" and the inmate went to work. Shortly after he began to work, the inmate seriously reinjured his back and was put on crutches and given medication. (Algoa Correctional Center, Missouri)

U.S. Appeals Court
MEDICAL RESTRICTIONS

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
MEDICAL RESTRICTIONS

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)

1999

U.S. District Court
DEDUCTIONS FROM WAGES

Alevras v. Snyder, 49 F.Supp.2d 1112 (E.D.Ark. 1999). A prisoner petitioned for habeas corpus relief challenging the legality of the federal Bureau of Prisons (BOP) Inmate Financial Responsibility Program (IFRP). The district court held that IFRP did not violate a statutory subsection governing the time and method of payment of fines or Article III. The court noted that the sentencing court ordered restitution to be paid in installments, which allowed the prison to withhold wages to pay court-ordered restitution. The district court reviewed conflicting appeals court decisions regarding this issue and concluded that requiring participation in IFRP was appropriate. (Fed. Corr. Inst. in Forrest City, Arkansas)

U.S. District Court
INJURY
MEDICAL RESTRICTIONS
SAFETY
WORK CONDITIONS

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
ADA-Americans with Disabilities Act
EQUAL PROTECTION

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
INJURIES
WORK CONDITIONS

Davis v. Woehrer, 32 F.Supp.2d 1078 (E.D.Wis. 1999). A state prisoner filed a pro se civil rights action alleging his Eighth Amendment rights were violated because he was knowingly ordered by prison officials to operate a meat slicer without the proper training. The prisoner claimed that he was severely injured while operating the meat slicer. The defendants moved to have the case dismissed because the prisoner had failed to exhaust administrative remedies. The district court denied the motion, ruling that the exhaustion requirement of the Prison Litigation Reform Act (PLRA) does not apply where the plaintiff is pursuing only monetary damages and the prison grievance procedure does not provide for monetary relief. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
PRETRIAL DETAINEES
MEDICAL RESTRICTIONS
SLAVERY
FORCED LABOR
INVOLUNTARY SERVITUDE

Ford v. Nassau County Executive, 41 F.Supp.2d 392 (E.D.N.Y. 1999). A pretrial detainee brought an action against a county correctional facility and county executive alleging violation of his constitutional rights because he was required to serve as a "food cart worker" without payment. The district court granted summary judgment in favor of the defendants. The court held that making the detainee choose between distributing food to inmates and being segregated in "lock in" could not be deemed punishment, and therefore did not deprive the detainee of liberty without due process. The court also held that requiring the detainee to work without payment as a food cart worker did not violate the Thirteenth Amendment; according to the court, to sustain a claim under the Thirteenth Amendment the detainee would have to demonstrate he was subjected to compulsory labor "akin to African slavery." The court found that the detainee's own alleged assistance in the distribution of food, for which he received at least some consideration, did not rise to the level of the indignity and degradation that accompanied slavery. As a food cart worker the detainee was required to push a pre-loaded food cart approximately 125 yards to an elevator, and occasionally to hand out certain foods such as milk, bread or oranges. He was also sometimes required to perform other tasks, such as sweeping a guard walk or emptying garbage. According to the detainee, he was required to work seven days per week, for all three meals. The detainee was required to take medication to control his epilectic seizures and was accordingly assigned to a "workers and medical dorm," which involved him in work activities. The court held that there was no evidence that the detainee's chores, despite his medical status, were overly burdensome to him. (Nassau County Correctional Center, New York)

U.S. District Court
WORK CONDITIONS
REMOVAL FROM JOB

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
FORCED LABOR
INVOLUNTARY SERVITUDE

Lambert v. Sullivan, 35 F.Supp.2d 1131 (E.D.Wis. 1999). A state prisoner filed for a writ of habeas corpus in an attempt to prevent his transfer to a privately-operated correctional facility in another state. The district court denied the petition, finding that the proposed transfer did not violate the prisoner's rights under state law nor did it violate the prisoner's due process rights. The court noted that as a general matter, a state prisoner has no federal constitutional right to serve his sentence in any particular place of confinement. The court also rejected the prisoner's assertion that his transfer would violate the Thirteenth Amendment's proscription against involuntary servitude because he would be required to work at the private facility. According to the court, it is well established that the forced labor of state convicts does not violate the Thirteenth Amendment, and the same rule of law applies regardless of whether the convict is incarcerated in a public or private facility. (Fox Lake Correctional Institution, Wisconsin)

U.S. Appeals Court
PRETRIAL DETAINEES
EQUAL PROTECTION

MacFarlane v. Walter, 179 F.3d 1131 (9th Cir. 1999). After their state habeas petitions were denied, state prisoners petitioned for federal habeas corpus relief, challenging two counties' "good conduct" and "good performance" policies as they were applied to them. The district court granted summary judgment for the respondent corrections officials, but the appeals court reversed and remanded. The appeals court held that there was an equal protection violation in the counties' allowance of lesser good time credits for defendants who were detained pretrial in county jails because of their financial inability to post bail, than that allowed for defendants who were able to wait to serve their sentences until after sentencing to a state correctional facility. The counties' early release policies limited presentence detainees to a maximum good-conduct credit of 15% of the sentence imposed; the court noted that persons who had posted bail and served their entire sentence at a state correctional facility could end up serving 23 days less on a five- to six-year sentence. The court upheld the policies under which pretrial detainees were not eligible for participation in work and other programs through which they could earn good-performance credit, finding the counties had established a strong rational connection between the legislative means and purpose of protecting community safety. (Pierce and Clark County Jails, Washington)

U.S. Appeals Court
EQUAL PROTECTION

Onishea v. Hopper, 171 F.3d 1289 (11th Cir. 1999). State inmates who tested positive for the human immunodeficiency virus (HIV) brought a class action suit against prison officials challenging segregation of prison recreational, religious and educational programs based on inmates' HIV-positive status. The inmates alleged that the practices were unconstitutional and violated the Rehabilitation Act. At the male prison at which HIV-positive male inmates were housed they were excluded from participation in various prison jobs, vocational classes, inmate barber jobs, laundry jobs, gardening, and other activities and programs. The district court denied relief after a bench trial and the inmates appealed. The appeals court affirmed in part and vacated and remanded in part. On remand the district court again denied relief and the inmates again appealed. The appeals court affirmed. The appeals court held that a "significant risk" of HIV transmission existed for any prison program in which HIV-positive inmates sought participation. The appeals court affirmed the district court's finding that integrated programs would risk violence and that segregation of HIV-positive inmates was not an exaggerated response. The court also affirmed the finding that hiring additional guards to accommodate integration of programs was too costly and imposed an undue burden on the prison system. The court noted that the Rehabilitation Act did not require a state corrections department to do whatever it was legally capable of doing to accommodate HIV-positive inmates. (Limestone Correctional Facility and Julia Tutwiler Prison for Women, Alabama Department of Corrections)

U.S. Appeals Court
REFUSAL TO WORK

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
DEDUCTIONS FROM PAY
PROPERTY INTEREST

Phillips v. Booker, 76 F.Supp.2d 1183 (D.Kan. 1999). A prisoner filed a habeas corpus petition challenging the execution of his sentence because the Bureau of Prisons had delegated payments of court-ordered restitution through the Inmate Financial Responsibility Program (IFRP). The court denied the petition, finding that even though restitution was ordered to be paid immediately by the court it did not become void because it could not be paid in full immediately. The court found that the federal prisoner did not possess a liberty or property interest in his Federal Prison Industries job assignment and therefore he could be presented with the choice of assigning one-half of his pay to satisfy his restitution obligation or losing his job, without any violation of his due process rights. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
INVOLUNTARY SERVITUDE

Pischke v. Litscher, 178 F.3d 497 (7th Cir. 1999). Inmates of several Wisconsin state prisons sought habeas corpus relief to invalidate, under the Thirteen Amendment's ban on involuntary servitude, a state statute that authorizes prison authorities to enter into contracts with private prisons in other states for the confinement of Wisconsin prisoners. Federal district courts denied the inmates' petitions. The appeals court denied the applications for appealability, finding that § 1983, not habeas corpus, was the proper means to challenge the constitutionality of the statute, and that the claims were frivolous. According to the court, the Thirteenth Amendment ban on involuntary servitude has an express exception for persons imprisoned pursuant to conviction of a crime. (Wisconsin)

U.S. District Court
EQUAL PROTECTION
GOOD TIME

Prevard v. Fauver, 47 F.Supp.2d 539 (D.N.J. 1999). Inmates serving indeterminate sentences under a former New Jersey sex offender statute sued the state alleging that denial of work and commutation credits available to defendants under a new criminal code was unconstitutional. The district court held that the denial of credits did not violate due process, equal protection, or prohibitions against ex post facto laws and cruel and unusual punishment. The court held that offenders serving indeterminate sentences under a former sex offender law were not similarly situated to persons serving determinate sentences under a new criminal code. The court noted that even if the state's denial of work and commutation credits to persons convicted of sex offenses affected a liberty interest, the state had a rational basis, consistent with due process, for denying the credits. (Adult Diagnostic and Treatment Center, New Jersey)

U.S. District Court
WORK RELEASE
DUE PROCESS

Quartararo v. Catterson, 73 F.Supp.2d 270 (E.D.N.Y. 1999). A prisoner brought a § 1983 action against corrections and parole officials challenging his removal from a work release program. The district court granted summary judgment in favor in the prisoner, ruling that failure to provide the prisoner with 24 hours' notice of the hearing concerning his removal violated due process. The court also held that a letter justifying the removal of the prisoner from the program solely on the basis of a parole hold did not comport with the due process requirement for a statement of the reasons. According to the court, an inmate in New York State has a protected liberty interest in continuing in a work release program, triggering minimum procedural due process requirements for termination that include notice and reasons. (Temporary Work Release Program, State of New York)

U.S. District Court
TERMINATION

Rienholtz v. Campbell, 64 F.Supp.2d 721 (W.D.Tenn. 1999). A prison inmate brought a pro se action under § 1983 alleging that termination from his prison law library position, his transfer to another facility, and his termination from a commissary clerical job, resulted in violation of his First Amendment and due process rights. The district court held that the handling of the inmate's prison grievances did not implicate his First Amendment right of access to courts. According to the court, right of access applies only to court actions, not prison grievances. The court also found that the inmate's alleged lack of access to a prison law library because a computerized research system had not been installed did not violate the First Amendment. The court held that an inmate has no liberty interest protected by the due process clause in assignment to a particular job, to a particular prison, or in freedom from segregation. The court noted that although mandatory language in state prison regulations might have been violated, these procedural regulations did not implicate a protected liberty interest. (West Tennessee Prison Site I, Henning, Tennessee)

U.S. District Court
REMOVAL FROM JOB
PROPERTY INTEREST

Shabazz v. Cole, 69 F.Supp.2d 177 (D.Mass. 1999). An inmate who worked in a prison library sued the prison librarian and the prison superintendent challenging his treatment by the librarian and the propriety of a disciplinary proceeding. The district court held that there was no procedural due process violation regarding the inmate's loss of library privileges for one week, exclusive of privileges to the law library. The court also found that the inmate failed to state a claim regarding his alleged constructive discharge from his library job. According to the court, the inmate had no vested or property interest in the right to maintain his position in the law library, and therefore failed to state a claim for alleged constructive discharge. The court found that the inmate failed to state a claim of verbal harassment due to his race, despite his allegations of mental suffering to the extent that he could no longer assist other prisoners with legal matters. The court noted that emotional damage by verbal harassment of an inmate does not amount to the infringement of a constitutional right.(Bay State Correctional Center, Massachusetts)

U.S. Appeals Court
REMOVAL FROM JOB
EQUAL PROTECTION

Shehee v. Luttrell, 199 F.3d 295 (6th Cir. 1999). A prisoner sued prison employees and officials claiming violation of his constitutional rights in connection with his termination from a prison work assignment. The district court denied the defendants' motion to dismiss but the appeals court reversed and remanded. The appeals court held that officials who were not involved in the inmate's termination from his commissary job and whose only roles involved the denial of administrative

grievances or the failure to act, were not liable under § 1983. The appeals court also held that the commissary supervisor and warehouse foreman could not be liable on the inmate's claims of termination from his job in retaliation for exercise of his First Amendment right in filing grievances, where they neither fired nor had the authority to fire the inmate from his job, despite the contention that they instigated the firing. The inmate had alleged that the supervisor and foreman harassed him by fabricating an allegation against him because he refused to participate in an alleged kickback scheme. The appeals court held that even if true, these allegations did not implicate the inmate's First Amendment rights. The court noted that all of the inmates who worked in the commissary were accused of attempting to make alcohol after rotting fruit was found in the refrigerator. (Federal Correctional Institution, Manchester, Kentucky)

U.S. Appeals Court
PRETRIAL DETAINEES
FLSA-Fair Labor Standards Act

Tourscher v. McCullough, 184 F.3d 236 (3rd Cir. 1999). A detainee brought a pro se § 1983 action against state prison officials alleging that his constitutional rights were violated by being compelled to work in a prison cafeteria while he was a pretrial detainee. He also alleged he was denied meaningful access to courts by being compelled to work in the cafeteria while preparing an appeal from his conviction. The detainee asserted that he was entitled to compensation pursuant to the minimum wage provisions of the Fair Labor Standards Act (FLSA). The district court dismissed the complaints. The appeals court held that the detainee failed to state a claim for meaningful access to court, and that prisoners and pretrial detainees who perform intra-prison work are not entitled to minimum wages under FLSA. (Pennsylvania Department of Corrections)

U.S. District Court
WORK STOPPAGE

Turner v. Johnson, 46 F.Supp.2d 655 (S.D.Tex. 1999). A state prisoner petitioned for habeas corpus relief challenging the outcome of three prison disciplinary hearings. The district court denied the petition. The court held that a prisoner has no constitutional right to organize a prison work shutdown or to circulate a petition facilitating such an action. The prisoner's own admissions and copies of the work stoppage materials were more than adequate, according to the court, to sustain the conclusions of hearing officers that the prisoner was guilty of disciplinary offenses for attempting to organize a prison work shutdown. (Wynne Unit, Walker County, Texas)

U.S. Appeals Court
SECURITY SEARCHES

U.S. v. Allen, 190 F.3d 1208 (11th Cir. 1999). A federal inmate was convicted in federal district court of possessing a prohibited object and he appealed. The appeals court vacated the district court decision and remanded with instructions. The appeals court held that under the statute that makes it unlawful for a federal inmate to possess a "prohibited object" and which defines a "prohibited object" to include an object that is intended to be used as a weapon, the intent to use the object as a weapon is an element of the offense and not merely a sentencing factor. The inmate worked as a quality assurance inspector at an on-site UNICOR (federal prison industries) mattress factory. One morning he was observed to be acting suspiciously in his conversation with another inmate and he was searched. The search produced three nine-inch tufter needles and a wooden dowel with a hole bored into one in and a rope wrapped around the other end. The needles appeared to have been broken off from one of the sewing machines. The needles fit into the wooden dowel and when assembled could be used as a shank or ice-pick tool or weapon with a lanyard. The inmate did not contest that he possessed these objects but told his supervisor that he had intended to give them to his supervisors privately rather than in view of other inmates. (U. S. Penitentiary, Atlanta,GA)

U.S. Appeals Court
INVOLUNTARY SERVITUDE
FORCED LABOR

U.S. v. Ballek, 170 F.3d 871 (9th Cir. 1999). A defendant was convicted in federal court of willfully failing to pay child support in violation of the Child Support Recovery Act (CSRA) and he appealed. The appeals court affirmed the conviction, holding that a willfulness finding could be based on the defendant's failure to seek available employment which would have earned him enough money to meet his child support obligations. The court held that CSRA did not violate the constitutional prohibition against slavery, because not all forced employment is constitutionally prohibited. The offender had been sentenced to six months imprisonment and ordered to pay $56,916 in past due support and restitution. (U.S. Dist. Court, Alaska)

U.S. District Court
WORK RELEASE

Weller v. Grant County Sheriff, 75 F.Supp.2d 927 (N.D.Ind. 1999). A state prisoner filed a § 1983 action challenging his removal from a temporary work release program. The district court granted summary judgment for the defendants, finding that the prisoner did not have a liberty interest in remaining in the work release program. The prisoner had been sentenced to the state corrections department but was allowed, at a sheriff's discretion, to serve his time in a work release program at a county jail. The court held that the inmate did not have a due process right to be heard prior to his removal from the program, to the extent that the removal did not have an impact on his length of incarceration. The prisoner had signed a contract agreeing to abide by all rules when he entered the program. He was terminated from the program after his third violation of the rules. (Grant County Jail, Indiana)

2000

U.S. District Court
INVOLUNTARY SERVITUDE
SLAVERY

Alexander v. Schenk, 118 F.Supp.2d 298 (N.D.N.Y. 2000). An inmate brought a § 1983 action alleging that his First and Thirteenth Amendment rights were violated because he was compelled to participate in an alcohol and substance abuse program that had religious components. The district court found that the inmate was coerced into participating, in violation of the Establishment Clause. The court noted that the inmate objected to attending program meetings during his initial interview, constantly complained about his enrollment in the program, refused to

sign the enrollment contract, raised issues of the program's religious aspects with prison officials, and was ordered to return to the group sessions despite officials' knowledge that he objected to them on religious grounds. The court denied qualified immunity for the officials. The court awarded nominal damages of $1. The court held that requiring the inmate to work without compensation while incarcerated did not violate the Thirteenth Amendment, which expressly did not prohibit involuntary servitude imposed as a legal punishment for a crime. (Cayuga Correctional Facility, New York)

U.S. District Court
WORK RELEASE

Aupperlee v. Coughlin, 97 F.Supp.2d 336 (E.D.N.Y. 2000). An inmate brought a § 1983 action alleging violation of his due process rights based on prison officials' refusal to reinstate him into a temporary work release program. The district court held that the inmate stated a claim against three former officials in connection with his removal from the program and that the officials were not entitled to qualified immunity. The inmate alleged that the former officials failed to remedy the violation of the inmate's rights after learning of it, and were grossly negligent in supervising the staff who caused the violation. The inmate challenged his removal from the program, citing violation of the state's policies that required a "participation review." (Queensboro Corr'l Facility, New York)

U.S. District Court
SLAVERY

Bao Ge v. Li Peng, 201 F.Supp.2d 14 (D.D.C. 2000). Chinese citizens who were allegedly forced to perform slave labor in prison camps brought a proposed class action suit against Chinese government entities and individuals, the Bank of China, and a private corporation (Adidas) whose soccer balls were allegedly assembled by the workers. The district court dismissed the case, finding that it lacked jurisdiction. (U.S. District Court, District of Columbia)

U.S. Appeals Court
SUPERVISION

Curry v. Crist, 226 F.3d 974 (8th Cir. 2000). Heirs of an inmate who was murdered by fellow prisoners while the two were alone in an unsupervised area of a prison brought a civil rights action against the prison warden. The district court granted summary judgment in favor of the warden and the appeals court affirmed. The appeals court held that the warden was not deliberately indifferent to the risks of allowing the inmate to work with the other prisoner in an unsupervised area of the prison. The court noted that the prisoner who made the fatal attack had been convicted of multiple murders and had made threats, 16 months earlier, to murder his fellow inmates. According to the court, there was no evidence that the murderer harbored any animosity toward the murdered inmate or that his selection of him as his victim was anything but fortuitous. The court noted that prison officials are not required to segregate indefinitely all inmates whose original crimes suggest that they might be capable of further violence. The inmate admitted that he killed the prisoner in their basement work area with a stolen plumber's pipe during a 30-minute period between guard patrols. (Stillwater Correctional Facility, Minnesota)

U.S. Appeals Court
DISCIPLINE
REMOVAL FROM JOB

DeWalt v. Carter, 224 F.3d 607 (7th Cir. 2000). A prisoner brought a § 1983 action against correctional employees for alleged violations of his constitutional rights. The district court dismissed the complaint. The appeals court affirmed in part, and reversed and remanded in part. The appeals court held that the prisoner could base a § 1983 claim on his loss of his prison job and the prisoner stated a claim for violation of his constitutional rights based on the loss of his job. The appeals court also held that the prisoner stated a viable claim for retaliation by alleging that officials acted to have him removed from his job after he filed a grievance against an officer. (Dixon Corr'l Center, Illinois)

U.S. District Court
REMOVAL FROM JOB
PROPERTY INTEREST
LIBERTY INTEREST

Miller v. Campbell, 108 F.Supp.2d 960 (W.D.Tenn. 2000). A prisoner brought a § 1983 action against prison officials, alleging due process violations arising out of disciplinary proceedings, her segregation and her loss of job or sentence credits. The district court dismissed the case. The court held that the inmate must pay the full $150 filing fee as required under the Prison Litigation Reform Act (PLRA) but that she could take advantage of the *in forma pauperis* statute to make a down payment on the fee and pay the balance in installments. The district court found that a prisoner did not have liberty or property interest in a prison job or in wages, and that the prisoner's removal from her prison position and loss of wages did not violate the Due Process Clause. The court noted that the Constitution does not create a property interest or liberty interest in a prison work assignment and that any such interest must be created by state law in language of an unmistakenly mandatory character. (Mark Luttrell Correctional Center, Tennessee)

U.S. District Court
DISCIPLINE

Nicholas v. Tucker, 89 F.Supp.2d 475 (S.D.N.Y. 2000). An inmate brought a § 1983 action against a state corrections department and officials alleging that he was improperly subjected to prison discipline. The district court held that a state rule that prohibited inmates from misusing, damaging or wasting state property was not unconstitutionally vague. The inmate had been disciplined for his use of a computer in a prison administration building to which he had access as part of his prison work assignment. The inmate had used the computer for personal legal work. But the court denied summary judgment for the defendants on the issue of whether the inmate was punished in retaliation for wearing religious apparel and preparing legal papers. (Woodbourne Corr'l Facil., N.Y.)

U.S. District Court
WORK RELEASE
DUE PROCESS

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)

2001

U.S. District Court
MEDICAL
RESTRICTIONS

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 court did not find a constitutional violation that would survive PLRA requirements arising from the inmate's allegations that he was required to wash chairs for 45 minutes, even though the task caused pain in his hands and elevated his blood pressure and stress. The court noted that the inmate must show that he was required to work beyond his strength, that he risked his life or health, or that he suffered undue pain. (Multnomah County Jails, Oregon)

U.S. Appeals Court
RELIGION

Clark v. Long, 255 F.3d 555 (8th Cir. 2001). A Muslim inmate sued prison officials alleging violation of his First Amendment rights because he was compelled to wash pans containing pork. The district court granted judgment for the defendants as a matter of law and the inmate appealed. The appeals court affirmed, finding no evidence that any of the named defendants compelled the inmate to wash the pans, but only an unnamed officer allegedly threatened the inmate with discipline if he refused. (Missouri Eastern Correctional Center)

U.S. Appeals Court
SUPERVISION

Flint ex rel. Flint v. KY Dept. of Corrections, 270 F.3d 340 (6th Cir. 2001). The estate of a prisoner who had been murdered in prison filed a § 1983 action against state corrections officials. The district court denied the defendants' motion for summary judgment on the basis of qualified immunity and the appeals court affirmed. The appeals court held that the murder of the prisoner was "sufficiently serious" to constitute a violation of the Eighth Amendment, that officials were deliberately indifferent to threats to the prisoner, and that officials acted unreasonably in taking no action to protect the prisoner. The prisoner worked in the prison print shop, which was managed by a former prisoner who had what was characterized as a "close relationship" with several inmates, allowing them to make telephone calls in violation of prison rules. The prisoner reported this situation and this angered other prisoners and the manager, resulting in threats against the prisoner's life. Prison officials were aware of these threats. The shop was left unsupervised one day by prison staff and another inmate took a hammer from the shop tool room and bludgeoned the prisoner to death. (Luckett Correctional Complex, Kentucky)

U.S. District Court
PRIVATE SECTOR
DISCIPLINE
DUE PROCESS
PRISON INDUSTRIES

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 was working for Impact Design, a private for-profit corporation operating within the confines of the Lansing Correctional Facility (Kansas). Impact employed inmates under the provisions of federal laws and regulations administered by the U. S. Department of Justice through the Prison Industry Enhancement Certification Program (PIECP). One of the PIECP requirements compels inmate workers to be paid the prevailing wage in the community for their labor. The inmate's job was to inventory spools of thread used in Impact's embroidery business and provide management with an accurate count of their stock. 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. Appeals Court
MEDICAL RESTRICTIONS

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. Appeals Court
WORK CONDITIONS
MEDICAL RESTRICTIONS

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. District Court
WORK RELEASE

Smith v. Cochran, 216 F.Supp.2d 1286 (N.D.Okla. 2001). A female former inmate filed a § 1983 suit alleging that a state drivers license examiner forced her to have sex with him while she was on work release at the examination center. The district court denied the examiner's motion for summary judgment. The court held that the examiner was acting under the color of state law while he was supervising the inmate and that he was not entitled to qualified immunity. The court found the examiner's alleged actions to be sufficiently outrageous to support the inmate's claim for intentional infliction of emotional distress. The court also held that the examiner's alleged sexual contacts with the prisoner while she was on work release demonstrated use of excessive force sufficiently prevalent to demonstrate a pattern that resulted in alleged injuries that were harmful enough to implicate the Eighth Amendment. The court noted that the work release contract gave the examiner control of the inmate and that the inmate was not free to leave while on work release, and could be subject to punishment if she disobeyed the examiner's commands. (Tulsa Community Correction Center, Oklahoma)

U.S. District Court
TRANSFER

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 Facility, Michigan)

2002

U.S. District Court
COMPENSATION
ADA- Americans with Disabilities Act

Arlt v. Missouri Department of Corrections, 229 F.Supp.2d 938 (D.Mo. 2002). An inmate brought an action under Title II of the Americans with Disabilities Act (ADA) and the Rehabilitation Act, alleging that corrections officials failed to provide him with accommodations for taking a high school equivalency test. The district court held that the department of corrections was liable under the Rehabilitation Act to the disabled inmate who allegedly lost his premium-pay job due to the department's refusal to make accommodations. The court awarded damages in the form of back pay from the date he lost his premium-pay job to the date he was transferred to a different facility. The court noted that it was undisputed that the inmate, who was blind in one eye and has learning disabilities, was disabled within the meaning of the Rehabilitation Act, and that the accommodations requested (extra time to complete the test, as recommended by two psychologists) did not constitute an undue burden on the prison. (Missouri Department of Corrections, Moberly)

U.S. Appeals Court
MEDICAL RESTRICTIONS
WORKING CONDITIONS

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. Appeals Court
RELIGION

Fenelon v. Riddle, 34 Fed.Appx. 265 (9th Cir. 2002). An inmate brought an action against prison officials, alleging that the First Amendment required the prison to permit him to attend a weekly Jumu'ah service for Muslims, and that the time spent in the service should count toward the reduction of his sentence under a state work incentive program. The district court granted summary judgment in favor of the inmate and entered a permanent injunction. The appeals court reversed and remanded, finding that the district court had erred in interpreting Jumu'ah as a non-routine religious function, which made it eligible for a prison regulation that governed excused time off. (California Medical Facility Prison, California Department of Corrections)

U.S. Appeals Court
MEDICAL RESTRICTIONS

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. Appeals Court
WORK RELEASE

Kitchen v. Upshaw, 286 F.3d 179 (4th Cir. 2002). A former jail inmate brought a § 1983 action against a regional jail authority and jail officials, alleging violation of his due process rights when he was not allowed to participate in a work release program. The district court granted summary judgment to the defendants and the appeals court affirmed. The appeals court held that the authority was not an arm of the state and was therefore not protected by Eleventh Amendment immunity. But the court held that the inmate did not have a liberty interest under state law in participating in a work release program that was protected by the due process clause. (Riverside Regional Jail, Virginia)

U.S. Appeals Court
ASSIGNMENT

Lomholt v. Holder, 287 F.3d 683 (8th Cir. 2002). A prisoner appealed the district court's dismissal of his § 1983 action against prison officials. The appeals court affirmed in part and reversed in part. The appeals court held that allegations that the prisoner had been placed "in the hole" for religious fasting were sufficient to state a free exercise of religion claim under § 1983. The court found that the sore feet from which the prisoner suffered did not amount to a serious medical need. The court also held that the prisoner had no right to a particular prison job. The court upheld the dismissal of the prisoner's complaint concerning the handling of his grievances because the prisoner only alleged that officials had denied his grievances, not prohibited him from filing any grievances. The court also held that regulation of the prisoner's access to his attorney did not violate the First Amendment or § 1983 because the prisoner did not show how being denied access to his attorney had impeded his access to the courts. (Iowa)

U.S. Appeals Court
PAYMENT

Love v. McKune, 33 Fed.Appx. 369 (10th Cir. 2002). Four prison inmates brought a civil rights action challenging their forced participation in a prison incentive level system that tied inmate privileges to participation in programs and good behavior. The district court dismissed the action and the appeals court affirmed. The appeals court held that forced participation did not violate the inmates' Fourteenth Amendment due process rights. The Internal Management Policy and Procedure (IMPP) system assigned inmates to one of four levels. Each level had a corresponding level of privileges, such as television ownership, handicrafts, participation in organizations, use of outside funds, canteen expenditures, incentive pay, and visitation. The system had been previously upheld by the state supreme court, which found that none of the restrictions denied to inmates on lower levels infringed on inmates' property or liberty interests and therefore did not implicate due process protection. (Lansing Correctional Facility, Kansas)

U.S. District Court
WORK RELEASE
DUE PROCESS

McGoue v. Janecka, 211 F.Supp.2d 627 (E.D.Pa. 2002). A prison inmate brought a § 1983 action claiming that authorities violated his due process rights by removing him from a work release program without notice or hearing. The district court dismissed the case, finding that the inmate did not have a protectable liberty interest sufficient to support a due process deprivation claim. The inmate had been participating in a court-ordered work release program when routine testing identified that he had used alcohol. The inmate argued that he was a barber and was required to handle alcohol-based materials throughout his work day. After a week of investigation the inmate was allowed to return to his position at the barber shop. Three days later a judge removed the inmate from the program and revoked his good time. (George Washington Hill Correctional Facility, Pennsylvania)

U.S. District Court
ADA- Americans with Disabilities Act
GOOD TIME

Mitchell v. Massachusetts Dept. of Correction, 190 F.Supp.2d 204 (D.Mass. 2002). A prisoner brought an action against corrections defendants under Title II of the Americans with Disabilities Act (ADA) and § 1983, alleging that he was denied the opportunity to participate in certain inmate programs during his incarceration, based upon the fact that he suffered from diabetes and a heart condition. The district court denied the plaintiff's motions for injunctive and declaratory relief but

did not dismiss the action, finding that the complaint was sufficient to state a claim under Title II of the ADA. The prisoner alleged he was denied participation in various prison work and educational programs due to his "medical condition," which the court found was sufficient to show that corrections officials "regarded" him as disabled. The district court held that the prisoner's claims under Title II and the Rehabilitation Act, seeking monetary damages for sentence-reduction credits that he alleged were improperly denied, would be allowed to proceed. The prisoner had been denied permission to participate in welding, barbering and culinary programs and classes. The prisoner alleged that had be successfully participated in the programs, he would have been granted "good time" credits that would have reduced his sentence by 2 and one-half days for every month he was confined. (North Central Correctional Facility, Massachusetts)

U.S. Appeals Court
RIGHT TO WORK

Moore v. Chavez, 36 Fed.Appx. 169 (6th Cir. 2002). A state prisoner brought suits against a state corrections department and correctional officials, alleging that he was improperly denied indigent status after he dropped out of an educational course, and that the defendants denied him employment when he refused to take a qualifying exam. The district court entered judgments generally in favor of the defendants and the appeals court affirmed. The appeals court held that the denial of indigent status did not constitute cruel and unusual punishment, even though the prisoner alleged that as a result of losing his indigent status he could not receive a loan to purchase hygiene items. The court noted that the inmate did not allege that he suffered extreme discomfort or that he was completely denied the basic elements of hygiene. The appeals court held that the prisoner's claim that the defendants discriminated against him because he had to use a wheelchair and could not take tests under pressure, was barred by Eleventh Amendment immunity. (Mich. Dept. of Corrections)

U.S. District Court
RELIGION

Murphy v. Carroll, 202 F.Supp.2d 421 (D.Md. 2002). A Jewish inmate brought a pro se § 1983 action against prison officials asking for injunctive relief and damages. The prisoner alleged that the officials violated his First Amendment right to the free exercise of religion by refusing to accommodate his request for an alternative cell cleanup day, other than Saturday. The district court granted summary judgment in favor of the officials, finding that while the policy violated the inmate's First Amendment right, this right was not clearly established at the time of the violation and the officials were entitled to qualified immunity. The court found no rational relationship between the Saturday-only cell cleaning policy that outweighed the inmate's right to honor the Jewish Sabbath by not working. The court was critical of the officials', finding them entitled to qualified immunity "despite the patent unreasonableness of the defendants' refusal to provide him with cleaning equipment on a day other than his Sabbath." (Maryland Corr'l Training Center)

U.S. District Court
INJURY

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 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. Appeals Court
INJURY

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 Correct'l Center, Federal Bureau of Prisons, Chicago)

U.S. District Court
REMOVAL FROM JOB

Wicks v. Shields, 181 F.Supp.2d 423 (E.D.Pa. 2002). A prisoner sued corrections officials challenging his termination as an employee of a legal clinic, restrictions on his private use of the clinic and restrictions on his mail privileges. The district court granted summary judgment to the defendants. The prisoner had asserted that the actions were taken in retaliation for his efforts to report alleged physical abuse of other prisoners. The court found that the actions were not retaliatory. According to the court, the prisoner was fired from his job in the legal clinic for misusing his position when he sent a large volume of mail to a public defenders association. (State Correctional Institution in Somerset, Pennsylvania)

U.S. District Court
DISCIPLINE
EQUAL PROTECTION

Williams v. Manternach, 192 F.Supp.2d 980 (N.D.Iowa 2002). An inmate brought a § 1983 action against corrections officials alleging due process and equal protection violations arising out of prison disciplinary reports. The district court held that the inmate presented a retaliation and conspiracy claim that officials retaliated against him with disciplinary actions him for "jailhouse lawyering." The disciplinary actions resulted in disciplinary detention, loss of privileges and his

"level V status," and loss of his prison job. The court also found that the inmate asserted equal protection claims with his allegations that inmates serving life sentences received disparate treatment as to prison jobs and level advancements, and quotas imposed on "lifers." (Anamosa State Penitentiary, Iowa)

2003

U.S. Appeals Court
WORK RELEASE

Anderson v. Recore, 317 F.3d 194 (2nd Cir. 2003). A prison inmate brought a civil rights suit against prison officials who revoked his full-time work release status and incarcerated him without a hearing, seeking damages for 15 months he spent in prison after the revocation. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part, and vacated and remanded in part. The appeals court held that the inmate's right to a hearing prior to revocation of his temporary release was clearly established at the time of the revocation and prison officials were not protected by qualified immunity. (Lincoln Correctional Facility, Temporary Release/Work Release Program, New York)

U.S. District Court
DUE PROCESS
PROPERTY INTEREST

Boyd v. Anderson, 265 F.Supp.2d 952 (N.D.Ind. 2003). Prisoners filed a complaint in state court, alleging that state corrections officials had violated their federally-protected rights while they were confined in a state prison. The case was removed to federal court, where some of the claims were dismissed. The court held that prisoners do not have a due process protected liberty interest or property interest in a particular prison job assignment. The court held that there was no Fourteenth Amendment equal protection claim stemming from the placement of some prisoners, but not all prisoners, back into their original housing and work assignments after their disciplinary charges were reduced. (Indiana State Prison)

U.S. District Court
WORK CONDITIONS

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. District Court
DISCIPLINE
REMOVAL FROM JOB

Childers v. Maloney, 247 F.Supp.2d 32 (D.Mass. 2003). A state prisoner sued prison officials alleging violation of his due process rights during a prison disciplinary hearing. The district court dismissed the action. The court held that the prisoner's liberty interests were not infringed upon by his loss of visitation for six weeks, placement in isolation, and transfer to another prison as discipline for violation of prison regulations. The court found that the prisoner did not have a liberty interest, under state law, in his position as "Minority Co-Camp Chairman." The court noted that the statute authorizing the corrections commissioner to establish work programs in prisons did not indicate any limitations on the commissioner's discretion to suspend or revoke the prisoner's position. (Old Colony Correctional Center, Massachusetts)

U.S. Appeals Court
REMOVAL FROM JOB
DUE PROCESS
GOOD TIME

Johnson v. Ward, 76 Fed.Appx 858 (10th Cir. 2003) [unpublished]. A state prisoner brought an in forma pauperis § 1983 action against prison officials, seeking monetary and injunctive relief, alleging that his termination from his prison job, which reduced his ability to earn good time credit, violated his due process rights. The district court dismissed the action as frivolous and the appeals court affirmed. The appeals court held that the prisoner did not have a liberty interest in his prison job, or in his ability to earn good time credit, so that his termination from his job for misconduct did not violate due process, regardless of the reason for the termination or the alleged inadequacy of the prison's misconduct appeal process. The prisoner had been working in the prison kitchen and was charged with misconduct for an alleged battery. The misconduct charged caused him to be terminated from his job, and reduced his ability to earn good-time credits and cost him 28 days of good time credit. Following a hearing, the misconduct charge was dismissed for failure to comply with due process. (Oklahoma State Penitentiary)

U.S. Appeals Court
PAYMENT
FLSA- Fair Labor Standards Act

Laventure v. Aramark Correct. Services, 76 Fed.Appx 870 (10th Cir. 2003) [unpublished]. A pro se inmate brought a civil rights action for himself and on behalf of another inmate, against a prison food contractor and various prison officials. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed, finding that the inmate failed to show that his constitutional rights had been violated, or that he was entitled to minimum wage for his work with the prison food contractor. The inmate had sought a court order requiring the Internal Revenue Service, the Department of Labor, and the Department of Justice to investigate the defendants. (Aramark Correctional Services, Inc., and Hutchinson Correctional Facility, Kansas)

U.S. District Court
MEDICAL
RESTRAINTS

Pate v. Peel, 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

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 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 of unrestricted duty. (Apalachee Correctional Institution, Florida)

U.S. District Court
WORK RELEASE
DUE PROCESS
LIBERTY INTEREST

Segreti v. Giller, 259 F.Supp.2d 733 (N.D.Ill. 2003). A former inmate brought a § 1983 claim against correctional officers seeking compensatory and punitive damages, based on an alleged retaliatory transfer. The district court denied the officers' motion to dismiss. The court held that the officers' alleged conduct supported the inmate's claim for retaliatory transfer, in response to filing a grievance against a corrections officer. The court found that the inmate had a statutory liberty interest in remaining in a work-release program, which could not be terminated without due process. (Transition Center, Illinois Department of Corrections)

U.S. Appeals Court
REMOVAL FROM JOB
DISCIPLINE
DEDUCTION FROM PAY

Vance v. Barrett, 345 F.3d 1083 (9th Cir. 2003). Two state prisoners brought separate § 1983 actions, alleging that prison officials violated their constitutional rights by conditioning prison employment on the waiver of their property rights to money in their prison trust accounts, and retaliated against them for refusing to waive such rights. The district court dismissed the actions and prisoners appealed. The appeals court reversed and remanded. On remand, the suits were consolidated and the court granted summary judgment to the officials on the grounds of qualified immunity. The prisoners again appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that deductions taken from the prisoners' trust fund accounts for charges relating to costs incurred in creating and maintaining such accounts did not constitute a taking without just compensation, absent a showing that the charges were unreasonable or were unrelated to the administration of the accounts. The court held that confiscation of accrued interest from the trust accounts violated the prisoners' due process rights, because a state law provided that the prisoners were entitled to receive accrued interest and prison administrators provided no procedure by which prisoners could contest the deprivation. The court found that officials were entitled to qualified immunity in the prisoners' claim that their prison employment was conditioned upon their willingness to give up their procedural due process rights. But the court denied qualified immunity to the officials for the prisoners' claim that they unconstitutionally retaliated against the prisoners for their refusal to waive their procedural due process rights. (Nevada Department of Prisons)

2004

U.S. Appeals Court
RELIGION

Adkins v. Kaspar, 393 F.3d 559 (5th Cir. 2004). A Texas state prisoner who was a member of the Yahweh Evangelical Assembly (YEA) filed a pro se action against the chaplaincy department of a state corrections agency. The prisoner alleged violation of his federal constitutional rights and the Religious Land Use and Institutionalized Persons Act (RLUIPA) in connection with his not being permitted to observe particular days of rest and worship. The district court dismissed the case and the prisoner appealed. The appeals court affirmed. The appeals court held that the agency's religious accommodation policy was rationally related to legitimate government objectives and that the inability of YEA inmates to assemble on every Sabbath and holy day did not "substantially burden" the practice of their religion in violation of RLUIPA. The court held that the YEA inmates had alternative means of exercising their religion, in the form of supplemental services, materials and other accommodations, and were not required to work on their Sabbath. The court noted that the inmates were allowed to attend live services when an accredited religious volunteer was able to attend. (Coffield Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
WORK CONDITIONS
INJURY

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. Appeals Court
PRISON INDUSTRIES

Coalition for Gov. Procurement v. Federal Prison, 363 F.3d 435 (6th Cir. 2004). A non-profit trade association representing manufacturers of office furniture sued the agency that managed federal inmate labor, alleging that the agency's expansion of production of office furniture violated its authorizing statute, the Administrative Procedures Act, and the Just Compensation Clause. The district court granted summary judgment for the agency and the association appealed. The appeals court affirmed in part and remanded in part, with instructions. The court held that the agency was not required to perform a Comprehensive Advanced Review Process or market share analysis before authorizing a new factory, and that the agency was not required to perform a market share analysis before increasing inmate employment levels. The court held that the agency did not violate a prohibition on the sale of goods to the public in competition with private enterprise. (Federal Prison Industries)

U.S. Appeals Court
WORK RELEASE

Givens v. Alabama Dept. of Corrections, 381 F.3d 1064 (11th Cir. 2004). A former inmate who had participated in a work release program brought a § 1983 action, alleging that a corrections policy that prohibited inmates from receiving interest on wages deposited in bank accounts constituted an unlawful taking. The district court dismissed the claims and the inmate appealed. The appeals court affirmed, finding that the policy was not an unconstitutional taking in light of the fact that no property interest existed. The court held that inmates had no common law property right in the interest that accrued on their wages that were deposited in bank accounts, and that inmates had only a limited property right in the principal under state law. (Alabama Dept. of Corrections)

U.S. Appeals Court
INJURY
SAFETY
WORK CONDITIONS

Hall v. Bennett, 379 F.3d 462 (7th Cir. 2004). An inmate brought a § 1983 claim against prison supervisors alleging deliberate indifference following an incident in which the inmate received a severe electrical shock while working as an electrician at the prison. The district court granted summary judgment for the supervisors and the inmate appealed. The appeals court vacated and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the supervisors knew that the inmate could suffer a severe shock as a consequence of working on a live wire without protective gloves. (Correctional Industrial Facility, Pendleton, Indiana)

U.S. District Court
PRETRIAL DETAINEE
INVOLUNTARY SERVITUDE

Johnson v. Board of Police Com'rs, 351 F.Supp.2d 929 (E.D.Mo. 2004). Homeless persons sued a city board of police commissioners and a police captain, claiming harassment with the intent to remove them from a downtown area in violation of their constitutional rights. The district court entered a preliminary injunction on behalf of the plaintiffs. The court barred the continuation of the challenged police practices, which included a pattern of arrests without probable cause, throwing firecrackers into homeless groups, and inflicting community service work without the adjudication of any crime. Several homeless persons were given a choice of performing manual labor or remaining in jail, without being charged with any offense nor found to have committed any offense. (City of St. Louis, Missouri)

U.S. District Court
RELIGION

Mayweathers v. Terhune, 328 F.Supp.2d 1086 (E.D.Cal. 2004). Muslim state prisoners brought a class action under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and § 1983, alleging violation of their rights to free exercise of religion and equal protection. The district court granted summary judgment in favor of the prisoners and entered a permanent injunction. The injunction prohibited prison officials from disciplining the inmates for missing work assignments in order to attend an hour-long Friday Sabbath service, and allowed the inmates to wear at least a half-inch beard for religious purposes. (California State Prison- Solano)

U.S. Appeals Court
RELIGION

Searles v. Dechant, 393 F.3d 1126 (10th Cir. 2004). An inmate brought a § 1983 action against prison officials, alleging they violated his religious freedom by requiring him to work in a prison kitchen where he could not avoid the ingestion of non-kosher odors and handling non-kosher food. The district court granted summary judgment in favor of the officials and the inmate appealed. The appeals court dismissed in part and affirmed in part. The court held that the inmate made an insufficient showing that the infringement on his rights outweighed legitimate penological interests. The court found that budgetary concerns and the need for non-discriminatory and consistent prison staffing appeared to be legitimate penological interests, even though the inmate had presented sufficient evidence of the sincerity of his beliefs. The Jewish inmate had alleged that the kitchen area was unclean for a Jewish person, particularly since there was no mikveh (purifying bath involving rainwater stored in a ceremonial fashion) for purification. After refusing to work in the kitchen the inmate was disciplined for a work performance violation. He was again assigned to the kitchen. The prison's religious programs director obtained an opinion from a local rabbi that working in a non-Kosher kitchen did not violate the Jewish faith, and that the inmate could wear gloves if he was concerned about contamination. (Hutchinson Correctional Facility, Kansas)

U.S. Appeals Court
DISCRIMINATION

Walker v. Gomez, 370 F.3d 969 (9th Cir. 2004). A Black state prisoner brought a suit under § 1983 against state defendants, claiming he was denied equal protection because, during three prison lockdowns, he was not allowed to resume his job until after similarly-situated inmates of other races. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the prisoner was not required to prove discriminatory intent to establish that he was denied equal protection, where the defendants admitted that they used race as the only factor in preliminarily excluding Black inmates from critical-worker lists. The court found that the defendants were entitled to qualified immunity, but that qualified immunity did not preclude injunctive or declaratory relief. (Calipatria State Prison, California)

2005

U.S. District Court
DISCRIMINATION
PAYMENT

Hill v. Thalacker, 399 F.Supp.2d 925 (W.D.Wis. 2005). A Black federal prison inmate sued the foreman of a prison factory, claiming that the foreman discriminated against him because of his race by delaying his promotion to the highest pay grade. The district court entered summary

judgment in favor of the foreman. The court held that the inmate's delayed promotion was due to the inmate's work shortcomings rather than racial discrimination, including his unwillingness to learn skills required for promotion. The court noted that there was no showing that similarly-situated Caucasian inmates were given preferential treatment. The prison cable manufacturing factory has a 5 tier pay schedule for inmates, ranging from $0.23 per hour to $1.15 per hour. Inmates are also entitled to a variety of bonuses and benefits, including vacation or longevity pay. (Federal Correctional Institution, Oxford, Wisconsin)

U.S. District Court
FORCED LABOR
PRETRIAL DETAINEE

Johnson v. Board of Police Com'rs, 370 F.Supp.2d 892 (E.D.Mo. 2005). Homeless persons brought a § 1983 action against a city police captain and a city, claiming that their Fourth, Thirteenth and Fourteenth Amendment rights were violated when they were periodically removed from a downtown area. After the district court entered a preliminary injunction barring the continuation of the alleged harassment, the defendants moved to dismiss. The district court denied the motions. The court held that the Fourth Amendment rights of the homeless persons who were allegedly wrongfully detained were further violated when jailers ordered them to perform manual labor or risk continued confinement, before they were charged with or found guilty of the commission of a crime. (City of St. Louis, St. Louis Board of Police Commissioners)

U.S. District Court
BENEFITS
EMPLOYEE

Kounelis v. Sherrer, 396 F.Supp.2d 525 (D.N.J. 2005). A prisoner brought a § 1983 action alleging that various prison officers violated his Fourth, Fifth, Eighth, and Fourteenth Amendment rights, and the New Jersey Conscientious Employee Protection Act (CEPA) by taking retaliatory actions against him for initiating the action. The district court held that an inmate performing intra-prison work was not an employee for the purposes of CEPA. The court noted that the inmate's work assignment did not provide him with annual leave, he did not accrue retirement benefits, neither the prison nor the state paid social security taxes on his behalf, his tasks were not an integral part of the business of the prison, his stipend was deposited into a trust account, he never received a paycheck, and termination of his assignment was controlled by the term of incarceration. (Northern State Prison, New Jersey)

U.S. District Court
INJURY
SAFETY

Littlejohn v. Moody, 381 F.Supp.2d 507 (E.D.Va. 2005). A federal prisoner brought a pro se action against prison officials, seeking injunctive relief and monetary damages. The inmate alleged violation of his constitutional rights when he was shocked by an electrical surge because a buffing machine that he was using did not have a ground-prong in its plug. The district court granted the defendants' motion to dismiss. The court held that one official did not know of a substantial risk of harm at the time the prisoner was shocked because he had sent the buffer to be repaired when it had shocked prisoners in the past, and he reasonably assumed that the machine was safe when it returned. Although the court found that allegations supported a deliberate indifference claim against a prison safety manager and electrical shop foreman, the court granted them qualified immunity because the right to be protected from a significant risk of injury was not clearly established at the time of the incident. (Federal Bureau of Prisons, Virginia)

U.S. District Court
DISCRIMINATION

Lyons v. Trinity Services Group, Inc., 401 F.Supp.2d 1290 (S.D.Fla. 2005). A prisoner brought a pro se civil rights action under § 1983 against the corporation that ran the food service department and kitchen at a state prison, alleging that he was illegally terminated from his kitchen assignment due to his race and that he suffered retaliation for his complaints. The district court granted summary judgment for the defendants, finding that the prisoner failed to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA), by failing to appeal his grievance to the highest level. (Everglades Correctional Institution, Florida)

U.S. Appeals Court
FREE SPEECH
TERMINATION
DISCIPLINE

McElroy v. Lopac, 403 F.3d 855 (7th Cir. 2005). An inmate brought a civil rights action against prison officials, alleging that he was fired from his prison job in retaliation for exercising his First Amendment right to free speech. The district court dismissed the case for failure to state a claim, and the inmate appealed. The appeals court affirmed. The court held that the inmate's inquiries about lay-in pay were a matter of purely individual economic importance and not of public concern, and were not protected by the First Amendment. A corrections officer had announced that the sewing shop in which the inmate worked would be closed in two weeks and the inmate had asked whether inmate workers would receive "lay-in pay" while they were waiting to be transferred to another work assignment. (Illinois)

U.S. District Court
RIGHT TO WORK

Munir v. Kearney, 377 F.Supp.2d 468 (D.Del. 2005). A state prison inmate brought a § 1983 in forma pauperis action against prison officials, alleging among other things that the imposition of discipline for his refusal to complete an essay as part of a substance abuse rehabilitation program violated his free exercise First Amendment rights. The district court granted summary judgment for the defendants, finding that the inmate's First Amendment free exercise of religion rights were not violated. The inmate complained that completing the assignment would be a violation of his beliefs under Islam. The court held that the regulation was reasonably related to a legitimate penological interest in rehabilitation programs. The court noted that the inmate had numerous alternative means to exercise his religious freedom, and that it would be unduly burdensome to require the prison to provide an alternative essay question. The prison policy requires all inmates

who are enrolled in a program to fully participate in the program. Any inmate who refuses to participate in the program in which he is enrolled is written up for "Refusal to Participate in Classified Treatment Program." Once written up, the inmate is referred to a disciplinary hearing officer and is no longer eligible for an institutional work assignment. The assignment required the inmate to think and write about alternative choices that he could have made prior to being incarcerated, and the impact these choices may have had on his life. The inmate claimed that completing the assignment would be a violation of his religious beliefs, alleging that answering it "knowing the sinful nature in the sight of Allah, is willful and blatant disobedience to Allah." (Sussex Correctional Institution, Delaware)

U.S. District Court
RIGHT TO WORK

Torres Garcia v. Puerto Rico, 402 F.Supp.2d 373 (D.Puerto Rico 2005). A prisoner filed a civil rights suit claiming violations of his constitutional rights. The district court granted the defendants' motions to dismiss in part, and denied in part. The court held that the prisoner stated a due process claim against prison officials based on his transfer from a minimum security unit to a maximum security unit in violation of a prison rule that required a timely post-transfer hearing, but noted that the prisoner could only seek prospective injunctive relief. The court found that the prisoner's expectations of prison employment did not amount to a property or liberty interest entitled to due process protection, noting that earning wages while incarcerated was a privilege, not a right. The court held that the inmate failed to state an Eighth Amendment claim that prison officials failed to afford him adequate protection from an attack by other inmates, absent an allegation that he had sustained any injury at their hands. (Puerto Rico Department of Corrections, Bayamon Institutions Nos. 292 and 501)

U.S. District Court
RELIGION
DISCIPLINE

Williams v. Bitner, 359 F.Supp.2d 370 (M.D.Pa. 2005). An inmate brought a § 1983 action against employees and officials of a state corrections department, alleging violations of his right of free exercise of religion, protected by the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the First Amendment. The district court granted summary judgment in favor of the defendants, in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the issuance of a misconduct report against the Muslim inmate who refused to assist in the preparation of pork while working in the prison kitchen, and his placement on cell restriction for 30 days, constituted a substantial burden on his exercise of sincere religious belief and whether the sanctions were the least restrictive means of furthering compelling government interests. The court noted that the right of Muslim inmates to avoid handling pork was clearly established at the time of the incidents. (Pennsylvania Department of Corrections)

U.S. District Court
COMPENSATION
DEDUCTIONS FROM PAY

Young v. Wall, 359 F.Supp.2d 84 (D.R.I. 2005). A state prison inmate sued the director of a state corrections department, claiming that the practice of not crediting accrued interest to his inmate accounts funded through deduction from his wages violated his constitutional rights. The district court dismissed the case in part, and denied the director's motion to dismiss in part. The court held that a state statute that provided for wage deductions and the release of funds to the inmate upon his release did not create a property interest protected by the Takings Clause. The court found that the inmate was not entitled to interest under the rule that interest generally follows principal. But the court held that the inmate stated a procedural due process claim with regard to denial of interest in the face of an Inmate Account Policy that seemingly requires the equitable distribution of interest. The court noted that due to the rehabilitative nature of work assignments imposed on prisoners, payment for their labor is purely discretionary for the state, although it is possible for a state to create a right to be paid for labor which could create a limited protected interest in wages it chooses to pay prisoners. According to the court, the statute that provides deduction of 25% of the wages earned by the prison inmate, to be turned over to the inmate upon his release, did not confer upon the inmate full rights of possession, control and disposition of funds sufficient to support a § 1983 action. (Adult Correctional Institution, Rhode Island)

2006

U.S. District Court
COMPENSATION

Blanco v. U.S., 433 F.Supp.2d 190 (D.Puerto Rico 2006). Current and former prison employees brought an action against the federal Bureau of Prisons (BOP) and officials, alleging that they were not fully compensated for time when they were restricted to a prison during a hurricane. The district court held that the BOP regulation authorizing payroll deductions for sleep time was based on a permissible construction of the Fair Labor Standards Act (FLSA). (Federal Bureau of Prisons Metropolitan Detention Center, Guaynabo, Puerto Rico)

U.S. District Court
EQUAL PROTECTION
REMOVAL FROM JOB

Bussey v. Phillips, 419 F.Supp.2d 569 (S.D.N.Y. 2006). An inmate brought a civil rights action against prison officials following his removal from his prison job. The officials moved for summary judgment. The court held that the inmate did not have a constitutionally protected liberty interest in his prison job assignment at a prison shop, and thus his removal from that assignment did not violate due process. According to the court, the inmate's removal from the shop was well within the terms of confinement ordinarily contemplated by his prison sentence. The court found that the inmate's allegations that prison officials allowed white and non-Muslim inmates, but not non-white, Muslim inmates, to return to the prison industry program after rule violations, were

sufficient to state an equal protection claim against the officials. (Green Haven Correctional Facility, New York)

U.S. District Court
DUE PROCESS
PROPERTY INTEREST
PAYMENT

Daniels v. Crosby, 444 F.Supp.2d 1220 (N.D.Fla. 2006). An inmate brought a § 1983 suit against corrections officials, alleging that they violated his due process rights by unconstitutionally depriving him of wages, occupational training, and other benefits. The district court granted summary judgment in favor of the defendants. The court held that the inmate had no liberty or property interest in wages for his work in prison, possession of particular items of personal property, or involvement in rehabilitative programs. The court noted that the Kentucky inmate, incarcerated in Florida for a Kentucky offense pursuant to an interstate corrections compact, had no liberty or property interest, and that while Kentucky officials may have owed a legal duty to the inmate to provide such benefits, Florida corrections officials did not. The inmate had argued that Kentucky pays prisoners for work they do in prison at the rate of $1 per day and that Florida owed him these back wages. He claimed entitlement to pay, to possess the same kind of personal property (typewriter, television, stereo receiver, ice chest, hot pot, bed linen) he was allowed to possess in Kentucky, and to enroll in a vocational trade as he was allowed to do in Kentucky. (Florida Department of Corrections)

U.S. District Court
WORK CONDITIONS

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. The court held that the inmate's failure to exhaust the prison's three-step grievance procedure precluded his § 1983 action, regardless of the reasons given, including futility. The court noted that there is no futility exception to the Prison Litigation Reform Act's (PLRA) administrative exhaustion requirement. 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 Corr'l Inst. at Mahanoy, Penn.)

U.S. Appeals Court
INJURY

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. District Court
FREE SPEECH
DISCIPLINE

King v. Ditter, 432 F.Supp.2d 813 (W.D.Wis. 2006). A state inmate brought a § 1983 action against a prison job supervisor, alleging that the supervisor lowered his pay and ultimately fired him for criticizing the supervisor's managerial practices. The supervisor moved for dismissal and the district court dismissed in part, and denied dismissal in part. The court held that the inmate stated a First Amendment retaliation claim, when the complaint alleged that the inmate engaged in the protected activities of writing letter to warden and complaining to others about supervisor's racism and changes in work schedule, and that the inmate experienced adverse actions in response. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
COMPENSATION
FLSA- Fair Labor Standards Act
FORCED LABOR

Loving v. Johnson, 455 F.3d 562 (5th Cir. 2006). A prisoner brought an action against a warden asserting he was entitled to the legal minimum wage under the provisions of the Fair Labor Standards Act (FLSA) for work he performed as a drying machine operator in a prison laundry. The district court dismissed the action as frivolous and for failure to state a claim. The prisoner appealed and the appeals court affirmed. The court held that a prisoner doing prison work in or for the prison is not an employee under FLSA and is thus not entitled to the federal minimum wage.

According to the court, compelling an inmate to work without pay does not violate the Constitution and the failure of a state to specifically sentence an inmate to hard labor does not change this rule. The court reviewed the history of its rulings: "…In a similar situation, we held that a jail was not the FLSA employer of an inmate working in a work-release program for a private employer outside the jail…we have also held that inmates who work inside a prison for a private enterprise are not FLSA employees for the private company…however, until today we have not expressly stated whether there is any FLSA employment relationship between the prison and its inmates working in and for the prison." The court noted that other circuits uniformly hold that prisoners doing prison work are not the prison's employees under FLSA. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
TRANSFER
REMOVAL FROM JOB

Morris v. *Powell*, 449 F.3d 682 (5th Cir. 2006). An inmate brought a § 1983 action against prison officials, alleging that they retaliated against him for exercising his First Amendment right to use the prison grievance system. Following denial of the defendants' first motion for summary judgment, the appeals court remanded for consideration of whether an inmate's retaliation claim must allege more than a *de minimis* adverse act. On remand, the district court granted the defendants' motion for summary judgment. The inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that: (1) when addressing an issue of apparent first impression for the court, prisoners bringing § 1983 retaliation claims against prison officials must allege more than an inconsequential or *de minimis* retaliatory act to establish a constitutional violation; (2) the officials' alleged actions in moving the inmate to a less desirable job within the prison did not rise to the level of an actionable retaliation; (3) the inmate's claim that he was transferred to an inferior and more dangerous prison satisfied the *de minimis* threshold; and (4) the defendants were entitled to qualified immunity on the inmate's job transfer claim. The court noted that although the inmate's official job classification was switched from the commissary to the kitchen for about six weeks, he was actually made to work in the kitchen for only a week at most, and he spent just one day in the "pot room," which was evidently an unpleasant work station, after which he was moved to the butcher shop, about which he raised no complaints. (Telford Unit, Texas Department of Criminal Justice)

U.S. District Court
PROPERTY INTEREST
TRANSFER

Tanner v. *Federal Bureau of Prisons*, 433 F.Supp.2d 117 (D.D.C. 2006). An inmate brought an action against the federal Bureau of Prisons, alleging that his pending transfer to another facility would deprive him of participation in vocational training programs. The inmate moved for a preliminary injunction. The district court denied the motion. The court held that the inmate failed to demonstrate the likelihood of success on his due process claim, as required to obtain a preliminary injunction preventing his transfer, where removal from programs did not constitute an atypical or significant deprivation of the inmate's rights, nor did it affect the duration of his sentence, as may have impaired his protected liberty interests. But the court found that the inmate demonstrated that he would suffer an irreparable injury if injunctive relief were not granted, as required to obtain a preliminary injunction, because the transfer was certain to result in the loss of access to an aquaculture program in which he was employed, loss of pay grade and loss of eligibility for a cable technician program. (Federal Correctional Institution Fairton, New Jersey, United States Penitentiary Leavenworth, Kansas)

U.S. Appeals Court
RELIGION

Williams v. *Bitner*, 455 F.3d 186 (3rd Cir. 2006). An inmate brought a § 1983 action against prison officials. The district court denied the officials' motion for summary judgment on the inmate's First Amendment claim, and the officials appealed. The court of appeals affirmed. The court held that the First Amendment right of Muslin inmate to avoid handling pork was clearly established for purposes of qualified immunity. According to the court, the First Amendment right that was violated when prison officials punished the inmate for refusing to handle or assist in preparing pork while working in a prison kitchen was a clearly established right, and thus, officials were not entitled to qualified immunity on the inmate's § 1983 claim that officials violated his right to free exercise of religion. The court noted that although neither the Supreme Court nor court of appeals had directly addressed whether requiring Muslim inmates to handle pork violated their right to free exercise of religion, other courts that had considered this precise question had uniformly held that prison officials had to respect and accommodate, when practicable, Muslim inmates' religious beliefs regarding prohibitions on handling pork. (State Corr. Inst. at Rockview, Pennsylvania)

U.S. District Court
DISCRIMINATION
EQUAL PROTECTION
LIBERTY INTEREST

Wilson v. *Taylor*, 466 F.Supp.2d 567 (D.Del. 2006). Thirty-one Black inmates filed a § 1983 action alleging that state prison officials routinely denied their right to procedural due process during disciplinary hearings and security classification determinations. The officials moved to dismiss the complaint and the inmates asked for summary judgment. The motions were granted in part and denied in part. The court held that Delaware has created no constitutionally protected liberty interest in an inmate's security classification, even when the change in classification is for disciplinary reasons. The court found that the black inmates did not have a liberty interest in prison jobs, a particular security classification, or assignments to particular buildings, and thus the state prison officials' decision in those matters did not violate the inmates' due process rights. The court noted that state prison policies and procedures did not give a reasonable expectation of employment, a particular security classification, or a particular building assignment. The court denied summary judgment for the defendants on the issue of whether state prison officials consistently treated black inmates differently from similarly situated white inmates in job assignments, disciplinary actions, and security classification, and racially segregated the inmates within the facility. According to the court, the issue involved fact questions that could not be resolved on a motion to dismiss the claim against officials for violating their equal protection rights. (Delaware Department of Correction)

2007

U.S. District Court
DISCIPLINE
FREE SPEECH

Allah v. *Poole*, 506 F.Supp.2d 174 (W.D.N.Y. 2007). A state inmate sued correctional officers under § 1983, alleging various violations of his constitutional rights. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that a commissary supervisor's directive to the inmate and other prisoners working at the commissary, that they speak to each other only in English, did not violate any constitutional right the inmate may have had to converse with fellow prisoners in Spanish. According to the

court, the stated rationale for the directive, to ensure the supervisor's own safety, was indisputably legitimate and the restriction on the inmate's use of Spanish applied only while he was working in the commissary. (Five Points Correctional Facility, New York)

U.S. Appeals Court
SAFETY
INJURY

Ambrose v. *Young*, 474 F.3d 1070 (8th Cir. 2007). The personal representative for the estate of a state prisoner who was electrocuted while on a prison work detail brought a § 1983 action against state corrections officials. The district court denied the officials' motion for summary judgment and they appealed. The appeals court affirmed in part and reversed in part. The court held that: (1) the deliberate indifference standard applied; (2) the corrections officer in charge of the prisoner's work crew was deliberately indifferent to the serious risk of the prisoner's electrocution; (3) the corrections officer was not entitled to qualified immunity; (4) the supervisory official for the DOC was not deliberately indifferent; and (5) the warden was not deliberately indifferent to the lack of training of the corrections officer in charge of the work crew. The court noted that the prohibition against cruel and unusual punishment applies to the conditions of confinement, and that prison work assignments fall under the ambit of conditions of confinement. According to the court, the Eighth Amendment forbids knowingly compelling an inmate to perform labor that is beyond an inmate's strength, dangerous to his or her life or health, or unduly painful, and requires supervisors to supervise and train subordinates to prevent the deprivation of the inmate's constitutional rights. The prisoner was on an Emergency Response Team (ERT) when he was killed. ERTs are comprised of minimum-security inmates from South Dakota's four state penitentiaries. The ERTs are dispatched to natural disaster clean-up sites, where they assist in removing downed trees and other debris. The inmates are required to comply with correctional officers' orders and conduct themselves appropriately. The only training the inmate received was watching a chainsaw safety training video. The court found that the corrections officer had the opportunity to deliberate and think before the electrocution incident occurred. The prisoner was electrocuted by a downed power line and the officer knew that the dangling, live power line created a substantial risk of harm, and despite the risk, the officer told the prisoner and other inmates to stomp out a non-threatening fire within arms reach of the line. The court held that the corrections officer was not entitled to qualified immunity for his deliberately indifferent conduct, in ordering the prisoner and other inmates to stomp out a fire near a dangling live power line, where the law was clearly established at the time of the electrocution incident that knowingly compelling a prisoner to perform labor that was dangerous to his life or health violated the Eighth Amendment. (South Dakota Department of Corrections)

U.S. District Court
DISCRIMINATION
WORK RELEASE

Goldhaber v. *Higgins*, 576 F.Supp.2d 694 (W.D.Pa. 2007). An attorney brought an action against state officials, county officials and a prison board, alleging civil rights violations in connection with his incarceration. The district court granted the defendants' motion for dismissal in part and denied in part. The court held that the attorney adequately alleged that officials retaliated against him for filing a motion for house arrest or work release, as required to state a claim under the Petition Clause. According to the court, the attorney's application to the court made it clear that a prior judicial order had afforded him work release subject to the rules and regulations of the facility where he was housed, and that he was requesting release to house arrest to facilitate work release. The court found that the attorney asserted that he had been subjected to arbitrary and irrational terms of confinement, as required to state an equal protection claim. The court noted that the attorney's complaint alleged conduct on the part of the defendants indicating the presence of discrimination against the attorney for the specific purpose of preventing him from participating in a work release program. (Bedford County Prison Board, Pennsylvania)

U.S. District Court
RELIGION

Henderson v. *Ayers*, 476 F.Supp.2d 1168 (C.D.Cal. 2007). An inmate brought a pro se and in forma pauperis suit under § 1983 against an acting warden, in his individual and official capacities, claiming that the warden had denied the inmate his right to attend Friday Islamic prayer services and seeking injunctive relief. The warden moved to dismiss. The district court denied the motion. The court held that the inmate satisfied the exhaustion requirement of the Prison Litigation Reform Act (PLRA), even though he did not specifically name the warden in his grievance. The court noted that exhaustion under the Prison Litigation Reform Act (PLRA) is not necessarily inadequate simply because an individual later sued was not named in the grievances, but rather, compliance with prison grievance procedures is all that is required by the PLRA to properly exhaust. The court held that the inmate stated a claim for violation of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and stated a claim for violation of his First Amendment rights. The inmate alleged that he had been denied excused time-off work to attend Friday Islamic prayer services, as his religion required, and that he had been subjected to progressive discipline, including loss of privileges, for attempting to attend these prayer services. (Calif. State Prison, Los Angeles County)

U.S. District Court
COMPENSATION
EQUAL PROTECTION
GOOD-TIME

Jackson v. *Russo*, 495 F.Supp.2d 225 (D.Mass. 2007). A prisoner brought a suit against prison officials claiming that compensation and good time credits awarded to him for participation in a barber program violated his due process and equal protection rights. The prisoner moved for summary judgment, and the defendants moved to dismiss for failure to state a claim. The district court granted the motions in part and denied in part as moot. The court held that the prisoner had no constitutionally created right to conduct business while incarcerated or to receive payment by the prison for services he provided to other inmates as part of a barber vocational program. According to the court, Massachusetts statutes that authorize the corrections commissioner to provide for education, training and employment programs and to establish a system of inmate compensation did not create a protected property interest for inmates in any job or in compensation for a job, for the purposes of a due process claim. The court noted that authorization was dependent on several contingencies, including appropriation of funds, and conferred complete discretion upon the commissioner over programs. The court held that the corrections commissioner's refusal to award additional good time credits to the inmate who enrolled in the barber school, beyond awards granted in 2.5 day increments for participation in various programs, did not create an atypical prison hardship, so as to give rise to an interest protected by due process. The court noted that the prisoner was not unfairly denied the opportunity to participate in other prison activities that might have earned him more credits. According to the court, the prisoner had no constitutional, statutory, or regulatory right to good time credits. The court found that a rational basis existed for differences in levels of compensation received by state prison barbers and kitchen workers in prison vocational programs, based on difficulties in recruiting prisoners, hours, and the demanding nature of the culinary arts program,

such that the lesser compensation received by the prisoner enrolled in the barber training program and providing services to other inmates did not violate equal protection. (Souza Baranowski Correctional Center, Massachusetts)

U.S. Appeals Court
EQUAL PROTECTION
DISCRIMINATION
DISCIPLINE

Lewis v. *Jacks*, 486 F.3d 1025 (8th Cir. 2007). A state prisoner brought an action under § 1983 alleging discrimination and retaliation in his prison employment. The district court entered summary judgment for the defendants and the prisoner appealed. The appeals court affirmed. The court held that: (1) telling admittedly noisy inmates to "shut up" on one occasion did not violate the equal protection clause, even if equally noisy inmates of another race were not equally chastised; (2) the prisoner failed to present affirmative evidence that the garment factory supervisor's work assignments were motivated by race discrimination; (3) the supervisor's work assignments would not have chilled an inmate of ordinary firmness from filing grievances, as was required for a § 1983 retaliation claim; and (4) the prisoner's protected activity of filing a grievance was not causally connected to the alleged retaliation of an increased work load. The court held that the prisoner failed to present affirmative evidence that the garment factory supervisor's work assignments were motivated by race discrimination, in violation of his Fourteenth Amendment right to equal protection. The prisoner, who admitted that he was given no personal production quota, did not refute evidence that each inmate was allowed to work at his own pace, that he was a particularly fast worker, and that he complained to every supervisor that he worked too hard but could have chosen to do less work. The factory manager, responding to the prisoner's complaint that the supervisor was assigning too much work, told the prisoner to "just do what you can." An altercation that occurred when another inmate put more work on the prisoner's bench, which resulted in the prisoner receiving a disciplinary write-up and filing three more grievances, occurred more than two years after the prisoner filed a grievance against the supervisor. The prisoner alleged that the supervisor told him and two other black inmates to "shut up and stop laughing" about ten minutes before break time. (Maximum Security Unit, Arkansas Department of Corrections)

U.S. District Court
DEDUCTIONS FROM WAGES

U.S. v. *Young*, 533 F.Supp.2d 1086 (D.Nev. 2007). A federal prisoner who had been ordered to pay restitution in the amount of $457,740 and a penalty assessment in the amount of $3,300 moved to set aside the schedule of payments. The district court denied the motion. The court held that the defendant's participation in the federal Bureau of Prison's (BOP) Inmate Financial Responsibility Program (IFRP), which allowed the BOP to withhold $50 per month from the defendant's account, was not under duress, and that withholding 21 percent of the defendant's monthly income was not egregious or unreasonable. The court noted that the prisoner earns approximately $57 while imprisoned and that he typically receives a bonus of approximately $28 per month, bringing his total monthly earnings to approximately $85. The prisoner also receives approximately $150 per month from family members, making his total monthly income $235. (Nevada)

U.S. District Court
DEDUCTION FROM WAGES
PROPERTY INTEREST

Ward v. *Stewart*, 511 F.Supp.2d 981 (D.Ariz. 2007). A state inmate brought a pro se § 1983 action alleging violations of his Fifth and Fourteenth Amendment rights based on corrections officials' withholding of a portion of his wages for "gate-money." After dismissal of the inmate's claim was reversed by an appeals court, a partial summary judgment for the corrections officials was granted. A supplemental briefing was ordered as to inmate's request for injunctive relief. The district court denied the request for injunctive relief. The court found that the inmate had a constitutionally protected property interest in his wages, based on an Arizona statute creating a cognizable property interest in inmate wages for purposes of his action alleging that corrections officials violated his rights under the Takings Clause. The court concluded that corrections officials did not violate the inmate's rights under the Takings Clause by withholding a portion of his wages for "gate-money." The court found that even though the money was the inmate's private property, prison inmates forfeit all right to possess, control or dispose of private property. The court also held that state correction officials did not act arbitrarily in withholding a portion of the inmate's wages for "gate-money" even though he was serving a life sentence, and therefore he was not deprived of due process. The court noted that the withholding was intended to promote public welfare and the common good, and that it was not arbitrary since the inmate might be able to obtain release prior to the end of his life and if not, the money would be used to pay costs associated with his cremation or other expenses. (Arizona Dept. of Corrections)

U.S. District Court
WORK ASSIGNMENT
EQUAL PROTECTION
DISCRIMINATION

Wilson v. *Taylor*, 515 F.Supp.2d 469 (D.Del. 2007). Black inmates brought a suit against prison officials asserting an equal protection claim that they were consistently treated differently from similarly situated white inmates in job assignments, disciplinary actions and security classifications. One inmate also asserted a retaliation claim against a deputy warden. The district court granted summary judgment for the defendants and denied summary judgment for the plaintiffs. The court held that an inmate failed to establish an equal protection claim against a prison commissioner and warden, absent evidence of the involvement of the commissioner or warden in the alleged incidents of racial discrimination. The court found that an inmate did not establish an equal protection claim based on the allegation that he was not permitted to return to a particular prison building following an investigation while a similarly situated white inmate was permitted to return. According to the court, the exhaustion provision of the Prisoner Litigation Reform Act (PLRA) barred an inmate's claim that his transfer to another facility constituted retaliation for filing grievances and civil rights lawsuits. The inmate had written a letter to the warden's office contesting his transfer, but filed no grievances raising a retaliation claim or even his housing transfer generally. (Sussex Correctional Institution, Delaware)

2008

U.S. District Court
INJURY
SAFETY
SUPERVISION

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
INJURY

Cason v. *District of Columbia*, 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)

U.S. District Court
FREE SPEECH
REMOVAL FROM JOB

Cossette v. *Poulin*, 573 F.Supp.2d 456 (D.N.H. 2008). An inmate at a correctional facility filed a First Amendment retaliation suit against a prison librarian, a major and a former warden, alleging he was removed from his job as a clerk in the prison law library in retribution for giving a written statement to another inmate in support of a planned lawsuit challenging an action taken by the prison librarian. The district court granted the defendants' motion for summary judgment. The court held that the inmate did not engage in a constitutionally protected activity by providing a fellow inmate with a written statement. The court noted that the inmate's statement, that a fellow inmate "followed all print procedures" when the librarian allegedly overcharged him for a copy/printout request, dealt with a matter of purely individual economic importance, rather than a matter of "public concern." (Northern Correctional Facility, New Hampshire)

U.S. Appeals Court
WORK RELEASE

Domka v. Portage County, Wis., 523 F.3d 776 (7th Cir. 2008). A former county jail inmate brought a § 1983 action against a county, alleging that revocation of his work-release and home-detention privileges, granted through a plea bargain in his prosecution for his third offense of driving under the influence (DUI), had constituted deprivation of due process. The district court granted summary judgment for the county, and the inmate appealed. The appeals court affirmed. The court held that the plea agreement did not give rise to protected liberty interests in home detention and work-release, and that the inmate had knowingly and intelligently waived any due process rights he may have had in the home-detention program by signing an agreement as to the program's terms. The agreement unambiguously stated that the inmate could, and would, be removed from the program without notice if, among other reasons, he tested positive for alcohol use. According to the court, the waiver was knowing and intelligent, regardless of the prisoner's reliance on an allegedly false oral promise that any positive test would be verified by a personally administered retest, since the written agreement conditioned removal on a positive initial test only, not on the prisoner's actually consuming alcohol. The court noted that the inmate received what he bargained for, the opportunity to serve a portion of his time under home detention with work release. (Portage County's Home Detention Program, Wisconsin)

U.S. Appeals Court
INJURY

Gabriel v. *Hamlin*, 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)

U.S. District Court
MEDICAL
RESTRICTIONS

Jacobs v. *Wilkinson*, 529 F.Supp.2d 804 (N.D.Ohio 2008). An inmate brought a § 1983 suit, claiming constitutional violations arising from prison officials' forcing him to shave his beard in contravention of his religious beliefs. The inmate also alleged denial of proper medical work restrictions. The district court dismissed the suit for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA). The inmate moved to reopen, and to consolidate his complaint and the court's prior screening order. The court held that a Supreme Court decision holding that courts should not dismiss prisoner complaints under the PLRA in their entirety when the prisoner presents both exhausted and unexhausted claims did not apply retroactively to the inmate's case. (Mansfield Correctional Institution, Ohio)

U.S. District Court
ADA- Americans with
Disabilities Act
DISCRIMINATION
LIBERTY INTEREST
TERMINATION

Kogut v. *Ashe*, 592 F.Supp.2d 204 (D.Mass. 2008). A county jail inmate petitioned for a writ of habeas corpus, alleging he was prevented from participating in various jail work programs as a result of discrimination based on his disability. The district court granted petition. The court held that the allegation that the inmate was prevented from participating in a good-time work program that would have affected the duration of his confinement as a result of discrimination in violation of the Americans with Disabilities Act (ADA) was sufficient to form the basis of habeas relief. The court noted that while an inmate may have no right under the Constitution to credit for good-time, he may not under Title II of the Americans with Disabilities Act (ADA) be barred, based on discrimination arising from his disability, from work programs that may have the effect of reducing his sentence. He alleged that he suffers from

disabilities which affect his ability to perform certain types of work assigned in the jail. The inmate alleged that he was "denied any and/or all access" to work assigned through the "County Correctional Facilities Work Programs" and provided 16 inmate work request forms in support of this claim. (Worcester County Jail, Massachusetts)

U.S. District Court
WORK ASSIGNMENTS

Ringgold v. *Lamby*, 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. (Howard R. Young Correctional Institution, Rhode Island)

U.S. Appeals Court
WORK RELEASE

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
COMPENSATION
FLSA- Fair Labor Standards Act

Sanders v. *Hayden*, 544 F.3d 812 (7th Cir 2008). A prisoner who was civilly committed to a secure treatment facility as a sexually violent person, after serving a prison sentence, filed a § 1983 suit against state officials, claiming violation of his federal rights by a reduction of pay from $2.50 to $2.00 per hour for work performed at the treatment facility. The district court dismissed the complaint and the prisoner appealed. The appeals court affirmed. The court held that the complaint would be construed as asserting a claim under the Fair Labor Standards Act (FLSA), although the complaint did not refer to FLSA, since the prisoner sued without the aid of counsel. The court found that the prisoner was not covered by FLSA, precluding his claims challenging reduction of his pay. The court noted that the payment of sub-minimum wages to prisoners presents no threat of unfair competition to other employers, who must pay the minimum wage to their employees, because the facility does not operate in the marketplace and has no business competitors. (Wisconsin Resource Center)

U.S. District Court
FREE SPEECH
REMOVAL FROM JOB

St. Louis v. *Morris*, 573 F.Supp.2d 846 (D.Del. 2008). A state prison inmate brought a § 1983 action against various prison staff and officials, alleging that he was removed from his prison kitchen job in retaliation for exercising his First Amendment rights to report institutional violations. The district court granted summary judgment for the defendants. The court held that the prisoner's unsubstantiated deposition testimony concerning informal, verbal complaints he made to prison officials reporting alleged institutional violations was insufficient to defeat summary judgment. The court noted that a prisoner does not have a constitutional right to employment while an inmate. (James T. Vaughn Correctional Center, Delaware)

U.S. District Court
RETALIATION
TERMINATION

Taylor v. *Walker*, 537 F.Supp.2d 966 (C.D.Ill. 2008). A prisoner brought a § 1983 action against the Illinois Department of Corrections Director, a correctional center warden, and corrections officer. The district court held that summary judgment was precluded by genuine issues of material fact, including the issue of whether the corrections officer was the prisoner's work supervisor. The prisoner alleged that the officer retaliated against him for exercising his First Amendment rights by firing him from his prison job. (Hill Correctional Center, Illinois)

U.S. District Court
COMPENSATION
INJURY

Thompson v. *Federal Prisons Industries, Inc.*, 546 F.Supp.2d 456 (S.D.Tex. 2008). A federal prisoner who sustained a wrist injury while working in a prison kitchen brought a pro se action in state court to enforce a settlement with prison officials for compensation for his injuries. The action was removed to federal court. The district court dismissed the action. The court held that the prisoner was not entitled to receive a lump sum payment of $857 for the settlement until he was released from federal custody. The court noted that the purpose of the Inmate Accident Compensation statutes is to provide accident compensation to former federal inmates or their dependents for physical impairment or death resultant from injuries sustained while performing work assignments in prison. (Federal Correctional Institution, Three Rivers, Texas)

U.S. District Court
COMPENSATION
INJURY

Thompson v. *Joslin*, 536 F.Supp.2d 799 (S.D.Tex. 2008). A federal prisoner brought a state court action against a warden and kitchen supervisor, seeking compensation for wrist and back injuries. The inmate had been offered a payment of $857.00 for his wrist injury, and $71.42 a month for a back injury. The inmate alleged that the BOP had not yet paid him. The warden and supervisor removed the action to federal court and moved to dismiss. The district court held that the prison operator was the proper defendant and dismissed the action with regard to the warden and kitchen supervisor. The court held that the statute authorizing Federal Prison Industries, Inc. (FPI) to pay compensation to inmates injured in a prison industry or work activity provides the exclusive remedy for inmates injured while working in federal prisons. FPI was substituted as the proper defendant, and FPI was ordered to file an answer or a dispositive motion addressing the claim that the plaintiff not yet been paid. (Federal Correctional Institution El Reno, Oklahoma, FCI-Three Rivers, Texas)

U.S. Appeals Court
WORK RELEASE

U.S. v. *Miller*, 547 F.3d 1207 (9th Cir. 2008). A federal supervisee who had been transferred to a county work-release program at the midpoint of his federal prison term, pursuant to a "prerelease custody" statute, moved to dismiss the government's petition to revoke his supervised release. The supervisee contended that his period of supervised release had expired prior to the revocation petition. The district court denied the supervisee's motion, and he appealed. The appeals court affirmed, finding that transfer to the work-release program did not mark the beginning of the supervised release period, given the continuing Bureau of Prisons (BOP) control. The court noted that the period of work-release was "imprisonment" within the meaning of the statute, and thus the period of supervised release commenced only upon the inmate's release from work-release. (Bannock County Jail Work Release Program, Montana)

U.S. District Court
FORCED LABOR
WORK ASSIGNMENTS

U.S. v. *Peterson*, 544 F.Supp.2d 1363 (M.D.Ga. 2008). A sheriff filed a motion to suppress his grand jury testimony and a motion to dismiss certain counts of an indictment charging him with extortion by a public official, obstruction of justice, perjury, and forced labor. The district court granted the motions in part and denied in part. The court held that the sheriff, who charged inmates for room and board, could not be guilty of extortion by a public official in violation of the Hobbs Act because he collected the funds and remitted them to the county commissioners. The court noted that a public official who obtains property on behalf of the government does not commit the offense of extortion, even if the government does not have a lawful or legal claim to the property. The court held that an indictment charging the sheriff with obtaining an inmate's labor by means of the abuse or threatened abuse of the law or the legal process was factually insufficient. The sheriff was charged with using an inmate's labor at a private business owned by his wife. (Clinch Co. Georgia)

2009

U.S. District Court
ADA-Americans with Disabilities Act

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. 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 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. District Court
COMPENSATION
DISCIPLINE
DUE PROCESS
FLSA-Fair Labor Standards Act
LIBERTY INTEREST
PROPERTY INTEREST
REMOVAL FROM JOB

Cox v. *Ashcroft*, 603 F.Supp.2d 1261 (E.D.Cal. 2009). A prisoner brought a § 1983 action against the United States Attorney General, several federal prosecutors, and the owner and employees of a privately-owned federal facility in which the prisoner was incarcerated, alleging constitutional violations arising from his arrest, prosecution, and incarceration. The district court dismissed the action. The court held that the prisoner did not have any Fourth Amendment rights to privacy in his cell, and thus did not suffer any constitutional injury as a result of the search of his cell and the confiscation of another inmate's legal materials. The court found that the prisoner did not have any liberty or property interest in employment while in prison, and thus the prisoner did not suffer any violation of his due process right related to his termination from his prison job as a result of discipline arising from the search of his cell, precluding liability on the part of facility owner and its employees under § 1983. The court found that the prisoner lacked standing to bring a claim against the warden of a privately-owned federal prison facility, alleging that paying the prisoner at a rate below minimum wage violated the Fair Labor Standards Act (FLSA). The court noted that prisoners were not "employees" within the meaning of FLSA. (Taft Correctional Institution, Wackenhut Corrections Corporation, California)

U.S. District Court
DUE PROCESS
EQUAL PROTECTION
WORK RELEASE

Holland v. *Taylor*, 604 F.Supp.2d 692 (D.Del. 2009). A state prisoner brought a pro se § 1983 action against a Department of Correction (DOC) and DOC officials, alleging violations of his constitutional rights to equal protection and due process, deliberate indifference, cruel and unusual punishment, and false imprisonment. The prisoner moved to appoint counsel, and the defendants brought a renewed motion for summary judgment. The district court granted the motion for summary judgment and denied the motion to appoint counsel. The court found that neither Delaware law nor Delaware Department of Correction regulations create a liberty interest, the denial of which would constitute a due process violation, in a prisoner's classification within an institution. The court found that the state prisoner had no constitutionally protected right to work release, and thus, neither the alleged failure of a multi-disciplinary team (MDT) member to inform the inmate of a disciplinary review meeting regarding his alleged work release program violation, nor the prisoner's transfer following completion of the sentence imposed in connection with the disciplinary meeting, to another facility to await return to the work-release facility, violated the prisoner's due process rights, absent any atypical or significant hardship by being housed at the other facility as compared to a work-release facility. (Delaware Correctional Center)

U.S. Appeals Court
DUE PROCESS
PROPERTY INTEREST
TERMINATION

Johnson v. *Rowley*, 569 F.3d 40 (2nd Cir. 2009). A Muslim federal prisoner proceeding pro se filed suit against his supervisor at a prison factory, claiming that his termination from a prison job assignment was due to the supervisor's personal animus towards Muslims in violation of the Due Process Clause and the First Amendment. The district court dismissed the claims and the prisoner appealed. The appeals court affirmed in part. The court held that the federal prisoner had no protected property interest in his job assignment at a prison factory, precluding the prisoner's due process claim against a former supervisor for terminating his job assignment. The court noted that property interests protected by the Due Process Clause are not created by the Constitution, but rather are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law, rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. The court also noted that employees "at will" have no property interest protected by the Due Process Clause in their continued employment. The court found that the prisoner failed to exhaust administrative remedies, as required by the Prison Litigation Reform Act (PLRA), where the prisoner failed to comply with the Bureau of Prisons' (BOP) procedural rules creating a four-step administrative grievance system for prisoner complaints, by not raising his First Amendment claim until the third step of grievance process. According to the court, the prisoner lacked good cause for failing to exhaust administrative remedies. (Federal Correctional Institution, Otisville, New York)

U.S. District Court
ADA-Americans With Disabilities Act
DISCIPLINE
SEGREGATION

Kogut v. *Ashe*, 602 F.Supp.2d 251 (D.Mass. 2009). A state prisoner filed a petition for a writ of habeas corpus, alleging that he had been discriminatorily excluded from work programs in which he could have earned good-time credits, in violation of the Americans with Disabilities Act (ADA). The district court dismissed the petition, finding that the prisoner's alleged disabilities were not the reason for his exclusion from the work programs, as would violate the ADA. The prisoner was excluded from the work programs because he had been the subject of over 30 incident reports for harassment of staff, fights with other inmates, and other disciplinary infractions, and several of those incidents required the prisoner's segregation from general prison population. The court noted that disciplinary issues and concerns over prison security may be legitimate non-discriminatory grounds for limiting access to a jail program. (Worcester County Jail, Massachusetts)

U.S. Appeals Court
WORK STOPPAGE

Pilgrim v. *Luther*, 571 F.3d 201 (2nd Cir. 2009). A prisoner, appearing pro se, brought an action against three prison officials alleging they violated his constitutional rights to free speech and due process of law in the course of an investigation and disciplinary hearing related to a pamphlet allegedly written by the prisoner, which encouraged inmates to engage in work stoppages. The district court granted the prison officials' motion for summary judgment. The prisoner appealed. The appeals court affirmed. The court held that entreaties to work stoppages, like petitions protesting prison conditions, are not entitled to First Amendment protection where other less disruptive means of airing grievances are available. According to the court, work stoppages are deliberate disruptions of the regular order of the prison environment and are a species of organized union activity, which are plainly inconsistent with the legitimate objectives of a prison organization. (Sing Sing Correctional Facility, New York)

U.S. Appeals Court
EQUAL PROTECTION
WORK ASSIGNMENTS

Roubideaux v. *North Dakota Dept. of Corrections and Rehabilitation*, 570 F.3d 966 (8th Cir. 2009). North Dakota prison inmates, representing a certified class of female inmates, brought a sex discrimination suit under § 1983 and Title IX, alleging that a state prison system provided them with unequal programs and facilities as compared to male inmates. The district court granted summary judgment in favor of the defendants and the inmates appealed. The appeals court affirmed. The court held that North Dakota's gender-explicit statutes, allowing the Department of Corrections and Rehabilitation to place female inmates in county jails and allowing the Department to place female inmates in "grade one correctional facilities" for more than one year, was substantially related to the important governmental objective of providing adequate segregated housing for female inmates, and thus the statutes were facially valid under heightened equal protection review. According to the court, even if the decision to house them at the women's center was based on economic concerns, where the female prison population as a whole was much smaller than the male population, sufficient space to house the female prisoners was becoming an issue as the entire prison population increased. Female inmates were in need of a separate facility to better meet their needs, and statutes expressly required the Department to contract with county facilities that had adequate space and the ability to provide appropriate level of services and programs for female inmates. The court held that the female inmates, by expressing an assertion before the district court that they were not challenging the programming decisions made by Department of Corrections and Rehabilitation upon transfer to county jails for housing, abandoned an "as-applied" challenge to the gender-explicit statutes facilitating such transfers.

The court held that North Dakota's "prison industries" program offered at a women's correction and rehabilitation center, under contract between several counties and the state, was not an "educational program" subject to Title IX protections, even though the program provided on-the-job training. The court noted that the program was primarily an inmate work or employment program, providing female inmates with paying jobs and enabling them to make purchases, pay restitution, or support their families, and the contract between the counties and state distinctly separated inmate employment and educational programs.

According to the court, vocational training offered at the center was not discriminatorily inferior to those offered to male inmates at state facilities, as required for a claim under Title IX. Although locational differences existed, like male inmates, female inmates had access to a welding class and classes in basic parenting, social skills, speech, and healthy lifestyles. (Southwest Multi-County Correctional Center, North Dakota)

U.S. District Court
DISCIPLINE
REMOVAL FROM JOB

Skinner v. *Holman*, 672 F.Supp.2d 657 (D.Del. 2009). A prisoner brought a § 1983 action against prison employees, alleging he was retaliated against for having filed a prison grievance. The defendants moved to dismiss the claims as frivolous and the district court denied the motion. The court held that the inmate's allegations that he was denied transfer to a minimum security prison, was prevented from working, and was kept in disciplinary confinement for several months as a result of a grievance he had filed were sufficient to state a claim of retaliation for the exercise of his First Amendment rights by prison employees. (James T. Correctional Center, Delaware)

U.S. Appeals Court
WORK CONDITIONS

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
INJURY
WORK RELEASE

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. Appeals Court
COMPENSATION
PRISON INDUSTRIES

Walton v. *U.S.*, 551 F.3d 1367 (Fed.Cir. 2009). A federal prisoner brought an action to recover from the United States for copyright infringement involving the government's use of calendars he created as part of his assigned duties in prison. The district court dismissed the complaint, and the prisoner appealed. The appeals court affirmed. The court held that the prisoner was in the "service of the United States" when he created calendars as part of his assigned duties in prison, and thus the Court of Federal Claims lacked jurisdiction over the prisoner's copyright infringement action against the United States. The court noted that the prisoner worked on the calendar on government-furnished computers while supervised by United States employees as part of his assigned duties at a government facility, and received compensation for his efforts. The prisoner developed and produced desk-blotter calendars for the years 2000 and 2001-2002. Federal Prison Industries made a substantial number of those calendars, which it distributed to General Services Administration warehouses throughout the country, and it also sold the calendars to private purchasers. Prisoners assigned to that work were given compensation ranging from $0.23 to $1.15 per hour and various other benefits. (United States Prison, Leavenworth, Kansas)

2010

U.S. District Court
ADA-Americans with Disabilities Act
PRIVATE SECTOR
RIGHT TO WORK

Castle v. *Eurofresh, Inc*., 734 F.Supp.2d 938 (D.Ariz. 2010). A state prisoner brought a pro se action against a state, department of corrections, its current and former directors, and a company to which his services were contracted while in prison, asserting claims under the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Arizona Civil Rights Act (ACRA). The court held that the state, the department of corrections, and its current and former directors had Eleventh Amendment immunity as to the prisoner's ADA disability discrimination claims relating to the tomato picking he performed for a private business through a prison program. The court found that the prisoner stated a claim under Title II of the ADA. Americans with Disabilities Act with allegations that: (1) the prison program under which prisoners picked tomatoes for a private business offered six times the wages paid for other prison jobs, as well as bonuses, and job skills not otherwise available; (2) that because of his disability, he was denied access to the program and the ability to obtain the benefits; and (3) that prison and state officials intentionally discriminated against him by denying and ignoring his requests for accommodations.

The court found that the private company that contracted with the state prison for prisoners to perform tomato picking on behalf of the company was not a "public entity" and, thus, it was not subject to Title II of the ADA. According to the court, the prisoner's allegations that state, prison, and state officials received direct federal financial assistance and therefore his claim stated a Rehabilitation Act claim against the state and these officials.

The court found that the prisoner's allegation that the private company that contracted with the state prison for prisoners to perform tomato picking on behalf of the company received an indirect financial benefit and competitive advantage from paying lower wages, was too vague and conclusory, as well as implausible, to satisfy the short and plain statement requirement for stating a claim that company violated the Rehabilitation Act. (Arizona Department of Corrections, Arizona Correctional Industries, Eurofresh)

U.S. Appeals Court
SAFETY
EXPOSURE TO CHEMICALS

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. District Court
RELIGION

Jackson v. *Raemisch*, 726 F.Supp.2d 991 (W.D.Wis. 2010). A Muslim inmate brought an action against correctional officials, alleging civil rights violations due to a prohibition against workplace prayer. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the claim brought under the Religious Land Use and Institutionalized Persons Act (RLUIPA) stemming from the defendants'

alleged refusal to allow the inmate to pray in a kitchen facility, was moot, since only injunctive or declaratory relief was available under the statute, and the inmate no longer worked in the kitchen and was unlikely to return to work there. The court held that summary judgment was precluded by genuine issues of material fact, regarding whether a correctional official issued a conduct report to the Muslim inmate because of a grievance he filed concerning the prohibition against workplace prayer. The court also found that summary judgment was precluded by genuine issues of material fact, regarding whether a correctional official directed her staff to take retaliatory action against the Muslim inmate because of a grievance he filed concerning the prohibition against workplace prayer. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
MEDICAL
RESTRICTIONS
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. District Court
ASSIGNMENT
DUE PROCESS
LIBERTY INTEREST
MEDICAL
RESTRICTIONS

Lymon v. *Aramark Corp*., 728 F.Supp.2d 1222 (D.N.M. 2010). A former state prisoner brought an action against the New Mexico Department of Corrections (NMDOC), its secretary, prison officers, the private company that managed a prison kitchen, and two of the company's employees, alleging various constitutional claims and negligence under the New Mexico Tort Claims Act (NMTCA). The prisoner had sustained injuries from work he was required to perform in a kitchen, and he made allegations about the injuries and his subsequent treatment. The state defendants moved to dismiss. The district court granted the motion. The court held that no New Mexico Department of Corrections (NMDOC) policy or regulation made any provision for the state prisoner's liberty interest in a labor assignment or otherwise provided the prisoner with protection from corrections officers ordering him to perform work in a prison kitchen or protection from orders in contravention of a medical order. The court ruled that the prisoner's § 1983 procedural due process claim arising from injuries he allegedly sustained while performing kitchen work was precluded. According to the court, corrections officers' alleged misclassification and denial of a grievance process did not rise to the degree of outrageousness, or the magnitude of potential or actual harm, that was truly conscience-shocking, precluding the state prisoner's § 1983 substantive due process claims.

The court noted that the state prisoner made no allegation that he contracted any disease while working in the prison kitchen, but only that he suffered a shoulder injury as the result of a heavy-lifting component of his work, thus precluding his § 1983 unconstitutional conditions claim against the New Mexico Department of Corrections (NMDOC) and its secretary. The court held that the prisoner did not personally suffer any injury as a result of a corrections officer's classification of prisoners for work duty, purportedly assigning inmates with known transmissible diseases to kitchen work, precluding the prisoner's claim for an alleged violation of federal public health policy. (Aramark Corporation, Central New Mexico Correctional Facility)

U.S. Appeals Court
SECURITY SEARCHES

Nunez v. *Duncan*, 591 F.3d 1217 (9th Cir. 2010). A federal inmate brought a pro se *Bivens* action against prison officials, alleging he was subjected to a random strip search in violation of his First, Fourth, and Eighth Amendment rights. The district court entered summary judgment for the officials, and the inmate appealed. The appeals court affirmed, finding that the strip search of the inmate pursuant to a policy authorizing strip searches of inmates returning from outside work detail was reasonably related to a legitimate penological interest in controlling contraband within the prison, and thus did not violate the inmate's Fourth Amendment rights. (Federal Prison Camp, Sheridan, Oregon)

U.S. District Court
DISCRIMINATION
EQUAL PROTECTION
TERMINATION

Reynolds v. *Barrett*, 741 F.Supp.2d 416 (W.D.N.Y. 2010). Four African-American inmates brought an action under § 1983 and § 1985 against New York State Department of Correctional Services (DOCS) employees, alleging that they were subjected to discrimination on account of their race in connection with their inmate jobs in a print shop. The actions were consolidated for discovery purposes. The inmates moved to amend their complaints and to certify the class, and the employees moved for summary judgment. The district court granted the motion. The court held that: (1) the first inmate failed to establish that white workers were treated differently under similar circumstances; (2) there was no evidence that the second inmate's race was a motivating factor in his removal from the shop; (3) fact issues precluded summary judgment as to third and fourth inmates' discrimination and retaliation claims against a supervisor. The court held that genuine issues of material fact existed as to whether a prison print shop supervisor acted out of retaliatory motives in recommending that an African-American inmate, who filed a grievance over an inmate counseling notification issued by the supervisor, be removed from his job in shop, and as to whether the supervisor acted toward the inmate based on discriminatory animus, precluding summary judgment as to inmate's § 1983 retaliation and racial discrimination claims against supervisor.

The court noted that a poster hanging in a prison print shop supervisor's office on which there was a photograph of an ape staring directly into camera with the words “whoever regards work as pleasure can sure have a HELL of a good time in this institution” was not probative of discriminatory animus on the supervisor's part. According to the court, documents authored by a New York State Department of Correctional Services' (DOCS) diversity trainer regarding the prison print shop supervisor's allegedly discriminatory statements at a training session did not create a genuine issue of material fact sufficient to overcome summary judgment on the African-American inmate's racial discrimination claim under § 1983 arising from his bonus deductions, demotion, and eventual removal from his job in the shop. (Elmira Correctional Facility, New York)

U.S. Appeals Court
COMPENSATION
LIBERTY INTEREST
DUE PROCESS

Serra v. *Lappin*, 600 F.3d 1191 (9th Cir. 2010). Current and former federal prisoners brought an action against various prison officials, alleging that the low wages they were paid for work performed in prison violated their rights under the Fifth Amendment and international law. The district court granted the defendants' motion to dismiss, and the prisoners appealed. The appeals court affirmed. The court held that current and former federal prisoners did not have a legal entitlement to payment for work performed while incarcerated for federal crimes, and thus prison officials did not violate the prisoners' Fifth Amendment due process rights by allegedly paying them inadequate wages for work performed in prison, absent an allegation that wages paid were less than applicable regulations required. The court found that the International Covenant on Civil and Political Rights (ICCPR) conferred no judicially enforceable rights, and thus did not provide current and former federal prisoners a legal claim or remedy against prison officials in their action alleging that low wages inmates were paid for work performed in prison violated their rights under international law. The court noted that ICCPR was ratified on the express understanding that it was not self-executing. Similarly, the court held that the United Nations' document entitled Standard Minimum Rules for the Treatment of Prisoners conferred no judicially enforceable rights, and thus did not provide current and former federal prisoners a legal claim or remedy against prison officials in their action. The court noted that the document was not binding on the United States, did not purport to serve as a source of private rights, and even if it were a self-executing treaty, did not specify what wages would qualify as equitable remuneration of prisoners' work. According to the court, the current and former federal prisoners failed to establish that any statute conferred jurisdiction over their claim that customary international law entitled them to higher wages for work performed in prison, and thus the district court did not have jurisdiction over prisoners' "law of nations" claim. The court held that the current and former federal prisoners had no constitutional right to be paid for work performed while in prison, as would be required to state a claim against prison officials in their individual capacities for money damages based on alleged inadequacy of the prisoners' earnings. (Fed. Prison Industries, Federal Bureau of Prisons)

U.S. Appeals Court
DEDUCTIONS FROM WAGES
PAYMENT

Ward v. *Ryan*, 623 F.3d 807 (9th Cir. 2010). A state inmate who was serving a 197-year sentence brought a § 1983 action against the director of the Arizona Department of Corrections, alleging the Department's withholding of a portion of his prison wages for "gate money," to be paid to him upon his release from incarceration, violated his Fifth and Fourteenth Amendment rights since it was unlikely he would be released from prison prior to his death. The appeals court reversed the dismissal of the claim. The district court subsequently denied the inmate injunctive relief and granted summary judgment in favor of the director. The inmate appealed. The appeals court held that the inmate did not have a current possessory property interest in wages withheld in a dedicated discharge account, as required to establish a violation of the Takings Clause. The court noted that Arizona statutes creating a protected property interest in prison inmate wages did not give inmates full and unfettered right to their property. (Arizona Department of Corrections)

U.S. District Court
MEDICAL RESTRICTIONS

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)

2011

U.S. District Court
DEDUCTION FROM PAY
FLSA- Fair Labor Standards Act

Martin v. *Benson*, 827 F.Supp.2d 1022 (D.Minn.2011). A civilly committed sex offender and resident of the Minnesota Sex Offender Program (MSOP) facility brought a pro se action against the chief executive officer (CEO) of MSOP, alleging the CEO violated the minimum wage provision of the Fair Labor Standards Act (FLSA) by withholding 50% of his earnings as a work-related expense to be applied toward the cost of care. The CEO moved to dismiss. The district court granted the motion. The court held that the economic reality of the civilly committed sex offender's work within the MSOP vocational work program was not the type of employment covered by FLSA. The court noted that the program was specifically designed to provide "meaningful work skills training, educational training, and development of proper work habits and extended treatment services for civilly committed sex offenders," and to the extent that the program engaged in commercial activity, it was incidental to the program's primary purpose of providing meaningful work for sex offenders. According to the court, the program had few of the indicia of traditional, free market employment, as the limits on the program prevented it from operating in a truly competitive manner, and the offender's basic needs were met almost entirely by the State. The court noted that the conclusion that the FLSA does not apply to a civilly committed sex offender should not be arrived at just because, as a committed individual, he is confined like those in prison or because his confinement is related to criminal activity, "…it is not simply an individual's status as a prisoner that determines the applicability of the FLSA, but the economic reality itself that determines the availability of the law's protections." (Minnesota Sex Offender Program)

U.S. District Court
ADA- Americans with Disabilities Act
PRIVATE SECTOR WORK RELEASE

Maxwell v. *South Bend Work Release Center*, 787 F.Supp.2d 819 (N.D.Ind. 2011.) An inmate who worked for a metal products production facility pursuant to a work release program brought an action against the employer alleging discrimination under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The employer moved for summary judgment. The district court granted the motion. The court held that the metal products production facility which employed prisoners in a work-release center was not a public entity within the meaning of Title II of the ADA, where the facility was a private for-profit corporation, and merely contracting with a public entity for the provision of some service did not make the facility an instrumentality of the state. The court noted that the production facility was not a program or activity receiving federal assistance, as required to support the prisoner's

claim under the Rehabilitation Act, where the facility was a private employer, and even if the facility participated in a joint venture with the state's department of corrections, it did not actually receive federal financial assistance. (Indiana Department of Corrections, South Bend Work Release Center, Indiana)

U.S. Appeals Court
TERMINATION
EQUAL PROTECTION

Milligan v. *Archuleta*, 659 F.3d 1294 (10th Cir. 2011). A state inmate filed a § 1983 action alleging that prison officials took away his prison employment in retaliation for his grievance regarding his designation as a potential escape risk, and in violation of his equal protection rights. The district court dismissed the complaint on its own motion and the inmate appealed. The appeals court reversed and remanded. The appeals court held that the district court erred in dismissing the equal protection claim, even though the complaint was deficient because it did not plead facts sufficient to show that the inmate's classification as an escape risk lacked a rational basis or a reasonable relation to a legitimate penological interest. According to the court, amendment of the complaint would not necessarily be futile, and the claim was not based on an indisputably meritless legal theory. The court noted that the fact that the state inmate did not have a constitutional right to employment did not foreclose his retaliation claim against the prison official arising from loss of his prison job after he filed a grievance. (Colorado Territorial Correctional Facility)

U.S. District Court
GOOD-TIME
PAYMENT
PRISON INDUSTRIES

Morton v. *Bolyard*, 810 F.Supp.2d 112 (D.D.C. 2011.) A federal prisoner, who was employed by the Department of Justice's Federal Prison Industries (UNICOR) program while in Federal Bureau of Prisons' (BOP) custody, brought a Bivens action against various federal officials, alleging that the defendants denied him promotions and back pay for his UNICOR job, and denied him good time credit for vocational training received through UNICOR and educational training he took at his own expense through a correspondence course. The defendants moved to dismiss. The district court granted the motion. The court held that sovereign immunity barred the prisoner's claims against the officials in their official capacities and that the district court lacked personal jurisdiction over the officials in their individual capacities. The court found that the prisoner failed to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA), even though the prisoner had filed an administrative remedy request at the institutional level, where the prisoner had failed to file an administrative remedy request at the regional and central office levels, and the regional and central office levels had the authority to provide relief or to take action in response to the complaint. (United States Penitentiary Hazelton, West Virginia, Federal Prison Industries)

U.S. District Court
RELIGION
REMOVAL FROM JOB
WORK

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
ADA- Americans with Disabilities Act
MEDICAL
RESTRICTIONS

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
DISCIPLINE
RELIGION
TERMINATION

Roberts v. *Klein*, 770 F.Supp.2d 1102 (D.Nev. 2011). A Black state prisoner filed a civil rights action against prison administrators and employees alleging violation of his First Amendment right to free exercise of religion, his statutory rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the Equal Protection Clause. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner stated a claim that prison officials and employees violated his religious rights under the First Amendment, RLUIPA, and the Equal Protection Clause on allegations that they implemented and enforced a policy that denied him kosher meals because his Jewish faith had not been verified by an outside entity, and the prison did not show that there was valid rational connection between the prison regulation and a legitimate government interest.

The court found that the prisoner stated a claim that a prison employee retaliated against him for exercising his First Amendment right to free exercise of religion, on allegations that he sincerely believed that he must attend religious services and his work assignment was terminated soon after he attended Jewish services, after which the employee stated that "You're no damn Jew," "You're right I'm firing you," and "Around here I'm your God." According to the court, the prisoner also stated a claim that a prison employee retaliated against him for exercising his First Amendment right to free exercise of religion and deprived him of Equal Protection under Fourteenth Amendment, on allegations that he was written up on disciplinary charges for attending Jewish services, as a protected activity, while white inmates of the Jewish faith were not written up on disciplinary charges for attending services, and that he was placed on disciplinary charges two days later because he attended the services. The court held that the prison employees were not entitled to qualified immunity. (Southern Desert Corr'l Center, Nevada)

U.S. Appeals Court
SAFETY
WORK CONDITIONS

Smith v. *Peters*, 631 F.3d 418 (7th Cir, 2011). A state prisoner brought an action against prison employees, alleging that the employees violated the Eighth Amendment by forcing him to work at hard labor in dangerous conditions, and violated the First Amendment by penalizing him for questioning the propriety of the work assignment and preparing to sue. The district court dismissed the complaint. The prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner stated a claim against prison employees for violating his Eighth Amendment right to be free from cruel and unusual punishment by forcing him to work at hard labor in dangerous conditions. The prisoner alleged that he was assigned to uproot tree stumps in cold weather, without being given any protective gear, that he developed blisters from handling heavy tools in the cold without gloves, and that he was subjected to the risk of getting hit by the blades of the tools because they slipped from their handles as prisoners hacked away without proper training. The court found that the prisoner stated a claim against prison employees for violating his First Amendment right to free speech, by alleging that the employees penalized him for questioning the propriety of his work assignment and preparing to sue. (Branchville Correctional Facility, Indiana)

2012

U.S. District Court
SAFETY

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
EQUAL PROTECTION
REMOVED FROM JOB

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
ADA- Americans with Disabilities Act
EQUAL PROTECTION
SEGREGATION
WORK ASSIGNMENT
WORK RELEASE

Henderson v. *Thomas*, 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)

U.S. Appeals Court
PRETRIAL DETAINEES
FORCED LABOR
INVOLUNTARY SERVITUDE

McGarry v. *Pallito*, 687 F.3d 505 (2nd Cir. 2012). A pretrial detainee filed an action against state prison officials alleging that compelling him to work in a prison laundry under the threat of physical restraint and legal process violated the Thirteenth Amendment. The district court dismissed the action and the detainee appealed. The appeals court reversed and remanded. The appeals court held that the detainee stated a civil rights claim under the Thirteenth Amendment, on allegations that his work in a prison laundry was compelled and maintained by the use and the threatened use of physical and legal coercion, where state prison officials threatened to send him to "the hole" if he refused to work and that he would thereby be subjected to 23 hour-per-day administrative confinement and shackles. The detainee also alleged that he had been threatened with disciplinary reports, which are alleged to be taken into consideration when making recommendations for a release date and, therefore, lengthen any period of incarceration. The court found that the prohibition against prison officials from rehabilitating pretrial detainees had been clearly established, and thus it was not objectively reasonable for the prison officials to compel and maintain the pretrial detainee's work in the prison laundry by the use and threatened use of physical and legal coercion. The court held that the officials were not entitled to qualified immunity at the pleading stage of the detainee's civil rights claim. According to the court, officers of reasonable competence should have known that compelling a pretrial detainee, as a person not "duly convicted," to work in the laundry for up to 14 hours per day for three days per week, doing other inmates' laundry, reasonably could not be construed as personally-related housekeeping chores. The court found that the work constituted hard labor solely to assist in defraying of institutional costs in violation of the Thirteenth Amendment. (Chittenden Regional Correction Facility, Vermont)

U.S. Appeals Court
COMPENSATION
DEDUCTION FROM PAY
DISCRIMINATION
EQUAL PROTECTION
WORK ASSIGNMENTS

Reynolds v. *Barrett*, 685 F.3d 193 (2nd Cir. 2012). African–American inmates brought actions under § 1983 and § 1985 against New York State Department of Correctional Services (DOCS) employees, alleging that they were subjected to discrimination on account of their race in connection with their inmate jobs in a print shop. The actions were consolidated for discovery purposes. The district court granted summary judgment for the defendants and the plaintiffs appealed. The appeals court affirmed. The appeals court held that the disparate-impact theory of liability was not applicable to the African-American inmates' class claims against individual state officials under §§ 1981, 1983, 1985, and 1986, which relied on an equal protection racial discrimination violation as the underlying basis, since equal protection always required intentional discrimination, and disparate impact did not. At the time the suits here were filed, inmates employed in the prison print shop were paid an hourly wage, which ranged from sixteen cents to sixty-five cents per hour depending on the inmate's experience and expertise. In addition, inmates were eligible to receive an "incentive bonus" as a reward for good work. Civilian supervisors determined, in their discretion, whether a particular inmate merited promotion and higher pay. Similarly, these supervisors could recommend to the prison Program Committee—the entity tasked with assigning and removing inmates from various prison programs—that inmates be terminated from employment in the print shop. As a general matter, an inmate would be removed upon two requests. The plaintiffs alleged that print shop supervisors demoted minority inmates more often than white inmates, confined minority inmates to low-paying positions, and unfairly docked the pay of minority inmates. (Elmira Correctional Facility, New York)

2013

U.S. Appeals Court
ADA- Americans with Disabilities Act
RIGHT TO WORK
WORK CONDITIONS

Castle v. *Eurofresh, Inc*., 731 F.3d 901 (9th Cir. 2013). A former state prisoner brought an action against the state, the state department of corrections (DOC), prison officials, and a private employer who contracted with the state to provide off-site work to prisoners pursuant to a DOC program, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The district court dismissed claims against the private employer, and granted summary judgment in favor of the state defendants. The prisoner appealed. The court affirmed in part, reversed in part, and remanded. The court held that the state prisoner who performed work for a private employer that contracted

with the state department of corrections (DOC) to provide work opportunities to prisoners through DOC's off-site work program was not "employed" by that private employer, within the meaning of the Americans with Disabilities Act (ADA), where the prisoner had a legal obligation to work under state law. According to the court, the Rehabilitation Act did not apply to the private employer, where the employer did not affirmatively choose to receive any federal funding, either directly or indirectly. But the court found that the DOC could not "contract away" its liability for the alleged violations of the Americans with Disabilities Act (ADA) and the Rehabilitations Act by the private employer, and the district court should not have granted judgment for the DOC. (Arizona Department of Corrections, Work Incentive Pay Program, Arizona Correctional Industries)

U.S. District Court
DISCRIMINATION
EQUAL PROTECTION

Randle v. *Alexander*, 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. According to the court, the alleged forced fight between the inmate and a fellow inmate, orchestrated, condoned, and covered up by correctional officers was an objectively serious violation of the inmate's Eighth Amendment right to reasonably safe conditions of confinement, and the intent evinced by such activity was, at the very least, one of indifference to inmate safety, supporting the inmate's § 1983 Eighth Amendment conditions of confinement claim against the officers.

The court held that the African-American state inmate's allegations in his complaint that a correctional officer arranged inmates in his company so that white inmates were close to officers' posts, whereas black inmates were placed further away, that white inmates were given superior jobs, that the officer's efforts in forcing a fight between the inmate and a fellow inmate were done purposefully for his amusement because both inmates were black, and that the officer's treatment of the inmate and other black inmates was motivated by his intent to discriminate on the basis of race and malicious intent to injure inmates, stated a § 1983 equal protection claim against the officer. The court ruled that the correctional officers were not entitled to qualified immunity from the inmate's § 1983 Eighth and Fourteenth Amendment claims because inmates had a clearly established right to remain incarcerated in reasonably safe conditions, and it was objectively unreasonable to threaten inmates until they agreed to fight each other in front of prison officials. 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)

U.S. Appeals Court
REMOVAL FROM JOB

Spencer v. *Jackson County, Mo*., 738 F.3d 907 (8th Cir. 2013). An inmate brought a § 1983 action against county detention center employees, alleging violation of his First Amendment rights. The district court granted the defendants' motion for summary judgment. The inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by issues of material fast as to: (1) the inmate's First Amendment retaliation claim against a supervisor; (2) First Amendment retaliation claims arising from the inmate's transfer to another housing module; and (3) claims arising from the alleged obstruction of the inmate's access to a grievance process. The court found a dispute of material fact as to whether a program supervisor was motivated by the lawsuit the inmate had previously filed against her, when she removed the inmate from a trustee program almost immediately after he reminded her about his having filed the suit, resulting in his loss of access to income, work opportunities, and housing advantages as well as other privileges.

A fact issue was found as to whether the 53-year old inmate would have been transferred from a housing module for older inmates to a module that housed younger and more violent offenders, but for his use of the grievance process. The inmate had been approved for the detention center's Inmate Worker Program (IWP), also known as the "trustee program." Inmates in the trustee program received job assignments within the detention center and were paid for each shift, with an opportunity to earn more for additional work. They also received a number of privileges and incentives. They were housed in a trustee module and were eligible for late nights, weekend contact visitation rewards, and access to popcorn, soda, and a movie player. One of inmate's work assignments was in the kitchen, where inmates received extra food and may have one meal per work day in the break room area. (Jackson County Detention Center, Missouri)

U.S. Appeals Court
COMPENSATION
BENEFITS
EMPLOYEE
SAFETY

Vuncannon v. *U.S*., 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)

U.S. District Court
EQUAL PROTECTION
RELIGION
WORK ASSIGNMENT

Washington v. *Afify*, 968 F.Supp.2d 532 (W.D.N.Y. 2013). A Muslim inmate, proceeding pro se, brought an action against the department of correctional services (DOCS) employees, alleging violations of the First, Eighth, and Fourteenth Amendments. The employees moved to dismiss. The district court granted the motion in part and denied in part. The district court held that: (1) ordering the inmate to clean up human waste did not violate the Eighth Amendment; (2) housing the inmate with a cellmate who allegedly exposed the inmate to pornographic images and prevented him from reciting his daily prayers with necessary humility and tranquility did not violate the inmate's First Amendment free exercise right; (3) the inmate's allegations that he was denied two religious breakfast meals and one evening meal during a Muslim holy month unless he signed up to work in the mess hall were insufficient to state a claim; (4) the Muslim inmate's allegations that he was singled out in being ordered to clean up feces, being transferred to a different cell, and transferred to new prison job were insufficient to state a claim for violations of Fourteenth Amendment equal protection. The court held that the inmate's allegations that he was charged with disobeying a direct order after he refused to clean feces, that he was found guilty by a biased hearing officer, and that the hearing officer called the inmate a “little monkey” and warned that there was “more retaliation on the way” were sufficient to state a § 1983 claim for violations of Fourteenth Amendment due process against the hearing officer. The court also found that the inmate's allegations that he filed a grievance against a prison employee, that the employee told the inmate he was “nuts” and that the inmate “was playing with the wrong one,” and that the employee issued a false misbehavior report against the inmate the next day, were sufficient to state a § 1983 retaliation claim in violation of the First Amendment. (Southport Correctional Facility, New York)

2014

U.S. District Court
EQUAL PROTECTION
SUPERVISION
WORK RELEASE

Castillo v. *Bobelu*, 1 F.Supp.3d 1190 (W.D.Okla. 2014). Five female inmates brought a § 1983 action against state officials and employees, alleging they were subjected to sexual abuse while working outside a community corrections center in which they were housed, in violation of the Eighth Amendment. The inmates were participating in the Prisoner Public Works Program (“PPWP”) that allowed offenders to work off-site at different state offices. They were working during the day doing grounds maintenance at the Oklahoma Governor's Mansion, where they were supervised by a groundskeeper and his immediate supervisor. When inmates work at places such as the Governor's Mansion, the DOC does not have a guard stay with the women at the work site. Instead, they are supervised by state workers employed at the work site, who function like guards. These individuals go through an eight hour training program. The inmate claimed that they were sexually harassed and sexually assaulted by the groundskeeper and by a cook employed at the Governor's Mansion. 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 prison guards were deliberately indifferent. The court held that: (1) the prison district supervisor did not have knowledge of a substantial risk of harm to the inmates because the supervisor did not know that the inmates were working only with males while off-site; (2) the supervisor was not deliberately indifferent; (3) the prison supervising case manager was not deliberately indifferent; and (4) there was no evidence that the employee had supervisory authority over the inmate. The court noted that the inmate did not return to the work assignment where she was allegedly abused by state employees or have contact with the alleged abusers, as required for the continuing violation doctrine to apply to her § 1983 action that alleged violations of the Eighth Amendment.

According to the court, despite the supervisor being aware of misconduct by a groundskeeper under his supervision, the supervisor was aware that the groundskeeper violated certain policies, but did not have knowledge of the sexual assaults, and he investigated the groundskeeper's conduct and counseled the groundskeeper. The court also found that the prison supervising case manager, who oversaw the off-site public works program, was not deliberately indifferent to the excessive risk of sexual assaults of female inmates working at the governor's mansion as part of the program, where the inmates did not complain to the manager and the manager was never informed of misconduct. (Hillside Community Corrections Center, Oklahoma City, Oklahoma)

U.S. Appeals Court
INJURY

Colwell v. *Bannister*, 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)

U.S. District Court
SEARCHES
SAFETY
PRETRIAL DETAINEE

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
DISCRIMINATION
EQUAL PROTECTION
RELIGION
WORK ASSIGNMENT

Richard v. *Fischer*, 38 F.Supp.3d 340 (W.D.N.Y. 2014). A multiracial Muslim inmate brought a civil rights action alleging that prison officials and employees discriminated against him on the basis of race and religion and retaliated against him for filing grievances. The officials 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 New York State Department of Correctional Services (DOCS) employees were acting within scope of their employment, specifically, the duty of assigning work positions to inmates, when they denied the multiracial Muslim inmate employment outside of his cellblock. The court found that the inmate's allegations that no other inmate in the prison was "isolated by programming" or restricted to an employment position in his or her cellblock, that the inmate was isolated to programs in his cellblock, presumably because of his race and religion, and that prison employees tasked with assigning work refused to place the inmate on a waiting list for his desired program, when waiting lists were open to "all others," sufficiently stated that the inmate was treated differently than similarly-situated individuals, supporting the inmate's § 1983 claim that employees denied him equal protection by restricting him to employment opportunities in his cellblock. (Five Points Correctional Facility, New York)

2015

U.S. Appeals Court
WORK ASSIGNMENT
SAFETY

Estate of Johnson v. *Weber*, 785 F.3d 267 (8th Cir. 2015). The estate of a state prison guard who was murdered by inmates who attempted to escape brought a § 1983 action in state court against various prison officials and the state department of corrections (DOC), alleging constitutional violations. The action was transferred to federal court. The district court granted summary judgment in favor of the defendants and the estate appealed. The appeals court affirmed. The court held that state prison officials did not shock the conscience or act with deliberate indifference by housing two prisoners with violent criminal pasts, one with a history of multiple escapes and one with a history of planning an escape, in a medium security environment, and giving them job assignments which allowed the prisoners to move within the prison, and thus, the officials did not violate the substantive due process rights of the prison guard who was murdered by prisoners during their attempted escape. The court noted that the prisoners had no history of violence or threats while incarcerated before the murder, and one prisoner had worked in the prison for many years without creating any known threat of harm to any guard. (South Dakota State Penitentiary)

U.S. Appeals Court
RELIGION
GOOD-TIME
TRANSFER
WORK ASSIGNMENTS

Jehovah v. *Clarke*, 798 F.3d 169 (4th Cir. 2015). A Christian inmate brought a § 1983 action against the Commonwealth of Virginia and various employees and contractors of the Virginia Department of Corrections (VDOC), alleging that the defendants violated his free exercise rights under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA) by prohibiting him from consuming wine during communion, requiring him to work on Sabbath days, and assigning him non-Christian cellmates. Following dismissal of some claims, the district court granted the defendants' motion for summary judgment. The inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by fact issues regarding the wine ban. The court also found that the inmate stated an RLUIPA claim based on cell assignment, a First Amendment claim based on cell assignment, and an Eighth Amendment deliberate indifference claim. The court noted that the inmate alleged that he was required to share a cell with a particular inmate who subjected him to "anti-Christian" rhetoric, and that he was "burdened, mocked, and harassed" on account of his religious views by being housed in a cell with that inmate.

The inmate alleged that his religion required him to abstain from working during the "Old Jewish" and "New Christic" Sabbaths, that his cleaning job would not accommodate his Sabbath observations, that his requests for job transfers were denied, that prison officials had not approved him for any job for which he applied in over three years. The inmate alleged that he would face sanctions and lose the opportunity to accrue good conduct allowances and earned sentence credits if he failed to work for 30 to 40 hours per week. (Sussex I Prison, Waverly, Virginia)

U.S. Appeals Court
RELIGION

Jones v. *Williams*, 791 F.3d 1023 (9th Cir. 2015). A Muslim former inmate brought civil rights claims against prison officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), seeking monetary and injunctive relief. The district court entered summary judgment in favor of the officials and the former inmate appealed. The appeals court affirmed in part, vacated, and remanded in part. The court held that the inmate's claims for injunctive relief, arising from an alleged requirement that he handle pork while working in a kitchen, were moot because he had been released from custody. The court found that unsworn statements of an inmate cook who told the Muslim inmate that the food service coordinator had directed the inmate cook to mix pork in with meat used in a tamale pie were hearsay, and thus could not properly be considered in opposition to the prison officials' motion for summary judgment as to the Muslim inmate's claim that his free exercise rights were violated when he was served and ate the pie without notice that it contained pork. But the court held that prison officials were not entitled to qualified immunity from the Muslim inmate's § 1983 claim that he was ordered in 2007 to cook pork loins as part of his job duties in a kitchen, in violation of his religious beliefs. The court noted that the penitentiary implemented a policy prior to the incident in question, providing that an inmate could opt out of handling pork on religious grounds, the inmate alleged that he told the officers in charge that he had the right to not handle pork, and the fact that some officers claimed they were not personally aware of the policy change was not sufficient to show that the inmate's right to avoid handling pork was not clearly established. (Oregon State Penitentiary)

U.S. District Court
COMPENSATION
FLSA- Fair Labor Standards Act
FORCED LABOR
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. Appeals Court
ADA- Americans with Disabilities Act
INJURY
DISCRIMINATION

Neisler v. *Tuckwell*, 807 F.3d 225 (7th Cir. 2015). An inmate brought an action against prison administrators under the Americans with Disabilities Act (ADA) after losing his prison job following an incident where a cart overturned and damaged his prosthetic leg. The defendants moved for summary judgment. The district court granted the motion. The inmate appealed. The appeals court affirmed, finding that the provision of ADA prohibiting exclusion from benefits or services does not cover a prisoner's workplace discrimination claim regarding damage to his prosthetic leg. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
REMOVAL FROM JOB

Pearson v. *Secretary Dept. of Corrections*, 775 F.3d 598 (3rd Cir. 2015). A state inmate filed a § 1983 action alleging that prison officials retaliated against him for filing grievances and a civil lawsuit. The district court dismissed the case and denied the inmate's motion for reconsideration. The inmate appealed. The appeals court reversed and remanded. The court held that the inmate's allegation that a unit manager told him he was being terminated from his prison job because of grievances that he had filed nearly one year earlier was sufficient to state a plausible retaliation claim in the inmate's § 1983 action against prison officials. (Pennsylvania Department of Corrections)

U.S. Appeals Court
FLSA- Fair Labor Standards Act
INVOLUNTARY SERVITUDE

Smith v. *Dart*, 803 F.3d 304 (7th Cir. 2015). A pretrial detainee brought action under § 1983 against a county alleging deliberate indifference to his health in violation of the right to the provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment, as well as failure to pay adequate wages under the Fair Labor Standards Act (FLSA) for his job in the jail's laundry room. The district court dismissed the case and the detainee appealed. The appeals court held that the detainee sufficiently alleged that the food he received was "well below nutritional value," as required to state a claim under § 1983 for deliberate indifference to his health in violation of the Due Process Clause of the Fourteenth Amendment. The court ruled that pretrial detainees are not protected by the Fair Labor Standards Act (FLSA) because they are not employees of their jail. The court noted that the detainee had volunteered to participate in a veteran's program within the county jail that included a job in the jail's laundry room, and that this was not "involuntary servitude" or punishment that would violate the Thirteenth Amendment. According to the court, "[P]eople are not imprisoned for the purpose of enabling them to earn a living. The prison pays for their keep. If it puts them to work, it is to offset some of the cost of keeping them, or to keep them out of mischief, or to ease their transition to the world outside, or to equip them with skills and habits that will make them less likely to return to crime outside. None of these goals is compatible with federal regulation of their wages and hours. The reason the FLSA contains no express exception for prisoners is probably that the idea was too outlandish to occur to anyone when the legislation was under consideration by Congress." (Cook County Jail, Illinois)